

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT

MR. JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH
MR. JUSTICE DR. SYED MUHAMMAD ANWER

SHARIAT PETITION NO. 22/I OF 2022

Sardar Abdul Qudoos, Advocate son of Muhammad Mukhtar, resident of Marali Hathar, Tehsil & District Kasur.

PETITIONER

VERSUS

1. Federation of Pakistan through Secretary Law & Justice, Islamabad.
2. Province of Punjab through Secretary Law & Parliamentary Affairs, Lahore.
3. Province of Sindh through Secretary Law & Parliamentary Affairs, Karachi.
4. Province of KPK through Secretary Law & Parliamentary Affairs, Peshawar.
5. Province of Balochistan through Secretary Law & Parliamentary Affairs, Quetta.
6. Election Commission of Pakistan through its Chairman, Islamabad.
7. Council of Islamic Ideology of Pakistan through its Chairman, Islamabad.

RESPONDENTS

Counsel for Petitioner:	In-person.
Date of Institution:	28.10.2022
Date of Hearing:	30.10.2023
Date of Judgment:	30.10.2023

JUDGMENT

DR. SYED MUHAMMAD ANWER, J: Through the instant Shariat Petition the petitioner challenged Articles 3, 4 and 5 of the Political Parties Order, 2002 and also prayed that one-party system instead of multi-party system be adopted in Pakistan, which, in his view, is in accordance with the

injunctions of Islam as laid down in the Holy Quran and Sunnah. For the purpose of ready reference, the prayer is reproduced as under:

"It is, therefore, most humbly and respectfully prayed that instant petition may kindly be accepted and Article 3, 4 and 5 of Political Parties Order 2002 and all laws relating to Multi Party System be declared against the injunctions of Islam as laid down in the Holy Quran and Sunnah.

It is further prayed that legislation regarding Uni Party System / One party system be adopted according to the injunction of Islam as laid down in Holy Quran and Sunnah.

Any other relief which this Hon'ble Court deems fit and proper may also be granted to the petitioner."

The petitioner in support of his prayer has relied upon few verses from the Holy Quran, like Verse 103 of *Surah Al-Imran*, Verse 159 of *Surah Al-An'am*, Verse 46 of *Surah Al-Anfal*, Verse 59 of *Surah Nisa*, Verse 107 of *Surah Taubah*, Verse 19 of *Surah Al-Imran*, Verse 85 of *Surah Bakarah*, Verse 3 of *Surah Al-Maidah*, Verse 85 of *Surah Al-Imran* and Verse 208 of *Surah Bakarah*.

2. We have heard the arguments advanced by the petitioner and have also reviewed the aforementioned verses of the Holy Quran and are of the view that all the verses of the Holy Quran referred by the petitioner are not relevant to the prayer as sought by the petitioner in his petition. The verses, which are referred to by the petitioner, stressing upon the importance of unity amongst Muslims, are regarding the direction given to them by Allah and His Prophet (SAW), which is part of our faith and belief. Obviously nobody can change the dictates of Allah and the Holy Prophet (SAW). Whereas, the roles of political parties in a society regarding formation of a government through democratic process are different.

3. In addition to that, the petitioner also relied upon a judgment of this Court, dated 16.10.1989, passed in Shariat Petition No.13/L of 1988 (Muhammad Salah-ud-Din etc. vs. Government of Pakistan) and other

connected matters, which was regarding the Representation of the People Act, 1976, which is a different law, and the main question which was challenged in that petition was regarding secrecy of ballot, which was totally different from the question raised by the petitioner in the instant Shariat Petition, therefore, such reliance is also not relevant and does not provide any support in favour of his arguments.

4. According to the injunctions of Islam, Muslims are required to decide the governance issues, including formation of a government, and policy matters at every level through consultation as the Holy Quran says in Verse 38 of *Surah Ash-Shurah*, that:

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنْفِقُونَ۔

اور جو اپنے پروردگار کا فرمان قبول کرتے ہیں اور نماز پڑھتے ہیں اور اپنے کام آپس کے مشورے سے کرتے ہیں اور جو مال ہم نے انکو عطا فرمایا ہے اس میں سے خرچ کرتے ہیں۔

And those who have responded to their lord and established prayer and whose affair is [determined by] consultation among themselves, and from what We have provided them, they spend.

5. It is the fundamental requirement of any consultation that all or any point of view must be brought to light through a consultative process in order to reach at a just and right conclusion. This equitable and democratic way of making decisions at any level, including at the collective national level, is required by the Holy Quran in the light of the above mentioned verse of *Surah Ash-Shurah*. Hence, in the light of this direction of Allah it was the practice of the Holy Prophet (SAW) that usually he heard and sought different opinions from different persons or different groups of persons before arriving at a final decision concerning the administrative affairs of the government.

