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JUDGMENT SHEET

IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR.
ELECTION TRIBUNAL
JUDICIAL DEPARTMENT

Election Appeal. No.01 of 2023

Mian Zohaib Aslam Advocate. Versus Returning Officer and another.

JUDGMENT

Date of hearing	12.04.2023
Appellant represented by:	Jam Muhammad Nasir Fayyaz, Advocate.
Respondents by:	Mr. Muhammad Jafar, Law Officer for the Respondent No.1 and Election Commission of Pakistan. Rao Abdul Raheem, Advocate for the respondent No.2.

SADIQ MAHMUD KHURRAM, J.- This election appeal has been filed by the Appellant under Section 63 of the Elections Act, 2017 read with Rule 54 of the Election Rules, 2017 for setting aside the order dated 19.03.2023 passed by the Respondent No.1/Returning Officer, Constituency PP-259, Rahim Yar Khan -V who rejected the objections filed by the Appellant by accepting the nomination papers of the Respondent No.2 namely Mian Shafi Muhammad.

2. Brief facts of the case are that the Election Commission of Pakistan called upon the voters of the Constituency PP-259, Rahim Yar Khan -V, to elect a Member from the said Constituency and the schedule of the election was announced. Respondent No.2 namely Mian Shafi Muhammad along with

others filed nomination papers before the returning officer (respondent No.1). The appellant namely Mian Zohaib Aslam Advocate filed written objections against the respondent No.2 namely Mian Shafi Muhammad which were rejected by the Respondent No.1/Returning Officer, Constituency PP-259, Rahim Yar Khan -V vide order dated 19.03.2023.

3. The learned counsel for the appellant submitted that the order dated 19.03.2023 passed by the Returning Officer, PP-259 Rahim Yar Khan-V, accepting the nomination papers of the respondent No.2 namely Mian Shafi Muhammad, was liable to be set-aside being against the facts and the law; that the respondent No.2 namely Mian Shafi Muhammad claimed to have the educational qualification of Bachelor of Arts (B.A) whereas, that degree, which the respondent No.2 namely Mian Shafi Muhammad, claims to show his educational qualification as Bachelor of Arts (B.A), had been determined to be fake by the Election Commission itself vide its order dated 31.10.2013 and he was also denoted as *Member of Provincial Assembly (M.P.A)* vide order dated 28.01.2015, hence, while submitting his nomination papers, the respondent No.2 namely Mian Shafi Muhammad, claiming himself to have the qualification as Bachelor of Arts (B.A), using the same degree, rendered himself disqualified for being a member of the Provincial Assembly.

4. Mr. Muhammad Jaffar, Law Officer, Election Commission of Pakistan has submitted the original record and stated that all the objections were properly heard by the Respondent No.1 through the mechanism provided under the law and the Respondent No.1 had rightly accepted the nomination papers of the Respondent No.2 namely Mian Shafi Muhammad.

5. Rao Abdul Raheem, Advocate for the Respondent No.2 has vehemently opposed this appeal and defended the impugned order by stating

that the Respondent No.1 had rightly passed the impugned order and had rightly accepted the nomination papers of the Respondent No.2 namely Mian Shafi Muhammad.

6. Arguments of all the parties have been heard and the available record has been perused.

7. The objection raised against the acceptance of the nomination papers of the respondent No.2 was that the respondent No.2 namely Mian Shafi Muhammad claimed to have the educational qualification of Bachelor of Arts (B.A) whereas, that degree which the respondent No.2 namely Mian Shafi Muhammad, claims to show his educational qualification as Bachelor of Arts (B.A), had been determined to be fake by the Election Commission itself vide its order dated 31.10.2013 and he was also denotified as Member of Provincial Assembly (M.P.A) vide order dated 28.01.2015, hence, while submitting his nomination papers, the respondent No.2 namely Mian Shafi Muhammad claiming himself to have the qualification as Bachelor of Arts (B.A), using the same degree, rendered himself disqualified for being a member of the Provincial Assembly. For ease of reference, the language of Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 is reproduced below:-

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

A plain reading of the Article makes it abundantly clear that the Constitution requires a declaration by a court of law for the candidate to be termed as being not sagacious, righteous, non-profligate, honest and ameen. Facts are that the respondent No.2 namely Mian Shafi Muhammad obtained *Sanad ul Faragh* in the year 1995 from Madrassa Qasim ul Uloom Ghotki and as the said

