

E.A.No.15-R of 2013

Usman Ibrahim

Returning Officer NA-95 etc.

**09.4.2013 M/s. Muhammad Saeed Ansari and Sh. Muhammad Akram, Advocates for the appellant.
Raja Muhammad Arif, Additional Advocate General.
Muhammad Iqbal, Reader, Sessions Court,
Gujranwala with record.**

The appellant submitted his nomination papers for scrutiny to the Returning Officer of NA-95 Gujranwala-I on 30.3.2013. The scrutiny was undertaken by the Returning Officer who vide order dated 03.4.2013 rejected the nomination papers of the appellant. In the impugned order dated 03.4.2013 the Returning Officer has recorded a finding that the appellant does not know what is Article 2-A as well as the Objective Resolution and complete number of Islamic Provisions of the Constitution of Islamic Republic of Pakistan 1973 therefore being a non-practicing lawyer this one factor also prevailed with the Returning Officer for rejection of the nomination papers of the appellant. The other reason recorded by the Returning Officer for rejecting the nomination papers of the appellant was that the documentary record reflects that the appellant has made wrong entries and wilful concealment of facts about his income and assets therefore he is not qualified in view of the provisions of Article 62(f) of the Constitution of Islamic Republic of Pakistan 1973. The details of the discrepancies noted by the Returning Officers have been given in paragraphs No.2 & 3 of the impugned order although these paragraphs are not numbered.

2. Through the instant election appeal preferred u/s 14(5) of the Representation of People Act 1976 the order dated 03.4.2013 passed by the Returning Officer has been assailed.

3. It is contended by the learned counsel for the appellant that the appellant was continuously being elected as MPA in the years 1985, 1989 (by elections), 1990, 1993 and 1995 as observed by the Returning Officer in paragraph No.1 of the impugned order. The learned counsel further contended that the appellant also got himself elected in the year 2008 for a National Assembly seat but lost the elections in the year 2002. The learned counsel for the appellant has argued that the question put by the Returning Officer regarding the Islamic provisions of the Constitution of Pakistan was a highly technical question and which provisions cannot be remembered by heart and the very asking of this question was uncalled for and has no bearing upon the eligibility of the appellant. The learned counsel next contended that the appellant has disclosed all his sources of income in column No.12 of the nomination papers with details of payment of income tax which contents were supported by the copies of income tax returns. The details of foreign tours of the appellant has also been given in Annexure-E-6 and that on the basis of the record produced there was no discrepancy of such a substantial nature so as to declare the appellant disqualified under Article 62(f). The learned counsel for the appellant further argued that the appellant declared a motor car Toyota Corolla model 2010 bearing registration No.LEC-895-10 and in support of the investment made on the purchase of the motor car the appellant placed on record the receipts of the sale and purchase of the earlier car and then the receipt of the sale of another Toyota Corolla car in the year 2010 therefore the appellant has duly explained all his assets and there is no inconsistency in the assets declared by the appellant and the sources of income of the appellant and the expenses as shown in the nomination form. A prayer has been made for setting aside of the impugned order passed by the Returning Officer as being unsustainable in the eye of law.

4. *We have considered the arguments of the learned counsel for the appellant and have perused the record with their assistance.*

5. We agree with the contention of the learned counsel for the appellant that questions put regarding the Islamic provisions of the Constitution were not justified and were uncalled for and the failure to give correct replies thereof cannot form the basis for rejecting the nomination papers of the candidates in the forthcoming elections.

6. Now we proceed to examine the next grounds recorded for rejection of the appellant's nomination papers.

7. The appellant declared himself to be a landlord in column No.8 of the nomination form. He further declared his educational qualification to be a B.A. but during the scrutiny he is stated to have claimed himself to be a non-practicing lawyer. In column No.12 of the nomination papers the appellant declared his total income in the year 2010 to be Rs.892,424/-, in the year 2011 Rs.985,391/-and in the year 2012 Rs.10,36,755/-. This total income declared by the appellant is from two sources of his salary as member of Parliament and his property. The Returning Officer after analyzing the declaration of income made by the appellant in his nomination papers observed that the appellant has declared a Toyota Corolla car model 2010 bearing registration No.LEC-895-10 valuing Rs.13,05,000/-in his assets. The total income declared by the appellant as mentioned has been found to be not commensurate with the assets declared. The Returning Officer has also observed that the personal expenses declared by the appellant in the nomination papers figure out to be Rs.14,14,000/-whereas his total income for the year 2012 has been declared as Rs.10,36,755/-. Both these figures are not compatible with each other. The Returning Officer has also observed that valuation declared of the property is much less than the market value obtained by the Returning Officer from the concerned departments' reports. The Returning Officer has

also recorded that foreign trips of the appellant to Saudi Arabia and United Kingdom have not been duly accounted for from the sources as declared. The appellant has been considered guilty of wilful concealment of facts and submission of false affidavit by the Returning Officer.

8. Apart from the points noted by the Returning Officer it is also observed by this Tribunal that the two receipts of sale of the two cars which have been produced by the appellants are seriously of doubtful authenticity; one is dated 09.9.2009 whereby Shahid Usman son of the appellant Usman Ibrahim sold out a car Toyota Corolla Xli bearing registration No.LEC-4635 to one Muhammad Irfan s/o Muhammad Iqbal for a sum of Rs.10,90,000/-. The other receipt produced by the appellant is of sale of another car bearing registration No.LEC-3520 of a Toyota Corolla car model 2009 which has also been sold away by Shahid Usman son of the appellant Usman Ibrahim to one Muhammad Riaz s/o Muhammad Bashir for a sum of Rs.12,60,000/-. In both the receipts surprisingly both the vehicles have been declared to be the ownership of Usman Ibrahim in the column of owners but have been sold out by his son. Both these receipts are not witnessed by any person and are not relatable to the Toyota car LEC-895-10 claimed by the appellant in his column of assets of the nomination papers. There is no such receipt produced by the appellant for the purchase of this car and the source of its sale price paid.

