

Fair Judgment for Signature pl


02-11-12

IN THE FEDERAL SHARIAT COURT
(Revisional Jurisdiction)

PRESENT

MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE DR.FIDA MUHAMMAD KHAN
MR. JUSTICE SHEIKH AHMAD FAROOQ

SHARIAT MISC. APPLICATION NO.06/I OF 2011

Dr. Zahoor Ahmad Azhar (Professor Aimaretus)
Ex.President Faculty of Arabic/Dean/Principal,
Oriental College, Punjab University,
Lahore

Petitioner

Versus

Federation of Pakistan

....

Respondent

For the Punjab Government ...

Ch. Saleem Murtaza Mughal,
Assistant Advocate General Punjab

For the Sindh Government ...

Mr. Muhammad Kasim Mir Jat,
Additional Advocate General,
Sindh

For the KPK Government

Mr. Aziz-ur-Rehman, Advocate on
behalf of A.G. KPK.

Date of Institution ...

20.12.2010

Date of hearing

22.10.2012

Date of decision

22.10.2012 ✓

.....

JUDGMENT

SHAHZADO SHAIKH, J.- We have heard Raja Arshad Hayat, Advocate on behalf of Sardar Nasir Ahmad Saghir, Advocate for petitioner, Ch. Saleem Murtaza Mughal, Assistant Advocate General Punjab, Mr. Muhammad Kassim Mir Jat, Additional Advocate General Sindh, Mr. Aziz-ur-Rehman, Advocate for Advocate General, KPK and Mr. Muhammad Azam Khan Khattak, Additional Advocate General, Balochistan. We have also considered the issue raised by petitioner Dr. Zahoor Ahmed Azhar in the light of arguments made at the bar. We have also considered the material available in file.

2. Raja Arshad Hayat, Advocate appearing on behalf of learned counsel for the petitioner states that the latter is unable to attend the Court today because his brother-in-law has died.

3. Applicant Dr. Zahoor Ahmad Azhar has filed this Misc. Application stating therein that Arabic language is very important, therefore, it is necessary to promote the same in Islamic Republic of Pakistan as it is the language of basic source of Islamic law, and because it is the language of Holy Quran and Sunnah. United Nations Organization has also recognized it as its official language. It is also one of the official languages of Organization of Islamic Conference (now Cooperation) and ✓

African Union. It has a status of official language in 21 Arabic speaking countries. It is also means of international communication, trade and economic development and also a source of promotion of Islamic values throughout the world. Therefore, Arabic language should be made compulsory upto to higher secondary level and should be taught as compulsory subject. He further states that since Arabic is internal religious language of the Muslim Ummah and language of Quran, Hadith and original source of law, it requires to be introduced as compulsory subject from primary to higher secondary level in all the educational institutions. Islamic Ideology Council has already drafted a bill titled as "A BILL THE COMPULSORY TEACHING OF ARABIC LANGUAGE ACT, 2011". Article 31(2) (a) of the Constitution of Islamic Republic of Pakistan, also requires facilitating learning of Arabic language. He further states that President's Order 1982, Shariat Act, 1991, recommendation of special committee of Senate of Pakistan dated 22.11.1990 and also recommendation of Standing Committee for Education dated 17.10.1992 regarding teaching of Arabic in primary and secondary classes are very much clear regarding requirement of teaching of Arabic language as a compulsory subject alongwith Islamic Studies. In favour of his contentions he submitted ACT X of 1991 (Enforcement of Shariah Act, 1991) ✓

published in Gazette of Pakistan, Extraordinary, Part I dated 18th June, 1991. Relevant portion of the Act is reproduced as under:-

“Teaching of, and training in Shariah etc. The State shall make effective arrangements-----

- (a) for the teaching of, and training in the Shariah, Islamic jurisprudence and all other branches of Islamic law at appropriate levels of education and professional training;
- (b) to include courses on the Shariah in the syllabi of the law colleges;
- (c) **for the teaching of the Arabic language; and**
- (d) to avail the services of persons duly qualified in Shariah, Islamic jurisprudence and Ifta in judicial system.

