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JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
 JUDICIAL DEPARTMENT

E.P.No.142 of 2008

Mian Saif ur Rehman Vs. Malik Iqbal Ahmad Langrial etc.

J U D G M E N T

Date of hearing	<u>08.08.2012</u>
Petitioners by	Mr. Rustam Khan Padhiar, Advocate with petitioner.
Respondents by.	Mr. Tipu Salman Makhdoom Advocate for the respondent No.1. Mr. Muhammad Akbar Cheema, Advocate Ch. Muhammad Waseem, Advocate.

NASIR SAEED SHEIKH, J: This election petition was fixed for hearing today vide order dated 01.08.2012 with the consent of Sh. Sajid Mahmood, Advocate learned counsel for the respondent No.1. The order dated 01.8.2012 is reproduced:-

“This case was called at 10.50 a.m. and Sh. Sajid Mahmood, Advocate learned counsel appeared before the Court and paid the cost of Rs.10,000/-to the learned counsel for the election petitioner and made a request that Mr. Ahmad Awais, Advocate, the senior counsel is busy before another Bench and he will address the arguments today. Accordingly the matter was directed to be heard after the court proceeding of Division Bench. At about 12.05 p.m. Mr. Waheed Ahmad, another learned Advocate appeared and stated that Mr. Ahmad Awais, Advocate learned senior counsel is busy before another Division Bench headed by Mr. Justice Farrukh Irfan Khan and the matter be kept in wait. At 12.55 p.m. Sh. Sajid Mahmood, Advocate learned counsel came and states that Mr. Ahmad

Awais, Advocate learned senior counsel could not spare time for this case today. The learned counsel prays that a short adjournment be granted and in case Mr. Ahmad Awais, Advocate learned senior counsel is not available on the next date of hearing Sh. Sajid Mahmood, Advocate learned counsel who is a counsel in the matter undertakes to address the arguments and no further adjournment shall be obtained. The case is directed to be listed on 08.8.2012 at S.No.1 immediately after urgent cases.”

Today an application has been sent by Sh. Sajid Mahmood, Advocate that on account of his illness he is unable to appear before this Court. There is also a request for adjournment on behalf of Mr. Ahmad Awais, Advocate learned senior counsel that on account of some personal engagements he is not able to appear before this Court.

2. This election petition is pending for hearing the arguments of the learned counsel for the Respondent No.1. The evidence in this case was completed by the Local Commission and the report after the completion of the evidence was submitted by the Local Commission on 5.11.2011. Thereafter the case was fixed for 11.11.2011 and the learned counsel for the respondent No.1 was not available. Through a C.M. dated 24.11.2011 the case was again fixed for 29.11.2011 and the learned counsel for the respondent No.1 was not available. On 02.12.2011 the learned counsel for the contesting respondent No.1 was not available. The arguments were partly heard on 07.12.2011, 14.12.2011 and 19.12.2011 and the case was then adjourned to 22.11.2011 and the learned counsel for the respondent No.1 sent a written request for adjournment. The case was relisted next day and nobody appeared on behalf of the respondent No.1. The case was then relisted on 27.3.2012 and the learned counsel for the respondent was not available and it was directed to be listed on 06.4.2012 alongwith connected Election Petition No.139/2008.

3. On 20.4.2012 a C.M.No.1/2012 was moved by respondent No.1 through his counsel for summoning the witnesses from Madrasa Quran ul Arabia for cross examination. The case was ordered to be put up for hearing on 23.4.2012. The learned counsel for the respondent No.1 did not appear. On 02.5.2012 the learned counsel for the respondent No.1 sent a written request for adjournment. The case was then adjourned to 4.5.2012. Sh. Sajid Mahmood, Advocate partly addressed the arguments on the C.M. Vide order dated 04.5.2012 the C.M. was dismissed. The case then came up for hearing on 08.5.2012 Sh. Sajid Mahmood, Advocate gave an undertaking before this Tribunal to argue the case on behalf of the respondent No.1 on 18.5.2012 on which date i.e. 18.5.2012 Sh. Sajid Mahmood, Advocate did not turn up and the following order was passed:-

“Sheikh Sajid Mehmood Advocate undertook to come prepared in this case for arguments today which was fixed with his consent. A written request for adjournment on behalf of Mr. Ahmad Awais Advocate, who rarely appeared in this case has been submitted. It is an election petition. The learned counsel for the petitioner has raised serious objection upon the grant of adjournment on the ground of non-availability of Mr. Ahmad Awais Advocate. I have no alternative but to proceed with the hearing of the arguments of the learned counsel for the petitioner.

2. Arguments of the learned counsel for the petitioner are in progress. To come up for further arguments on 23.5.2012 as requested by the learned counsel for the petitioner”.

4. The arguments of the learned counsel for the petitioners in the election petition No.142/2008 were completed on 30.5.2012 and the case was fixed for 31.5.2012 for hearing the arguments of the learned counsel for the petitioner of Election Petition No.139/2008. Another C.M.No.2/2012 was moved in Election Petition No.142/2008 by the respondent No.5 (This respondent is the real

daughter of the Respondent No.1 and contested the election of 2008 for the same seat of PP-226 Sahiwal-VII and lost the election) for cross examining the witnesses of the opposite party. A similar application was moved by Mst. Amna Naveed in E.P.No.139/2012. Both these C.M.s were dismissed vide order dated 07.6.2012 passed by this Tribunal. On 17.7.2012 C.M.No.3/2012 was moved on behalf of the respondent No.1 for allowing him an opportunity to argue the case and vide order dated 25.7.2012 this application was not contested by the election petitioners subject to payment of cost of Rs.10,000/-. The case was adjourned to 01.8.2012 and the above reproduced order was passed with the consent of the learned counsel for the respondent No.1 Sh. Sajid Mahmood, Advocate and the case was adjourned to 8.8.2012.

