

IN THE SUREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present

Mr. Justice Mian Saqib Nisar, HCJ

Mr. Justice Umar Ata Bandial

Mr. Justice Ijaz ul Ahsan

CIVIL PETITIONS NO.2693-2694 OF 2018

(On appeal from the judgment/order dated 03.07.2018 passed by High Court of Balochistan, Quetta in CP.823-824 of 2018)

Sardar Yar Muhammad Rind	...	...	Petitioner. (in both cases)
Versus			
The Election Tribunal Balochistan, Quetta and others	...	...	Respondents (in both cases)
Taj Muhammad Raisani	...	...	Respondent No.4 (in CP.2693/2018)
Ghulam Haider	...	...	Respondent No.4 (in CP.2694/2018)

For the petitioner : Sardar M. Latif Khan Khosa, Sr. ASC.
(in both cases) Ch. Akhtar Ali, AOR.

For respondent No.4 : Mr. M. Amir Nawaz Rana, ASC.
(in both cases)

For ECP. : Mr. M. Arshad, DG (Law), ECP.
(in both cases)

Date of hearing : 19.09.2018.

ORDER

UMAR ATA BANDIAL, J. The petitioner is a returned candidate in the elections of constituency No.PB-17 Kachhi of the Balochistan Provincial Assembly and NA-260 Kachhi of the National Assembly. His nomination papers were rejected by the Returning Officers of both constituencies on 19.06.2018 on different grounds. The Appellate Tribunal (High Court) vide consolidated judgment dated 26.06.2018 upheld his

ineligibility to contest the elections for, *inter alia*, lacking the qualifications laid down under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**"). The basis of this finding is that in the general elections of 2008 in which the petitioner was a returned candidate from PB-31 Bolan in the Balochistan Provincial Assembly, he had claimed to be a holder of *Sanad of Shahad-ul-Aalmia* issued by the Jaamia Anwar-ul-Alum, Sukkar. However, in the next general elections of 2013, the petitioner disclosed his educational qualification as Intermediate. The petitioner's failure to disclose his *Sanad of Shahad-ul-Aalmia* was alleged by the objector/respondent No.4 to be concealment and an admission of a false statement made in his nomination papers in the year 2008. The petitioner was thereby guilty of being not "honest" on the criteria laid down in Article 62(1)(f) of the Constitution. Accordingly, he was disqualified to contest the elections. This view has been considered and endorsed by the learned Division Bench of the High Court vide its impugned consolidated judgment dated 03.07.2018 passed in constitutional petitions filed by the petitioner to challenge the judgment of the learned Appellate Tribunal dated 26.06.2018 and the original orders by the respective Returning Officers dated 19.06.2018. Hence these petitions for leave to appeal.

2. The case law relied by both the learned Appellate Tribunal and the learned Division Bench of the High Court, namely, **Muhammad Rizwan Gill vs. Nadia Aziz** (PLD 2010 SC 828), **Abdul Ghafoor Lehri vs. Returning Officer, PB-29 Naseerabad-II** (2013 SCMR 1271) and **Iftikhar Ahmad Khan Bar vs. Chief Election Commissioner Islamabad & others** (PLD 2010 SC 817) deal with the use of bogus, fake and forged documents claimed by delinquent election candidates to establish their educational

credentials. The present case does not involve a fake or bogus degree therefore none of the said precedents apply. In two of the above-cited cases, namely, **Muhammad Rizwan Gill** and **Abdul Ghafoor Lehri**, documentary and oral evidence was recorded to arrive at the adverse finding against the returned candidate. No evidence was recorded in the instant case to sustain the finding against the petitioner. Therefore, the rule laid down in the judgments relied does not apply here. Article 62(1)(f) of the Constitution requires that the disqualification of an election candidate must be founded on a declaration by a Court of law that such person is "not honest." Any judicial declaration must necessarily be based on evidence, oral or documentary. A perusal of the judgment of the learned Appellate Tribunal and the impugned judgment by the learned Division Bench of the High Court do not refer to any positive evidence on the record to establish either that the *Sanad of Shahad-ul-Aalmia* claimed by the petitioner in his nomination papers in 2008 is bogus, forged or fake or that the petitioner referred to the same knowingly and deliberately as being equivalent to a graduate or postgraduate degree. The issue that the *Sanad of Shahad-ul-Aalmia* held by the petitioner was not equivalent to a graduate or postgraduate degree has been decided affirmatively by the learned Appellate Tribunal and the learned High Court solely on the basis that such fact is undisputed by the petitioner. That omission does not constitute an admission in order to have evidentiary value. It has been repeatedly held by this Court that an admission should be unambiguous, unqualified and specific. [Ref: **Amir Bibi vs. Muhammad Khurshid** (2003 SCMR 1261) and **Macdonald Layton & Co. Pak Ltd. vs. Uzin Export Import Foreign Trade Co.** (1996 SCMR 696)]. Reference in this regard is also made to **Muhammad Siddique**

