

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No: Election Appeal No.24144/2023.

Muhammad Rizwan Nowaiz Gill.
Vs.
The Returning Officer PP-77, Sargodha-VI, etc.

JUDGMENT

Date of hearing	12.04.2023
Appellant by	M/s Khalid Ishaque, Ahmad Saeed, Faizan Ahmad, Rahil Riaz, Usman Nasir Awan, Ahmer Mumtaz Mali, Kasir Ahmad Ch., Rana Abu Hurairah, Adeel Shahid Karim and Abid Hussain Sial, Advocates.
Respondent No.3 by:	Mr. Imran Arif Ranjha, Advocate/Law Officer for ECP and Hafiz Adeel Ashraf, Advocate/Legal Assistant for ECP.

ABID AZIZ SHEIKH, J. This Election Appeal is directed under Section 63 of the Elections Act, 2017 (**Act**) against the order dated 22.03.2023 (**impugned order**), passed by the Returning Officer of PP-77,Sargodha-VI, Punjab, (**Returning Officer**), whereby the nomination papers of the appellant were rejected.

2. The relevant facts are that appellant contested the election of PP-34 in the year 2008 and was elected as a member of Punjab Assembly. His rival candidate (Mrs. Nadia Aziz) filed an election petition before the learned Election Tribunal, Lahore mainly on the ground that appellant does not possess the requisite qualification i.e. graduation to contest the election. The said election petition was

accepted by the learned Election Tribunal vide order dated 28.05.2010 and it was held that the graduation certificate appears to be fabricated and fictitious and, therefore, the appellant does not possess the requisite qualification i.e. graduation. Consequently, the election of the appellant was declared to be null and void and his seat had fallen vacant to be filled in through fresh election by the Election Commission of Pakistan. The said judgment was upheld by the Hon'ble Supreme Court vide judgment dated 14.06.2010 and the Election Commission was further directed to initiate action against all such persons who were accused of commission of corrupt practices, of committing forgery and of using as genuine, documents which they knew or at least had reason to believe to be forged. Consequently, FIR No.8 dated 08.01.2011 was registered against the appellant and in trial vide judgment dated 02.04.2013, the appellant was convicted. However, appeal filed by the appellant was accepted in toto by the learned Division Bench of this Court on 11.03.2019 and he was acquitted of the charges in FIR No.8/2011. The nomination papers of the appellant for the upcoming provincial elections of 2023 for PP-74, Sargodha-VI have been rejected through impugned order dated 22.03.2023, hence, this appeal.

3. Learned counsel for the appellant submits that as there is no declaration against the appellant under Article 62 (1) (f) of the Constitution of Islamic Republic of Pakistan, 1973 (**Constitution**), therefore, the appellant is not disqualified for lifetime to contest the

election. He further submits that when the appellant was acquitted by the learned Division Bench of this Court on 11.03.2019, the allegations of preparing forged documents and corrupt practice are not proved against the appellant. He adds that gradation being no more the minimum qualification, it is not relevant whether the graduation certificate was or not a genuine document though the learned Division Bench in judgment dated 11.03.2019 already held that same is a genuine document as per the University record.

4. Learned counsel for the respondent No.3, on the other hand, supported the impugned order, however, despite notice no one entered appearance on behalf of respondent No.2 to contest this appeal.

5. Arguments heard. Record perused. Article 62 (1) (f) of the Constitution being relevant to the moot issue is reproduced hereunder:-

62(1) *A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless:-*

(f) *“he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law;”*

Under Article 62 (1) (f) of the Constitution, a person shall not be qualified to be elected or chosen as a member of Parliament unless he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a Court of law. In the instant matter, the appellant contested the election of PP-34 in the year 2008 and was declared a returned candidate, however, he was

de-seated by the learned Election Tribunal vide judgment dated 28.05.2010 on the ground that his graduation certificate appeared to be fabricated and, therefore, he does not possess the requisite qualification of graduation. The said judgment was also upheld by the august Supreme Court of Pakistan vide judgment dated 14.06.2010. However, no specific declaration was made in the said judgments under Article 62 (1) (f) of the Constitution to the effect that the appellant is not sagacious, righteous, non-profligate, honest and ameen.