5. The record of the case reflects that the respondent No.1 has been provided sufficient opportunities to address his arguments in the matter ever since the month of November 2011. Numerous opportunities were granted and adjournments were sought by the learned counsels for the respondent No.1 on one pretext or the other. Today again an application for adjournment has been sent on behalf of the learned counsels for the respondent No.1. The learned counsels for the respondent No.1 have deliberately adopted dilatory tactics in this matter and are not rendering any assistance to the Tribunal. Even in the application for adjournment moved on behalf of the learned counsel Sh. Sajid Mahmood, Advocate the nature of his sickness is not described nor any medical certificate is appended.

6. In view of the above the adjournment request on behalf of the learned counsels for the respondent No.1 is declined.

7. At this stage the learned counsel Ch. Waseem and Muhammad Akbar Cheema appeared on behalf of the respondent No.2 in election petition No.142/2008 who is

also the respondent No.5 in election petition No.139/2008. Mr. Tipu Salman Makhdoom learned Advocate has now also appeared in both the election petitions for the Respondent No.1 and the power of attorney of the said learned Advocate is already on the record and he alongwith other counsels have addressed the arguments on behalf of the respondent No.1 of both the election petitions. It is pointed out that the learned counsels for the respondent No.2 of election petition No.142/2008 and of the respondent No.5 in election petition No.139/2008 respectively have also addressed the arguments in support of the Respondent No.1.

8. The arguments have been heard and record perused.

9. This judgment will dispose of both the election petitions No.139/2008 and 142/2008 as both the election petitions are in respect of the same constituency and are against the same contesting respondent No.1 Malik Iqbal Ahmad Langrial.

10. All the respondents and the petitioners of Election Petition No.139/2008 & 142/2008 contested the general election for the seat of Member Provincial Assembly from PP-226 Sahiwal-VII held on 18.2.2008. The respondent No.1 was declared successful candidate and was notified as a returned candidate by the Election Commission of Pakistan vide notification dated 01.3.2008 Exh.PW3/1. The two election petitions were instituted against the respondent No.1 and others before the Election Commission of Pakistan. Jamsahid Ali Chaudhry instituted Election Petition No.17/2008 whereas Mian Saif ur Rehman instituted Election Petition No.18/2008. Both these election petitions were entrusted to the Lahore High Court by the Election Commission of Pakistan and were earlier sent to Election Tribunal at Multan Bench vide order dated 15.4.2008. Later the election petitions were transferred to the Principal Seat vide order dated 24.3.2012 passed by the Election

Commission of Pakistan and were respectively numbered as Election Petition No.139/2008 and 142/2008.

11. The election petitioners in both the cases have assailed the eligibility of the respondent No.1 to contest the election. It has been alleged that the respondent No.1 claimed to be holder of a B.A. degree on the basis of Sanad ul Feraag issued by Madrassa Al-Quran Arabia Bahrol-ulom Shikarpur and a Sanad of Shahadat ul Almia BA plus issued by Jamia Talemat ul Islamia Faisalabad-Rawalpindi in the column of education qualifications at the time of submitting his nomination papers for contesting the elections. The petitioners contend that both the above stated institutions are not recognized by the High Education Commission for the purpose of declaring the equivalence for graduation degree. It was further alleged that notwithstanding the above mentioned objections the respondent No.1 did not qualify the newly introduced condition of passing the two elective subjects of Pakistan Studies and Islamic Studies so as to be eligible to claim the equivalence on the basis of the above mentioned Sanads of Deeni Madrasas for contesting the election. It is further contended in the election petitions that the respondent No.1 was previously a candidate for NA-163 Sahiwal in the by-elections of 2002. At that time he claimed himself to be a graduate and produced matriculation certificate bearing roll No.42168 pertaining to the year 1959 allegedly issued by BISE, Lahore whereas the said roll number was issued in the name of one Iqbal Tabash. It is further alleged in the petitions that the F. A. certificate produced by the respondent No.1 before the Returning Officer during the earlier election of 2002 was bogus as the roll number in the year 1962 for F. A. as claimed by the respondent No. 1 was 32847 whereas the serial number for the said year of F.A. roll numbers ends at 31415. It is further alleged that the controversy about the claim of the education qualification in the year 2002 of the

respondent No.1 was raised before the Election Tribunal in Election Appeal No.384/2002 and vide judgment pronounced on 26.12.2002 it was declared by the Election Tribunal that the respondent No.1 is an imposter. The election petitioners contend that having been so declared in the year 2002, the respondent No.1 procured fabricated sanads of Deeni Madrasas and on the basis of these Sanads which Madarassas were not even recognized by the HEC, the respondent No.1 contested the elections and got himself declared as successful candidate. The election petitions were therefore prayed to be accepted with a further direction to de-notify the respondent No.1 from the list of returned candidates.

12. The Election Petitions were contested by the respondent No.1 only who submitted written statements. A number of preliminary objections were raised. On the factual side the respondent No.1 claimed that the Deeni Madrasas from which the respondent no.1 is claiming Sanads were duly recognized by the Election Commission of Pakistan. The contents of paras 4 & 5 of the election petition No.142/2008 were replied by the respondent No.1 in the following manner:-

“4. That Paragraph No.4 of the election petition is not admitted to be correct. The Dini Madrisas which issued the Sanad to the petitioner are included in the notification issued by the Election Commission of Pakistan dated 25-07-2002 and issued by U.G.C. (HEC) dated 25-07-2002.

