

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MR. JUSTICE IJAZ AHMED CHAUDHRY

MR. JUSTICE GULZAR AHMED

CIVIL APPEALS NO. 411 TO 414 OF 2013

*(On appeal from the judgment dated 18.4.2013
passed by the High Court of Balochistan, Quetta in
CPS No. 270 to 273 of 2013)*

Abdul Ghaoor Lehri

.... Appellant
(in all cases)

Versus

The Returning Officer, PB-29, Naseerabad-II & others

.... Respondents
(in all cases)

For the Appellant

Mr. Kamran Murtaza, ASC

For the Respondents

Mr. Zahoor ul Haq Chishti, ASC
(in CA 411/2013)

Nemo *(in CA 412/2013)*

Raja Abdul Rehman, ASC
Mr. Arshad Ali Chaudhry, AOR
(in CA 413/2013)

Mian Abdul Rauf, ASC
(in CA 414/2013)

Date of hearing

24.05.2013

JUDGMENT

IJAZ AHMED CHAUDHRY, J.- Through this single

Judgment we intend to dispose of the civil appeals Nos. 411,

412, 413 and 414 of 2013 as common questions of law and facts are involved in all of them and have arisen out of the same proceedings.

2. Abdul Ghafoor Lehri, appellant through the instant appeals, by way of leave of this Court vide order dated 7.5.2013, calls in question the legality of the order dated 18.4.2013 passed by a Full Bench of the High Court of Balochistan, Quetta in Constitution Petition No. 270 of 2013 whereby the same was dismissed against the order dated 17.4.2013 passed by the Election Tribunal, Balochistan allowing the appeal against acceptance of nomination papers of the appellant.

3. Succinctly, the facts forming background of the instant appeals are that the appellant filed his nomination papers to contest general elections, 2013 scheduled to be held on 11.5.2013 from PB-29-Naseerabad-II. The contesting candidates, namely, Nazim-ud-Din Lehri, Ali Hassan Jamot, Muhammad Amin Umrani and Ahmad Bukhsh filed objections against the nomination of the appellant on the grounds that the appellant while contesting the general elections held in the year 2002 made different entries in his nomination papers qua his qualification on the basis of his Sanad which differ from the contents of nomination papers filed by him to contest general election, 2013, as such, his act is in-violation of Article 62 and 63 of the Constitution of Islamic Republic of

Pakistan as he was not righteous, sagacious and Ameen in terms thereof. The other objection for not showing the correct evaluation of his land was also enforced. The learned Returning Officer on the day of scrutiny of nomination papers by overruling the objections filed by the respondents accepted the nomination papers of the appellant declared him eligible to contest the elections, 2013.

4. Feeling dissatisfied with the aforesaid orders of the learned Returning Officer, the respondents filed election appeals before the learned Election Tribunal which were allowed. Consequently, the nomination papers of the appellant were rejected and he was declared ineligible to contest general elections of 2013 and the Returning Officer was directed to exclude his name from the list of validly nominated candidates.

5. Feeling aggrieved by the aforesaid order, the appellant called in question the legality of the said order by filing constitutional petitions Nos. 270, 271, 272 and 273 of 2013 before the learned High Court of Balochistan, Quetta which were dismissed by the said court through short order dated 18.4.2013 and recorded reasons thereof on 6.5.2013. The appellant still dissatisfied with the aforesaid judgment filed civil petitions Nos. 505 to 508 of 2013 for leave to appeal challenging the impugned judgment of the High Court of Balochistan, Quetta in which leave to appeal was granted

inter-alia to consider the question as to whether validly, issued degree/Sanad by a Deeni Madrassa which was not found to be equivalent by the concerned University could disqualify the appellant in terms of Article 62 (f)(i) of the Constitution of the Islamic Republic of Pakistan 1973, to contest the elections.

6. Learned counsel for the appellant contends that the order dated 18.4.2013 passed by the Full Bench of the High Court of Balochistan is against law and facts of the case; that the learned Full Bench has misread and mis-appreciated the material available on record; that the Returning Officer after completing all codal formalities had rightly accepted his nomination papers but the learned Tribunal as well as the learned High Court have illegally set aside order of the Returning Officer; that the appellant was duly qualified to contest elections of 2013 as no condition of being graduate has been imposed to contest general elections the same having been erased from the statute, as such, both the learned Courts below have committed a patent illegality while upsetting well-reasoned order of the learned Returning Officer accepting the nomination papers of the appellant; that since the appellant has neither committed any sinful act nor cheated the Court while producing a Sanad from Madrassa, as such, the conditions laid down by Article 62 of the Constitution of Islamic Republic of Pakistan, 1973 cannot be

imposed upon the appellant to declare him that he is not righteous, sagacious or Ameen whereas the position is otherwise and that since the appellant has been declared as returned candidate after contest of general elections, 2013 under the orders of this Court, therefore, if the order impugned in these proceedings is not set-aside, the voters of his constituency will not only be deprived of their constitutional right to choose a representative of their choice but the constituency will also be left unattended/un-represented, in such circumstances, the impugned judgment/order is liable to be set aside.