6. The relevant case law shows that whenever a person is required to be disqualified under Article 62 (1) (f) of the Constitution by the Court, a specific declaration in this regard is to be made. For ready reference, some of the judgments passed by the August Supreme Court of Pakistan where such declaration was made are mentioned as under:-

- (i) In “MUHAMMAD HANIF ABBASI Vs. JAHANGIR KHAN TAREEN” (PLD 2018 Supreme Court 114), the Hon’ble Supreme Court of Pakistan passed the declaration under Article 62 (1) (f) of the Constitution in following terms:-

“Therefore, on account of the above, we hold and declare that in view of our findings on the proposition about the off-shore company (in short) covered by clause (e) of the conclusion, the respondent is disqualified in terms of Article 62 (1) (f) of the Constitution read with section 99 (1) (f) of ROPA for the non-declaration of his property/asset i.e. “Hyde House” in his nomination papers, and in making untrue statement before this Court, that he has no beneficial interest in SVL, therefore, he should cease

to hold the office as the member of the National Assembly with immediate effect. This petition is accordingly allowed.”

(ii) In “IMRAN AHMAD KHAN and others Vs. Mian MUHAMMAD NAWAZ SHARIF PRIME MINISTER OF PAKISTAN” (PLD 2017 Supreme Court 692), the declaration was made in the following manner:-

“It is hereby declared that having failed to disclose his un-withdrawn receivables constituting assets from Capital FZE, Jebel Ali, UAE in his nomination papers filed for the General Elections held in 2013 in terms of Section 12(2)(f) of the Representation of the People Act, 1976 (ROPA), and having furnished a false declaration under solemn affirmation respondent No.1 Mian Muhammad Nawaz Sharif is not honest in terms of section 99(f) of ROPA and under Article 62 (1) (f) of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, he is disqualified to be a member of the Majlis-e-Shoora (Parliament).”

(iii) In “IMRAN AHMAD KHAN NIAZI Vs. MIAN MUHAMMAD NAWAZ SHARIF, PRIME MINISTER OF PAKISTAN/MEMBER NATIONAL ASSEMBLY, PRIME MINISTER’S HOUSE ISLAMABAD and 9 others” (PLD 2017 Supreme Court 265), the following declaration were issued by the Hon’ble Supreme Court of Pakistan:-

“As a consequence of the declaration issued regarding lack of honesty on the part of respondent No.1 the said respondent has become disqualified from being a member of the Majlis-e-Shoora (Parliament) in terms of Article 62(1)(f) of the Constitution and section 99(1)(f) of the Representation of the People Act, 1976 and, therefore, he is liable to be denotified by the Election Commission of Pakistan as a member of the National Assembly forthwith with a consequence that he ceases to be the Prime Minister of Pakistan from the date of denotification.”

(iv) In “MUHAMMAD IJAZ AHMAD CHDUDHRY Vs. MUMTAZ AHMAD TARAR and others” (2016 SCMR 01), the disqualification of Article 62 (1) (f) of the Constitution was applied in the following terms:-

“The upshot of above discussion is that the appellant intentionally misrepresented his educational qualification in his nomination paper and thereby made false statement which fails him in meeting the qualification prescribed in Article 62(1)(f) of the Constitution. His election as member National Assembly from constituency NA-108 Mandi Bahauddin is illegal and void. The making of a false statement or submitting a false or incorrect declaration in a nomination paper filed by a candidate also amounts to the offence of ‘corrupt practices’ under section 78 (3)(d) of the ROPA. In the cases wherein returned candidates had made a false statement in nomination papers about their educational qualification, this Court has directed action by the Election Commission of Pakistan under section 78 of the ROPA. Reference may be made to Najeeb-ud-Din Owaisi v. Amir Yar (2011 SCMR 180). The Election Commission of Pakistan is accordingly directed to commence proceedings for the prosecution of the appellant for the commission of offence under section 78 of the ROPA.”

(Emphasis supplied).

7. The Hon’ble Supreme Court of Pakistan in “Sardar YAR MUHAMMAD RIND Vs. ELECTION TRIBUNAL BALOCHISTAN, QUETTA and others” (PLD 2020 Supreme Court 137), held that Article 62(1)(f) of the Constitution requires that disqualification of an election candidate must be founded on a declaration by a Court of law that such person is “not honest” and any judicial declaration must necessarily be based on evidence, oral or documentary. In “ALLAH DINO KHAN BHAYO Vs. ELECTION COMMISSION OF

