

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

**Present:**

Mr. Justice Anwar Zaheer Jamali  
Mr. Justice Justice Dost Muhammad Khan  
Mr. Justice Umar Ata Bandial

**CIVIL APPEAL NO. 461 OF 2014**

(On appeal from the judgment dated 14.03.2014 of the Election Tribunal, Lahore passed in Election Petition No. 130 of 2013).

Muhammad Ijaz Ahmad Chaudhry ... ... Appellant.

Versus

Mumtaz Ahmad Tarar & others ... ... Respondents.

For the appellant : Khawaja Haris Ahmed, Sr. ASC

For respondent No.1 : Mr. Shahzad Shaukat, ASC

Respondents No.2-16 : *Ex-parte.*

Date of hearing : 14.04.2015.

**JUDGMENT**

**UMAR ATA BANDIAL, J. -** By this judgment, we hand down the detailed reasons of our short order of even date, whereby we have dismissed the above titled appeal, which reads as under:-

"We have heard the arguments of both the learned ASCs at length and perused the case record. For the reasons to be recorded separately, this appeal is dismissed. Needless to mention here that interim order passed earlier stands vacated."

This appeal is filed against the judgment dated 14.03.2014 ("impugned judgment") rendered by the learned Election Tribunal, Lahore. It declares that the appellant lacks the qualification prescribed by Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") to be elected as member of the

*h2*

National Assembly. The appellant was elected as member of the National Assembly from constituency NA-108, Mandi Bahauddin in General Elections, 2013. Article 62(1)(f) of the Constitution provides as follows:

"62.(1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless –  
....

(f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a Court of law; and"

The impugned judgment has held that the appellant made a false declaration in his nomination paper about his BSC graduate qualification. Accordingly, he lacked the requisite qualification of being sagacious, righteous, non-profligate, honest and ameen prescribed in Article 62(1)(f) of the Constitution. It is also held by the Election Tribunal that in the statement of assets and liabilities made in his nomination paper, the appellant failed to declare Plot No.181, measuring 7 marlas allotted to him in Chak No.16, Mandi Bahauddin under the Jinnah Abadi Scheme, vide mutation No.929, dated 15.09.1989 (Exb.P-9). The concealment of the said plot from his declaration of assets again deprived the appellant of the qualification required by Article 62(1)(f) of the Constitution.

2. The foregoing findings are challenged by the appellant, primarily on the ground that the procedure adopted by the Election Tribunal to belatedly admit documents on record and to read them as evidence against the appellant is wrong. It is also urged that the Election Tribunal lacked authority to sit in judgment over the actions of Higher Education Commission, Pakistan ("HECP") and also the land revenue authorities of the Government of Punjab in respect of



matters falling within their respective jurisdictions conferred by the law. It is thus maintained that had the Election Tribunal respected the certificate of equivalence granted by the HECP vide letter dated 01.07.2003 (Exb.RW-13/4) to appellant's BSC degree given by Quezon College of Southern Philippines ("Quezon College"), the question of false declaration of qualification by the appellant would not have arisen. Likewise, had the Election Tribunal recognized the lawful order dated 22.07.2013 passed by the Additional District Collector, Mandi Bahauddin, allowing the appellant's application dated 10.04.2013 for correction of revenue record, there would be no allegation of concealment of property by the appellant. That the Election Tribunal departed from the procedural requirements envisaged by the Code of Civil Procedure, 1908 ("CPC") by admitting documents belatedly produced by the respondent-election petitioner for proving fake and bogus status of the foreign BSC degree qualification claimed by the appellant. The appellant was taken by surprise and as a result suffered prejudice by the admission in evidence of adverse foreign documents regarding his claimed educational qualification. If these documents were excluded from consideration, the foreign BSC degree of the appellant enjoys recognition and equivalence according to certification of the competent authority, the HECP.