Madrasa was duly recognized by Shah Abdul Latif University, Khairpur, Sindh for the grant of said *Sanad* by virtue of the Shah Abdul Latif University Act, 1986 therefore the respondent No.2 namely Mian Shafi Muhammad was issued an Equivalence Certificate from the Shah Abdul Latif University, Khairpur, Sindh and on the basis of *Sanad ul Faragh*, he appeared in the annual Bachelor of Arts (B.A) examination conducted by the Shah Abdul Latif University Khairpur Sindh in the year 2006 and successfully passed the same and the Bachelor of Arts (B.A) degree was conferred upon him by the said University in the year 2007. Subsequently, the Election Commission of Pakistan, vide its order dated 31.10.2013, observed that *prima facie* it appeared that the respondent No.2 had committed an offence under section 82 of the Representation of the People Act, 1976 read with other enabling provisions of law while using the said degree and was liable to prosecution before the Session Judge concerned under section 94(2) of the Representation of the People Act, 1976. The Election Commission of Pakistan, transmitted the order dated 31.10.2013 to the Provincial Election Commissioner Punjab, who was to direct the Regional Election Commissioner/District Election Commissioner concerned to lodge a complaint before the Session Judge, Rahim Yar Khan. Aggrieved by these measures, the respondent No.2, instituted a civil suit before the learned Court of Civil Judge, Islamabad-West praying for a declaration that the Bachelor of Arts (B.A) degree conferred upon him by the Shah Abdul Latif University, Khairpur, Sindh was genuine. The suit as filed by the respondent No.2, was decreed on. 27.07.2015 by the learned Civil Judge, Islamabad-West and the appeal lodged by the Election Commission of Pakistan was also dismissed by the Additional District Judge, Islamabad vide order dated 19.11.2015. However, on 05.07.2019 the Hon'ble Islamabad High Court, while deciding the Civil Revision No. 10/2016 titled

as "*Election Commission of Pakistan and another versus Mian Shafi Muhammad and others*" remanded the matter to the learned Civil Court for adjudication of the case on merits. Subsequently, again, the suit filed by the respondent No.2 praying for declaration that the Bachelor of Arts (B.A) degree conferred upon him by the Shah Abdul Latif University, Khairpur, Sindh was genuine was decreed on 01.12.2021 by the learned Civil Judge, Islamabad-West . The learned Civil Judge, Islamabad-West declared in his judgment dated 01.12.2021, as under:-

“The case of the plaintiff is he has got equivalence certificate qua Sanad ul Faragh being equal to B.A and thereafter in 2006 appeared in B.A Oriental Group exam under Shah Abdul Latif University Sindh and finally degree was conferred in 2007 on the basis of which he contested election of 2008, 2013 and 2018. As admitted by DW-1 the competent authority regarding educational affairs is none other than HEC whose DG (A&A) got recorded his statement on 08.07.2015 to the effect that he has no objection if the suit of the plaintiff' is decreed. **As such, inversely the collective fall out of statement of DG (A&A) HEC dated 08.07.2015 is that B.A Oriental degree of plaintiff is genuine.** Had it been not so the fact of degree being forged and fabricated would have been clearly and specifically asserted in unambiguous terms. However, this is not the case of HEC as per available record.”
(emphasis supplied)

The Election Commission of Pakistan has indeed lodged a Regular First Appeal under section 96 read with Order XII Roles 1 and 2 CPC for setting aside the judgment and decree dated 01.12.2021 passed by the learned Civil Judge, Islamabad-West, however, the said RFA No.47 of 2022 is still pending adjudication before the Honourable Islamabad High Court, Islamabad. In this manner, the Bachelor of Arts (B.A) degree conferred upon the respondent No.2 by the Shah Abdul Latif University, Khairpur, Sindh has been declared to be genuine by learned Civil Judge, Islamabad-West and the said judgment

is still in the field. Therefore, it is abundantly clear that there is no declaration by a court of law terming the respondent No.2 as being not sagacious, righteous, non-profligate, honest and ameen. The august Supreme Court of Pakistan in the case of *Rana AFTAB AHMAD KHAN Versus MUHAMMAD AJMAL and another(P L D 2010 Supreme Court 1066)* has held as under:-

