

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MR. JUSTICE GULZAR AHMED

MR. JUSTICE SH. AZMAT SAEED

CIVIL PETITION NO.636 OF 2013

*(On appeal from the order dated 23.4.2013 of the
Lahore High Court, Lahore passed in WP No.9349
of 2013)*

Miss Kalsum Khaliq Advocate, Islamabad

... Petitioner

VERSUS

1. The Election Commission of ... Respondent (s)
Pakistan etc.
2. Malik Shabbir Hussain Awan, RO
3. Imtiaz Ahmad, Iftikhar Ahmad,
Muhammad Hashim Sahou, Ghulam
Farid Mairani,
4. Ghulam Haider Thind and others

Petitioner:

In person

For Ghulam Haider Thind, Mr. Ahsan Bhoon, ASC
respondent No.34 Ch. Akhtar Ali, AOR

On Court notice:

Malik Muhammad Tariq,
DG, Social Security,
Mr. Aleem Perviaz, Dir (Legal)
Mr. M. Anwar Dy. Dir.
Mr. Mumtaz Niazi, SSO, Layyah

Date of hearing:

09.5.2013.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- This

petition for leave to appeal has been filed against the judgment dated

23.4.2013 passed by the learned Lahore High Court, Lahore in Writ Petition No.9349 of 2013.

2. Precisely stating, facts of the case are that respondent No.34 Ghulam Haider Thind s/o Malik Ghulam Rasool [hereinafter referred to as “the respondent”] submitted nomination papers as a candidate for Constituency PP-266 Layyah. An objection was raised against his candidature on the ground of non-payment of social security dues of Rs.256500/- in respect of a flour mill (M/s Ahmad Khan Flour Mills, Layyah) owned by him for the months of March, May & June, 2009 and April 2010 to March 2013. His nomination papers were rejected on 06.04.2013 for this and other reasons.

3. It may not be out of context to note that in pursuance of the letter dated 4.4.2013 by the Director, Punjab Employees Social Security, Institution an amount of Rs.1,40,300/- was deposited on 5.4.2013. The detail of which is given below:-

S.No.	Period	Booked Amount	Increase	Total
1.	March, 2009, May & June, 2009 March, 2010 to June, 2012	58,140	29070	87210
2.	January & February, 2010	-	594	594
3.	July, 2012 to February, 2013	34907	12,189	47,096
4.	March, ,2013	5400	-	5400
Total		98,447	41853	140,300

It is explained that out of the total alleged amount, the respondent had been depositing the amount from time to time, therefore, after deducting the same, the balance was deposited on 5.4.2013 for the periods which have been mentioned hereinabove.

4. As a consequence of the rejection of the Nomination Papers, an appeal was preferred by the respondent being Election Appeal No.09/2013, which has also been dismissed vide order dated 10.4.2013. Relevant para therefrom reads thus: -

“3. Although the appellant has made payment towards Social Security Fund yet on account of the allegations discussed in the first part of the order, the appellant’s candidature was to be dealt with consciously and by not allowing him to enter into the election process as qualified candidate. The learned Returning Officer, in our considered view, has reached a right decision. The result of the above discussion is that the findings arrived at by the learned Returning Officer are upheld and this appeal preferred against rejection of the appellant’s nomination papers stands dismissed.”

5. Against the above order, a Writ Petition No.9349/2013 was preferred by the respondent, which has been allowed vide impugned order dated 23.4.2013, wherein regarding the outstanding amount of contribution of Social Security it has been dealt with as under:-

“5. In our view the impugned order dated 10.4.2013 passed by the learned Election Tribunal is not sustainable for the following reasons:-

(i)

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- (ii) As far as the question of default is concerned, there is nothing on record to show that the petitioner has controlling interest or majority shareholding in Ahmad Flour Mills, Layyah. The fact that petitioner paid the liability of the company does not by itself indicate that the petitioner was liable to pay the said account. The explanation offered by the learned counsel for the petitioner that he paid the said amount as a matter of abundant caution in order to avoid of possibility of being termed as a defaulter, seems plausible. Even otherwise, there is nothing on record that may indicate that the petitioner is in default of social security contributions in his personal capacity or on the basis of the liability of any company in which he holds the controlling interest.”

