

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

**PRESENT:**

Mr. Justice Umar Ata Bandial  
Mr. Justice Qazi Muhammad Amin Ahmed  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

**CIVIL APPEAL NO.937 OF 2018**

(Against the judgment dated 05.07.2018  
of the Lahore High Court, Lahore passed  
in Writ Petition No.222873/2018)

Rana Muhammad Asif Tauseef

...Appellant(s)

**Versus**

Election Commission of Pakistan through its Chairman, Islamabad and  
others

...Respondent(s)

For the Appellant(s):      Sardar M. Latif Khan Khosa, Sr. ASC  
Sardar M. Shahbaz Khosa, ASC

For the Respondent(s):      Ex-parte

For the ECP:                  Mr. Muhammad Arshad, D.G. (Law)

Date of Hearing:              18.11.2020

**JUDGMENT**

**Sayyed Mazahar Ali Akbar Naqvi, J.-** This appeal with leave of the Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 is directed against the judgment passed by the learned Division Bench of the Lahore High Court, Lahore dated 05.07.2018 in Writ Petition No.222873/2018.

2.                  The brief facts leading to filing of the instant appeal are that the appellant being ticket holder of a political party opted to contest the general elections to be held in the year 2018 from constituency NA-105 Faisalabad-V. The appellant filed three nomination papers to establish his claim as a candidate on 08.06.2018. The objections were filed by

respondent No.5 calling in question the eligibility of the appellant as a candidate before the Returning Officer in each nomination paper. The main objection raised against the appellant was that he was not eligible to contest the elections as he does not qualify the requirements of the law being hit by Articles 62/63 of the Constitution. He is further disqualified on the basis that a decree has already been passed by the learned Special Judge, Banking Court-II, Faisalabad against the spouse of the appellant dated 13.06.2018. It was lastly objected that the name of the appellant is duly mentioned in the report of Credit Information Bureau (CIB) and that he has also obtained loan from the financial institution against Rana Fabrics (Pvt.) Ltd., an establishment to whom the appellant represents as a Director. The objections raised by respondent No.5 were duly replied by the appellant before the Returning Officer. The Returning Officer, after taking into consideration arguments advanced by both sides, repelled the objections raised while accepting the nomination papers of the appellant without any reservation. Being aggrieved, respondent No.5 filed election appeal bearing No.190-A/2018 before the learned Election Tribunal which was dismissed vide order dated 25.06.2018.

3. A constitutional petition was filed by respondent No.5 calling in question the order of the Returning Officer dated 19.06.2018 as well as the learned Election Tribunal dated 25.06.2018. The said petition was adjudicated by the learned Division Bench especially constituted to deal with election matters. The learned Bench, after hearing both the sides, accepted the constitutional petition vide impugned judgment dated 05.07.2018, consequently it reversed the findings of both the courts below, resultantly, the nomination papers filed by the appellant were ordered to be rejected, he was further declared to be in-eligible to contest elections on the grounds mentioned above. Hence this appeal with leave of the Court.

4. At the very outset, learned counsel for the appellant has submitted that the learned High Court has not properly appreciated the law on the subject while rejecting the nomination papers of the appellant; that the appellant was legally bound to file nomination papers supported by an

affidavit disclosing any liability till 30.06.2017; that the learned High Court made basis for rejection of the nomination papers a decree which was passed subsequent to the cut-off date on 04.12.2017; that the judgment of the learned High Court was in defiance of the spirit of Section 60(2)(d) of the Election Act, 2017; that the total shareholding of the spouse of the appellant was nominal which do not comes within the ambit of major shareholding which can be instrumental for declaring anybody a defaulter.

5. On the other hand, the proceedings before this Court against respondent No.5 are carried out ex-parte because he had already been proceeded under Order XVI Rule 6 of the Supreme Court Rules, 1980 by the office vide order dated 05.08.2019. Mr. Muhammad Arshad, Director General (Law) has appeared on behalf of the Election Commission of Pakistan but he has not controverted any arguments advanced by the learned counsel for the appellant.

