

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Mohammad Moosa Khan Leghari
Mr. Justice Syed Sakhi Hussain Bukhari
Mr. Justice Sheikh Hakim Ali

CIVIL PETITION NO.878 OF 2008
CMA 95 OF 2009

(On appeal from the judgment/order dated 23.6.2008 of the Lahore High Court
Lahore, passed in W.P.No.6470/2008)

Federation of Pakistan through Secretary Cabinet Division, Islamabad	Petitioner
Versus	
Mian Muhammad Shahbaz Sharif and others	Respondents

On Court call:	Sardar Muhammad Latif Khan Khosa, Attorney General for Pakistan
For the petitioner:	Agha Tariq Mahmood, DAG Mr. Arshad Ali Chaudhry, AOR
For respondents No. 1-4:	Nemo.
For respondent No.5:	Sahibzada Ahmed Raza Khan Qasuri, Sr. ASC
For the applicant:	Mr. Shahid Orakzai (In person)

CIVIL PETITION NO.657-L/2008

Province of Punjab through Chief Secretary	Petitioner
Versus	
Syed Khurram Shah and others	Respondents

For the petitioner:	Khawaja Haris Ahmad, A.G. Punjab
For respondent No.1:	Sahibzada Ahmed Raza Khan Qasuri, Sr. ASC Dr. Mohyuddin Qazi, ASC

For respondents No.2-5: Nemo.

For respondent No.6: Agha Tariq Mahmood, DAG

CIVIL PETITION NO.803/2008

Speaker, Provincial Assembly Punjab

Petitioner

Versus

Syed Khurram Shah and others

Respondents

For the petitioner:

Mr. Ashtar Ausaf Ali, ASC,
Mr. Muhammad Raza Farooq, ASC
Mr. Arshad Ali Chaudhry, AOR

For respondent No.1:

Sahibzada Ahmed Raza Khan Qasuri, Sr. ASC

For respondent No. 2 to 5: Nemo.

For respondent No.6:

Agha Tariq Mahmood, DAG

CIVIL PETITION NO.905 of 2008

Syed Khurram Shah

Petitioner

Versus

Mian Muhammad Shahbaz Sharif and others

Respondents

For the petitioner:

Sahibzada Ahmed Raza Khan Qasuri, Sr. ASC

For respondents No.1-4:

Nemo.

For respondent No.5:

Agha Tariq Mahmood, DAG

CMA 471-L/2008 in
CIVIL PETITION NO. Nil/2008

Province of Punjab through its Chief Secretary

Petitioner

Versus

Syed Khurram Shah and others

Respondents

For the petitioner: Khawaja Haris Ahmad, ASC

For respondent No 1: Sahibzada Ahmed Raza Khan Qasuri, Sr. ASC

For respondents 2 to 5: Nemo.

For respondent No.6: Agha Tariq Mahmood, DAG

Dates of hearing: 6.1.2009, 14.1.2009, 15.1.2009,
19.1.2009 to 22.1.2009, 27.1.2009 to 30.1.2009,
2.2.2009 to 4.2.2009, 9.2.2009 to 12.2.2009,
16.2.2009 to 20.2.2009, 23.2.2009 to 25.2.2009

Date of announcement: 25.2.2009

JUDGMENT

Mohammad Moosa Khan Leghari, J.— The above titled petitions are directed against the judgment dated 23.6.2008 passed by the Lahore High Court, Lahore in Writ Petition No.6470/2008. By the aforesaid judgment, the verdict of the Election Tribunal dated 31.5.2008 and the order of the Election Commission of Pakistan dated 1.6.2008 were declared to be without lawful authority.

2. Precisely stated, facts forming background of filing of the petition are that consequent upon notifying the election schedule by Election Commission of Pakistan (Respondent No.4) for holding the bye-elections of National Assembly and Provincial Assemblies on 26.6.2008, respondent No.1, Mian Muhammad Shahbaz Sharif submitted his nomination papers for the seat of PP-48 Bhakkar-II. It appears that one Malik Nazar Abbas, a candidate from the same constituency,

filed an objection petition alleging therein that respondent No.1 propagated and acted in the manner prejudicial to the integrity and independence of judiciary, he defamed and brought judiciary of Pakistan into the ridicule and that he has submitted an incorrect declaration claiming therein that he fulfills the qualifications laid down in Article 62 of the Constitution of Pakistan and is not subject to any of the disqualifications as specified in Article 63 of the Constitution of the Islamic Republic of Pakistan. The nomination papers of respondent No.1 were however, accepted by the Returning Officer of the said constituency (Respondent No.2) vide his order dated 16.5.2008 on the ground that the objections raised by Malik Nazar Abbas were withdrawn by him through his statement dated 16.05.2008.

3. Respondent No.5 Syed Khurram Shah (petitioner in CPLA 905/2005) in capacity of an elector and citizen of Pakistan and claiming to be a firm believer in independence and integrity of the judiciary as well as the armed forces, submitted an application under section 14(5-A) of the Representation of People Act, 1976, thereby bringing to the knowledge of the Election Appellate Tribunal information/material regarding disqualification of respondent No.1 from being elected as a Member, praying therein to call upon respondent No.1 to show cause as to why his nomination papers may not be rejected and consequently for rejection of his nomination papers. It seems that the notices of the Tribunal, issued against respondent No.1 were not responded to, hence respondent No.1 was proceeded ex-parte.

4. Learned Election Appellate Tribunal comprising of two learned Judges of the Lahore High Court, Lahore delivered a divergent decision. One of the Members of the Tribunal Muhammad Akram Qureshi J. declared the respondent to be disqualified while the other Member of the Tribunal Hafiz Tariq

Naseem J. upheld the order passed by the Returning Officer, whereby respondent No.1 was declared qualified. The matter was then referred to Election Commission of Pakistan, respondent No.4. The Election Commission of Pakistan vide Memo dated 1st June, 2008 communicated the observations of the Chief Election Commissioner revealing therein that in view of the mandatory provisions of section 14(6) of the Representation of People Act, 1976, an appeal not disposed of within the period specified in the election schedule, shall be deemed to have been rejected. It was stated that since according to the schedule notified on 7th May, 2008, the last date for deciding the appeals against the acceptance or rejection of nomination papers by the Appellate Tribunal in the instant case was 31st May, 2008, which date having already expired, the appeal stood rejected.

5. The orders of respondents No.2,3 and the Notification dated 03.06.2008 issued by Respondent No.4 were challenged before the Lahore High Court, Lahore through Writ Petition No.6470/2008 by respondent No.5, Syed Khurram Shah (the petitioner in CPLA 905/2008).

6. During the pendency of the petition, C.M. No.1260/2008 was moved on behalf of the Province of Punjab under Order 1 Rule 10 CPC for impleadment as a respondent party, while C.M.No.1276/2008 was moved on behalf of the Speaker Punjab Assembly for the same purpose. It was pleaded in the said applications that the petitioner was neither a candidate nor a voter of the constituency, and as a stranger was not entitled to maintain the petition. That respondent No.1 after having been elected as Member was elected as Chief Minister of the Province, as such the governance and functioning of the Province and House was likely to be affected by any order passed in the said Petition.

However, after hearing the parties a full Bench of Lahore High Court, Lahore vide order dated 18.06.2008, announced on 20.06.2008 dismissed the

applications moved under Order 1 Rule 10 CPC, holding that the applicants were neither necessary nor proper parties.

7. As far as the main petition is concerned, the Respondent No.1 despite service opted not to appear/be represented and remained ex-parte. A full Bench of the Lahore High Court, Lahore, which was seized of the matter, after hearing the learned counsel for the petitioner (respondent No.5) and Deputy Attorney General, came to the conclusion that the learned Election Appellate Tribunal and the Chief Election Commissioner/Election Commission of Pakistan fell into error by treating the application of the petitioner viz. Syed Khurram Shah as an appeal and tagged the same with an other appeal, subject matter of the impugned order. Consequently learned Full Bench of the High Court vide judgment dated 23.06.2008 set aside the orders of the Chief Election Commissioner/Election Commission of Pakistan dated 1.6.2008 and that of the Election Appellate Tribunal dated 31.5.2008 by declaring the same to be unlawful. Accordingly the learned Chief Election Commissioner was required to constitute another Bench comprising three Judges of the High Court to decide the application of the petitioner viz. Syed Khurram Shah (respondent No.5). Respondent No.1 was, however, allowed to continue performing his function as a Chief Minister and Member Provincial Assembly of Punjab.

8. The above judgment of the Full Bench of Lahore High Court is the subject matter of the instant petitions. The Federation has prayed for grant of leave and setting aside the judgment.

9. Besides that, leave to appeal has been sought by Speaker Provincial Assembly, Province of Punjab vide CPSLA.No.803 of 2008 to impugn the said judgment. Similar prayers have been made by the Province of Punjab through

CMAs for the purpose of setting aside the order dated 18.06.2008 passed in C.M.A.No.1260 of 2008 and the judgment dated 23.06.2008 passed in Writ Petition No. 6470 of 2008. Respondent No.5, however, through a separate petition has prayed for declaring the notification dated 3.6.2008 of the Election Commission of Pakistan to be illegal and without lawful authority, whereby respondent No.1 was declared as a returned candidate from PP-48 Bhakkar-II.

10. We have heard Agha Tariq Mehmood, learned DAG appearing for the Federation, Khawaja Haris Ahmad, learned Advocate General, for Province of Punjab, Mr. Muhammad Raza Farooq, ASC appearing for Speaker Provincial Assembly, Punjab and Sahibzada Ahmad Raza Khan Qasoori, Sr. ASC who represented respondent No.5, Syed Khurram Shah. Sardar Muhammad Latif Khan Khosa, learned Attorney General for Pakistan was called upon to address the Court and to assist on the points of law involved in the controversy.

11. Learned Deputy Attorney General contended that as per mandatory provisions contained in sub-section (6) of section 14 of the Representation of the People Act, 1976 (hereinafter referred to as the Act) after expiry of the period stipulated for deciding the appeals under section 14(5) of the Representation of People Act, 1976, the application filed by respondent No.5 before the Election Appellate Tribunal stood rejected. In the circumstances, he argued that the observation given by the learned Chief Election Commissioner was proper and the direction of the High Court for re-constitution of the Election Appellate Tribunal, after the changed situation was beyond jurisdiction, as such was unsustainable. With regard to locus-standi of the Federation to maintain the instant petition learned DAG argued that respondent No.5 himself impleaded the Federation in his writ petition before the High Court, as such the present petition by the Federation was legally competent.

