

IN THE SUPREME COURT OF PAKISTAN

(Review Jurisdiction)

Present:

Mr. Justice Tassaduq Hussain Jillani
Mr. Justice Nasir-ul-Mulk
Mr. Justice Mohammad Moosa K. Leghari
Mr. Justice Sheikh Hakim Ali
Mr. Justice Ghulam Rabbani

CIVIL REVIEW PETITIONS No. 45, 46, 47, 48, 50, 51, 52, 59, 60, 61, 62 of 2009 IN C.Ps. No. 778, 779, 878, CA No.166/09 & C.PS. 803, CMA Nos.63 & 64/08 IN CMA No.1674-75/08 IN CP No. NIL of 2008, Crl. R. P. No.22/09 IN Crl. O. P. 41 of 2008

(On review from the judgments of this Court dated 25.2.2009 passed in the above captioned petitions)

C. R. P. Nos. 45 & 46 of 2009 IN C.P.Nos.778 & 779 of 2008

Federation of Pakistan
(in both cases)

Petitioner

Versus

Mian Muhammad Nawaz Sharif and others
(in both cases)

Respondents

For the petitioner : Agha Tariq Mehmood Khan, DAG
(in both petitions)

For respondent No.1: Mr. Abid Hassan Minto, Sr.ASC with
(in both petitions) Mr. Mehr Khan Malik, AOR (in CRP 45/09)

For Respondents No.2-5:Nemo.
(in both petitions)

For Respondent No.6: Dr. Mohyuddin Qazi, Sr. ASC with
(in both petitions) Mr. Ejaz Muhammad Khan, AOR

C. R. P. Nos. 47 & 48 of 2009 IN C. P. Nos. 905 & 878 of 2008

Federation of Pakistan
(in both petitions) Petitioner

Versus

Syed Khurram Shah & others
(in both cases) Respondents

For the petitioner : Agha Tariq Mehmood, DAG with
(in both cases) Mr. Arshad Ali Ch. AOR

For respondent No.1: Mr. Ahmed Raza Qasuri, Sr. ASC
(in both cases) Mr. Ejaz Muhammad Khan, AOR

For Respondent No.2: Khawaja Haris Ahmed, ASC with
(in both cases) Mr. Mehr Khan Malik, AOR

For Respondent Nos.3-5 Nemo. (in both cases)

C. R. P. No. 50 of 2009 IN C.P.No.803 of 2008

Speaker of Provincial Assembly Province of Punjab Petitioner

Versus

Syed Khurram Shah and others Respondents

For the petitioner : Mr. Muhammad Raza Farooq, ASC and
Mr. Ashtar Ausaf Ali, ASC with
Mr. Arshad Ali Ch. AOR

For respondent No.1: Mr. Ahmed Raza Qasuri, Sr. ASC with
Mr. Ejaz Muhammad Khan, AOR

For respondent No.2: Khawaja Haris Ahmed with
Mr. Mehr Khan Malik, AOR

For respondent Nos.3-5: Nemo.

For respondent No.6: Agha Tariq Mehmood, DAG

C.R. P. No. 51 of 2009 IN CMA No.64/08 IN CMA No.1674/08 IN CP No.Nil of 2008

Shakeel Baig

Petitioner

Versus

Noor Elahi and others

Respondents

For the petitioner : Mr. A. K. Dogar, ASC with
Mr. Arshad Ali Ch. AOR

For respondent No.1 Dr. Mohyuddin Qazi, Sr. ASC with
Mr. Ejaz Muhammad Khan, AOR

For respondent No.2: Mr. Abid Hassan Minto, Sr. ASC with
Mr. Mehr Khan Malik, AOR

For respondents No.3-5: Nemo.

For respondent No.6: Agha Tariq Mehmood, DAG

C.R. P. No.. 52/09 IN CMA No.63/09 IN CMA No.1675/08

Mehr Zafar Iqbal

Petitioner

Versus

Syed Khurram Shah and others

Respondents

For the petitioner : Mr. Muhammad Akram Sheikh, Sr. ASC
Mr. Arshad Ali Ch. AOR

For respondent No.1 Dr. Mohyud Din Qazi, Sr. ASC with
Mr. Ejaz Muhammad Khan, AOR

For respondent No.2: Mr. Abid Hassan Minto, Sr. ASC with
Mr. Mehr Khan Malik, AOR

For respondents No.3-5: Nemo.

For respondent No.6: Agha Tariq Mehmood, DAG

C. R.P. Nos. 59 & 60 of 2009 IN C.P.Nos.778 & 79 of 2008 a/w CMA No. 1130 & 1551 of 2009

Mian Muhammad Nawaz Sharif Petitioner

Versus

Federation of Pakistan and others Respondents

For the petitioner : Mr. Abid Hassan Minto, Sr. ASC with
Mr. Mehr Khan Malik, AOR (in both cases)

For respondent No.1: Agha Tariq Mehmood, DAG

For respondent Nos.2-5: Nemo.

