IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE KHILJI ARIF HUSSAIN

CIVIL APPEAL NO.384 OF 2014
(On appeal from order dated 7.2.2014, passed by the Election Tribunal, Quetta-1, in E.P.No.01/2013)

Muhammad Khan ... Appellant (s)

Versus

Obaidullah Jan Babat and others ... Respondent (s)

For the Appellant (s) : Mr. Muhammad Akram Sheikh, Sr. ASC a/w
Barrister Sajeel Sheryar, Advocate
Ch. Hasan Murtaza Mann, Advocate
Miss Sundas Hurain, Advocate

For the Respondent (s) : Mr. Tariq Mehmood, Sr. ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 20 and 26.01.2016

JUDGMENT

SH. AZMAT SAEED, J.- This Civil Appeal under Section 67(3) of the Representation of People Act, 1976 (ROPA) is directed against the Order dated 07.02.2014, whereby an Election Petition bearing No.1 of 2013, filed by the present Appellant, was dismissed.

2. Brief facts necessary for adjudication of the *lis* at hand are that the General Elections were scheduled for the 11th of May, 2013, including for the Provisional Assembly of the Province of Balochistan. The Appellant and the present Respondents filed their respective Nomination Papers to contest the Elections from Constituency PB-16 Loralai-II. It appears from the record that the Appellant filed two separate Nomination Papers to contest the said Elections, however, both were rejected by the Returning Officer vide Order dated 07.04.2013, holding the Appellant disqualified to contest the said Elections. Aggrieved, the Appellant filed two Appeals i.e. Election Appeals No.21 and 25 of 2013 before the learned Election Tribunal, which failed to find favour and were dismissed vide Order dated 17.04.2013. The said Order dated 17.04.2013, was challenged through Constitutional Petitions No.286 and 287 of 2013 before the learned High Court of Balochistan, which too were dismissed vide Order dated 19.04.2013.

3. The Appellant challenged the above-said Order dated 19.04.2013 of the learned High Court of Balochistan by invoking the appellate jurisdiction of this Court through two

separate Civil Petitions for Leave to Appeal No.520 and 521 of 2013.

4. The aforesaid two Civil Petitions for Leave to Appeal came up for hearing before this Court on 25.04.2013 when CPLA No.521 of 2013 was not pressed and was disposed of; and leave to appeal was granted in CPLA No.520 of 2013. The said CPLA No.520 was accompanied by a Civil Misc. Application bearing No.2348 of 2013, seeking interim relief thereupon, the following Order was passed:

> "*Notice for a date during next month. Meanwhile operation of the impugned judgment shall remain suspended.*"

5. In the above backdrop, the Appellant was permitted to contest the elections along with the Respondents and after the poll Respondent No.1 was declared and notified as a Returned Candidate while the Appellant was runner up.

6. The Civil Appeal No.444 of 2013 arising out of Civil Petition for Leave to Appeal No.520 of 2013 wherein leave to appeal has been granted vide Order dated 25.04.2013 referred to above, came up for hearing before this Court on 06.11.2013.

7. In the meanwhile, the Appellant had already challenged the elections of Respondent No.1 through an

Election Petition under Section 52 of the ROPA, which was pending adjudication before the learned Election Tribunal. On 20.12.2013, Respondent No.1 filed an application seeking dismissal of the Election Petition filed by the Appellant, *inter alia*, contending that the said Election Petition was not maintainable as the Appellant had no *locus standi* to maintain such Election Petition as he (the Appellant) was not a "validly nominated candidate" for the purposes of Section 52 of ROPA. The said contentions found favour with the learned Election Tribunal and the Election Petition filed by the Appellant was dismissed vide Order impugned dated 07.02.2014.

8. It is contended by Mr. Muhammad Akram Shaikh, learned Sr. ASC that the Appellant was not disqualified from contesting the elections as no Court of competent jurisdiction had returned a finding against the Appellant, in this behalf, hence his Nomination Papers could not have been legally rejected. In the above backdrop, after the illegal rejection of the two Nomination Papers filed by the Appellant, the matter was agitated right up to this Court by filing Civil Petitions for Leave to Appeal No.520 and 521 of 2013. The Appellant, it is contended, had filed one Nomination Paper to contest the

Elections as an Independent Candidate while the other Nomination Paper had been filed as a Candidate of a Political Party. Since the Appellant decided to contest the Elections on the ticket of a Political Party, the Civil Petition for Leave to Appeal arising from the Order rejecting the said Nomination Paper was not pressed. However, leave was granted in the Civil Petition pertaining to the matter of rejection of the Nomination Paper of the Appellant filed as a Candidate of a Political Party. Interim relief was granted by this Court to the Appellant to contest the Elections. The afore-said is evident from the Order of this Court dated 25.04.2013. Pursuant to the said Order, the Appellant contested the Elections. After the Elections had been held the Appellant withdrew the pending proceedings before this Court without prejudice to his rights as is apparent from the Order dated 06.11.2013, hence, by operation of law, the Appellant was clothed with the *locus standi* to file an Election Petition under Section 52 of ROPA, 1976 and such Election Petition could not be summarily rejected by the learned Election Tribunal vide Order impugned, which is, therefore, not sustainable in law.

