

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.2779/2017  
Muhammad Sami ul Haq

**Versus.**

Election Commission of Pakistan and others

**Date of Hearing:** 01.06.2018

**Petitioner by:** Syed Pervez Zahoor, Advocate

**Respondents by:** Barrister Muhammad Moazzam Sher, for  
respondent No.4.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Sami ul Haq, impugns the order dated 11.07.2017, passed by the Election Commission of Pakistan (“E.C.P.”) (respondent No.1), whereby respondent No.4’s application seeking the petitioner’s disqualification as a Member District Council, Khushab, was accepted. The said application was accepted primarily on the ground that petitioner was more than twenty five years of age on the last date fixed for the filing of nomination forms, and was, therefore, not qualified to be elected against the seat reserved for youth. Respondent No.4’s case before the E.C.P. was that the petitioner did not fulfill the requirements of Section 2(nnn) read with Section 27(1)(b) of the Punjab Local Government Act, 2013, (“the 2013 Act”) under which a candidate for election against the seat reserved for youth had to be less than twenty five years of age.

2. Learned counsel for the petitioner submitted that the petitioner’s correct date of birth was 01.01.1992; that on the last date of the submission of nomination papers (i.e. 15.10.2016, the petitioner’s age was 24 years, 9 months and 14 days; that along with his nomination papers, the petitioner also submitted his revised CNIC No.38201-7790956-3, dated 21.01.2016, issued by National Database Registration Authority (“NADRA”); that NADRA’s representative confirmed the issuance of the said CNIC; that the authenticity of the NADRA record could not be questioned in summary proceedings before E.C.P. and the same could only be done in a trial before a Court of plenary jurisdiction; that the impugned order whereby the petitioner was de-notified as Member Zila Council is without lawful authority inasmuch as the E.C.P. did

not comply with the procedure prescribed in section 33 of the 2013 Act; that the E.C.P. neither ordered for an enquiry nor appointed an enquiry officer before disqualifying the petitioner; and that the impugned order dated 11.07.2017, is the result of an irregularity and procedural impropriety which is liable to be interfered with in the Constitutional jurisdiction of this Court. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned order dated 11.07.2017, to be set-aside. In making his submissions, learned counsel for the petitioner placed reliance on the cases of Ahmad Nawaz Khan Bakhtiari Vs. Appellate Authority and others (PLD 2016 Lahore 539), Muhammad Ijaz Ahmad Chaudhry Vs. Mumtaz Ahmad Tarar (2016 SCMR 1), Waqas Akram Vs. Dr. Muhammad Tahirul Qadri (2003 SCMR 145), Agha Ghulam Ali Buledi Vs. Gohar Ali alias Ganwar Ali (1995 MLD 41), Muhammad Mujtaba Abdullah Vs. Appellate Authority/Additional Sessions Judge Tehsil Liaquatpur District Rahim Yar Khan and others (2016 SCMR 893) and Multan Electric Power Company Ltd. Vs. Muhammad Ashiq and other (PLD 2006 SC 328).

3. On the other hand, learned counsel for respondent No.4 submitted that the petitioner had defrauded the electorate by misdeclaring his age; that the petitioner was born on 11.09.1990; that the petitioner's first identity card as well as his matriculation certificate bears 11.09.1990 as his date of birth; that on the date of the filing of nomination papers, the petitioner was not eligible to contest against the seat in the Zila Council Khushab reserved for youth since he was more than 25 years of age; that just so as to be in a position to contest the elections against the seat reserved for youth, the petitioner filed a belated application before NADRA in order to change his date of birth from 11.09.1990 to 01.01.1992; that the petitioner managed to change his date of birth on the basis of a medical report; that the petitioner used his CNIC bearing 11.09.1990 as his date of birth for eight long years before he applied for the change in his date of birth; that the petitioner has also filed a suit for the correction of his date of birth in his matriculation certificate; and that the said suit is still pending adjudication.

