

EQUALITY OF CITIZENS

Citation Name: 2007 PLD 139 KARACHI-HIGH-COURT-SINDH

Side Appellant: SALEEM RAZA and 31 others

Side Opponent: State

Issue:

The petitioners convicted by Accountability Courts and serving out their sentences in the Central Prison Karachi, have assailed validity and vires of several provisions containing in the National Accountability Ordinance, 1999 (“NAB”), on the ground that they are violative of the fundamental rights enshrined in the Constitution, more particularly in Articles 12 and 25.

Rule:

Article 25 of the constitution of Pakistan

National Accountability Ordinance – sections 12, 23, 25, 25(A), 31-D & Preamble

Pakistan Prison Rules of 1978 – section 401

Prevention of Corruption Act of 1947 --- sections 14, 9(a)

Application:

.....where legislature lays down law and indicates the persons or things to whom its provisions are intended to apply and leaves the application of law to an administrative authority while indicating policy and purpose of law and laying down standards or norms for guidance of designated authority in exercise of its powers, no question of violation of Art. 25 of the Constitution arises---In case, however, the designated authority abuses its powers or transgresses the limit when exercising the power, the actual order of such authority and not the State would be condemned as unconstitutional.

.....all person subjected to law should be treated alike under all circumstances and conditions both in privileges conferred and in liabilities imposed

..... presumption is always there in favour of constitutionality of an enactment.....

Conclusion:

..... having heard the petitioner and the learned counsel we are of the view that section 10(d) of the NAB Ordinance is **ultra vires the Constitution and liable to be struck down** and all prisoners convicted under the NAB Ordinance would be entitled to such remission as persons convicted under the ordinary law. At the same time we also find great force in the petitioner’s contention that he was discriminated against inasmuch as another prisoner Qurban Jatoi convict

of NAB offence was given the benefit of remission..... I am, therefore, entirely unable to subscribe to the view of the learned Deputy Attorney-General that a reasonable classification could be effected through conferment of unbridled power under section 18 and find great merit in the contention of the learned Deputy Prosecutor General that the dominant object of the statute is to recover ill-gotten wealth rather than make people rot in jails.....

Citation Name: 1992 MLD 2135 LAHORE-HIGH-COURT-LAHORE
Side Appellant: MIAN ANWAR-UL-HAQ RAMAY
Side Opponent: FEDERATION OF PAKISTAN

Issue:

The questions of vires of section 7 of the Sales Tax Act, 1951 as amended through Finance Act of 1990 and validity of notifications, dated 27-6-91 and 26-6-88 alongwith notification dated 7-7-91 have been raised.

Rule:

Article 73(2) of the Constitution
Article 189 of the Constitution
Article 75 and 199 of the Constitution
Section 19 of the Customs Act 1969
Section 7 of the Sales Tax Act 1951
Article 25 of the Constitution
Article 203-D of the Constitution

Application:

Article 73(2) of the Constitution ----simply defines Money Bill.....

Article 189 of the Constitution ---question of law as to interpretation of Constitution having been decided by Supreme Court would be binding on all Courts in Pakistan.....

Article 75 and 199 of the Constitution ---Courts were not to question wisdom of legislature in enacting provisions of any law in any manner; their judicial function was primarily confined to interpretation of law.....

Section 19 of the Customs Act 1969 --- delegation of power did not constitute abdication of legislative function by a legislature but was a valid delegation of discretion vested under law.....

Section 7 of the Sales Tax Act 1951 ---- No guidelines laid down for exercise of such powers by delegates by legislature.....

Article 25 of the Constitution ---- Citizens placed in similar situation are to be treated alike --- treating a class of citizens differently from another class which was not similarly situated would not offend against fundamental right of equal protection of law.....

Article 203-D of the Constitution ----- Where any law was repugnant to injunctions of Islam, same could be declared to be so by Federal Shariat Court and such law would cease to be law on the date fixed by Federal Shariat Court..

Conclusion:

..... Citizens placed in similar situation are to be treated alike---Treating of a class of citizens differently from another class which was not similarly situated would not offend against fundamental right of equal protection of law---Merely because certain manufacturer of goods situated in specific areas had been given different treatment from those who were not situated in that area, such treatment would not offend against fundamental rights as enunciated in Article 25 of the Constitution.....