9. In the alternative, it is further contended by the learned counsel for the Appellant that in Section 2 of ROPA, 1976, the various terms employed in the said Statute have been defined. Such words and expressions defined in the said provision include “candidate”, “validly nominated candidate”, “contesting candidate” and “returned candidate”. Such expressions have been defined in the Statutes in contradistinction to each other. In Section 52 of ROPA, 1976, a “candidate” can file an Election Petition, and the expression “candidate” has been defined in Section 2 sub section (iv) as “means a person proposed as a candidate for, or seeking election as a member”. The learned counsel also referred to Section 2 sub section (xxvi) of ROPA, 1976, wherein “validly nominated candidate” has been defined to “mean a candidate whose nomination has been accepted”. Thus, even if it is presumed that the Appellant was not a “validly nominated candidate” in as much as his Nomination Papers were legally rejected, he the Appellant, in law could file an Election Petition in terms of Section 52 of ROPA, 1976, as it is a settled law that the words and expressions used in a Statute or any provision thereof must necessarily be interpreted inconformity with the

definitions given in the Interpretation Clause of such Statute. It is added, had the intention of the law been to limit the scope of Section 52 of ROPA, 1976, to the Election Petitions being filed only by validly nominated candidates or by the contesting candidates, it is such expression, which would had been employed in the said provision (Section 52 of ROPA, 1976). Therefore, the learned Election Tribunal has misconstrued, misinterpreted and misapplied the law by way of the impugned judgment, which is consequently not tenable in law and liable to be set aside.

10. The learned counsel further contended that the entire election process was tainted and both, the Appellant as well as the Contesting Respondents had expressed their dissatisfaction and separately sought verification of the thumb impressions on the counterfoils of the Ballot Papers through National Database and Registration Authority (NADRA). The learned counsel also pointed out that the number of rejected votes (900) exceeded the votes separating the Appellant from the Contesting Respondents in terms of notified result thereby denuding such result of credibility and authenticity. It was urged that the impugned judgment be set aside and the

Election Petition filed by the Appellant be decided on merits. In support of his contentions, the learned counsel relied upon the judgments, reported as *(1)* Raja Aftab Ahmad Khan v. Muhammad Ajmal and another (PLD 2010 SC 1066), *(2)* Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828), *(3)* Election Commission of Pakistan through its Secretary v. Javaid Hashmi and others (PLD 1989 SC 396), *(4)* Ghulam Mustafa Jatoi v. Additional District & Sessions Judge/Returning Officer, N.A. 158, Naushero Feroze and others (1994 SCMR 1299), *(5)* Raja Muhammad Afzal v. Ch. Muhammad Altaf Hussain and others (1986 SCMR 1736) and *(6)* Naeem Hussain Chattha v. Tawakkal Ullah and another (1997 CLC 192).

11. The learned Sr. ASC for the Contesting Respondents controverted the contentions raised on behalf of the Appellant by contending that pursuant to the General Elections held in 2008, it was discovered that the Appellant had utilized fake and fraudulent educational testimonials and the Election Commission of Pakistan (ECP) concluded that the Appellant was disqualified and directed the initiation of criminal proceedings against him. In view of the afore-said

determination of the ECP, both the Nomination Papers filed by the Appellant for the Elections of 2013 were rejected on the ground that the Appellant was disqualified from contesting the Elections. The Appellant invoked the jurisdiction of this Court through two separate Civil Petitions for Leave to Appeal i.e. CPLA No.520 and 521 of 2013. One of such Petition was withdrawn as is evident from the Order of this Court dated 25.04.2013. Thus, the Order of the Returning Officer holding the Appellant to be disqualified and rejecting his Nomination Papers in this behalf attained finality. Therefore, it was contended, both in fact and in law, the Appellant was disqualified from contesting the Elections in question held on the 11th of May, 2013. Furthermore, with reference to the Civil Petition for Leave to Appeal which was not withdrawn by the Appellant and interim Order was passed merely suspending the operation of the judgment impugned therein i.e. the judgment passed by the learned High Court, dismissing the Constitutional Petition filed by the Appellant. The legal consequence of such suspension would at best result in the revival of the Order of the Returning Officer rejecting the Nomination Papers of the Appellant. Thus, despite the Order of

this Court dated 25.04.2013, purportedly granting interim relief, the Appellant was not entitled to contest the Elections and the ECP misconstrued the said Order by allowing the Appellant to participate in the electoral process. Consequently, the very candidature of the Appellant was non-est in the eye of law who, therefore, had no *locus standi* to file an Election Petition in terms of Section 52 of ROPA, 1976, as has been correctly held by the learned Election Tribunal by way of the impugned judgment. After the Elections were held and Respondent No.1 was declared and notified as a Returned Candidate, the Appellant withdrew his Civil Petition for Leave to Appeal without prejudice only to the matter pending before the ECP pertaining to the Elections of 2008, as is apparent from the Order dated 06.11.2013. As a consequence of such withdrawal, there can be no manner of doubt that the question of disqualification of the Appellant and rejection of his Nomination Papers became a past and closed transaction. Furthermore, had the Appellant wished to achieve the *locus standi* to file an Election Petition under Section 52 of ROPA, 1976, he should have pressed the Civil Petition for Leave to Appeal before this Court and sought its adjudication on merits.

On account of the aforesaid withdrawal, the Appellant it was contended lost not only the nascent status to file an Election Petition under Section 52 of ROPA, 1976, but was also estopped in law from doing so and such Election Petition filed by the Appellant was not maintainable and rightly dismissed.