4. Learned counsel for respondent No.4 further submitted that since respondent No.4 did not contest the elections against the

petitioner, he could not have filed an election petition under section 38 of the 2013 Act; that respondent No.4 filed a petition under section 33 of the 2013 Act, seeking the petitioner's disqualification under section 27 of the said Act; that section 27(3)(a) of the said Act provides that if a person is found by the E.C.P. to have contravened any provision of section 27(1) or (2), he shall stand disqualified from being a candidate for election to any office of a local government for a period of four years; that section 27(3)(b) provides that if a person has been elected as a member of a local government and is found by the E.C.P. to have contravened any provision of section 27(1) or (2), he shall cease forthwith to be an elected member or to hold the office of such member and shall stand disqualified from being a candidate for election to a local government for a period of four years; that section 27(1)(b) provides that a person shall qualify to be elected as a member or to hold an elected office of a local government if he, except he is a youth member, is not less than twenty five years of age on the last day fixed for filing of nomination papers; that since the petitioner was more than twenty five years of age on the last date fixed for filing the nomination papers, he was disqualified from contesting the elections against the seat reserved for a youth member; and that the impugned order dated 11.07.2017, passed by the learned E.C.P., does not suffer from any jurisdictional infirmity. In making his submissions, learned counsel for respondent No.4 relied on the case reported as Syed Akif Hussain Shah Vs. FBISE and others (PLJ 2017 Islamabad 310). Learned counsel for respondent No.4 prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The record shows that the elections for the District Council, Khushab were held on 15.11.2016. The petitioner contested the elections against the seat reserved for youth and was declared as the returned candidate having secured 24 out of 48 votes. The petitioner had submitted his nomination forms on 15.10.2016. In the said nomination forms, the petitioner had declared his date of birth to be 01.01.1992. The petitioner's rival candidate was supported by respondent No.4.

7. On 20.12.2016, respondent No.4 filed writ petition No.39988/2016, before the Hon'ble Lahore High Court, seeking the petitioner's disqualification primarily on the ground that under section 27(1)(b) of the 2013 Act, a candidate is not qualified to contest elections against the seat reserved for youth unless he is less than twenty five years of age; and that on the last date fixed for the filing of the nomination forms, the petitioner's age was more than twenty five years. Vide order dated 03.04.2017, the Hon'ble High Court on the joint request of the contesting parties disposed of the said petition by remitting the same to the E.C.P. for a decision after treating it as a petition under section 27(3) of the 2013 Act. The operative part of the said order dated 03.04.2017 is reproduced herein below:-

*"2. During the course of hearing it is pointed out that efficacious remedy available to the petitioner was to file petition under Section 27(3) of the Punjab Local Government Act, 2013 before respondent No.6. Thus, a joint request is made that this petition be disposed of by remitting a copy thereof to respondent No.6 for its decision after treating it as petition under Section 27(3) of the Punjab Local Government Act, 2013 through a well-reasoned order after affording opportunity of hearing to all concerned."*

8. After the receipt of the said petition by the E.C.P., the E.C.P. summoned the record from NADRA in order to verify as to whether respondent No.4 was correct in his assertion that the petitioner's date of birth was 11.09.1990 and not 01.01.1992. Thereafter, the petitioner filed a detailed written reply. In the said written reply, the position taken by the petitioner was *inter-alia* that the petitioner's correct date of birth was 01.01.1992 and not 11.09.1990; that on the date of the filing of the nomination papers, the petitioner's age was 24 years, 9 months and 14 days, and was therefore, eligible to contest the elections against the seat reserved for youth in the District Council; that NADRA had issued a revised CNIC bearing No.38201-7790956-3, dated 21.01.2016 to the petitioner showing his date of birth as 01.01.1992; that the said revision in the petitioner's date of birth on his CNIC was made after the submission of a medical report to the effect that the petitioner's age was about twenty four years.

9. Vide impugned order dated 11.07.2017, the E.C.P. allowed respondent No.4's petition and held that on the date of filing the nomination papers, the petitioner was not qualified to contest the

elections for the seat reserved for youth. Furthermore, it was held that the petitioner managed to usurp the seat for a youth councilor through “fraud and trickery”. An immediate action for the petitioner’s de-notification was ordered.

10. The said order dated 11.07.2017 was impugned by the petitioner in the instant petition which was taken-up for hearing on 28.07.2017 and by way of interim relief it was ordered that the petitioner shall not be de-notified.