3. The contest between the learned counsel for the parties before us has centered on the Election Tribunal's finding that the appellant's BSC degree is fake. This finding is recorded mainly on
- 

the basis of the documentary evidence tendered by the parties. On the said finding, the oral testimony given by the appellant (RW-13) and by the Director General Accreditation & Attestation, HECP (RW-1) are useful for exemplifying the meaning and effect of the documentary evidence on record regarding the ground on which the appellant has been held to lack the qualification prescribed in Article 62(1)(f) of the Constitution. The objection to the admissibility of documents and to their probative value can be assessed meaningfully if their contents are surveyed first.

4. The election petition filed by the respondent No.1, a losing candidate in the election, alleges that the appellant's BSC degree from Quezon College is fake as stated by the Registrar of that College in his letter dated 26.07.2002; and as confirmed by the Commission of Higher Education of the Philippines ("CHE Philippines") in its letter dated 25.11.2002 addressed to the Ambassador of Philippines to Pakistan. The said documents are stated in the election petition to be attached as Annexure 'S', 'T' & 'U' thereto. The case of the respondent No.1 is that by the terms of the appellant's diploma, his BSC degree is issued pursuant to a special order dated 24.07.2002 issued by the Quezon College. According to the letter dated 25.11.2002 addressed by the CHE Philippines to the Philippines Ambassador to Pakistan, the aforementioned special order dated 24.07.2002 was cancelled on 26.07.2002 by the same College. The said correspondence became a bone of contention in an earlier dispute between the appellant and



his electoral opponent in a previous election. In the 2013 General Elections, the respondent No.1 a new contestant raised the same challenge. The opposing parties have thereafter strived for endorsement of their respective positions by the said two Philippines authorities, namely the Quezon College and the CHE Philippines. The appellant obtained a confirmation dated 22.04.2003 (Exb.RW-1/E) from Quezon College that he had successfully completed the BSC course at the College. On the basis of the said Exb.RW-1/E, the HECP certified on 01.07.2003 (Exb.RW-1/F) that the appellant's BSC degree was equivalent to the corresponding graduation degree in Pakistan. Later, during the course of an enquiry regarding genuineness of the appellant's degree, Quezon College reiterated on 25.08.2010 its said correspondence dated 22.04.2003 (Exb.RW-1/E) with the HECP. In the background of the CHE Philippines letter dated 25.11.2002, there were conflicting statements about the status of special order dated 24.07.2002, that authorized a graduation degree for the appellant. As a result, the dispute between the parties still turns on whether or not the said sanction for the appellant's claimed degree is valid. The respondent No.1 produced in evidence a certificate dated 16.09.2013 (Exb.P-5) by the CHE Philippines to the effect that the special order dated 24.07.2002 issued by the Quezon College in favour of the appellant was cancelled on 26.07.2002. The impugned judgment notes that the said document (Exb.P-5) is duly certified in accordance with the



provision of Article 89(5) of the Qanoon-e-Shahadat Order, 1984 ("QSO").

5. Another letter dated 11.09.2013 (Exb.P-6) issued by the Quezon College addressed to the respondent No.1 states that the College has no record of the appellant and also confirms that the special order dated 24.07.2002 was duly cancelled. This letter also bears certification in terms of Article 89(5) of the QSO. Yet another letter dated 29.10.2013 (Exb.P-8) by the Quezon College addressed to the respondent No.1, restates the contents of letter (Exb.P-6) mentioned above. A copy of this letter was also sent to the HECP and it stands exhibited again in the statement of RW-1 as Exb.RW-1/M. The said documents establish that the graduate diploma of the appellant issued by the Quezon College stood revoked upon the cancellation of special order dated 24.07.2002 with effect from 26.07.2002.

6. The above mentioned documents/correspondence were produced on record on 06.11.2013 during examination-in-chief of the respondent No.1. These documents were objected by the appellant. Accordingly, the Election Tribunal exhibited the same subject to the objection against their admissibility. The appellant also sought and was granted time on 06.11.2013 to prepare his cross-examination on the respondent No.1 (PW-1), *inter alia*, about the said documents. On 22.11.2013, the appellant's counsel cross-examined the respondent No.1 including in relation to the aforementioned exhibited documents issued in the year 2013.