12. The learned counsel for the Respondents drew the attention of the Court to the various provisions of ROPA, 1976, in an effort to establish that during the electoral process a person seeking to contest the Elections attains various legal status separately and distinctly referred to in the various provisions of the law. A person who is proposed is referred to as a “candidate”, if Nomination Papers filed are accepted he attains the status of a “validly nominated candidate”, and if such validly nominated candidate does not withdraw or retire from elections, such person is referred to as a “contesting candidate”. During the poll and thereafter, the only persons recognized by law and available in the field are “Contesting Candidates” while the others i.e. persons whose Nomination Papers have been rejected or have been withdrawn or who have retired from the Elections disappear from the scene and it is only such Contesting Candidates who can challenge the

Elections by filing an Election Petition under Section 52 of ROPA, 1976, as has been held by way of the impugned judgment. It was added that all expressions defined in Section 2 of ROPA, 1976, when employed in the succeeding provisions can only be assigned the meaning given in Section 2 of ROPA, 1976, if there is nothing repugnant to the context in which such expressions are used in the other provisions of ROPA, 1976. Therefore, the expression “candidate” when used in Section 52 of ROPA, 1976, means a Contesting Candidate and not a Candidate whose Nomination Papers have been rejected and as a consequence thereof, has exited from the electoral process. To interpret Section 52 of ROPA, 1976, as is being canvassed by the learned counsel for the Appellant, it is contended, would offend against the scheme of the law and may also result in absurdity. The learned counsel further contended that each provision of law must be given a purposive rather than a literal interpretation as is the settled law and when examined purposively Section 52 of ROPA, 1976, offers only one interpretation i.e. that the Election Petition can only be filed by a Contesting Candidate.

13. The learned counsel further contended that this Court had already held that a person whose Nomination Papers have been rejected, has no remedy before an Election Tribunal, after the Elections. Furthermore, if the intention of the law had been to permit persons other than the Contesting Candidates to file Election Petitions after the Elections, express words, in this behalf, would have been employed as has been done in the Indian Representation of People Act, 1951. Consequently, the judgment of the learned Election Tribunal is in accordance with the law and should not be interfered with. In support of his contentions, the learned counsel referred to various treaties on Interpretation of Statutes and relied upon the judgments, reported as *(1)* Jaffar Khan v. Chief Election Commissioner, Pakistan and others [PLD 1965 (W.P.) Peshawar 245], *(2)* Ghulam Mustafa Jatoi v. Additional District & Sessions Judge/Returning Officer, N.A. 158, Naushero Feroze and others (1994 SCMR 1299), *(3)* Raja Abdul Qayyum v. Ch. Latif Akbar, Advocate and 2 others (1994 CLC 2041), *(4)* Harbhajan Singh v. Press Council of India and others (AIR 2002 SC 1351), *(5)* Charan Lal Sahu v. Shri Fakruddin Ali Ahmed and others (AIR 1975 SC 1288), *(6)* Amin Lal v. Hunna Mal (AIR 1965 SC

1243) and *(7)* Kanai Lal Sur v. Paramnidhi Sadhukhan (AIR 1957 SC 907).

14. Heard. Available record perused.

15. The real matter in issue which goes to the heart of the controversy involved in the instant case is regarding the person who can file and maintain an Election Petition under Section 52 (1) of ROPA, 1976, which reads as follows:

> "No election shall be called in question except by an election petition made by a candidate for that election (hereinafter in this Chapter referred to as the petitioner)
>
> (emphasis supplied)

The expression "candidate" has been defined in Section 2 sub section (iv) as follows:

> "means a person proposed as a candidate for, or seeking election as a member;"

The said Section 2 also defines the expression "contesting candidate" in sub section (viii) in the following terms:

> "means a validly nominated candidate who has not withdrawn his candidature;"

A "validly nominated candidate" is defined in Section 2 sub section (xxvi) as follows:

> "means a candidate whose nomination has been accepted;"

A "returned candidate" has been defined in Section 2 sub section (xxi) as follows:

> "means a candidate who has been declared elected as a member under this Act;"

16. In pith and substance, it is the case of the Appellant that in terms of Section 52 of ROPA, 1976, an Election can be called into question by a candidate. The expression "candidate" has been defined by Section 2 sub section (iv), reproduced hereinabove and an expression defined in a statute must be given only the said meaning. Had the intention of the Legislature been to the contrary any of the other defined terms i.e. "validly nominated candidate" or "contesting candidate" would have been employed in Section 52 of ROPA, 1976.

17. It may be noticed that the definitions enumerated in the various clauses of Section 2 of ROPA, 1976, are prefaced with the rider "In this Act unless there is anything repugnant in the subject or context".

18. With regard to construing the true import and effect of an Interpretation Clause in a Statutory Instrument, the Privy Council in its judgment, reported as Indian Immigration Trust Board of Natal v. Govindasamy (AIR 1920 Privy Council 114) held as follows:

> "Now, when the interpretation clause in a statute says that such and such an expression shall include so and so, a Court in construing a statute is bound to give effect to the direction unless it can be shown that the context of the particular passage where the expression is used shows clearly that the meaning is not in this place to be given effect to, or unless there can be alleged some general reasons of weight why the interpretation clause is to be denied its application. …"

In the judgment of this Court, reported as The Bank of Bahawalpur Ltd. through its Manager v. The Chief Settlement & Rehabilitation Commissioner, Lahore and others (PLD 1977 SC 164), in the minority view of Muhammad Afzal Cheema, J. by relying upon the aforesaid judgment of the Privy Council, it was observed as follows:

