

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

**Mr. Justice Mian Saqib Nisar, HCJ**

**Mr. Justice Faisal Arab**

**Mr. Justice Ijaz ul Ahsan**

**Civil Appeal No.3 of 2017**

Against judgment dated 27.10.2015 of Lahore  
High Court, Lahore, passed in Writ Petition  
No.30944 of 2015.

Nasir Mehmood & another

**Appellants**

**VERSUS**

Umar Sajid & others

**Respondents**

For the Appellants:

Mr. M. Ahsan Bhoon, ASC  
Ch. Akhtar Ali, AOR

For the Respondents :

Mr. Azam Nazir Tarar, ASC  
Syed Rafaqat H. Shah, AOR

Date of Hearing:

10.10.2018

**JUDGMENT**

**IJAZ UL AHSAN, J-** This Civil Appeal with leave of the Court is directed against an order of the Lahore High Court, Lahore dated 27.10.2015 passed in Writ Petition No.30944/15. The writ petition was filed by the respondents against the rejection of their objections before the Returning Officer and the order of the Appellate Authority upholding such rejection. The Respondents had filed objections against the joint candidacy of the Appellants for the election of Chairman & Vice Chairman of the Union Council No.3, Municipal Corporation, Gujrat. The main ground of objection was that they had been convicted of criminal offences in an earlier round of litigation. Such litigation emanated from a declaration of dishonesty, given by the High Court and upheld by this Court, against the Appellant.

d

2. The factual background of this case is that the Appellant No.1 contested for and was declared as the Returned candidate for PPP-III, Gujrat in the General Elections 2008. The election of Appellant No.1 was challenged by way of Election Petition No.147/2008. His election was set aside by the Election Tribunal, vide judgment dated 03.02.2010. An appeal preferred by the Appellant against the judgment of the Tribunal was dismissed by this Court in the case reported as Haji Nasir Mahmood v. Mian Imran Masood (PLD 2010 SC 1089).

3. Pursuant to the decision of the Courts against the Appellant and findings of dishonesty in terms of Article 62 (1) (f) of the Constitution of Islamic Republic of Pakistan (***the Constitution***), recorded against the Appellant, the Deputy Election Commissioner, Gujranwala filed a written complaint against the Appellant for action under the Criminal laws. FIR No.24 dated 31.01.2011 (U/s 199/200/471 PPC & Section 82 r/w S.78 of the Representation of the Peoples Act, 1976) was accordingly registered against him. He was tried and convicted under the said provisions of law on four counts; for a term of one year and six months against each count. These sentences were ordered by the trial Court to run concurrently. The moot question before us is whether conviction on four counts and a sentence of 1 year and six months on each count is to be seen cumulatively or in the perspective of being served consecutively in the context of Section 27(2)(i) of the Punjab Local Government Act, 2013 (***PLGA***) read with Article 63 (1) (h) of the Constitution.



4. It has firstly been argued by the learned counsel for the Appellants that the bar of disqualification to contest election in case of conviction and sentence for a term exceeding 2 years, would not be attracted to the instant case. The same should not have been an impediment against the Appellant for contesting the subsequent election for the seat of Chairman Union Council No.3, Municipal Corporation, Gujrat. He has pointed out that the sentences of Appellant No.1 have been ordered to run concurrently. Hence, his total sentence is in effect 1½ years. He is therefore not hit by the mischief of Section 27(2)(i) of the **PLGA** read with Article 63(1)(h) of the Constitution.

5. The learned counsel for the appellants has further argued that the sentences awarded to him (Appellant No.1) have been suspended by the High Court in the appeal filed by him against the judgment of the Trial Court. As a result of such suspension he can contest the election while the final verdict in his case is awaited.

6. The learned counsel for the Respondents has forcefully supported the impugned judgment.

7. Having heard the learned counsel for the parties we find that both arguments of the learned counsel for the appellants are misconceived and devoid of force. In the first instance, on the quantum of multiple sentences below the two-year mark; we have carefully examined and compared the language of Article 63 (1) (h) of the Constitution and Section 27(2) (i) of **PLGA**. For reference; both the provisions are reproduced below:

**"Article 63(1)(h) of the Constitution:** he has been, on conviction for any offence involving moral turpitude, sentence to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release"

**AND**

**Section 27 (2) (i) PLGA:** A person shall be disqualified from being elected or chosen as, and from being, an elected member of a local government, if he-

- (a) ceases to be citizen of Pakistan or acquires citizenship of a foreign State;
- (b) is declared by a competent court to be of unsound mind;
- (c) is an undischarged insolvent;
- (d) is in the service of Pakistan or of a local government;
- (e) is in the service of any statutory body or a body which is owned or controlled by the Government or a Provincial Government or the Federal Government or a local government or, in which any of such Government or local government has a controlling share or interest, except the holders of elected public office and part time officials remunerated either by salary or fee; provided that in case of a person who has resigned or retired from any such service, a period of not less than two years has elapsed since his resignation or retirement;
- (f) is under an existing contract for work to be done or goods to be supplied to a local government or has otherwise any direct pecuniary interest in its affairs;
- (g) has been dismissed from public service on the grounds of misconduct unless a period of five years has elapsed since his dismissal;
- (h) has been removed or compulsorily retired from public service on the grounds of misconduct unless a period of three years has elapsed since his removal or compulsory retirement;
- (i) has been convicted by a court of competent jurisdiction for a term not less than two years for an offence involving moral turpitude or misuse of power or authority under any law unless a period of five years has elapsed since his release; and
- (j) has been convicted for an offence involving activities prejudicial to the ideology, interest, security, unity, solidarity, peace and integrity of Pakistan unless a period of five years has elapsed since his release.