11. In terms of section 14 of the 2013 Act, a District Council consists of the Chairmen of all Union Councils in the area of the District Council and includes members indirectly elected on the reserved seats by the Chairmen of the Union Councils. Included in the members indirectly elected on the reserved seats is one youth member. The word “youth” has been defined in section 2(nnn) of the 2013 Act, as a person who is at least twenty one years old and is less than twenty five years of age on the last day fixed for filing of nomination papers.

12. The qualifications and disqualifications for candidates and elected members of the local government are provided in section 27 of the 2013 Act. Section 27(1)(b) provides that a person shall qualify to be elected as a member or to hold an elected office of a local government if he, except the youth member, is not less than twenty five years of age on the last day fixed for filing the nomination papers. A conjoint reading of section 2(nnn) and 27(1)(b) of the 2013 Act shows that a candidate for election against the seat reserved for youth must be more than twenty one years and less than twenty five years of age on the last day fixed for filing the nomination papers.

13. Proceedings for the disqualification against a member of a local body can be initiated by filing a petition before the E.C.P. under section 27(3) of the 2013 Act. Section 27(3)(a) of the said Act provides that if a person is found by the E.C.P. to have contravened any provision of section 27(1) or (2), he shall stand disqualified from being a candidate for election to any office of a local government for a period of four years. Furthermore, section 27(3)(b) provides that if a person has been elected as a member of a local government and is found by the E.C.P. to have contravened any provision of section 27(1) or (2), he shall cease forthwith to be an elected member and

shall stand disqualified from being a candidate for election to a local government for a period of four years.

14. It is an admitted position that none of the provisions of section 27(2) are attracted in the case at hand. As regards section 27(1), the same provides that for a qualifying age of twenty five years for a person to be elected as a member or to hold an elected office to a local government, except for a youth member. Section 27 (2) of the 2013 Act does not in explicit terms provide for the disqualification of a person elected against the reserved seat for youth who is more than twenty five years of age. However, under section 27(1)(b) a person is qualified to be elected as a member or to hold an elected office of a local government if he, except as a youth member, is not less than twenty five years of age on the last day fixed for filing the nomination papers. This provision when read with section 2(nnn) of the 2013 Act mandates that a person who is more than twenty five years of age cannot be elected against a seat reserved for youth. In the case at hand, it is not disputed that when the petitioner's CNIC was initially issued, it mentioned the petitioner's date of birth as 11.09.1990. The petitioner's matriculation certificate had the same date of birth. For several years, the petitioner made no effort to correct the date of birth entered in his CNIC and matriculation certificate. It was only after the election schedule was announced by the E.C.P. on 15.01.2016 that the petitioner applied to NADRA for his date of birth on his CNIC to be changed to 01.01.1992. This was done not on the basis of any birth certificate or school entry/leaving certificate or entry in the register of births maintained by a union council, but on the basis of a medical report dated 18.01.2016. It is also an admitted position that NADRA changed the entry of the petitioner's date of birth on his CNIC from 11.09.1990 to 01.01.1992 on the basis of the said medical report. The revised CNIC issued by NADRA on 21.01.2016 still holds good and has not been recalled. The petitioner has also filed a civil suit for the correction of the entry of his date of birth in his matriculation certificate. The said suit is still pending adjudication. All these factors make the equities heavily tilted against the petitioner.

15. Be that as it may, the procedure to be followed by the E.C.P. after a petition seeking disqualification of a member of a District

Council has been filed under section 27 of the 2013 Act has been provided in section 33 of the said Act, which is reproduced herein below:-

*33. Removal.– (1) Where proceedings of disqualification under section 27 have been initiated against a member, the Election Commission or any authority authorised by it may issue a notice to the member to show cause within a specified period as to why proceedings against him may not be taken for his removal for breach of any of the provisions of section 27.*

*(2) Where the Election Commission or an authority authorised by it is not satisfied with the reply to the notice referred to in subsection (1) or any reply to the said notice is not filed within the period fixed by it, it may order for an enquiry in the matter and for that purpose appoint an enquiry officer.*

*(3) On the basis of enquiry held under subsection (2), the Election Commission or an authority authorised by it may order the removal of the member.*

