

وفاقی شرعی عدالت میں 1984 میں قادیانیوں نے درخواست دی کہ انکو باقی غیر مسلم کی طرح بحیثیت اقلیت تسلیم کیا جائے اور جس طرح باقی غیر مسلم کے حقوق ہیں ہمیں بھی وہ حثیت دی جائے۔ بحث مباحثے کے بعد انکی درخواست خارج کی گئی۔ آخر میں اس فیصلے کا خلاصہ دیا گیا ہے وہ ضرور پڑھیں۔ بنیادی نکتہ یہ ہے کہ قادیانی 1974 کی آئینی تبدیلی کو ماننے سے انکار کرتے ہیں اور اس کی کھلے عام مخالفت اور خلاف ورزی کرتے ہیں۔ اسی لئے ان کی یہ درخواست خارج کر دی گئی۔

Judgment of Federal Shariat Court, Pakistan

JUDGMENT OF THE FEDERAL SHARIAT COURT IN SHARIAT PETITIONS

No. 17/I of 1984, No. 2/L of 1984, Dated October 28, 1984

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Ministry of Religious Affairs and Minorities Affairs, Government of Pakistan, Islamabad

IN THE FEDERAL SHARIAT COURT

Mr. Justice Fakhre Alam, Chief Justice

Mr. Justice Ch. Muhammad Siddique

Mr. Justice Maulana Malik Ghulam Ali

Mr. Justice Maulana Abdul Quddus Qasmi

Shariat Petition No. 17/I of 1984

Petitioners: Mujibur Rehman & three others

versus

Respondent: Federal Government of Pakistan through

Attorney General of Pakistan

Shariat Petition No. 2/L of 1984

Petitioners: Capt. (Retd) Abdul Wajid and another

versus

Respondent: Attorney General of Islamic Republic of Pakistan

For the Petitioners - Mr. Mujibur Rehman, Advocate

(in S.P. No. 17/I of 1984)

For the Petitioners - Capt. (Retd) Abdul Wajid

(in S.P. No. 2/L of 1984)

For the Respondent:

Haji Shaikh Ghias Muhammad, Advocate

Mr. M.B. Zaman, Advocate

Dr. Syed Riazul Hasan Gillani, Advocate

Dates of Hearing at Lahore:

15-7-1984, 16-7-1984, 17-7-1984, 18-7-1984, 19-7-1984, 22-7-1984, 23-7-1984, 24-7-1984, 25-7-1984, 26-7-1984, 29-7-1984, 30-7-1984, 31-7-1984, 01-8-1984, 02-8-1984, 05-8-1984, 06-8-1984, 07-8-1984, 09-8-1984, 11-8-1984, 12-8-1984

Date of Decision: 12-8-1984

JUDGMENT:

Fakhre Alam, C.J. Ordinance No. XX of 1984 called the Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984, was promulgated in the Gazette of Pakistan (Extraordinary) Issue, dated April 26, 1984. The Ordinance amended certain provisions of the Pakistan Penal Code (Act XLV of 1860), the Code of Criminal procedures, 1898 (Act V of 1898) and the Press & Publications Ordinance, 1963.

2. The Quadianis who are followers of Mirza Ghulam Ahmad of Quadian (hereinafter to be called Mirza Sahib) are divided into two groups, both of whom are, however, called by the name of Ahmadis.

3. One group which is generally known as Quadiani group believes that Mirza Sahib was the Promised Mehdi, the Promised Messiah and a Prophet. The Lahori group says that he was a Mujaddid (revivalist), the Promised Mehdi, and the Promised Messiah.

4. Two Petitions, one by some members of the Quadiani group and another by two members of Lahori group, bearing Nos. 17/I, of 1984 and 2/L of 1984 were filed to challenge the validity of the Ordinance viz-z-viz the Quran and the Sunnah of the Holy Prophet (P.B.H.).

