

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.133237 of 2018

Malik Taj Ahmad

Versus

**Malik Muhammad Nawaz, Member of Provincial Assembly
(MPA), Punjab & others**

J U D G M E N T

Date of hearing: 11.06.2018.
Petitioner by: Mr. Ishrat Mahmood Sheikh,
Advocate.
Respondents by: M/s. Mubeen-ud-Din Qazi, Naeem
Sarwar, Malik Muhammad Zafar Iqbal
and Roman Bilal, Advocates.

MUHAMMAD SAJID MEHMOOD SETHI, J.- This consolidated judgment shall dispose of instant writ petition alongwith following connected writ petition as common questions of law and facts are involved in these cases:-

W.P. No.161857 of 2018 titled *Malik Taj Ahmad v. Muhammad Razaq Malik, Mayor Municipal Corporation, Faisalabad & others.*

2. Through instant and connected petitions under Article 199 (i)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”), petitioner has sought writs of *quo warranto* from this Court requiring Malik Muhammad Nawaz, Member of Provincial Assembly (“**MPA**”), Punjab from PP-71 Faisalabad (respondent No.1 in this petition) and Muhammad Razaq Malik, Mayor, Municipal Corporation, Faisalabad & Chairman, City Union Council (“**UC**”) 137, Faisalabad

(respondent No.1 in connected petition) to show under what authority of law, they claim to hold the said offices and election for the said seats be declared void, of no legal effect and vacant with consequential direction to respondent / Election Commission of Pakistan (“ECP”) to hold fresh elections in accordance with law.

3. Brief facts, necessary for disposal of instant petition, are that respondent No.1 was elected as MPA from PP-71, Faisalabad in General Election, 2013 (during pendency of this petition, the Provincial Assembly of the Punjab, on completion of its five years’ term, stands dissolved on and from 31.05.2018 in terms of Article 107 of the Constitution). Petitioner, being voter of said constituency and elected Chairman of City Union Council 145 (Choohar Majra), Ghulam Muhammad Abad, Municipal Corporation, Faisalabad, filed instant petition *inter alia* on the ground of concealment of assets / liabilities by respondent No.1.

In connected petition, petitioner has sought writ of *quo warranto* against Muhammad Razzaq Malik (respondent No.1 therein) qua his office as Mayor of Faisalabad Municipal Corporation and Chairman of City Union Council No.137, Faisalabad with the allegation of concealment of assets / liabilities.

4. Learned counsel for petitioner submits that at the time of contesting General Election, 2013, respondent / Malik Muhammad Nawaz was director / share-holder of Malik Ghee & Cooking Oil Mills Ltd. (“**Malik Ghee**”), Benz Maize Products International Ltd. (“**Benz Maize Products**”), Faisalabad and partner of Malik Protein, Faisalabad, and respondent / Muhammad Razzaq Malik was chief executive / director / share-holder of Malik Ghee, Benz Maize Products, Faisalabad and Benz Industries Ltd., Lahore, however, in the columns of liabilities and loans, they wrote NIL liabilities and NIL loans, thus, filed incorrect statements of their assets / liabilities by concealing bank guarantees against loans

from different banks. He adds that upon institution of suit by respondent / Bank of Punjab, both the respondents entered into a settlement agreement dated 18.12.2017 and filed a joint application before learned Banking Court for passing consent decree, in order to avoid disclosure of loan to public at large. He further submits that as per Articles 62 & 63 of the Constitution, said respondents are no more *Sadiq* and *Ameen*, thus, are liable to be declared disqualified for concealment of liabilities. He further contends that concealment in declaration under oath is not condonable in the eye of law. He has relied upon *Dr. Muhammad Afzal and others v. The State* (2001 SCMR 1615), *Rahim Tahir v. Ahmed Jan and 2 others* (PLD 2007 Supreme Court 423), *Khaleefa Muhammad Munawar Butt and another v. Hafiz Muhammad Jamil Nasir and others* (2008 SCMR 504), *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 Supreme Court 1089), *Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarar and others* (2016 SCMR 1), *Mujahid Kareem and others v. National Bank of Pakistan through Manager and others* (2016 SCMR 66), *Industrial Development Bank of Pakistan v. Hyderabad Beverage Company Private Limited and others* (2016 SCMR 451), *Muhammad Ahmad Chatta v. Iftikhar Ahmad Cheema and others* (2016 SCMR 763), *Ch. Muhammad Yousaf Kaselia v. Peer Ghulam Mohy-ud-Din Chishti and others* (PLD 2016 Supreme Court 689), *Hafeez ur Rehman v. Judge Accountability Court No.2 and another* (PLD 2016 Supreme Court 763), *Nadeem Shafi v. Tariq Shuja Butt and others* (PLD 2016 Supreme Court 944), *Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan / Member National Assembly, Prime Minister's House, Islamabad and 9 others* (PLD 2017 Supreme Court 265), *Imran Ahmed Khan and others v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan* (PLD 2017 Supreme Court 692), *Mian Muhammad Nawaz Sharif and others v. Imran Ahmed Khan Niazi and others*

