

**2011 MLD 541**

**[Lahore]**

**Before Nasir Saeed Sheikh, J**

**MUHAMMAD IQBAL---Petitioner**

**Versus**

**NATIONAL DATABASE REGISTRATION AUTHORITY through Chairman and 3 others---Respondents**

Writ Petition No. 25097 of 2010, decided on 3rd December, 2010.

**(a) Representation of the People Act (LXXXV of 1976)---**

---S. 99(1)(cc)---Constitution of Pakistan, Art.199---Constitutional petition---Petitioner sought issuance of writ of quo warranto against the elected Member of the National Assembly to appear before High Court and to explain as to how she was holding the alleged seat of National Assembly---Petitioner asserted that said Member did not personally appear in her B.A. Examination in the year 2002 and B.A. degree had been procured through fraud and she had to be disqualified to be elected and from holding her position as Member National Assembly after getting verification of record of the National Database and Regulatory Authority and university record of degree---Record revealed that the petitioner had made use of the record of election petition which was pending before an Election Tribunal and wanted a second decision on the basis of said record from High Court--Such duplication of proceedings on the basis of record of the Election Tribunal, which was already seized of the same matter against the said Member National Assembly could not be allowed by High Court---Petitioner had raised disputed questions of facts and instead of moving any application before the National Database Regulatory Authority for getting verification from the same about the particulars of the Member National Assembly had instituted the constitutional petition---Constitutional petition was dismissed by High Court.

Hafiz Hamidullah v. Saifullah Khan and others PLD 2007 SC 52 and Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others PLD 2010 SC 817 ref.

Aziz-ur-Rehman Chowdhury v. M. Nasir Uddin, and others PLD 1965 SC 236; Muhammad Liaquat Munir Rao v. Shams-ud-Din and others 2004 SCMR 489; M.U.A. Khan v. M. Sultan and another 1981 SCMR 74; Ghulam Rasool v. Muhammad Hayat PLD 1984 SC 385; Syed Ali Raza Asad Abidi v. Ghulam Ishaq Khan, President of Pakistan and another PLD 1991 Lah. 420 and Halsbury's Laws of England, 4th Edition, 1989, Volume 1(1), at page 372 para. 274 rel.

**(b) Constitution of Pakistan---**

----Art. 199---Constitutional petition---Quo warranto, writ of---Scope---Grant of relief of a writ of quo warranto was not a matter of course and the conduct and motives of the petitioner could be looked into by High Court when such a prayer was submitted.

Aziz-ur-Rehman Chowdhury v. M. Nasir Uddin, and others PLD 1965 SC 236; Muhammad Liaquat Munir Rao v. Shams-ud-Din and others 2004 SCMR 489; M.U.A. Khan v. M. Sultan and another 1981 SCMR 74; Ghulam Rasool v. Muhammad Hayat. PLD 1984 SC 385; Syed Ali Raza Asad Abidi v. Ghulam Ishaq Kharl, President of Pakistan and another PLD 1991 Lah. 420 and Halsbury's Laws of England, 4th Edition, 1989, Volume 1(1), at page 372 para. 274 rel.

Faisal Ali Qazi for Petitioner.

## **ORDER**

**NASIR SAEED SHEIKH, J.**---The petitioner has instituted this writ petition before this Court with the following prayer:--

"In view of the above it is most humbly prayed that this honourable Court may be pleased to direct respondent NADRA to download on hard Copy in color form all the particulars of Mrs. Sumaira Malik for her respective NIC' s issued by NADRA comprising of National Identity Cards NIC No. 128-63-180716 issued on 21-8-2002 and CNIC No. 61101-176507-6 issued on 13-8-2004 respectively.

The same may be directed to be produced before this Honorable Court and compared with the photographs on the record of University Admission Form/Roll Number Slip No.054334 for Bachelor of Arts Annual Examination, 2002. On the basis thereof the B.A. Degree bearing Serial No.541219 issued on 27th November, 2002 by the stated University be graciously held to have been procured through impersonation, fraud and cheat by Mrs. Sumaira Malik and she be disqualified to be elected and or from holding her position as MNA under section 99(1)(cc) of the Representation of the People Act, 1876 read with Articles 62 and 63 of the Constitution of the Islamic Republic of Pakistan, 1973 as it existed in February, 2008.

It is also prayed that pending this petition before this honourable Court, the respondent No.2 be restrained to function as an MNA on this basis of her aforesaid unlawful/fraudulent conduct.

