

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SH. AZMAT SAEED

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

CIVIL APPEAL NO.1083 OF 2017

(On appeal from order dated 20.6.2017, passed by the Election Commission of Pakistan, in Case No.7(4)/2016-Law)

AND

CIVIL PETITION NO.3148 OF 2017

(On appeal from judgment dated 28.7.2017, passed by the Islamabad High Court in W.P. No.2604/2017)

Raja Shaukat Aziz Bhatti
(in both cases)

... Appellant (s)/
Petitioner (s)

Versus

Major (R) Iftikhar Mehmood Kiani
(in CA.1083/2017)

Major (R) Iftikhar Mehmood Kiani
and another
(in CP.3148/2017)

... Respondent (s)

For Appellant (s)/
Petitioner (s) : Malik Waheed Anjum, ASC with
Syed Rifaqat Hussain Shah, AOR
(in both cases)

For Respondent
No.1 (in both cases) : Sardar M. Latif Khan Khosa,
Sr. ASC with
Syed Iqbal Hussain Gillani, ASC
assisted by
Sardar Shahbaz Ali Khan Khosa, Adv.
Rai Muddassur Iqbal, Advocate
Mr. Naz Gul Shah, Advocate
Ch. Akhtar Ali, AOR

For HEC : Mian Muhammad Hanif, ASC with
Raja Abdul Ghafoor, AOR

For ECP : Malik Mujtaba Ahmad,
Additional Director General

For the Federation : Mr. Sajid Ilyas Bhatti, DAG
On Court Notice assisted by Barrister Minaal Tariq
Mirza Nassar Ahmad, DAG

Dates of Hearing : 07.02.2018, 19.02.2018, 20.02.2018,
06.03.2018, 07.03.2018, 13.03.2015
and 15.03.2018

JUDGMENT

SH. AZMAT SAEED, J.- Through this common judgment, it is proposed to decide Civil Appeal No.1083 of 2017 and Civil Petition for Leave to Appeal No.3148 of 2017 *inter se* the same parties and involving common questions of law and fact. The aforesaid Civil Appeal bearing No.1083 of 2017 under Section 103-AA of the Representation of the People Act, 1976 (RoPA) is directed against the Order dated 20.06.2017, passed by the Election Commission of Pakistan (ECP); and the above titled Civil Petition for Leave to Appeal bearing No.3148 of 2017 under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 is directed against the judgment dated 28.07.2017, passed by the learned Islamabad High Court, in Writ Petition No.2604 of 2017.

2. The brief facts necessary for adjudication of the *lis* at hand are that the Appellant/Petitioner contested the elections for the Provincial Assembly of

the Province of the Punjab from PP-4, Rawalpindi-IV, held in May, 2013, and was declared as the Returned Candidate. An application was filed by the Respondent [Major (R) Iftikhar Mehmood Kiani] before the Election Commission of Pakistan praying that the Appellant/Petitioner be de-notified as a Member of the Provincial Assembly as he (the present Appellant/Petitioner) had used false testimonials and made a mis-declaration while contesting the elections for the seat of the Provincial Assembly held in 2008. On the basis of the aforesaid application and purportedly in pursuance of an inquiry conducted on the orders of this Court dated 15.06.2010 passed in C.M.A. No.1624 of 2010 in Civil Appeal No.409 of 2010 reported as Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828) the ECP concluded that, in fact, the Appellant/Petitioner had contested the elections in the year 2008 by using false testimonials and vide impugned Order dated 20.06.2017, the Notification in favour of the Appellant/Petitioner as a Returned Candidate was withdrawn and follow up actions were directed to be taken.

3. The Civil Appeal No.1083 of 2017 has been filed by the Appellant purportedly under Section 103-AA(4) of RoPA against the impugned Order dated 20.06.2017.

4. The said impugned Order dated 20.06.2017 passed by the ECP was also challenged before the learned Islamabad High Court by the Appellant/Petitioner through Writ Petition No.2604 of 2017, which was dismissed vide judgment dated 28.07.2017 and the same has been challenged before this Court through the instant Civil Petition for Leave to Appeal No.3148 of 2017.

