

JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Election Appeal No.24133/2023

Faisal Aziz Malik Vs. Returning Officer (PP-82-Khushab-1)

Date of hearing	11-04-2023
Appellant by	Mr. Shahid Mehmood Aleem, Advocate.
Respondent No.1 by	Mr. Imran Arif Ranjha, Advocate/Legal Advisor and Hafiz Adeel Ashraf, Advocate/Legal Assistant for ECP.
Respondent No.2 by	Mr. Muhamad Adeel, Team Leader Legal/Legal Head SAMG-Bank Al-Falah Ltd. and Aamir Nawaz Bajwa, Team Leader Central SAMG-Bank Al-Falah Limited.

ABID AZIZ SHEIKH, J. This Election Appeal has been filed 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-82 *Khushab-1* (respondent No.1), whereby the appellant's nomination papers have been rejected.

2. Relevant facts are that the appellant filed his nomination papers to be a candidate of PP-82 *Khushab-1* in respect of the General Elections of the Provincial Assembly of the Punjab, 2023 and after scrutiny thereof, his nomination papers were rejected through the impugned order for being outstanding liability of loan against the appellant, as reported by the State

Bank of Pakistan (**SBP**). The appellant being aggrieved has filed this Appeal.

3. Learned counsel for the appellant submits that ex-parte judgment & decree dated 27.05.2013 (**decree**) was passed by the learned Judge Banking Court, Lahore against the appellant and in favour of respondent No.2 i.e. Bank *Al-Falah* Limited, *Shahdin Manzil*, The Mall, Lahore (**respondent-Bank**), for an amount of Rs.2,491,991.01/- plus cost of fund, however, before rejection of his nomination papers, the appellant entered into Settlement Agreement dated 21.03.2023 (**Settlement Agreement**) with the respondent-Bank for return of the settled amount of Rs.1,850,000/- till 25.04.2024. He adds that down payment of Rs.200,000/- has already been paid. He contends that in the circumstances, there is no default on part of the appellant on the date of passing of the impugned order under Article 63(1)(n) & (o) of the Constitution of the Islamic Republic of Pakistan, 1973 (**Constitution**) and if at all, there was any default, the same has been settled, hence, the nomination papers of the appellant could not be rejected under Section 62(10) of the Act.

4. Learned counsel for the respondent No.1, on the other hand, supported the impugned order. Learned counsel for respondent-Bank confirmed that there was decree passed

against the appellant and its execution was also filed but the same was adjourned *sine-die* due to non-availability of the assets, however, the parties have finally entered into Settlement Agreement.

5. Arguments heard. There is no dispute that the decree for an amount of Rs.2,491,991.01/- plus cost of fund was passed against the appellant by the learned Banking Court, Lahore and its execution was also filed, which was however adjourned *sine-die*. It is also a matter of record that as per Election Schedule, the last date for filing of nomination papers with the Returning Officer by the candidates was 16.03.2023 and till the said date, neither the decree was satisfied nor any Settlement Agreement was executed between the appellant and respondent-Bank. However, the Settlement Agreement was executed on 21.03.2023 before the rejection of nomination papers on 22.03.2023. In the above factual background, the legal question required determination is that what is the cutoff date for disqualification of a candidate under Article 63(1)(n) & (o) of the Constitution for failure to pay the loan, government dues and utility expense. In this context, for convenience, the aforesaid Article 63(1)(n) & (o) of the Constitution are reproduced hereunder:-

“63. (1) A person shall be disqualified from being elected or chosen as, and from being,

a member of the Majlis-e-Shoora (Parliament), if –

- (n) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, co-operative society or co-operative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off; or*
- (o) he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers;”*

(Emphasis supplied)

The aforesaid disqualifications under Article 63 of the Constitution are also applicable to the members of a Provincial Assembly under Article 113 of the Constitution and Section 231 of the Act.

6. The plain reading of Article 63(1)(n) of the Constitution shows that a person shall be disqualified from being elected or chosen as, and from being, a member of the *Majlis-e-Shoora*, if he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, co-operative society or co-operative body in his own name or in the name of his

spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off. Whereas under Sub-Article (o) of Article 63(1) of the Constitution, he will be disqualified, if he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers. The words “at the time of filing his nomination papers”, used in Article 63(1)(o) of the Constitution, manifest that cutoff date envisaged under Article 63(1)(n) or (o) of the Constitution before which the disqualification be removed, is the time of filing of nomination papers.

7. The learned Full Bench of this Court in “RASHID Vs. RETURNING OFFICER, Nankana Sahib” (**PLD 2013 Lahore 509**), while interpreting Article 63(1)(n) & (o) of the Constitution, held that disqualifications under aforesaid Article crystalizes when the default subsists till the time of filing nomination papers. The relevant part of the judgment is reproduced hereunder:-

“8. *What is then the cutoff date for the deposit of unpaid loan to avoid the mischief of disqualification under Article 63(1)(n) or the last date for curing the said*

disqualification? First, parallel can be drawn with Article 63(1)(o) of the Constitution that also deals with similar disqualification regarding government dues and utility expenses. In the said Article disqualification is attracted when the default in the payment of government dues or utility expenses subsists for over a period of six months till the time of filing of nomination papers. The importance of the time of filing of the nomination papers cannot be over emphasized. It is the entry point for a candidate to step into the electoral process and in the wisdom of the Constitution the candidate must not only be qualified but must also be free from any taint of disqualification at this initial stage. Similarly Article 63(1)(n) also crystallizes if the loan remains unpaid till the time of filing of the nomination papers. Any payment made after filing of the nomination papers does not cure this constitutional disqualification. Reading the time of the "filing of the nomination papers" as the cutoff date in both the above constitutional disqualifications advances a harmonious interpretation of the constitution and avoids the possibility of discrimination in the application of the above Articles, which carry similar objectives and purposes."