5. That Paragraph No.5 of the election petition is not admitted to be correct. According to Notification No.F2(11)/2002-CORD dated 29-07-2002 issued by Election Commission of Pakistan it was clarified that the holders of the Sanad Shahdat ul Almia Fil Aloom Al-Arbia-Wal-Islamia granted by Wifaq/Tanzeem-ul-Madaris and approved by individual Dini Madaris which has been recognized as equivalent to M.A. Arabic/Islamic Studies for teaching purposes by the University Grants Commission shall be eligible to contest the forth coming General Election subject to fulfillment of other qualifications. This

clarification/notification makes it clear that the answering respondent was entitled to contest the election without passing the additional subjects and the said notification was never discussed in any judgment.”

13. The respondent No.1 further took up the plea in para 6 of his reply that he has now passed two additional subjects as per requirements of law and this reply was submitted by the respondent No.1 on 13.1.2009.

14. The respondent No.2 of the Election Petition No.142/2008 was proceeded ex parte vide order dated 19.11.2008 and she elected to move C.No.322/2009 for setting aside of the order dated 19.11.2008 which was accordingly set aside vide order dated 18.2.2009 subject to payment of cost of Rs.25,000/-. This cost was not paid and accordingly the order dated 19.11.2008 was restored vide order dated 11.6.2010. The other respondents were proceeded ex parte through separate orders passed.

15. The following issues were framed in this matter vide order dated 19.3.2011:-

ISSUES

1. *Whether the titled petition is not maintainable under the law?OPR*
2. *Whether the election petition has been filed with mala fide intention?OPR*
3. *Whether on the day of election, respondent No.1 lacked academic qualification for contesting elections as envisaged under Section 8-A of the conduct of the General Elections Order, 2002 read with Section 99 (i) (cc) of the Representation of the Peoples Act, 1976?OPP*
4. *Whether respondent No.1 is liable to be disqualified in view of the provisions of Article 62, 63 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 12(2) (f), 42A, 76A and 82 of Representation of Peoples Act, 1976?OPP*
5. *Relief.*

Mr. Azmat Hayat Lodhi, Advocate was appointed as Local Commission to record the evidence of the parties. The

evidence has been recorded vide report dated 5.11.2011 submitted by the Local Commission in both the matters.

16. Both the parties produced oral as well as documentary evidence.

17. It is contended by the learned counsels for the petitioners that the respondent No.1 was a candidate in the year 2002 for contesting the elections for the constituency NA.163 Sahiwal-IV and his nomination papers were objected to on the ground that he was not a graduate and was not qualified to contest the election of National Assembly. The objection was overruled by the Returning Officer. The controversy ultimately came up before the Election Tribunal which was heard by a learned Division Bench of this Court and through the judgment dated 26-12-2002 announced in E.A.No.384/A/2002 the respondent No.1 who was impleaded as respondent No.2 in the said election petition was held to be a cheater as his claim as being holder of matriculation certificate, FA certificate and consequently the B.A. degree were declared to be based upon forged and fabricated documents. It is next contended that after being declared so the respondent No.1 for contesting the instant elections manoeuvred the Shahdat ul Almia Sanad from Jamia Talemat-e-Islamia Faisalabad-Rawalpindi and Sanad tul Feraag from Madrasa Quran ul Arabia Bahrol Uloom Shikarpur Sindh which sanads were not only fabricated one but were not from the institutions duly recognized by the HEC. It is further contended by the learned counsels for the petitioners that the respondent No.1 did not even pass the additional elective subjects so as to qualify on the basis of Sanads in question to be holder of a B.A. degree for contesting election for the year 2008. The learned counsel contends that the respondent No.1 did not appear personally to depose in the matter. The learned counsel thus concluded that the Respondent No.1 is not an ameen and an honest person and be declared so and to be not qualified to

contest the elections for the year 2008 and his election be thus declared as void.

18. The learned counsels for the respondent No.1 as well as of the respondent No.2 have vehemently opposed the arguments of the learned counsels for the petitioners by contending that the respondent No.1 holds the Sandas from duly recognized Madrasas which Sanads are equivalent to a B.A.degree and in this respect the learned counsel for the respondent No.1 referred to the Exh.RW1/1 a certificate of Shah Abdul Latif Bhattai University declaring the Sanad ul Feraag issued by Madrasa Quran ul Arabia to be equivalent to B.A. pass part-II. The learned counsels also contended that RW1/2 is a duly issued Sanad from Madrasa of Shikarpur Sindh. The learned counsel for the respondent No.1 further contends that Sanad of Shahdat ul Almia has been proved by the respondent No.1 in the evidence as RW3/2 issued by Rawalpindi Branch of the Jamia Talemaat-e- Islamia and also by the production of documents RW3/1, RW3/3 and RW3/5. The learned counsel for the respondent No.1 contended that the respondent No.1 is duly qualified and eligible on the basis of Sanads to be a B.A. degree holder and the election petitions have been instituted out of malafides by the election petitioners on account of political rivalry. It is further argued that the reference to previous judgment pronounced in the Election Appeal No.384/2002 is irrelevant for the purpose of the instant elections. The learned counsel for the respondent No.1 contended that the election petitions be dismissed.

19. Arguments heard record perused.

20. My findings on the issues framed in the case are as follows:-

21. **Issues No.1 & 2** No arguments have been addressed by the learned counsels for the Respondents No.1 & 2 on legal issues No.1 & 2 therefore these issues are decided in the negative.

