

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

DIARY NO.10047 OF 2014

RIAZ HANIF RAHI, ADVOCATE
VERSUS
FEDERATION OF PAKISTAN, ETC.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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25-08-2014 Mr Riaz Hanif Rahi Advocate in person.

Briefly stated, the petition was fixed before this Court as an Objection Case. The Office raised an objection that the petitioner had no *locus standi* to file the instant petition. Overruling the objection, the petition was taken up for hearing.

2. As the objection is removed, therefore, it is deemed that this petition is numbered and the office is directed to assign the same.

Main Petition

The petitioner is a Member of the Bar and argued the petition at length. Through the petition, he has challenged the vires of the Representation of Peoples Act, 1976 (hereinafter referred to as the "Act"). The petitioner has further sought a direction to the respondents to enact a new law "after

thorough deliberation, research and taking into consideration the work carried out by the petitioner. It is also prayed that guidelines may be laid down for fresh legislation”.

2. The learned counsel read out the grounds taken in his petition, from 'A to Z'. He particularly stressed three grounds i.e.

- i) that there is no definition of a voter;
- ii) that it is a class based society, and as such the impugned legislation fails to cater to the needs of the under privileged and has become obsolete; and
- iii) Sections 14 & 15 of the impugned legislation have failed to ensure proper scrutiny of the candidates.

3. After hearing the learned counsel at length, the findings of this Court are as follows:

4. The contention of the petitioner that the law does not provide a definition of a voter is misconceived. The eligibility of a 'voter' is provided in Article 51(2) of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "Constitution", as follows:

Article 51(2):- *A person shall be entitled to vote if—*

(a) he is a citizen of Pakistan;

(b) he is not less than eighteen years of age;

(c) his name appears on the electoral roll; and

(d) he is not declared by a competent court to be of unsound mind.

5. The other grounds taken by the petitioner as articulated in the petition and during his arguments are 'purely' political in nature and at best can be termed as the political opinions of the petitioner. His main thrust is on an article published in the daily "Khabrain" in support of elections on the basis of "proportional representation". The petitioner, therefore, on the basis of his political opinions has challenged the vires of the Act and seeks a direction to the committee constituted by the Majlis-e-Shura (the Parliament) for electoral reforms.

6. It is settled law that purely political questions are not justiciable. As a rule, political questions, as far as possible, should not be decided by Courts, and ought to be left for consideration to the wisdom of the Parliament. This rule, however, is not absolute, and the Courts do not refuse to exercise its jurisdiction of judicial review, if the aggrieved person can

demonstrate that the question raised, though having a political content or complexity, involves a legal or constitutional issue. This Court concurs with the view taken in the case of '*M/s Hudabiya Paper Mills Ltd. Vs. National Accountability Bureau*' (P.L.D. 2012 Lahore 515) that the doctrine of Political Question postulates two questions for determining whether the Court would exercise its jurisdiction, i.e. (a) whether there is a legal standard or criteria to adjudge the issue, and (b) whether it is desirable to decide the dispute in Court or should it be resolved by other organs of the State.

7. The fact that a question is political in nature will not deter a Court to exercise its powers of review, provided the same "involves interpretation of the Constitution, or if the validity of such question is to be determined on the touchstone of the Constitution. Actions taken, acts done or policies framed in violation of the provisions of the Constitution or not permissible by law, regardless of the political context of the question, will not bar the jurisdiction of the Court. However, purely political questions are outside the ambit of judicial review and, therefore, not justiciable.

Reliance is also placed on "*Watan Party and others Vs. Federation of Pakistan and others*" (P.L.D. 2012 S.C. 292), "*Mehmood Khan Achakzai and others Vs. Federation of Pakistan and others*" (P.L.D. 1997 S.C. 426), "*Khawaja Muhammad Sharif Vs. Federation of Pakistan through Secretary Cabinet Division Government of Pakistan and 18 others*" (P.L.D. 1988 S.C. 725), "*S. A. Rafi and another Vs. Government of West Pakistan through Secretary to the Government of West Pakistan, Lahore and 4 others*" (P.L.D. 1973 Lahore 539), and "*United States Vs. Munoz-Flores*" (United States Supreme Court) reported as 1997 S.C.M.R. 119.

8. It may also be emphasised that while examining the vires of the legislation enacted through the legislative process provided under the Constitution, the powers of the Courts are limited to examining whether the primary legislation is repugnant, inconsistent or in conflict with the provisions of the Constitution, whether the legislature had the legislative competence as envisaged in the Constitution, and whether it violates or abridges the fundamental rights guaranteed under the Constitution. The petitioner has not been able

to raise any ground which may persuade this Court to exercise its jurisdiction, so as to go into the question of the vires of the Act.

9. The narrative of the petitioner raises questions which essentially relates to the wisdom of the Parliament in enacting the Act. It is settled law that the wisdom of the Parliament in enacting a law is outside the scope of judicial review. As long as the legislature has the competence to legislate, the grounds or wisdom of legislation remains its exclusive prerogative. "There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to the problems manifested by experience, and that its discriminations are based upon adequate grounds". '*Middleton Vs. Texas Power & High Co.*' (249 U.S. 152).

