

6. **Civil Appeal No. 981 of 2018**

Sardar Confcius Imam Qasrani. ... Appellant
Versus
Sardar Mir Badshah Khan Qaisarani and another. ... Respondents

CMA No. 10919/23 in Civil Appeal No.981/18

[Concise statement from Ch. Javaid Ahmad]

CMA No. 10920/23 in Civil Appeal No.981/18

[Concise statement from Yousaf Ayub Khan]

CMA No. 10921/23 in Civil Appeal No.981/18

[Concise statement from Behram Khan]

CMA No. 10939/23 in Civil Appeal No.981/18

[Concise statement from Muhammad Aijaz Ahmed Chaudhry]

CMA No. 2/24 in Civil Appeal No.981/18

[Concise statement from Sardar Mir Badshah Khan Qiasrani]

CMA No. 3/24 in Civil Appeal No.981/18

[Impleadment on behalf of Rashda Yaqub]

CMA No. 4/24 in Civil Appeal No.981/18

[Concise statement from Sardar Mir Shoaib Nosherwani]

CMA No. 5/24 in Civil Appeal No.981/18

[Concise statement from Mian Zia-ur-Rehman]

CMA No. 6/24 in Civil Appeal No.981/18

[Concise statement from Jahangir Khan Tareen]

CMA No. 13/24 in Civil Appeal No.981/18

[Concise statement from Attorney-General for Pakistan]

CMA No. 18/24 in Civil Appeal No.981/18

[Impleadment on behalf of Chaudhry Nazir Ahmed Jatt]

7. **Civil Appeal No. 985 of 2018**

Sardar Confcius Imam Qasrani. ... Appellant
Versus
Sardar Mir Badshah Khan Qaisarani and another... Respondents

8. **CM Appeal No. 22/2022 in C.P.NIL/2022**

Supreme Court Bar Association of Pakistan etc. ... Appellants
Versus
Federation of Pakistan through Secretary, M/o Law and Justice, Islamabad and another. ... Respondents

9. **CM Appeal No. 135/2022 in C.P.NIL/2022**

Mohabbat Khan. ... Appellant
Versus
Federation of Pakistan through Secretary, M/o
Law and Justice, Islamabad and another. ... Respondents

10. **Constitution Petition No. 40 of 2022**

Mir Muhammad Amin Umrani. ... Petitioner
Versus
Federation of Pakistan and another. ... Respondents

For the Appellants:

Mr. M. Saqib Jilani, ASC.
(in CAs. 981 & 985/2018)

Mr. Kamran Murtaza, Sr. ASC.
(in CA. 982/2018)

Sh. Usman Karim-ud-Din, ASC.
(in CA. 984/2018)

Mr. M. Ahmed Qayyum, ASC.
(in CA. 880/2015)

Mr. Waleed Rehan Khanzada, ASC.
(in CA. 1946/2023)

Syed Asghar Hussain Sabzwari, Sr. ASC.
(For petitioner in C.P 2680/2023)

Mr. Saeed Khurshid Ahmed, ASC.
(in Const. P. 40/2022)

Syed Ali Imran, ASC/Secy. SCBA
Mr. Anis Muhammad Shahzad, AOR
(in CM Appeal. 22/2022)

Mir Aurangzeb, AOR.
(in CM Appeal. 135/2022)

For the Applicants:

Nemo. (in CMA. 10919/2023)

Ch. Akhtar Ali, AOR (in CMA. 10920/2023)

Mr. Khurram Mahmood Qureshi, ASC.
(in CMA. 10921/2023)

Mr. Dil Muhammad Khan Alizai, ASC.
Syed Rifaqat Hussain Shah, AOR
(in CMA. 10939/2023)

Mian Abdul Rauf, ASC (in CMA 3/2024)

Mr. Shoukat Hayat, ASC (in CMA. 4/2024).

Mr. M. Anwar Malik, ASC/AOR.
(in CMA. 5/2024)

Mr. M. Makhdoom Ali Khan, Sr. ASC.
Mr. Saad Mumtaz Hashmi, ASC.
Mr. Sikandar Bashir Mohmand, ASC.
Barrister Imran Khan &
Mr. Hamza Azmat Khan, Advocates.
(in CMA. 6/2024)

Ch. Munir Sadiq, ASC (in CMA. 18/2024)
& Syed Ali Imran, ASC.

For the Respondents:

Mr. Khalid Ibn-e-Aziz, ASC.
(For Respondent No. 1 in CA 981/2018)
Nemo for respondent No.3.
(in CA 982/2018)
Nemo for respondent No.1.
(in CA 984/2018)
Nemo for respondent No.2.
(in CA 880/2015)
Barrister Khuram Raza, ASC.
(For respondent No.3 in CA 880/2015)

On Court's Notice:

For the Federation:

Mr. Mansoor Usman Awan,
Attorney-General for Pakistan.
Ch. Aamir Rehman, Addl. AGP.
Malik Javed Iqbal Wains, Addl. AGP, and
Raja M. Shafqat Abbasi, DAG.

For Govt. of Punjab:

Mr. Khalid Ishaq, Advocate-General, Punjab.
Mr. Sana Ullah Zahid, Addl. A.G. Punjab.
Mr. Wasim Mumtaz, AAG, Punjab

For Govt. of Sindh:

Mr. Hassan Akhtar, A.G. Sindh
Mr. Suresh Kumar, A.A.G. Sindh
(*through video-link, Karachi*)

For Govt of KP:

Mr. Amir Javed,
Advocate-General and Mr. Sultan Mazhar
Sher Khan, AAG Khyber Pakhtunkhwa.

For Govt. of Balochistan:

Mr. Ayaz Khan Swati,
Additional Advocate-General, Balochistan.