6. The purpose of having different political parties in a polity to represent different point of views and to highlight the issues from every aspect before

the government is not against the teachings of Islam, rather this concept is in conformity to the injunctions of Islam. According to the injunctions of Islam, consultation is recommendatory upon the authorities, policy makers and the stakeholders. Islam gives liberty to every citizen or a group of citizens to object and raise questions on any issue of governance, for which they want clarification, and the government is supposed to answer all such questions. In a famous incident, a person in a consultative session gathering of the Sahabah (RA) raised a question about the clothes of Hazrat Umar (RA), which he got from his share of the bounties of war, the person alleged that more cloth was used in Hazrat Umar's (RA) clothes from the share which had been equally distributed amongst all the Sahabah (RA). In response, Hazrat Umar (RA) gave a satisfactory clarification that he borrowed the extra cloth from the share of his son. According to the injunctions of Islam and all the verses relied upon by the petitioner, there is a clear difference in creating division / disorder in the society and having / expressing difference of opinion. First one is prohibited, while the second one is allowed and permissible according to the injunctions of Islam by any individual or by a group of people in a society.

7. Another verse of the Holy Quran is very relevant with Verse 38 of *Surah Ash-Shurah*, that is Verse 59 of *Surah Nisa*, which states as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا۔

مومنو! خدا اور اس کے رسول کی فرمانبرداری کرو اور جو تم میں سے صاحب حکومت ہے ان کی بھی اور اگر کسی بات میں تم میں اختلاف واقع ہو تو اگر خدا اور روز آخرت پر ایمان رکھتے ہو تو اس میں خدا اور اس کے رسول کے حکم کی طرف رجوع کرو اور یہ بہت اچھی بات ہے اور اس کا آل بھی اچھا ہے۔

O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.

It is clear from the above referred verse of *Surah Nisa* that a Muslim society can have a difference of opinion and in case there arises a dispute amongst different groups of Muslims, then it must be referred to Allah as well as to His Prophet (SAW).

8. According to Verse 38 of *Surah Ash-Shurah*, referred earlier, consultation is advised to the Muslims in order to reach at the right conclusion regarding any matter, including the matters related to governance and policy, which a government is supposed to adopt and implement. Furthermore, it is very much relevant that due to the importance of the Quranic phrase (وَأَمْرُهُمْ شُورَى بَيْنَهُمْ), used in the abovementioned verse of *Surah Ash-Shurah*, which means “and whose affair is (determined by) consultation among themselves”, the term of “*Majlis-e-Shoora*” (مجلس شورى) for the Parliament was introduced and incorporated in the Constitution vide Presidential Order No.14 of 1985. By virtue of this constitutional amendment the title of earlier Article 50 of the Constitution of Islamic Republic of Pakistan, 1973, containing the definition of “Parliament” was substituted by the term “*Majlis-e-Shoora*”. Resultantly, the word “Parliament” was put in parenthesis in front of an Urdu term “*Majlis-e-Shoora*”. The purpose of introduction of this amendment was to highlight the importance of consultation between different political parties or groups, etc., which are democratically elected and are present in the parliament. In other words, the parliament, which is a place of debate and consultation between different political parties, is supposed to undertake the consultation for the benefit of public at large as well as for the government, which is in accordance to the spirit of Islamic injunctions.

9. The practices of raising the objections on the working of a government in a society in a civil and democratic way is a part of a consultative process, which cannot be done in the absence of persons of different political thoughts and groups or political parties and same is the purpose of the impugned law i.e. the Political Parties Order, 2002. To have a constructive, healthy consultative process i.e. Shurah (شورى), can only be promoted through the political parties of a polity, and that is the main purpose of the impugned law according to its preamble, which states that:

“WHEREAS it is intended to create a political environment conducive to the promotion of a federal democratic system as enshrined in the Constitution.

AND WHEREAS political parties play a pivotal role in fostering a constitutional, federal democratic culture;

AND WHEREAS the practice of democracy within the political parties will promote democratic governance in the country for sustaining democracy.

AND WHEREAS it is expedient to provide for the formation and regulation of political parties;

AND WHEREAS it is essential to revise, consolidate and re-enact the law relating to political parties and matters connected therewith and incidental thereto.”

(Emphases added)

10. Above all, the Shariat Petition of the petitioner is not at all maintainable as it is in direct conflict to Article 17 of the Constitution of Islamic Republic of Pakistan, 1973, to be precise Article 17(2) of the Constitution, which makes it a fundamental right of every citizen of Pakistan to form a political party or to be a member of any political party. The formation and presence of a political party within the country is one of the fundamental rights given by the Constitution, which is guaranteed and also

protected by the Constitution. Article 17 of the Constitution, titled “Freedom of Association” reads as under:

(1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) Every political party shall account for the source of its funds in accordance with law.

(Emphases added)

In addition to that Article, several other Articles of the Constitution i.e. Articles 51, 63-A, 175 and 224, also talk about the participation and working of political parties in our polity.

11. For the above referred reasons, the instant Shariat Petition being not maintainable was **dismissed** *in limine* vide our short order announced in open Court on 30.10.2023 and these are the detailed reasons for the same.

(JUSTICE DR. SYED MUHAMMAD ANWER)
JUDGE

(JUSTICE IQBAL HAMEEDUR RAHMAN)
CHIEF JUSTICE

(JUSTICE KHADIM HUSSAIN M. SHAIKH)
JUDGE

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Approved for reporting.