Any other relief deemed appropriate may also be granted."

2. It is contended by the learned counsel for the petitioner that the respondent No.2 Mst. Sumera Malik passed her B.A Examination in the year, 2002. However, in the said examination, she did not appear personally, but some other girl whose name the petitioner does not know has appeared in the said examination. It is next contended that the form submitted by the respondent No.2 in the Punjab University for appearing in the B.A Examination for the year, 2002 also contained the photograph of some other girl. It is next contended that an Election Petition No.104 of 2008 has

been instituted against the respondent No.2 titled as "Malik Umar Aslam Awan v. Sumera Malik, etc." and the petitioner obtained the copy of the photograph, which is annexed with the instant writ petition as Annexure-A, of the girl from the record of the said Election Petition, which is pending before the Election Tribunal headed by a learned Judge of this Court. The petitioner has also relied upon the statement got recorded by the respondent No.2 as (RW.1) during the hearing of the above Election Petition, a photocopy of which statement is also annexed by the petitioner along with the instant writ petition from pages Nos. 13 to 73. The learned counsel next contended that the National Identity Card of the respondent No. 2, which is placed at page-38 was issued on 21-8-2002, which date is written on the said National Identity Card. In respect of this National Identity Card, the learned counsel for the petitioner has contended that the record of NADRA be requisitioned by this Court to confirm as to whether this National Identity Card has been validly obtained by the respondent No.2 or not. On the basis of the above mentioned contentions, the learned counsel for the petitioner has prayed that after getting verification of the record of the NADRA to be summoned by this Court as well as the record of the Punjab University in relation of the graduation degree of the respondent No.2, a writ of quo-warranto be issued against the respondent No.2 to appear in this Court and explain as to how she is holding the seat of an MNA against NA 69, Khushab. The learned counsel for the petitioner has relied upon the judgments reported as Hafiz Hamdallah v. Saifullah Khan and others (PLD 2007 SC 52) and Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others (PLD 2010 Supreme Court 817) in support of his contentions.

3. I have considered the arguments of the learned counsel for the petitioner and have perused the record.

4. In the first instance, the writ petition does not contain the prayer of issuance of a writ of quo warranto. The prayer clause has been reproduced above, wherein the petitioner has sought that the NADRA be directed to download hard copy in color form all the particulars of Mrs. Sumaira Malik of her Identity Cards, which has been mentioned in the prayer clause. Secondly, the petitioner has annexed with this writ petition the copies from the record of the Election Petition No.104 of 2008, which admittedly is pending before an Election Tribunal titled as "Malik Umar Aslam Awan v. Sumera Malik, etc." before a learned Judge of this Court. On the basis of the copies of this record of the Election Tribunal, the petitioner is seeking the issuance of a writ of quo warranto against the respondent No.2.

5. The petitioner has requested for holding an inquiry into the disputed questions, which have been raised by the petitioner that the NADRA be directed to download the particulars of the National Identity Card of the respondent No.2 and then the same record be requisitioned to get it compared with the Punjab University Record from where the respondent No.2 obtained her graduation degree Annexure 'D' in 2002.

6. I have asked the learned counsel for the petitioner as to whether he has moved any application before the NADRA authorities for obtaining copies of the said record, the learned counsel contended that the petitioner did not need to move such an application before the NADRA and it is for this Court to requisition the said record and to do the needful as prayed for.

7. In the matters of writ petitions seeking the issuance of a writ of quo-warranto, the grant of relief of a writ of quo warranto is not a matter of course and the conduct and motives of the petitioner can be looked into by this Court when such a prayer is submitted. I am fortified in this context by the following case-law:

- (i) In Aziz-ur-Rahman Chowdhury v. M. Nasir Uddin, etc. (PLD 1965 Supreme Court 236), the Honourable Supreme Court of Pakistan held at page-247 that the remedy of writ of quo warranto is not a writ of course. The Court from which a writ was sought was entitled to inquire into the conduct and the motives of the appellant for such a writ.
- (ii) In another judgment reported as Muhammad Liaquat Munir Rao v. Shams-ud-Din and others (2004 SCMR 489), the Honourable Supreme Court of Pakistan examined this aspect after discussing the previous case-law in the following manner in paragraphs Nos.9 and 10 at pages 729,730 which paragraphs are reproduced below:--