> "Although normally an expression if defined in a Statute has to be given the same meanings wherever it occurs therein, yet there is ample authority for the principle of interpretation that a definition of a term in a Statute is merely declaratory in nature and should not be unnecessarily inflicted where it does not fit in with the subject and context and might lead to anomalies and absurd results. Further strength is lent to this justifiable invocation of the above principle by the express qualification or exception with which section 2 was prefaced, namely, "unless there is something repugnant in the subject or context". From this, it is abundantly clear that the definition of "house" or of "possession" like any other definitions contained in section 2 would apply only where it is in consonance and fits in with the subject and the context and not otherwise. The repugnancy is only

> too obvious and incapable of resolution on any other reasonable hypothesis. …"

Subsequently, in a later judgment, the aforesaid minority view was endorsed and followed by this Court in the case, reported as Iftikhar Ahmad and others v. President, National Bank of Pakistan and others (PLD 1988 SC 53) in the following terms:

> "10. It is difficult to subscribe to the view taken by the learned Judges in the High Courts. No doubt, the award given by the Wage Commission is not included in the definition of the term 'award' as given in section 2(ii) of the Ordinance, but then as the governing clause of section 2 itself states the definitions given therein are to be read subject to anything repugnant in the context in which the defined terms occur. Apart from that, as held by this Court in Bank of Bahawalpur v. Chief Settlement and Rehabilitation Commissioner PLD 1977 S C 164 that although normally an expression if defined in a Statute has to be given the same meaning wherever it occurs therein, yet there is ample authority for the principle of interpretation, that a definition of a term in a Statute is merely declaratory in nature and should not be unnecessarily inflicted where it does not fit in with the subject or context. …"

19. The matter again came up for consideration before this Court in the case reported as Syed Muhammad Haider Zaidi and others v. Abdul Hafeez and others (1991 SCMR 1699), wherein it was held as follows:

> "18. We may observe that a definition clause in a statute is of a declaratory nature though

> normally the definitions provided for in the definition clauses are to be read into the provisions of the Act while interpreting the defined terms / words, but if the contents of the provisions of the Act indicate otherwise, the definition clause cannot override a main provision of the statute. In the present case, section 2 makes it explicit by providing that "unless there is anything repugnant in the subject or context"."

In the aforesaid judgment, the following extracts from various Treaties or Interpretation Statutes were quoted with approval:

> "**Craies on Statute Law Seventh Edition:**
>
> It is a sound rule of construction, said Cleasby B. in Courtauld v. Legh, (1869) L.R. 4 Ex. 126, 130. Lewise v. Cattle (1938) 2 K.B. 454, 457. R. v. Belfast JJ. (1947) N.I. 191) "to give the same meaning to the same words occurring in different parts of an Act of Parliament". The presumption that the same words are used in the same meaning is however very slight and it is proper, "if sufficient reasons can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act. (Per Turner L.J. in Re National Savings Bank (1866) L.R. 1 Ch. App. 547, 550). For instance, if, as Fry L.J. said in Re Moody and Yates' Contract, (1885) 30 Ch. D. 344, 349) "a word is used inaccurately in one section of a statute, it must not be assumed to have been used inaccurately when it occurs in another section of the same statute". And, in fact, a word may be used in two different senses in the same section of an Act. (Maddox v. Storer (1963) 1 Q.B. 451). "It is obvious", said North J. in Re Smith, Green v. Smith, (1883) 24 Ch. D. 672, 678) "that the word `property' is used in section 54 of the repealed Bankruptcy Act, 1869 in two totally different senses". The

Court said, in Doe d. Angell v. Angell (1846) 9 Q.B. 328). "Considerable difficulty arises in the construction of the Real Property Limitation Act, 1833 by reason of the word `rent' being used in two different senses throughout viz. in the sense of a rent charged upon land, and of rent reserved under a lease". Similarly, in R. v. Allen (1872) 1 C.C.R. 367, 374) the Court held, as to the word "marry" in section 57 of the Offences against the Person Act, 1861 (which enacts that "whosoever, being married, shall marry any other person during the life of the former husband or wife.....shall be guilty of felony") that "it is at once self-evident that the proposition that the same effect must be given to the term `marry' in both parts of the sentence cannot possibly hold good."

"Crawford on Interpretation of Laws 1940 Edition

Strictly speaking, construction and interpretation are not the same (U.S. v. Wiltberger, 5 Wheat. (U.S.) 76, 5 L. Ed. 37), although the two terms are often used interchangeably (U.S. v. Keitzel, 211 U.S. 370, 53 L. Ed. 320, 29 S.Ct.123). Construction however, to be technically correct, is the drawing of conclusions with respect to subjects that are beyond the direct expression of the text, from elements known and given in the text (U.S. v. Farenholt, 206 U.S. 226, 51 L.Ed. 1036, 27 S. Ct.123; People v. Comrs. of Taxes, 95 N.Y. 554), while interpretation is the process of discovering the true meaning of the language used (Bloomer v. Todd, 3 Wash. T. 599, 19 Pac. 135, 1 L.R.A. 111). Thus, the Court will resort to interpretation when it endeavors to ascertain the meaning of a word found in a statute, which when considered with the other words in the statute, may reveal a meaning different from that is apparent when the word is considered abstractly or when given its usual meaning (Anderson v. City of Hattiesburg, 131 Miss. Miss. 216, 94 So. 163).