5. It is contended by the learned counsel for the Appellant/Petitioner that the impugned Order of the ECP dated 20.06.2017, is wholly without jurisdiction. It is his case that the elections were conducted in May, 2013 wherein the Appellant/Petitioner was declared as a Returned Candidate and a Notification, in this behalf, was issued by the ECP on 22.05.2013. In terms of Section 103-AA sub-section 4 of RoPA, the ECP is conferred with the jurisdiction to declare the elections null and void for the reasons mentioned in the said provisions. However, such powers could only be

exercised within 60 days of the issuance of the Notification declaring the result, whereafter, the ECP becomes *functus officio*. In the instant case, the impugned Order has been passed by the ECP purportedly under Section 103-AA of RoPA more than three years after the issuance of the Notification, declaring the Appellant/Petitioner as a Returned Candidate, hence, is wholly without jurisdiction and non-est in the eye of law.

6. It is further contended that upon the allegations that the Appellant/Petitioner had used false and fake educational testimonials to support his candidature in the elections of 2008, an FIR was registered at the behest of the ECP against the present Appellant/Petitioner and the conclusion drawn by the Investigating Officer was that no crime had been committed and the allegations are false and fictitious. In this backdrop, a report under Section 173 Cr.P.C. was filed before the concerned Magistrate by the police recommending cancellation of the case. The Magistrate concurred with the findings of the police and cancelled the case. The ECP challenged the said Order before the learned Lahore High Court and a Constitution Petition

filed, in this behalf, was dismissed. Whereafter, the jurisdiction of this Court was invoked by filing Criminal Petition for Leave to Appeal bearing No.111 of 2013 in which leave was granted vide Order dated 10.07.2013. However, the Criminal Appeal bearing No.152 of 2013 arising therefrom was disposed of as having become infructuous. Contemporaneously, the ECP instituted a criminal complaint against the Appellant/Petitioner on the same allegations. Such criminal complaint was dismissed and the ECP has challenged the said Order before the learned Lahore High Court which matter is pending, however, to-date not even a notice has been issued to the Appellant/Petitioner. In the above circumstances, it is contended by the learned counsel that on the allegations from which the Appellant/Petitioner has been exonerated by the Court of competent jurisdiction through an acquittal and separately by cancellation of the FIR, the ECP could not return a finding to the contrary and de-notify the Appellant/Petitioner by holding that his educational testimonials are fake. In this behalf, it is also urged that the findings recorded in the impugned Order dated 20.06.2017, even otherwise, are not sustainable in law

as the original record was not available with the ECP which could form the basis of any such findings. It is added that the impugned Order of the ECP hinges upon an inquiry report of the Additional District and Sessions Judge, Gujar Khan. The said report is available on the file which is in two different formats with two different sets of contents. Thus, the report of the said Additional District and Sessions Judge referred to by the ECP is at least unreliable, if not, forged.

7. It is further contended that even if it is assumed that the proceedings have been initiated on the instructions of this Court contained in the judgment reported as Muhammad Rizwan Gill (*supra*), a perusal of the above-said judgment would indicate that a de-notification could only follow a guilty verdict in proceedings initiated by the ECP before a Criminal Court in pursuance of the direction of this Court. In the instant case, the Appellant/Petitioner has been acquitted, hence, the question of de-notification did not arise.

8. Without prejudice to above, it was further contended that the ECP by way of the impugned Order

dated 20.06.2017 has presumed that in the elections of 2008, the Appellant/Petitioner had claimed his educational qualification to be B.A. In fact, the Appellant/Petitioner never claimed to be a B.A nor submitted a Degree of B.A from any Pakistani University but only claimed to have a qualification equivalent to B.A. Thus, in the circumstances, the question of the Appellant/Petitioner having appended a fake B.A. Degree from the University of the Punjab did not arise, hence, he could not be panelized for such imaginary act especially when the two learned Courts of competent jurisdiction have held to the contrary. It was added that the Appellant/Petitioner in fact had been awarded Diplomas from the Victoria College of Technology and E-Commerce, United Kingdom, which as per his understanding was equivalent to B.A. It is nobody case that such Diplomas were forged or fabricated. Even if it has now been discovered that the said Diplomas are not equivalent to B.A., at best, this fact would impact the elections of 2008, where the minimum educational qualification was prescribed but it would be irrelevant for the elections held in May, 2013 in view of the change in law. In support of his

contention, the learned Counsel placed reliance upon the judgments of this Court reported as (1) Mian Muhammad Nawaz Sharif and others v. Imran Ahmed Khan Niazi and others (PLD 2018 SC 1), (2) Muhammad Hanif Abbasi v. Imran Khan Niazi and others (PLD 2018 SC 189), (3) Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others (PLD 2017 SC 265), (4) Muhammad Nasir Mahmood and another v. Federation of Pakistan through Secretary Ministry of Law, Justice and Human Rights Division, Islamabad (PLD 2009 SC 107), (5) Syed Fakhar Imam v. Chief Election Commission of Pakistan and others (PLD 2008 SC 730), (6) Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarar and others (2016 SCMR 1) and (7) Bartha Ram v. Lala Mehar Lal Bheel and another (1995 SCMR 684).