12. Khawaja Haris Ahmad, learned Advocate General, Punjab contended that the judgment of the full Bench was biased due to inclusion of one of the learned Judges on the Bench, the same was non-speaking judgment and was delivered without hearing and considering the view point of Respondent No.1. He argued that respondent No.5 was neither a candidate nor even a voter of that constituency and thus was not an aggrieved person within the contemplation of Article 199 of the Constitution of Islamic Republic of Pakistan to maintain the writ petition before the High Court, as he was a stranger to the proceedings. Referring to the election schedule notified by the Election Commission of Pakistan, learned Advocate General submitted that last date for filing the appeals before the Election Appellate Tribunal was 24.05.2008 and that no appeal was filed by respondent Syed Khurram Shah till such time, as such the said appeal or application was patently barred by time. Learned Advocate General argued that the objections before the Returning Officer were filed by Malik Nazar Abbas, who was the candidate but at the time of scrutiny he withdrew those objections with the result that the Returning Officer has no option except to accept the nomination papers of respondent No.1 and that his action was just, proper and legal. He submitted that the term "source" as appearing in sub-section (5-A) of section 14 of the Act, is limited to a body corporate/a juristic person and does not include a natural person. He argued that unless it is established that a candidate whose nomination papers have been accepted, is a defaulter of loans, taxes, government dues or utility charges or his any loan has been written off, his nomination papers could not be rejected. He further submitted that the above disqualifications were exhaustive and that sub-section (5-A) would not cover other kind of disqualifications.

In any case he argued that the Tribunal, upon receipt of the information in the nature as enumerated in the above sub-section, was under the obligation to issue show-cause notice to the candidate concerned, containing explicit allegations, which course was missing in the present case. He argued that writ petition was filed by respondent No.5 in the High Court on 4.6.2008, while the notification declaring respondent No.1 as a returned candidate, was already issued by the Election Commission of Pakistan on 3.6.2008 who was subsequently sworn in as a Chief Minister of the Province of Punjab.

Learned Advocate General pressing into service the rule of *Ejusdem Generis* and referring to certain paragraphs from the book “*Understanding Statute*” authored by Mr. S.M. Zafar, “*Principle of Statutory Interpretation*” by Guru Prasanna Singh (Pages 280-281), a passage from “*Interpretation of Statutes*” by N.S. Bindra’s book, strenuously argued that the rule of *Ejusdem Generis* was attracted to the provisions of sub-section (5-A) of section 14 of the Act, and by extending harmonious construction, the time limit prescribed for deciding the appeals under sub-section (5) of the Act will be fully applicable to the applications filed under sub-section (5-A) of section 14, as any interpretation to the contrary was bound to negate the provisions of the Statute and would lead to the absurdities, which had to be avoided. The cases titled: (i) Ameer Khatoon Vs. Faiz Ahmad and others (PLD 1991 SC 787) (ii) Abdul Qayyum and another Vs. Niaz Muhammad and another (1992 SCMR 613) (iii) Khalid Qureshi and 5 others Vs. United Bank Ltd (2001 SCMR 103) were referred to advance the above arguments.

Relying upon the legal maxim “*Semper Proesumitur Pronegante*” (Presumption is always in the favour of the one denying or in favour of the negative), learned Advocate General, Punjab added that the judgment of the High

Court was against the intention of law-makers as the process of the election has already been completed, as such there was no legal justification for constituting a three Members' Tribunal to hear the appeal. He submitted that though the Chief Election Commissioner was vested with the powers to extend the schedule of election as provided under section 11-A of the Act, yet such power had to be exercised in exceptionally rare circumstances, which was manifestly lacking in the present case. Learned Advocate General strenuously emphasized that the intention of the law-makers was to complete the election process in most expeditious manner, for which time limit for every major, -39ae TD12ekers a3 Tw (makers was to complete

submitted that after the election process having been completed and respondent No.1 having been elected as a Chief Minister, remedy of respondent No.5 was to file a writ of quo-warranto but in any case could not maintain the present proceedings. In support of the above contentions and to arrive at correct conclusion learned Advocate General referred the following case laws:-

- i) Hafiz Hamdullah Vs. Saifullah Khan and others (PLD 2007 SC 52)
- ii) Ghulam Mustafa Jatoi Vs. Additional District & Sessions Judge/Returning Officer, NA 158, Naushero Feroze and others (1994 SCMR 1299)
- iii) Muhammad Safdar Abbasi Vs. Aamir Yar Malik and 3 other (2004 SCMR 1602)
- iv) Ayatullah Dr. Imran Liaqat Hussain Vs. Election Commission of Pakistan and others (PLD 2005 SC 52)
- v) Ahad Sharif @ Muhammad Ahad and another Vs. Javed Tariq and others, (2006 SCMR 1356)
- vi) Faqir Abdul Majeed Khan Vs. District Returning Officer and others (2006 SCMR 1713)
- vii) Rana Muhammad Hayat Khan Vs. Rana Imtiaz Ahmad Khan (PLD 2008 SC 85)
- viii) Ch. Muhammad Arif Hussain Vs. Rao Sikandar Iqbal and 10 others (PLD 2008 SC 429)
- ix) Intesar Hussain Bhatti Vs. Vice Chancellor, University of Punjab , Lahore and others (PLD 2008 SC 313)
- x) Syed Nayyar Hussain Bukhari Vs. District Returning Officer, NA-49, Islamabad and others (PLD 2008 SC 487)
- xi) Aftab Shahban Mirani and others Vs. Muhammad Ibrahim and others (PLD 2008 SC 779)
- xii) Let.Gen. (R) Salahuddin Tirmizi Vs. Election Commission of Pakistan (PLD 2008 SC 735)
- xiii) Syed Fakhar Imam Vs. Chief Election Commission of Pakistan and others (PLD 2008 SC 730)

To explain the factum of the rejection of nomination forms of respondent No.1 in the general election learned Advocate General submitted that rejection of

nomination papers of respondent No.1 in the general election would create no bar or estoppel so far as the acceptance of nomination papers in the bye election is concerned. He explained that allegations with regard to criticizing the judiciary were against the person of a specific judge and not against the judiciary as mentioned in the order of rejection dated 01.12.2007 passed by the Returning Officer in the general elections. He further submitted that the criminal case referred to in the rejection order stood decided wherein respondent No.1 was acquitted. He argued that the perusal of Lahore High Court's judgment PLD 2003 Lahore, 646 did not disclose that Respondent No.1 was a defaulter of loans. Referring to the judgment reported in PLD 2000 Supreme Court 869, he submitted that there was no verdict of guilt of corruption against respondent No.1 in the said judgment. On query of the Court, learned Advocate General, Punjab did not deny the appointment of one Khalid Mehmood who was convicted for contempt of this Court as reported in 2000 SCMR 1969 on the post of judicial/quasi-judicial nature by the Provincial Government headed by Respondent No.1 but stated that the incumbent was being removed from such official position. So far as the question of un-paid loans on the part of respondent No.1 was concerned learned Advocate General submitted that there had been mutual settlement/compromise between the respondent's project i.e. the debtors, and the creditor Banks, yet he candidly conceded that he was not in a position to take conclusive stand with regard to fulfillment of the obligations or the repayments of loans by Respondent No.1.

As regards to the locus-standi of the Province of Punjab to become a party or to maintain a petition learned Advocate General, Punjab argued that after being declared as a returned candidate by Election Commission of Pakistan vide notification dated 03.06.2008, respondent No.1 was elected as Chief Minister of Punjab and was functioning as such. He submitted that the governance and

functioning of Government of Punjab was likely to be affected by any adverse decision of the High Court, therefore Province of Punjab was a necessary party, which conferred a right upon the government and prompted the Province of Punjab to move an application under Order 1 Rule 10 CPC before the Lahore High Court seeking impleadment as a respondent party. Learned Advocate General, Punjab submitted that a distinction has to be drawn with regard to the election dispute arising during the election process and the post-election process whereby the election is held and notification of a validly elected person is published in the gazette by the Election Commission of Pakistan. Learned Advocate General, Punjab during the arguments candidly conceded that the election dispute with regard to qualification or otherwise concerning a candidate was a personal dispute yet he argued that after having been validly elected, such elected person can be defended by any one, even by any Member of public as it would turn into a public interest litigation. He argued that the Chief Secretary being the official head of Secretariat of the Government of Punjab, and according to the Rules of Business of the Government of Punjab being a coordinator of all the Government Departments and at the helm of affairs was quite competent to file the application for impleadment and also to maintain the Civil Petition before this Court. Learned Advocate General in support of his above contentions has referred to various Rules of Business of the Government of Punjab. However, at the end of his argument was at pains to satisfactorily reply as to how the Province of Punjab was going to be adversely affected by the judgment of the Lahore High Court and /or the dispute relating to qualification and disqualification of respondent No.1 Mian Muhammad Shahbaz Sharif was likely to hamper and/or disrupt the functioning of governance of the Province.

13. Mr. Muhammad Raza Farooq, ASC who advanced arguments on behalf of Speaker Provincial Assembly, Punjab. (Mr. Ashtar Ausaf Ali, ASC could not attend on account of medical ground) adopted all the arguments addressed by Khawaja Haris Ahmed, learned Advocate General and further contended that consequent upon his notification as Member Provincial Assembly respondent No.1 was chosen as Leader of the house and taken oath as Chief Minister, Punjab on 06.06.2008, therefore, the application was filed before the Lahore High Court, Lahore by Speaker, Punjab Assembly under Order 1 Rule 10 CPC for impleadment as a respondent.

Arguing the point of locus-standi he contended that it was responsibility of the Speaker to protect and preserve the rights of a Member as he is the custodian/guardian of the entire house. Enumerating the duties of the Speaker learned counsel submitted that the Speaker maintains the order and decorum of the house as per Rule 14 of the Rules of Business of the Provincial Assembly, Punjab. He being representative of the rights of the Members, has to safeguard their interest and has duty and powers to conduct the proceedings of the house. The Speaker is the spokesman of the house in relation to the Crown, the House of the Lords and other authorities and persons outside the Parliament. Relying upon Eskiné May's Treatise on the law, privileges, proceedings and usages of Parliament (22nd Edition page 188) states that the Speaker holds and enjoys place and status of prominence. He has also referred to the duties of the Speaker from Mr. A.K. Brohi's book "Fundamental Rights of Pakistan". Referring to Rule 90 of the Rules of Procedure and Conduct of business in the National Assembly 1992 learned counsel submitted that the Speaker has got power to summon a Member in custody arrested on the charge of non-bailable offence to attend a sitting or sittings of Assembly or meeting if he considers his presence necessary. In view of

the above, learned counsel states that same powers shall be deemed to have been conferred upon Speaker of Provincial Assembly. He submits that for this reason Speaker has right to challenge the act of dissolution of Assembly. For the said purpose he relied upon Moulvi Tamizuddin Khan Vs. Federation of Pakistan (PLD 1955 Sindh 56), Federation of Pakistan and others. Vs. Moulvi Tamizuddin (PLD 1955 F.C 240). Learned ASC argued that the Speaker in the instant case is acting as a shield to protect the rights of a Member as he has the obligations to exercise parental jurisdiction for his Members even outside the House. Referring to Article 63 (2) of the Constitution, learned ASC contended that Speaker has got the power to take a decision as to whether a Member has been rendered disqualified. Reference is made to Ghulam Muhammad Mustafa Khar Vs. Chief Election Commissioner of Pakistan and others (PLD 1969 Lahore 602). It is contended that the Speaker had “sufficient interest” in the matter to become a necessary party. In order to determine the sufficient interest learned counsel submits that even a civic or community environmental and cultural interest has been held to be “sufficient interest” as laid down by this Court in Ardeshir Cowasjee’s case reported in 1999 SCMR 2883. The same principle can be deduced from Ms. Benazir Bhutto’s case reported in PLD 1988 SC. 416. Learned counsel vehemently argued that in the given circumstances Speaker was a necessary party, however, in any event the Speaker could be deemed to be a proper party, thus had a right to be impleaded as such, as it was necessary for just decision of the case. Besides others, the learned ASC has referred to the following judgments of this Court, which in his view would strengthen the case of his party and could help arriving at a just decision.