But when the Court goes beyond the language of the statute and seeks the assistance of extrinsic aids in order to determine whether a given case falls within the statute, it resorts to construction (Union Trust Co. v. McGinty, 212 Mass. 205, 98 N.E. 679). The process to be used in any given case will depend upon the nature of the problem presented. And, as is apparent, both processes may be used in seeking the legislative intent in a given statute. If the legislative intent is not clear after the completion of interpretation, then the Court will proceed to subject the statute to construction (2 Williston, contracts (1920) 1160-1161)."

"Maxwell On The Interpretation of Statutes Twelfth Edition

The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment (Towerfield (Owners) v. Workington Harbour and Dock Board (1949) P. 10. per Scott and Asquith L. JJ., and Freed v. D.P.P. (1969) 2 W.L.R. 390). Their meanings found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained (Per cur., R. V. Hall (1822) 1 B. & C. 123). Grammatically, words may cover a case but whenever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied (Lion Mutual Marine Insurance Association V. Tucker (1883) 12 Q.B.D. 176, per Brett M.R.)."

In the case, reported as Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz and others (PLD 2011 SC 260), it was held as follows:

> "It is settled law that definition clause or a section in a statute is meant generally to declare what certain words or expressions used in that statute shall mean, the obvious object of such a clause is to avoid the necessity of frequent repetition in describing all the subject matter to which the word or expression so defined is intended to apply. …"

The Supreme Court of India in the judgment, reported as Commissioner of Sales Tax, Gujarat v. M/s. Union Medical Agency (AIR 1981 SC 1) expressed a similar view, which reads as under:

> "14. It is a well settled principle that when a word or phrase has been defined in the interpretation clause, prima facie that definition governs whenever that word or phrase is used in the body of the statute. But where the context makes the definition clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are, therefore, normally enacted subject to the usual qualification-'unless there is anything repugnant in the subject or context', or 'unless the context otherwise requires'. Even in the absence of an express qualification to that effect such a qualification is always implied."

> “18. There is no dispute with the proposition that the meaning of a word or expression defined may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in definition section, namely 'unless the context otherwise requires'. In view of this qualification, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words in a particular section. But where there is no obscurity in the language of the section, there is no scope for the application of the rule ex visceribus actus. …”

A perusal of the aforesaid reveals that the words and expressions used in a Statute are ordinarily to be interpreted in accordance with their normal dictionary meaning and the same words used in different Sections of the same Statute usually carry the same meaning. Words and expressions may be defined in the Interpretation Clause of Statutes. Such definitions are declaratory in nature and are incorporated to avoid repetitiveness. Normally, such words and expressions occurring in the main provisions of the Statute carry the same meaning, as are available in the definition. However, both the aforesaid general principles are subject to the overriding condition that the said words and expressions must always be construed with reference to the context they are used in the

Statutes the subject of provisions wherein they are used and examined with reference to the scheme of the Statute and the intent and purpose to be achieved thereof. The possibility that such words and expressions may have a different meaning in individual Sections of the Statute cannot be entirely ruled out as the meaning of such words and expressions must be construed subject to the context in which they are employed in the specific provision. Usually, definition clauses in the Statutory Instruments are scribed subject to the rider that the words and expressions so defined will carry the meaning ascribed to them where the context and the subject so permit. Where the defined meaning being employed results in an obvious anomaly or absurdity, it is not permissible to mechanically and mindlessly inflict such meaning regardless of repugnancy to the context or the subject, to the words or expressions in the provision sought to be interpreted.

20. In the instant case, it is canvassed on behalf of the Contesting Respondent that if the expression “candidate” as used in Section 52 of ROPA, 1976, reproduced hereinabove, if given the meaning as defined in Section 2 sub section (iv), it would result in an anomaly and absurdity and also run

contrary to the scheme of ROPA, 1976. It is the veracity of such argument, which needs to be examined.

Section 12 of ROPA, 1976, deals with filing of the Nomination Papers for election and confers a right on any Elector of the Constituency to propose or second the name of any duly qualified person in this behalf. The Nomination Papers also require the signatures of such a person who is referred to in the said provision as a “Candidate”. A person so proposed is in fact a “candidate” as defined by Section 2 sub section (iv) of ROPA, 1976. The Nomination Papers so filed are subjected to scrutiny in terms of Section 14 of ROPA, 1976. A candidate whose Nomination Papers are accepted is referred to as a “validly nominated candidate” whose name is published in a prescribed manner (Sections 15 and 26). Such validly nominated candidate may subject to law withdraw from the elections under Section 16 or retire therefrom under Section 17 of ROPA, 1976. Such validly nominated candidate who has neither withdrawn nor retired from the Elections is the Contesting Candidate as defined by Section 2 sub section (viii) of ROPA, 1976. The names of such Contesting Candidates are published in terms of Section 21 (b) of ROPA, 1976. It is the

names and symbols of the Contesting Candidates alone which are published on the Ballot Papers.