9. The learned counsel for the Respondent No.1 controverted the contentions raised on behalf of the learned counsel for the Appellant/Petitioner by contending that this Court in the case of Muhammad Rizwan Gill (*supra*) had categorically directed the ECP

to verify the educational testimonials of all the Parliamentarians. In pursuance of the aforesaid judgment of this Court, the ECP embarked upon an exercise as directed, in this behalf. The educational testimonials submitted by the Appellant/Petitioner with his Nomination Papers while contesting the elections held in the year 2008, were sent by ECP to the HEC for verification, which concluded that the Appellant/Petitioner had claimed himself to be a holder of B.A. Degree and a copy whereof had been appended with his Nomination Papers. On verification from the University concerned, it transpired that the said Degree had been issued in favour of one Shaukat Aziz Sheikh son of Abdul Aziz and obviously such a Degree was not awarded to the said Appellant/Petitioner. Consequently, for contesting the elections of 2008, a Degree awarded to someone else had been used and pressed into service by the present Appellant/Petitioner, who thereby used unfair means to get elected and was, therefore, rightly de-notified by the ECP.

10. It was further contended that the powers exercised by the ECP while passing the impugned

Order were in compliance of the judgment of this Court in the case reported as Muhammad Rizwan Gill (*supra*), hence, the said order cannot be said to be without jurisdiction. Even otherwise, it is contended, that in terms of Article 218 (3) of the Constitution, it is the duty of the ECP to ensure free and fair elections and guard against disqualified persons from trespassing into the Parliament. The provisions of Article 218 (3) of the Constitution cannot be ignored and in fact a more dynamic interpretation needs to be given to it and the other Articles of the Constitution, including Article 225 must be read in harmony therewith. Furthermore, it is contended, the sub-Constitutional provision of RoPA, 1976 cannot control or limit the scope or amplitude of Article 218 (3) of the Constitution.

11. In the alternative, it was contended, that it is now settled law that in case a person suffering from a pre-election disqualification or lack of qualification slips through the net at the time of the scrutiny of the Nomination Papers, and no application having been filed with the ECP immediately after the elections and thereafter, no Election Petition filed after the elections

before the learned Election Tribunal, it does not mean that the disqualification has been cured or that the missing qualification has been acquired by the flux of time. It is further contended that for the last more than a half century, this Court has repeatedly held that in such an eventuality the Constitutional jurisdiction of the learned High Court under Article 199 of the Constitution and of this Court under Article 184(3) of the Constitution can always be invoked and exercised to implement the law and determine the lack of qualification or disqualification of a Member of the Parliament. In the instant case, the obvious lack of qualification of the Appellant/Petitioner is self-evident on the record and cannot be ignored by this Court. Furthermore, no technical barrier can be erected to restrain this Court from exercising its jurisdiction, in this behalf. Such jurisdiction has been repeatedly exercised by this Court in a host of different circumstances. Furthermore, it is added that this Court can always exercise one jurisdiction even if another has been invoked by converting the proceedings.

12. It was next contended by the learned counsel for the Respondent No.1 that in the Nomination Papers submitted by the Appellant/Petitioner while contesting the elections of 2008, he had shown his educational qualification as B.A. Subsequently, interpolation was made in the Nomination Papers and it was scribed B.A. "کے برابر". The copies of both such documents, one with and the other without the interpolation are available on the file, leaving no manner of doubt that the said Nomination Papers have been tempered with. It is added that the Appellant/Petitioner relied upon the B.A. Degree, which admittedly was found not awarded to him having been earned by one Shaukat Aziz Sheikh. Conveniently the original record has disappeared and the Appellant/Petitioner is trying to take unfair advantage thereof. In the alternative, it is added that the Appellant/Petitioner has now relied upon the Diplomas from the Victoria College of Technology and E-Commerce, United Kingdom. This Court inquired about its equivalence from the Higher Education Commission (HEC) and it has come on record that Victoria College of Technology and E-Commerce has not been accredited nor can award an