7. On the other hand learned counsel for the respondents have vehemently opposed the contentions raised by the learned counsel for the appellant by contending that the appellant while contesting election for the seat of Nazim held in the year 2001 shown himself to be a matriculate and did not describe in the nomination papers that he was holding Sanad ul Fragh equivalent to B.A.; that the appellant passed Secondary School Examination (Matric) in the year 1983 whereas he is alleged to have obtained Sanad-ul-Fragh in the year 1985, the question arises that when the appellant was possessing Sanad-ul-Fragh at the time of filing of nomination papers to contest Local Bodies election in the year 2001, why he had not shown himself to be holder of Sanad-ul-Fragh. Thus he cannot be said to be a righteous, sagacious and

Ameen within the meaning of Article 62 of the Constitution of Islamic Republic of Pakistan, 1973 and was not eligible to contest election; that the appellant after having been declared as a returned candidate on the basis of Sanad produced by him before the Returning Officer to contest election in the year 2002 was declared fake and forged, therefore, on the basis of the said findings the appellant was debarred from contesting elections of 2013 his candidature being hit by Article 62 (f)(i) of the Constitution of Islamic Republic of Pakistan, 1973 as he, by his conduct, was not a righteous, sagacious or Ameen.

8. We have heard arguments of learned counsel for the parties and also gone through the available record.

9. Admittedly, the appellant at the time of filing of nomination papers to contest Local Bodies election in the year 2001, declared his qualification as Matric only but in the general elections held in the year 2002, he produced a Sanad known as Sanad-ul-Fragh allegedly issued by Madrassa Al-Quran-UI-Arabia Behrul Uloom Qadria Abdullah Dahan Shikarpur which according to the appellant was equivalent to graduation. But, since the appellant while filing his nomination papers for contesting Local Bodies elections in the year 2001 had disclosed his qualification as Matric and despite holding the said Sanad-ul-Fragh, non-mentioning of the said fact in his nomination papers to contest Local Bodies Election

in the year 2002 amounts to concealment of facts. Even otherwise, the course for obtaining the said Sanad is normally completed within six years but after passing the matriculation examination in the year 1983 how could it be possible for the appellant to pass the lengthy course within a short span of two years. Thus, genuineness of Sanad-ul-Fragh produced by him to contest the general elections in the year 2002 creates doubt in ones mind, the same being obtained without completing the educational course for the said Sanad.

10. On the basis of the aforesaid Sanad his nomination papers were accepted and he was declared returned candidate. However, his election was challenged by one Muhammad Sadiq Umrani by filing an election petition under section 52 of the Representation of the People Act, 1976 before the Election Tribunal alleging therein that the appellant was not qualified to contest election as he did not possess educational qualification as provided by Article 8-A of the Conduct of General Election Order, 2002 and the Sanad produced by him alongwith his nomination papers was firstly a bogus Sanad as he never studied in the Madrassa which issued the Sanad and secondly it was not equivalent to bachelor degree, the minimum qualification at the relevant time provided for becoming member of the Provincial Assembly. The said election petition was contested by the appellant and the learned Election Tribunal on divergent

pleadings of the parties framed as many as four issues. After recording of the evidence of both the parties the learned Election Tribunal declared that the appellant was not qualified to contest election, as such, his election as member of the Balochistan Provincial Assembly from PB-29-Naseerabad-II Balochistan was declared void as a whole vide judgment dated 15.12.2003. The said findings of the learned Election Tribunal were challenged by the appellant through an appeal in this Court which alongwith other appeals came up for hearing on 18.6.2009 when the same was disposed of having become infructuous by efflux of time. The Sanad produced by the appellant while filing his nomination papers in the year 2002 reveals that the same has been certified by the University as an equivalent certificate to enable the persons holding said Sanad to seek admission in M.A. Arabic/Islamic Culture and was not at all equated with B.A. degree normally issued by the University. Article 8-A of the Conduct of General Election Order, 2002 permitted only those persons to contest election of the Parliament or the Provincial Assembly who were at least graduate or any degree equivalent to the graduation and recognized by the University Grants Commission. The appellant at that time was not admittedly a graduate within the meaning of Article 8-A of the Conduct of General Election Order, 2002. It is also evident from the notification issued on 25th July, 2002, whereby the University Grants Commission accorded the requisite recognition and

equivalence to those Sanads only which were issued by the institutions mentioned in the said Notification, namely,