For respondent No.6: Dr. Mohyud Din Qazi, Sr. ASC with
Mr. Ejaz M. Khan, AOR (in both cases)

For the applicant: Mr. Shahid Orakzai (in person in CMAs)

C. R.P. Nos. 61 & 62 of 2009 IN C.P.Nos.878 & C.P.No.905/08 (CA No.166/09) a/w CMA No.1525 of 2009

Mian Muhammad Shahbaz Sharif Petitioner

Versus

Federation of Pakistan and others Respondents

For the petitioner : Khawaja Haris Ahmed, ASC
Mr. Mehr Khan Malik, AOR (in both cases)

For respondent No.1: Agha Tariq Mehmood, DAG
in CRP No.61 & 6 in CRP No.62/09

For respondent Nos.2-4: Nemo. (in both cases)

For respondent No.5: Dr. Mohyud Din Qazi, Sr. ASC with
In CRP 61 & 1 in CRP 62/09 Mr. Ejaz M. Khan, AOR

For the Applicant: Mr. Shahid Orakzai (in person in CMA)

Crl. R.P. No. 22 of 2009 IN Crl.O.P.No.41/09 IN CP No.657-L of 2008

Javed Mehmood

Petitioner

Versus

Syed Khurram Shah and another

Respondents

For the petitioner : Mr. Muhammad Raza Farooq, ASC with
Mr. Mehr Khan Malik, AOR

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

On Court's Call: ***Sardar Muhammad Latif Khan Khosa***
Attorney General for Pakistan.

Dates of hearing: 11.05.2009 to 26.5.2009

SHORT ORDER

Tassaduq Hussain Jillani, J.- For reasons to be recorded in the detailed judgment later, Civil Review Petitions No. 59 & 60 of 2009 filed by Mian Muhammad Nawaz Sharif, Civil Review Petitions No. 61 and 62 of 2009 filed by Mian Muhammad Shahbaz Sharif, Civil Review Petitions No. 45, 46, 47 and 48 of 2009 filed by the Federation of Pakistan and Criminal Review Petition No. 22 of 2009 filed by Javed Mehmood, Civil Review Petition No. 50 of 2009, Civil Review Petitions No. 51 and 52 of 2009 filed by Shakeel Baig and Mehar Zafar Iqbal and Civil Misc. Application No. 1130, 1551 and 1525 of 2009 filed by Shahid Orakzai are being disposed of by this short order.

2. Petitioner Mian Muhammad Nawaz Sharif (in Civil Review Petition No. 59 & 60 of 2009) filed his nomination papers for N.A. 123 Lahore. The only objection petition filed by Mian Akhlaq Ahmad @ Guddu was dismissed vide order dated 5.5.2008, inter alia, on the ground that the objection

petition had not been supported by any documentary evidence despite the opportunities given to the objector. This order was challenged in appeal before the Appellate Tribunal comprising of two learned Judges of the High Court. However, on 27.05.2008 the said objector withdrew his appeal but on the same day the other candidate Noor Elahi filed an application under Order 1 Rule 10 CPC with the prayer that he might be allowed to be transposed as appellant. This application was dismissed with the observation that he might file a separate appeal, if so advised. Later on, he filed a time barred appeal on 28.05.2008 (last date for filing appeal was 24.05.2008). In the meanwhile, one Syed Khuram Shah had also laid information under section 14(5-A) of the Representation of Peoples Act, 1976 [hereinafter referred to as 'the Act'] through an application dated 26.05.2008 alleging that Mian Muhammad Nawaz Sharif was disqualified in the light of the said information.

3. Petitioner Mian Muhammad Shahbaz Sharif (in Civil Review Petition No. 61 & 62 of 2009) filed his nomination papers to contest the elections for the seat of Provincial Assembly Punjab for the Constituency of PP 48 Bhakkar-II. Only one person namely Malik Nazar Abbas filed an objection petition on the grounds that the candidate had defamed the judiciary by criticizing the then District & Sessions Judge; that his nomination papers were rejected in the General Elections on 01.12.2007; that he along with his nomination papers had filed a false declaration; that he was not qualified to contest the elections in view of Article 63 (1) (g) of the Constitution read with section 99 of the Act. This objection was dismissed and nomination papers were accepted on 16.05.2008. The said objector did not challenge this order but on 27.05.2008 Syed Khuram Shah filed a petition under section 14(5-A) of the Act purporting to lay information against Mian Muhammad Shahbaz Sharif to the effect that he was disqualified to be elected as member of the

Assembly on the ground that he was guilty of defaming the judiciary; that he was propagating against the sitting Chief Justice and the Judges who had taken oath under the Provisional Constitutional Order, 2007; was attempting to divide the judiciary and was willful defaulter of, “*several loans running into billions*”.