22. Issues No.3 & 4 are decided jointly as they are interconnected.

23. The respondent No.1 Malik Iqbal Ahmad Langrial has been proved to have submitted his nomination papers to contest the elections for National Assembly seat N.A.163-Sahiwal-IV in the year 2002. He therein claimed to be holder of a B.A. educational certificate. He also produced his matriculation, F.A. certificates before the Returning Officer to substantiate his educational qualifications. The authenticity of the educational certificates of the respondents No.1 were assailed on the ground that all the three documents claimed and produced by the respondent No.1 before the Returning Officer were forged and fabricated. The controversy of his educational documents came up for hearing through an Election Appeal No.384/A/2002 before a Division Bench of this Court. The learned Division Bench obtained reports from BISE, Lahore and Punjab University about the documents claimed by the respondent No.1 who was arrayed as respondent No.2 in the Election Appeal No.384/2002. The following paragraph No.3 of the judgment dated 26.12.2002 passed by the learned Division Bench which is produced as Exh.PW3/E in the instant matter is relevant and is reproduced:-

“3. We directed respondent No.-5 Board of Intermediate & Secondary Education, Lahore and respondent No.6-Punjab University for verification of the above-said certificates. In their respective reports, they have submitted that all the three documents are forged and fabricated. The Controller of Examination, University of the Punjab stated that the photograph pasted on the roll number slip is different from the photograph pasted on the admission form, meaning thereby that an impersonator appeared in the examination in place of the actual candidate. B.A. result of respondent No.2 under Roll No.74683 is doubtful for which inquiry is already in process and will be finalized shortly.”

In paragraph No.10 of the judgment dated 26.10.2002 the facts of the said case were discussed in detail by the learned Division Bench in the following manner:-

“10. The facts of the aforesaid case were slightly different from the case in hand. Respondent No.2 claimed that he passed matriculation examination from Board of Intermediate & Secondary Education, Lahore in the year 1959 under Roll No.42168 and his date of birth recorded therein is 5.4.1942. He passed his F.A. examination in the year 1962 under Roll No.32847 from the same Board, whereas he appeared under Roll No.074683 in B.A. examination and was intimated the result through result intimation card attached as Annexure ‘C’ with this appeal. Report of the Board of Intermediate & Secondary Education reads as under:-

“It is submitted that as per office record the respondent No.2, namely, Malik Iqbal Ahmad s/o Fateh Sher, date of birth 05.04.1942 did not appear in the Secondary School Examination 1959 against roll number 42168 and this office did not issue the Secondary School Certificate appended with the petition as Annexure ‘A’. The particulars of the candidate who appeared in the said examination against roll number 42168 are as under:-

<i>Name</i>	<i>Iqbal Hussain Tabish</i>
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<i>Father’s name</i>	<i>Fazal Hussain</i>
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<i>Date of birth</i>	<i>04-06-1938</i>
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Copy of the admission form and result Gazette for Secondary School Examination 1959 is enclosed as Annexures R and R/1.

As far as Intermediate Examination is concerned, it is submitted that the office of the answering respondent did not allot roll number 32847 to any candidate in the Intermediate (Annual) Examination 1962. Therefore, the Intermediate Certificate appended with the petition as Annexure-B is fake and bogus.”

Similarly University of the Punjab has reported that the photograph pasted at roll number slip is different from the photograph pasted at the admission form, meaning thereby that an impersonator appeared in examination in place of the actual candidate. In paragraph 3, it is stated “Apropos above B.A. Result of Mr. Iqbal Ahmad S/o Fataih Sher, Roll No.74683 is doubtful for which inquiry is already in

process and will be finalized shortly". Reports of respondents No.5 & 6 clearly show that the appellant has neither passed matriculation examination nor F.A. the result intimation card attached as Annexure 'C' with this appeal and produced before the Returning Officer is a fake document. Respondent No.2 himself produced Annexures A, B, & C attached with this appeal before the Returning Officer, who instead of holding a summary inquiry from the concerned authorities accepted his nomination papers in an illegal manner. The requisite inquiry was necessary to find out the genuineness of the educational qualification by inquiry from the Board of Intermediate and Secondary Education and University of the Punjab. In the light of reports submitted by respondents No.5 and 6, we are absolutely clear that respondent No.2 is not a graduate and has produced fake educational documents to pose himself as a graduate to overcome the disqualification provided under section 99(1)(cc) of the Representation of People Act, 1976"

The learned Division Bench of this Court acting as an Election Tribunal further concluded in paragraphs No.11 & 12 as follows:-

"11. Date of birth of respondent No.2 given in Annexure 'A' is different from the date of birth which he has mentioned in the nomination papers. The notification of the Board of Intermediate & Secondary Education dated 16.8.1963 pertaining to Intermediate examination 1962 clearly indicates that the last roll number for the said year was 31415, whereas he claimed that he was issued roll number No.32847. No roll number after 31415 has ever been issued. This appears to be a forged document on the face of it. Yet there is another factor to doubt the authenticity of these documents. Petitioner passed F.A. examination in the year 1962 and appeared in B.A. examination after forty years in the year 2002. Record of the Board of Intermediate & Secondary Education and University of the Punjab clearly belie his stand regarding his educational qualification.

12. We have seen the original record of University of the Punjab. The photographs pasted on the admission form and roll number slip are different. Apparently, respondent No.2 procured the result intimation card through unlawful means."

24. This judgment Exh.PW3 passed in the earlier case against the respondent No.1 has not been disputed by the special attorney who appeared as RW2 on behalf of the respondent No.1 before the Local Commission appointed to record the evidence in the instant matter and who was confronted in cross-examination with this judgment and these facts were admitted in the following manner:-

“I didn’t contest NA-163 Election in 2002. It is correct that I filed nomination papers in by-elections of NA-163 in 2002. It is correct that in my nomination papers for 2002 by-election, I had written that I am a B.A. graduate. I don’t remember that in those nomination papers I had stated that Shahadat ul Alamia is equal to M.A. Its an old matter and I cant verify without seeing record. It is incorrect that I was disqualified by the High Court through Exh.PW-3/E in relation to that election. But the order was obtained by my political rivals through tampering the record of election commission and by misleading the Honorable Court. I didn’t file appeal against Exh.PW-3/E before Supreme Court, because elections were approaching within week and we decided not to go to Court.

