

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Mushir Alam  
Mr. Justice Sardar Tariq Masood  
Mr. Justice Amin-ud-Din Khan

*AFR*

**Civil Petition No. 1171 OF 2021**

(On appeal against the judgment dated 24.02.2021 passed by Peshawar High Court, Peshawar in W.P. No. 942-P of 2021)

Zubair Ali

Petitioner

**Versus**

Election Commission of Pakistan and others

Respondents

For the petitioner:

Syed Iftikhar Hussain Gillani, Sr. ASC  
Mr. Mehmood A. Sheikh, Sr. ASC

Respondents:

Not represented

Date of Hearing:

25.05.2021

**ORDER**

**MUSHIR ALAM, J.** Petitioner's nomination paper on *Technocrat* seat of *Senate*, was rejected on 18.02.2021 by the Returning Officer on the ground, *inter alia*, that "the nomination papers of candidate scrutinized, *inter-alia* at the yardstick of Section 2 (xxxix) of Election Act-2017. Perusal of nomination paper of the candidate reveals that candidate has got a degree of Master of Arts in International Relations in the year 2010 from the University of Peshawar in 2<sup>nd</sup> Division with self-submitted professional experience from 1997 to till date, as shown in his nomination papers for the seat of *Technocrat*, however, in this respect, it is noteworthy to mention here that the candidate has got his Secondary School Certificate in 1999 from Peshawar Public School and candidate is claiming his professional experience when he was under Matric and of fourteen years age." Order was maintained by the Election Tribunal on 22.02.2002 and by a Bench of High Court through impugned judgement dated 24.02.2021 whereby rejection of the nomination of the petitioner on *Technocrat* seat for the *Senate*, by the Returning Officer was maintained throughout.

2. Learned Bench of the High Court considered that the experience of the petitioner as required within the contemplation of section 2 (xxxix) (a) & (b) of the Election Act, 2017 *inter-alia*, requires academic qualification coupled with experience that has received National or

International acclamation in terms of Section 2 (xxxix) clause (a) a person holds a degree requiring conclusion of at least sixteen years education recognized by the Higher Education Commission and further in terms of clause (b) at least twenty years of experience including a record of achievement at the national or international level". On examining the record of his experience prior to completion of relevant education, learned Bench in paragraph No.8 concluded that "At the very outset it is clarified that the experience so referred in the definition is to be on high pedestal and not merely running a shop or some small hotel/restaurant at a local area."

3. It was contended by the learned counsel for the petitioner that 20 years' experience of the Petitioner that precedes 16 years educational qualification leading to Master Degree in 2020, was not considered qualifying experience by the Returning officer, as sustained throughout. It was urged it is not the spirit of Section 2 (xxxix) of Election Act, 2017 that 20 years' experience required for *Technocrat* invariably has to be post prescribed academic qualification. According to the learned counsel petitioner has more than twenty years' experience in family business stretching sixteen years pre-degree qualification till after postgraduate qualification, according to learned Counsel petitioner is engaged in family business since 1997-98, which cannot be discounted.

4. The learned Bench of the High Court in consideration of fact that petitioner earned his degree of Masters of Arts in International Relations (MA I.R) in the year 2010 from Peshawar University. In Nomination Form he claimed professional experience in Column No. 10 (A) from year 2000 as Principal Officer/Partner. In Column No. 10 (B) experience is shown from 2002 till date up to 2020 and in column 10 (C) originally it was hand written as from 2006, which was over written to read as 1997 to 2016 (page 61).

3. Senate elections takes place in accordance with Article 59 of the Constitution. Each of the four Provincial Assemblies are represented by 23 senators regardless of population (i.e fourteen (14) General Seats, four (4) Technocrat/Ulema, four (4) women and one (1) Minority), while Islamabad Capital Territory is represented by four senators (two on general seat, one woman and one Technocrat seats), all of whom serve six-year terms. Definition of *Technocrat* in Article 59 of the Constitution is not provided. Definition of Technocrat is supplied by different election

laws<sup>1</sup> promulgated from time to time and have come under judicial scrutiny of superior courts.

4. *Technocrat* per section 2 (xxxix) Election Act, 2017 is defined to “means a person (a) holds a degree requiring conclusion of at least sixteen years education recognized by Higher Education Commission and (b) has at least twenty years of experience including a record achievement at national or international level”. It appears that the definition of *Technocrat* as given in the Election Act, 2017 is adopted and borrowed from the definition contained in *second explanation*<sup>2</sup> to Article 213 Of the Constitution, 1973 for a Chief Election Commissioner, who now may be appointed from amongst the *Technocrat*. The definition of *Technocrat*, as noted above, find mention in various election laws<sup>3</sup> though paraphrased differently but substantially prescribed similar eligibility criteria.

5. *Technocrat* within the contemplation of Article 59 of the Constitution, 1973 read with section 2 (xxxix) of the Election Act, 2017 is a person who *a)* possess higher educational qualification of not less than sixteen years culminating into a degree as recognized by the Higher Education Commission and *b)* possess not less than; or at the minimum 20 years of practical experience and *c)* has a record of achievement either at national or international level. When we speak of a *Technocrat*, it means a person, who has studied and had undergone at least 16 years of education in any specialized faculty and discipline, therefore, applied his educational qualification in the specialized field of vocations he adopted/gained hands on experience, acquired expertise and rose to a higher or senior management or commanding position to be able to make and take policy decision in the field any vocation or discipline he is pursuing, may it be any Engineering, Computer or Information Technology, Medical, Medicine or Social Sciences to name a few and in recognition of his qualification coupled with hands on experience he has a proven track “record achievement at national or

<sup>1</sup> Professional as defined by Explanation to article 5(i) of P.O 5 of 1977, *Technocrat* per Article 2(d) Conduct of General Election Order (7) of 2002

<sup>2</sup> *Sub-Article (2)* of Article 59 of the Constitution, 1973 and *Explanations* thereto were Substituted by section 4 of Constitution (Twenty-second Amendment) Act, 2016 (XXV of 2016), received assent from the President and came into force on 8 June 2016, Gazetted on 10 June 2016.