10. It has been aptly observed in '*Radice Vs. People of the State of New York*' (264 US 292) that "Where the Constitutional validity of a Statute depends upon the existence of facts, Courts must be cautious about reaching a conclusion respecting them contrary to that reached by the legislature; and if the question of what the facts establish be a fairly debatable

one, it is not permissible for a Judge to set up his opinion in respect of it against the opinion of the lawmaker”.

11. The august Supreme Court of Pakistan observed in '*The State Vs. Zia-ur-Rehman*' (P.L.D. 1973 S.C. 49) as follows:

"On the other hand it is equally important to remember that it is not the function of the judiciary to legislate or to question the wisdom of the Legislature in making a particular law if it has made it competently without transgressing the limitations of the Constitution. Again if a law has been competently and validly made the judiciary cannot refuse to enforce it even if the result of it be to nullify its own decisions. The legislature has also every right to change, amend or clarify the law if the judiciary has found that the language used by the Legislature conveys an intent different from that which was sought to be conveyed by it. The Legislature which establishes a particular Court may also, if it so desires, abolish it."

12. In the case of Sh. Liaqat Hussain Vs. Federation of Pakistan (P.L.D. 1999 S.C. 504), the august Supreme Court has held that:

"No malafide can be attributed to the Parliament as it is a sovereign body to legislate on any subject, for which it has

been empowered to legislate. The Court cannot strike down a statute on the ground of malafide, but the same can be struck down on the ground that it is violative of the Constitution"

13. The wisdom of the Parliament is, therefore, not amenable to the jurisdiction of this Court, let alone being substituted. Reliance is also placed on the case of "*Pir Sabir Shah Vs. Shad Muhammad Khan, Member Provincial Assembly, N.W.F.P and another*" (P.L.D. 1995 S.C. 66) and "*Mr. A. K. Fazalul Qader Chaudhry Vs. Syed Shah Nawaz and others*" (P.L.D. 1966 S.C. 105).

14. Lastly, I advert to the question whether a direction can be made to the Parliament or the Sub-Committee constituted for the electoral reforms. The Constitution is the paramount law and is based on the concept of separation of powers. In the words of Honourable Hamood-ur-Rehman, Chief Justice, in the case of "*The State Vs. Zia-ur-Rehman & others*" (P.L.D. 1973 S.C. 49), that while exercising the power of judicial review, the judiciary claims no supremacy over the organs. Even where it declares a legislative measure unconstitutional and void, it does not do so

because the judicial power is superior in degree or dignity of the legislative power; but because the constitution has vested it with the power to declare what the law is in the cases which come before it. It merely enforces the Constitution where it comes in conflict with it. It is the Court's duty to see that the Constitution prevails.

15. It has been unequivocally held by the august Supreme Court in the case of '*Al-Jehad Trust through Habibul Wahab Al-Khairi, Advocate and 9 others Vs. Federation of Pakistan through Secretary Ministry of Kashmir Affairs, Islamabad and 3 others*' (1999 S.C.M.R. 1379) that no direction can be issued to the legislature to legislate a particular law. However, a direction can be issued to the executive authority to initiate "administrative and legislative measures" for complying with the mandate of the Constitution. Reliance is placed on '*Asif Ali Zardari Vs. Federation of Pakistan and others*' (P.L.D. 1999 Karachi 54).

16. Moreover, the proceedings of the Sub-Committee constituted by the Parliament fall within its "internal proceedings" and, therefore,

the same being outside the jurisdiction of this Court in terms of Article 69 of the Constitution. It is, therefore, a settled law and the mandate of the Constitution that neither can a direction be given to the legislature nor can it be dictated to regarding the manner in which it can legislate.

17. The petitioner being a competent member of the Bar ought to have exercised due care. It is the duty of both the Bench and the Bar to protect the process of the Court and endeavour that the public time of the Court is not wasted in frivolous litigation. Such litigation clogs the judicial system causing delays for the actual stakeholders i.e. the bonafide litigants and the general public. Delays caused by frivolous litigation subverts the course of justice for the bonafide litigants as, indeed, justice delayed is justice denied. It may also be noted that it erodes public confidence and trust in the judicial system.

18. In the light of the above, the petition is without any merit and not maintainable. The same is, therefore, dismissed with costs. The petitioner shall deposit Rs.10,000/- as costs.

Riaz Hanif Rahi, Advocate Vs.
Federation of Pakistan, etc.

The costs shall be deposited with the Deputy Registrar (Accounts/DDO) of this Court within four (04) weeks, who shall handover the amount to the President District Bar, Islamabad for depositing the same in the fund established by the Bar for welfare of the young lawyers.

(ATHAR MINALLAH)
JUDGE

Announced in open Court on 5th September, 2014.

JUDGE

Approved for reporting.

JUDGE