Q. The metric F.A. & B.A. in High Court were declared as forged.

A. My political rivals tampered the record of election commission and mislead the Honorable Court.

I have been returned two times as an MPA and once as MNA. It is correct that I have not been elected as MNA.”

The respondent No.1 then submitted his nomination papers to contest the general elections held in February 2008 for PP-226 Sahiwal-VII. It was a condition precedent to contest this election to be the holder of a B.A. degree as recognized by the HEC. The respondent No.1 produced two Sanads from religious Madrassas alongwith the nomination papers for contesting the instant election. The petitioner of Election Petition No.142/2008 produced Khalid Rasheed as PW1 who was an Assistant Election Commissioner Sahiwal. The record of nomination papers of the respondent No.1 was produced

by the said witness. The nomination form consisting of six pages was produced as Exh.PW1/4. The said witness produced a certificate of Deeni Madrassa, a copy of Sanad issued by Shah Abdul Latif University Khairpur dated 30.10.2007 which were submitted by the respondent No.1 alongwith his nomination papers. The learned counsel for the respondent No.1 objected to the production of this Deeni Sanad and the Local Commission marked the Deeni Sanad as PW1/A and the objection raised to be decided by this Tribunal. The copies of the Sanad ul Feraag from Shikarpur Madrissa and Sanad Shahadat ul Alamia issued by Jamia Taleemat-e-Islamia, Faisalabad-Rawalpindi were also produced by the witness which were objected to by the learned counsel for the respondent No.1 that these were not certified copies therefore cannot be produced. The Local Commission marked those Sanads as PW1/B and PW1/C respectively. The petitioner produced PW2 Hafiz Aqeel Ahmad Law Officer from the Higher Education Commission who produced a copy of the gazette notification dated 25.7.2002 as Exh.PW2/1 wherein the list of 10 Deeni Madrassas recognized by the HEC, and the Sanads of which Deeni Madrassas were given equivalence by the HEC to a B.A. degree. The learned counsel for the respondent No.1 objected to this document that it was a photocopy. This witness was confronted with a document Annexure-H at page 65 of the Election Petition No.139/2008 wherein an entry regarding Jamia Taleemat-e-Islamia Faisalabad-Rawalpindi was described by the witness to be tampered one and to be in conflict with the HEC record. The petitioner of Election Petition No.142/2008 Mian Saif ur Rehman appeared as PW3. He produced the nomination papers Exh.P3/2 of the respondent No.1 and stated that the respondent No.1 claimed to be holder of Sanad ul Feraag and Shahadat ul Alamia BA plus and produced copies of the certificates alongwith his nomination papers. The Sanad ul

Feraag claimed by the respondent No.1 was exhibited as PW3/A and Sanad Shahadat ul Alamia claimed by the respondent No.1 alongwith his nomination papers was produced as Exh.PW3/B (both these documents were exhibited under objection).

25. The objections raised by the learned counsel for the respondent No.1 on the copies of the documents produced by the petitioners and their witnesses are not based upon any valid reasons. The photocopies were produced by the respondent No.1 alongwith his nomination papers and the witness from the Election Commission of Pakistan appeared to produce those documents and in the cross examination, the learned counsel for the respondent No.1 referred to those documents himself therefore the objections raised by the learned counsel for the respondent No.1 upon the production of those documents are overruled.

26. Exh.PW3/A is reflected to have been issued by Madrassa tul Quran Al Arabia, Behrul Aloom, Qaria Village Abdullah Dakkhan, Shikarpur Sindh whereas Shahadat ul Alamia Exh.PW3/B shows that it has been issued by Jamia Taleemat-e-Islamia Faisalabad-Rawalpindi. Both these Deeni Madrassas are admittedly not recognized by the Higher Education Commission. The special attorney of the respondent No.1 who appeared in evidence as RW2 in cross examination admitted the following facts:-

“It is correct that in my examination in chief I have not exhibited any document relating to nomination papers or academic credentials of Respondent No.1. Respondent No.1 contested elections of 2008 on the basis of Sanad ul Faragh Exh.PW-3/A and Shadat-ul-Alamia Exh.PW-3/B. It is correct that Exh.PW-3/A was issued by Madrass Qaria Abdullah Dakkhan Shikarpur, Sindh, and Exh.PW-3/B was issued by Madrassa Jamia Taleemate-Islamia, Faisalabad, Rawalpindi.”

This witness was further subjected to cross examination with respect to the nomination papers of the respondent No.1 and the Sanads produced by the election petitioner and the following extracts from his evidence are relevant which are reproduced:-

“Q. These madrassas are not recognized by the Election Commission of Pakistan in the notification produced in evidence by the Election of Pakistan?”

A. I don't know whether these madrassas which issued these documents are recognized by Election Commission of Pakistan in the notification. Volunteers that all the documents filed by Respondent No.1 before Election Commission of Pakistan and madrassas issuing my academic credentials were recognized by the Election Commission of Pakistan.

I don't know whether I have filed notification alongwith my written statement which shows madrassas issuing aforementioned documents being recognized by Election Commission of Pakistan. Reply was filed around 3 years back so I don't remember.

Q. You have placed reliance upon attested notification dated 25.07.2002 in list of reliance under O.VII R.14. The document has been relied but not produced by you?

An objection has been raised that the question relates to record and cannot be put.

(Witness has been confronted with Court file of the case).

Answer: This question relates to court record and I cannot reply to this question.