Riaz Hussan and others vs. Muhammad Akbar and others 2003 SCMR 181, Syeda Tahira Begum and another v. Syed Akram Ali and another 2003 SCMR 29, Jamila Pir Buksh and others v. Appellate Authority and others 2003 SCMR 1524, Muhammad Anwar Khan and five others v.

Chaudhry Riaz Ahmed and five others PLD 2002 S.C.491, Rauf Qadri v. State Bank of Pakistan, PLD 2002 S.C.1113, Nazir Ahmed and another v. Mohammad Din and another 2000 SCMR 440, Barkat Ali v. Mohammad Ihsan Irshad 2000 SCMR 556, Zahoor Ahmed vs. Mehra through legal heirs and others 1999 SCMR 105, Mahmood Ali Butt v. Inspector General of Police Punjab and 10 others PLD 1997 S.C.823, Jane Margaret William vs. Abdul Hamid Mian 1994 SCMR 1555, Chaudhry Akbar Ali vs. Secretary, Ministry of Defence, Rawalpindi 1991 SCMR 2114, Asla vs. Abdur Rehman, 1994 CLC 1388, Sh. Rashid Ahmed vs. The Election Tribunal, Lahore High Court and another, PLD 1993 S.C. 791.

14. Mr. Shahid Orakzai after advancing his arguments on the subject of recusal at length has referred to the judgment reported in **Shahid Orakzai. Vs. Pakistan Muslim League (Nawaz) (2000 SCMR 1969)** and submitted that the respondent and his party was found to be involved in the acts of vandalism and hooliganism having been committed in and around the premises of the Supreme Court of Pakistan on 28.11.1997. Referring to sub-para 17 of the aforementioned judgment appearing at page 1988 the applicant argued that though certain persons belonging to the said party were convicted for contempt of this Court yet the case was still pending, and the proceedings against the remaining respondents were deferred till the thorough investigation is made as to the culpability of any person found so involved. Inspector General of Police, Islamabad was accordingly directed to get the investigation completed within a period of 4 months so as to identify the miscreants involved in the incident and thereafter proceed in accordance with law. Mr. Shahid Orakzai submitted that in compliance of the said investigation report dated 23.2.2001 was prepared by Tamoor Ali Khan, PSP Commandant Islamabad Reserve Police and was submitted in this Court as far back in the year, 2001, but that inquiry report revealing the respondent's culpability in the offence was suppressed by way of maneuvering. He submitted that despite best efforts he could not get a certified true copy of report. In any event, Mr. Shahid Orakzai submitted that though the above case was pending yet it did not find mention in the statement/declaration sworn by respondent No.1 which tantamount to filing a false declaration rendering the respondent No.1 disqualified to contest the election. He accordingly submits that such inherent disqualification was incurable.

15. Mr.Ahmed Raza Khan Qasuri, learned Sr.ASC addressed his argument in reply to the arguments rendered on behalf of the petitioner Federation; the Province of Punjab and Speaker Provincial Assembly and so also in support of the CPLA.No.905 of 2008 filed by respondent No.5 Syed Khurram Shah. Besides dilating upon the constitutional history of Pakistan by making references from different Articles contained in the Government of India Act, 1935, Constitution of Pakistan 1956, Constitution of Pakistan 1962, the interim Constitution 1972 and present Constitution of Pakistan 1973. The learned ASC submitted that nomination papers of Mian Muhammad Shahbaz Sharif in the general election of 2002 from the constituency NA-119, PPP-148 and 142 were accepted on 27.7.2002, 28.7.2002 and 31.8.2002 respectively, against which Election Appeals No.171-A, 173-A and 174-A of 2002 were filed before the Election Appellate Tribunal. The said appeals were accepted on 12.9.2002 and nomination papers of respondent No.1 Mian Muhammad Shahbaz Sharif were rejected. The writ petition Nos. 17268 to 17273 of 2002 filed by respondent No.1 Mian Muhammad Shahbaz Sharif against the orders of the Election Appellate Tribunal were also rejected on 27.9.2003, thus confirming rejection of nomination papers of Mian Muhammad Shahbaz Sharif. He has referred to the case of Mian Muhammad Shahbaz Sharif. Vs. Election Commission of Pakistan and 15 others (PLD 2003 Lahore 646) to support his viewpoint. Learned counsel submitted that nomination papers of Mian Muhammad Shahbaz Sharif respondent No.1 filed for PP-141, 142 and NA-119 Lahore XI in the general election, held on 18.2.2008, were rejected by the Returning Officer vide order dated 1.12.2007. Learned ASC submitted that instead of filing appeal before the Election Appellate Tribunal respondent No.1 Mian Muhammad Shahbaz Sharif submitted three applications to the Election Commission of Pakistan on 7.12.2007 whereupon respondent No.1 was replied

that the order of the Returning Officer was appealable under section 14 (5) of the Representation of People Act, 1976 before the Election Appellate Tribunal constituted for that purpose. Respondent No.1 was therefore, informed to approach appropriate forum provided under the law, if so advised, as the Chief Election Commissioner lacks jurisdiction in the matter. Learned ASC submitted that bye election was continuity of the process of general elections and the acceptance of the nomination papers of respondent No.1 in the bye-elections, after the rejection of his nomination papers in the general elections, which act attained finality, was without lawful authority. He strenuously argued that order of the Returning officer accepting the forms of the respondent No.1 in the bye election was violative of law as the disqualification was still existing. He further argued that even after withdrawal of the objections by the rival candidate Malik Nazar Abbas the Returning officer was under legal obligation to conduct a summary inquiry to satisfy himself that the candidate did not suffer from inherent disqualification. Learned counsel submitted that sub-section (5-A) was inserted vide Ordinance dated 31.7.2002 with the purpose of blocking the way of such candidates who were defaulter of loans, taxes, government dues or utility charges or those who have had, any loan written off or otherwise suffer from any other disqualification from being elected as a Member of Assembly. He argued that insertion of words “suffer from any other disqualification” had a purpose and that such term has a very wide scope. He argued that the Tribunal was, therefore, given very wide powers so that it can call upon such candidate on the basis of any information or material brought to its knowledge by any source or even on its own motion, to show cause as to why his nomination papers be not rejected. Learned counsel contended that the term “source” as contained in sub-section (5-A) would not be limited to a body corporate or a juristic or artificial entity but it would include

natural person also. He argued that if the intention of law makers was to prohibit a person having unclean or dubious character from being elected as a Member, then limiting the scope of term “person” would be contrary to the intent of law makers and thus tantamounts to defeating the very purpose of enactment. He further submitted that sub-section (6) of section 14 of the Act provides for a limitation for the disposal of appeals and such stipulation could not be extended to the information received by the Tribunal from any source or even gathered from its own motion. On the above premises learned ASC contended that the order of the Election Commission treating the proceedings, to be an appeal and deeming the same to have been rejected, was patently illegal.

Learned ASC argued that respondent No.1 knowingly did not challenge the order of Returning Officer dated 1.12.2007 with the result that it attained finality and as a result thereof the disqualification of respondent No.1 became final and conclusive. He argued that subsequent acceptance of the nomination papers by Returning Officer was absolutely illegal. Learned ASC contended that respondent No.1, despite service of notices, opted not to appear before the Election Appellate Tribunal as well as the High Court. The allegations against the respondent as contained in the appeal and the petition were with regard to his involvement in corruption, default, concealment of facts and ridiculing the judiciary. Learned counsel submitted that on 14.4.2008 respondent No.1 in a press conference addressed at Sharif Medical Complex defamed and brought into ridicule the judiciary after rejection of his nomination forms. He submitted that observations of this Court in Zafar Ali Shah's case reported as PLD 2000 SC 869 were adequate enough to demonstrate the financial follies committed by Respondent No.1 and the companies mainly owned by the family. Learned counsel submitted that factum regarding non-payment of loan by respondent No.1 is abundantly evident from the

judgment of the Lahore High Court reported in Mian Muhammad Shahbaz Sharif through Attorney Vs. Election Commission of Pakistan, Islamabad and others (PLD 2003 Lahore 646). Learned counsel submitted that respondent No.1 is a defaulter of consortium of banks lead by National Bank of Pakistan and the Civil Original bearing Nos. 63, 64 and 65 of 1998 are still pending before the High Court. The properties and assets handed over by the petitioner and other stakeholders in consequence of settlement are still with them having not been disposed of on account of collusive litigation, initiated by their Directors at the behest of the respondent. For the said purpose learned counsel has referred to Project Brief dated 22.5.2008 containing the details duly authenticated by the Representative of National Bank of Pakistan who happens to be one of the members of the Committee constituted by the Lahore High Court Lahore, which is available at page 106 of the paper book in CP.No.905 of 2008. Learned counsel has placed on record photostat copies of press clippings to show that respondent No.1 is still propagating and acting in a manner inter-alia prejudicial to independence of judiciary of Pakistan and is defaming and bringing into ridicule the judiciary. Learned counsel submits that press clippings were valid documents and could be taken into consideration. In this regard learned counsel placed reliance upon Islamic Republic of Pakistan. Vs. Abdul Wali Khan (PLD 1976 SC 57), Mian Muhammad Nawaz Sharif. Vs. President of Pakistan (PLD 1993 SC 743), Mohtarama Benazir Bhutto. Vs. President of Pakistan (PLD 1998 SC 388). Learned counsel contended that since the very act of acceptance of nomination papers of respondent was patently illegal, all the subsequent acts and notification therefore will be rendered invalid and of no legal effect. To substantiate the above plea learned ASC has placed reliance on Yousaf Ali Vs. Muhammad Aslam Zia and 2 others (PLD 1958 SC 104) and Abdul Razak Vs. Karachi Building Control

Authority and other (PLD 1994 SC 512). Learned ASC submitted that it is by now well settled that question of inherent and pre-election disqualification could be questioned by way of a petition before the High Court.

Referring to the powers of this Court under Article 187 of the Constitution of Islamic Republic of Pakistan learned counsel submitted that this Court was vested with inherent powers to do complete justice under the Constitution and the law.

16. Learned counsel strenuously argued that the Federation has unnecessarily filed the present petition. Admittedly the controversy involves the election dispute questioning the qualification of an individual viz. Respondent No.1 which has no concern with the Federation. Even no directions of any kind have been passed against the Federation, hence it has no locus-standi to maintain the petition. Learned Sr. ASC accordingly prayed for summary dismissal of the petition filed by the Federation of Pakistan.