educational degree equivalent to B.A. recognized by the HEC. In the circumstances, there can be no escape from the fact that the Appellant/Petitioner had made a false declaration in his Nomination Papers in the elections of 2008 by claiming to possess educational qualification of B.A. or B.A. "کے برابر". Thus, in terms of the law as settled by this Court in its various pronouncements, the Appellant/Petitioner having made a false declaration in his Nomination Papers was neither honest nor ameen, and, therefore, not qualified in terms of Article 62(1) of the Constitution. In the circumstances, it is contended, that not to dismiss the Petition and the Appeal would perpetuate an illegality and in fact an un-Constitutional act. In support of his contentions, the learned counsel for Respondent No.1 has relied upon the judgments of this Court reported as (1) Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others (PLD 2017 SC 265), (2) Malik Iqbal Ahmad Langrial v. Jamshed Alam and others (PLD 2013 SC 179), (3) Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and

others (PLD 2012 SC 1089), (4) Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828) and (5) Farzand Ali v. Province of West Pakistan (PLD 1970 SC 98).

13. Heard. Available record perused.

14. The grievance of the Appellant/Petitioner arises out of the Order of the ECP dated 20.06.2017 whereby the Notification in his favour as a Returned Candidate to the Provincial Assembly of the Province of the Punjab was withdrawn. The Appellant/Petitioner has directly challenged the said Order before this Court purportedly under Section 103-AA(4) of RoPA through Civil Appeal bearing No.1083 of 2017. It appears that by way of abundant caution the Appellant/Petitioner also challenged the said Order of the ECP dated 20.06.2017 through a Constitutional Petition i.e. Writ Petition bearing No.2064 of 2017 before the learned Islamabad High Court, which was dismissed vide judgment dated 28.07.2017, and has been challenged before this Court through Civil Petition for Leave to Appeal No.3148 of 2017.

15. At the very outset, the Appellant/Petitioner called into question the jurisdiction of the ECP to pass

the impugned Order de-notifying him as a Member of the Provincial Assembly. In pith and substance, it is the case of the Appellant/Petitioner that with regard to an alleged pre-election disqualification or lack of qualification of a candidate or an illegality in the conduct of the elections, the jurisdiction of the ECP to pass orders under Section 103-A of RoPA can only be exercised prior to the expiry of 60 days from the notification of the result of the elections. In the instant case, it is contended, that the impugned Order of the ECP has been passed several years after the original Notification declaring the Appellant/Petitioner as an elected Member of the Provincial Assembly was issued.

16. A perusal of the impugned Order of the ECP dated 20.06.2017 reveals that pursuant to the judgment of this Court reported as Muhammad Rizwan Gill (*supra*) the ECP and the HEC inquired into the validity and authenticity of the educational qualification of the Members of the Parliament and the Provincial Assemblies. It is in pursuance to the aforesaid directions of this Court that the ECP conducted the requisite inquiries and purportedly passed the impugned Order dated 20.06.2017. The

aforesaid is clear and obvious from paragraph 2 of the Order of the ECP dated 20.06.2017. Thus, it appears that the contentions of the learned counsel for the Appellant/Petitioner pertaining to the assumption of jurisdiction of the ECP after the lapse of 60 days may not be strictly applicable as the ECP was purportedly acting in compliance of the directions of this Court.

17. Furthermore, it is the case of the Respondents and as is also evident from the Order of the ECP dated 20.06.2017 that Article 218(3) of the Constitution must necessarily be read and interpreted in its broadest amplitude thereby conferring jurisdiction on the ECP to pass appropriate orders at any stage unfettered by technical restrictions imposed by any sub-Constitutional legislation pertaining to the conduct of elections including RoPA. In this behalf, Article 225 of the Constitution must also be read in harmony with Article 218(3) of the Constitution. The ECP, in this behalf, also referred to the judgments of this Court including the judgment reported as (1) Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others (PLD 2010 SC 817), (2) Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828) and (3) Syeda

Waheeda Shah v. Election Commission of Pakistan through Chief Election Commissioner and 4 others (PLD 2013 Sindh 117). However, the question of jurisdiction of the ECP to pass such order de-notifying the Member of the Parliament or the Provincial Assembly on account of a pre-election disqualification or lack of qualification after a lapse of 60 days from the original Notification is not free from difficulty.