*(Signature)*

7. The Director General, Accreditation & Attestation, HECP (RW-1) is the first witness produced by the appellant on 10.12.2013. During the course of his cross-examination, RW-1 accepted that the institutional sanctity of HECP had been adversely affected by its inaction on the contradictory letters from the Quezon College and the CHE Philippines on the subject of the appellant's graduate qualification. He confirmed that the equivalence letter dated 01.07.2003 (Exb.RW-13/4) also Exb.RW-13/F issued by the HECP to the appellant about the graduate status of his BSC degree is founded merely upon the bald statement dated 22.04.2003 (Exb.RW-1/E) by the Quezon College that the appellant was its student and had completed the BSC Course for major in Business Administration. Also that the HECP did not undertake any assessment of the scope, quality or level of education imparted at Quezon College or about the seriousness of study undertaken thereby by the appellant. He informed that the HECP had not notified its own list of foreign accredited colleges and universities. Instead reliance was placed upon such a list prepared by the UNICCO, wherein Quezon College is duly mentioned. RW-1 acknowledged that the HECP failed to probe the contradiction between the appellant's claim before HECP that he was a part time student of the Quezon College whereas the said College in its correspondence described him as its regular student. Likewise for the differences in name and date of birth of the appellant on his matriculation certificate (Exb.RW-1/P) from his NIC, which went unnoticed. He



confirmed that official HECP policy announced on its website envisaged validation and equivalence of a foreign qualification after, *inter alia*, the "verification of the antecedents of the applicant (student), particulars of the degree and program of studies, course contents, period of study abroad and the accredited status of the institution." On the other hand, in the present case, the antecedents of the appellant were not verified and accreditation of Quezon College and equivalence of the appellant's BSC diploma were granted by the HECP on a bald statement made by the Quezon College in its letter dated 22.04.2003 (Exb.RW-1/E). The upshot of the statement by RW-1 is that HECP attestation of the appellant's foreign BSC degree was given mechanically without complying the procedural checks prescribed for the purpose by HECP policy.

8. The integrity and credibility of the appellant's BSC degree <sup>445</sup> / tarnished further by the Quezon College letter dated 28.11.2013 (Exb.RW-1/N), which it wrote to the appellant forwarding a copy thereof to the HECP. Here the Quezon College admitted the issuance of its earlier letters dated 29.10.2013 (Exb.P-8) and dated 11.09.2013 (Exb.P-6) but now unabashedly pronounced their contents to be "ineffective." After twice rejecting the appellant's BSC diploma in 2002 and again in 2013, the College took another summersault, purporting thereby to re-validate its correspondence dated 22.04.2003 (Exb.RW-1/E). The letter dated 28.11.2013 (Exb.RW-1/N) by the Quezon College is both uncertified under Article 89(5) of the QSO and is also an inadmissible photo-stat

*h3*

*h3*

copy. To overcome the said defects the appellant has obtained another letter dated 06.03.2014 issued by the CHE Philippines bearing certification in terms of Article 89(5) of the QSO, that reads as follows:

**"CERTIFICATION**

TO WHOM IT MAY CONCERN:

This is to certify that on the basis of the missing records submitted by Mr. Eulogio M.Quezon Jr., Registrar and Miss Loraine G. Quezon, Executive Director of the Quezon Colleges of Southern Philippines, Tacurong City, Sultan Kudarat, this office is on the process of the re-issuance of the Special Order of Mr. Mohammad Ajaz A. Chaudhry having satisfactorily completed all the requirements of the Four-Year Program in Commerce leading to the degree of BACHELOR OF SCIENCE IN COMMERCE (BSC) major in Business Administration as of March, 1999.

This certification is issued to Mr. Chaudhry to validate the authenticity of his scholastic records and for whatever legal purpose it may serve him best. Therefore, the certification being released by this office dated September 16, 2013 is hereby cancelled.

Done this 6<sup>th</sup> day of March, 2014 in the City of Koronadal, Philippines." (*emphasis supplied*).