..... For what has been discussed hereinbefore it is declared that section 19 of the Customs Act 1969 and section 7 of the Sales Tax Act 1951 and the impugned notifications issued in pursuance thereof are intra vires to the Constitution

Citation Name: 1997 PLD 594 LAHORE-HIGH-COURT-LAHORE

Side Appellant: UMAR ASIF JANJUA

Side Opponent: UNIVERSITY OF ENGG & TECH

Issue:

The petitioner applied for admission in the University of Engineering and Technology, Lahore, on open merit basis as resident of Punjab Province. The petitioner passed his F.Sc. Pre-Engineering from Karachi securing 856 out of 1100 marks. In addition thereto he was entitled to get 20 marks for NCC. In all, he had 876 marks to his credit for the purpose of calculating his merit for selection but his name was not included in the merit list, though the last student who was admitted in Mechanical Engineering had only 869 marks. Admission to the petitioner was refused by the Engineering University on the ground that he did not produce domicile certificate of his father to show that he was domicile of Punjab.

Rule:

Article 22(3)(b) of the Constitution

Application:

Article 22(3)(b) of the Constitution --- right to acknowledge to receive education, subject to eligibility and availability or accommodation in educational institutions is basic right of every citizen.....

Conclusion:

Constitution of Pakistan 1973 Para. 43.3--Constitution of Pakistan (1973), Arts.8 & 25---equality of citizen ---Interpretation or construction of word "father" in restricted sense by not including "mother" therein would make the same violative of Article 25 of the Constitution---Child would be entitled to utilize benefit of status of either of his/her parents---No discrimination could be permitted in exercise of those rights on basis of sex alone---Recognition of father's domicile status to the exclusion of mother would be case of clear discrimination based on sex which was not permitted by Article 25 of the Constitution---Efforts should be made to interpret provisions of law including rules and instructions in such a way that they harmonize with fundamental rights guaranteed by the Constitution---Word "father" as occurring in para. 43.3(b) of the Prospectus would include mother--In such view of interpretation there was no need to declare that said provisions of prospectus were void---Mother could thus, get her child admitted in educational institution on her own independent domicile even if she was living with her husband, if on account of independent factors she had distinct and separate place of domicile---Where spouses were differently domiciled, their child would be entitled to seek admission in any of such places.

Citation Name: 2007 PLD 568 LAHORE-HIGH-COURT-LAHORE

Side Appellant: ANOOSHA SHAIGAN

Side Opponent: LAHORE UNIVERSITY OF MANAGEMENT SCIENCE THROUGH CHANCELLOR AND OTHERS

Issue:

The petitioner after having passed O Level's exam., appeared in A Level's exam., but awaiting the result, she applied for admission with the Lahore University of Management Science (the LUMS) for BSC. (Honours)/BA-LLB Programme, which has been declined to her with the advice that she must improve her A Level's result, whereas according to the petitioner at that time, A Level's result was not yet announced, which was subsequently declared and the petitioner had obtained 3 A's therein. It is this refusal which has been challenged by the petitioner through the present writ petition on the ground of being illegal, arbitrary, whimsical, unlawful, unreasonable etc., and violative to the provisions of Article 8, 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

Rule:

Constitution of Pakistan (1973) Articles 199, 8, 4 & 25

Application:

..... the absolute control over the management of a body/an organization by the federation etc., is a condition most important for declaring it to be a "person" performing its functions in connection with the affairs of the Federation etc; the Federation etc. should have a complete domination to do and undo whatever it decides in running the affairs of such a body and should have the exclusive, complete and final authority to take the vital policy decisions. Such control must be absolute, unfettered, unbridled and exclusive, besides, the State must also have the financial control of the Organization; the power of hiring and firing the employees thereof appointing and removing the management body meant for running the routine affairs of the Organization. But from the Presidential Order of 1985, though the President is the Chancellor of the LUMS, but this is notional and more with the status of a Patron-in-Chief; in practical terms except for the nomination of the persons on the Board or the Council, he does not have the administrative or policy-making control, which is the authority of the Board of Trustees and the Council of LUMS, which manages its affairs. It has been rightly pointed out by the respondents' counsel that the funds to LUMS are not being provided by the Government on regular basis, those are generated by the LUMS itself either from the fees or the donations and may be occasionally in the nature of donation, the government also contributes, but this contribution cannot be held to be within the concept of "financial control" of the Organization. The judgments cited by the learned counsel for the petitioner, in the light of the catena of judgments from the respondents' side which have been discussed above, not only are distinguishable, rather do not apply to the facts and circumstances of the present case.

Conclusion:

Therefore, when both the "administrative" and the "financial" control of the Federation over respondent No. 1 is lacking, I am constrained to hold that LUMS is not a "person" within the meaning of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, which could be held to be performing its duties in connection with the affairs of the Federation or the Province. Resultantly, this writ petition against the respondents is incompetent, which is hereby dismissed.