

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.4715 of 2018

Abdul Ghaffar.

Versus

Election Commission of Pakistan, Islamabad through its Secretary and 03 others.

Petitioners By : Mr. Muhammad Sarwar Chaudhary,
Advocate.

Respondents By : Mr. Sana Ullah Zahid, Advocate for
respondent No.1.
Ms. Kulsum Khaliq, Advocate for
respondent No.4.

Date of Hearing : 05.11.2019.

AAMER FAROOQ, J. - Through the instant petition, the petitioner seeks disqualification of respondent No.4 as Member Provincial Assembly, Punjab.

2. The facts, in brief, are that the petitioner is a voter in the Constituency PP-241, Bahawalnagar (V), Teshil Chishtian, District Bahawalnagar (PP-241). Respondent No.4 contested 2018 General Election from PP-241, Bahawalnagar-V and was declared as a successful candidate by the Election Commission of Pakistan, vide notification dated 28.07.2018. It is the case of the petitioner that respondent No.4 is disqualified to hold the office of Member Provincial Assembly inasmuch as he does not hold graduate qualification from Al-Khair University as declared in the affidavit submitted alongwith nomination papers.

3. Learned counsel for the petitioner, *inter-alia*, contended that respondent No.4 is not of good character in terms of Article 62(1)(f) of the Constitution read with Sections 167 and 173 of the Elections Act, 2017 and is also not honest and *Ameen*. It was contended that respondent No.4 is to be permanently disqualified on the ground of misstatements made in the nomination form; learned counsel pointed out that in the Bye-Elections of 2006, respondent No.4 mentioned his qualification as graduate (BBA from Al-Khair University), whereas, in the General Elections of 2013, he mentioned his qualification as intermediate in his nomination papers. It was further contended that in the General Elections, 2018, respondent No.4 again mentioned his qualification as BBA from Al-Khair University; that respondent No.4 concealed the fact that in the year 2013 his qualification was F.A. on which an objection was raised and finally the nomination papers were rejected; that according to the letter dated 13.04.2006 issued by Registrar, Al-Khair University (AJK), respondent No.4 is not a bona fide student of the University and Detailed Marks Certificate issued on 06.04.2006 is not correct. It was further submitted that in the General Elections of 2018, respondent No.4 submitted his affidavit in which at para G, he mentioned his qualification as F.A-B.B.A; that the affidavit was tendered pursuant to the order of the Hon'ble Supreme Court of Pakistan and deliberately a false statement was made. Learned counsel in support of his contentions placed reliance on cases reported as "*Mian Zia ur Rehman and others Vs. Syed Nadir Ali Shah and others.*" **(2019 SCMR 137)**, "*Sher Baz Khan Gaadhi Vs. Muhammad Ramzan and others.*" **(2018 SCMR 1952)**, "*Suo Motu Case No.8 of 2018*" **(PLD 2019 SC 201)**, "*Muhammad Usman Dar Vs. Khawaja Muhammad Asif and others.*" **(PLD 2018 Islamabad 214)** and "*Khawaja Muhammad Asif Vs. Muhammad Usman Dar and others.*" **(2018 SCMR 2128)**.

4. Learned counsel for respondent No.4 objected to the maintainability of the instant petition on ground of the fact that respondent No.4 is elected from

Bahawalnagar, hence this Court lacks territorial jurisdiction. It was contended that even otherwise respondent No.4 is not disqualified in any way. It was also submitted that the matter is sub-judice before the august Apex Court by way of a civil appeal arising out of the decision in election petition.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. Since respondent No.4 has raised question of territorial jurisdiction, hence the same is dealt with first. Under Article 199 of the Constitution, jurisdiction of Islamabad High Court is extended to any person carrying on the affairs of Federation, a Province or a local authority within the territorial jurisdiction of the Court. The jurisdiction of High Court is somewhat different from the other four Provincial High Courts inasmuch as the jurisdiction of the Provincial High Courts is extended to the extent of Federation, a Province and local authority, however, since Islamabad Capital Territory is not really a province but has a special status being a Federal Capital its jurisdiction extends to Federation; the affairs of Islamabad Capital Territory and local authorities. The issue raised before this Court regarding its territorial jurisdiction is with respect to the fact that respondent No.4 was elected as a Member Provincial Assembly (Punjab) from PP-241 and whether or not in the said backdrop this Court has jurisdiction. Under the Constitution, the conduct of election is the sole responsibility of Election Commission of Pakistan, hence all the elections are conducted by the referred constitutional body. There is no doubt that the Election Commission of Pakistan being a constitutional body falls within the definition of person carrying on affairs of Federation for the purposes of Article 199 *ibid*. Election Commission of Pakistan has its principal establishment at Islamabad with Regional offices in the four provinces. The notification of a returned candidate is issued by principal office of Election Commission of