"(9) The question of conduct of a writ petitioner and the delay in filing a writ of quo warranto was considered in a number of cases. In the Full Court judgment in Federation of Pakistan v. Haji Muhammad Saifullah Khan and others (PLD 1989 SC 166 at page 218) the relevant observations made in earlier case of Dr. Kamal Hussain and 7 others v. Muhammad Sirajul Islam and others (PLD 1969 SC 42) were reproduced as under:--

"Under Article 98(2)(b) "any person and not necessarily an aggrieved person can seek redress from the High Court' against the usurpation of a public office by a person who is allegedly, holding it without lawful authority." On that account it cannot be doubted that Mr Siraj-ul-Islam did have the locus standi to file the petition. But the grant of relief in writ jurisdiction is a matter of discretion, wherein it is quite legitimate on the part of the High Court to the test bona fides of the relator to see if he has come with clean hands. A writ of quo warranto in particular is not to issue as matter of course on sheer technicalities on a doctrinaire approach. In the present case, considering all the circumstances I cannot escape the feeling that Mr. Siraj-ul-Islam is not entirely playing his own game, for high altruistic motives, and that he has instituted the writ petition not so much for the vindication of any public right or the redress of a public wrong as to redeem the discomfiture of the defeated candidates, and to fight their battle on another front which some of them had already waged by the process of the election petitions within its limitations. The delay has occurred in the filing of the petition which has not been satisfactorily explained is not without effect on the grant of this discretionary relief".

In M.U.A. Khan v. M. Sultan and another (1981 SCMR 74), this Court dealt with the issue in the following words:

"Before parting with the case, we cannot help remarking that the petition instituted by the present appellant, does indeed appear to be an extension of the litigation commenced against the respondent by an official of his own Department. The appellant does not appear to have been motivated by any sense of public duty and it is accordingly a matter of some regret....."

The observations made in, the case of M.U.A Khan (supra) apply, with equal force, to the facts and circumstances of the present case. In Ghulam Rasool v. Muhammad Hayat (PLD 1984 SC 385) a polling agent of a losing candidate for the election of Zila Council had filed a writ of quo warranto against the successful candidate. This Court took the view that such a person should be deemed to be acting not probono publico but for the benefit of a losing candidate and issuance of writ was declined. In the case of Azizur Rahman v. M. Nasiruddin and others (PLD 1965 SC 236), it was held that a writ of quo warranto was not a writ of course and the Court was entitled to inquire into "conduct and motives" of applicant and to refuse the writ where information laid was of a vexatious nature. In the case of Syed Ali Raza Asad Abidi v. Ghulam Ishaq Khan, President of Pakistan and another (PLD 1991 Lahore 420), a learned Division Bench of the Lahore High Court had dismissed a writ of quo warranto on the ground of lathes also where the inordinate delay of more than three years in filing the same was not explained.

(10) In Halsbury's Laws of England, 4th Edition, 1989, Volume 1(1), at page 372 para. 274, it is stated that:--

"an information in the nature of quo warranto was not issued, and an injunction in lieu thereof would not be granted, as a matter of course. It was in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. The Court would inquire into the conduct and motives of the applicant, and the Court might in its discretion decline to grant a quo warranto information where it would be vexatious to do so."

8. Keeping in view the case-law noted above, it is evident from the documents annexed with the instant writ petition that the petitioner has made use of the record of the Election Petition No.104 of 2008, which is pending before an Election Tribunal headed by a learned Judge of this Court and he wants a second' decision on the basis of the said record from this Court. This duplication of proceedings on the basis of the record of the Election Tribunal, which is already seized of the same matter against the respondent No.2 cannot be allowed to be encouraged by this Court. I am not, therefore, satisfied with, the bona fides of the petitioner of the instant writ petition. The case-law relied upon by the learned counsel for the petitioner cannot be of any help in proving the bona fides of the petitioner in instituting the instant writ petition and is also distinguishable on the basis of the facts narrated therein.

9. In exercise of my writ jurisdiction, I do not consider it a fit case to entertain this writ petition for issuance of a writ of quo warranto. The petitioner has also raised disputed questions of facts and instead of moving himself any application before the NADRA for getting verification from the NADRA -about the particulars of the respondent No.2, the instant writ petition has been instituted with the prayer re-produced above.

10. In view of all the above facts, I am not persuaded to entertain this writ petition, which is accordingly. Dismissed.