18. Be that as it may, this Court when confronted with the issue of jurisdiction, the ECP with regard to pre-election disqualification or lack of qualification in its judgment dated 23.02.2018 passed in Civil Petition No.3131 of 2017, after examining various judgments of this Court, including the judgments reported as (1) Muhammad Jibran Nasir and others Vs. The State and others (PLD 2018 SC 351), (2) Muhammad Hanif Abbasi v. Jahangir Khan Tareen and others (PLD 2018 SC 114), (3) Muhammad Hanif Abbasi v. Imran Khan Niazi and others (PLD 2018 SC 189), (4) Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others (PLD 2017 SC 265), (5) Khawaja Muhammad Asif v. Federation of Pakistan and

others (PLD 2014 SC 206), (6) Mian Najeeb-ud-Din Owaisi and another v. Amir Yar Waran and others (PLD 2013 SC 482), (7) Malik Iqbal Ahmad Langrial v. Jamshed Alam and others (PLD 2013 SC 179), (8) Air Marshal (Retd) Muhammad Asghar Khan v. General (Retd) Mirza Aslam Baig, Former Chief of Army Staff and others (PLD 2013 SC 1), (9) Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1089), (10) Muhammad Azhar Siddiqui v. Federation of Pakistan and others (PLD 2012 SC 774), (11) Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132), (12) Shahid Orakzai v. Pakistan through Secretary Law, Ministry of Law, Islamabad (PLD 2011 SC 365), (13) Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828), (14) Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others (PLD 2010 SC 817), (15) Syed Fakhar Imam v. Chief Election Commission of Pakistan and others (PLD 2008 SC 730), (16) Mian Muhammad Nawaz Sharif v. President of Pakistan and others (PLD 1993 SC 473), (17) Miss Benazir Bhutto v. Federation of Pakistan and others (PLD 1988 SC 416),

(18) Farzand Ali v. Province of West Pakistan (PLD 1970 SC 98), (19) Muhammad Akram v. DCO, Rahim Yar Khan and others (2017 SCMR 56), (20) Ch. Muhammad Ashraf Warraich and another v. Muhammad Nasir Cheema and others (2016 SCMR 998), (21) Jamshoro Joint Venture Ltd. and others v. Khawaja Muhammad Asif and others (2014 SCMR 1858), (22) Allah Dino Khan Bhayo v. Election Commission of Pakistan, Islamabad and others (2013 SCMR 1655), (23) Muhammad Khan Junejo v. Federation of Pakistan through Secretary, M/o Law Justice and Parliamentary Affairs and others (2013 SCMR 1328), (24) Abdul Ghafoor Lehri v. Returning Officer, PB-29, Naseerabad-II and others (2013 SCMR 1271), (25) Muddasar Qayyum Nahra v. Ch. Bilal Ijaz (2011 SCMR 80), (26) Suo Motu Case No. 10 of 2009 (Complaint regarding establishment of Makro-Habib Store on playground) (2010 SCMR 885), and (27) Bartha Ram v. Lala Mehar Lal Bheel and another (1995 SCMR 684), concluded as follows:

"27. An overview of the afore-quoted provisions of the Constitution, as interpreted by this Court through its various juridical pronouncements referred to and reproduced herein above leads to an irresistible and irrefutable conclusion that our Constitutional dispensation is erected upon the democratic principle that the authority vest with the people of Pakistan can only be

exercised through their chosen representatives. Such authority, including the power of law making and control over the public exchequer is to be conferred upon the chosen representatives by way of trust and the trust can only be reposed upon those who are worthy thereof.

28. In the above context, the qualification and disqualification of persons, entitled to act as the chosen representatives of the people and to act on their behalf as Members of the Majlis-e-Shoora and the Provincial Assemblies are set forth in the Constitution itself, more particularly, in Articles 62 and 63 thereof as well as other sub-Constitutional legislation. An elaborate process and procedure has been prescribed by law to filter out those who are disqualified or not qualified to contest the elections to the Majlis-e-Shoora and the Provincial Assemblies as is apparent primarily from the provisions of ROPA of 1976. With regard to pre-election disqualification, such process includes objections before the Returning Officer at the time of filing of the Nomination Papers, an application to the ECP under Section 103-A of ROPA of 1976. And subsequently, an Election Petition before the Election Tribunal established under Article 225 of the Constitution. If no objection is raised or challenge thrown or relevant proceedings initiated before the appropriate forum at the appropriate time, the disqualification of a candidate is not cured nor an absent qualification acquired.