1. Wafaq-ul-Madaris,
Markazi Office Gordon Town Sher Shah Road,
Multan.
2. Tanzeem, -ul-Madaris Ahle-Sunnat, Jamia Naeemia
Rizvia, Garhi Shaho, Lahore.
3. Wafaq-ul-Madaris, Al-Salfia Hajiabad Post Code-
38600, Faisalabad.
4. Wafaq-ul-Madaris Shia, Jamia-al-Muntazar, H.
Block Model Town, Lahore.
5. Rabita-ul-Madaris-Al-Islamia, Manzoor Road,
Lahore.
6. Jamia Islamia Minhaj-ul-Quran, 368 Model Town,
Lahore.
7. Jamia Taleemat-e-Islamia, Sargodha Road,
Faisalabad.
8. Jamia Ashrafia, Ferozepur Road, Lahore.
9. Darul Uloom Mohammadia Ghousia Bhera, District
Sargodha,
10. Darul Uloom, Korangi, Karachi.

11. According to the aforesaid list of the Madaris, the Madarassa which issued Sanad Fragh-ul-Uloom to the appellant does not figure anywhere in the said Notification and the University Grants Commission has restricted the grant of requisite status and recognition to the Sanads awarded by the institutions mentioned supra and had not extended the same to the institutions affiliated therewith. From the aforesaid Notifications, it is clear that the Sanad

Fragh-ul-Uloom issued by the aforesaid Madrissa was certified by Shah Abdul Latif University, Khairpur as an equivalent certificate enabling the candidate to seek admission in M.A. Arabic/Islamic Culture and such equivalence certificate cannot be equated with B.A. degree normally issued by the University for other disciplines. The said decision has been circulated by Shah Abdul Latif University, Khairpur through circular dated 23.8.2002. Since the University with which the Madrassa which issued the Sanad in question is affiliated itself notified that the equivalence certificate cannot be equated with B.A. degree, therefore, the appellant could not have contested the election on the basis of said Sanad. This fact has already been taken note of by this Court in the case of Sanaullah Khan and others vs. District Returning Officer Mianwali and others (PLD 2005 S.C. 858) wherein it was held that UGC vide Notification No. 8-418/Acad/82/128 dated November 17, 1982 declared that the Sanad of Shahadat-ul-Almiyya-fil-Uloomil-Arabia-Wal-Islamia granted by a Deeni Madrassa whose name finds mention therein shall be considered equivalent to M.A. in Arabic/Islamic Studies for the purpose of teaching Arabic/Islamic Studies in the colleges and Universities and for pursuing higher studies in Arabic and Islamic Studies. However, for employment other than teaching, Sanad holders were required to qualify in two additional subjects other than Arabic and Islamic studies at B.A. level of a University. They have also to qualify in the

newly introduced subjects of Elective Pakistan Studies and Islamic Studies at the B.A. level. In such circumstances, it is crystal clear as light of the day that as held by this Court in the case referred supra the Sanad produced by the appellant while contesting election in the year 2002 was not at all equal to B.A. degree, thus, he was not qualified to be elected or chosen as a member of the Provincial Assembly.

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.

13. Since as per conclusions drawn by this Court in Sanaullah Khan's case (supra) that the appellant knowingly and deliberately submitted a degree for becoming a parliamentarian which was not equivalent to B.A., therefore, had not only committed an offence by doing so but also defrauded the voters and the nation, as such, was disqualified to contest the election for not fulfilling the conditions contained in Article 62(1)(d) and (f) of the Constitution of Islamic Republic of Pakistan, 1973. This Court in the case of Malik Iqbal Ahmad Langrial vs. Jamshaid Alam and others (PLD 2013 SC 179) has held that a person who indulges into using unfair means in procuring his educational qualifications does not deserve to claim to be an honest, righteous or Ameen person so that he be assigned the high responsibilities of performing national functions of running the affairs of the country. Relevant paras therefrom are reproduced hereinbelow: -