For Islamabad Capital Territory:

Mr. Ayaz Shaukat, Advocate-General, Isb.

For ECP:

Mr. Muhammad Arshad, D.G. (Law) ECP
Mr. Falak Sher, Legal Consultant, ECP.

Amici Curiae:

Mr. Uzair Karamat Bhandari, ASC,
Mr. Faisal Siddiqi, ASC and
Ms. Reema Omer, who submitted amicus
brief in writing.

Dates of Hearing: 2, 4 and 5 January 2024.

ORDER OF THE COURT

For the reasons to be recorded later and subject to amplifications and explanations made therein, by a majority of 6 to 1 (Yahya Afridi, J. dissenting), it is decided and declared that:

- i. Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan (**“Constitution”**) is not a self-executory provision as it does not by itself specify the court of law that is to make the declaration mentioned therein nor does it provide for any procedure for making, and any period for disqualification incurred by, such declaration.
- ii. There is no law that provides for the procedure, process and the identification of the court of law for making the declaration mentioned in Article 62(1)(f) of the Constitution and the duration of such a declaration, for the purpose of disqualification thereunder, to meet the requirements of the Fundamental Right to a fair trial and due process guaranteed by Article 10A of the Constitution.
- iii. The interpretation of Article 62(1)(f) of the Constitution in imposing a lifetime disqualification upon a person through an implied declaration of a court of civil jurisdiction while adjudicating upon some civil rights and obligations of the parties is beyond the scope of the said Article and amounts to reading into the Constitution.
- iv. Such reading into the Constitution is also against the principle of harmonious interpretation of the provisions of the Constitution as it abridges the Fundamental Right of citizens to contest elections and vote for a candidate of their choice enshrined in Article 17 of the Constitution, in the absence of reasonable restrictions imposed by law.
- v. Until a law is enacted to make its provisions executory, Article 62(1)(f) of the Constitution stands on a similar footing as Article 62(1)(d), (e) and (g), and serves as a guideline for the voters in exercising their right to vote.
- vi. The view taken in *Sami Ullah Baloch v Abdul Karim Nausherwani* (PLD 2018 SC 405) treating the declaration made by a court of civil jurisdiction regarding breach of certain civil rights and obligations as a declaration mentioned in Article 62(1)(f) of the Constitution and making such declaration to have a lifelong disqualifying effect amounts to reading into the Constitution and is therefore overruled.

- vii. Section 232(2) added in the Elections Act, 2017, *vide* the Elections (Amendment) Act, 2023 promulgated on 26 June 2023, prescribes a period of five years for the disqualification incurred by any judgment, order or decree of any court in terms of Article 62(1)(f) of the Constitution and has also made such declaration subject to the due process of law. This provision is already in field, and there remains no need to examine its validity and scope in the present case.

2. Consequently, the present civil appeals and petitions are decided in the following terms:

- i. **Civil Appeal No. 982/2018** is allowed to the extent of the appellant's disqualification to contest elections on the ground stated in the impugned order of the Lahore High Court, dated 6 July 2018, passed in Writ Petition No. 22429/2018, which to that extent is set aside;
- ii. **Civil Appeal No. 984/2018**, which has impugned the order of the Lahore High Court, dated 11 July 2018, passed in Writ Petition No. 222868/2018 whereby the respondent's nomination papers were ordered to be accepted and the Returning Officer was directed to include his name (Fazal Mehmood) in the list of eligible candidates, is dismissed;
- iii. **Civil Appeal No. 880/2015**, which has impugned the judgment of the Election Tribunal, Multan, Punjab, dated 21 August 2015, whereby the election of the appellant (Ch. Muhammad Arif Hussain) as returned candidate in respect of General Elections held on 11 May 2013 was declared as void and the Election Commission of Pakistan was directed to hold fresh elections which were held and the term of the said assemblies has expired, is disposed of as having become infructuous;
- iv. **Civil Appeal No. 1946/2023**, which has impugned the order of the High Court of Sindh, dated 19 October 2023, passed in Constitution Petition No. 1082/2023 whereby the appellant's prayer for declaring him to be eligible to contest the upcoming elections was disposed of with the observation that the same would be decided at the appropriate stage if his nomination papers were rejected, is disposed of in view of the above declarations; and
- v. **Civil Petition for Leave to Appeal No. 2680/2023** is converted into an appeal and allowed to the extent of the appellant's disqualification to contest elections on the ground stated in the impugned order of the Lahore High Court, dated 4 May 2023, passed in Writ Petition No. 27043/2023, which to that extent is set aside.

3. Learned Syed Ali Imran, the Secretary of the Supreme Court Bar Association ('**SCBA**'), stated that the SCBA sought to withdraw **C.M. Appeal No. 22/2022** and Constitution Petition filed in 2022, which was under objection and not numbered, therefore, the said appeal and petition are dismissed as withdrawn. **Civil Appeals No. 981 & 985/2018, CM Appeal No. 135/2022** in C.P. No. NIL/2022 and **Constitution Petition No. 40 of 2022** are de-listed, which shall be posted for hearing separately before appropriate Benches.

Chief Justice

Judge

Judge

Judge

Judge

Judge

Judge

Yahya Afridi, J. - With profound respect, I disagree. For reasons to follow, the extent of lack of qualification of a member of the Parliament, as envisaged under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973, is neither lifelong nor permanent, and the same shall remain effective only during the period the declaration so made by a Court of law remains in force. Therefore, the conclusion so drawn by this Court in Sami Ullah Baloch Versus Abdul Karim Nousherwani (PLD 2018 SC 405) is legally valid, hence affirmed.

Judge

Announced in open Court at Islamabad on ____ January 2024.

Chief Justice

Islamabad

Approved for Reporting

(Farrukh, Hassan K.W.)