(**PLD 2018 Supreme Court 1**), Waqar Zafar Bakhtawari and 6 others v. Haji Mazhar Hussain Shah and others (**PLD 2018 Supreme Court 81**), Muhammad Hanif Abbasi v. Jahangir Khan Tareen and others (**PLD 2018 Supreme Court 114**), Zulfiqar Ahmed Bhutta and 15 others v. Federation of Pakistan through Secretary Minister of law, Justice and Parliamentary Affairs and others (**PLD 2018 Supreme Court 370**), Sami Ullah Baloch and others v. Abdul Karim Nousherwani and others (**PLD 2018 Supreme Court 405**), Order dated 26.01.2018, passed by Hon'ble Apex Court in **Civil Appeal No.1250 of 2017** titled Humayun Akbar v. The Cantonment Election Tribunal, Multan and another, Judgment dated 08.05.2018, passed by Hon'ble Supreme Court in **Civil Petition No.3122 of 2017** titled Malik Ameer Haider Sangha and another v. Mrs. Sumaira Malik, etc., Syed Muhammad Jamaluddin Kazmi v. Federation of Pakistan through President of Pakistan and another (**PLD 2010 Federal Shariat Court 221**), Nageeb Ullah Khan v. Malik Imran Khan and 6 others (**PLD 2006 Peshawar 21**), Ch. Mubashar Hussain v. Returning Officer, Kharian, District Gujrat and 3 others (**PLD 2008 Lahore 134**), Ch. Muneer Ahmad and others v. Malik Nawab Sher and others (**PLD 2010 Lahore 625**), Waheed Sabir v. Rana Zahid Hussain Khan and others (**PLD 2013 Lahore 586**), Altaf Hussain v. Returning Officer NA-135 and 171 (Sangla Hill) and another (**2013 CLC 1010**), Zulikha Bibi v. Election Commission of Pakistan through Secretary and another (**2015 YLR 1584**), Major (Retd.) Ahmed Nadeem Sadal and 3 others v. Federation of Pakistan through Secretary Sports, Islamabad and 3 others (**2015 CLC 34**), Habib Bank Limited v. Messrs Toweline (Pvt.) Limited and others (**2015 CLD 629**), Syed Abbas Ali v. Bank of Punjab through Manager and others (**2015 CLD 1409**), Messrs Asim Traders through Sole Proprietor and others v. National Bank of Pakistan through Manager (**2016 CLD 1654**), Barkhurdar v. Appellate Tribunal / Additional District and Sessions Judge and 3

others (PLD 2016 Lahore 101), Syed Nadir Ali Shah v. Mohtamim / Raees ul Madrassa, Madrassa Arabia Qasim-ul-Aloom, Ghotki District Ghotki Sindh and others (PLD 2017 Peshawar 133), Shafiullah v. Saifullah Khan and 7 others (PLD 2017 Peshawar 203), Adamjee Polycraft Limited and 3 others v. National Investment Trust Limited (2017 CLD 380), Malik Farzand Ali and another v. Asad Ali and others (PLD 2018 Lahore 46), Judgment dated 01.03.2017, passed by another learned Bench of this Court in **W. P. No.39 of 2017** titled Zameer-ul-Haq v. Province of Punjab, etc., Judgment dated 13.06.2017 passed by another learned Bench of this Court in **Election Appeal No.09 of 2016** titled Haji Faqeer Muhammad v. Malik Rafique Ahmad etc. and Order dated 26.04.2018, passed by learned Islamabad High Court, Islamabad in **W. P. No.2907 of 2017** titled Muhammad Usman Dar v. Khawaja Mohammad Asif, etc.

