

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.51021 of 2023

Tanveer Sarwar

Versus

**Federation of Pakistan through Ministry of Law and Justice
& another**

J U D G M E N T

Date of Hearing	02.10.2023
For the petitioner	Mr. Nadeem Sarwar, Advocate.
For respondent No.1/Federation of Pakistan	Mr. Muhammad Mansoor Ali Sial, Assistant Attorney General.
For respondent No.2/Election Commission of Pakistan	Mr. M. Arif Ranjha, Advocate with Bushra Rasheed, Senior Law Officer and Muhammad Haroon Kasi, Director (Law), ECP.
Amicus Curiae	Mr. Faisal Siddiqi, Advocate.

Raheel Kamran J:- The petitioner has invoked jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution') praying for a direction to the Election Commission of Pakistan ('ECP') to file complaints against all members of National and Provisional Assemblies who have not disclosed *Toshakhana* gifts in their statements of assets and liabilities.

2. Learned counsel for the petitioner contends that the concealment of *Toshakhana* gifts in the statement of assets and liabilities constitutes an offence under section 137(4) read with section 167(a) of the Elections Act, 2017 ('the Act') punishable under section 174 of

the Act. He further contends that respondent No.2 has acted in a discriminatory manner to file such a complaint only against Imran Ahmed Khan Niazi, former Prime Minister of Pakistan, who has been convicted and sentenced to undergo three years imprisonment, which is in violation of Article 25 of the Constitution as no complaint has been filed against other legislators.

3. Learned counsel for the ECP states that the titled writ petition is not maintainable inasmuch as complaint against the former Prime Minister Imran Ahmed Khan Niazi was filed in response to a reference sent by the Speaker of National Assembly under Article 63(2)(3) of the Constitution whereas no such reference has been forwarded against other legislators. He maintains that respondent No.2 did not act unfairly and in discriminatory manner as proceedings were not initiated under section 137 of the Act. He further contends that since no reference against any other legislator was forwarded by the Speaker National Assembly, the Chairman Senate or the Speakers of Provincial Assemblies, therefore, complaints were not required to be filed against any of them. He adds that in terms of sub-section (4) of section 137 of the Act, the legislators may be proceeded against for committing any *corrupt practice* within 120 days from the date of submission of the statement which is found to be false in material particulars. He finally contends that the allegation of *mala fide* attributed to the ECP is patently erroneous and misconceived. Learned Law Officer for the Federation has also opposed this petition on these grounds.

4. Mr. Faisal Siddiqi Advocate, learned *amicus curiae*, contends that prayer in the titled petition is based on the averments made in paragraph No.4 which provides foundation of the claim whereas averments made in paragraphs No.5 and 6 depict the superstructure built thereon. He maintains that the allegations in paragraph No.5 are generic whereas in paragraph No.6, specific allegations have been levelled against five particular individuals. He further contends that

the titled writ petition is not maintainable for the reasons that firstly, the allegations levelled in the instant petition are vague and unsubstantiated and secondly, not a single document is appended with the petition in support of such allegations. It is his contention that this Court should not entertain such petition containing vague and unsubstantiated allegation and reliance in this regard has been placed on the case of Ashok Kumar Pandey vs. State of West Bengal and others (**AIR 2004 Supreme Court 280**) wherein the Indian Supreme Court has held that when there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the same is to be thrown out; it should not be misunderstood as Publicity Interest Litigation or Private Interest Litigation or Politics Interest Litigation and of late Praise Income Litigation; such petition cannot be entertained on speculative foundations, premises and to make roving enquiry and the petitioner has no *locus standi* to file public interest litigation as a public spirited citizen. He adds that the petitioner has alternate remedy of filing complaint under section 190(2) of the Act. According to him, the petitioner is sure about five specific individuals mentioned in paragraph No.6 of the petition against whom he has an alternate remedy provided by law i.e. complaint under section 190(2) of the Act. To substantiate his plea, reliance has been placed on the case of Mian Najibuddin Owaisi vs. Aamir Yar and others (**PLD 2011 Supreme Court 1**) wherein it was held by the Supreme Court of Pakistan that under section 94 of the Representation of People Act, 1976 a private individual could lodge complaint against any person for being involved in the *corrupt practice*. He finally contends that challenging prosecution on the ground of discrimination is not a valid defence to absolve of an accused from any criminal liability who is answerable for his own act and has to defend himself in a trial. In support of such contention, reliance has been placed on the case of Malik Din vs. Chairman National Accountability Bureau and another (**2019 SCMR 372**).

5. Heard. Record perused.

6. In order to properly appreciate respective contentions of learned counsel for the parties and the *amicus curiae*, it would be advantageous to reproduce section 137 of the Elections Act, 2017 which reads as follows: -

***"137. Submission of statement of assets and liabilities.-*(1) Every Member of an Assembly and Senate shall submit to the Commission, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding thirtieth day of June on Form B.**

(2) The Commission, on the first day of January each year through a press release, shall publish the names of Members who failed to submit the requisite statement of assets and liabilities within the period specified under sub-section (1)

(3) The Commission shall, on the sixteenth day of January, by an order suspend the membership of a Member of an Assembly and Senate who fails to submit the statement of assets and liabilities by the fifteenth day of January and such Member shall cease to function till he files the statement of assets and liabilities.