Sd/-

MAXIMO C. ALJIBE, Ph.D., DPM, CESO III  
Regional Director"

The CHE Philippines has reinforced the above contents in its letter dated 31.03.2014 as follows:

1. That the Special Order No.(B) (R-XII)-50-340107 1948, series of 2002 dated July 24, 2002 was replaced to No.(50)(R-XII) No.340107-0149, series of 2014 dated March 07, 2014 to avoid uncertainty and inaccuracy in the future;
2. That he has satisfactorily completed all the requirements of the Four-Year Program in Commerce leading to the degree of BACHELOR OF SCIENCE IN COMMERCE (BSC) major in Business Administration; and
3. That he graduated from the Four-Year Program in Commerce leading to the degree of BACHELOR OF SCIENCE IN COMMERCE (BSC) major in Business Administration as of March 25, 1999.



This certification is issued to Mr. Chaudhary to validate the authenticity of his scholastic records and for whatever legal purpose it may serve him best.

Done this 31<sup>st</sup> day of March, 2014 in the City of Koronadal, Philippines." (*emphasis supplied*).

The two aforesaid documents dated 06.03.2014 and 31.03.2014 are produced on record for the first time in the appellant's CMA No. 1906 of 2014 filed in the present appeal. These are meant to demonstrate that on 07.03.2014 the Quezon College issued a new special order and awarded thereunder a new BSC degree to the appellant. More importantly the said documents acknowledge that the special order dated 24.07.2002 has been substituted. As such the cancellation of the said special order stands admitted. Accordingly, letters dated 11.09.2013 (Exb.P-6) and dated 29.10.2013 (Exb.P-8) by Quezon College are duly affirmed. Consequently, the alleged BSC degree awarded to the appellant pursuant to the special order dated 24.07.2002 became invalid when that special order was cancelled on 26.07.2002. By declaring that a new special order dated 07.03.2014 has been issued to authorize a BSC degree for the appellant, the said letters of CHE Philippines dated 06.03.2014 and 31.03.2014 have the effect of destroying the appellant's case. The BSC diploma claimed by the appellant under special order dated 24.07.2002 is admittedly non-existent. The correspondence by the foreign entities about the appellant's claimed graduate diploma exposes their mockery made of the noble calling of imparting education.



9. The false and unscrupulous enterprise of the appellant is exemplified further by his own deposition made before the Election Tribunal. Whilst deposing as RW-13 the appellant made the stunning revelation that he was granted admission to Quezon College not on the basis of his matriculation or secondary school certificate but on account of his passport. The contradiction between the appellant's claim that he was a part-time student at Quezon College and the latter's account that he was its regular student was explained by the appellant by inventing a new nomenclature: that he was a "part-time regular student." Whilst describing his course of study in the subject of 'Negotiable Instruments' the appellant explained the expression 'negotiable instrument' to mean '*a complete knowledge of the subject which is going to be negotiated by anyone.*' In his statement that was recorded on 19.02.2014, he owned up his pleadings in a previous proceeding (Exb.RW-13/1) to admit that he had also obtained a post-graduate MBA degree in Business Administration. However, he was unable to state whether this post-graduate degree was obtained from a Pakistani or a foreign University. However, shortly before the impugned judgment was delivered, the appellant filed an application dated 06.03.2014 before the Election Tribunal for admitting additional documentary evidence. The application attached the appellant's MBA diploma issued on 24.03.2004 given by the *Collegio de Caraga (CDCI) Inc.*, the Philippines. Strangely, the appellant produced his foreign MBA diploma on record although merely two weeks earlier he could not

*h2  
HMO*

recall if that college was located in Pakistan or abroad. It is not surprising that the Election Tribunal rejected the said additional documents as being fake and fabricated.

10. The statement recorded by the appellant as RW-13 discredits his claim of having studied a BSC course at any college. It is comical that rather than considering scholastic aptitude or achievement of an applicant for admission, a college should treat his passport as a basis for registering him as a student. Likewise for the appellant's imaginative but absurd meaning given to the expressions 'negotiable instrument.' As noted above, the appellant's status as a student is owned and disowned by the Quezon College in the blink of an eye. The contradictions in the College's stand prove it to be a spurious entity without any reliable record. The HECP attested the claimed BSC degree of the appellant without verifying the content of the courses that he studied or the creditworthiness of the claimed institution. The appellant's own knowledge about his course of study at Quezon College and at CDCI exposes his claimed degrees to be a sham and a hoax.