6. We have heard the learned counsel for the appellant and gone through the record.

7. The nomination papers filed by the appellant with respect to candidature of NA-105 Faisalabad-V were objected by respondent No.5 on two grounds: (i) that a decree has been passed by the Banking Court against the spouse of the appellant; and (ii) that his name do figure in the report of CIB. The objections raised by respondent No.5 were discarded by the Returning Officer as well as the learned Election Tribunal. However, during the adjudication of constitutional petition, the learned Division Bench of the Lahore High Court reversed the findings given by both the *fora* below and as such a direction was given to declare the appellant ineligible to contest the elections and the nomination papers filed by the appellant were ordered to be rejected. A further direction was issued to the Returning Officer to delete the name of the appellant from the list of eligible candidates *vide* order dated 05.07.2018.

8. Leave to appeal was granted by this Court vide order dated 10.07.2018 mainly on the ground that the learned High Court has

overlooked Section 60(2)(d) of the Act and the same has been interpreted in contravention of spirit of the aforesaid provision of law. It was further observed by this Court that the decree issued by the court which was made basis for declaration qua rejection of the nomination papers filed by the appellant was passed against the spouse of the appellant on 04.12.2017 after the cut-off date as envisaged in Section 60(2)(d) of the Act. To appreciate the arguments, it seems advantageous to reproduce the provision of Section 60(2)(d) of the Act which reads as below:-

**“60. Nomination for election.—**(1) .....

(2) Every nomination shall be made by a separate nomination paper on For A signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, be accompanied by:-

(a) .....

(b) .....

(c) .....

(d) a statement of his assets and liabilities and of his spouse and dependent children as on the preceding thirtieth day of June on Form B.

(3) .....”

Plain reading of the above said provision demonstrates without any ambiguity that the assets, liabilities of the appellant, his spouse and dependent children were to be disclosed on the preceding thirtieth day of June as required in Form B duly issued by the ECP i.e. 30.06.2017. There is no denial to this fact that according to election schedule announced by the ECP, general election was to be held in 2018 while the appellant was supposed to furnish the details of personal assets and liabilities and dependents including spouse till 30<sup>th</sup> June, 2017 as per the demand of law duly mentioned in Section 60(2)(d) of the Act. The learned High Court while pressing into Section 62(9)(c) of the Act declared the appellant ineligible to contest elections while directing the Returning Officer to delete the name from the list of the candidates. Perusal of the aforesaid provision clearly reveals that the said provision revolves around the Returning Officer

and its authority to proceed with the matter of his own or on the objection raised by any of the objector before it. The said provision further authorizes the Returning Officer a discretionary power to conduct preliminary inquiry while exercising the authority of the office to ascertain the facts and circumstances to arrive at a just conclusion in order to satisfy the spirit of Section 62(9)(c) of the Act.

9. Academically speaking the learned High Court while exercising constitutional jurisdiction under Article 199 of the Constitution, *inter alia*, provides a relief in the form of a declaration, prohibitory order, mandatory order or an order in the nature of quo-warranto, subject to one commonality in the exercise of jurisdiction that it is discretionary in nature. Therefore, it is incumbent duty of the court to deliberate in a manner with extra care and caution eliminating any element of unfairness/injustice. Undeniably the constitutional jurisdiction is wide in its scope and ordinarily it is not subject to any judicial constraints. This aspect further burden its exercise because of the reason that it is subject to extra-ordinary circumstances, it has to be exercised in so classified manner while creating a balance in its exercise so that no one should suffer because of the exercise of discretionary power. The contention of the learned counsel that no one should suffer because of an act of court is directly related to the dictum of administration of justice. In a democratic State, political activity is a common feature, however, there are certain limitations which might vary from one State to another. In our homeland the right to form an association or a union is a constitutional right which has been made part of fundamental rights under Article 17 of the Constitution of the Islamic Republic of Pakistan, 1973. It is advantageous to reproduce the said Article which reads as follows:

“17. (1) Every Citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member

of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) .....”