5. Conversely, learned counsel for respondents submits that petitioner has failed to avail the alternate remedy of invoking jurisdiction of the Speaker of Punjab Assembly and respondent-ECP under Article 63(2) & (3) of the Constitution, before invoking constitutional jurisdiction of this Court. He adds that petitioner has also been unable to raise any objection at the time of submission of nomination papers. He adds that previously, petitioner filed similar petition before respondent-ECP on the same grounds, but it was dismissed as withdrawn with permission to file fresh one, however, this fact has been concealed while filing these petitions. He further contends that the bank's sanctioned finance facilities were fully secured and currently, no amount / liability is outstanding against respondents. He adds that there is series of litigation on civil as well as criminal sides between petitioner and respondents, and these petitions have been filed with *mala fide*. He further submits that respondents disclosed their share-holding in the companies while submitting nomination papers and, as the companies are

separate legal entities, therefore, no office / designation held in such companies or liabilities of such companies was required to be mentioned. He further submits that had he declared such liabilities, it would not have any effect on their candidature as *bona fide* omission does not invite disqualification under relevant provisions of law. He adds that the allegations leveled against respondents, in absence of *mala fide* and element of *mens rea* in any omission or defect in providing information, are not sustainable. He adds that no decree of default has been passed against respondents by a Court of law. In support of his contentions, he has referred to *Dr. Kamal Hussain and 7 others v. Muhammad Sirajul Islam and others* (PLD 1969 Supreme Court 42), *Syed Saeed Hassan v. Pyar Ali and 7 others* (PLD 1976 Supreme Court 6), *Qazi Hussain Ahmad, Ameer Jamaat-e-Islami Pakistan and others v. General Pervez Musharraf, Chief Executive and others* (PLD 2002 Supreme Court 853), *Messrs Huffaz Seamlen Pipe Industries Ltd. and 2 others v. Messrs Security Leasing Corporation Ltd.* (2002 SCMR 1419), *Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others* (PLD 2010 Supreme Court 817), *Zahid Iqbal v. Hafiz Muhammad Adnan and others* (2016 SCMR 430), *Sheikh Muhammad Akram v. Abdul Ghafoor and 19 others* (2016 SCMR 733), *Muhammad Mujtaba Abdullah and another v. Appellate Authority / Additional Sessions Judge Tehsil Liaquatpur District Rahim Yar Khan and others* (2016 SCMR 893), *Murad Bux v. Kareem Bux and others* (2016 SCMR 2042), *Nawab Ali Wassan v. Syed Ghous Ali Shah and others* (2018 SCMR 87), *Muhammad Hanif Abbasi v. Imran Khan Niazi and others* (PLD 2018 Supreme Court 189), Judgment dated 03.11.2009, passed by Hon'ble Supreme Court in **Civil Appeal No.24 of 2008** titled *Ch. Mubashar Hussain v. The Returning Officer, NA 107 Gujrat-IV, Kharian, District Gujrat and others, Muhammad Irfan Khan v. Javed Ahmed Chattari and 20 others* (1998 CLC 1241), *Capt. Syed Muhammad Ali v. Salim Zia*

(1999 CLC 1026), Muhammad Shabbir Abu Talib v. Dr. Abdul Aziz Bantwa and 18 others (2003 YLR 3039), Aurangzeb Shaafi Burki v. Province of the Punjab through Chief Secretary and 5 others (PLD 2011 Lahore 231), Syed Zafar Ali Shah v. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 34 others (PLD 2015 Islamabad 156), Malik Farzand Ali and another v. Asad Ali and others (PLD 2018 Lahore 46) and Order dated 26.04.2018, passed by learned Islamabad High Court, Islamabad in **W. P. No.2907 of 2017** titled Muhammad Usman Dar v. Khawaja Mohammad Asif, etc.

6. Arguments heard. Available record perused.

7. It is the stance of petitioner that respondents executed various bank guarantees, but they suppressed and concealed the liabilities / loans as well as correct value of their assets and accounts of the company i.e. Malik Ghee maintained with different banks, in the relevant columns of their nomination papers, hence, they are liable to be disqualified within the contemplation of Articles 62 & 63 of the Constitution, as they are no more *Sadiq* and *Ameen*. In support of his submission, petitioner has referred to settlement agreement dated 18.12.2017, executed between M/s. Malik Ghee and Bank of Punjab / respondent No.3. Whereas respondents have disputed the above assertions of petitioner by submitting that petitioner did not exhaust alternate remedy of approaching respondent-ECP; that petitioner did not agitate the matter at the time of filing of nomination papers; that similar petition filed by petitioner before respondent-ECP has already been withdrawn; that finance facilities were fully secured by furnishing guarantees and respondents are not un-discharged insolvents; that present petitions are the result of *mala fide* and personal grudge of previous litigation between the parties; that bank guarantees are not liability until default of principal debtor is established and