**(Emphasis added)**

16. What the petitioner is seeking in the instant writ petition is the issuance of a writ of *certiorari*. Such a writ can be issued where a Tribunal commits an error of law or does not follow the procedure prescribed by law. The requirement to follow the procedure prescribed by law becomes all the more stringent when the proceedings in question result in a penal measure against the petitioner. In the case at hand, respondent No.4 was seeking the petitioner's removal from an elected office as well as his disqualification. It was, therefore, obligatory upon the E.C.P. to have strictly followed the procedure for a member's removal prescribed in section 33 of the 2013 Act. In the case at hand, it is an admitted position that the E.C.P. did not "order for an enquiry in the matter." Furthermore, the E.C.P. did not appoint any enquiry officer for the purpose of an enquiry. In this way, there has been non-compliance with the requirement of section 33(2) of the 2013 Act. It is pertinent to bear in mind that under section 33(3) of the 2013 Act, the E.C.P. can order the removal of the member "on the basis of enquiry held under sub-section (2)" of section 33 of the said Act. As mentioned above, there is nothing on the record to show that an order for an enquiry was made by the E.C.P. in the instant case. Therefore, it is my view that the impugned order is a consequence of a procedural irregularity and impropriety which is liable to be

judicially reviewed and interfered with in the Constitutional jurisdiction of this Court.

17. Respondent No.4 could not have filed an election petition against the petitioner before an election tribunal because respondent No.4 was not the petitioner's contesting candidate. In the petition before the E.C.P., respondent No.4 had sought the petitioner's removal and disqualification on the ground that petitioner had concealed his actual age so as to enable him to contest the elections for the seat reserved for youth in District Council, Khushab. It is a fundamental principle of law that a person must be subjected to a trial or a regular inquiry before the penal measure of disqualification is imposed on him. However, under section 27 read with section 33 of the 2013 Act, the E.C.P. could not be expected to conduct a trial against the petitioner. But the very least the E.C.P. could have done was to have strictly followed the procedure prescribed in section 33(2) to the said Act and passed an order for an enquiry and for that purpose appointed an enquiry officer. Indeed, the E.C.P. in the instant case had called for the record from NADRA and examined the same but this would be no substitute to an enquiry contemplated under section 33(2) of the 2013 Act. There is a catena of case law in support of the preposition that when a thing is required by law to be done in a particular manner, it must be done in that very manner or not at all. Reference in this regard may be made to the law laid down in the cases of Raja Hamayun Sarfraz Khan Vs. Noor Muhammad (2007 SCMR 307), State Life Insurance Corporation of Pakistan Vs. Director General, Military Lands and Cantonments, Rawalpindi (2005 SCMR 177), and Khalid Saeed Vs. Shamim Rizwan (2003 SCMR 1505). This principle is also enshrined in the Latin maxim *expressio unius est exclusio alterius*.

18. Another crucial feature in the case at hand is that the charge on which respondent No.4 was seeking the petitioner's removal and disqualification was akin to fraud. In other words, the petitioner was alleged to have fraudulently procured a change of his date of birth on his CNIC only so as to enable him to be qualified to contest the election against the seat reserved for youth. The E.C.P., in the impugned order dated 11.07.2017, has also observed that the



petitioner had committed “fraud and trickery”. It is my view that the standard of proof required in the petition filed by respondent No.4 would be like that of a criminal trial. It is well settled that penal provisions in a statute are required to be strictly construed. The penal measure of disqualification could not have been imposed on the petitioner without passing an order for an enquiry by an enquiry officer. True, the word “may” has been used in section 33(2) but since the proceedings under the said section culminate in the imposition of a penal measure of removal and disqualification, it is my view that the holding of an enquiry before such a penal measure can be imposed, is obligatory. In the event, after holding such an enquiry the E.C.P. comes to the conclusion that the charge/allegation against the petitioner has been proved or established beyond reasonable doubt, an order for removal or disqualification be made. In holding so, I derived guidance from the law laid down in the following judgments:-