<sup>3</sup> Article 2 (d) of the conduct of General Election Order (7) of 2002. Section 2(XXXIX) Election Act, 2017



*international level*" to his credit in any organization, business or field to qualify and recognized as a *Technocrat*<sup>4</sup>.

6. Examining the case of the Petitioner in the light of above discussion, his 16 years qualification culminated into HEC recognized Master Degree in International Relation [M.A (I.R)] in 2010. In the nomination paper available at page 60 in column 10 (A) to (C) he has declared professional experience being Principal Officer/Partner in Ali Enterprises Deluxe Hotel, Qissa Khawani Bazar, Peshawar, which is merely a hotel/restaurant. No record is placed to show such Hotel/Restaurant has any class, merely running a family hotel/restaurant as held in impugned judgment that merely running a shop or small hotel/restaurant at a '*local area*' does not qualify the petitioner as a '*technocrat*'. The qualification of master degree is in International Relations, firstly such qualification is not in the field of his family vocation of hotel/restaurant. His Master (I.R.) qualification in 2010 has not added any value or raised the standard of family Hotel/Restaurant. He was born on 18-5-1983 and in February 2021 when he filed nomination, he was 38 years old. He completed sixteen years degree qualification (MA I.R) in 2010 at the age of 27 years. Merely attending family vocation during his studies is not sufficient unless shown that he possesses not less than; or at the minimum 20 years of practical experience, that thereafter earned him senior management policy making position. His participation in the affairs of Chambers of Commerce and Industries as per certificate dated 12.2.2021 (page 77) earliest office he held is shown to be from 2012 as member of SRRAC Chambers of Commerce and as member Executive Committee FPCCI, which is not a position of excellence, even otherwise his standing in the FPCCI as a member is hardly nine (9) years, which does not fulfil the requirement of 20 years of experience that earned acclamation as a businessman of national and or international level.

7. Contention of the learned counsel that the impugned judgment is bad in law as it has not considered that pre degree qualification in hotel business. Such contention has already been answered in the cases of

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<sup>4</sup> Ihsanul Haq Pirzada v Wasim Sajjad PLD 1986 SC 200, Zaffar Jhagra v. Khalur Rehman 2000 SCMR 250 followed in Islam Hussain v Election Commission of Pakistan 2018 CLC 820 (DB) Zafar Ali Shah v Hanif Khan 1992 CLC 665, Agha Shahzeb Durrani v ECP and 3 others 2021 CLC (DB), Muhammad Abdul Qadeer v Provincial Election Commissioner Balochistan and 2 others PLD 2018 Balochistan 59 (DB)

*Islam Hussain*<sup>5</sup> (supra), wherein after considering large number of cases it was held that “*experience so mentioned in the definition of technocrat is to be counted only after acquiring the prescribed qualification.*” And the petitioner, from own showing, lacks such qualifying length of experience.

8. Learned Counsel attempted to argue that the qualifying age for person to be elected as a member of National or Provincial Assembly in terms of Article 62 (1) (b) of the Constitution, 1973 is 25 years, and no educational qualification or experience is required. It was therefore, argued if at all the qualification coupled with experience as required under Section 2 (xxxix) of the Election Act, 2017 which if taken in account, will be violative of Article 62 (1) (b) *ibid*; which amounts to disenfranchising the Petitioner. The contentions is flawed on more than one count. *vires* of Section 2 (xxxix) of the election Act, was not challenged and secondly, it may be observed that compositions of the members of the Senate on general seats is specified separately, who are required to possess eligibility and ineligibility criteria as provided for the members of National and or Provincial assembly as provided for in Article 62 and 63 of the Constitution, 1973. By specifically providing for election on reserved seats for *Technocrat*, as noted above, in various election laws not only qualification but so also substantial experience coupled with recognition at National or international level, demonstrate that the legislature required that a person of higher academic qualification, having achieved position of eminence at senior managerial and dominating position in his specialized vocation that has earned him national and or international recognition. A person to earn and qualify to be elected as a *Technocrat*, therefore must be on higher pedestal and must possess higher eligibility and qualifying yard stick and criteria, higher than member elected on general seat of National and or Provincial Assembly (both in terms of education qualification and having acquired expertise in in specialized vocation). To achieve such position of eminence, invariably a person with higher degree qualification of 16 years together with 20 years of experience that has earned him a position of eminence to be worthy of national and or international recognition is not possible to acquire at the age of 25 years. Article 62 (1)(b) only sets down minimum qualifying age and not

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<sup>5</sup> 2018 CLC 820

the maximum, arguments raised on such count does not merit any consideration.

9. No case for interference is made out. Consequently, this petition is dismissed and leave declined.

Sd/- J  
Sd/- J  
Sd/- J

*Bench-II*  
Islamabad  
25.05.2021  
(Atif)

"Not approved for reporting"