Plain reading of the aforesaid provision of Article 17 clearly envisages that it ensures freedom of association or union but subject to certain reasonable restrictions imposed by the law. The aforesaid restrictions are further classified to the extent of interest, sovereignty or integrity of Pakistan, public order or morality. Superior courts of this country while interpreting Article 17 of the Constitution of the Islamic Republic of Pakistan, 1973 have broadened its scope and same has been brought to its logical conclusion. The ordinary meaning of language of Article 17 becomes meaningless if an activist who becomes part of association or union is not let to further participate in political activities within the limits prescribed by the law which ultimately relates to election process. The interpretation of Article 17 while elaborating its scope the same has been broadened while associating with it the election process so that the participant becomes useful entity to be recognized while strengthening the process of Parliamentary system. This Court in Miss Benazir Bhutto Vs. Federation of Pakistan and others (PLD 1988 SC 416), Mrs. Benazir Bhutto and another Vs. Federation of Pakistan and another (PLD 1989 SC 66), Muhammad Nawaz Sharif Vs. President of Pakistan (PLD 1993 SC 473) and Workers' Party Pakistan Vs. Federation of Pakistan (PLD 2012 SC 681) has held that participation in elections is a constitutional right. According to Article 17(2) every citizen, who is not in service of Pakistan, has a right to form a political party or he can become member of any party. Every party is made up of several individual persons. If one individual is not allowed to contest elections imposing upon him certain restrictions, then the question of

forming a political party does not arise, because these are the individuals who collectively form a party.

10. There is no second cavil to this proposition that according to the Constitution the general elections are held after the expiry of a term which ordinarily comprises of five years. The learned Division Bench of the High Court while adjudicating the matter mis-interpreted Section 62(9)(c) and as such a declaration was issued. In ordinary jurisdiction the scheme of law is loaded with so many remedies to redress the grievance but in such like situation in which the litigant has to wait for the expiry of the term of elections, that too, if the credentials are fully satisfied and make the appellant eligible to contest election, that sounds inapt regarding exercise of extra-ordinary jurisdiction to deprive someone of his constitutional right. It is an established law that every Judge must wear all the laws of the country on the sleeve of his robes. Reference is placed on Muhammad Sarwar Vs. The State (PLD 1969 SC 278) and Muhammad Aamir Khan Vs. Government of Khyber Pakhtunkhwa (2019 SCMR 1021). This Court in Muhammad Sarwar's case has observed as follows:-

“It appears that the learned Judges were not properly advised, but it falls to be said that there is a well-known adage that a Judge must wear all the laws of the country on the sleeve of his robe.”

11. Now the question which erupts in the mind of this Court is whether, in the given facts and circumstances, the appellant is victimized due to an act of court, has any relevance. In order to meet the aforesaid contention, this Court is clear to hold that no doubt the impugned order has deprived the appellant to participate in political activities for a specific period but to establish this aspect, there should be some material placed on the record to establish that the act of the court was based upon some specific consideration which is missing in this case. Hence it can safely be said that the judgment passed by the learned High Court was merely due to an omission of a provision of law. However, the responsibility of the Court to be vigilant while exercising the authority either in original jurisdiction or constitutional jurisdiction cannot be absolved. In this regard, reliance can

be placed on the judgment reported as Rodger Vs. The Comptoir d'Escompte de Paris [(1871) 3 PC 465] in which the Court has observed as follows:-

“One of the first and highest duties of all Courts is to take care that the act of the Courts does not cause injury to any of the suitors and when the expression ‘the act of the Court’, is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case.”

As a consequence, when it is established that the appellant has finally succeeded in making out a case in his favour it clearly reflected that he was not a sufferer of the act of the court, rather finally his grievance was redressed and as such he can claim that he is not a victim of law, rather a beneficiary of the process of law.

12. For what has been discussed above, we are constrained to hold that the judgment of the learned High Court is based upon misconception of law and the same could not prevail in the eyes of law. Resultantly, we allow this appeal, set aside the impugned judgment passed by the Lahore High Court, Lahore dated 05.07.2018 and restore that of the learned Election Tribunal dated 25.06.2018 and the Returning Officer dated 19.06.2018 accepting the nomination papers submitted by the appellant.

**Islamabad, the**  
18<sup>th</sup> of November, 2020  
**Approved for reporting**  
Waqas Naseer