

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.

Mr. Justice Javed Iqbal, Judge.

Civil Appeal No. 67/2017

in

CPLA No. 126/2016.

Jamil Ahmed son Shaheen Khan R/O Kashrote Gilgit

Petitioner.

Versus

Chief Election Commissioner GB & 20 others

Respondents.

PRESENT:-

1. Mr. Amjad Hussain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Munir Ahmed Advocate for Election Commissioner Gilgit-Baltistan.
3. Mr. Manzoor Ahmed Advocate alongwith Mr. Basharat Ali Advocate on behalf of the respondent No. 04.

DATE OF HEARING: - 29.09.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Petition for leave to appeal has been directed against the impugned judgment dated 07.10.2016 passed by the learned Election Tribunal-A Gilgit-Baltistan whereby the Election Petition No. 05/2015 filed by the petitioner was dismissed, hence, this petition for leave to appeal. This court vide order dated 22.11.2016 issued notices to the respondents and the case is heard today.

2. Briefly, the facts of the case are that the petitioner filed an Election Petition under Section 52 of The Representation of the People Act, 1976 by challenging the election of the respondent No. 04 as member of the Gilgit-Baltistan Legislative Assembly GBLA-2. During the general elections held on 08.06.2015, the respondent No. 04 Hafiz Hafeez-ur-Rehman was declared Returning

Candidate on having been obtained 10,739 votes, whereas the petitioner obtained 7,176 votes. The petitioner in his petition had blamed the degree and experience certificate, furnished by the respondent No. 04 before the then Retuning Officer to qualify on Technocrat Seat of GBLA in election held in 2009 within the contemplation of Articles 62 of The constitution of Islamic Republic of Pakistan read with section 99 of the Act alleging that he is not sagacious, righteous, non profligate, honest and Ameen. The petitioner had also leveled various other allegations of corruption & corrupt practices committed in election 2015. The learned Election Tribunal framed 17 issues upon resolving the said issues on the basis of evidence come on record & upon hearing the learned counsel for the respective parties, dismissed the Election Petition No. 05/2015 filed by the petitioner vide Impugned Judgment dated 07.10.2016.

3. The learned counsel for the petitioner contended that the respondent No. 04 Hafiz Hafeez-ur-Rehman was not “Sadiq & Ameen” in terms of The Representation of Peoples Act, 1976. He had submitted a fake degree equivalent to master Degree issued by the Wafaq-ul-Madaris and bogus experience letter at the time when he had contested the election in 2009 on a technocrat seat for Gilgit-Baltistan legislative Assembly (GBLA) but he could not succeed. He also contested the general election of the Gilgit-Baltistan legislative Assembly (GBLA-2) held in 2015 but he was declared successful. Per learned counsel, the respondent No. 04,

however, was notified as member of Gilgit-Baltistan legislative Assembly (GBLA-2) even after rigging the election by casting bogus votes. He submit that an application dated 28.08.2015 was filed by the petitioner before the learned Election Commission for providing the copies of the said documents i.e. fake Master Degree issued by the Wafaq-ul-Madaris and Experience Certificate thereto of the respondent-04 Hafiz Hafeez-ur-Rehman filed by him at the time of contesting election for the seat of technocrat in the year 2009. The learned Election Commission failed to provide copy of the said documents which shows that the Election Commission Gilgit-Baltistan connived with the respondent No. 04 and misplaced the said degree and experience certificate. He also alleged that the respondent No. 04 Hafiz Hafeez-ur-Rehman had rigged the election 2015 by using bogus ballots papers in his favour on massive level. The respondent No. 04 Hafiz Hafeez-ur-Rehman by adopting corruption and corrupt practices entered into an agreement with Aurangzeb Khan Advocate, Perveen Ghazi, Shahida Ikhlaq & Haji Abid Ali Baig in order to restrain them to contest election against him with the promise that when he will win the election, they will be accommodated on Technocrat and reserve women seats respectively. Consequently, all the aforementioned persons did not contest the election. Later on, Mr. Aurangzeb Khan Advocate was allotted PML-N ticket on technocrat seat whereas he was never a member of PML-N. Per learned counsel, inspite of various complaints of rigging and casting bogus votes by the respondent No.

04 Hafiz Hafeez-ur-Rehman, the Election Commission Gilgit-Baltistan has not taken any notice of it. Consequently, the respondent No. 04 Hafiz Hafeez-ur-Rehman was declared successful candidate for Gilgit-Baltistan Legislative Assembly-II. The learned counsel contended that the petitioner proved the above allegations supported with documentary evidence but the learned Election Tribunal failed to appreciate the same and dismissed the election appeal filed by the petitioner which is not sustainable.