29. Consequently, where a disqualified or unqualified person slips through the cracks sneaks into the Majlis-e-Shoora or the Provincial Assemblies, his presence in the said House can always be challenged through exercise of the Constitutional jurisdiction of this Court under Article 184(3) of the Constitution and before the learned High Court under Article 199 of the Constitution by way of a Writ in the nature of *quo warranto*. Even where a matter comes before this Court regarding the qualification or disqualification of a Member of the Majlis-e-Shoora or the Provincial Assemblies otherwise by way of proceedings other than under Article 184(3) of the Constitution, this Court not only has the jurisdiction to convert

such proceedings to proceedings under Article 184(3) of the Constitution but is bound to do so, as to permit an unqualified or disqualified person to continue to defile and desecrate the Majlis-e-Shoora or the Provincial Assemblies and masquerade as a chosen representative of the people would amount to frustrating the Constitutional provisions. In such an eventuality, if this Court looks other way, it would perhaps constitute a failure to protect and preserve the Constitution.

Thus, we find ourselves unable to decline the prayer of the Petitioner to examine the merits of the case so as to determine on the basis of the material available on record whether Respondent No.1 was qualified or disqualified from being a Member of the Provincial Assembly, KPK. Any refusal on our part to avoid or evade such an exercise would constitute a departure from the law as laid down by this Court and perhaps would even amount to a betrayal of the Constitution. Hence, we convert these proceedings into Suo Motu proceedings under Article 184(3) of the Constitution."

19. In view of facts and circumstances narrated above and as the settled law referred to above we cannot abdicate our responsibility by brushing the issues floating on the surface under the carpet. Hence, we have no other option but to convert the instant proceedings into suo moto proceedings under Article 184(3) of the Constitution so as to examine the cases of the parties on the basis of the material available on record so as to examine the Order of the ECP dated 20.06.2017 by determining as to whether the Appellant/Petitioner was

disqualified or not qualified for being a Member of the Provincial Assembly under the Constitution.

20. It was perhaps being aware of its own original Constitutional jurisdiction under Article 184(3) of the Constitution, this Court during the course of hearing of the instant cases vide its Order dated 17.08.2017 issue the following directions to the HEC:

"3. Appellant is directed to provide to HEC all the original of testimonials, degree etc. including Diploma in Business Administration from "Victoria College of Technology and E-Commerce", UK dated 30.05.2007, statedly annexed with his nomination papers, within seven days from today. HEC in turn shall examine the authenticity and obtain verification of the above noted testimonials, degree and Diploma from the respective institutions and noted college. Once the authenticity and verification is made, HEC shall also provide equivalence certificate/qualification status, before next date.

4. Let HEC produce the original letter, which is allegedly issued by the appellant, as reproduced in the order of this Court dated 10.07.2013. HEC shall also produce all the documents in connection with any inquiry conducted by it in relation to verification of the testimonials/degrees/diplomas of the appellant. The entire record of ECP pertaining to the inquiry, etc., of the appellant's testimonials/degrees/diplomas should also be requisitioned. The appellant is also required to produce his original testimonials/degrees/diplomas, which he admittedly claims to be in his possession."

21. The Appellant/Petitioner contested the General Elections held in 2008 for a seat of the Provincial Assembly of the Province of the Punjab. At that point of

time, it was the requirement of the law that a candidate must be a graduate to be eligible to contest the elections. The Appellant/Petitioner submitted his Nomination Papers. Though, it is the case of the private Respondent and the ECP that the Appellant/Petitioner claimed to possess the requisite educational qualification on the basis of a B.A. Degree issued by the University of the Punjab and it was such Degree which was appended with the Nomination Papers and pursuant to the orders of this Court in the case reported as Muhammad Rizwan Gill (*supra*) the copies of the said B.A. Degree allegedly appended with the Nomination Papers were sent by the ECP to the HEC for verification. It is common ground between the parties that the said Degree sent to the HEC in fact had been earned by and awarded to one Shaukat Aziz Sheikh and not to the present Appellant/Petitioner. Conveniently for the Appellant/Petitioner the original record pertaining to his Nomination Papers of 2008 has gone missing. The Officers of the ECP summoned at the behest of the Appellant/Petitioner confirmed that the said record has been lost and the proceedings initiated against some employees of the ECP, in this behalf. The aforesaid statement on behalf of the ECP stands reflected

in the Order of the Court dated 13.03.2018. The claim of the Appellant/Petitioner that the Nomination Papers of the elections 2008, he had not relied on the B.A. Degree issued by the University of the Punjab but Diploma issued by the Victoria College of Technology and E-Commerce, UK is not confidence inspiring.