Q. Notification dated 25.07.2002 referred to in Para-4 of written reply does not include madrassas which issued the aforementioned documents Exh.PW-3/A?

Answer: It is incorrect.

Q. Please tell us which is the notification which includes the Madrassas, which issued Exh.PW-3/A?

Answer: We filed that notification alongwith nomination papers.

I do not have that notification today. Whether I filed it alongwith the written

reply is a matter of record, therefore I cannot reply.

Exh.PW-1/4 is my nomination paper. I cannot say whether Mark-PW-1/B & Mark-PW-1/C are my sanads without tallying with them with the originals.

Q. You filed Exh.PW-1/8 to Exh.PW-1/10 alongwith your nomination papers?

Ans. I cannot say whether I filed Exh.PW-1/8 to Exh.PW-1/10 alongwith my nomination papers, but the documents I filed with nomination papers were genuine accepted without objection.”

***“I don’t remember which subjects I studied in Shahadat ul Alamia. Matter is 40 years old. I don’t remember my roll number of Shahadat ul Alamia. It is correct that there is no roll number on Shahadat ul Alamia Exh.PW-3/8, but Sabiqul Fazleen is written. I only passed the exam. I don’t remember the numbers I obtained. In 2006, I completed by education for Sanad ul Faragh Exh.PW-3/A in the madrassa. I got admitted in the madrassa in 2001/2002. It is correct that in my nomination papers I have written that Exh.PW-3/A is equal to BA. According to notification of election commission of Pakistan Exh.PW-3/A is equal to BA.*”**

This special attorney was further cross examined about the Sanad of Jamia Taleemat-e-Islamia, Rawalpindi and he made following replies:-

***“I don’t remember the exact location of Jamia Taleemat-e-Islamia in Rawalpindi. It is an old matter. I can take you to the madrassa in Shikarpur, but I cant tell exact address. Its located in town. I am not sure about tehsil but its district Shikarpur.”*”**

27. This special attorney further stated at the fag end of his cross examination that the respondent No.1 has passed additional papers of B.A. and the record is in possession of the RW2 but no such record was produced .

28. It is important to note that the respondent No.1 did not produce any documentary evidence in his attorney’s

statement (RW2) to prove all the Sanads which he claimed to have been issued by the Madrassas in question. One more aspect of the matter could be relevant that the respondent No.1 produced RW3 Imran Shabbir Chohan who claimed to be the Secretary/Mohtamim-e-Ala Jamia, Madrassa Jamia Taleemat-e-Islamia, Model Town Rawalpindi to prove that Madrassa Jamia Taleemat-e-Islamia is a branch of Jamia Taleemat-e-Islamia Faisalabad-Rawalpindi and this witness RW tendered in evidence the Sanad Exh.RW3/2 as issued by Mohtamim Ala of the said Madrassa. This witness admitted in cross examination that he has not brought any record or register relating to the issuance of RW3/2 in favour of the respondent No.1. The following portion of the statement of this RW3 is relevant:-

“Respondent was admitted in Madrasa in 1974.

Q. In which course he take admission?

*Ans. Since he belonged to “Sabqa Fazleen” as per decision of Wafaqul Madras he was only required to give **oral test** to pass the Sanad.*

I do not know the subjects forming syllabus of the Shahada Tul Alamia Sanad. It is incorrect to suggest that Respondent was not a regular student at the Madrasa. I do not know when Respondent No.1 previously studied at the Madrasa as Sabqa Fazleen. It is correct that I do not have any record with me relating to Respondent No.1’s status as Sabqa Fazleen. I was not told to bring any such record. I do not know whether Sanad ul Faragh precedes Shahada Tul Almia. I do not know whether before issuance of Shahada tul Almia, issuance of Shahada tul Alia precedes. I am Secretary to the Mohtamum e Ala, and not of the Madrasa and that is why I am not conversant with Madrasa procedures.

Q. Election Commission issued notification dated 25.7.2002 which contains list of ten Madrasas which does not include Jamia Taleemat e Islamia Rawalpindi which issued RW-3/2? (Objection by learned counsel for Respondent No.1 that this question cannot be put in cross examination upon this witness since it does not relate to him nor he executant of the notification).

An. The notification that was issued to our Madrasa contains our Madrasa’s name in the recognized list.

I do not have that notification nor I recall its date of issuance. It is incorrect to suggest that there is no such notification nor that such notification does not contain our Madrasa's name. Original affiliation letter Exh.RW-3/5 is with us.....

Again this witness made the following disclosures:-

"It is correct that address of the Madrasa is not mentioned as (in) Exh.RW-3/2. It is correct that I have not produced any record relating to the admission and discharge of Respondent No.1 from the Madrasa. Such record is available at the Madrasa."

About the Sanad-ul-Feraagh the Respondent produced RW1 Mr. Habibullah Phulpoto, Additional Registrar Administration Shah Abdul Latif Bhattai University and the following part of his statement is relevant:-

*"The Madrasa that has issued Sanad ul Faragh of Respondent No.1 is in the list issued by University of Sindh as maintained by Shah Abdul Latif University. I have not brought the said list today. While issuing the Equivalence Certificate to the Respondent No.1 our University did not verify the genuineness of Sanad ul Faragh, issued to the Respondent No.1. It is correct that Equivalence Certificate as per Exhibit RW-1/2 at Serial No.16 has been issued in favor of Iqbal Ahmad son of Fateh Sheikh, Caste Langrial, **R/o Karachi**. It is correct that Exh.RW-1/2 does not bear CNIC or any identification/mark of Iqbal Ahmad. I do not know whether the Equivalence Certificate issued is not in respect of Sanad ul Faragh issued in favor of Respondent No.1. It is correct that Sanad is issued by University only for purposes of admission to M.A.previous in Islamic Culture and Arabic only, being equal to B.A. I have once visited the Madarsa which issued Sanad ul Faragh to Respondent No.1. It is correct that the Madarsa which issued Sanad ul Faragh to Respondent No.1 has never applied to Shah Abdul Latif Bhattai University, Khairpur Sindh, for affiliation directly."*