He also submitted a copy of the bill for the Compulsory Teaching of Arabic Language Act, 2011 drafted by Islamic Ideology Council of Pakistan. Relevant portion of the drafted bill is as under:-

- i. “Short title, extent and commencement; (1) This act may be called the *Compulsory Teachings of Arabic Language Act, 2011*.
- 2. It extends to the whole of Pakistan.
- 3. It shall come into force at once.
- ii. Acknowledging the significance of teaching of Arabic language in a Muslim polity such as Pakistan, Arabic, adopting direct method of teaching, shall be taught ✓

at Primary, High School and Intermediate levels as compulsory subject.

- iii. At degree level, *Arabic* shall be taught as compulsory subject in programs that contains studies of Law, *Shariah and Fiqh*.
- iv. Policy, method of teaching and design of curricula for teaching of Arabic as compulsory subject shall be developed in accordance with modern scientific methodology.
- v. There shall be constituted a body, having chapters both at Federal and Provincial levels, that shall supervise effective propagation and advancement of Arabic language”.

He further submitted that Arabic is official language of the following Regional and International Organizations:-

- i. Arab League (22 countries) Official Language is Arabic.
- ii. Organization of Islamic Conference (More than 56 Countries).
- iii. Official Languages: Arabic, English, French.
- iv. African Union (more than 50 Countries)
- v. Official Languages: Arabic, English, French, Portuguese, Spanish, Swahili. ✓

- vi. United Nations Organization (more than 190 Countries) official Languages: Arabic, Chinese, English, French, Russian, Spanish.

Mr. Muhammad Idrees, Education Officer (SS) Government of Pakistan, Cabinet Division has submitted a report regarding promotion of Arabic Language. The same is reproduced as under:-

- i. It is submitted that sometime back in the year 2009, the Ministry of Law, Justice and Parliamentary Affairs forwarded a draft Bill "The Teaching of Holy Quran and Arabic Language Act, 2009" to the erstwhile Ministry of Education for making it mandatory to impart learning of Holy Quran with translation and teaching of Arabic Language, as compulsory subject for Muslim students in all public and private schools or any such institution functioning in the country as well as those set up abroad by the Government.
- ii. On receipt of the Bill from the Ministry of Law, the erstwhile Ministry of Education moved a summary highlighting the important pre-requisites for the introduction of compulsory teaching of Arabic and complete Holy Quran with translation in addition to Islamiyat. Ministry of Education proposed that before the Bill is introduced to the Parliament, a Committee headed by the Rector, International Islamic University, Islamabad may be constituted with members from Ministry of Education, Ministry of Religious Affairs, Provincial Governments and three eminent Islamic Scholars to be nominated by the Minister for Education to review the draft bill and give its recommendations; OR this summary, alongwith the draft bill, may be circulated to the Ministry of Religious Affairs and Provinces for comments and subsequently submitted to the Cabinet for consideration.
- iii. The Prime Minister Secretariat approved the second proposal of circulation of the summary for comments. The erstwhile Ministry of Education accordingly circulated the summary and the draft bill for comments to all provincial governments (Education Departments), Education Department of Northern Areas Government Gilgit,

Government of the State of AJK, Federal Directorate of Education, Islamabad, Higher Education Commission and Ministries of Religious Affairs, Minority Affairs, Law and Justice and Finance.

- iv. Federal Ministries *agreed* to the contents of the Bill but the Government of the Punjab disagreed to it on technical grounds saying that introducing full Holy Quran with translation and Arabic language as compulsory subject will cause to overloading the young students. Balochistan, AJK and Northern Area Governments asked the Federal Government to bear cost on teachers and their training, etc. and Sindh agreed to the Bill but proposed to postpone its implementation for one year in order to recruit teachers from the graduates of Deeni Madaris and to train them properly. The NWFP agreed to the Bill and proposed for the training of teachers through International Islamic University, Islamabad. For ICT, Federal Directorate of Education (FDE) agreed to the Bill and conveyed an estimate of Rs. 60.106 million to Finance Division for meeting expenses on recruitment of teachers for teaching the new subject. The Higher Education Commission (HEC) has offered no comments saying that the subject pertains to school education which does not fall under the purview.
- v. In view of the above comments, the M/o Education proposed that the matter may be discussed in the Cabinet to settle the following issues as submitted by the provinces. No further action was undertaken until the devolution of M/o Education as per 18th Constitutional Amendment in April, 2011. After 18th Constitutional Amendment, Federal Government (CA&DD) do not have legal mandate to implement such policies for whole of the country. It is further submitted that in the new Scheme of studies, teaching of Arabic has been included as an Optional subject for Classes VI-VIII and as an Elective subject for Classes IX to XII in the Humanities Group. The teaching of Islamiyat is compulsory from Class III to XII. In addition, Advanced Islamic Studies has also been introduced as an Elective subject for classes IX-XII. In the new Curricula of Islamiyat (comp),