Article 63 (1)(h) of the Constitution mandates that a person convicted of an offence involving moral turpitude, and sentenced for a period not less than two years, would be disentitled to contest election for a further period of five years after his release. It is quite evident from a plain reading of both



provisions that apart from the words "has been convicted by a Court of competent jurisdiction" Article 63 (1) (h) of the Constitution and Section 27 (2) (i) of the **PLGA** are identical.

8. The issue in the case at hand is not whether the conviction of the appellant was for a crime involving moral turpitude or whether the Court of competent jurisdiction had rendered the sentence (which are admitted facts). Rather, the pivotal issue is whether the convictions awarded to Appellant No.1 would be taken on a whole in a cumulative manner, the effect whereof would be a conviction, followed by a sentence on four counts for an aggregate period of 6 years in terms of the provisions of PLGA. In our opinion it is the conviction and sentencing that is the determining factor rather than the actual time spent behind bars. Any other interpretation would lead to absurd results. It is settled law that no absurdity can be imputed to the Legislature. If, for instance, a person is convicted and sentenced for more than two years, but for a number of possible and perfectly legitimate reasons, he is released after serving a period of less than two years, would the bar of Article 63(1) (h) and Section 27 (2) (i) of PLGA be attracted? The answer, to our mind is in the affirmative. This is so because the material consideration is conviction and sentencing and not the actual time for which the convict served his sentence. This interpretation is in line with the language of the provisions in light of their ordinary meaning. It does not require anything to be read into the plain and ordinary meaning of the language. On the other hand, an exercise of reading into the language of the Constitution and the statute would be required if we were to

accept the interpretation canvassed by the learned Counsel for the Appellants. We are unable to do so under the facts and circumstances of the present case. Therefore this argument is repelled. We therefore hold that for the purposes of Article 63 (1) (h) of the Constitution and Section 27 (2) (i) of the PLGA, the portion of sentence actually served is of no relevance and the disqualification is attracted on the basis of conviction and sentence "awarded" as opposed to served (emphasis is ours).

9. In our view, the interpretation advanced by the learned Counsel for the Appellants would amount to defeating the purpose behind Article 63 (1) (h) of the Constitution and S.27 (2) (i) of the **PLGA**. The language of both these provisions is such that the words "conviction" and "sentence" have been used therein. If the criteria for being disqualified to contest an election after being convicted of a crime of moral turpitude was, the time undergone behind bars—the word "served" would have been used with the word "sentence". This is clearly not the case. Therefore the argument of the learned Counsel for the Appellants is misconceived.

10. The benefit of running of the sentences concurrently is only to the extent of the period of incarceration in jail and the same would have no effect on the sentences awarded to a person on different counts which have to be read cumulatively for the purposes of disqualification envisaged by Article 63 (1) (h) and Section 27 (2) (i).

11. This question came up for hearing before a Full Bench of the Lahore High Court, Lahore in Ch. Zahid Iqbal's

Supre



case [2013 CLC 1856]. The judgment was authored by one of us (Ijaz ul Ahsan, J). In the operative part of the judgment while dealing with a similar question it was held as follows:-

*"Admittedly, the appellant has been sentenced by a Court of Session on three different counts namely for violation of section 82 of Representation of the People Act, 1976, under sections 199 and 200 of P.P.C. Further he has been punished for a period of thirteen months on each count. Therefore, the cumulative effect of the three different convictions is that he has inter alia been sentenced to imprisonment for an aggregate period of 39 months. Although the benefit of running of the sentences concurrently has been granted to the appellant, the same does not mean that he has not been sentenced for a period of 39 months. The concurrent running of sentence is for the purpose of calculating the actual period for which the appellant will be held in jail, if his appeal does not succeed. However, the same has no effect on the quantum of sentence awarded by the trial Court on each count for the purpose of Article 63(1)(h) of the Constitution read with section 99(1-A)(h) of Representation of the People Act, 1976."*

12. The interpretation of these provisions in this Judgment is the correct enunciation of the law on the matter and is approved and reaffirmed. We are not convinced that any other interpretation would be just, logical or reasonable and in line with the letter and spirit of the relevant provisions of law read with letter of the Constitution.

13. As far as the second argument of the appellant is concerned, we find that the suspension of the sentence awarded to the appellant would have no consequence on the conviction of the appellant which is complete as soon as the person charged has been found guilty by a Court of competent jurisdiction. As noted above, it is the conviction of the accused which is relevant in the context of Article 63(1)(h) of the Constitution and Section 27(2)(i) of the PLGA. The suspension of sentence would have no consequence on the conviction of the appellants for the purposes of being qualified to contest either the local bodies elections or the elections for the Legislative

Assemblies. Unless the conviction is specifically suspended by the Appellate Court by assigning cogent reasons therefor, or the Appeal of the Appellant is ultimately allowed and his conviction as well as sentence are set aside by the Appellate Court, the conviction of the Appellant would continue to hold the field and the disqualification incurred by him, by reason of this conviction, shall remain intact.

14. For the reasons recorded above, we do not find any merit in this appeal. It is accordingly dismissed.