4. The learned Appellate Tribunal (comprising of two learned Judges of the High Court) consolidated both the cases and gave split opinions. While one learned Judge dismissed the appeals and declared both the petitioners to be qualified to contest the elections, the other learned Judge declared both of them to be disqualified and rejected the nomination papers. On account of this split opinion, the appeals remained undecided (though as per the Election Schedule, the same had to be decided by 31.05.2008). The Chief Election Commissioner of Pakistan declared that since the appeals/petitions filed by respondents against acceptance of nomination papers had not been decided by the aforementioned cut-off date, the same shall be deemed to have been rejected. Respondent Syed Khuram Shah challenged this order by way of two separate writ petitions (Writ Petitions No. 6469 & 6470 of 2008), while Noor Elahi, the rival candidate, also filed Writ Petition No. 6468 of 2008 against acceptance of nomination papers of Mian Muhammad Nawaz Sharif. These writ petitions were allowed by separate judgments of even date by the learned High Court. In the case of Mian Muhammad Nawaz Sharif, the Court held that he was disqualified to contest the elections as he was:-

- (i) *a convict in terms of the judgment of Accountability Court in Reference No.2 of 2000 dated 22.7.2000 under section 9-A(v) of the National Accountability Bureau Ordinance;*
- (ii) *had scandalized, abused and ridiculed the judiciary; and*

(iii) *had sworn a false affidavit attached with his nomination papers to the effect that he was qualified to contest the elections.”*

5. However, the same learned Bench though accepted the petition against Mian Muhammad Shahbaz Sharif but held that the information laid under section (5-A) of the Act could not be treated as appeal and the Chief Election Commissioner was directed to constitute another Appellate Tribunal (comprising of three Judges of the High Court) to decide the said application. The afore-mentioned judgments of the learned High Court were challenged in Civil Petitions No. 778 and 779 of 2008 and Civil Petition No. 878 of 2008, filed by the Federation of Pakistan, Civil Petition No. 905 of 2008 (converted into C.A. No. 166 of 2009) filed by Syed Khurram Shah, Civil Petition No. 803 of 2008 filed by Speaker Provincial Assembly Punjab, Civil Petition No. 657-L of 2008 and C.M.A. No. 471-L of 2008 in Civil Petition No. NIL of 2008 filed by the Chief Secretary Punjab and C.M.A. No. 95 of 2009 filed by Shahid Orakzai against the petitioners. Although the writ petition filed by Syed Khurram Shah had been accepted yet the latter filed the civil petition praying that since the order of the Chief Election Commissioner dated 1.6.2008 was set aside, the Court should have de-notified the membership of Mian Muhammad Shahbaz Sharif which had emanated on account of the order of Chief Election Commissioner dated 1.6.2008. This Court vide the judgment under review while accepting the Civil Petition No. 905 of 2008 filed by Syed Khurram Shah dismissed all the connected petitions. Reversing the judgment of the High Court in the case of Mian Muhammad Shahbaz Sharif, he was disqualified to contest the elections.

6. We have heard learned counsel for the petitioners and for the respondents, the learned Attorney General and

Deputy Attorney General for Pakistan and have given anxious consideration to the submissions made.

7. Having heard the learned counsel for the parties, we hold as under:-

- (i) That the judgments under review i.e. of the Lahore High Court dated 23.06.2008 and of this Court dated 25.02.2009 are ex-parte on account of which certain factual aspect and legal provisions having bearing on the issues raised, were not brought to the notice of the Court and therefore were not considered leading to miscarriage of justice which has been found by us to be errors apparent on the face of record warranting review.
- (ii) Realizing the exceptional and extraordinary events relating to unconstitutional removal of Judges of the Superior Courts which in the judgment under review has been described as, *“enforced by a brutal force, by deviating from constitutional provisions,”* triggering an unprecedented nationwide movement, culminating in the restoration of those Judges, and during the interregnum, non-appearance of petitioners before the Courts then constituted could neither be termed as contumacious nor reflecting acquiescence, the findings of fact rendered on such assumptions merit to be interfered with in the review jurisdiction.
- (iii) That both the appeals filed under section 14(5) of the Act and the information laid or directed against the acceptance of nomination papers (under section 14(5A) of the said Act) were mandated to be decided by or before 31st of May 2008, the period fixed for deciding the appeals in the Schedule issued by the Chief Election

Commissioner under section 11 read with section 14(5) of the said Act. Since the appeals were not decided by then, the order of the Chief Election Commissioner holding that the appeal stood dismissed was in accord with section 14(6) of the Act which stipulated that, "*an appeal not disposed of within the period specified in sub section (5) shall be deemed to have been dismissed.*" The finding that information laid under section 14(5A) of the said Act could remain pending and decided beyond the said date fixed for disposal of appeals was not in consonance with the legislative intent.