4. On the other hand, the learned counsels appearing on behalf of the respondents No. 04 Hafiz Hafeez-ur-Rehman and the Election Commission Gilgit-Baltistan supported the impugned judgment. They contended that the allegations of the petitioner against the respondent No. 04 Hafiz Hafeez-ur-Rehman and the Election Commission Gilgit-Baltistan were based on hearsay which is not admissible in law. They also contended that the petitioner failed to produce any evidence in support of his contentions. Per learned counsels, the allegations raised at the time of filing election petition were never raised at the time of accepting nomination papers which was rightly not been considered by the learned Election Tribunal. Prima facie, the petitioner failed to produce any material evidence on record proving any rigging in election or casting bogus votes as alleged. They pray that the impugned Judgment may graciously be maintained.

5. We have heard the learned counsel for the respective parties, perused the material on record and gone through the

impugned judgment. This court put the following questions to the learned counsel for the petitioner to answer it on the basis of record:-

- i. as to whether at the time, when the respondent No. 04 Hafiz Hafeez-ur-Rehman contested the election in 2009 on a technocrat seat, his degree and experience certificate was ever challenged or otherwise?
- ii. as to whether respondent No. 04 Hafiz Hafeez-ur-Rehman when filed nomination papers to contest the election of 2015 for the seat of member GBLA-II, any objection was raised about his alleged bogus degree filed in the election of 2009 or otherwise?
- iii. as to whether any aforementioned objections were ever raised before the learned Election Commission Gilgit-Baltistan before holding election 2015 or otherwise?
- iv. which oral or documentary evidence on record supports the petitioner's claim?

6. In reply, the learned counsel for the petitioner frankly conceded that the said degree produced by the respondent No. 04 Hafiz Hafeez-ur-Rehman was never challenged at the time of filing nomination papers either in the election held in 2009 or in the general election held in 2015. He also could not substantiate through any evidence on record regarding the allegations of rigging in the election by casting bogus votes in collusion and connivance with the Polling Officer, Assistant Returning Officer, District

Returning Officer and/or the Election Commission Gilgit-Baltistan. On the contrary, the petitioner's witness -01 has frankly stated as under:-

7. The same statement/admission was also stated by Muhammad Aslam Advocate PW-03 in his cross-examination which is also reproduced as below:-

8. The aforesaid PWs have frankly admitted that neither in the election of 2009 nor in the election of 2015, they have raised any objections regarding the fake degree and bogus certificate of the respondent No. 04 Hafiz Hafeez-ur-Rehman at the time of submission his nomination paper for contesting election. No complaint was ever filed by the petitioner to the Polling officers, Assistant Returning Officer and/or District Returning Officer during the process of polling regarding casting of bogus votes. No evidence was ever produced or any material available on record to show that any bogus vote(s) was managed to cast by the respondent No. 04 Hafiz Hafeez-ur-Rehman. The learned counsel for the petitioner read over the whole impugned judgment and repeatedly gone through the issues framed and resolved by the learned Election Tribunal but he could not point out any illegality or infirmity in the said impugned judgment. Admittedly, no application was filed by

the petitioner on the question of rigging the election or casting of bogus votes before the learned Returning Officer, District Returning Officer or before the learned Chief Election Commissioner Gilgit-Baltistan at the time when the election was in progress which can not be raised at this stage. The allegations of the petitioner against the respondent No. 04 Hafiz Hafeez-ur-Rehman are baseless, hearsay, ill-founded and general in nature. The petitioner has miserably failed to prove his case/claim as alleged. The allegations raised at the time of filing Election Appeal without supporting evidence or material on record, was rightly discarded by the learned Election Tribunal and dismissed the appeal on its own merits. In our considered view, the impugned judgment dated 07.10.2016 passed by the learned Election Tribunal is well reasoned and well founded, hence, no interference into it is warranted by this court.

9. In view of the above discussions, we convert this petition into an appeal and the same is dismissed. Consequently, the impugned judgment dated 07.10.2016 in EC. No. E-9/2015 & ETP No: EP (Tribunal) 5/2015 passed by the learned Election Tribunal-A Gilgit-Baltistan are affirmed.

10. The appeal is dismissed in above terms.

Chief Judge.

Judge.