

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.756-L of 2013

[On appeal against the order dated
25.04.2013, passed by the Lahore High
Court, Lahore, in W.P.No.9513 of 2013]

Khalid Pervaiz Gill

Petitioner(s)

VERSUS

Saifullah Gill & others

Respondent(s)

For the Petitioner(s) : Mr. M. Ahsan Bhoon, ASC

For Respondent No.1 : Sheikh Muhammad Suleman, ASC
Mr. Arshad Ali Ch., AOR

Date of Hearing : 10.05.2013

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.—This petition has been filed for leave to appeal against the impugned order dated 25.04.2013.

2. Precisely stating the facts of the case are that the petitioner being a candidate in the forthcoming elections from PP-61, Faisalabad, objected to the candidature of the respondent from the same constituency before the Returning Officer (RO) contending that he being a candidate for the seat of Nazim of Union Council 134 (held in the year 2005) produced a fake and forged matriculation certificate showing his date of birth to

02.04.1979 instead of 02.08.1981, on this a case was registered against him thus he is not entitled to contest the election, as he did not fulfil the conditions laid down in Article 62 of the Constitution of the Islamic Republic of Pakistan, 1973. The objection was contested by the respondent. The RO on having taken into consideration the objection observed *"the candidate has not categorically denied in his written reply that he has not mentioned his date of birth in his matriculation certificate as 02.04.1979 while filing his nomination papers for contesting the election of Nazim Union Council No.134. A copy of the certificate has been appended with the objection petition showing that birth entry has forged by the candidate as 02.04.1979 to make himself eligible to contest the election for the seat of Nazim Union Council was a person who has dishonestly forged an entry and made himself eligible to contest the particular election cannot be terms as Sadiq and Amin so his nomination paper is hit by provision of Article 62 of the Constitution"*. Accordingly his nomination papers were rejected.

3. At this juncture, it would not be out of context to mention that according to Section 152 of the Punjab Local Government Ordinance, 2001, a person who is at least 25 years of age besides fulfilling other conditions was qualified to contest the election. It seems that the respondent was not of 25 years of age as his date of birth has been shown to be 02.08.1981 in the

matriculation certificate but somehow he managed to produce a matriculation certificate with the date of birth as 02.04.1979.

4. The respondent preferred an appeal before the Election Tribunal, which has been allowed on 13.04.2013, against which the petitioner preferred a Constitution Petition before a larger Bench of the Lahore High Court, Lahore, which has not been disposed of on merits for the reasons mentioned in the impugned order, para 2 therefrom is reproduced herein below: -

"2. We have heard the learned counsel for the parties. We have already held in other matters that the cases of objectors in which similar questions have been agitated, need to be disposed of leaving the petitioner to agitate the matter before the Election Commission of Pakistan under the provisions of Representation of People Act, 1976 or other appropriate proceedings should the Respondent be returned. In other petitions filed by objectors the following order has been passed.

"We have been informed by the Election Commission of Pakistan (ECP) that final list of validly nominated contesting candidates has been prepared, which would be followed by printing of ballot papers, which contains the names of validly nominated contesting candidates alongwith their election symbols. Any interference in this process including, but not limited to addition or omission of names of candidates is likely to affect the election schedule framed by the ECP. Further, the petitioner has a remedy to approach the ECP under Representation of People Act, 1976 or avail his remedy under the law after the elections, if so advised. Therefore, in the

interest of justice, equity, fair play and in order to ensure that the elections are held as per Schedule, we are not inclined to interfere in the impugned order dated 16.04.2013. Consequently, this petition is disposed of".

5. Learned counsel for the petitioner contended that in view of the facts and circumstances of the case, the learned High Court may have not refused to exercise jurisdiction under Article 199 of the Constitution, as there is a conclusive findings against the respondent that he has forged his date of birth in the matriculation certificate in order to make himself eligible to contest the election of Union Council and had shown his date of birth to be 02.04.1979 instead of 02.08.1981, as it was so held by the Election Tribunal constituted under the Punjab Local Government Ordinance, 2001, vide order dated 22.05.2007 copy of which is also available on record, passed in Election Petition No.29-E of 2005. He further stated that against these findings, a Writ Petition No.6266/2007 was presented before the High Court, which was subsequently withdrawn on 04.09.2007. It would be appropriate to reproduce herein below the order of withdrawal: -

"Learned counsel for the petitioners under instructions, prayed for withdrawal of instant petition. Dismissed as withdrawn".

6. He further contended that the respondent had also suffered criminal proceedings on account of committing forgery but ultimately in terms of compromise he was acquitted of the

charge, however, conclusive findings of fact as mentioned above are operating against him that he had tampered the age in the matriculation certificate in order to make himself qualified to contest the election of local bodies in terms of Section 52 of the Local Government Ordinance, 2001, therefore, according to him and in view of the said declaration by a Court of law/Tribunal after recording evidence, the respondent's case is fully covered under Article 62 (1)(f) of the Constitution, therefore, he may be disqualified.

7. The learned counsel for the Caveat vehemently opposed the contention put forward on behalf of the petitioner and stated that this Court from time to time had observed in a number of cases that date of birth mentioned in a matriculation certificate cannot be considered conclusive against a candidate. Reliance in this behalf has been placed on the case of Waqas Akram v. Dr. Muhammad Tahirul Qadri & others (2003 SCMR 145) as well as on the case of Muhammad Safdar Abbasi v. Aamir Yar Malik & 3 others (2004 SCMR 1602). He further stated that as now the ballot papers have been printed, therefore, the respondent and petitioner both be allowed to contest the election, as according to him no forgery has been established against him before the Election Tribunal to the effect that he has tampered with any document or produced a fake or bogus document.

8. We have heard the learned counsel for the parties and have gone through the documents produced before us including the judgment recorded by the Election Tribunal as far back as on 22.05.2007 therein he was found not qualified to contest the election on the basis that the matriculation certificate relied upon by him was disowned by the BISE. Such findings have become conclusive as though he filed a Constitution Petition but without getting such findings set aside withdrew the same, therefore, a case for leave to appeal is made out in order to examine as to whether the respondent is qualified to contest the election in terms of Article 62 (1) (f) of the Constitution.

9. It is to be noted on having concluding that a case has been made out for grant of leave on the basis of earlier findings we have passed an order on 09.05.2013 in Civil Petition No.636 of 2013 in the case of Miss Kalsum Khaliq Advocate, Islamabad v. The Election Commission of Pakistan, etc. pertaining to the interpretation of Article 63 (1) (o) of the Constitution of Islamic Republic of Pakistan, 1973, the candidate against whom evidence/finding was available on record was restrained from contesting the election of the provincial Assembly, therefore, following the same precedent and the observation made therein in this case too we direct that the respondent is restrained from contesting the election from constituency No. PP-61 Faisalabad.

The case is ordered to be fixed for a date in office after effecting service upon the respondents.

CJ.

J.

Islamabad
10.05.2013

Hashmi*

J.