Pakistan and the record as well as the affairs of all elected representatives whether of the parliament (National Assembly and Senate) or the Provincial Assemblies are regulated by the said constitutional body from Islamabad. In light of the said factual and legal backdrop, the question of jurisdiction of this Court in somewhat similar circumstances was considered by the Hon'ble Supreme Court of Pakistan in case reported as "*Let.-Gen. (R) Salahuddin Tirmizi Vs. Election Commission of Pakistan*"(**PLD 2008 SC 735**). The august Apex Court with respect to the question of jurisdiction observed as follows:-

“Question of jurisdiction which is always a fundamental question must be decided at the initial stage of proceedings as it is the right of court to proceed with the litigation and this right must be determined at the first instance. The power of court to adjudicate upon the matter is linked with the territorial jurisdiction otherwise the judgment is treated to have been rendered illegally, without lawful authority due to lack of jurisdiction. The court possesses jurisdiction which is directly or indirectly, expressly or impliedly conferred upon it by the law and the Constitution but jurisdiction of the court vested under the Constitution cannot be abridged or enlarged through an ordinary legislation. The jurisdiction conferred on High Court under Article 199 of the Constitution may be territorial as well as inherent which cannot be construed in a manner to curtail the concept of jurisdiction only to the territorial boundaries. This is settled principle that jurisdiction cannot be conferred by consent or waiver if the court otherwise lacked jurisdiction to adjudicate and render judgment in a matter and at the same time it is also settled law that if the objection relating to the jurisdiction which was required to be taken at initial stage, was not raised at appropriate stage, there may be waiver or estoppel to the question of jurisdiction of the court at a later stage.”

On the question of territorial jurisdiction, it was observed as follows:-

In the Federal System, Federating Units are independent in their affairs and similarly the public

functionaries and authorities as well as Courts or Tribunals of exclusive jurisdiction conferred on them and powers vested in them by law and can exercise such powers and jurisdiction within their respective territory. Islamabad Capital territory is not a Province but has independent status in the Constitution and in Article 175 of the Constitution, the words "Islamabad Capital Territory" have been inserted by virtue of amendment made in the Constitution. The Islamabad High Court has been established with status equal to that of the High Courts of Provinces under (Establishment) Order, 2008 (P.O. No.5 of 2008) wherein its territorial limits have been described as Islamabad Capital Territory, therefore, this Court has territorial as well as inherent jurisdiction in all matters within the area of capital territory (Islamabad District) and the authorities functioning at Islamabad in connection with the affairs of Federation are subject to the jurisdiction of Islamabad High Court. The principal seat of Election Commission of Pakistan is at Islamabad with its Branches at Provincial Headquarters and the function of Election Commission of Pakistan is to manage and regulate the elections of Parliament (National Assembly and Senate), prepare electoral rolls for such elections with all other duties relating to election, therefore, the order passed by Election Commission of Pakistan in respect of constituency situated in a Province can conveniently be challenged before the Islamabad High Court. The expression "discharges function within the territorial" would sufficiently indicate that an order passed by an authority which exercises jurisdiction within the boundaries of Capital Territory, is subject to the jurisdiction of Islamabad High Court. In the present case, Election commission of Pakistan while discharging functions in connection with the affairs of Federation within the territorial jurisdiction of Islamabad High Court passed an order in respect of a constituency of Province of N.-W.F.P., therefore, the objection relating to the jurisdiction and maintainability of writ petition before the Islamabad High Court, would be of no significance. In such situation, the order passed by the Election Commission of Pakistan which functions at Islamabad in respect of the constituency of

Province of N.-W.F.P., would be challengeable both before the Islamabad High Court and Peshawar High Court. This concurrent jurisdiction is, however, subject to the rule of propriety according to which a High Court having jurisdiction in a matter if has exercised such jurisdiction, the other High Court which has also jurisdiction in the matter may restrain from exercising its jurisdiction. In view thereof, in the present case, the propriety demanded that subsequent order passed by Election Commission of Pakistan should have been challenged before the Islamabad High Court and the jurisdiction of Peshawar High Court should have not been invoked and said High Court also should not, without determining the question of propriety exercise the jurisdiction. Be that as it may, initially the respondent invoked the jurisdiction of Islamabad High Court against the order of Election Commission of Pakistan and subsequently, the order passed by Election Commission of Pakistan in post remand proceedings was challenged by the petitioner before the Peshawar High Court and question of jurisdiction was neither raised before Islamabad High Court nor before Peshawar High Court and since both the Courts have concurrent jurisdiction, therefore, the orders of Islamabad High Court as well as Peshawar High Court have been passed in exercise of lawful authority and objection in this behalf may have no significance.”