17. Dilating upon the role of Speaker and Province of Punjab in the proceedings learned counsel submitted that both of them have no locus-standi, contending that election dispute is essentially and purely a dispute between the parties concerned. He vehemently contended that the Speaker Provincial Assembly has exceeded his authority to defend respondent No.1 who is the leader of his party, for which the Speaker neither took the matter to the Finance Committee of the House or for that matter to any other Committee nor even in the House. He argued that the Speaker demonstrated a partisan role, resultantly a big question mark has appeared on his conduct. He contended that there could be no precedent in the Parliamentary history, whereby a Member who continuously ridiculed the Judiciary and knowingly and purposely refused to defend his case,

would have been defended by the Speaker by spending huge sum of money from State exchequer without approval of the House.

18. Regarding the role of the Province of Punjab, learned ASC argued that the Chief Secretary Punjab blatantly acted against the rules of Business, he flouted the service discipline and committed the acts of gross misconduct. Learned counsel argued that by violating the verdict of this Court whereby the parameters were set for bureaucrats, the Chief Secretary committed contempt of Court by unnecessarily jumping into the election dispute of respondent No.1 as a Chief Minister, who refused to appear before the Courts and openly defamed and ridiculed the Superior Judiciary. Learned counsel emphasized that a candidate who seeks his election must have guts and courage to defend his position himself. Even otherwise the allegations of ridiculing the judiciary and loan default could not be satisfactorily refuted by anyone else except the respondent candidate himself. Neither the Province of Punjab nor the Speaker of the Provincial Assembly could be in a position to make any statement on behalf of respondent No.1, more particularly when he was available and not prevented by law to appear and approach the Court. Learned counsel vehemently submitted that the election dispute, which required to be decided summarily, has been lingering on since June, 2008 and no useful purpose will be served even if the case is heard by the Tribunal except that the proceeding will be protracted in view of the fact respondent No.1, whose election is in dispute has stated in categorical term that he has no intention to defend himself, as obvious from the press statement attributed to respondent No.1. He therefore, prayed for setting aside the orders of the Returning Officer and the Lahore High Court and nullifying the notification of Election Commission of Pakistan notifying the respondent to be a Member of Provincial Assembly.

19. Learned Attorney General for Pakistan who was called upon to assist this Court on the points of law, submitted that no “sufficient interest” of either the Province of Punjab or Speaker Provincial Assembly was involved to grant them a right of locus-standi as the matter involved the personal rights of the parties. He submitted that Province of Punjab could agitate interest of the Province and that Speaker of Provincial Assembly can agitate for the collective cause of the House and not to defend the individual act of a Member. So far as the jurisdiction of Election Appellate Tribunal under sub-section (5-A) of section 14 is concerned, it was submitted by learned Attorney General that words “may on its own motion” give the Tribunal ample powers so that it can take notice even if a matter comes to his knowledge through newspapers or media reports or by any person, company, bank, department etc. He clarified that the term “any source” has been used to include all sources i.e. even other electors and candidates also e.g. any person juristic/artificial or natural. He stated that the Tribunal can even take cognizance on anonymous application if for any reasons, someone is not in a position to come forward to raise objection against a candidate. Learned Attorney General went on to argue that sub-section (5-A) of section 14 of Representation of People Act has been inserted to prevent a candidate from entering into the arena of election who survives the scrutiny before the Returning Officer due to malafide connivance of the candidates or electors or due to any threat, fear or favour to the electors. Learned Attorney General submitted that had there been any intention to restrict the term “source” to institutionalized category i.e. bank, department etc only then there was no need of mentioning “any other disqualification” because of institutions, specific categories have already been mentioned whereas other categories of disqualifications provided under article 62, 63 of the Constitution and section 99 of the Representation of People Act are not mentioned.

Learned Attorney General argued that the words “any other disqualification” have been used to extend the Suo Motu powers of the Election Tribunal to examine the disqualification defined under article 62, 63 of the Constitution and section 99 of the Representation of the People Act. He argued that after forming the opinion “*on its own motion*” the Tribunal is duty bound to proceed whereas the act Suo Motu binds the Tribunal to decide and follow the matter to ensure that disqualified candidates should be kept outside the contest. He submitted that time limit for decision of application under section 14 (5-A) of the Act would be deemed to remain intact till the decision, as is adequately evident from the provision itself. He further argued that if the statute has given a right to a person to place any material or move an application as a source then that person has inherent right under the principle of natural justice to have a decision on it as well, as evidently in the instant case no final decision was given by the Tribunal.

20. We have appreciated the respective contentions put forward by learned counsel appearing for the parties, have taken into consideration the relevant provisions of law and have examined the case laws referred before us. The procedure for elections has been enumerated in detail in Chapter IV titled “*Conduct of Elections*” in the Representation of People Act, 1976. It will be appropriate to reproduce hereunder the provisions contained in sections 11, 11-A, 12, 14 and 15 of the Representation of People Act, 1976:-

“11. Notification for election.”---(1) *As soon as (may be necessary and practicable) the President makes an announcement of the date or dates on which the polls shall be taken, the Election Commission (not later than thirty days of such announcement) shall, by notification in the official Gazette, call upon a constituency to elect a representative or representatives and appoint-----*

a) the last date for making nominations, which shall be the sixth day after the date of publication of the notification or, if that day is a public holiday, the next succeeding day which is not public holiday.

b) (The dates for the scrutiny of nominations, which shall be the (seven) days immediately following the last date of making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday).

c)

d) the last date for filing of appeals against acceptance or rejection of nominations, which shall be the (fourth) day following the (last) date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

e) the last date for decision of appeals, which shall be the (seventh) day following the last date for filing of appeals or, if that day is a public holiday, the next succeeding day which is not a public holiday;

ee) the last date for the withdrawal of candidature, which shall be the day following the last date for decision of appeals or, if that day is a public holiday, the next succeeding day which is not a public holiday;

f) the last date for publication of the revised list of candidates, which shall be the second day following the last date for decision of appeals, and

g) the date or dates on which a poll shall, if necessary be taken, which or the first of which shall be a date not earlier than the twenty second day after the publication of the revised list of candidates.

3) A returning Officer shall, as soon as may be after the publication of a notification under sub-section (1), give public notice

of the dates specified by the Commission in respect of the constituency or constituencies of which he is the Returning Officer; and the public notice shall be published at some prominent place or places within the constituency to which it relates.

4) *A Returning Officer shall, by the public notice given under sub-section (3) invite nominations specifying the time by which and the place which nomination papers shall be received by him.*

11-A. Alteration in election programme.--- *Notwithstanding anything contained in section 11, the Commission may at any time after the issue of a notification under sub-section(1) of that section, make such alterations in the programme announced in that notification for the different stages of the election as may, in its opinion, be necessary).*

12. Nomination for election.----- (1) *Any elector of a constituency may propose or second the name of any duly qualified person to be a member for that constituency).*

2) *Every nomination shall be made by a separate nomination paper in the prescribed form which shall be signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, accompany-----*

a) *a declaration that he has consented to the nomination and that he fulfils the qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 or any other law for the time being in force for being elected as a member.*

b) *Omitted.*

c) a declaration that no loan for an amount of two million rupees or more, obtained from any bank, financial institution, cooperative society or corporate body in his own name or in the name of his spouse or any of his departments, or any business concern mainly owned by him or the aforesaid, stands unpaid for more than one year from the due date, or has got such loan written off;

d) a declaration that he, his spouse or any of his dependents or a business concern mainly owned by him or the aforesaid, is not in default in payment of government dues or utility charges, including telephone, electricity, gas and water charges of an amount in excess of ten thousand rupees, for over six months, at the time of filing of nomination papers;

e)

f)

(3)

4)

5) (Omitted)

6)

7) The Returning Officer shall cause to be affixed at a conspicuous place in his office a notice of every nomination paper received by him containing the particulars of the candidates as shown in the nomination paper.

8) The nomination form and accompanying declarations and statements shall be open to inspection by the public, and copies thereof may be made available by the Commission in such manner and on payment of such fee as may be prescribed).

13. **Deposits.**----(1) Subject to the provisions of sub section (2), no nomination paper delivered under section 12 shall be accepted unless-----

a) a sum of rupees----

i) (four thousand) for election to a seat in the National Assembly; and

ii) (two thousand) for election to a seat in the Provincial Assembly, is deposited in cash by the candidate or by any person on his behalf at the time of its delivery; or

b) it is accompanied by a bank draft for a sum as aforesaid drawn in favour of the Returning Officer or a receipt showing that a sum as aforesaid has been deposited by the candidate or by any person on his behalf at any branch of the National Bank of Pakistan or at a Government Treasury or Sub-Treasury.

2) Not more than one deposit under sub-section (1) shall be required in the case of a person who has been nominated as a candidate for the same seat by more than one nomination paper.

14. **Scrutiny.**----- (1).....

2)

3) The Returning Officer may, either of his own motion or upon any objection, (either by an elector or) (by any person referred to in sub section (1),) conduct such summary enquiry as he may think fit and may reject nomination paper if he is satisfied that -----

a) the candidate is not qualified to be elected as a member;

b) (the proposer or the seconder is not qualified to subscribe to the nomination paper;)

c) any provision of section 12 or section 13 has not been complied with (or submits any false or incorrect declaration or statement in any material particular); or

d) (the signature of the proposer or the seconder is not genuine;)

(3-A)

(4)

(5) A candidate, may prefer an appeal against the decision of the Returning Officer rejecting or, as the case may be, accepting the nomination paper of the candidate to the Tribunal constituted for the constituency to which the nomination relates and consisting of not less than two nor more than three Judges of the High Court nominated by the Commissioner, with the approval of the President; and such appeal shall be summarily decided within such time as may be notified by the Commission and any order passed thereon shall be final.)

(5A) If, on the basis of any information or material brought to its knowledge by any source, a Tribunal constituted under sub section (5) is of the opinion that a candidate whose nomination papers have been accepted is a defaulter of loan, taxes government dues or utility charges or has had any loan written off or suffers from any other disqualification from being elected as a member of an Assembly, it may, on its own motion, call upon such candidate to show cause why his nomination papers may not be rejected, and if the Tribunal is satisfied that the candidate is actually a defaulter as aforesaid or has had a loan written off or suffers from any disqualification, it may reject the nomination papers.)

6) *An appeal not disposed of within the period specified in sub section (5) shall be deemed to have been rejected.*

7)

14A.

