

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

**C.P No. D-275 of 2020**

Har Lal .....Petitioner

Versus

Federation of Pakistan and others.....Respondents

Abdullah Nizamani, Advocate, along with Yaser Latif Hamdani, Advocate, for the Petitioner. Kazi Abdul Hameed Siddiqui, D.A.G along with Samina Maqsood, Law Officer, NADRA.

Date of hearing : 08.03.2023

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Petition raises questions as to whether citizens can and ought to be required by the National Database and Registration Authority (“**NADRA**”) to state their religion in the application form for issuance of a Computerized National Identity Card (“**CNIC**”), and, if so, whether those who follow a religion other than Islam can be required to thereby make a declaration of their faith in terms extending beyond what is sought from citizens who profess to belong to the Islamic faith.

2. As it stands, whilst the relevant form developed by NADRA requires all citizens to disclose their religion, Clause 33 thereof calls for a Muslim to simply state his or her belief (i.e. that he is a Muslim) but obliges followers of other faiths to firstly make a negative declaration to the effect that they are not Muslims before going on to state their religious affiliation. In the case of the Petitioner, who professes to be a Hindu, the envisaged declaration reads as follows:

I hereby declare on Oath that: I am not Muslim and belong to Hindu Religion.

میں حلفیہ بیان کرتا/کرتی ہوں کہ میں مسلمان نہیں ہوں اور میرا تعلق ہندو مذہب سے ہے۔

3. The comments submitted by NADRA reflect that such measures were introduced in compliance of a judgment rendered by the Islamabad High Court on 04.7.2018 in the case then reported as *Mulana Allah Wasaya v. Federation of Pakistan* through Ministry of Law and Justice PLD 2019 Islamabad 62, where it had *inter alia* been directed that in order to get a CNIC “an affidavit must be sworn by the applicant based on the definition of Muslim and Non-Muslim provided by Article 260(3) (a)&(b) of the Constitution”. Hence, vide Notification dated 02.11.2018 issued by the Ministry of Interior, the National Database and Registration Authority (Application for National Identity Card) Regulations, 2002 (the “**Regulations**”) had been amended in exercise of powers said to have been conferred by Section 45 of the National Database and Registration Authority Ordinance, 2000 (the “**Ordinance**”) read with Section 9(3) thereof, so as to provide in terms of Regulation 10(2) for such a declaration to be made by a citizen if he mentions his religion in the application to be other than Islam or mentions himself to be a non-Muslim.

4. In the wake of that submission, learned counsel for the Petitioner did not press the basic argument that a citizen's religious belief is a personal matter which bears no relevance to the recording of his national identity, and confined himself to the alternative submission impugning the propriety of the particular declaration being sought from non-Muslim citizens. Indeed, that realignment is reflected as far back as in the Order dated 06.11.2020, which reads as follows:

“The main contention raised by the petitioner is that in the application form submitted for CNIC, column 15 germane to religion in which it is clearly mentioned that the applicant is Hindu, but in clause 33 there is no justification to further verify by him that he is not Muslim and he is Hindu. This clause has been objected by the petitioner with the contention that when a column is already introduced in the form in relation to the religion of applicant then there is no necessity or logical reason for incorporating any further clause which may create disharmony.”

As such, the scope of our determination stands circumscribed accordingly, and we leave it open for other aspects to be addressed in an appropriate proceeding at a later stage.

5. Proceeding with his submissions, learned counsel for the Petitioner argued that non-Muslim citizens seeking CNICs ought to be extended the courtesy afforded to Muslims of simply stating their religion, or stating that they did not subscribe to any faith for that matter, if that be the case. He contended that to oblige a non-Muslim to firstly make a statement on oath to the effect that he or she is not a Muslim prior to stating his or her religion forces him or her to identify for religious purposes in negation to the Muslim majority rather than simply as an adherent to an independent and equal faith.

6. He submitted that it ought to suffice for members of other faiths to simply state their own religion, since such a statement itself constituted an unequivocal assertion that they are not Muslims. Thus, in the case of the Petitioner, his declaration that he is a Hindu ought to suffice of itself, and to demand a further declaration from him or indeed from the adherents of other faiths beyond what was otherwise envisaged in the case of a Muslim was unnecessary and superfluous.
  
7. In response, the learned DAG and learned counsel appearing on behalf of NADRA were at a loss to advance any valid rationale for the declaration required from non-Muslims other than to emphasize that the same was a measure introduced through an amendment to the Regulations in consonance with the directions issued in Allah Wasaya's case (Supra) and to submit that the same did not amount to a violation of the Petitioner's fundamental rights.
  