In light of the above observations of the Hon’ble Supreme Court of Pakistan, this Court in such matters has concurrent jurisdiction with the Provincial High Court (Lahore High Court in the instant case). Again in quite similar circumstances, the candidature of Khawaja Muhammad Asif, who was a returned candidate from NA-110 (Sialkot) was challenged before this Court and a petition was entertained and decided on merit, vide judgment dated 26.04.2018, titled "*Muhammad Usman Dar Vs. Khawaja Mohammad Asif, etc.*" (**Writ Petition No.2907 of 2017**), though this judgment was set-aside by the august Apex Court but only on merit and there is no observation on the assumption of territorial jurisdiction

of this Court in the decision of august Apex Court, which is reported as "*Khawaja Muhammad Asif Vs. Muhammad Usman Dar and others.*" **(2018 SCMR 2128)**.

In view of the above position, this Court has territorial jurisdiction in the matter.

7. The instant petition is in the nature of *quo warranto*, where the petitioner has questioned the authority on the basis of which respondent No.4 is enjoying the position of Member Provincial Assembly. Another objection in this behalf was raised that an election petition was filed by the brother of the petitioner, which was dismissed and the matter is now pending before the august Apex Court. Learned counsel for the petitioner submitted that the Election Petition was dismissed on the technical ground and no finding was handed down on merit. It was contended that since there is no finding by the Election Tribunal constituted, hence there is no bar for this Court to adjudicate the matter. Learned counsel for respondent was unable to controvert the position; hence the objection raised on behalf of respondent No.4 has no substance. On merit it is the case of the petitioner that respondent No.4 has made false declaration and undertaking regarding his qualification. In this behalf, it was submitted that even earlier the petitioner had stated in the nomination papers his qualification as B.B.A., which was challenged and the nomination papers were rejected. In the current election i.e. held in 2018, the petitioner again mentioned his educational qualification as B.B.A. Respondent No.4 submitted that he is graduate (B.B.A). In reply and argument it contended that in affidavit filed with nomination papers BBA is from Al-Kahir University, though previously Al-Khair University had spurned the claim of respondent No.4 on the ground that he is not a registered student. It was thought appropriate by this Court to have the matter verified again and report was sought from Al-Khair University regarding the academic qualifications of the petitioner and in response the said University reiterated, vide letter dated 25.09.2019 that Mr. Kashif Mahmood s/o Khalid Mehmood (respondent No.4) has neither been student of Al-Khair University Bhimber (AJK)

nor graduated in the course of Bachelor of Business Administration. It has also been stated that claim of respondent No.4 that his Detailed Marks Certificate was issued under Serial No.1053 and Registration No.AUR(BA)296-2000 by Al-Khair University is also not justified. In view of the said position, it is established that respondent No.4 never was a student of Al-Khair University nor graduated from there. However, in the affidavit tendered by respondent No.4 pursuant to the order of the Hon'ble Supreme Court of Pakistan, he has mentioned his qualification as BBA. The question before the Court is whether in light of the fact that respondent No.4 tendered a false affidavit and that his academic qualifications are not as he has represented, would it have adverse effect on his position as Member Provincial Assembly. A similar matter came up for consideration before the Hon'ble Supreme Court of Pakistan in case reported as "*Mian Zia ur Rehman and others. Vs. Syed Nadir Ali Shah and others.*" (**2019 SCMR 137**), the august Apex Court observed as follows:-

5. *It is an admitted fact that the Petitioner did his matriculation in the April, 1996. It is also admitted that he had declared himself as graduate (B.A.) on the basis of Sanad, Shahdat-ul-Alia purported to have obtained by him on 19.12.1996. Further, the 'Deeni Madrasa' which had allegedly issued him the 'Sanad' was not amongst the institutions recognized by the Higher Education Commission (HEC) for the purposes of issuing 'Sanad'.*

