

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

*Mr. Justice Iftikhar Muhammad Chaudhry, C.J.
Mr. Justice M. Javed Buttar
Mr. Justice Hamid Ali Mirza*

CIVIL PETITION NO.1532-L OF 2005.

*(On appeal against the judgment dated 05-08-2005
passed by the Lahore High Court, Lahore in Writ
Petition No.14204 of 2005)*

<i>Shaukat Ali and another</i>	<i>Petitioners</i>
<i>Versus</i>			
<i>District Returning Officer & another</i>	<i>Respondents</i>

For the petitioners : *Mr. S. M. Masood, ASC*

For the respondents : *Mr. Muhammad Aslam Ulan, ASC
Mr. Arshad Ali Chaudhry, AOR*

Date of hearing : *12-10-2005*

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J. *This petition calls in question judgment dated 5th August 2005 passed by the Lahore High Court, Lahore. Concluding para therefrom reads as under : -*

On the other hand the D.R.O. Faisalabad vide his order dated 3-8-2005 held that institution which issued Asnaad is not recognized by the University Grant Commission, Faisalabad. The learned counsel referred to election appeal No.50/02, Malik Saleh Vs. R.O. and No.193(R)/2002 Mian Muhammad Imran Vs. R.O. and Writ Petition No.938 of 2001, Hafiz Rehman Vs. DRO. However, on the same point two decisions have been delivered by this Court on 3-8-2005 whereby Writ Petition No.14075/05, Muhammad Younis Vs. DRO and Writ Petition No.14111/05, Sayeed Ahmad Asad Vs. DRO have been dismissed by two learned Bench. I agree with the above two decisions of this Court, therefore, this writ petition is also dismissed."

2. Petitioner's nomination papers filed by him for the seat of Nazim and Naib Nazim, Union Council No.234, Iqbal Town, Faisalabad were accepted by the Returning Officer on 30th July 2005. The opponent candidate Ameen-ul-Hassan Hashmi (Respondent No.2) preferred appeal before the District Returning Officer Faisalabad, on the ground that petitioner No.1 is not qualified to contest the election because Sanad of Deeni Madrissa relied upon by him for the purpose of Section 152(1)(e) of the Punjab Local Government Ordinance 2001 [herein after referred to as 'the Ordinance 2001'] is not equal to Matriculation. The appeal was accepted on 3rd August 2005. Writ Petition filed by the petitioner failed as it has been noted herein above. Petitioners were allowed to contest the election vide order dated 11th & 12th August 2005. Meanwhile after the polling, petitioners were declared successful candidates, However, the election Authority was directed vide order dated 26th August 2005 not to ~~be~~ publish notification.

3. Learned counsel for petitioner contended that the petitioner possesses requisite qualification as he has passed the examination of "Shahadatul Almiya Fil Uloom Ul Arabia Wal Islamia" equal to Master from Jamia Itehadul Madaris Ul Arabia Pakistan, Mardan. In support of his contention he has referred to several notifications, issued from time to time by the University of the Punjab and higher authorities.

4. On the other hand learned counsel for respondents contended that this Court in Civil Petition Nos.1569-L/2005 etc has already held that if Sanad of Deeni Madrisa has not been issued by an institute which is not recognized by the University Grants Commission or the Higher Education Commission, it would not be consider equivalent to a degree of MA. BA. FA or Matriculation.

5. We have heard learned counsel and have also gone through the Sanad of Deeni Madrisa which has been relied upon by the learned counsel for petitioner. As the Madrisa from where Sanad has been obtained, is not recognized by the University Grants Commission as per its notifications issued from time to time, reference of which has already been made in the judgment pronounced in Civil Petition Nos.1569-L/2005 etc, therefore, in our opinion the petitioner was not qualified to contest the election as his academic qualification was not equivalent to Matriculation in accordance with the provisions Section 152(1)(e) of the Ordinance 2001.

6. Now the question is as to whether respondent No.2 who statedly had secured votes next to the petitioner, can be declared as a successful candidate. In this behalf we are inclined to hold that as dis-qualification was not notorious, therefore, the doctrine of "throw away votes" would not be applicable as it has been held in the case of Sh. Amjad Aziz v. Haroon Akhtar Khan and others (2004 SCMR 1484). Relevant para therefrom is reproduced herein below :-

"Ratio of above cases on this point is that if the disqualification of a returned candidate was not notorious at the time of polling, the votes polled in favour of the successful candidate could not be thrown away by giving seat to the candidate with next highest number of votes. In the instant appeal, it was not known to the voters that the appellant was not a graduate and lacked requisite qualification for contesting the election. No steps were taken by anybody to bring to the knowledge of the electors that the appellant was not a graduate. The nomination papers of the appellant were accepted without any objection. This unequivocally postulates that the voters were unaware of his disqualification, therefore, rule of "throw away votes" could not be invoked."

7. Thus following the above dictum the election as a whole of the consequencey i.e. U.C 234 is declared bad as such the Election Commission is directed to take steps to conduct fresh election for the seat of Nazim and Naib Nazim in accordance with law.

Petition stands disposed of in above terms.

Islamabad
12-10-2005
MS/*

APPROVED FOR REPORTING.

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