- (i) In the case of Saeed Hasan Vs. Pyar Ali (PLD1976 SC 6), it has been held that the analogy of a criminal trial would hold good in the matter of a corrupt or illegal practice which must be affirmatively proved to the exclusion of a reasonable hypothesis consistent with the non-commission of a corrupt practice and the benefit of doubt must go to the person against whom a corrupt or illegal practice is alleged in an election dispute.
- (ii) In the case of Muhammad Yousuf Khan Khatak Vs. S.M. Ayub (PLD 1973 SC 160), it has been held that the charge of a corrupt practice or a disqualification attaching to a candidate before the election or incurred by him after the election is a quasi-criminal charge and must be proved affirmatively by positive evidence.
- (iii) In the case of Muhammad Saeed Vs. Election Petitions Tribunal, West Pakistan (PLD 1957 SC 91), it was held that a charge of a corrupt practice is a quasi-criminal charge and that such an allegation must be treated, for the purposes of evidence, on the principles applicable to the trial of criminal charges. Furthermore, it was held that in case of doubt raised

upon the evidence, the benefit of such doubt must go to the accused person.

- (iv) In the case of Syed Mashooq Mohiuddin Shah Vs. Syed Fazul Ali Shah (2014 CLC 1181), it was held that the burden of proof for showing that corrupt and illegal practices were committed during the poll by the returned candidate is to be discharged in the same manner as a criminal charge which is to be proved beyond all the reasonable doubt.
- (v) In the case of Syed Qutub Ahmad Vs. Syed Faisal Ali Subzwari (2007 CLC 1682), it was held that in order to unseat a returned candidate on the ground of corrupt practice, the standard of proof required is that of proving guilt of an accused in criminal proceedings.
- (vi) In the case of Dr. Abdul Sattar Rajpar Vs. Syed Noor Muhammad Shah (2005 YLR 937), it was held that the standard of proof required in an election petition would be like that of a charge in a criminal trial and benefit in case of doubt would go to the returned candidate. Furthermore, it was held that in an election petition the burden and onus to prove the allegation is basically on the Petitioner, who is required to prove the allegations of illegal practice by independent, convincing, cogent, clear, consistent and confidence inspiring evidence.
- (vii) In the case of Capt. Syed Muhammad Ali Vs. Salim Zia (1999 CLC 1026), it has been held as follows:-

*“8. In the election disputes it is settled that the burden to prove illegal and corrupt practices lies heavily on the petitioner and that these allegations must be proved with such standard as is required for proving a charge in criminal trial. It is further settled that in case of doubt arising out of the material placed before the Election Tribunal, its benefit must go to the returned candidate. If any reference is needed see Muhammad Saeed and others v. Election Petitions Tribunal West Pakistan and others PLD 1957 SC 91, Muhammad Yousuf Khan Khattak v. S.M. Ayub and 2 others PLD 1973 SC 160 and Syed Saeed Hasan v. Piya Ali and 7 others PLD 1975 SC 6.”*

- (viii) In the case of Badrudin Vs. Muhammad Sarwar Khan Kakar (1988 MLD 294), it was held that the standard of proof required in an election petition would be like that of a charge in a criminal trial and benefit in case of doubt would go to the returned candidate.

- (ix) In the case of Sardar Muhammad Arif Khan, Advocate Vs. Noor Alam (1987 CLC 1353), it has been held that in election cases, the standard of proof required to prove malpractice or corruption is the same as required in a criminal case and is to be proved beyond any reasonable doubt.
- (x) In the case of Pir Matook Ali Vs. Rais Muhammad Usufi (1986 CLC 1329), it was held that the burden of proof is upon the petitioner who challenges the election on the ground of commission of corrupt or illegal practices; that the illegal or corrupt practice should be proved by clear, cogent and convincing evidence without any reasonable doubt; that no finding can be given on surmises and conjectures and standard of proof should be as required of a charge in a criminal trial; and that where there is any doubt, the benefit must go to the accused person.

19. In view of the above, the instant petition is allowed; the impugned order dated 11.07.2017, passed by the E.C.P. is set-aside; and the matter is remanded to the E.C.P. which may pass an order for an enquiry and appoint an enquiry officer in terms of section 33(2) of the 2013 Act. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**APPROVED FOR REPORTING**

*Qamar Khan\**

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