9. The appellant has declared his total income in column No.12 for the year 2012 as Rs.10,36,755/-, for the year 2011 Rs.985,391/-and for the year 2010 Rs.892,424/- and in the source of income column of the said total income the appellant has stated salary and property income to be the source of his total income. In the column of personal expenditures the appellant has disclosed Rs.14,14,083/-as the total expenditures of his personal life. This figure

apparently is not compatible with the total income declared by him. Another factor which is apparent on the record annexed with the nomination papers is that the certified copies have been produced by the appellant of his income tax returns wherein the appellant disclosed his agriculture income to be Rs.246,543/- during the year 2012. In the return for the year 2012 the appellant has declared his total income to be Rs.790,212/-. These figures do not tally with the income declared by the appellant in column No.12 of the nomination papers. The appellant has also produced a certificate regarding his salary income which narrates the salary and allowances received by the appellant from the National Assembly Secretariat for the year 2011-12. The appellant received his total salary under the headnote (a) pay and allowances to be Rs.790,212/- and under the headnote (b) the TA/DAs received for Sessions/Committee Meetings, travelling allowance, daily allowance, conveyance allowance and housing allowance of Rs.945,854/-. The TA/DAs and the telephone allowance and the office maintenance allowances added by the appellant in his total income cannot be considered to be a part of his earning because these allowances are meant to be spent for the specific purposes for which these were entrusted and cannot be considered as income of the appellant. In the return for the year 2011 the appellant has declared his total income at Rs.747,360/-. In the return for the year 2010 the appellant has declared his total income to be Rs.604,524/-. All these figures do not tally with the income declared by the appellant with the total income declared in column No.12 of the nomination papers. The appellant also declared an increase into his assets of Rs.658,526/- in the year 2012 as per detail given in the column of Assets of the Nomination papers. There is no explanation for this increase as to wherefrom the source of this increase came.

10. The scrutiny conducted by the Returning Officer and perused by this Court reflects that the appellant has not truly reflected

his sources of income in different papers which do not even tally with each other. These contradictions are of substantial nature and reflect seriously upon the personal character of the appellant.

11. Article-62 (f) of the Constitution of Islamic Republic of Pakistan 1973 makes a fundamental qualification for being elected as member of Majlis-e-Shoora for a person that he should be a sagacious, righteous, non-profligate and honest and ameen. These terms have been interpreted by the honourable Supreme Court of Pakistan in the reported judgments ***MALIK IQBAL AHMAD LANGRIAL VS. JAMSHED ALAM AND OTHERS (PLD 2013 SC 179)*** and ***MUDDASAR QAYYUM NAHRA VS. CH. BILAL IJAZ AND OTHERS (2011 SCMR 80)*** in which the honourable Supreme Court of Pakistan approved the judgments announced by this Court in two cases reported as ***CH. BILAL IJAZ VS. MUDASSAR QAYYUM NAHRA AND 4 OTHERS (2010 CLC 1692)*** and ***MIAN SAIF-UR-RAHMAN VS. MALIK IQBAL AHMAD LANGRIAL AND 4 OTHERS (2012 CLC 1806)*** interpreting the above terms .The honourable Supreme Court of Pakistan in the judgment reported as ***(2011 SCMR 80)*** from pages 91 to 94 observed as follows:-

“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 word “sagacious, righteous and non-profligate and honest and Ameen” written in clause (f) have been interpreted in well known English Dictionaries as under:-

*1.1. **Sagacious.** The word sagacious denotes a prudent person skillful in statecraft or management, having prompt wisdom, ability to lead, insightful, having sense of honour, integrity and foresightedness, who is wise, learned and knowledgeable*

*1.2. **Righteous.** The word “righteous”, as noun connotes, ethical morals. As an adjective it means just, morally correct, consonant with ethical principles or rules of positive law it is the opposite of wrong, unjust, illegal. The attitude of such a person in all walks of life must be*

(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 behaviour: morally excellent worthy*

(vii). *Virtuous: morally excellent worthy*

(viii). *Worthy: having worth or merit or value; being Hon'ble or admirable*

(ix). *Honest: blameless*

1.3. **Non profligate.** *The phrase "non profligate" as matter of affect connotes extravagant, spendthrift, corrupt self indulgent, immoral, decadent, etc. He can be called:*

(i). *Recklessly wasteful*

(ii). *Wildly extravagant*

(iii). *Shamelessly immoral or debauched*

(iv). *Spendthrift*

(v). *Prodigal in their expenditures*

(vi). *Squandering*

1.4. **Honest.** *An honest person is truthful, pious refrains committing major since(sins),*

*God fearing upright sincere
believing to be answerable
before Allah Almighty. He is*

(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.

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. Election 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 (the) Constitution and the law. A person who indulges into using 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 competent authority are allowed to be given entry into the doors of National or Provincial Assemblies or our country. Such a person 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 or be eligible to represent the people of Pakistan.”

12. The appellant has been rightly adjudged by the Returning Officer to be suffering from lack of the qualifications mentioned in Article-62 (f) of the Constitution of Islamic Republic of Pakistan 1973 therefore the instant election appeal instituted by the appellant has no merits and is *dismissed in limine*.

(Shahid Waheed)
Judge

(Nasir Saeed Sheikh)
Judge

Approved for reporting

Amjad