29. After the perusal of the evidence produced by the parties, extracts of which have been reproduced above, it is established that the respondent No.1 first claimed to be holder of matriculation and F.A. qualifications from the BISE, Lahore and a B.A. result card from University of Punjab and on the basis of above mentioned claim he

submitted his nomination papers in the by-elections of NA.163 (Sahiwal-IV) and his nomination papers were accepted by the Returning Officer vide order dated 17.2.2002. An Election Appeal No.384-A/2002 was preferred by one Saeed Ahmad Chaudhry and the matter came up for hearing before a learned Division Bench as an Election Tribunal of this Court and it was finally decided by the said Election Tribunal that the claim of the respondent No.1 regarding his educational qualifications of matric, F.A. and University of Punjab was based upon forgery, fabrication and impersonation. This judgment dated 26.12.2002 passed in Election Appeal No.384-A/2002 has been produced as Exh.PW3/E and has attained finality as it was not further appealed against by the respondent No.1. The respondent No.1 did not raise any claim in the earlier election process of 2002 that he was holder of any Sanad of Shahadat ul Alamia ,Jamia Taleemat-e-Islamia, Faisalabad-Rawalpindi Exh.PW1/A admittedly claimed to have been obtained in the year 1974-75. It is also admitted by the special attorney of the respondent No.1 Khalid Mehmood who appeared as RW2 that the degree of Shahadat ul Alamia is superior to the degree of Sanad ul Feraag. The respondent No.1 got exhibited Sanad ul Feraag as Exh.RW1/2 in the statement of RW1 which according to the respondent No.1 is equivalent to B.A. qualification for the purpose of seeking admission in M. A. Islamic Culture and Arabic. An equivalence certificate to that effect was got produced by the respondent No.1 as RW1/1 from Shah Abdul Latif University Khairpur. RW1/2 is claimed by the respondent No.1 to include his name at S.No.16. No identification of the said Iqbal Ahmad at S.No.16 is noted in the document Exh. RW1/1. The RW1 Assistant Registrar of Shah Abdul Latif University Khairpur admitted that the Sanad ul Feraag was issued in favour of Iqbal Ahmad s/o Fateh Sher r/o Karachi. The cross examination reproduced of RW1

establishes without any doubt that the document RW1/1 is not an authentic document. It is established that both the Sanads claimed by the respondent No.1 for being a graduate so as to be eligible to contest the elections are result of forgery and fabrication.

30. Another important question which strikes the mind is that the special attorney of the respondent No.1 who appeared as RW2 admitted in his cross-examination that the degree of Shahadat ul Alamia is superior to the degree of Sanad ul Feraag. If the respondent was already holding of a superior degree of Shahadat ul Alamia issued in the year 1974-75 then there was no necessity for him to have obtained an inferior degree of Sanad ul Feraag in the year 2008 from a Deeni Madrasa known as Madrassa tul Quran Al Arabia, Behrul Aloom, Qaria Village Abdullah Dakkhan, Shikarpur Sindh. It is also an admitted position on the record that the Madrassa tul Quran Al Arabia, Behrul Aloom, Qaria Village Abdullah Dakkhan, Shikarpur Sindh is not a recognized Madrassa in the notification dated 25.7.2002. Thus after the respondent No.1 having been declared to be an imposter and cheater in the Election Appeal No.384-A/2002 by a Division Bench/Election Tribunal of this Court, he maneavoured two Sanads in question in order to claim his status of being a graduate. In this respect the respondent No.1 submitted his nomination papers before the Returning Officer the record of which has produced by the RW1 and a copy of the gazette notification Exh.RW1/10 was produced by the respondent No.1 before the Returning Officer with an interpolation of word "Rawalpindi" against the name of Jamia Taleemat-e-Islamia, Faisalabad. This notification in original has been produced as Exh.PW1/1 wherein Jamia Taleemat-e-Islamia, Sargodha Road Faisalabad (without the word "Rawalpindi") is the only recognized Madrassa at S.No.7 by HEC. More importantly this notification dated 25.7.2002 has been produced in the

judgment reported as **SARDAR ASMATULLAH KHAN VS. MOULVI MUHAMMAD SARWAR AND OTHERS (2011 SCMR 107)** at page 113 and Jamia Taleemat-e-Islamia, Sargodha Road, Faisalabad is the only recognized Deeni Madrassa for the purpose of equivalence of its Sanad for election purpose. The respondent No.1 thus produced an interpolated notification dated 25.7.2002 with the word “Rawalpindi” before the Returning Officer for getting the acceptance of his nomination papers for the general election of PP-226 Sahiwal-VII of 2008. Notwithstanding the above facts, there was a requirement of passing of additional two elective subjects as laid down by the honourable Supreme Court of Pakistan in the reported judgment (**2011 SCMR 107**) which requirement was also not proved by the respondent No.1 to have been acquired on the date of the election held on 28.2.2008.