21. When the electoral process reaches a stage where the names of the Contesting Candidates are finalized and their names and symbols published on the Ballot Papers, all candidates whose Nomination Papers were rejected and such order of rejection has attained finality as well as such validly nominated candidates who have either withdrawn or retired in accordance with law, for all intents and purposes cease to have any further relevance in the subsequent process of the conduct of the Elections. Yet, in the provisions that follow which pertain to the electoral process, even prior to the stage of the resolution of the electoral disputes there is repeated reference to the expression “candidate”. If the said expression is interpreted in a manner as canvassed by the learned counsel for the Appellant, it would result in an obvious anomaly bordering on absurdity rendering such provisions meaningless, as is obvious from the following:

> (a) In Section 22 (1) a “candidate” may appoint an election agent and the name and details of such appointment are to be transmitted to the Returning Officer (Section 22 sub section 3). However, when

the aforesaid provision is examined in juxtaposition with Section 23 (1), it appears that a "contesting candidate or his election agent" may appoint polling agents for each polling station. Thus, if the definition of the expression "candidate" as given in Section 2 sub section (iv) is pressed into service while interpreting Section 22, it would result in an obvious anomaly that while a candidate whose Nomination Papers have been rejected may appoint an Election Agent but cannot appoint any Polling Agent. Even otherwise, the appointment of election agents by such candidates would be an exercise in futility.

(b) Similarly, in sub section 2 of Section 23, the provision pertaining to revoking the authority of polling agent, the expression "candidate" is employed. Such candidate cannot be anyone other than a Contesting Candidate as only a contesting candidate can appoint an election agent. Thus, by interpreting the expression "candidate" with reference to the context wherein it is employed the only possible conclusion that can be drawn is that such candidate is in fact the Contesting Candidate and not the candidate as defined by Section 2 sub section (iv) i.e. a candidate whose Nomination Papers may have been rejected.

(c) In Section 30 (4) (c), it is stated that the empty Ballot Boxes would be shown to the "candidates or

their election agents or polling agents" as may be present. The expression "candidate" used in the said provision obviously refers to a Contesting Candidate as only such Contesting Candidate would have polling agents in view of Section 23. Giving the term "candidate" the meaning as set forth in Section 2 sub section (iv) would render the said provision meaningless.

(d) Section 35 sub section (1) pertaining to challenge of electors, it is provided that a "candidate or his polling agent" can raise such objection. The expression "candidate" in the said provision obviously means a Contesting Candidate as only such Contesting Candidate can appoint a polling agent. The expression as defined in Section 2 sub section (iv) if pressed into service would result in a legal impossibility. Hence, in order to attribute any meaning to the said provision, the term "candidate" must be interpreted with reference to the context in which it is employed.

(e) In Section 38 sub section (11) the Presiding Officer is required to provide a certified copy of the statement of the count and a ballot paper account to the "candidates, their election agents or polling agents" as may be present. Here again the expression "candidate" obviously means a Contesting Candidate, as such Contesting Candidate

alone can appoint polling agents. The aforesaid becomes even more obvious in view of sub section (13) of the said provision which provides that upon each statement and packet prepared under sub section (12), the signatures of the Contesting Candidates or their election agents or polling agents could be obtained. Yet again, the expression "candidate" must necessarily be interpreted with reference to the context and subject in accordance with the scheme of the law rather than the meaning enumerated in the Interpretation Clause i.e. Section 2 sub section (iv).

(f) In Section 40, yet again reference is made to a candidate and their election agents obviously it refers to the Contesting Candidates only as they alone can have election agents.

(g) In Section 41, the term "candidate" is employed while referring to drawing of lots in case of the equality of votes. Obviously, such candidate means a Contesting Candidate, as there is no question of equality of votes between the Contesting Candidates and a candidate whose Nomination Papers were rejected and his name and symbol was not present on the Ballot Paper. Thus, the definition of "candidate" as given in Section 2 sub section (iv) of the expression candidate is inapplicable to Section 41.

(h) In Chapter VI, which is pertaining to election expenses, in Sections 48 and 49 (1), the expression candidate is employed, yet in Section 49 (2) with regard to the amount of election expenses, the term "Contesting Candidate" is mentioned. Subsequently, in sub section (3) yet again, the term "candidate" is used with regard to receipts of election expenses. However, by virtue of sub section (1) of Section 50, the Contesting Candidates are required to file the return of election expenses. It is evident that the expression "candidate" in Sections 48 and 49 implies a Contesting Candidate only. If the definition of the term "candidate" as used in Section 2 sub section (iv) is pressed into service an obvious anomaly would result as a candidate whose Nomination Papers are rejected would be required to maintain accounts of election expenses and receipts thereof without any legal necessity of filing the same.

An overview of the aforesaid provisions of law leaves little room for doubt that the expression "candidate" does not in all events and in each and every provision carry the meaning that attributed to it in Section 2 sub section (iv) of ROPA, 1976 and must necessarily be interpreted with reference to the context in which it is employed in each and every provision so as to avoid an anomaly or absurdity. The expression "candidate" must be

construed after contextualizing the same with regard to the subject of the provision, as is not only the settled rule of construction but also the mandate of the opening lines of Section 2 itself. The legal premises of the contentions of the learned counsel for the Appellant to the contrary are not only in conflict with the time honoured rules for interpretation but also would result in obvious anomaly and render various provisions meaningless, as is apparent from the examples cited above. It also appears to be the scheme of the law that by and large in the absence of clear and unequivocal statement to the contrary, in the provisions pertaining to the electoral process subsequent to the publication of the list of the Contesting Candidates and printing of their names and symbols on the Ballot Papers, the expression “candidate” occurring in any such provision would tend to mean a Contesting Candidate and not a Candidate, whose Nomination Papers have been rejected.