22. However, we cannot loose sight of the fact that the criminal proceedings on the same allegations were initiated against the present Appellant/Petitioner in which he has been acquitted. The Orders of such acquittal today's holds the field. Thus, perhaps, it would be unsafe to hold that the Appellant/Petitioner claimed his educational qualification was B.A. while contesting the elections of 2008 and in support of his contentions he submitted a B.A. Degree from the University of the Punjab, which was found to be earned by one Shaukat Aziz Sheikh and not the Appellant/Petitioner.

23. The Appellant/Petitioner vehemently has taken up a plea before us that in the Nomination Papers submitted for the elections in 2008 he held specifically stated that his educational qualification was B.A. کے برابر and he had made available copies of the Diplomas issued by the Victoria College of Technology

and E-Commerce, UK. As note above, the original record of the Nomination Papers as submitted by the Appellant/Petitioner in the election of 2008 have conveniently been lost.

24. This Court has passed an Order dated 17.08.2017 and the relevant portion has been reproduced herein above seeking a Report from the HEC, in this behalf. Such report has been received and filed before this Court through Civil Misc. Application bearing No.6369 of 2017. The said Report makes interesting reading and is reproduced herein below in its entirety:

"Raja Shaukat Aziz wrote a letter to Mr. Rashid Muhammad, Section Officer (Confid). Election Commission of Pakistan (ECP) which was reproduced in the Honorable Supreme Court of Pakistan order dated July 10, 2013 passed in criminal petition number 111 of 2013. HEC did not possess the original letter as it was addressed to the Election Commission of Pakistan (ECP) by the Appellant. However, photo copy of the same letter is attached **(Annex-I)**.

2. The BA degree held by **Raja Shoukat Aziz Bhatti** from Punjab University, Lahore in 1992 under Registration No.89-RP-162 was forwarded by the ECP to HEC for its verification from Punjab University **(Annex-II)** the Punjab University verified vide letter number 4111-CA dated August 27, 2010 that "Copy of degree provided by HEC was verified for **Shaukat Aziz s/o Abdul Aziz caste Sheikh** by the University of the Punjab. The supporting documents/evidence for the purpose (Admission Form) is attached please" **(Annex-III)**. This was conveyed by HEC vide its letter No.Ref.5-3/HEC/A&A/2010/680 dated September 2,

2010 (**Annex-IV**) to Mr. M. Rashid Bhatti, Section Officer, Election Commission of Pakistan.

3. Raja Shoukat Aziz through his representative Mr. Tauseef Mubarik submitted photocopies of following documents for equivalence of foreign diplomas obtained from Victoria College of Technology and E-Commerce, U.K. along with the following documents: (**Annex-IV A**)

Qualification	Year	Institution	Original Documents
Matric	1982	BISE, Rawalpindi	Not submitted
1-year Diploma in Commerce	1996	Sindh Board of Technical Education, Karachi	Not submitted
BBA	2000	Al-Khair University (AJK)	Not submitted
Diploma in Business Administration	2005	Victoria College of Technology and E-Commerce, UK	Submitted
Advanced Diploma in Business Administration	2006	Victoria College of Technology and E-Commerce, UK	Submitted
PGD in Business Administration	2007	Victoria College of Technology and E-Commerce, UK	Submitted

The original Degree of BA obtained from The University of the Punjab which was sent by Election Commission of Pakistan to HEC for verification was not produced before this Commission on August 24, 2017, while submitting aforementioned documents for equivalence.

4. The 'Victoria College of Technology and E-Commerce' is not accredited degree awarding Institution of U.K. Therefore, Diploma, Advanced Diploma and PGD held by the appellant obtained from this non-accredited institution are **Not recognized** by HEC. The HEC has also informed the same to appellant vide letter No.8 (50)HEC/A&A/2017 dated September, 15, 2017, copy attached (**Annex-V**)

5. As regard photocopy of BBA degree obtained by the appellant from Al-Khair University in the session 1998-2000, submitted along with above documents was attested by HEC on 7th October, 2015 as the credentials reflected place of study as "Bhimber: AJ&K, on the BBA degree along

with signatures of Controller of Examination and Chancellor of the University.

6. Due to the grave irregularities found in the academic operations of Al-Khair University, the admissions at all levels have been stopped w.e.f Fall 2016 and the verification of the degrees has also been suspended. University was also asked to provide the lists of all its graduates from the date of inception. It was revealed during the scrutiny of the lists of graduates provided by the Al-Khair University that the appellant has not obtained BBA degree through its authorized main Campus i.e. from Bhimber (AJK) as reflected on the Degree. The degree was actually obtained through College of Global Technologies, Rawalpindi as confirmed from the list provided by the University of HEC (**Annex-VI**). As such this college is not recognized by HEC. The matter relating to the attestation of degrees obtained through unrecognized colleges of Al-Khair University is under consideration of the Commission for an appropriate decision."