5. The matter was heard in detail for more than four weeks. Mr. Mujibur Rehman, one of the Petitioners in Shariat Petition No. 17/I of 1984 and Capt. (Retd) Abdul Wajid, one of the Petitioners in Shariat Petition No. 2/L of 1984, argued the case on behalf of the Petitioners. Shaikh Ghias Muhammad, Advocate and Dr. Riazul Hasan Gillani argued the matter on behalf of the Government. The following Juris-Consults and Ulema belonging to the different schools of thought were invited by the Court for rendering assistance to it on the issues involved in the matter and argued the matter in detail:

Qazi Mujibur Rehman

Prof. Mahmud Ahmad Ghazi

Maulana Sadar-ud-Din Al-Rifai

Allama Tajuddin Haideri

Prof. Muhammad Ashraf

Allama Mirza Muhammad Yousuf

Prof. Tahir-ul-Qadri

6. The Constitution of 1973 was amended by the Constitution (Second Amendment) Act, 1974 (Act XLIX of 1974) to amend Article 106 and Article 260 thereof. Clause (3) was added to Article 260 to declare those persons as non-Muslims who do not believe in the "absolute and unqualified finality of Prophet or claim to be a Prophet in any sense of the word or of any description whatsoever, after Muhammad(P.B.H.) or recognizes such a claimant as a Prophet or a Religious Reformer". The Qadianis of the two groups are covered by this definition and they were thus declared non-Muslims.

7. Article 106 dealt with the constitution of Provincial Assemblies which specified the number of Members to be elected for the Assemblies, their qualifications and also the additional seats in those Assemblies reserved for non-Muslims, i.e. Christians, Hindu, Sikh, Buddhist and Parsi Communities. To those communities were added by the second Constitutional Amendment of 1974 "persons of the Qadiani Group or the Lahori Group (who call themselves Ahmadis)".

8. Thus, effect of Article 106 was given by declaration made in Sub-Article 3 of Article 260 and Ahmadis of either persuasion were placed in juxtaposition with other minorities.

9. Despite these provisions of the Constitution, the Ahmadis persisted in calling themselves Muslims and their faith as Islam. They remained impetuously apathetic and insensitive to the perturbation of the Muslims of Pakistan. However, their violation of the above Constitutional provisions and of continuing to defile the epithets, descriptions and titles like Ummul Momineen (Mother of the Muslims), Ahle-Bait (Members of the family of the Holy Prophet(P.B.H.)), Sahaaba Companions), Khulafa-e-Rashideen (the rightful Caliphs), Ameerul Momineen, Khalifat-ul-Momineen, Khalifat-ul-Muslimeen (epithets used generally for the Muslim Rulers and for the rightful Caliphs) which are exclusive for the Muslims and had never been used by the non-Muslims, for the wife, members of the family, companions, and successors respectively of Mirza Sahib. For this reason, use of derogatory remarks in respect of the Holy personages was made a criminal offense punishable under Section 298-A of the Pakistan Penal Code (Act XLV of 1860) (recently added by Ordinance No. XLIV of 1980). The Section is as follows: -

298-A

"Use of derogatory remarks, etc. in respect of holy personages:

Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (Khulafae-Rashideen) or companions (Sahaaba) of the Holy Prophet (peace of upon him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fines, or with both."

10. This Section was couched in general terms and was not made applicable to Ahmadis only. On account of the agitation of the Muslims over the persistence of the Ahmadis, the impugned Ordinance was promulgated. It added Section 298-B and 298-C to the Pakistan Penal Code (Act XLV of 1860) and made consequential amendments in the Code of Criminal Procedure, 1898 (Act V of 1898) and West Pakistan Press and Publications Ordinance, 1963. Sections 298-B and 298-C are as follows: -

298-B

"Misuse of epithets, descriptions and titles, etc. reserved for certain holy personage or places:

Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who by words either spoken or written or by visible representation;

refers to or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as 'Ameerul Mumineen', 'Khalifat-ul-Mumineen', 'Khalifat-ul-Muslimeen', 'Sahaabi', or 'Razi-Allah-Anho';

refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (peace be upon him), as 'Ummul-Mumineen';

refers to, or addresses any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as 'Ahle-bait'; or

refers to, or names, or calls, his place of worship as 'Masjid'; shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Any person of the Qadiani group or Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as 'Azan', or recites Azan as used by the Muslims, shall be punished with

imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

298-C

"Any person of Quadiani group, etc. calling himself a 'Muslim' or preaching or propagating his faith: -

Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who, directly or indirectly, poses himself as a Muslim, or calls, or refers to his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description of a term which may extend to three years and shall also be liable to fine."