declared by a decree issued by a Court of law; that respondents disclosed their share-holdings in nomination papers; and that as the companies are separate legal entities, therefore, no office / designation held in such companies or liabilities of such companies was required to be mentioned and the provisions of Articles 62 & 63 of the Constitution are not attracted in case of respondent Muhammad Razzaq Malik, as held by the Hon'ble Apex Court in Zahid Iqbal v. Hafiz Muhammad Adnan and others (2016 SCMR 430) and this Court in the case of Malik Farzand Ali supra. In the case of Zahid Iqbal supra, the Hon'ble Apex Court has held as under:-

“13. As noted above, any disqualification within the contemplation of Article 62 and or 63 of the Constitution is neither attracted by implication nor by reference within the fold of section 27 of the Act, 2013, such disqualifying provisions cannot be dragged and be read as a part of section 27 of the Act, 2013.”

8. The question which needs determination by this Court is whether in the facts and circumstances of these cases, provisions of Articles 62 & 63 of the Constitution can be invoked seeking disqualification of respondents on the above allegations in writ jurisdiction. It has also not been shown to this Court that at the time of filing of nomination papers, respondents were defaulters within the contemplation of Articles 62 & 63 of the Constitution and the law applicable thereto. The Hon'ble Apex Court, in the case reported as Federation of Pakistan and others v. Mian Muhammad Nawaz Sharif and others (PLD 2009 Supreme Court 644), while deciding the review application, held that when the alleged disqualifications qua loan liability are not floating on the surface, then the questions as to unpaid loans are disputed questions of facts, which could not have been adjudicated upon in the proceedings under Article 199 of the Constitution. Similarly, assertions made by learned counsel for petitioner qua dishonest

concealment of correct value of assets are not apparent from record and involve disputed questions. So far as the accounts of the company are concerned, company is a separate legal person and it has not been shown that respondents were under legal duty to disclose it. Even otherwise, respondents have offered *prima facie* reasonable explanation to the alleged loan liability / concealment. Such explanation, whether plausible, reasonable, *bona fide* or dishonest, involves a detailed inquiry, which *ex facie* cannot be undertaken in the exercise of writ jurisdiction.

The above legal position is further obvious in the case of Murad Bux supra, wherein the Hon'ble Supreme Court has ruled that there has to be willful false or incorrect statement. The relevant part is reproduced as under:-

“7. As against this if non-disclosure about pendency of a criminal case has been made, for which the Petitioner has offered a reasonably plausible explanation, then the affidavit could not be considered as a false or incorrect declaration. It is well settled that the provisions of disqualification of a candidate are to be strictly construed in the case in hand, the disqualification of the Petitioner is not an issue. The only issue is the non-disclosure of the pending criminal case in the affidavit before the Returning Officer and whether such non-disclosure would be construed as concealment of 'material particulars'. We, in the backdrop of these facts, are of the considered view that the non-disclosure of a fact which otherwise, if disclosed, could not debar the Petitioner from contesting the election, cannot be made a ground to preclude the petitioner from contesting the election.”

[emphasis supplied]

9. Law on the subject has elaborately been developed till now and in a recent pronouncement of Hon'ble Supreme Court, certain criteria have been laid down in order to invoke said provisions of law. Element of dishonesty is an essential element of disqualification under Article 62(1)(f) of the Constitution, and the person should be found involved in dishonesty and cheating in

order to attract the afore-referred provision of law as held in the case of Muhammad Hanif Abbasi supra (PLD 2018 Supreme Court 189), wherein the Hon'ble Supreme Court has emphasized that dishonesty cannot be attributed without reference to any alleged design, intention, scheme, background or impropriety / *mens rea*. In the afore-referred case, one of the Hon'ble Members of the Full Bench, while recording his additional note, made the following observations:-