- (iv) The last date for disposal of appeal against the acceptance of nomination papers was 31.05.2008 and thereafter the Appellate Tribunal had become functus officio. The order of the Chief Election Commissioner dated 01.06.2008 to the effect that since the appeals had not been decided within the afore-referred cut-off date, the same were deemed to have been rejected (in terms of sub-section (6) of section 14 of the said Act) was passed with jurisdiction. The learned High Court not only allowed respondents' writ petitions against this order but while doing so, passed two inconsistent judgments of even date i.e. while in the case of Mian Muhammad Shahbaz Sharif, it held that the source information/petition (under sub-section (5A) of section 14 of the Act) shall be deemed to be pending before the Appellate Tribunal comprising of three Judges of the High Court to be constituted by the Chief Election Commissioner, whereas in the case of Mian

Muhammad Nawaz Sharif declared him disqualified to contest the elections.

- (v) The mandate of Article 225 of the Constitution has not been appreciated in the context of the instant cases. This Article places a bar to challenge an election dispute except through an election petition under the law i.e. the Representation of Peoples Act, 1976. In exceptional circumstances, however, the qualification or disqualification of a candidate can be challenged under Article 199 of the Constitution provided the order passed during the election process is patently illegal, the law has not provided any remedy either before or after the election; and the alleged disqualification is floating on record requiring no probe and enquiry. In the cases in hand, the issues of unpaid loans, of court contempt and of filing false affidavit were disputed questions of fact which could not have been adjudicated upon in the proceedings under Article 199 of the Constitution and even the material placed before the Court was not sufficient to render the impugned findings.
- (vi) That the 'Presidential Pardon', in the case of Mian Muhammad Nawaz Sharif stood admitted by the Federation of Pakistan through the statement made by the Deputy Attorney General before the High Court, before this Court during the hearing of the main petition and in the instant review petition and even by the learned Attorney General for Pakistan who appeared in these review proceedings. To allege that it was conditional or qualified pardon required deeper probe which exercise entailed factual enquiry.

Similarly, the questions whether petitioners were hit by Article 63(h) and (l) of the Constitution or by section 99 of the Act could also not have been decided by the High Court or by this Court in writ jurisdiction. The judgments under review therefore are not in accord with the law laid down by this Court in the cases reported as Election Commission of Pakistan through its Secretary v. Javaid Hashmi and others (PLD 1989 SC 396), Ghulam Mustafa Jatoi v. Addl. District & Sessions Judge/Returning Officer N.A. 158, Naushero Feroze and others (1994 SCMR 1299) and Let. Gen. (R) Salahuddin Tirmizi v. Election Commission of Pakistan (PLD 2008 SC 735 at 763).

- (vii) That one of the onerous functions of the Supreme Court is to protect the constitution and to sustain democracy. Democracy is not merely holding of periodical elections or of governance by legislative majority. It is a multi-dimensional politico-moral concept epitomizing the abiding values of equality, human dignity, tolerance, enjoyment of fundamental rights and due process of law. Whether it is the issue of denial of a substantive right or of construing a statutory provision, these principles should weigh with the Court. Article 4 of the Constitution is a restraint on the legislative, executive and judicial organs of the State to abide by the rule of law. Abdication of this awesome responsibility by any organ leads to arbitrariness and injustice. These in our estimation are canons of substantive democracy embodied in our Constitution which, inter alia,

we have kept in view while exercising the power of judicial review.

8. For what has been discussed above, Civil Review Petitions No. 59 and 60 of 2009 filed by Mian Muhammad Nawaz Sharif and Civil Review Petitions No. 61 and 62 of 2009 filed by Mian Muhammad Shahbaz Sharif and Criminal Review Petition No. 22 of 2009 filed by Javed Mehmood are allowed and all the remaining civil review petitions and civil miscellaneous applications are being disposed of as not maintainable. Consequently, the judgments of the learned Lahore High Court dated 23.06.2008 (in W.P. Nos. 6468, 6469 and 6470 of 2008) and of this Court under review dated 25.02.2009 (in civil petitions captioned above) are set aside and the orders of the Returning Officer accepting nomination papers of the petitioner Mian Muhammad Nawaz Sharif dated 15.05.2008 and Mian Muhammad Shahbaz Sharif dated 16.05.2008 and the order of the Chief Election Commissioner dated 1.6.2008 are restored.

Judge

Judge

Judge

Judge

Judge

Islamabad.
May 26, 2009
Khurram Anis

APPROVED FOR REPORTING