8. We have heard and considered the arguments advanced for and against the declaration envisaged as per the Regulations.
  
9. Whilst Islam may be the State religion in terms of Article 2 of the Constitution and whilst Article 260(3) (a)&(b) thereof sets out the definition of a "Muslim" and clarifies that any person who does not fall within that definition is a "non-Muslim" while going on to include persons belonging to certain other faiths forming part of the religious minorities of the country within that fold for further clarity, that is not to say that the Constitution regards other religions to be lesser or non-Muslims to be

less than equal citizens. Nor does it presume all citizens to be Muslims and envisage that non-Muslims be required to firstly deny an affiliation to Islam through a declaration that they are not Muslims for purpose of stating their own faith. On the contrary, it is axiomatic that just as people practicing Islam identify as Muslim, people who profess the religion of Hinduism identify themselves as Hindus and people professing the religion of Christianity identify themselves as Christians, and so on, with each separate identification being mutually exclusive of others, and it thus being sufficient for adherents to any particular religion to simply state that they are followers of such faith.

10. Indeed, the subject of minority rights has been viewed from a Constitutional lens in a number of decided cases, including *Suo Motu Case No.1 of 2014 etc.* PLD 2014 SC 699, relating to an attack on a Church in Peshawar and regarding threats being given to the Kalash tribe and Ismailies in Chitral, where the Supreme Court of Pakistan observed that:

15. Of all the Articles relating to the minorities' rights, Article 20 is of prime significance. A close reading of this provision would indicate that the freedom to practice religion and manage religious institutions under this provision is multifaceted because:

- (a) The right to religious conscience conferred under this Article does not make any distinction between majority and minority or Muslim and Non-Muslim. It is in the nature of an Equal Religious Protection Clause conferred on every citizen, every religious denomination and every sect thereof. This equal religious protection clause is in the same nature as the equal justice under the law and equal protection under the law clauses conferred under Articles 4 and 25. In other words, every absolute equality and there is no distinction among citizens, religious denominations and sects thereof, as far as the right to religious conscience, is concerned.

(b) The right to religious conscience is a fundamental right. It has not been subjected or subordinated to any other provision of the Constitution because it is only subject to law, public order and morality and not to any religious clauses of the Constitution. The very term law, public order and morality has been used in non-religious terms as the notion of law or public order or morality is not reducible to the Islamic meanings of these terms. Therefore, Article 20 has a certain preeminence in the Constitution being only subject to the general restrictions of law, public order and morality, which three terms cannot be interpreted or used in such a restrictive way as to curtail the basic essence and meaning of the pre-eminent right to religious conscience.

(c) The right to profess and practice is conferred not only on religious communities but also on every citizen. What this means is that every citizen can exercise this right to profess, practice and propagate his religious views even against the prevailing or dominant views of its own religious denomination or sect. In other words, neither the majority religious denominations or sect nor the minority religious denomination or sect can impose its religious will on the citizen. Therefore, not only does it protect religious denominations and sects against each other but protects every citizen against the imposition of religious views by its own fellow co-believers. It needs to be mentioned here that every citizen would necessarily include both males and females (Article 263), which point needs emphasis considering the exclusion or subordination of women in relation to numerous forms of religious practices.

(d) As far as every religious denomination is concerned, even sects within these religious denominations have been conferred the additional right to establish, maintain and manage its religious institutions. Therefore, even sects within these religious denominations have been protected against their own co-religious denominations.

(e) The right of religious conscience conferred on every citizen is a right conferring three distinct rights i.e. Right to Profess, Right to Practice and Right to Propagate. What this means is that Article 20 does not merely confer a private right to profess but confers a right to practice both privately and publicly his or her religion. Moreover, it confers the additional right not only to profess and practice his own religion but to have the right to propagate his or her religion to others. It is important to note that this propagation of religion has not been limited to Muslims having the right to propagate their religion but this right is equally conferred on Non-Muslims to propagate their religion to their own community

and to other communities. This should not be seen as a right to encourage conversions but more importantly, should be seen as a right against forced conversions or imposing beliefs on others because if all citizens have the right to propagate then no citizen has the right of forced conversion or imposing beliefs on others.

16. Article 20 must then be interpreted to guarantee the rights of the community as well as the right of the individual against those from his own or other religious communities - the ultimate goal being the eradication of religious intolerance in the society. English political philosopher John Stuart Mill in his treatise 'On Liberty' (1859) stated that "the great writers to whom the world owes what religious liberty it possesses, have mostly asserted freedom of conscience as an indefeasible right, and denied absolutely that a human being is accountable to others for his religious belief. Yet so natural to mankind is intolerance in whatever they really care about, that religious freedom has hardly anywhere been practically realized, except where religious indifference, which dislikes to have its peace disturbed by theological quarrels, has added its weight to the scale."