(4) Where a Member submits the statement of assets and liabilities under this section which is found to be false in material particulars, he may, within one hundred and twenty days from the date submission of the statement, be proceeded against for committing the offence of corrupt practice."

From perusal of section 137(1) of the Act, it is abundantly clear that an obligation has been cast upon every Member of an Assembly and Senate to submit to the ECP, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June. Failure to submit the aforementioned statement of assets and liabilities by 15th January renders the Member of an Assembly or Senate dysfunctional and such penal consequences, as provided in section 137(3) of the Act, which makes the requirement to file the statement clearly mandatory. It is noteworthy that no offence is prescribed under section 137 of the Act to criminalize failure to file the statement of assets and liabilities. Section 137(4) of the Act, however, prescribes it to be an offence of *corrupt practice*

where a Member of Assembly or Senate submits statement of assets and liabilities which is found to be false in material particulars and the same is punishable with imprisonment for a term which may extend to three years or with fine which may extend to one hundred thousand rupees or with both, under section 174 of the Act. A limitation period to prosecute for the offence of *corrupt practice* has also been prescribed under section 137(4) of the Act to be 120 days from the date of submission of statement of assets and liabilities under the said section which is found to be false in material particulars. The object of prescribing period of limitation for the offence of *corrupt practice* under section 137(4) of the Act is to quicken the prosecution of complaints and to rid criminal justice system of inconsequential cases displaying lethargy, inertia or indolence and to make it more orderly, efficient and just.

7. The cognizance and trial of an offence under the Act is governed by the provisions of section 190 of the Act. Section 190(2) of the Act provides that proceedings against a person involved in corrupt or illegal practice may be initiated on a complaint made by a person or the Commission. For ready reference said section is reproduced hereunder: -

"190. Cognizance and trial.—(1) Notwithstanding anything contained in any other law but subject to section 193, an offence under this Chapter shall be tried by the Sessions Judge and any aggrieved person may, within thirty days of the passing of the final order, file an appeal against the order in the High Court which shall be heard by a Division Bench of the High Court.

(2) The proceedings against a person for being involved in corrupt or illegal practice may be initiated on a complaint made by a person or by the Commission but if a complaint made by the person proves to be false, based on bad faith or is made for any ulterior motive to provide benefit to another person, the complainant shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

(3) The Commission may direct that the summary trial of an offence under this Act may be conducted in accordance with the provisions of Chapter XX of the Code.

Explanation.—In this section, “Sessions Judge” includes an Additional Sessions Judge.”

Even under section 94 of Representation of the People Act, 1976 an individual could lodge complaint against a person in respect of offences made cognizable under section 82 of the said Act. Reliance in this regard is placed on the case of Mian Najibuddin Owaisi vs. Aamir Yar and others (PLD 2011 Supreme Court 1).

8. Jurisdiction of this Court under Article 199 of the Constitution is subject to limitations specified therein. A High Court may exercise jurisdiction under the said Article where it is satisfied that no other adequate remedy is provided by law to any aggrieved party for redressal of its grievance raised in his petition. In the instant case, the applicable law i.e. section 190 of the Act provides remedies of complaint before the Sessions Judge and appeal before the High Court. Thus, adequate alternate remedy of complaint is available to the petitioner because of which this writ petition is not maintainable. Reliance in this regard is placed on the judgments of the Supreme Court of Pakistan in the cases of Muhammad Salman vs. Naveed Anjum (2021 SCMR 1675), Rana Aftab Ahmad Khan vs. Muhammad Ajmal and another (PLD 2010 Supreme Court 1066) and Federation of Pakistan and others vs. Mian Muhammad Nawaz Sharif and others (PLD 2009 Supreme Court 644).

9. Much emphasis has been laid on the alleged discriminatory act of ECP for only proceeding against the former Prime Minister of Pakistan namely Imran Ahmed Khan Niazi, however, the said respondent has refuted such allegation. It is case of the ECP that there is no discrimination inasmuch as criminal proceedings against the above-named former Prime Minister were not initiated on its own rather on a reference forwarded by the Speaker of National Assembly under Article 63(2)(3) of the Constitution on the question of his disqualification as Member of National Assembly moved by six Members of the National Assembly whereas no such reference has

been forwarded against any other Member. Be that as it may, validity of prosecution and conviction of the above-named former Prime Minister of Pakistan is a matter for consideration of the Court of competent jurisdiction where his appeal against conviction and sentence is pending. As far as this Court is concerned, in view of the adequate alternate remedy of complaint provided by law to the petitioner under section 190(2) of the Act, there exists no occasion for this Court to issue a writ in the nature of mandamus on any ground whatsoever.

10. For the foregoing reasons, this petition sans merit and is accordingly **dismissed**.

(RAHEEL KAMRAN)
JUDGE

Announced in open Court on 29.12.2023.

JUDGE

APPROVED FOR REPORTING.

JUDGE

Saeed Akhtar