The same view was also expressed by the learned Full Bench of this Court in "HAMEED AKBAR KHAN Vs. ELECTION APPELLATE TRIBUNAL and others" (**PLD 2013 Lahore 548**). The hon'ble Supreme Court in "ATIQUE REHMAN Vs. HAJI KHAN AFZAL and others" (**2007 SCMR 507**), while interpreting Section 99 of the Representation of the People Act, 1976 (**ROPA**) held that qualifications and disqualifications, prescribed

under said Section, must be fulfilled on the date of filing of nomination papers. The relevant observations are reproduced as under:-

“After hearing the learned counsel for the parties at length and having carefully perused the record with their assistance, we in the light of the provisions of section 99 of the Act, 1976 have found that a candidate intending to contest election for the seat of member Provincial Assembly must fulfill the condition contained therein including attaining the age of 25 years on the date of filing the nomination papers and should also be enrolled as voter in the constituency from which he is contesting the Election.”

The same view was earlier expressed by the hon'ble Supreme Court in “WAQAS AKRAM Vs. MUHAMMAD TAHIRUL QADRI and others” (**2003 SCMR 145**).

8. In view of the law settled in the afore-noted judgments, there is no manner of doubt that the cutoff date for clearing bank default was 16.03.2023 being the last date for filing of nomination papers and therefore, the subsequent Settlement Agreement dated 21.03.2023 executed between the appellant and respondent-Bank will not absolve the appellant from the disqualification prescribed under Article 63(1)(n) of the Constitution.

9. The next argument of the appellant that as he has entered into Settlement Agreement before last date for filing of nomination papers with the respondent No.1,

therefore, his nomination papers could not be rejected under Section 62(10) of the Act, is also misconceived. In this regard, for ready reference Section 62(10) of the Act is reproduced hereunder:-

“62(10) Notwithstanding anything contained in sub-section (9), where a candidate deposits any amount of loan, tax or government dues and utility expenses payable by him of which he is unaware at the time of filing of his nomination paper, such nomination paper shall not be rejected on the ground of default in payment of such loan, taxes or government dues and utility expenses.”

10. No doubt Section 62(10) of the Act is a *non-obstante* clause and under said sub-section where a candidate deposits any amount of loan, tax or government dues and utility expenses payable by him of which he is unaware at the time of filing of his nomination papers, such nomination papers shall not be rejected on the ground of default in payment of such loan, taxes or government dues and utility expenses. However, while interpreting similar Section 14(3A) of ROPA, the learned Full Bench of this Court in *Rashid's* Case *supra* held that this provision is inconsistent with Article 63(1)(o) of the Constitution and disrupts the harmony of the Constitutional provision which cannot be

permitted through sub-constitutional legislation. The relevant observations are reproduced as under:-

“9. We are aware that section 14(3-A) of Representation of the People Act, 1976 provides that if the payment of unpaid loan is made before the rejection of the nomination papers, the disqualification under Article 63 (1)(n) is not attracted. We are afraid the said provision of Representation of the People Act, 1976 besides being inconsistent with Article 63(1)(o), disrupts the harmony of the constitutional provisions leading to discriminatory application of the above two constitutional disqualifications, which cannot be permitted through sub-constitutional legislation. We therefore hold that disqualification under Article 63(1)(n) becomes compete only when the loan remains unpaid for over a year till the date of filing of the nomination papers. We therefore also held that section 14(3-A) of Representation of the People Act, 1976 is inconsistent with the scheme of the Constitution in general and Article 63(1)(o) and (n) in particular.”

11. Beside the above observation by the learned Full Bench of this Court, in any case the *non-obstante* provision of Section 62(10) of the Act can only be attracted where the candidate must show that he was unaware at the time of filing of his nomination papers about the loan, tax, government dues and utility expenses payable by him and he has paid the same before his nomination papers were rejected. In the present case, the appellant has neither demonstrated before the Returning

Officer that he was not aware at the time of filing of his nomination papers about the loan nor same has been established before this Court. On the other hand, admittedly, the loan amount was availed by the appellant and in case of default, decree was passed on 27.05.2013 and thereafter, its execution was filed, which was finally adjourned *sine-die*. Further, when the appellant himself entered into Settlement Agreement with the respondent-Bank on 21.03.2023, he admits availing of the finance facility under the decree dated 27.05.2013, therefore, it cannot be pleaded that the appellant was not aware of the loan availed by him, which he finally settled through the Settlement Agreement, hence, the provision of Section 62(10) of the Act is not attracted.

12. In view of above discussion, this Election Appeal being meritless and without substance is **dismissed**.

**(ABID AZIZ SHEIKH)
JUDGE**

Approved For Reporting

JUDGE

Arsalan