15). ***Publication of list of candidates.***-----*(1) The Returning Officer shall, after the scrutiny of nomination papers, prepare and publish in the prescribed manner a list of validly nominated candidates.*

2) *In case an appeal against the decision of the Returning Officer is accepted by the (Tribunal referred to in sub section (5) of section 14) the Returning Officer shall revise the list of validly nominated candidates accordingly.*

3) *The Returning Officer shall, on the (second day following the last date for decision of appeal) under sub section (5) of section 14, prepare and publish in the prescribed manner the revised list of validly nominated candidates”.*

21. By summarizing the provisions, it will be gathered that section 11 of the Act regulates the notification for election prescribing therein different steps for holding of elections. Section 12 provides that an elector of a constituency may propose or second the name of any “*duly qualified person*” to be a Member for that constituency. Sub-section (2) of the said section provides that every nomination made on the prescribed forms shall be signed by both the proposer and seconder and shall also contain the declaration made and signed by the candidate on solemn affirmation to the effect that he has consented to the nomination; that he fulfills the qualifications specified in Article 62 of the Constitution and is not subject to any of the disqualifications specified in Article 63 of the Constitution or

any other law for the time being in force for being elected as a Member, declaring that no loan for an amount of two millions rupees or more, obtained from any bank, financial institution, co-operative society or corporate body in his own name or in the names of his spouse or any of his dependents or any business concern mainly owned by him or his spouse or any of the dependents stands unpaid for more than one year or has got such loan written off, a declaration to the effect that he, his spouse or any of the dependents or a business concern mainly owned by him or the aforesaid persons are not defaulter in payment of the government dues or utility charges including telephone electricity, gas and water charges of an amount in excess of Rs.10,000/-for over six months at the time of filing of nomination papers, a statement specifying his educational qualifications, occupations etc. and a statement of his assets and liabilities and that of his spouse and dependents. Sub-section (7) of section 12 provides that Returning Officer shall cause to be affixed at a conspicuous place in his office a notice of every nomination paper received by him containing the particulars of the candidates as shown in the nomination papers. Sub-section (8) of section 12 which was added vide Ordinance No. XXXVI of 2002 dated 31.7.2002 stipulates that the nomination forms and accompanying declarations and statements shall be open to inspection by the public and copies thereof may be made available by the Commission in such manner on payment of such fee, as may be prescribed. Section 14 of the Act, which relates to scrutiny of nomination forms prescribes that the Returning Officer shall examine the objections to the nomination of a candidate after giving them an opportunity for examining the nomination papers delivered to him and scrutinize the nomination papers and decide the objections. Sub-section (3) of section 14 authorizes the Returning Officer to reject the nomination papers of a candidate

after conducting such summary inquiry as he may think fit, either on his own motion or on any objection, if he is satisfied that:-

- (a) the candidate is not qualified to be elected as a Member;
- (b) the proposer or seconder are not qualified to subscribe the nomination papers;
- (c) any provision of sections 12 or 13 has not been complied with or “submits any false or incorrect declaration, statement or any material particular” (added vide Ordinance No.XXXVI of 2002 dated 31.7.2002);
- (d) the scrutiny of the proposer or seconder is not genuine.

Sub-section (5) of section 14 provides that a candidate may prefer an appeal against the decision of the Returning Officer rejecting or, as the case may be, accepting the nomination papers of a candidate to the Tribunal constituted for the said purpose, consisting of not less than two Judges of the High Court, nominated by the Commissioner with the approval of the President and such appeal shall be summarily decided within such time as may be notified by the Commission and any order passed thereon shall be final.

As against that sub-section (5-A), which was inserted in section 14 of the Act, vide Ordinance XXXVI of 2002 dated 31.7.2002 provides that if on the basis of any information or material brought to its knowledge by any source, a Tribunal constituted under sub-section (5) is of the opinion that a candidate whose nomination papers have been accepted, is defaulter of loan, taxes, government dues, or utility charges or has had any loan written off or suffers from any other disqualification from being elected as a Member of an Assembly, it may, on its own motion, call upon such candidate to show cause why his nomination papers may not be rejected, and if the Tribunal is satisfied that the candidate is actually a

defaulter, as aforesaid or has had a loan written off or suffers from **any disqualification**, it may reject the nomination papers. Sub-section (6) of the said section provides that an **appeal** not disposed of within the period specified in sub-section (5) shall be deemed to have been rejected.

22. The careful consideration of the provisions contained in sub-section (5) and sub-section (5-A) of section 14 would demonstrate that there is a sentiently conscious distinction between the two provisions. Under sub-section (5) the right of an appeal before the Tribunal has been given to a candidate to challenge the rejection of his nomination papers or to call in question the acceptance of nomination papers of his rival candidate on the grounds of disqualifications. However, the scope of scrutiny under sub-section (5-A) is wide enough. The Tribunal can reject the nomination papers of a candidate on the basis of **“any information”** received by it or **any material** brought to its knowledge by any **source**. What the law requires is that on receipt of the information, the Tribunal has to form an opinion that the candidate, whose nomination papers have been accepted, is a defaulter of loans, taxes, government dues or utility charges or has had any loan written off or **“suffers from any other disqualification”** and then after considering the viewpoint of the said candidate, the Tribunal has to satisfy itself that his candidature is marred by disqualification, nomination papers have to be rejected. A comparative perusal of both the sub-sections would reveal that the words *“appeal shall be summarily decided within such time as may be notified by Commission”* are conspicuously missing from sub-section (5-A) of section 14 *ibid*.

So far as sub-section (5-A) of section 14 of the Act is concerned, it would essentially mean that the stipulation for deciding the appeal, as laid down in sub-section(6) of the said section, was not made applicable to the scrutiny, to be made

under sub-section (5-A). The arguments that time limit specified under sub-section (6) for deciding the appeal should also be made applicable to sub-section (5-A) is patently misconceived. The intention of the legislature is abundantly clear whereby neither the decision of the Tribunal under sub-section (5-A) has to be made “*summarily*” nor it has to be made within time period, specified by the Election Commission of Pakistan in the Schedule. Evidently the purpose seems to be blocking the way of those candidates from contesting the elections who are either defaulters of loan, taxes, dues, charges or suffer from any other disqualifications. The term “*any other disqualification*” would cover the disqualifications as mentioned in section 14 (3)(b)(c) and(d) of the Act, beside the qualifications and disqualification as contained in section 99 of the Act and Articles 62 and 63 of the Constitution of Islamic Republic of Pakistan.

23. The arguments advanced by learned Advocate General, Punjab that the word “*source*” as appearing in sub-section (5-A) of section 14 of the Act would be limited to the juristic/artificial person or corporate body and not to a natural person is manifestly erroneous having no force. Word “*source*” in different dictionaries has been defined as under:-

New Webster’s Dictionary “*The place from which anything comes or is obtained; anything from which something proceeds or arises; the beginning or the place of origin of a stream or river; a spring or issue of water from the earth, or the place of issue; a fountain or fountainhead; an originating cause or ground; an origin; that from which news, , information, or evidence, esp. of an original character, is obtained; a book or other publication supplying such information; the business or person making payments of interest, dividends, or the like.*”

Oxford English Dictionary: “*A work, etc. supplying information or evidence as to some fact, event, or series of these*”.

Words and Phrases by West Publishing Co. “A source is that which anything comes forth, regarded as its cause or origin.

Dictionary/thesaurus: “ The point at which something springs into being or from which it derives or is obtained. 2. the point of origin, such as a spring, of a stream or river. 3. One that causes, creates or initiates a maker. 4. One, such as a person or document, that supplies information.

1. The place where something begins, where it springs into being; “the Italian beginning of the Renaissance”; “Jupiter was the origin of the radiation”; Pittsburgh is the source of the Ohio river”; communism’s Russian root”

2. a document(or organization) from which information is obtained; “the reporter had two sources for the story”.

3.

4.

5. a person who supplies information

6.

Chambers 21st Century Dictionary: ““the word source interalia means a person, a book or other documents that can be used to provide information/evidence.”

Black’s Law Dictionary:- “The originator or primary agent of an act, circumstance, or result.”

From perusal of the above definition, it will become manifestly clear that the term “ **Source**” has a very wide meaning. It includes a person, a book or any other document that can be used to provide information/evidence.

The meaning of word “**person**” as contained in the **Chambers 21st Century Dictionary** is as follows:-

“an individual human being. 2. the body, often including clothes.”

Word “**Person**” according to **Black’s Law Dictionary** means:

“ A human being. 2. An entity (such as a corporation) that is recognized by law as having the rights and duties of a human being 3.The living body of a human being.

“So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition” John Salmond, Jurisprudence 318.

Word “**Person**” has been defined in the **General Clauses Act, 1897** in section 3(39) in the following manner:

Word “**person**” includes *any company or association, or body or person whether incorporated or not*”

Term “**Person**” has been defined in the similar meaning contained in section 11 of the **Pakistan Penal Code 1860**.

24. Thus it will be concluded that the definition of “**Person**” would include artificial person or legal entity and natural persons viz. human being - men or women. It would be seen that the information or material can be brought to the knowledge of the Tribunal by any juristic or natural person to question the qualifications of a candidate whose nomination papers have been accepted. The phrase “*on its own motion*” even authorizes and empowers the Tribunal to gather the information from electronic or print media, and that the decision of a Tribunal could not be made subject to the time limit prescribed in the notification issued by the Election Commission of Pakistan, as it would only cover the appeals. There appears a logic behind that, as if some candidate who is not qualified , and is elected or chosen, his election can be called in question by his rival candidate through an election petition. But the ordinary citizens or the electors will have no locus-standi to maintain such an election petition. Moreover, the addition of sub-

section (8) in section 12 of the Act, providing therein that the nomination papers and accompanying declaration and statements of a candidate shall be open to inspection *by the public* and copies thereof may be made available by the Commission to the public could not be without purpose, whereby general public has been provided access to inspect the documents filed by a candidate and obtain copies thereof also. The intention of the law-makers is quite clear and there is no ambiguity in the provisions to show that the general public has been given a right to question the qualifications of their representatives. This is an act to ensure the transparency in the election and to prevent the persons otherwise disqualified to reach the law-making bodies.

25. Section 12 of the Act has given a right to all the electors of the constituency to propose and second the name of any person, however, such right can only be exercised by an elector in respect of a *duly qualified person*. The electors have not been given unfettered rights to propose and second a person who is not duly qualified. Besides, the candidate himself has been made responsible to swear a declaration *inter alia* that he fulfills the qualifications specified in Article 62 of the Constitution and is not subject to any of the disqualifications specified in Article 63 of the Constitution or any other law for the time being in force.

26. From the above discussion, it becomes crystal clear that the Election Tribunal is vested with the powers to call upon a candidate on the basis of any information or material brought to its knowledge, to show cause as to why his nomination papers may not be rejected on account of disqualifications enumerated in sub-section (5-A) and disqualification as contained in Article 63 of the Constitution of Pakistan and section 99 of the Representation of People Act, 1976 and that decision in such matter shall not be governed by sub-section(6) of the Act, meaning thereby that the Tribunal has to arrive at a definite conclusion after it

has taken notice of the matter, and that such information or material can be brought to its knowledge by any source viz. a body corporate, juristic or natural person. However, the Tribunal shall take effective steps to adjudicate the election dispute in an expeditious manner within a reasonable time

27. The above discussion will lead to the conclusion that the observation of learned Chief Election Commissioner erroneously treating the information laid down before the Appellate Tribunal by respondent No.5 as an appeal was legally untenable, further observing the same as deemed to have been rejected was against the provisions of law. The view taken by the Lahore High Court, Lahore in this regard is legally valid and thus unexceptionable.