11. These Sections made it a criminal offense for an Ahmadi:

to call or pose himself directly or indirectly as a Muslim or refer to his faith as Islam;

to preach or propagate his faith or to invite others to accept his faith or in any manner whatsoever to outrage the religious feelings of Muslims;

to call people to prayer by reciting Azan or to refer to his mode or form to call to prayer as Azan;

to refer or call his place of worship as Masjid;

to refer to any person other than a Caliph or companion of the Holy prophet Muhammad (P.B.H.) as Ameer-ul-Mumineen, Khalifat-ul-Mumineen, Khalifat-ul-Muslimeen, Sahaabi or Razi-Allah-Anho, any person other than the wife of the Holy Prophet(P.B.H.) as Ummul-Mumineen, and any person other than the family of the Holy Prophet(P.B.H.) as Ahle-bait."

12. The main ground on which these Petitions have been filed and which was argued from different angles is that the impugned Ordinance violates the Sharia and the Constitutional rights of the Ahmadis to profess, practice, and preach or propagate their religion.

13. It is pertinent to note that despite the Constitutional provisions, the Petitioners in their arguments insisted upon calling themselves Muslims and

calling their faith as Islam and submitted that the Constitutional Amendment was not a declaration of their being non-Muslims by a religious body but was the Act of the Ruling Party of that time. It was pointed out to the Petitioners that the Constitutional Amendment was unanimously passed by all parties and the Parliament had given this verdict almost in a judicial manner by hearing both sides including the head of the Ahmadiya community.

14. Mr. Mujibur Rehman stated that since the Court cannot decide against the Constitutional provisions, he would not like to raise the question whether Qadianis are Muslims or Non-Muslims. He, however, persisted in emphasizing that the Qadianis as such are not non-Muslims but have been declared so by the Iqtidar-e-Aala.

15. He, then, clarified that if the Counsel for the Government argued that the Qadianis are non-Muslims according to Sharia, he would also like to refute that argument in detail.

We inquired from Mr. Riazul Hasan Gillani, counsel for the Federal Government whether he would like to proceed only on the assumption that Qadianis have been Constitutionally declared non-Muslims or would like to argue the point of their status independently in the light of the Shariah. He opted in favor of the latter proposition. On this Mr. Mujibur Rehman submitted that he would like to argue and elaborate the question of status of the Qadianis in the light of the injunctions of the Quran and the Sunnah.

The arguments of Mr. Mujibur Rehman on the assumption of the Ahmadis being Muslims is an invitation to this Court to go into this question. This Court cannot thus avoid giving its findings on this point. The point was fully argued and shall be dealt with in the judgment.

The assertion in the written arguments filed at the end that the petitioners themselves did not wish to raise the question of their belief is thus only partly correct.

Before elaborating the points involved in this petition as well as the effects of different provisions of the impugned Ordinance, it would be pertinent to throw light on the Muslims concept of finality of the prophethood of Muhammad(P.B.H.), which is the main theme of the difference between the Muslims and Ahmadis and which was the base of Constitution (Second amendment) Act 1974 (Act XLIX of 1974), according to which the Ahmadis were declared non-Muslims.

[Regretfully, due to space limitation, we are not able to post some 120 pages of proof provided by Muslim Scholars and Government to prove that the Ordinances are in accordance to Sharia of Islam and Constitution of Pakistan. Allow us to follow the conclusion of the hearings and the decision.]

Lastly reference may be made to two pamphlets issued by the Islamic Council one is the 'Declaration of Human Rights' and the other is "A Model of an Islamic Constitution." Generally, the Human Rights described in the two Pamphlets, on the basis of the injunctions of the Quran and Sunnah of the Holy Prophet(P.B.H.), include the human rights as approved by the United Nations. Some of the rights are in addition, for example right to justice, right to protection against abuse of power, right to Asylum, rights of the Minorities to be governed in their personal matters by their own personal laws, rights and obligations to participate in the conduct and management of public affairs, status and dignity of workers, right to social security, etc.

In the pamphlet entitled 'Universal Islamic Declaration of Human Rights' ,paragraphs XII and XIII deal with the right to freedom of belief, thought and speech and right to freedom of religion. They are reproduced below: -

XII:

Every person has the right to express his thoughts and beliefs, so long as he remains within the limits prescribed by the law. No one, however, is entitled to disseminate falsehood or circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.

Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.

It is the right and duty of every Muslim to protest and strive (within the limits set out by the law) against oppression, even if it involves challenging the highest authority in the State.

There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the law.

No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

XIII: Every person has the right to freedom of conscience and worship in accordance with his religious beliefs."