“11. It may be clarified here that dishonesty can be attributed to a member for an act committed prior to his election if he has been so adjudicated by a court of law. This is the mandate of Article 62(1)(f) of the Constitution which reads ‘A person shall not be qualified to be elected or chosen as a Member of Majlis-e-Shoora (Parliament) unless-.....(f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law.’ The last phrase of Article 62(1)(f) is clearly intended to mean that where a member is attributed to be financially corrupt before he has entered the arena to contest election for a seat in the National or Provincial Assembly then the complainant must demonstrate without any ambiguity that such a member has been declared by a court of law to be financially dishonest. Thus the term ‘honest’ contained in Article 62(1)(f) of the Constitution has to be interpreted in a restricted sense keeping the last phrase of Article 62(1)(f) in mind which states *there being no declaration to the contrary by a court of law.*’ If the application of these provisions is stretched beyond this, a political opponent in his desire to seek removal of his rival from the political scene would call in question an asset owned by his opponent that was though acquired not only prior to his becoming a member of the National or a Provincial Assembly but even prior to his holding any public office or for that matter any office of trusteeship or in his capacity as custodian of rights of others. Where a member has failed to declare an asset in his nomination form that was acquired prior to his election and there is no adjudication of dishonesty with regard to its acquisition by a competent court of law, the remedy provided under the election laws is to be availed, which only entails rejection of the nomination form simpliciter. Once such remedy relating to such category of non-disclosure is availed under the provisions of election laws or the time to avail it has

gone by, the same being not a case of disqualification falling within the ambit of Article 62(1)(f) of the Constitution, no more remains a live issue on account of the bar contained in Article 225 of the Constitution."

[emphasis supplied]

10. It is evident from the above that a non-disclosure sans an element of design, scheme or intent would also not make a candidature open to be questioned if it could be shown that it was a *bona fide* error and that there was no intention to gain any benefit by withholding such information from the constituents. The scrutiny for the purposes of Article 62(1)(f) of the Constitution is not based on moralistic or subjective criterion. The said condition does not contemplate perfection but in simple words requires a person to be honest, reliable and trustworthy. To err is human instinct, which might not be highlighted especially when the liability was settled and compromise decree was passed. It is also to be noted that here the ground for seeking disqualification under Article 63 of the Constitution was that a member did not qualify at the time of filing his nomination papers, but such fact was discovered subsequently, which was also removed by payment before approaching the Court.

11. Learned counsel for petitioner made reference to the cases of Imran Ahmad Khan Niazi (PLD 2017 Supreme Court 265), Imran Ahmed Khan and others (PLD 2017 Supreme Court 692), Mian Muhammad Nawaz Sharif and others (PLD 2018 Supreme Court 1) and Muhammad Hanif Abbasi (PLD 2018 Supreme Court 114) supra to contend that the element of strict liability is to be followed. Suffice it to say that the Hon'ble Apex Court, in **Civil Appeal No.467 of 2015** titled Malik Shakil Awan v. Sheikh Rasheed Ahmed and others, has held that in the afore-referred cases, it was established, in fact, admitted, that the assets owned were not mentioned in the nomination papers and no explanation in

this behalf was offered. In this case, neither default nor dishonest concealment of assets has been established but settlement and payment has also been admitted. There are disputed questions of facts as to default of respondents, involved in these cases, therefore, the afore-referred case law qua applicability of rule of strict liability and jurisprudence is not attracted in the given facts and circumstances of the case. This is further affirmed by the Hon'ble Apex Court in Khawaja Mohammad Asif's case, whereby judgment / order dated 26.04.2018, passed by learned Islamabad High Court, Islamabad, disqualifying the respondent therein on the ground of certain alleged concealment / non-disclosure, was set aside (detailed reasons are yet to be released). It is also relevant to observe here that election laws have more particular disqualification provisions to disenfranchising a candidate, thus, depriving him of a valuable right of franchise / representation of people after election, guaranteed under the Constitution is to be strictly construed and any ambiguity is to be resolved in favour of candidate. Any benefit of doubt has to be given to the candidate after election and higher standards of proofs are required for proving dishonesty. Reliance is placed upon the case of Muhammad Mujtaba Abdullah supra.

12. Learned counsel for petitioner contended that any error or omission in the declaration of assets / liabilities by a candidate for election or a legislator incurs his disqualification under the afore-referred provisions of law posits a wide proposition of law. If at all, this may have limited relevance where the context involves corruption or money laundering in state office, misappropriation of public property or public funds, accumulation of assets beyond known means or abuse of public office or authority for private gain. These allegations are not germane to the present cases. There is no involvement of public property or funds, abuse of public office and authority, corruption or breach of fiduciary duty in these

