

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 386 OF 2005

VISHWA LOCHAN MADAN

..... PETITIONER

VERSUS

UNION OF INDIA & ORS.

.... RESPONDENTS

J U D G M E N T

Chandramauli Kr. Prasad

All India Muslim Personal Law Board comprises of Ulemas. Ulema is a body of Muslim scholars recognised as expert in Islamic sacred law and theology. It is the assertion of the petitioner that All India Muslim Personal Law Board (hereinafter referred to as 'the Board') strives for the establishment of parallel judicial system in India as in its opinion it is extremely

difficult for Muslim women to get justice in the prevalent judicial system. Further, under the pressure of expensive and protracted litigation it has become very difficult for the downtrodden and weaker section of the society to get justice. Therefore, to avail the laws of Shariat, according to the Board, establishment of Islamic judicial system has become necessary. According to the petitioner, the Board, Imarra-e-Sharia of different States and Imarra-e-Sharia, Phulwari Shariff have established Dar-ul-Qazas, spread all over the country. Camps are being organised to train Qazis and Naib Qazis to administer justice according to Shariat. Dar-ul-Qaza and Nizam-e-Qaza are interchangeable terms. It is the allegation of the petitioner that Dar-ul-Qazas, spread all over the country are functioning as parallel judicial system aimed to administer justice to Muslims living in this country according to Shariat i.e. Islamic Canonical Law based on the teachings of the Quoran and the traditions of the

Prophet. What perhaps prompted the petitioner to file this writ petition is the galore of obnoxious Fatwas including a Fatwa given by Dar-ul-Uloom of Deoband in relation to Imrana's incident. Imrana, a 28 years old Muslim woman, mother of five children was allegedly raped by her father-in-law. The question arose about her marital status and those of her children born in the wedlock with rapist's son. The Fatwa of Dar-ul-Uloom in this connection reads as follows:

"If one raped his son's wife and it is proved through witnesses, or the rapist himself confesses it, Haram Musaharat will be proved. It means that the wife of the son will become unlawful forever to him i.e. the son. The woman with whom father has copulated legally or had sexual intercourse illegally in both ways, the son can't keep physical relationship with her. The Holy Quran says:

"Marry not the woman whom your father copulated"

The Fatwa has dissolved the marriage and passed a decree for perpetual injunction

restraining the husband and wife living together, though none of them ever approached the Dar-ul-Uloom.

Another Fatwa of which our attention is drawn rules that no police report can be filed against the father-in-law of Asoobi, who had allegedly raped her. According to the Fatwa, father-in-law could have been blamed only if there had either been a witness to the case or the victim's husband had endorsed Asoobi's allegation. Yet another Fatwa, which has been brought to our notice is in connection with Jatsonara, a 19 year old Muslim woman, who was asked to accept the rapist father-in-law as her real husband and divorce her husband.

Petitioner alleges that all these Fatwas have the support of All India Muslim Personal Law Board and it is striving for the establishment of parallel Muslim judicial system in India.

According to the petitioner, adjudication of disputes is essentially the function of sovereign State, which can never be abdicated or parted with.

In the aforesaid background, the petitioner has sought a declaration that the movement/activities being pursued by All India Muslim Personal Law Board and other similar organizations for establishment of Muslim Judicial System and setting up of Dar-ul-Qazas (Muslim Courts) and Shariat Court in India are absolutely illegal, illegitimate and unconstitutional. Further declaration sought for is that the judgments and fatwas pronounced by authorities have no place in the Indian Constitutional system, and the same are unenforceable being wholly non-est and void ab-initio. Petitioner further seeks direction to the Union of India and the States concerned to forthwith take effective steps to disband and diffuse all Dar-ul-Qazas and the Shariat Courts

and to ensure that the same do not function to adjudicate any matrimonial-disputes under the Muslim Personal Law. Petitioner's prayer further is to restrain the respondents from establishing a parallel Muslim Judicial System, inter-meddling with the marital status of Indian Muslims and to pass any judgments, remarks or fatwas and from deciding the matrimonial dispute amongst Muslims. Lastly the prayer of the petitioner is to direct the All India Muslim Personal Law Board (Respondent No.9), Dar-ul-Uloom Deoband, and other Dar-ul-Ulooms in the country, not to train or appoint Qazis, Naib-Qazis or Mufti for rendering any judicial services of any kind.

JUDGMENT

The stand of the Union of India is that Fatwas are advisory in nature and no Muslim is bound to follow those. Further, Dar-ul-Qaza does not administer criminal justice and it really functions as an arbitrator, mediator, negotiator or conciliator in matters pertaining to family

dispute or any other dispute of civil nature between the Muslims. According to the Union of India, Dar-ul-Qaza can be perceived as an alternative dispute resolution mechanism, which strives to settle disputes outside the courts expeditiously in an amicable and inexpensive manner and, in fact, have no power or authority to enforce its orders and, hence, it cannot be termed as either in conflict with or parallel to the Indian Judicial System. The Union of India has not denied that Fatwas as alleged by the petitioner were not issued but its plea is that they were not issued by any of the Dar-ul-Qaza. In any event, according to the Union of India, few bad examples may not justify abolition of system, which otherwise is found useful and effective.