28. As regards to the maintainability of a Writ Petition challenging the pre-election disqualification of a candidate before the completion of election process has now been well settled. After surveying the entire case law on the subject, this Court in the case of Intesar Hussain Bhatti. Vs. Vice-Chancellor, University of Punjab, Lahore and others (PLD 2008 Supreme Court 313) has held as under:-

“The contentions of the learned counsel for the petitioner that petitioner appeared in 2003 Examination and qualified but the degree was issued in 2005, on the face of it, seems to be invalid. In the case of Tariq Mahmood. Vs. District Returning Officer, Faisalabad and others 2001 SCMR 1991 this Court disqualified the candidate on the ground that he tried to mislead the authorities as he did not possess the basic qualification which could qualify him to contest the election. The contention of

learned counsel for the petitioner that under Article 199 of the Constitution High Court has no jurisdiction to interfere in the election matter in view of bar of jurisdiction under Article 225 of the Constitution has no force as it was held by a larger Bench of this Court in the case of Ghulam Mustafa Jatoi. Vs. Additional District and Sessions Judge-Returning Officer and others 1994 SCMR 1299 that High Court generally cannot interfere in the election process in the exercise of its Constitutional Jurisdiction in view of bar of jurisdiction contained in Article 225 of the Constitution,. However, this is subject to an exception that where no legal remedy is available to an aggrieved party during the process of election or after its completion, against an order of an election functionary which is patently illegal/without jurisdiction and the effect of which is to defranchise a candidate, he can invoke constitutional jurisdiction of the High Court. The view taken in the case of Javed Hashmi (supra) is not applicable in the present case. In the case of Ayatullah Dr.Imran Liaquat Hussain (supra) it was also held that legislature expects every statutory authority to act within the limits of the law and if any such authority steps out of these limits or refused to function as the law requires him to function and he proceeds to make an order not within the limits of law; such order can be declared as without lawful authority and no legal effect under Article 199. Therefore, orders passed even by election authorities which are outside the ambit of law, are not, immune from challenge before and correction by the High

Court under Article 199. In the case of Lt.-Col. Farzand Ali and others. Vs. Province of West Pakistan PLD 1970 SC 98 the issue related to pre-election disqualification of the candidate. It was held, inter alia that since the dispute raised was not a dispute relating to or arising in connection with an election but related to the right of the person concerned from being a member of assembly and disqualification of a candidate which was overlooked by the Authorities who were responsible for properly scrutinizing a person's right to be enrolled as a voter or his right to be validly nominated for election, the High Court was not debarred from exercising its jurisdiction. In the case of Hafiz Hamdullah. Vs. Saifullah Khan and others PLD 2007 SC 52, too the appellant was suffering from a pre-election disqualification which was challenged before the High Court through Constitutional Petition under Article 199. It was contended that since the matter was required to be decided only by way of election petition under section 52 of the Act, in view of the provision of Article 225 of the Constitution, therefore the writ petition was not maintainable. The contention was repelled and while relying on the case of Lt.-Col. Farzand Ali (supra) it was held that since respondent was not a candidate in the election, therefore, he could not have had a recourse to sections 14 and 52 of the Representation of People Act, 1976, nor any other remedy was available to him under any law except by way of filing a Constitution Petition. It was also held in the case of Ahad sharif

alias Muhammad Ahad. Vs. Tariq Javed 2006 SCMR 1356 that if a statute prescribes a remedy, normally the same should be adhered to but it does not mean that in a case where the order of the election functionary is patently illegal, the High Court would be debarred to exercise its constitutional jurisdiction which is much higher than the jurisdiction available to a Tribunal under a subordinate legislation. In the wake of above it thus follows that when validity of election is not challenged and the matter primarily relates to the competency and qualification or otherwise of a person to be a candidate in the election, the bar contained in Article 225 would not be attracted and it would also not apply when the Tribunal having jurisdiction has failed to exercise the same or it is improperly exercised and the person aggrieved is left without remedy at a later stage of the proceedings because a Tribunal having jurisdiction cannot do it rightly or wrongly but is bound to do rightly as has been held by this Court in the cases of i) Naik Muhammad. Vs. Mazhar Ali and others 2007 SCMR 112 (ii) Riaz Hussain and others. Vs. Board of Revenue and others 1991 SCMR 2307 (iii) Utility Store Corporation of Pakistan. Vs. Punjab Labour Appellate Tribunal PLD 1987 SC 447 (iv) Zulfikar Khan Awan. Vs. The Secretary Industries and Mineral Development Government of Punjab 1974 SCMR 530 (v) Muhammad Hussain. Vs. Sikandar PLD 1974 SC 139, (vi) Bardul Haque Khan. Vs. The Election Tribunal, Dacca PLD 1963

SC 704. The case-law cited by learned counsel for the petitioner is distinguishable”.

29. Such view of the full Bench was further affirmed by a larger Bench of this Court in the case titled Let.-Gen.(R) Salahuddin Tirmizi. Vs. Election Commission of Pakistan (PLD 2008 Supreme Court 735). More particularly when the aggrieved party has no alternate remedy under Article 225 and when the facts are undisputed, the High Court certainly will have the jurisdiction to adjudicate the matter in its Constitutional jurisdiction available under Article 199 of the Constitution of Islamic Republic of Pakistan.

30. As in the instant case respondent No.5 being not a candidate could not challenge the pre-election disqualification of respondent No.1 by way of election petition under Article 225 of the Constitution, thus petition was rightly entertained by the High Court. Indeed respondent No.1 opted not to appear and defend his case before the Election Tribunal or even before the High Court to controvert the averments made in the petition, and on the basis of the available record, the facts remained unrebutted.

31. In such circumstances we are of the considered view that the writ petition before the Lahore High Court, Lahore filed by respondent No.5 was maintainable in law. The contentions raised by learned Advocate General, Punjab being without substance are therefore repelled. Even the doctrine “*Semper Proesumitur Pronegante*” (Presumption is always in the favour of the one denying or in favour of the negative) pressed into service by learned Advocate general, Punjab would not be attracted in the present case for the

simple reason that there was no denial. Even otherwise the facts were borne out from the record. The contentions raised on behalf of learned Advocate General, Punjab suggesting the filing of a writ of quo warranto by respondent No.5 would amount to negate the provisions of sub-section (5-A) of section 14 of the Representation of the People Act, 1976 as respondent No.5 has placed the information regarding inherent disqualification of respondent No.1 before the Election Tribunal prior to completion of the election process. Besides the suggestion being unreasonable and contrary to the rule of advancement of cause of justice if accepted, was bound to encourage multiplicity of litigation which in a way tantamounts to denial of justice.

32. It is an admitted position that the nomination forms of respondent No.1 in the general elections were also rejected by the Returning Officer vide his order dated 01.12.2007. It is also an admitted fact that respondent No.1 did not challenge the orders of the Returning Officer before the Election Appellate Tribunal. Instead respondent No.1 submitted an application dated 07.12.2007 (Pp 124-126) raising his grievance against the order of the Returning Officer that he has rendered a dishonest decision and committed a grave error of law by rejecting his nomination papers. Such application moved by respondent No.1 was responded to with the following orders stated to have been communicated to respondent No.1 as appearing in the office order dated 17.12.2007 (page 127 of the paper book of CPLA 878/2008) reproduced hereunder:-

“ELECTION COMMISSION OF PAKISTAN

In re: APPLICATION BY MIAN SHAHBAZ
SHARIF AGAINST REJECTION OF HIS
NOMINATION PAPERS FOR
CONSTITUENCY NO. NA-119 LAHORE-II
& PP-141-V.

A copy of this petition was received in the office through fax on 7.12.2007 and in view of the short time left for filing of the appeal before the notified Appellate Tribunal it was disposed of promptly and the decision was conveyed to the petitioner in the following terms:

“I have been directed by the Hon’ble Chief election Commissioner to inform you that the Order of the Returning Officer rejecting or, as the case may be accepting the nomination paper of a candidate is appealable under section 14(5) of the Representation of the People Act, 1976 before the Appellate Tribunal constituted for the purpose. As such, the Chief Election Commissioner lacks jurisdiction in the matter.

“You may, therefore, approach the appropriate forum provided under law for the redressal of your grievances, if so advised”.

In the case of the above Order and the comments of the learned Members Election Commission, the matter does not require any further action. The petitioner may seek remedy, if any, available to him under the law. The petition be filed and the learned counsel for the petitioner be informed”.

33. Respondent No.1 after receipt of such order did not agitate the matter any more, and obviously acquiesced in. Thus afore-said order disqualifying Respondent No.1 attained finality. No plausible or convincing arguments were advanced to justify the subsequent acceptance of the nomination papers of respondent No.1, in the bye-elections while there was a clear cut acquiescence on the part of the respondent to his disqualification in the general elections.

34. Be that as it may, the nomination papers of respondent No.1 were rejected in the general elections on the following grounds:

1. The he remained fugitive from law.
2. That the loans obtained by the candidate and his family members remained unpaid.
3. That he defamed and ridicule the judiciary;
4. That the respondent could not be considered righteous;

Learned Advocate General, Punjab has only been able to satisfactorily explain that the criminal case in which respondent No.1 was declared absconder was in the meantime disposed of and resulted in his acquittal. However, he was absolutely unable to explain the repayment of borrowed loans and fulfillment of the obligations with the creditor Bank by the companies/projects mainly owned by respondent No.1 in accord with the settlement as reflected in the judgment of the Lahore High Court, Lahore in Mian Muhammad Shahbaz Sharif through Attorney. Vs. Election Commission of Pakistan, Islamabad and 15 others (PLD 2003 Lahore 646). In this regard it

will be appropriate to reproduce here under para 30 of the above judgment to understand the factual position :-

“As far as the question of default is concerned, the contention of the learned counsel for the petitioner, Mian Muhammad Shahbaz Sharif has merit. It is not disputed that National Bank of Pakistan has filed C.O.Nos. 63 of 1998 and 64 of 1998, under section 284 of the Companies Ordinance, 1984 based on the arrangement dated 30.6.1998 between the aforesaid Bank and the two companies, namely, Ittefaq Foundary (Pvt.) Ltd and Ittefaq Brothers (Pvt.) Ltd. The Order dated 8.7.1998 passed in aforesaid cases clearly recites that the learned counsel for the respondent-companies in the said cases, accepted the aforesaid arrangement. Perusal of the order dated 8.7.1998 shows that the learned Company Judge appointed a Committee, inter alia, comprising the Regional Chief Executive, National Bank of Pakistan, amongst others, to assume and take over the possession and preserve the properties of the companies and make arrangements for the disposal of the same, for the discharge of the liabilities. Various orders placed before us show that one of the parties had objected to the maintainability of the said petitions under section 284 of the Companies Ordinance and the position taken by the learned counsel for the National Bank was that in the circumstances it was the most appropriate remedy. The aforesaid petitions are, however, pending. The undisputed fact however, remains that the two companies i.e.

the principal debtor, have placed all the assets and properties at the disposal of the Court at the initiative of the creditor-Bank. The bank itself wants to realize its dues by the disposal of the properties of the two companies which has already been accepted by the said companies. It is, therefore, a case in which the creditor has taken over the assets and properties of the principal debtor. The effect to our mind, of this new arrangement is that all previous agreements including the agreements of guarantee stand superseded. The change in the circumstances i.e. enforcement of a compromise by the creditor Bank under section 284 of the Companies Ordinance, 1984 is so fundamental in character that it strikes at the very root of the original contract. It may be added that with the taking over of the assets and properties of the company by the creditor Bank, the remedy of the surety to proceed against the principal debtor at least stands suspended. Reference may be made to Begum Zia Farhat Awan and two others. Vs. Islamic Republic of Pakistan and three others (1993 CLC 365) in which this Court, after examining various provisions of the Contract Act, observed that when the creditor takes over the principal debtor i.e. the company, the surety cannot be held to be liable any more. We will, however, like to add that these observations are being made in the limited context of the question whether Mian Muhammad Shahbaz Sharif could be said to be a defaulter, and are not to be construed to prejudice the parties in the said recovery suits”.