11. The evidence on record clearly demonstrates that the graduate qualification claimed by the appellant is devoid of any substance or merit. The degree claimed is at best an ornamental title rather than a testament of learning and formal instruction. As such the appellant made a dishonest and fraudulent statement in his nomination paper about his educational qualification. For doing so,



he fails the requirements of rectitude and integrity prescribed in Article 62(1)(f) of the Constitution.

12. Having said that, the appellant's main objection in this appeal may now be taken up for consideration. It pertains to the admissibility of the exhibited documents Exb.P-4 to Exb.P-8, tendered in evidence by the respondent No.1. In essence the said objection disputes the procedure adopted by the Election Tribunal prior to admitting the said documentary evidence. Section 62(2) of the Representation of the Peoples Act, 1976 ("ROPA") makes the QSO applicable to the trial of an election petition but subject to any contrary provisions in the ROPA. Section 64 of the ROPA vests an Election Tribunal with all the powers of a civil Court trying a suit under the Code of Civil Procedure, 1908 ("CPC"). Some of the salient principles of our law and jurisprudence that are relevant to the appellant's objection may be briefly recounted. Any document that is genuine and relevant to the determination of a factual controversy may be admitted on record at any stage of the proceedings, whether original or appellate, so that justice may be done. This rule is laid down in Bisvil Spinners (Pvt) Ltd. vs. Pakistan thr. Secretary Ministry of Finance, Islamabad, etc. (PLD 1992 SC 96). Another principle of general application is that every procedure that promotes the administration of justice is permissible unless it is expressly prohibited. Reference in this behalf can be made to H.M. Saya & Co. vs. Wazir Ali Industries Ltd. (PLD 1969 SC 65). In the present context a third legal principle germane to



procedural lapses in legal proceedings is that: "*a question of defect in procedure is always a question of prejudice.*" This observation made by *Kaikuus, J.* in Zafarullah Khan vs. Custodian of Evacuee Property (PLD 1964 SC 865 at 883) is expanded by *Cornelius, CJ* in the same case at page 882 to mean:

*"In an appeal from a Tribunal, such as a Custodian this Court does not substitute its own view of evidence for that formed by the Custodian, unless the conclusion of the Tribunal be vitiated by some grave departure from either the minimum requirements of procedure for the doing of justice between the parties or unless the conclusion upon a point of law or even on a point of fact is vitiated by a similar departure from accepted principles of the admission and evaluation of evidence, or of natural justice and the requirements of reason."*

13. As already noted there is no prohibition in the ROPA against reception of fresh evidence by an Election Tribunal at any stage of its proceedings. Consequently, the Election Tribunal can devise its own procedure to promote the cause of justice. Such a course of action that is adopted by an Election Tribunal to regulate its proceedings instead of following the technicalities of CPC, except some provisions specifically made applicable for limited purposes, has been approved in Umar Aslam vs. Sumera Malik (PLD 2007 SC 362). Now the documents Exb.P-4 and Exb.P-8 are admissible for being certified in terms of Article 89(5) of the QSO. Their contents are directly germane to the question of genuineness of the appellant's claimed foreign BSC qualification. According to

Zafarullah Khan's case (*supra*), the reception of such documents by the Election Tribunal in evidence is a fair decision provided this is done under a procedure that avoids prejudice to the appellant and complies the rules of natural justice.