vs. Faiz Mai (PLD 2012 SC 211) wherein this Court held that admission must be categorical, definite and unambiguous in nature and that a mere non-denial of a fact in written statement by the defendant, about a fact which is not specifically pleaded in the plaint, cannot by stretch of any legal principle be construed to be an 'admission' in terms of law. As already noted above, there is neither any allegation nor any evidence to show that the petitioner's *sanad* was fake. There is also no evidence on the record to indicate the constitutional ingredient of "not honest" in Article 62(1)(f) *ibid*. Equally, there is nothing to show that the petitioner consciously declared his *sanad* knowing that it is not equivalent to a graduate or higher degree.

3. Disqualification under Article 62(1)(f) of the Constitution entails a life time bar on eligibility to contest elections as held by this Court in **Sami Ullah Baloch vs. Abdul Karim Nousherwani** (PLD 2018 SC 405). Lack of honesty of the petitioner appears to have been presumed by the impugned judgments whereas in the context of Article 62(1)(f) of the Constitution, in the case of **Mehmood Akhtar Naqvi vs. Federation of Pakistan** (PLD 2012 SC 1089) this Court has recognised that the element of dishonesty should be present in candidate's conduct which can be deduced from his overt acts that reflect deliberate false statement, cheatful involvement in the use of unfair means and dishonesty. Operative para therefrom is reproduced herein below:

"22. ... A person who indulges into unfair means in procuring his educational qualifications and is also found guilty by the Disciplinary Committee, which is the only authority competent to inquire into the matters of such allegations against candidates appearing in the examination of the said University, does not deserve to claim to be an honest, righteous

or Ameen person. ... The spirit with which the words sagacious, righteous, non profligate, honest and Ameen have been used by the Constitution of Islamic Republic of Pakistan, 1973 for the eligibility of the candidates contesting the elections of Members of National or Provincial Assembly cannot be allowed to be frustrated if persons who secure their educational documents through unfair means and are found guilty of such a condemnable act by [the] competent authority are allowed to be given any entry into the doors of National or Provincial Assemblies [of] our country. The respondent No.1 not only is found guilty of a dishonest or cheatful involvement in the use of unfair means in procuring his B.A./degree/results from the University of Punjab but also made deliberately false statement before this Tribunal. ..."

[emphasis supplied]

More recently, the element of dishonesty to incur disqualification under Article 62(1)(f) of the Constitution is examined by this Court in **Muhammad Hanif Abbasi vs. Imran Khan Niazi** (PLD 2018 SC 189) and it is held that:

"100. ... It cannot, therefore, be contended that dishonesty is attributed in the said judgment without reference to any alleged design, intention, scheme, background or impropriety. Consequently, to our minds the larger Bench has not expunged the requirement of establishing the "dishonesty" of conduct of an aspirant or incumbent member of a Constitutional Legislature in order for the disqualification under Article 62(1)(f) of the Constitution and Section 99(f) of the ROPA to be attracted. ..." **[emphasis supplied]**

The same view is expressed in the judgment of this Court titled **Hassan Nawaz vs. Muhammad Ayub** (PLD 2017 SC 70) in para-17 thereof.

4. The impugned judgments by the learned High Court have applied the bar of Article 62(1)(f) of the Constitution upon the petitioner without giving a finding that his declaration of *Sanad of Shahad-ul-Aalmia* in his nomination papers filed in the year 2008 was a dishonest and deceitful action to meet the condition of graduate qualification in order to become eligible for contesting the general elections. Apart from lacking such finding, the discussion in the impugned judgment is at best based upon a presumption and not on any finding or deduction made on the basis of any material qualifying as evidence. In the circumstances, the presumption drawn by the impugned judgments is conjectural and cannot be made the ground for disqualifying the petitioner forever from contesting for or holding an office in the Constitutional Legislatures of the country.

For the foregoing reasons, both these petitions are converted into appeals and allowed and the impugned judgments dated 03.07.2018, 26.06.2018 and 19.06.2018 passed by the learned High Court, Appellate Tribunal and the Returning Officers, respectively, are set aside.

Chief Justice

Judge

Judge

Announced in Court
on **05.12.2018.**

Judge.

APPROVED FOR REPORTING.

*Irshad Hussain /**