22. The provisions of Section 52 of ROPA, 1976, which pertain to the real matter in controversy involved in the instant case, must necessarily be interpreted in the above backdrop.

23. Section 52 (1) of ROPA, 1976, reproduced hereinabove, is couched in negative terms and enjoins that no

election can be called into question except through an Election Petition filed by a "candidate for the election" (referred to as the Petitioner in Chapter VII). It needs to be ascertained whether the expression "candidate" as occurring in Section 52(1) of ROPA, 1976, would include a candidate whose Nomination Papers have been rejected or has otherwise withdrawn or retired from the election. In this behalf, reference may be made to Section 54 of ROPA, 1976, which reads as follows:

> "54. **Parties to the petition.-** The petitioner shall join as respondents to his election petition –
>
> (a) all contesting candidates; and
>
> (b) any other candidate against whom any allegation of any corrupt or illegal practice is made and shall serve personally or by registered post on each such respondent a copy of the petition."

A perusal of the aforesaid provision makes it clear and obvious that only Contesting Candidates are *per se* necessary and proper parties to an Election Petition. Other candidates can only be impleaded, if there are allegations of corrupt or illegal practices against them. It is difficult to accept that a candidate whose Nomination Papers have been rejected and against whom there

are no allegations of corrupt or illegal practices and who is neither a necessary nor a proper party to the proceedings can maintain an Election Petition. Section 66 of ROPA, 1976, in the same Chapter i.e. Chapter VII, makes reference to the expression "candidate". The said provision for ease of reference is reproduced herein-below:

> "66. **Recrimination where seat is claimed.-** (1) Where in an election petition a declaration is claimed that a candidate other than the returned candidate has been duly elected, the returned candidate or any other party may produce evidence to prove that the election of such other candidate would have been declared void had he been the returned candidate and had a petition been presented calling his election in question:
>
> Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he or it has, within the fourteen days next following the commencement of the trial, given notice to the tribunal of his intention so to do and has also deposited the security referred to in section 52.
>
> (2) Every notice referred to in sub-section (1) shall be accompanied by a statement of the case, and all the provisions relating to the contents, verification, trial and procedure of an election petition, or to the security deposit in respect of an election petition, shall apply to such a statement as if it were an election petition."

24. Yet again, the expression "candidate" would imply a Contesting Candidate, as only such Contesting Candidate can

be declared as a duly elected candidate, as it is a legal impossibility for a candidate whose Nomination Papers have been rejected to be declared an elected candidate by the learned Election Tribunal.

25. The orders that can possibly be passed by an Election Tribunal are enumerated in Section 67 sub section (1) (c) of ROPA, 1976, which reads as follows:

> "67. **Decision of the Tribunal.-** (1) The Tribunal may, upon the conclusion of the trial of an election petition, make an order-
>
> (a) ……..
>
> (b) ……..
>
> (c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected;"

Reference may also be made to Section 69 of ROPA, 1976, which reads as under:

> "69. **Ground for declaring a person other than a returned candidate elected.-** The Tribunal shall declare the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected, if it is so claimed by the petitioner or any of the respondents and the Tribunal is satisfied that the petitioner or such other contesting candidate was entitled to be declared elected."

In the aforesaid two provisions reproduced hereinabove, which are part of Chapter VII of ROPA, 1976, the expression "petitioner or any other contesting candidate" and the expression "petitioner or such other contesting candidate" have been employed. The expression "such" in legal parlance has a peculiar and well settled connotation :

> **In West's Legal Dictionary 2010 Edition**
>
> Such: Of that type, kindred, corresponding, similar, of that sort, of that kind, comparable, suchlike, analogous, twin, allied, matching.
>
> **In Words and Phrases Permanent Edition**
>
> Such: The word 'such' is defined as of the sort or degree previously indicated or contextually implied. People v. Heslen, Cal., 163 P.2d 21, 30.
>
> Word 'Such' means of this or that kind, character or measure: of the sort or degree previously indicated or contextually implied. Campbell v. Mueller, CCA Ohio, 159 F.2d 803, 806.
>
> 'Such' is defined by Webster as "having the particular quality or character specified …". State v. Estep, 71 P. 857, 859, 66 Kan. 416.
>
> Word 'Such' means … of the same kind or class as something mentioned … People ex rel. Miller v. Mobile & O. R. Co., 29 N.E.2d 604, 607, 374 I11. 376.
>
> **Black's Law Dictionary Fifth Edition**
>
> **Such:** Of that kind, having particular quality or character specified. Identical with, being

> the same as what has been mentioned. Alike, similar, of the like kind.
>
> (emphasis supplied)

26. When examined in the above context, there can be no manner of doubt that the expression “petitioner” as used in Sections 66 and 69 of Chapter VII of ROPA, means a person having identical attributes and characteristics of a contesting candidate and therefore, means a validly nominated candidate, who has neither withdrawn nor retired from the election process. The said provisions pertaining to the relief, which may be granted to a petitioner under Section 52 of ROPA, where such expression “petitioner” has been defined to mean a candidate. The intention of the Legislature appears to be clear and unambiguous that the expressions “Candidate“ and “Petitioner” are used in Chapter VII including Section 52 thereof is limited to “a contesting candidate” and does not include a candidate whose Nomination Papers have been rejected.