35. From perusal of the above paragraph it will transpire that the two companies i.e. principal debtor placed all assets and properties at disposal of the Court at the initiative of creditor bank. It was observed in the judgment that with the taking over of assets and properties of the companies by the creditor bank, remedy of surety to proceed against principal debtor at least stands suspended.

36. The above judgment reflects that vide order dated 08.07.1998 learned Company Judge of the Lahore High Court appointed a Committee, inter alia, comprising of the Regional Chief Executive, National Bank of Pakistan amongst others, to takeover possession and preserve the properties of the companies and make arrangements for disposal of the same, for the discharge of the liabilities. However, the Project Brief dated 22.05.2008 of Ittefaq Group comprising Ittefaq Foundary (Pvt.) Ltd, Ittefaq Brothers (Pvt.) Ltd and Ilyas Enterprises showing respondent No.1 and his other family members including Mian Muhammad Nawaz Sharif and Mrs.Nusrat Shahbaz as director of those companies reveals that since 1998 when the directors offered to surrender the assets of these units to settle the claim of all the banks which included National Bank of Pakistan, HBL, UBL, MCB, 1st Punjab Mudarba, Bank of Punjab, ADBP, PICIC and ICB, no progress has since been made on account of objection petitions filed by the directors of Ittefaq Group inspite of the fact that a bid of Rs.2.48 billion was received which was submitted to the Court as far back as in 2005. It will be appropriate to reproduce herein the said Project Brief appearing at page 106 of the paper book of C.P.L.A.No. 905 of 2008 which has duly been

signed by Saleem Ansar, Executive Vice-President National Bank of Pakistan a Member of the Committee as representative of the Banks:--

PROJECT BRIEF

Dt.22.05.2008

ITTEFAQ GROUP

Ittefaq Foundries (Pvt) Limited.

Brother Steels (Pvt) Limited

Ittefaq Brothers (Pvt) Limited

Ilyas Enterprises

Exposure of Banks:

Banks	Ittefaq Foundry	Brother Steel	Ittefaq Brothers	Total	(%)	NBP/other Banks	(%)
NBP	1.072	118	355	1,545	49.94%		
HBL	716	0	0	716	23.14%	NBP	
UBL	340	0	0	340	10.99%	1.545	49.94%
MCB	239	0	0	239	7.72%		
1 ST Punjab Mudarba	87	23	0	110	3.56%		
Bank of Punjab	61	0	0	61	1.97%	Other Banks	
ADBP	58	0	0	58	1.87	1,549	50.06%
PICIC	17	0	0	17	0.55%		
ICP	0	8	0	8	0.26%		
TOTAL:	2,590	149	355	3,094	100.00%		

In 1998 the directors offered to surrender the assets of these units to settle the claims of all the banks. Upon this offer, all the banks unanimously agreed to get a court order on this deal, and as per legal

advice of Joint Legal Council of all the banks (Raja Muhammad Akram) an application under Section 284 (Compromise) was filed by the banks at Lahore High Court.

While hearing this application under Section 284 the Lahore High Court ordered to constitute a Committee comprising 3 members: a representative of banks: a chartered accountant and an advocate being the Court representative. The mandate of the Committee is to take possession of the said units of Ittefaq Group to protect and preserve their assets and to auction them through Court Procedure.

Under the said Committee a bid of Rs.2.48 billion was received for assets of all the said units, which was submitted to the Court in 2005, however the final Court Order for auction has not yet been issued due to Objection Petitions filed by some of the directors of Ittefaq Group.

Subsequently, in 2006, Committee member Mr.Iqbal Hamidur Rehman, af iET 3 of meounts Addn Petr.IJudg84 the Lahore High ,whicue to

Since filing of the bid of Rs.2.48 billion with the Court in 2005, duly accepted by all the banks and recommended by the committee, the matter is still stuck up at Court for an Order, and despite all out efforts of the Committee no progress could so far be made. Several meetings of Creditors banks were convened by NBP at SAMG-North Office, Lahore. Where legal experts other than the dealing councils of the banks were also invited to consider alternate course of action to expedite this matter, however, the legal complications have been arisen to such an extent that no concrete solution of the problem could so far be unanimously adopted and the progress at the court has come to almost a stand still.”

Companies Profile:

Companies	Ittefaq Foundries	Brother Steels	Ittefaq Brothers
Location	Kot Lakhpat, Lahore	Kot Lakhpat, Lahore.	8-KM GT Road, Shahdara, Lahore
Capacity	Not specified	100,000 Tons p.a. steel products	150 Tons p.a. steel products
Operational Status	Closed	Closed	Closed
Land	67 Acres	20 Acres	6 Acres
Directors	Mian Tariq Shafi Mian Javed Shafi Mian Abbas Sharif Mian Riaz Meraj Mian Shahbaz Sharif Mian Yousaf Aziz Mian Nawaz Sharif	Mian Yousaf Aziz Mian Yahya Siraj Mrs.Nusrat Shahbaz Mian Naseem Tariq Mian Memoona Idrees Mr.Hussain Barkat	Mian Shahbaz Sharif Mian Muhammad Idrees Mian Pervaiz Shafi

Sd/-
(SALIM ANSAR)
Executive Vice President
National Bank of Pakistan
SAMG-LAHORE CANTT.

37. The above document if read in conjunction with the observation made in the judgment of Lahore High Court in the case of

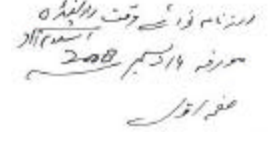
Mian Muhammad Shahbaz Sharif (*supra*) would reveal that a loan amounting to Rs.2590.00 million, Rs.149.00 million and 355.00 million respectively is still outstanding against the Pvt. Ltd. companies, of which respondent is a Director and also a guarantor and the factum of non-payment thereof has gone absolutely unchallenged. Even otherwise learned Advocate General, Punjab being Law Officer of the Province was neither legally competent or authorized nor capable of making any comments, hence remained acquiescent on the personal financial transaction of respondent No.1 made in his personal capacity as an Industrialist, such matter having obviously no concern whatsoever with the administration, control and governance of the Province of Punjab.

38 Regarding defaming the judiciary Kh.Haris Ahmad, learned Advocate General, Punjab was not in a position to categorically deny the allegations but made a faint-hearted and feeble attempt to justify the action saying that the remarks were made in respect of the person of a Judge and not against the judiciary as a whole. Certainly the above justification is neither convincing nor legally justified, hence unacceptable. To say the least such an argument on behalf of the Principle Law Officer of a Province was not only dismaying, rather saddening. It will be appropriate to reproduce hereunder the remarks made by respondent No.1 verbatim available at page 41 of the paper book.

26 نومبر کو میرے کاغذات نامزدگی مسترد کیے۔ میرے ریٹرننگ آفیسر کو ایک بمبئی صاحب جولاہور کے سیشن جج تھے۔ یہ جج ہائی کورٹ کے جج بن گئے ہیں نے بلا کر کہا تمہیں شہباز شریف کے کاغذات نامزدگی بلا تعامل مسترد کرنا ہوں گے۔ بعد میں انعام کے طور پر ان کو PCO میں ہائی کورٹ کا جج بنوایا گیا۔ اس RO نے ضمیر فریشتی کی۔ اور میرے کاغذات نامزدگی مسترد کیے۔

39. Apart from above, Mr.Ahmed Raza Khan Qasoori, learned Sr.ASC appearing for respondent No.5, Syed Khurram Shah has placed on record the DVDs, containing the above remarks made by the petitioner in proof.

So far as plea of continuously ridiculing the judiciary is concerned, Mr.Ahmed Raza Khan Qasoori has placed on record certain press clippings to prove his point, which have also been taken on record. It appears appropriate to reproduce a few of them to have a glance over language and tenor expressed therein.



عزیزانِ وطن! پی ایچ جی کے سامنے نہیں جھکیں گے شہباز شریف

DAILY KAWA-E-WAQT
روزنامہ
کوائے وقت
شہباز شریف

ملیت کیس کا فیصلہ خلاف آیا تو ججوں کے جرقوں کے سامنے لامینگہ

DAILY EXPRESS
روزنامہ
ایکسپریس

جسٹس عبدالحمید ڈوگر زمیندار ابق دیدیں کی خدمت جاری رکھیں گے شہباز
سیاستدانوں کی اہلیت فیصلہ عدالت نہیں عوام کے ہاتھ میں ہے سعید فقی

روزنامہ
SAMA
لاہور

میری اہلیت کا فیصلہ کر نیوالے جج خوناہل ہیں 9 مارچ پہلے تہیابی لائیں شریف

DAILY EXPRESS
روزنامہ
ایکسپریس

پی ایچ جی کو نہیں ماننا کہیں کہتے ہیں جھک نہیں سکتی شہباز شریف

DAILY KAWA-E-WAQT
روزنامہ
کوائے وقت
شہباز شریف

جسٹس ڈوگر نے نواز شریف کو چک دکھانے پر اہلیت بے باک کر کے پیشکش کی شہباز شریف

DAILY EXPRESS
روزنامہ
ایکسپریس

عدلیہ کی کیا بات کریں نا اہلی ختم نواز کو جسٹس ڈوگر کی پیشکش شہباز شریف کا
انتہائی

Daily KHABRAIN
شہباز شریف

پنجاب حکومت بچانے کیلئے پی سی جی بلیک میل نہیں منگے شہباز شریف

THE JANG BUREAU
روزنامہ
جنگ لاہوری

پاکستان میں نصابِ فہم کر نیوالے انصاف میں کم کو خود اٹھنا ہو نواز شریف

Daily JANAH
روزنامہ
جنات



Nawaz says PCO judges ineligible

TheNation



29 مئی 2009ء - ضلع ازل
نواز نے وقت نہیں لیا

40. There is no denial so far as continuously making outrageous remarks against the judiciary in newspapers are concerned. The arguments could be advanced that the functioning of the judiciary and the laxnesses thereof could be commented upon by the Political Leaders which must not

only be absorbed by the judiciary but to be appreciated to overcome the shortcomings so pointed out. There can be no two opinions that in a democratic society fair comments must be encouraged as freedom of speech and expressing of viewpoint is a fundamental and inviolable right enshrined in the Constitution. However, there is vast difference between a fair comment and/or bonafide criticism and purposeful and outrageously, unconscionable defamation deliberate ridiculousness, coupled with malicious persecution. The material reproduced hereinabove would by itself speak of derogatory and offensive language demonstrating humiliation, persecution and ridicule tainted with malice for the achievement of ulterior purposes. Such iniquitously wicked and insulting statements in the press were sufficient enough to bring the mischief within clause (1)(g) of Article 63 of the Constitution of Islamic Republic of Pakistan and sub-section (g) of the section 99 of the Representation of People Act, 1976 as respondent No.1 not only propagated to bring into the ridicule the judiciary in the past but is still continuing to do so unabatingly.

