

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Sarmad Jalal Osmany
Mr. Justice Mushir Alam

CIVIL PETITION NO. 1646-L OF 2014

Gohar Nawaz Sindhu

Petitioner

Versus

Mian Muhammad Nawaz Sharif & others

Respondents

Petitioner: In person

On Court's notice: Mr. Salman Aslam Butt, AGP
Mr. Waqar Rana, Addl. AGP assisted by
Mr. Dilnawaz Ahmed Cheema, Consultant to AGP

Respondents: Not represented

Date of hearing: 10.11.2014

ORDER

Jawwad S. Khawaja, J. This case raises questions of constitutional law that are of great significance to the continuity and health of our nation's system of elections, governance and adherence to the will of the people as expressed by them in the body of the Constitution itself.

2. This petition arises out of Writ Petition No. 23456 of 2014 which was filed by the petitioner, Mr. Gohar Nawaz Sindhu. He is an Advocate and is also the Sr. Vice President of Insaaf Lawyers' Forum which is the Lawyers Wing of Pakistan Tehreek-e-Insaaf (PTI). He has appeared and argued this petition in person. The respondents are the Prime Minister of Pakistan Mian Muhammad Nawaz Sharif, Interior Minister Ch. Nisar Ahmed and the Secretary Defence, Government of Pakistan.

3. The High Court dismissed the petitioner's Writ Petition vide judgment dated 2.9.2014. The learned Single Bench did not touch upon the merits of the petition but dismissed it as being not maintainable. Reliance was placed by the learned single Bench on the case titled Hudabiya Paper Mills Ltd. Vs. National Accountability Bureau (PLD 2012 Lah. 515). It was held that the issue raised by the petitioner was a "political question" and was not

justiciable. It was also held that the petitioner "*can agitate this matter before an appropriate political forum, if so advised.*"

4. Feeling aggrieved the petitioner filed ICA No. 865/2014. This appeal was heard by a learned Division Bench and was dismissed through judgment dated 8.9.2014. Though this judgment has made reference to Articles 62(1)(f), 63(1)(g), 66 and 69 of the Constitution, it proceeds on the same grounds as the judgment of the learned Single Judge i.e. failure of the petitioner to satisfy the Court on the question of maintainability and on the question of his *locus standi*. On 16.10.2014 after hearing the petitioner at some length we had issued notice to the learned Attorney General under Order XXVIA CPC. A concise statement has been filed by the learned Attorney General.

5. After hearing the petitioner and the learned Attorney General and having considered the concise statement filed by him pursuant to our order, we are *prima facie* of the view that the following constitutional questions arise in this case:-

- (i) Whether in view of the express stipulations in Articles 62(1)(f) and 63(1)(g) of the Constitution requiring declaration/conviction by a court, the High Court could have dismissed the Writ Petition on the ground that it raised a "*political question*" and was, therefore, not justiciable;
- (ii) If it is held that the High Court fell in error and that the Writ Petition was maintainable, what would be the effect of the constitutional requirement that declaration/conviction as aforesaid has to be by a court and for the purpose of such declaration/conviction whether the provisions of Article 10A of the Constitution requiring "*fair trial*" and "*due process*" are attracted; and if so, what do these terms entail;
- (iii) It may well be that the facts and circumstances emerging on record may *prima facie*, not justify the acceptance of the Writ Petition, but it is in our view still essential to lay down the law and parameters of the constitutional provisions and to outline on principle, what would be the minimum threshold for attracting the above referred provisions of the Constitution. In any event it is important to determine:-

- (a) as to which Court will be competent to make such declaration or to pass an order convicting a member of Parliament;
- (b) What will be the procedure adopted by such Court for rendering such declaration/conviction;
- (c) What will be the standard of proof required for making such declaration or order of conviction;
- (d) As to who will have *locus standi* to seek such declaration/conviction;
- (iv) The constitutional provisions of eligibility for elected office requiring an elected persons to be "*honest*" and "*ameen*" have to be given meaning because these terms have to be interpreted as they constitute a substantive part of the Constitution; and it is the people of Pakistan who have (through the Constitution) mandated and are entitled to ensure that members of Parliament elected by them are *inter alia*, "*honest*" and "*ameen*" and thus fulfill the eligibility criteria and qualifications given in Articles 62 and 63 of the Constitution.
- (v) Whether Article 66 (privileges of members etc.) of the Constitution provides an absolute or a qualified privilege to members of Parliament for statements made on the floor of the two houses of Parliament and Provincial Assemblies and also whether the provisions of Articles 62 and 63 of the Constitution override the provisions of Article 66 *ibid*.
- (vi) What is the effect of the material changes which have been made in Articles 62 and 63 of the Constitution by virtue of the 18th amendment passed in April, 2010.

6. It is of utmost importance that the foregoing constitutional questions are adjudicated because the same challenges as to qualifications/disqualifications, eligibility of elected members of Parliament and also elections and bye-elections are a recurring phenomenon and for the same reason it is necessary that courts, returning officers and election tribunals etc. receive guidelines by way of precedent in terms of Article 189 of the Constitution; otherwise, without such guidance there is likelihood that there will be a lack of certainty and uniformity in the decisions rendered by various courts, returning officers

and election tribunals etc. bearing in mind that there are a total of 1070 constituencies and an average of 10 candidates will be contesting elections and will be submitting their nomination papers for scrutiny.

7. Since the aforesaid important constitutional questions have arisen and the same are likely to have far reaching consequences and we have also been informed that some of the questions noted above are already under consideration by another learned Bench of this Court, we may suggest that senior Advocates of the Bar (Mr. Hamid Khan, Mr. Raza Rabbani, and Mr. Khawaja Haris) assist the Court as *amicus curiae*. The Office is directed to place the file before Hon'ble the Chief Justice for further orders deemed appropriate by him including, if deemed fit by him, the constitution of a larger Bench.

Judge

Judge

Judge

Quetta, the
10th November, 2014
M Azhar Malik*/

NOT APPROVED FOR REPORTING.