6. *Although the issue at hand emanates from the educational qualifications and requirements of being a graduate stipulated in the Constitution, which stipulation was later on removed from the Constitution, rather the same primarily pertains to truthfulness of a candidate and the consequences ensuing after making of a false declaration.*

7. *It was exactly in this context that this Court while deciding the matter pertaining to 'fake degrees' in Iqbal Ahmed Langrials' case¹ held that:*

"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 SC.MR 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 above proposition of law was adequately dealt with by this Court in Imran Khan Niazi's case in the following terms:

10. The argument that the petitioner could not be disqualified under Article 62(1)(f) of the Constitution without recording evidence, in a proceeding under Article 184(3) of the Constitution also runs counter to the settled law of the land as this Court in the case of Syed Mahmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 SC 1089) while exercising jurisdiction under Article 184(3) of the Constitution proceeded to disqualify the person elected, who despite being disqualified in terms

of Article 63(1)(c) of the Constitution made a false declaration on solemn affirmation in his nomination papers to the contrary. The relevant paragraphs read as under:-

'we have no option but to hold that at the time of submitting their nomination papers they were disqualified and ineligible to file the same and apparently have made false statements while submitting their nomination papers'.

'From the facts noted hereinabove, what appears is that respondent was holding citizenship of a foreign state, made statement on oath that he is qualified under Article 62(1)(c) of the Constitution and not disqualified under Article 63(1) of the Constitution apparently made a false statement.'

'All members of the parliament/provincial assemblies noted above had made false declaration before the ECP while filing their nomination papers and as such appear to be guilty of corrupt practices in terms of section 78 of ROPA, 1976, therefore, the ECP is directed to institute legal proceedings against them under section 82 of the Act read with sections 193, 196, 197, 198 and 199, P.P.C. in accordance with law.'

To further cement this proposition we find that the facts and circumstances of this case are almost identical to the facts and ratio of Najeeb-ud-Din Owaisi's² case and for ease of reference the finding of this Court is reproduced below:

'yet if a candidate has made a declaration in the column meant for academic qualification and declared himself to be a graduate, but subsequently, it is found that he was not a graduate then he would be equally liable to face the consequences of Articles 62 and 63 of the Constitution or the other relevant

provisions of the P.P.C. It is further to be observed that once there is a disqualification, it is always a disqualification; therefore while making a declaration in the nomination papers, a candidate must provide, a crystal clear statement about his credentials and antecedents. There is no scope of making or proving information, which is not correct, because he is one of the persons whom the electorate of a constituency, which may be having a strength of 50 thousand, are going to elect their representative. Therefore, whatever he possesses in terms of academic qualification, bank credits and taxes etc. he shall have to declare each and every thing required for the qualification to contest the election."

'Once a person has filed a declaration under his signatures declaring that he fulfills the conditions of Articles 62 and 63 of the Constitution and he undertakes that the statement is correct and if such declaration is incorrect the ECP shall de-notify him for such representation, retrospectively.'

8. *Similarly, in Yasmeen Bibi's case this principle was reiterated by this Court and a Parliamentarian who had tendered a fake degree was held to be disqualified in terms of Article 62(1)(f) of the Constitution.*

9. *In addition to the above, the Petitioner was asked in open Court qua the legitimacy of the degree allegedly possessed by him. He was asked simple questions about basic principles of Islam and Hadith, but he was unable to recall the curriculum of the course of study (Shahadat-ul Aalia). This leaves us in no manner of doubt that the Petitioner had indeed filed false declarations before different fora at different times. No sufficient answer was provided thereof."*

Similar observations were made by the Hon'ble Supreme Court of Pakistan regarding the candidature of the returned candidate on the basis of dual nationality in cases reported as "*Sher Baz Khan Gaadhi Vs. Muhammad Ramzan and others.*" **(2018 SCMR 1952)** and "*Suo Motu Case No.8 of 2018*" **(PLD 2019 SC 201)**.

8. In view of the above position of law and facts, respondent No.4 wrongfully mentioned his qualification as BBA and made a false declaration in this behalf he is entitled to be disqualified in terms of Article 62(1)(f) of the Constitution.

9. For the above reasons, the instant petition is **allowed** and respondent No.4 is declared to be disqualified from holding the position of Member Provincial Assembly, Punjab (PP-241, Bhawalnagar-V). The Election Commission of Pakistan is directed to de-notify respondent No.4 as a successful candidate and do the needful forthwith in accordance with law.

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 31st day of January, 2020.

JUDGE

M. Zaheer Janjua