Nazra Holy Quran has been made mandatory in schools. Translation and Hifz of selected Suras and Verses have also been included in Islamiyat compulsory from grade III-XII.

The above report was submitted to the Secretary CA&DD with the proposal that this matter alongwith the complete history of the case may be forwarded to Cabinet Division for onwards transmission to Ministry of Interprovincial Coordination to build National Consensus on the subject matter and for further necessary action at ICT level. The Secretary CA&DD has approved this proposal”.

Statement of objects and reasons submitted by Minister-In-

Charge is reproduced is as under:-

“In an ideological country having come into existence in the name of Islam, the educational system could not be changed according to the aspirations of the people. Objective Resolution ordained that Pakistan shall be a State wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with teachings and requirements of Islam as set out in the Holy Quran and Sunnah of the Holy Prophet (peace be upon him). Article 31 of the Constitution of the Islamic Republic of Pakistan 1973 imposes a duty on the State that it shall endeavor to make the teaching of Holy Quran and Sunnah of the Holy Prophet (peace be upon him) compulsory and to encourage and facilitate the learning of Arabic language. But the objectives could not be achieved in letter and spirit in spite of the fact that Islamiyat as a compulsory subject is being taught upto graduate level. Hence there is a need to revisit the school education curricula to make teaching of the Holy Quran and Arabic language as compulsory subjects within the National Scheme of Studies”.

4. The Education Officer (SS), Cabinet Secretariat, Government of Pakistan vide his letter No.F.5-3/2012-EO (C&TW) dated 23.04.2012,

has referred to the report of the Council for Australian-Arabic Relations, the relevant portion of which is reproduced as under:-

- * Promote Arabic language in Australia
- * promote Australian studies in Arab countries
- * develop a cadre of Australian graduates with Arabic language skills and a practical understanding of business practice and culture in Arab countries
- * encourage Australian students to develop a long-term interest in Australian-Arab relations.

The formation of the Council is a significant initiative by the Federal Government: one that recognizes the importance of a strong relationship between Australian and the Arab world. The Government has sent a clear message: Australia values the contribution of our Arab communities, and our relations with Arab countries are important to the national interest.

5. Notice was issued to Secretary Law and Justice for Federal Government, Attorney General of Pakistan, Standing Counsel for Federal Government as well as Sanding Counsel for Attorney General and Advocates General of four Provinces but no one is present on behalf of Federation.

6. In view of above, Federation of Pakistan is directed that, under Article 31 (2) (a) of the Constitution of Islamic Republic of Pakistan, Shariat Act, 1991 and the facts mentioned above, necessary steps, stated to be already under way, in certain respects in this regard, as mentioned above, be finalized early for promotion of Arabic language for the educational and other relevant systems. It should regularly be monitored in order to ensure ✓

positive progress on the same, to be submitted to the Cabinet within six months.

7. Shariat Misc. Application No. 06/I of 2011 filed by Dr. Zahoor Ahmed Azhar is hereby disposed of accordingly.

8. * The office is hereby directed to send copies of this judgment to the Federal Government as well as four Provincial Governments for information and necessary compliance within six months.



JUSTICE SHAHZADO SHAIKH


JUSTICE DR.FIDA MUHAMMAD KHAN



JUSTICE SHEIKH AHMAD FAROOQ

Islamabad the 22nd October, 2012
MUJEEB-UR-REHMAN/-

Fit for reporting



JUSTICE SHAHZADO SHAIKH