

IN THE HIGH COURT OF SINDH, KARACHI.

CONST. PETITION No. D-1334 OF 2021

Present:-
Ahmed Ali M. Shaikh, CJ &
Yousuf Ali Sayeed, J

Muhammad Tariq Manzoor, Advocate.....PETITIONER

Versus

Federation of Pakistan & others..... RESPONDENTS

.....

Mr. Tariq Mansoor, Advocate, In person
Mr. Khaleeq Ahmed, DAG for the Respondents No.1 & 2
Mr. Abdul Jalil Zubedi, AAG
Barrister Sadiq Qureshi, Law Officer, Sindh Healthcare Commission

Date of hearing : 18.11.2021

ORDER

AHMED ALI M. SHAIKH, CJ: Through these proceedings, Petitioner has sought following relief(s):-

“That therefore on the basis of the aforementioned fact(s), figure(s), ground(s) and considering the severity, gravity and the sensitivity of the “MATTER OF HIGH PUBLIC INTEREST AND PUBLIC IMPORTANCE, it is most humbly prayed for and on behalf of 4,78,86,051 CITIZENS (as per 2017 census) residing in the Province of Sindh, for the enforcement of their Fundamental Right that your Lordship may kindly consider the gravity of the instant matter and thereby may kindly:

1. TO GRANT DIRECTIONS:

To the Respondents No.1 to 8 as per their respective jurisdiction(s) to do necessary amendments in P.P.C. and the Contract Act, 1872 etc., for complete ban and restriction of Surrogacy procedure and practice in any form its incorporation as a crime as per the Injunctions of Islam and Holy Quran and Sunnah and implementation & enforcement of Hon’ble Federal Shariat Court Judgment dated 16th Feb, 2021, in Shariat Petition No. 2/I of 2015 in letter and spirit.

2. TO DECLARE:

The “SURROGACY” its process, practice and procedure and use in any shape, form, brand name type to be against the Constitutional Commandments as mandated under the Constitution of the Islamic Republic of Pakistan, 1973 R/Alongwith Art. 227(1) & 2, 2A ETC.

3. TO MAY KINDLY GRANT DIRECTIONS:

To Respondent(s) No.5 to 8 etc to cancel the license of all those Registered Medical Practitioners (RMP) who are and will be found to be involved in either doing, or conducting or providing services for the process of "SURROGACY" in any shape, brand name, type or form forthwith in any Public and Private Medical Institution or Clinic etc.

Any other Order including the above as my most Hon'ble Lord(s) may deem fit and proper as per the nature, fact(s) and circumstance(s) of the instant matter in the larger Public interest as a matter of Public Importance accordingly.

Prayed in the interested of justice and for the enforcement of the Fundamental Right of 4,78,86,051 "CITIZENS" residing in the Province of Sindh in their larger Public Interest as a matter of Public importance accordingly.

The case advanced by the Petitioner is essentially founded on the judgment of the Federal Shariat Court (the 'FSC') in Shariat Petition No. 2/I of 2015 (*Farooq Siddiqui Versus Mst. Farzana Naheed*) where certain directions were issued on that note. In that regard the Petitioner apparently filed Shariat Misc. Application No. 02-I of 2020 before the FSC for the very purpose sought to be advanced through the instant petition, but withdrew the same. The Petitioner sought to explain away withdrawal of said application by contending that this was done as the FSC had no power of enforcement. In view of Article 203-E(3) of the Constitution, we are unable to accept that contention. That being said, as to the scope of the FSC's jurisdiction in terms of Article 203-D of the Constitution, one may turn to the judgment of the Shariat Appellate Bench of the Honourable Supreme Court in the case reported as *Government of Punjab through Chief Secretary Vs. Dr. Zahoor Ahmed Azhar* (PLD 2019 Supreme Court 32) where it was held as follows:-

"9. Having examined the Jurisdictional bounds of the Federal Shariat Court, we have noted that the Federal Shariat Court has issued a direction in the form of *writ of mandamus* as reproduced in paragraph 3 above, which is clearly beyond its jurisdictional authority.

10. Learned Bench of the Federal Shariat Court, fell into error, treating Article 31(2) of the Constitution, as command of the Constitution or law capable of implementation by the Federal Shariat Court. As discussed

above, jurisdiction of Federal Shariat Court is confined to the extent of examining the compatibility or otherwise of law (per Article 203-B (c) *ibid*) on the touchstone of Injunctions of Islam. Once a law or any provision thereof is held to be repugnant to Injunctions of Islam, by the Federal Shariat Court then it becomes the responsibility of the appropriate legislature to harmonize it in accordance with Injunctions of Islam, otherwise declaration so made by the Federal Shariat Court becomes effective on the day so specified in its decision.

11. It may be observed that Principles of Policy as embedded (Article 29 to 40), in fact are the guidelines for the State, stand alone, are not enforceable. Sub-Article (1) *ibid* on one hand places responsibility on each organ and authority of State to strive to achieve the same on the other sub-Article (2) of Article 30 *ibid* insulates it against examination even by the High Courts and Supreme Court unless same are translated into command of the Constitution and or law like Article 141-A, Article 10-A, Article 25-A, corresponding to Article 32, 37(d) and 37(b)&(c) respectively grafted through 18th Constitutional Amendment [For illustrative cases one may see *Mehr Zulfiqar Ali Babar, President of Balochistan High Court Bar Association v. Federation of Pakistan and others* (2012 SCMR 745) and *Hafiz Abdul Waheed v. Mrs. Asma Jehangir and another* (PLD 2004 Supreme Court 219).

12. As discussed above original jurisdiction of the Federal Shariat Court is circumscribed by Article 203D of the Constitution, to the extent of examining any law to be in conformity with Injunction of Islam or otherwise. Federal Shariat Court has no jurisdiction to examine or be influenced by any proposed draft legislation, Bill “*the Teaching of Holy Quran and Arabic Language, Act, 2009.*” Which has not yet been translated into the Act of Parliament nor possess any jurisdiction in the nature of Article 199 or 184(3) of the Constitution, for the enforcement of fundamental rights or to issue order, declaration or directions to implement any command of the Constitution or law. The direction given to Federation of Pakistan and all of the four Provinces through impugned judgment to take necessary steps under Article 31 (2) (c) of the Constitution and “*Enforcement of Shariah Act, 1991*” “*for promotion of Arabic language for educational and other relevant purposes*”, the jurisdiction and authority, if any, to issue such direction, may rest elsewhere but, certainly not with the Federal Shariat Court.”

Learned counsel sought to contend that the jurisdiction of this Court under Article 199 has been invoked for the given purpose in the public interest, but was unable to advance any cogent argument to establish his *locus standi* in terms of there being a public duty owed to him or to satisfy us as to how the matter was justiceable.

In the wake of above, we do not find any merit in the petition in hand, which is accordingly dismissed alongwith listed application.

CHIEF JUSTICE

JUDGE

Amjad/PS