The above leaves no manner of doubt that the Diplomas from the Victoria College of Technology and E-Commerce, UK are not equivalent to B.A. Degree issued by any University in Pakistan. In this view of the matter, even if, the contentions raised on behalf of the Appellant/Petitioner, in this behalf, are accepted as the gospel truth, the Appellant/Petitioner did not possess the requisite educational qualification of being graduate or equivalent thereof to be elected as a Member of the Provincial Assembly in accordance with the law as was applicable at the time when he filed his Nomination Papers for the elections held in 2008. The said

Nomination Papers included his affidavit, as required by law, that the Appellant/Petitioner was qualified to contest the elections. In the absence of the requisite educational qualification required at that point of time, the affidavit of the Appellant/Petitioner with his Nomination Papers submitted that he was qualified and did suffer from any disqualification under the law was false.

25. A similar matter came up before this Court where a candidate for the General Elections of 2008 filed his Nomination Papers supported by an affidavit that he possessed the requisite qualification and did not suffer the disqualification as set forth in the Constitution and the law and it was subsequently discovered that he did not have the requisite educational qualification. In the said case reported as Abdul Ghafoor Lehri (*supra*) this Court held as follows:

“12. Since the Sanad produced by the appellant while contesting election, 2002 has been declared not equivalent to B.A. degree for the reasons mentioned in the preceding paragraphs, therefore, appellant was not at all qualified to contest election. Now the question arises as to whether the appellant is disqualified to contest election, 2013 or not. In this regard it is noticed that while producing aforesaid Sanad, the appellant sworn an affidavit to the effect that the Sanad produced by him was issued to him by a recognized institution and equivalent to

a bachelor degree made false statement and submitted false or incorrect declaration in respect of his educational qualification, thus, he was not righteous, sagacious, non-profligate, honest and Ameen within the meaning of Article 62(f) of the Constitution of Islamic Republic of Pakistan, 1973, as such, was not qualified to be elected or chosen as a member of Majlis-e-Shoora."

In view of the law laid down and reproduced herein above which has been reiterated repeatedly by this Court it is clear and obvious that the Appellant/Petitioner having filed a false affidavit with his Nomination Papers for the elections held in 2008 could not be deemed to be honest and ameen, hence, was not qualified in terms of Article 62(1)(f) of the Constitution.

26. Adverting now to the argument of the learned counsel for the Appellant/Petitioner that lack of educational qualification, if any, would be relevant only for the General Elections 2008 and not to subsequent elections including the elections held in May, 2013. Such contention cannot be accepted as has been held by this Court in the judgment reported as Malik Iqbal Ahmad Langrial (*supra*) that as a consequence of the false affidavit having been filed by a candidate with his Nomination Papers in the elections of 2008 such person would loose the qualification of being honest also for the subsequent elections and would not be entitled to

contest such elections or be a Member of the Parliament or the Provincial Assembly. A similar view was also taken by this Court in the case reported as Malik Umar Aslam v. Mrs. Sumaira Malik and others (2014 SCMR 45).

27. The upshot of the above discussion is that the Appellant/Petitioner had given a false affidavit with his Nomination Papers while contesting the elections held in 2008. Filing of an affidavit with the Nomination Papers was the requirement of the law (RoPA) and the motive for filing of false affidavit was to enter the Provincial Assembly by unfair means by making false representation regarding the required educational qualification. Thus, the Appellant/Petitioner was not honest and ameen in terms of Article 62(1)(f) of the Constitution and such lack of qualification continuous, so as to disentitle the Appellant/Petitioner from being a candidate for or being a Member of the Parliament or the Provincial Assembly.

28. In this view of the matter, no exception can be taken to the Order dated 20.06.2017 of the ECP denotifying the Appellant/Petitioner as a Member of the Provincial Assembly and there is no occasion for interference therewith.

29. Consequently, the titled Civil Appeal is dismissed as well as the Civil Petition for Leave to Appeal is also dismissed and leave declined.

Judge

Judge

'APPROVED FOR REPORTING'

Mahtab H. Sheikh

Judge

Announced on 22nd May 2018 at Islamabad.

Judge