27. If the expression “candidate” as used in Section 52 of ROPA, 1976, is interpreted to include a person whose Nomination Papers though filed were rejected and such person is permitted or held entitled in law to maintain an Election

Petition in terms thereof but to what end? It has been noticed that the illegal rejection of the Nomination Papers is not a ground available under Chapter VII of ROPA, 1976, for grant of any relief. With reference to the aforesaid, this Court has already held that the candidate whose Nomination Papers are rejected, even illegally cannot seek any relief through an Election Petition under Section 52 of ROPA, 1976, or other provisions of Chapter VII thereof. Reference, in this behalf, may be made to the judgment of Ghulam Mustafa Jatoi v. Additional District & Sessions Judge/Returning Officer, N.A. 158, Naushero Feroze and others (1994 SCMR 1299). The relevant portion of the said judgment is reproduced hereunder:

> "It may also be pertinent to mention that subsection (1) of section 68 of the Act gives the grounds on which the election of a returned candidate can be declared as void. The above subsection (1) of section 68 reads as follows:--
>
> > "68. Ground for declaring election of returned candidate void.—(1) The Tribunal shall declare the election of the returned candidate to be void if it is satisfied that—
> >
> > (a) the nomination of the returned candidate was invalid; or
> >
> > (b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member; or

> (c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or
>
> (d) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his election agent."

20. It may be noticed that the above grounds do not admit the filing of a petition by a candidate whose nomination papers were illegally rejected and who could not participate in the elections on that account. …"

(emphasis supplied)

28. It appears to have been held in clear and unequivocal terms by this Court in the above quoted judgment that a candidate whose Nomination Papers have been rejected cannot maintain an Election Petition under Section 52 of ROPA, 1976.

29. The compulsion to interpret the expression "candidate" in terms of Chapter VII with reference to the context in which it has been employed and the subject to which the provisions pertain is overwhelming. If the petitioner for purposes of the said Chapter i.e. Chapter VII of ROPA, 1976, were to include a candidate whose Nomination Papers have been rejected, the result would be anomalous and lead to

unexpected and unforeseen situations rendering the provisions meaningless. There appears to be little doubt that only a validly nominated candidate who has neither withdrawn nor retired from the Elections i.e. a Contesting Candidate can file or maintain an Election Petition under Section 52 of ROPA, 1976.

30. Adverting now to the facts of the instant case, it appears from the record that in the General Elections held in 2008, the Appellant was elected as a Member of the Provincial Assembly of the Province of Balochistan. Subsequently, the educational testimonials of the Appellant were scrutinized and the ECP, in this behalf, came to a *prima facie* conclusion that the Appellant had become a Member of the Provincial Assembly by employing illegal and unfair means in as much as the educational testimonials appended by the Appellant with his Nomination Papers while contesting the Elections in 2008 were fake and fictitious. Criminal proceedings, in this behalf, were directed to be initiated against the Appellant. When the Appellant submitted his Nomination Papers to contest the General Elections held on 11th of May, 2013, his Nomination Papers were rejected on the ground that he had filed fake and fictitious educational testimonials while contesting the General

Elections of 2008. Findings to this effect were returned by the ECP after an inquiry, hence, the Appellant was held to be disqualified in view of Article 63 of the Constitution of the Islamic Republic of Pakistan, 1973. Such Order of rejection was challenged unsuccessfully by the Appellant before the learned Election Tribunal as well as the learned High Court of Balochistan and eventually, the matter reached this Court wherein some interim relief was granted with reference to one of the rejected Nomination Papers filed by the Appellant. The Appellant appears to have been permitted to contest the Elections on the strength of the said interim Order. The Civil Appeal No.444 of 2013 arising out of Civil Petition for Leave to Appeal No.520 of 2013 wherein leave to appeal has been granted vide Order dated 25.04.2013 referred to above, came up for hearing before this Court on 06.11.2013, when the following Order was passed:

> "It has been informed by the learned counsel for the appellant that the appellant has already approached the Election Commission for redressal of his grievance, against the result of election held in the year 2008, therefore, in such view of the matter instant appeal be disposed of with the observation that no prejudice shall be caused to the cases of either party pending before the concerned forum.

Dispose of accordingly."

31. A perusal of the afore-said Order reveals that the withdrawal was without prejudice to the proceedings pending before the ECP pertaining to the Elections of 2008 and not with regard to the Elections of 2013. Even without examining and adjudicating upon the contentions of the learned counsel of Respondent No.1 with regard to the fact that Civil Petition for Leave to Appeal No.521 of 2013 pertaining to the rejection of one set of Nomination Papers had been withdrawn on 25.04.2013 and the interim relief granted did not permit the Appellant to contest the Elections, there can be no manner of doubt that on account of the withdrawal the aforesaid Order of the Returning Officer, rejecting the Nomination Papers of the Appellant for the General Elections of 2013, was not set aside and attained finality. Consequently, the Appellant neither has the status nor the *locus standi* of the Contesting Candidate, hence, was not in law a "petitioner" entitled to challenge the Elections in an Election Petition under Section 52 of ROPA, 1976, or seek any relief under any other provision of Chapter VII of ROPA, 1976. The conclusions drawn by the learned Election Tribunal, in this behalf, by way of the impugned

judgment appear to be in accordance with law and no ground warranting interference therewith is available to the Appellant.

32. Consequently, this Civil Appeal, being without merit is dismissed with no order as to cost.

Chief Justice

Judge

'APPROVED FOR REPORTING' Judge

*Mahtab H. Sheikh/**

Announced on 02.03.2016 at Islamabad.

Judge