31. Article 62 of the Constitution in its sub Article (1) (f) provides as follows:-

“62. A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-

- (a)...*
- (b)...*
- (c)...*
- (d)...*
- (e)...*
- (f) he is sagacious, righteous and non-profligate and hones and honest and ameen;*

The honourable Supreme Court of Pakistan in the judgment reported as **MUDDASAR QAYYUM NAHRA VS. CH. BILAL IJAZ AND OTHERS (2011 SCMR 80)** quoted with approval the following paragraphs No.21 & 22 of an earlier judgment pronounced by this Court and reported as **CH. BILAL IJAZ VS. MUDASSAR QAYYUM NAHRA AND 4 OTHERS (2010 CLC 1692):-**

“21. The concept of inserting Article 62 clause (f) in the Constitution is very purposeful; Constitution of Islamic Republic of Pakistan, 1973 cannot be said to have incorporated the said

clause without any meaningful objective. The holders of Public offices like members of National and Provincial Assemblies are expected to be persons of unimpeachable character. The terms used in clause (f) of Article 62 of the Constitution of Islamic Republic of Pakistan, 1973 need to be understood and implemented in order to stop dishonest and cheatful persons from entering into the corridors of the National and Provincial Assemblies. The words written in clause (f) are thus reproduced below which are denied and interpreted in well known English Dictionaries as are available on web-side (site)/internet with universally accepted meanings:- -

Sagacious

- (i) Skillful in statecraft or management
- (ii) Marked by artful prudence expedience and shrewdness.
- (iii) Having prompt wisdom.
- (iv) A wise leader.
- (v) Insightful; foresighted.

Righteous

- (i) Morally upright, without guilt or sin.
- (ii) Characterized by accepted standard of morality or justice.
- (iii) Good: morally admirable.
- (iv) Clean handed; guiltless.
- (v) Just: Used, especially of what is legally or ethically right or proper or befitting.
- (vi) Moral: concerned with right and wrong or conforming to standards of behavior: morally excellent worthy.
- (vii) Virtuous; morally excellent worthy.
- (viii) Worthy; having worth or merit or value; being Hon'ble or admirable.
- (ix) Honest; blameless.

Non profligate

- (i) Recklessly wasteful.
- (ii) Wildly extravagant.

- (iii) Shamelessly immoral or debauched.
- (iv) Spendthrift.
- (v) Prodigal in their expenditures.
- (vi) Squandering.

Honest

- (i) Displaying integrity; upright.
- (ii) Not deceptive or fraudulent.
- (iii) Characterized by truth; not false.
- (iv) Sincere.
- (v) Not given to cheating.

Ameen (An Arabic word)

Meaning:

Trustworthy: faithful.

22. The concepts projected in using all the above terminology is not difficult to understand. It demonstrates a keen desire of the Constitution that persons desiring to engage themselves in the process of law making for the country must themselves be possessed with High qualities of personal character and moral values. A legislator who indulges into unfair means in earning or procuring his educational documents cannot be termed to be possessing the required standards of high personal characteristics mentioned in clause (f) of Article 62 of the Constitution of Islamic Republic of Pakistan, 1973. Members of the National or Provincial Assemblies on their successful election have been further obliged to take oath as incorporated in the third schedule of the Constitution, with necessary condition of undertaking the performance of the duties and functions honestly in accordance with constitution. Elected members are further likely to be entrusted with the other high and onerous offices of the Prime Minister, Federal Ministers, Speaker of the National and Provincial Assemblies, Deputy Speakers of the National and Provincial Assemblies and Chief Ministers of the Provinces. The swearing of solemn oath from such holders of public offices are also prescribed in the Constitution requiring similar performances of duties and functions with honesty and also to be faithful to be Constitution and the law. 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 so that he be assigned the high responsibilities of performing national functions of running the affairs of the country. 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 file (the) competent authority are allowed to be given any entry into the doors of National or Provincial Assemblies or (of) our country. The respondent No.1 not only is found guilty of a dishonest or cheatful involvement into 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 as well when P.W.1 was suggested that he was admittedly not holder of the B.A. degree from the University of the Punjab whereas in his written statement Exh.P12, the respondent where he was respondent No.4 in the said writ petition categorically took up the plea and claimed to be holder of a valid B.A. degree from the University of the Punjab. He is thus not worthy of credence and cannot be allowed to be entrusted with State responsibilities of Law Making; to be in-charge of the National Exchequer (Exchequer) or be eligible to represent the people of Pakistan.”

32. With a little variation of fraud and fabrication methodology adopted by the Respondent No.1 the only conclusion possibly to be drawn is that the Respondent No.1 was not only ineligible to contest the election for the seat of PP-226 Sahiwal-VII in the year 2008, but was also not a

righteous or honest or an Ameen person. The findings on issues No.3 & 4 are accordingly recorded against the respondent No.1. The respondent No.1 was declared to be an imposter by a learned Division Bench Election Tribunal of this Court in the judgment announced on 26.12.2002 regarding his claim of previous educational qualifications. The respondent No.1 also was not holder of Sanads from Madrassas duly recognized by the Higher Education Commission of Pakistan. The two Sanads from the Dini Madrissas as claimed by the Respondent No.1 are fraudulently manufactured by the Respondent through dishonest means of forgery and fabrication. The Respondent No.1 did not pass the two additional subjects as per the law laid down by the honourable Supreme Court of Pakistan. Therefore the election of the Respondent No.1 to the seat of PP-226 Sahiwal-VII in the general election of February 2008 is declared **illegal and void** and accordingly his notification dated 01.03.2008 as a returned candidate from the constituency PP-226 Sahiwal-VII is **set aside** and is ordered to be **cancelled**.

33. None of the election petitioners Mian Saif ur Rehman or Jamshed Alam can be declared as a successful candidate as the substantial majority of the voters of PP-226 Sahiwal-VII did not cast their votes in favour of the either.

34. The Election Commission of Pakistan is directed to immediately arrange for holding of by-elections for PP-226 Sahiwal-VII in accordance with the Constitution and the Election Laws.

(Nasir Saeed Sheikh)
Judge

APPROVED FOR REPORTING

Amjad