41. It was argued before us that the Leaders and workers of Pakistan Muslim League (Nawaz) of which respondent No.1 is the President committed the acts of rowdism in the Supreme Court premises on 28.11.1997. Referring to the judgment reported as Shahid Orakzai. Vs. Pakistan Muslim League (Nawaz) and 8 others (2000 SCMR 1969) it was argued that the said attack on the Supreme Court was made during the government of Pakistan Muslim League (Nawaz) and at the behest of respondent No.1 while Mian Muhammad Nawaz Sharif was Prime

Minister and respondent No.1 was the Chief Minister of Punjab. Certain members of the Provincial Assembly and National Assembly and pro-active workers of the party were found involved and were convicted for contempt of the Court. It was pointed out that according to para 17 of the said judgment, an order was passed for conducting thorough investigation and submission of report within four months to proceed against the miscreants to be identified in the investigation. Though such report was submitted to this Court but was subsequently suppressed and was not placed before the Court.

42. As a matter of fact, such order is available at para 17 of the reported judgment(supra) but since the certified copy of the said report is not available before us therefore, we do not deem it appropriate to dilate upon the same. Yet certain facts are obviously clear and need no further proof. It is quite certain that the persons who were convicted for the contempt of this Court not only belonged but occupied prominent positions in the party of which respondent No.1 is the President. The culpability of respondent No.1's party is further affirmed by the fact that one Akhtar Mehmood who was convicted in contempt of the Court case was undeniably appointed to occupy a responsible judicial/quasi judicial position by respondent No.1 in his capacity as a Chief Executive of the Province. Having conceded the above factum of appointment of the said convict, Kh.Haris Ahmed, learned Advocate General, Punjab made a candid statement before us that the steps were being taken to revoke the appointment of Mr.Akhtar Mehmood, which may not be enough to reduce the culpability. Nonetheless the aforesaid contempt case is still pending,

but it has not been mentioned in the declaration submitted by Respondent No.1 alongwith his nomination form.

43. From the above factual position it will be observed that respondent No.1 had been and is continuously making well determined and decisively resolute efforts to ridicule, defame, harrass, downgrade and humiliate the judiciary since 1997 till date.

44. Though it may not be said with certainty that the judgment in Zafar Ali Shah's case (PLD 2000 SC 869) does affirm the financial bunglings made by respondent No.1 but the subsequent events were adequate enough to show that the allegations were not without substance to be outrightly rejected.

45. Article 63 of the Constitution of Islamic Republic of Pakistan *interalia* provides that a person shall be disqualified from being elected or chosen as, and from being, a Member of *Majlis-e-Shora* (parliament), if:-

“(i) *he is propagating any opinion, or acting in any manner, prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Paksitan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan or which defames or brings into ridicule the judiciary or the Armed forces of Pakistan;*
or

(ii) *he has obtained a loan for an amount of tow million rupees or more, from any bank, financial institutions, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for*

more than one year from the due date, or has got such loan written off; or

- (iii) *he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers.”*

Apart from the above, sub-section (1-A) of section 99 of the Representation of People Act, 1976 also speaks of the above-mentioned disqualifications.

46. As is evident from the above discussion that respondent No.1 is defaming and propagating to bring into ridicule the judiciary and that the loans obtained by him exceeding the amount of two million rupees have remained unpaid since the year 1998. Besides a pending case has not been declared in the statement submitted alongwith nomination form. As a result of above findings, respondent No.1 is disqualified from being elected or chosen as, and from being a Member of Provincial Assembly.

LOCUS-STANDI:

47. Adverting to the plea of locus-standi of the Province of Punjab, it will suffice to say that the election dispute is purely a personal matter and private cause between the electors and the candidate for the simple reason that to contest the election is a personal right, which can be brought only by the person concerned. It is an action which will essentially die with the death of the candidate. The law palpably and unambiguously

requires that “duly qualified” candidate could be proposed and seconded. If a person suffers from inherent disqualification, he cannot be elected or chosen as a member of the Assembly. If a person is not qualified to become a member of Provincial Assembly, as a natural consequence he cannot be chosen or elected as a Leader of the House i.e. in the present case as a Chief Minister. In such an event either Mr.X remains Chief Minister or loses his seat and Mr.Y is chosen in his place, it will make hardly any difference so far as the continuity in the functioning of the Provincial Government is concerned. The Provincial Government functions in continuity and perpetuity and its functioning could not be hampered on account of change of personalities; may it be a Governor of Province, Chief Minister of the Province, a Provincial Minister or a Secretary to Government, in no case perpetuity is disturbed. In such circumstances, we are of the view that the Chief Secretary of the Provincial Government acted in an overzealous manner, overstepped his authority and pushed the Province of Punjab to defend the case of the sitting Chief Minister, who himself intentionally opted to remain out of the Court and decided not to defend his case instead remained busy in humiliating the judiciary. There is a plea of initiating contempt proceedings against Mr.Javed Mehmood, Chief Secretary Province of Punjab as *prima -facie* , it may be presumed that he also shared the views of respondent No.1 so far as maligning of the judiciary is concerned. However, at this juncture we consider it proper to withhold the commencement of contempt proceedings against Mr. Javed Mehmood. In any case the act of Mr.Javed Mehmood, Chief Secretary, Punjab on the face of it appears to be subversive of discipline constituting

misconduct under the Service Laws. Be that as it may we leave the matter open to be dealt with by the Competent Authority.

48. Regarding the locus-standi of the Speaker of Punjab Assembly, the arguments of Mr. Raza Farooq, learned ASC to the extent of role of Speaker so far as regulating and conducting the business of the House is concerned, his duties obligations and privileges including the status of prominence are not disputed. It is also not disputed that the Speaker is under obligation to refer the case of a member for disqualification on the ground of defection as provided under Article 63-A of the Constitution, however the point which needs to be considered is, as to whether the Speaker of the Provincial Assembly shall be entitled to espouse the individual cause of a Member or for that matter that of the Leader of the House in regard to his personal disqualification to be elected or chosen as a member, the reply will be definitively in negative. The Speaker is the custodian/guardian of the entire House, and not an individual member. The case of Moulvi Tameez-ud-Din Khan as relied upon by learned ASC is evidently in relation to challenging the Act of Governor of dissolution of the Assembly and does not concern the individual act of a member. The said case and the subsequent precedents in this regard will be of no help to advance the case of the Speaker of Punjab Assembly. Of course the Speaker may agitate the collective cause of the House but could not provide a shield to defend an individual member, more particularly when the member himself is neither handicapped, incapacitated or prevented by an act of God nor prohibited by the circumstances beyond his control but is resolutely and determinably unwilling to defend himself.

49. In the given circumstances, neither the Province of Punjab nor Speaker Punjab Assembly has a right to intervene and seek impleadment in an election dispute revolving around the question of personal qualification and or disqualification of an individual member. The Lahore High Court, Lahore was absolutely justified in rejecting their applications moved under Order 1 Rule 10 CPC, both the parties having no locus-standi to invoke the jurisdiction of this Court. Their applications bearing Nos. CMA No.471-L/2008 and CMA No.1715/2008 are accordingly dismissed.

50. As regards the locus-standi of the Federation of Pakistan to impugn the judgment of the Lahore High Court, it will be noted that the Federation was a proforma party/respondent in the petitions before the Lahore High Court. The perusal of the impugned judgment manifestly reveals that neither any relief was granted against the Federation nor any direction was issued to them, so as to give rise to the cause of action to the Federation to file the instant petition. It was candidly conceded by learned Deputy Attorney General that no direction or order was passed against the Federation. In the circumstances, neither the Federation was aggrieved party nor had any cause of action to provide them a locus-standi to challenge the judgment of the Lahore High Court. Even learned Attorney General has not been able to cite any precedent to demonstrate that at any point of time, the Federation has ventured to step into an election dispute of a certain individual.

We have no slightest doubt in holding that the Federation, not being an aggrieved party, was not competent to maintain the petition. Accordingly the petition filed by the Federation is equally liable to be dismissed, which stands dismissed.

51. For what has been discussed above, we have arrived at an irresistible conclusion that respondent No.1, Mian Muhammad Shahbaz

Sharif was disqualified from being elected or chosen as a member of Provincial Assembly of Punjab as he suffered from an inherent disqualification. The order of the Returning Officer dated 16.5.2008 of acceptance of nomination papers of respondent No.1 was legally unsustainable which is set aside. The judgment dated 23.6.2008 passed by Lahore High Court, Lahore remanding the case to the Chief Election Commissioner for constituting a three members' Tribunal, in the given circumstances of the case, is untenable and of no legal effect, as it will serve no purpose except protracting the proceedings, especially when respondent No.1 has taken determinative decision not to appear before any forum, which is evident from the record and proceedings. Respondent No.1 despite service did not appear before the Election Appellate Tribunal. He elected not to appear before the High Court despite service. instead futile attempts were made through proxies to drag the proceedings of the High Court and to cause harassment and humiliation to the learned Judges of the Lahore High Court. Despite serious and relentless efforts made by this Court, more particularly having got respondent No.1 served through Advocate General, Punjab he opted not to appear before this Court.

52. As a result of foregoing reasons, the notification issued by Election Commission of Pakistan dated 03.06.2008 declaring respondent No.1 to be Returned Candidate, is set aside.

53. These are the detailed reasons for the short order passed on 25.2.2009 which is reproduced herein below:-

“Arguments concluded.

2. For the detailed reasons to be recorded separately, the under mentioned civil petitions are held to be not maintainable and accordingly dismissed. Leave is refused:-

- (i) CPLA No.657-L/2008
- (ii) CPLA No.803/2008
- (iii) CPLA No.878/2008

3. CPLA No.905/2008 (Syed Khurram Shah v. Mian Muhammad Shahbaz Sharif and others) is converted into appeal and allowed.

4. Resultantly, respondent No.1 (Mian Muhammad Shahbaz Sharif) is declared not qualified to be elected or chosen as a Member of an Assembly. The order dated 16.5.2008 of the Returning Officer PP-48 Bhakkar-II (respondent No.2) accepting the nomination papers of Mian Muhammad Shahbaz Sharif and the judgment dated 23.6.2008 of the Lahore High Court, Lahore passed in W.P. No.6470/2008 are set aside.

In consequence thereof, the notification issued by the Election Commission of Pakistan dated 3.6.2008 thereby publishing the name of Mian Muhammad Shahbaz Sharif and notifying him as returned candidate is declared to be null and void. Consequently, respondent No.1 (Mian Muhammad Shahbaz Sharif) ceases to be Member of the Provincial Assembly of Punjab from the said constituency. Election Commission of Pakistan is directed to issue a Notification thereby de-notifying Mian Muhammad Shahbaz Sharif.

5. The CMAs No. 471-L/2008, 95/2009 are also dismissed.

Judge

Judge

Judge

Announced on:
25th February, 2009
Islamabad.
Nisar/*

Approved For Reporting.