"It may be pertinent to mention here that to hold a person lacking honesty, being not, Sagacious, righteous, Ameen and non-profligate, in other words is to declare him a fraud, cheat and dishonest, etc. which shall be a stigma on his face entailing great immense, and innumerable legal and social consequences and repercussions; this to our mind shall not be justified **without there being an adjudication made by the Court of competent jurisdiction to hold him carrying such a "vice"**. In this connection reference can be made to the judgment of this Court reported as Dr. Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 SC 265), in which it has been held "if a person involved in corruption and corrupt practices has been finally adjudged to be so, then on the basis of such final judgment his candidature on the touchstone of Art.62(f) of the Constitution could be adjudged to the effect whether he was sagacious, righteous, non-profligate, honest or Ameen". This means that the declaration, determination and adjudication of a person falling within the mischief of the noted Article by appropriate forum is a pre-requisite. Such determination in appropriate cases can also be possible though the medium of Returning Officer or the appeal arising therefrom, but it can hardly be agreed if it should be straight away done in the Writ Jurisdiction when there is a factual controversy involved. We are also not impressed by the submission that the Returning Officer should have suo motu rejected the respondent's nomination paper, or that in view of the alleged imminent and inherent disqualification the High Court should have independently debarred him from contesting the election; moreover the reference in this behalf made to paragraph No.21 of the judgment declined in C.P. No. 287 of 2008 is misconceived as that direction was restricted to the case of Mr. Jamshed Dasti and that too in his case. In the light of the above it is

held that the Writ Petition of the petitioner was not maintainable.” (emphasis supplied)

Reliance in this regard is also placed on the case of “*Imran Ahmad Khan Niazi Versus Mian Muhammad Nawaz Sharif, Prime Minister Of Pakistan/Member National Assembly, Prime Minister’s House, Islamabad and 9 others*” (**P L D 2017 Supreme Court 265**) wherein the august Supreme Court of Pakistan has held as under:-

“20. The next question emerging for the consideration of this Court is what are the fora provided by the Constitution and the law to deal with the questions emerging from Articles 62(1)(f) and 63(2) of the Constitution. To answer this question we will have to fall back upon Articles 62 and 63 of the Constitution. A careful reading of the said Articles would reveal that the one deals with qualifications of a person to be elected or chosen as a member of Parliament while the other deals with disqualifications of a person not only from being elected or chosen but also from being a member of Parliament. If a candidate is not qualified or is disqualified from being elected or chosen as a member of Parliament in terms of Articles 62 and 63 of the Constitution, his nomination could be rejected by the Returning Officer or any other forum functioning in the hierarchy. But where the returned candidate was not, on the nomination day, qualified for or disqualified from being elected or chosen as a member, his election could be declared void by the Election Tribunal constituted under Article 225 of the Constitution. While election of a member whose disqualification was overlooked, illegally condoned or went unquestioned on the nomination day before the Returning Officer or before the Election Tribunal, could still be challenged under Article 199(1)(b)(ii) or Article 184(3) of the Constitution of Pakistan, 1973 as was held in the cases of Lt. Col. Farzand Ali and others v. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore (PLD 1970 SC 98) and Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1054). However, disqualifications envisaged by Article 62(1)(f) and Article 63(2) of the Constitution in view of words used therein

have to be dealt with differently. In the former case the Returning Officer or any other fora in the hierarchy would not reject the nomination of a person from being elected as a member of Parliament unless a court of law has given a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Even the Election Tribunal, unless it itself proceeds to give the requisite declaration on the basis of the material before it, would not disqualify the returned candidate where no declaration, as mentioned above, has been given by a court of law. **The expression “a court of law” has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded. Such a court would include a court exercising original, appellate or revisional jurisdiction in civil and criminal cases.** But in any case a court or a forum lacking plenary jurisdiction cannot decide questions of this nature at least when disputed. In the latter case when any question arises whether a member of Parliament has become disqualified it shall be dealt with only by the Election Commission on a reference from the Speaker of the Parliament in terms of Articles 63(2) and 63(3) of the Constitution. (Emphasis supplied). We would have sent this case to the Speaker in terms of 63(2) or the Election Commission in terms of Article 63(3) of the Constitution but we do not think a question of such nature has arisen in this case as respondent No. 1 has been alleged to be disqualified even on the nomination day on account of having failed to disclose his assets and those of his dependents.” (emphasis supplied)

At this stage, the Tribunal is of the view that if the respondent No.2 is allowed to contest the election and even if he succeeds, the appellant would still have a remedy to challenge the election by way of an Election petition whereas on the other hand, if this appeal is allowed, the respondent No.2 would be ousted from the election arena which would be irreparable damage. The wisdom of summary inquiry contemplated under the provisions of Election Rules, 2017 has this rationale behind it.

8. In view of above, this appeal holds no merit as the Tribunal does not find any illegality or perversity in the impugned order. Therefore, the same is hereby **dismissed**. Notwithstanding anything stated above, it is clarified that the findings recorded and observations made herein are based only on a tentative assessment of the material before the Tribunal, in the facts and circumstances brought to the notice of the Tribunal, for the limited purpose of deciding this appeal.

**(SADIQ MAHMUD KHURRAM)
JUDGE/APPELLATE TRIBUNAL**

Raheel/

APPROVED FOR REPORTING

JUDGE