PAKISTAN and others” (PLD 2020 Supreme Court 591), the apex Court held that a disqualification under Article 62 (1) (f) of the Constitution can only be imposed by or under a declaration made by a Court of law. The Hon’ble Supreme Court of Pakistan in “ROSHAN ALI BURIRO Vs. Syed MURAD ALI SHAH and others” (2019 SCMR 1939) held that declaration under Article 62 (1) (f) of the Constitution cannot be issued by the Returning Officer but only a Court of law can issue a declaration of disqualification. In “SAMI ULLAH BALOCH and others Vs. ABDUL KARIM NOUSHERWANI and others” (PLD 2018 Supreme Court 405), it is held that incapacity cast upon a candidate for election under Article 62 (1) (f) of the Constitution to be contingent upon an adverse declaration by a Court of law being made against the candidate. The similar view was also expressed in “ISHAQ KHAN KHAKWANI and others Vs. MIAN MUHAMMAD NAWAZ SHARIF and others” (PLD 2015 Supreme Court 275), “Rana AFTAB AHMAD KHAN Vs. MUHAMMAD AJMAL and another” (PLD 2010 Supreme Court 1066), “FAZAL MEHMOOD Vs. GOVERNMENT OF PAKISTAN and others” (2018 CLC 1664), “MUHAMMAD NAWAZ KHAN Vs. ELECTION COMMISSION OF PAKISTAN through Secretary and 5 others” (2018 CLC 784), “Raja PERVAIZ ASHRAF Vs. ELECTION TRIBUNAL and others” (PLD 2013 Lahore 552), “MUHAMMAD JAMEEL Vs. AMIR YAR and 6 others” (PLD 2010 Lahore 583) and “FATAHULLAH

KHAN Vs. IKRAMULLAH KHAN GANDAPUR and others” (2014 CLC 1725).

8. From the above case laws, it is manifest that where a person is to be disqualified under Article 62 (1) (f) of the Constitution, a specific order or declaration was passed by the learned Courts, however, the order passed by the learned Election Tribunal dated 28.05.2010 shows that no such declaration was made in respect of the appellant. No doubt, the said judgment of the learned Election Tribunal was upheld by the August Supreme Court of Pakistan on 14.06.2010 but even in such judgment, no such specific declaration under Article 62 (1) (f) of the Constitution was passed against the appellant but general directions were issued to the Election Commission to initiate criminal proceedings against all such persons who were accused of commission of corrupt practices or committing forgery. The said general observations cannot be treated as declaration against the appellant under Article 62 (1) (f) of the Constitution to debar him for lifetime to contest the elections.

9. It is not out of place to refer the judgment “Ch. BILAL IJAZ Vs. MUDASSAR QAYYUM NAHRA and 4 others” (2010 CLC 1692), passed by the learned Election Tribunal regarding general election of 2008, in which similar allegations of fake degrees were leveled against the elected member which was allowed and in said judgment beside de-seating him it was specifically declared that he is neither righteous nor honest and ameen in terms of under Article

62 (1) (f) of the Constitution. However, no such specific declaration was passed by the learned Election Tribunal in respect of the appellant, though his matter also pertains to general election 2008.

10. It is also settled law that election laws more particularly disqualification provisions to disenfranchising a candidate, thus depriving him of a valuable right of franchise guaranteed under the Constitution are to be strictly construed and any ambiguity is to be resolved in favour of candidate who could be permitted to participate in the electoral process. Reliance in this regard is placed on “MUHAMMAD MUJTABA ABDULLAH and another Vs. APPELLATE AUTHORITY/ADDITIONAL SESSIONS JUDGE TEHSIL LIAQUATPUR DISTRICT RAHIM YAR KHAN and others” (2016 SCMR 893). In the light of aforesaid rule of interpretation, when there is no specific declaration under Article 62 (1) (f) of the Constitution against the appellant in the judgment dated 28.05.2010, passed by the learned Election Tribunal and judgment dated 14.06.2010, passed by august Supreme Court of Pakistan, then the benefit of no such specific declaration is to be given to the appellant, rather construing it otherwise, especially when learned Division Bench of this Court has already acquitted the appellant of the charges of corrupt practices including committing forgery.

11. In view of above discussion, as there was no specific declaration under Article 62 (1) (f) of the Constitution against the

appellant and further he was acquitted by the learned Division Bench of this Court on 11.03.2019, it cannot be said that appellant is disqualified for life to contest election or he has concealed his disqualification through Court in his nomination papers.

12. In view of above discussion, this appeal is accepted and impugned order dated 22.03.2023 is set-aside. The Returning Officer is directed to include the name of the appellant in the list of eligible candidates.

(Abid Aziz Sheikh)
Judge

Approved for reporting.

Judge

M.Ajmal