"10.It is to be noted that Article 62(1)(f), as it stood prior to 18th Constitutional Amendment, provides that a person shall not be qualified to elected or chosen as a Member of Majlis-e-Shoora (Parliament) unless he is sagacious, righteous, non-profligate, honest and ameen. It is clear from the plain reading of the said Article that there is no restriction upon the Court/Tribunal to declare any person to be not sagacious, righteous or ameen. Admittedly the appellant used fake documents not only in the year 2002 but also in the year 2008 and also made false declaration making him liable to

criminal action under certain provisions of P.P.C. In the case of Muddasar Qayyum Nahra v. Ch. Bilal Ijaz (2011 SCMR 80) this Court had upheld the findings of Election Tribunal, Punjab whereby it was held that a person who indulges into using unfair means in procuring his educational qualifications does not deserve to claim to be an honest, righteous or Ameen person so that he be assigned the high responsibilities of performing national functions of running the affairs of the country. The spirit with which the words sagacious, righteous, non profligate, honest and Ameen have been used by the Constitution of Islamic Republic of Pakistan, 1973 for the eligibility of the candidates contesting the elections of Members National or Provincial Assembly cannot be allowed to be frustrated if persons who secure their educational documents through unfair means and are found guilty of such a condemnable act by the competent authority are allowed to be given entry into the doors of National or Provincial Assemblies of our country. The respondent (therein) is thus not worthy of credence and cannot be allowed to be entrusted with State responsibilities of Law Making; to be in-charge of the National Exchequer or be eligible to represent the people of Pakistan."

"12. In a recent case titled as Syed Mehmood Akhtar Naqvi, v. Federation of Pakistan (Constitution Petition No.5 of 2012) this Court has held that whoever makes false declaration at the time of filing of nomination papers, makes himself liable to be disqualified from being elected or chosen as Member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly for making misstatement or concealment of fact, and also exposes himself to criminal proceedings contemplated under sections 193, 196, 198 and 199, P.P.C. "

14. In the instant case, the appellant has failed to meet the criteria set out for proposed candidates under Article 62(1) (d) & (f) of the Constitution and sub-sections (d), (e), (f) and (g) of section 99 of the Representation of People Act, 1976. It may be noted that under Article 63 of the Constitution of the Islamic Republic of Pakistan there are certain disqualifications which are of temporary nature and a person disqualified under Article 63 can become qualified after lapse of certain period as mentioned therein, whereas, the requirement of Article 62 are of permanent nature and a person has to fulfill certain qualifications/conditions to become eligible to be elected or chosen as a member of Majlis-e-Shoora (Parliament), otherwise, he is not eligible to be a Member of Majlis-e-Shoora (Parliament). For this reason alone, Article 62 does not provide any period after which a person, who was declared disqualified under the said Article, can be eligible to contest the elections of the Parliament. In such view of the matter we hold that a person who is not qualified under Article 62(1)(f) cannot become qualified by efflux of time. Reference in this regard may also be made to the case of Imtiaz Ahmed Lali v. Ghulam Muhammad Lali (PLD 2007 SC 369). In such circumstances the appellant has rightly been disqualified to be elected as member of the Parliament by the learned Election Tribunal by allowing the election appeal filed against acceptance of his nomination papers by the Returning Officer which findings were upheld by

the High Court of Balochistan. In view of the facts and circumstances of the case and the material available on record we are of the view that the findings of the learned High Court are based on correct appreciation of evidence on record and the law on the subject.

15. Even otherwise, the order, in the earlier round of litigation, passed by the learned Election Tribunal accepting the election petition filed by the contesting candidates qua election 2002 and disqualifying the appellant to be the member of the Parliament has attained finality for the reason that although the appellant had challenged his disqualification before this Court by filing a civil appeal, yet, it was not decided on merits and was disposed of having become infructuous on the statement of learned counsel for the appellant. Since the appellant was not qualified to contest the elections, therefore, his success in the general elections held under the stay order granted by this Court while granting leave to appeal, cannot be helpful to him as the question of his disqualifications has to be decided by this Court in the instant proceedings in continuation of rejection of his nomination papers and no premium of his success in the election could be given to him as he was not qualified to contest the election being not sagacious, righteous, non-profligate and honest and Ameen.

16. For what has been discussed above, we find no merit in these appeals which are hereby dismissed with costs. As a sequel to the aforesaid findings, we set-aside the election of PB-29-Naseerabad-II held on 11.5.2013 and direct the Election Commission of Pakistan to hold fresh election in the said constituency accordingly.

17. These are the reasons of our short order of even dated announced in open Court.

Chief Justice

Judge

Judge

Islamabad
24th May, 2013
(Zulfiqar)

NOT APPROVED FOR REPORTING