11. Subsequently, in the same vein it was affirmed by the Supreme Court in the case reported as Tahir Naqash and others v. The State and others PLD 2022 Supreme Court 385 that:

"10. Article 14 of the Constitution guarantees right to dignity to every person. Human dignity encapsulates the notion that every person has inherent equal worth. This simple but profound concept has three elements: first, every member of the human family has value - no one can be dismissed, ignored, mistreated or abused as if their humanity means nothing; second, each person's worth is equal to every other person and no one's life is more important than any other person; third, human dignity inheres in the human person and cannot be taken away.<sup>7</sup> To deprive a non-Muslim (minority) of our country from holding his religious beliefs, to obstruct him from professing and practicing his religion within the four walls of his place of worship is against the grain of our democratic Constitution and repugnant to the spirit and character of our Islamic Republic. It also deeply bruises and disfigures human dignity and the right to privacy of a non-Muslim minority, who like all other citizens of this country enjoy the same rights and

protections under the Constitution. Bigoted behaviour towards our minorities paints the entire nation in poor colour, labelling us as intolerant, dogmatic and rigid. It is time to embrace our constitutional values and live up to our rich Islamic teachings and traditions of equality and tolerance.

11. Article 20(a) of the Constitution provides that every citizen shall have the right to profess, practice and propagate his religion subject to law, public order and morality. Article 20(b) provides that every religious denomination or sect shall have the right to establish, maintain and manage its religious intuitions. Under Article 22, the Constitution provides that no person attending any educational institution shall be required to receive religious instruction or take part in any religious ceremony or attend religious worship if such instruction, ceremony or worship relates to a religion other than his own. Article 22(3)(a) provides that no religious community or denomination shall be prevented from providing religious instruction for pupils of that community in any educational institution maintained wholly by that community or denomination. Article 25 underlines that all citizens are equal before the law and are entitled to equal protection of law.”

12. In the case reported as *Ameen Masih v. Federation of Pakistan and others* PLD 2017 Lahore 610, an amendment to the Divorce Act 1869 was struck down as being an affront to minority rights, with it being stated that:

“40. The preamble of the Constitution, as well as, the Objectives Resolution, which forms substantive part of the Constitution under Article 2A of the Constitution, provide that adequate provisions shall be made for the minorities to freely profess and practice their religion and develop their culture. And adequate provision shall be made to safeguard the legitimate interests of the minorities. Article 20 of the Constitution, as a fundamental right, provides that every citizen shall have the right to profess, practice and propagate his religion subject to law, public order and morality. Principle of Policy under Article 36 provides that State shall safeguard the legitimate rights and interest of minorities. Under Article 29 of the Constitution, it is the responsibility of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles. Members of the



minority also enjoy fundamental rights guaranteed to every citizen under the Constitution. Therefore, inter alia, right to life, liberty, dignity and non-discrimination are also available to the minorities of this country being citizen of Pakistan. Minority rights are, therefore, a basket of fundamental rights, constitutional values, State obligations under the Principles of Policy, international conventions like ICCPR (duly ratified by Pakistan) and the rich jurisprudence developed over the years.”

13. As is best discernible from a reading of the judgment in Allah Wasayas case (Supra), the purpose of the direction made therein with reference to Article 260, as aforementioned, was simply to document the religion of citizens from the standpoint of their employment in state institutions. That purpose can be served just as well in the case of a non-Muslim by his or her simply stating their faith in the relevant form in the same manner as is done by a Muslim. Nothing more is necessary. Even otherwise, the Constitution permits no discrimination on the basis of faith, whether in matters of employment or otherwise, other than restricting eligibility to the posts of President and Prime Minister in terms of Articles 41(2) and 91(3) respectively, and prescribing specific oaths in respect of those offices so as to render it unnecessary for reliance to be placed for such purpose on the CNIC of the entrant.
  
14. Under the given circumstances, without endorsing or unsettling anything laid down in Allah Wasayas case (Supra), we would direct the Ministry of Interior and NADRA to redesign the Form set out in Schedule II of the Regulations so as to harmonise the declaration to be made by all citizens so that they may simply state their own faith without having to disavow an affiliation or association with any other religion.

15. The Petition thus stands allowed in the foregoing terms.

CHIEF JUSTICE

JUDGE