Similarly, Articles 8 and 16 of the Pamphlet 'A Model of an Islamic Constitution' deal with the religious rights of the minorities and are as follows: -

8. Every person has the right to his thoughts, opinions, and beliefs. He also has the right to express them, so long as he remains within the limits prescribed by law.

16. There is no compulsion in religion.

Non-Muslim minorities have the right to practice their religion.

In matters of personal law, the minorities shall be governed by their own laws and traditions, except if they themselves opt to be governed by the Shariah. In cases of conflict between parties, the Shariah shall apply."

It may be noticed that the right to propagate one's religion is not included in the Human Rights of the Minorities. This is in accordance with what has been stated above.

Article 20 of the Constitution confers the fundamental right upon all citizens of Pakistan to profess, practice, and propagate one's religion but this right is subject to law, public order, and morality. It reads:

Subject to law, public order and morality -

every citizen shall have the right to profess, practice, and propagate his religion; and

every religion denomination and every sect thereof shall have the right to establish, maintain, and manage its religious institutions."

In the case of *Jabindar Kashore* PLD 1957, S.C. page 9, the Supreme Court had an occasion to interpret similar language in Article 18 of the Constitution of 1956. It was held that the words 'subject to law' do not permit the Legislature to take away with another hand what has been given by the Constitution by one hand and this right may only be regulated but cannot be taken away. Mr. Justice Muhammad Munir, Chief Justice (Retd) made the following observations in this respect :-

"But the scope of the regulation by law cannot be so curtailed when a law and order situation arises".

Article 20 is also subject to law and order, and the right preaching is subject to it.

It has already been noticed from historical review of Mirza Ghulam Ahmad's claims and their evolutionary trend that the Muslims of the Indian Sub-Continent had feeling of uneasiness soon after the claim of Mirza Ghulam Ahmad to be a Mujaddid and mamoor-un-minallah (a person appointed by Allah). They had shown an apprehension prophetically enough that this was likely to be the first step towards Prophethood. Mirza Sahib was quick in refuting this and in claiming that he was a firm believer in the finality of the prophethood of the Holy Prophet Muhammad(P.B.H.) and in his view any claim to prophethood was not less than Kufr (unbelief).

This uneasiness, resentment, and hostility among the Muslims increased when the claim of being the Promised Messiah and Mehdi was made in 1890. It would be clear from the books of Mirza Sahib and other Qadiani literature that Muslims crowded around the places of his stay in different cities whenever he visited them. The Ulema were also extremely agitated.

This agitation reached its peak by the distinct claim of Mirza Sahib to prophethood made in 1901.

After the establishment of Pakistan, there was such an agitation on this point that the Martial Law of 1953 had to be enforced to curb it. This, however, did not succeed in quieting the Muslims' demand as voiced by the Ulema in their 22 points program for incorporating in the Constitution the non-Muslim and minority status of the Qadianis.

The agitation continued despite the imposition of Martial Law till the representatives of the Muslim public in the Parliament and the National Assembly passed the Constitution (Second Amendment) Act of 1974, after giving a full hearing to the Qadianis through Mirza Nasir Ahmad, Chief of the Qadiani Sect, and to add a definition to Article 260 of the Constitution of 1973 declaring the Qadianis of the two well-known groups as non-Muslims and placing them through an amendment in Article 106, in Juxtaposition with other minorities in Pakistan like Christians, Parsis, and Hindus, etc.

As a result of the declaration which was the result of an unanimous demand of the Muslims, it was not possible for the Qadianis to call themselves Muslims or to propagate Islam of their concept as true Islam; but they showed the least respect for the Constitutional Amendment and continued, as before, to call their

faith as Islam. They continued to propagate their religion freely by publication of books, journals, etc. as well as among individual Muslim to create resentment which obviously was likely to create law and order situation and all this continued till the present Ordinance was passed and promulgated. In these circumstances, the Ordinance appears to be covered by the exception in Article 20 about its being subject to maintenance of law and order.

For the above reasons, the two petitions are without force and are dismissed.

Before finishing this judgment, we would like to place on record our deep appreciation for the assistance given to us by Mr. Mujeebur Rehman, petitioner and Mr. Riazul Hasan Gillani, advocate for the Federal Government. Mr. Gillani's preparation and presentation of the case was commendable.

Islamabad. dated October 28, 1984.