matters. Even otherwise, as observed supra: (i) this Court cannot hold with certainty whether liability / information concealed was intentional, dishonest, serious or substantial in nature and recording of evidence is required. Reference is made to Muhammad Younus Khan and 12 others v. Government of N.-W.F.P. through Secretary, Forest and Agriculture, Peshawar and others (1993 SCMR 618), Secretary to the Government of the Punjab, Forest Department, Punjab, Lahore through Divisional Forest Officer v. Ghulam Nabi and 3 others (PLD 2001 Supreme Court 415), Anjuman Fruit Arhtian and others v. Deputy Commissioner, Faisalabad and others (2011 SCMR 279) and Rai Hassan Nawaz v. Haji Muhammad Ayub and others (PLD 2017 Supreme Court 70); (ii) petitioner himself concealed and suppressed availing of alternate remedy before respondent-ECP. He who seeks equity, must come to the Court with clean hands. Reliance is placed on Abdul Rasheed and another v. Election Appellate Authority and others (2016 SCMR 1215), Abdul Rahim Khan v. Town Committee, Makhdoompur Pahooran and others (1985 CLC 2805) and Rao Tariq Mehmood v. Election Tribunal, Punjab, Lahore and another (PLD 2003 Lahore 169); (iii) During pendency of this petition, 05-years' term of respondent Malik Muhammad Nawaz, MPA stood completed and the Provincial Assembly of the Punjab was dissolved on and from 31.05.2018 in terms of Article 107 of the Constitution. Even otherwise, at the time of filing of nomination papers, no such objections were raised; (iv) in case of respondent Muhammad Razzaq Malik, disqualification within the contemplation of Articles 62 & 63 of the Constitution was neither attracted by implication nor by reference within the fold of the Punjab Local Government Act, 2013. Reference is made to the cases of Zahid Iqbal and Malik Farzand Ali supra; (v) there is a series of litigation between the parties and *bona fides* of petitioner are questionable; (vi) explanation offered by the respondents, whether reasonable or not,

cannot be determined with certainty at this stage; (vii) discovery, if any as to loan / liability and alleged concealment, was made after filing of nomination papers and same was settled before approaching this Court; and (viii) liberal approach has to be adopted as per the latest view of the Hon'ble Supreme Court in the cases of Muhammad Hanif Abbasi (PLD 2018 Supreme Court 189), Malik Shakil Awan, Khawaja Mohammad Asif supra and this Court in Muhammad Ashraf and others v. Additional District Judge / Appellate Authority, R.Y.Khan and others (2018 YLR 173). Consequently, the argument of learned counsel for petitioner, on these scores, fails. The case law cited by learned counsel for petitioner is on distinguishable facts and circumstances, therefore, same is not applicable.

13. It is also relevant to observe here that there is a series of litigation between the parties as highlighted by learned counsel for respondents, during the course of arguments, and petitioner has already approached the respondent-ECP through a petition. However, later on, it was withdrawn and this fact has not been disclosed by petitioner in the instant petition, which clearly militates against *bona fide* of petitioner. Even otherwise, grant of relief in writ jurisdiction is a matter of discretion, wherein it is quite legitimate on the part of High Court to test the *bona fides* of the relator to see if he has come with clean hands. A writ of *quo warranto* in particular cannot be issued as a matter of course on sheer technicalities on a doctrinaire approach.

Similarly, in the case of Aurangzeb Shaafi Burki supra, this Court has given the following observations:-

“12. There is no cavil to the proposition that the Constitutional remedy is a discretionary particularly the relief claimed on the principle governing *quo warranto* as envisaged under Article 199(2)(b)(ii) of the Constitution. Such a discretion has to be exercised by this Court in accordance with the judicial principles and not as a matter of course. In

order to exercise such a discretion the conduct of the petitioner is very relevant. The present Writ Petition is based on mala fides and is an act motivated for ulterior considerations designed to malign and scandalize the respondents as the petitioner, as per his own admission, in the Writ Petition, is a, political worker serving as Secretary Finance of Pakistan Peoples Party (Punjab), as such, he is not entitled to any discretionary relief.”

14. It is well settled that an aggrieved person has to resort to statutory remedy as provided under the relevant statute and must not invoke constitutional jurisdiction of this Court in terms of Article 199 of the Constitution in a routine matter. Such remedy is discretionary in nature and has to be exercised in favour of the aggrieved person in extreme circumstances in a case having its own peculiar facts and circumstances. Its object is to foster justice in aid of justice and not to perpetuate injustice, therefore, the Court is not inclined to interfere at this stage. Resultantly, instant petition, along with connected petition, is dismissed. No order as to costs.

(Muhammad Sajid Mehmood Sethi)
Judge

Announced in open Court on 28.06.2018.

Judge

Approved for reporting.

Judge