

SUPREME COURT OF PAKISTAN

Before Judge in Chambers:

Mr. Justice Syed Mansoor Ali Shah

C.M. Appeals No.39 & 41 of 2021 in

Civil Appeals No. Nil of 2021

(Against the order dated 22.03.2021 of the Registrar, declining to entertain and register the Civil Appeals of the Appellant)

Muhammad Ahsan Abid (*in both cases*)

... Appellant

Versus

Makhdoom Khusru Bakhtiar, etc (*in C.M.Appeal No.39/2021*)

Makhdoom Hashim Jawan Bakht, etc (*in C.M.Appeal No.40/2021*)

... Respondents

Appellant: In person.

Respondents: N.R.

Date of hearing: 10.08.2022

ORDER

Syed Mansoor Ali Shah, J.- Both the listed civil miscellaneous appeals are being disposed of through this consolidated order as common questions of law and facts are involved therein.

2. Through these appeals under Order V Rule 3 of the Supreme Court Rules, 1980 ("**Rules**"), the appellant has challenged the objection orders of the Registrar of this Court, dated 22.3.2021, whereby the appeals filed by the appellant under Article 63-A(5) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") have been returned being not entertainable on the ground that appeal under Article 63-A(5) of the Constitution only lies before this Court in a case where the Election Commission decides upon the declaration made by the Party Head, under Article 63-A of the Constitution, regarding the defection of a Member of Parliament or Provincial Assembly. However, the present cases pertain to disqualification of the Members of the Parliament and Provincial Assembly under Article 63 of the Constitution, as they arise out of the orders of the Election Commission dated 05.01.2021 passed on the Election Petitions filed by the appellant under Articles 63(1) and 225 of the Constitution seeking disqualification of the respondents as Members of the Parliament and Provincial Assembly, on the ground of alleged concealment of their assets.

3. I have heard the appellant, who has appeared in person, and have examined the record of the cases.

4. Article 191 of the Constitution provides that the Supreme Court may make rules regulating the *practice and procedure* of the Court. The rules made under the said Article by the Supreme Court are called the Supreme Court Rules 1980 ("Rules"). Under the said Rules, the powers of the Registrar are primarily covered under Order III Rule 10, Order V Rule 1(6), Order VII Rule 7 and Order XVII Rule 5, which simply regulate the *practice and procedure* of the Court and are merely administrative in character. The Rules empower the Registrar to ensure that the form and presentation of the petitions or the appeals are in order according to the Rules. The Registrar does not enjoy any power under the Rules to decide upon the maintainability of a petition or an appeal. The question of maintainability of a petition or an appeal is a justiciable issue that calls for *adjudication*¹, which is solely the prerogative of the Court in the exercise of its judicial power.² A limited exception is, however, provided under Order V Rule 1 of the Rules where the Registrar enjoys the powers of the Court in deciding certain applications, etc., in pending cases. The power to deal with these applications, which though not under examination in the present cases, also appears to be procedural in nature and *prima facie* do not impinge upon the judicial power of the Court so as to decide upon the substantive justiciable issue(s) involved in the petitions or appeals.

5. In the present cases, the Registrar has decided that the appeals filed by the appellant are not maintainable under the provisions of Article 63-A(5) of the Constitution, while the appellant argues that they are maintainable under the said provisions of the Constitution. This issue as to the maintainability of the appeals of the appellant could not have been decided by the Registrar in the exercise of its administrative powers under the afore-referred rules nor can it be decided by a Judge hearing an administrative appeal against an administrative order of the Registrar.³

¹ Adjudication refers to the legal process of resolving a dispute or deciding a case. When a claim is brought, courts identify the rights of the parties at that particular moment by analyzing what were, in law, the rights and wrongs of their actions when they occurred. *Legal Information Institute, Cornell Law School*.

² Farman Ali v. Muhammad Ishaq PLD 2013 SC 392; P. Surendran vs State 2019 SCC Online SC 507. See also Order dated 18.7.2022 passed in Civil Miscellaneous Appeal No.87/2022, titled Qausain Faisal v. Federation of Pakistan, available online on the official website of this Court at: https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._87_2122.pdf

³ A.P.N.S. v. Federation of Pakistan PLD 2004 SC 600; see also Qausain Faisal case ibid.

6. Order XVII Rule 5 of the Rules provides that the Registrar may refuse to receive a petition on the ground that it is “frivolous”. Frivolity of the petition is to be viewed by the Registrar in the overall constitutional construct of the Rules under Article 191 of the Constitution and within the administrative scheme of the Rules. A “frivolous” petition within the meaning of this Rule is limited to its form and presentation and no more. A petition whose form and presentation falls short in material particulars or which fails to refer to any provision of the Constitution, the law or the Rules under which it is purportedly filed will pass as “frivolous.”⁴ The Registrar in such a case can refuse to receive the petition unless the petitioner fixes the form and presentation of the petition. The said Rule, however, does not vest judicial power in the Registrar to adjudicate the justiciable issue of maintainability of a petition or appeal on the ground of it being frivolous.

7. It is underlined that even if a petition or an appeal is *prima facie* non-maintainable under the provisions of the Constitution, a law or the Rules referred to by the petitioner or appellant for filing the same, still the question of maintainability of the petition or the appeal under the referred provisions is to be adjudicated by the Court on the judicial side and not by the Registrar on the administrative side. Mere, *prima facie* non-maintainability of a petition or an appeal does not vest the jurisdiction in the Registrar to adjudicate upon the question of maintainability of such a petition or an appeal. Nor can the administrative powers of the Registrar under the Rules be employed to refuse receiving and registering such petitions or appeals which appear to him as non-maintainable. However, the Court can discourage the filing of outright non-maintainable, frivolous and vexatious, petitions or appeals by imposing costs on the unscrupulous petitioners or appellants under Order XVII Rule 12 of the Rules.

8. In this background, without touching upon the question of maintainability of the main appeals filed by the appellant under Article 63-A(5) of the Constitution, these miscellaneous appeals against the administrative orders of the Registrar are allowed, and the objection orders of the Registrar dated 22.3.2021 are set aside. The office shall register the main appeals of the appellant and fix them before the appropriate Bench on the judicial side.

⁴ Fazal Muhammad v. State PLD 1987 SC 273.

9. The appellant has further submitted that he had filed the main appeals on 02.02.2021 and since then a year and a half has passed but the matter is still lingering on the administrative side and prayed that his appeals may be fixed for an early date. The prayer appears genuine and justified, and is therefore allowed. The office shall fix the appeals of the appellant immediately after the summer vacations.

Judge

Islamabad,
10th August, 2022.

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