6. The petitioner, who is an objector being a voter, has instituted instant petition for leave to appeal, *inter alia*, on the ground that the case of the respondent falls within the mischief of Article 63(1)(o) of the Constitution of Islamic Republic of Pakistan, 1973 and on account of his default in making the payment of the Government dues, he was disqualified to contest the election. According to her, the learned High Court had not taken into consideration, the judgment of the learned Returning Officer as well as the Appellate Forums. Because there was no question at all regarding holding the controlling shares or not, as admittedly, the amount outstanding towards the Social Security Institution was

deposited by the respondent on 5.4.2013, as per the challan, which has been produced before the Court.

7. The learned counsel appearing for the respondent seriously controverted to the arguments, raised by her as according to him in the Nomination Papers nothing was concealed and as the petitioner, while disclosing the factum of the outstanding dues had stated that to the extent of the shares of 9/16th in M/s Ahmed Khan Flour Mills, his lady wife Saeeda Begum is the owner and so far the shares in her favour had not been transferred, as litigation is pending in the Civil Court as well as in the High Court, therefore, on account of this reason, that any amount, which was due, was not deposited hence the statement so made by the respondent is without concealing anything and therefore, following the law laid down by this Court in the case of Munir Ahmed and another v. District Returning Officer/Appellate Authority, Sargodha and others (2004 SCMR 1456), the amount was deposited under the compelling circumstances, as such, the respondent cannot be declared defaulter in the payment of Government Dues in terms of the Article 63(1)(o) of the Constitution. He has also stated that in order to examine an identical question, a larger Bench of this Court has granted leave to appeal in Civil Petition No.626/2013 titled as "Jamil Hassan Khan v. Returning Officer, PP_174 Nankana Sahib and others"

8. We have heard the petitioner and the learned counsel for the respondent, Malik Muhammad Tariq, D.G., Punjab Employees'

Social Security Institution and Mr. Mumtaz Niazi, SSO, Layyah & D.G Khan and have perused the record.

9. It may not be out of place to note that the Flour Mills in respect whereof it is alleged that the respondent being its owner, was originally registered by the Social Security Organization as Ahmed Khan Flour Mills, Layyah owned by Ch. Akram Khan and had been depositing the Social Security Dues and according to DG, Punjab Employees' Social Security Institution an amount of Rs.1,40,000/- was found due against the respondent commencing from the month of March, 2009 to onward and no sooner the Department learnt that the respondent is contesting the election, it wrote a letter to the Retuning Officer pointing out the default, which had been committed by him and subsequent thereto on 5.4.2013 the amount referred to hereinabove has been deposited through different challans, the breakup, which has been given hereinabove. *Prima facie*, it seems that there is a default of the Government Dues for a period of more than six months form the time when the Nomination Papers were filed. Therefore, under the circumstances, the Returning Officer as well as the appellate Court vide orders dated 06.04.2013 and 10.4.2013 respectively came to the conclusion that the respondent was disqualified from contesting the election.

10. Leave to appeal is granted, *inter alia*, to examine as to whether respondent Ghulam Haider Thind is not disqualified under Article 63(1)(n) of the Constitution from contesting election from

PP-266 Layyah, as admittedly he had paid government dues of Rs.140300/- on 05.04.2013 towards Social Security for over six months at the time of filing of his nomination papers. And in the meanwhile respondent Ghulam Haider Thind is restrained from contesting election for Constituency PP-266 polling of which is scheduled to be held on 11.05.2013.

11. Notices to all the respondents be issued for a date in office.

Chief Justice

Judge

Islamabad, the
9th May, 2013

M Safdar Mahmood/

Judge

Approved For Reporting