14. It is noted that on account of the objected documents the Election Tribunal gave the appellant an adjournment on 06.11.2013 for two weeks to prepare his cross-examination of the respondent No.1, *inter alia*, on the said documents. During this recess the appellant was able to access Quezon College to procure from them a letter dated 28.11.2013 (Exb.RW-1/N) which is addressed to the appellant. This letter commits a *volte face* on earlier correspondence by the College dated 11.09.2013 (Exb.P-6) and 29.10.2013 (Exb.P-8) addressed to the respondent No.1 wherein the appellant's BSC degree is disowned. Exb.RW-1/N was then followed with the appellant's application for reception of evidence dated 06.03.2014. The document produced, namely, appellant's MBA degree was considered and rejected on good grounds. Again the appellant filed above referred correspondence produced in his CMA No.1906 of 2014 filed before this Court. These have also been read by us. The Election Tribunal's procedure to entertain and consider the material filed by the appellant in rebuttal including an opportunity both to cross-examine the respondent No.1 and also to rebut the documentary material filed against his case means the requirements of fairness and natural justice were duly complied. Any prejudice resulting from the new documents that may have been suffered by the appellant was overcome by giving him an

*h3*

opportunity to rebut the same, which opportunity was duly availed. It is quite another matter that rather than strengthening the case of the appellant, the self-contradiction of various correspondence by the Quezon College has completely destroyed it. This view is further reinforced by the documents attached to the appellant's CMA No.1906 of 2014 that have been read by us to meet the ends of justice.

15. Turning to the Election Tribunal's finding that in his declaration of assets made in his nomination paper the appellant had concealed the allotment of Plot No.181 in Jinnah Abadi Scheme Chack No.16, Mandi Bahauddin vide mutation No. 929 dated 15.09.1989 (Ex.P-9). From the statement of the respondent No.1 (PW.1), recorded by the Election Tribunal, it may be observed that on 22.07.2013 the Additional District Collector, Mandi Bahauddin reversed the revenue entries recording allotment of the aforementioned plot to the appellant. That order was assailed by the respondent No.1 in revision petition which was dismissed. According to the statement of the appellant (RW.13), the respondent No.1 had also filed a writ petition challenging the said order but that proceeding was withdrawn. Consequently, the order dated 22.07.2013 by the Additional District Collector, Mandi Bahauddin reversing the entries regarding the allotment and ownership of the aforementioned plot by the appellant still holds the field. It is not permissible for an Election Tribunal to denounce an order passed by a competent authority unless the same is set aside in accordance with law or if sufficient evidence on the record of the Election



Tribunal disclosed jurisdictional defect or patent illegality in the order passed by the revenue authorities. Merely a different view of the law without reference to the facts and evidence cannot justify the rejection of an order passed by the competent authority. However, the denial of knowledge of mutation No. 929 dated 15.09.1989 by the appellant who was a Lumbardar in Chak No.16 for a good 24 years until 2013 is a startling disclosure. Yet the claimed date of knowledge of the said mutation cannot be rejected in the absence of contrary evidence including with respect to possession of plot No.181 by the appellant. Therefore, at best, the factual position that at all relevant times including the date of election on 11.05.2013, a 7 marlas plot meant for homeless inhabitants was owned by the local Lumbardar in a government welfare scheme casts a dark cloud on the *amanat-dari* of the appellant Lumbardar. Indeed, the finding of concealment of assets and false statement under Article 62(1)(f) of the Constitution is given against the appellant by the Election Tribunal on the basis of its disbelief and unreasonableness. This finding is not justified.

16. The upshot of above discussion is that the appellant intentionally misrepresented his educational qualification in his nomination paper and thereby made false statement which fails him in meeting the qualification prescribed in Article 62(1)(f) of the Constitution. His election as member National Assembly from constituency NA-108 Mandi Bahauddin is illegal and void. The making of a false statement or submitting a false or incorrect

*hmd*

declaration in a nomination paper filed by a candidate also amounts to the offence of 'corrupt practices' under Section 78(3)(d) of the ROPA. In the cases wherein returned candidates had made a false statement in nomination papers about their educational qualifications, this Court has directed action by the Election Commission of Pakistan under Section 78 of the ROPA. Reference may be made to Najeeb-ud-Din Owaisi vs. Aamir Yar (2011 SCMR 180). The Election Commission of Pakistan is accordingly directed to commence proceedings for the prosecution of the appellant for the commission of offence under Section 78 of the ROPA.

17. This appeal is dismissed in above terms. No order as to costs.

Islamabad,  
14.04.2015.  
*Irshad Hussain* /

NOT APPROVED FOR REPORTING.