Respondent No.9, All India Muslim Personal law Board does not deny the allegations that it had established Dar-ul-Qazas and training Qazis and Naib Qazis and the practice of issuing Fatwas but

asserts that Dar-ul-Qaza/Nizam-e-Qazas are not parallel judicial systems established in derogation of or in conflict with the recognised judicial system. It is informal justice delivery system aimed to bring about amicable settlement of matrimonial disputes between the parties. According to this respondent, Dar-ul-Qazas have no authority, means or force to get their Fatwas implemented and the writ petition is based on ignorance and/or misconception that they are parallel courts or judicial system.

Respondent No.10, Dar-ul-Uloom, Deoband admits issuing Fatwa in Imrana's case as per Fiqah-e-Hanafi, which is based on Quran and Hadith but asserts that it has no agency or powers to enforce its Fatwas. It is within the discretion of the persons or the parties who obtain Fatwas to abide by it or not. However, according to Respondent No.10, God fearing Muslims being answerable to the Almighty, obey the Fatwas, others may defy them.

In the aforesaid background, the plea of Respondent No. 10 is that it is not running parallel judiciary.

The plea of the State of Madhya Pradesh is that Fatwa issued by Dar-ul-Qaza has no legal value.

The stand of the State of U.P. is that Fatwas are advisory in nature. They are not mandatory and do not prohibit any Muslim to approach Courts established by law for adjudication of their disputes. Hence, Dar-ul-Qaza does not act as a parallel Court for adjudication of disputes.

From the pleadings of the parties there does not seem to be any dispute that several Dar-ul-Qazas presided over by the Qazis exist and they do issue Fatwas. In the present case, what we have been called upon to examine as to whether Dar-ul-

Qaza is a parallel court and 'Fatwa' has any legal status.

As it is well settled, the adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. Person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law is to ensue. These are the fundamentals of any legal judicial system. In our opinion, the decisions of Dar-ul-Qaza or the Fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the Fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority

under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his Fatwa on any one by any coercive method. In fact, whatever may be the status of Fatwa during Mogul or British Rule, it has no place in independent India under our Constitutional scheme. It has no legal sanction and can not be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qaza are running a parallel judicial system is misconceived.

As observed earlier, the Fatwa has no legal status in our Constitutional scheme.

Notwithstanding that it is an admitted position that Fatwas have been issued and are being issued. All India Muslim Personal Law Board feels the "necessity of establishment of a network of judicial system throughout the country and Muslims should be made aware that they should get their disputes decided by the Quazis". According to the All India Muslim Personal Law Board "this establishment may not have the police powers but shall have the book of Allah in hand and sunnat of the Rasool and all decisions should be according to the Book and the Sunnat. This will bring the Muslims to the Muslim Courts. They will get justice".

The object of establishment of such a court may be laudable but we have no doubt in our mind that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the *corpus juris* of the State. A Fatwa is an opinion, only an expert is expected to give. It is not a decree, not

binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing Fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the Fatwa gets strength from the religion; it causes serious psychological impact on the person intending not to abide by that. As projected by respondent No. 10 "God fearing Muslims obey the Fatwas". In the words of respondent No. 10 "it is for the persons/parties who obtain Fatwa to abide by it or not. It, however, emphasises that "the persons who are God fearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the Fatwa". Imrana's case is an eye-

opener in this context. Though she became the victim of lust of her father in law, her marriage was declared unlawful and the innocent husband was restrained from keeping physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way, victim has been punished. A country governed by rule of law cannot fathom it.

In our opinion, one may not object to issuance of Fatwa on a religious issue or any other issue so long it does not infringe upon the rights of individuals guaranteed under law. Fatwa may be issued in respect of issues concerning the community at large at the instance of a stranger but if a Fatwa is sought by a complete stranger on an issue not concerning the community at large but individual, than the Darul-Qaza or for that matter

anybody may consider the desirability of giving any response and while considering it should not be completely unmindful of the motivation behind the Fatwa. Having regard to the fact that a Fatwa has the potential of causing immense devastation, we feel impelled to add a word of caution. We would like to advise the Dar-ul-Qaza or for that matter anybody not to give any response or issue Fatwa concerning an individual, unless asked for by the person involved or the person having direct interest in the matter. However, in a case the person involved or the person directly interested or likely to be affected being incapacitated, by any person having some interest in the matter. Issuance of Fatwa on rights, status and obligation of individual Muslim, in our opinion, would not be permissible, unless asked for by the person concerned or in case of incapacity, by the person interested. Fatwas touching upon the rights of an individual at the instance of rank strangers may cause irreparable damage and therefore, would be

absolutely uncalled for. It shall be in violation of basic human rights. It cannot be used to punish innocent. No religion including Islam punishes the innocent. Religion cannot be allowed to be merciless to the victim. Faith cannot be used as dehumanising force.

In the light of what we have observed above, the prayer made by the petitioner in the terms sought for cannot be granted. However, we observe that no Dar-ul-Qazas or for that matter, any body or institution by any name, shall give verdict or issue Fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of concerned individual. In any event, the decision or the Fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is

not binding on anyone including the person, who had asked for it. Further, such an adjudication or Fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law.

From the conspectus of what we have observed above, we dispose off the writ petition with the observation aforesaid, but without any order as to the costs.

.....J
JUDGMENT
(CHANDRAMAULI KR. PRASAD)

.....J
(PINAKI CHANDRA GHOSE)

NEW DELHI,
July 7, 2014.

