

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W. P. No.223063 of 2018

Muhammad Yaqoob Sheikh

Versus

The Election Appellate Tribunal, Lahore & others

J U D G M E N T

Date of hearing: 17.07.2018.
Petitioner by: M/s. Muhammad Shahzad Shaukat and Taha Asif Mehmood, Advocates.
Respondents by: M/s. Khalid Ishaq, Asim Hafeez, Wajahat Ali, Adeel Shahid Karim, Babar Afzal, Ahmed Saeed, Advocates, Imran Arif Ranjha, Mian Mureed Hussain, Naeem Sarwar, Legal Advisors for respondent-ECP and Hafiz Adeel Ashraf, Assistant Law Officer.

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

W.P. No.223062 of 2018 titled *Rashda Yaqub v. The Election Appellate Tribunal, Lahore & others*

2. Through instant petition, petitioner has assailed orders dated 19.06.2018 and 25.06.2018, passed by the Returning Officer, PP-126, Jhang-III and learned Appellate Tribunal, respectively, whereby petitioner's nomination papers for the constituency in question were rejected concurrently.

In connected petition, petitioner (wife / spouse of petitioner in instant petition) has also challenged orders dated 19.06.2018 and 25.06.2018, passed by the Returning Officer, PP-126, Jhang-III and learned Appellate Tribunal, respectively,

whereby her nomination papers for the constituency in question were rejected concurrently.

3. Learned counsel for petitioner submits that petitioner did not hold controlling shares in M/s. Husnain Cotex Limited, thus, has no nexus with financial workings of said company. He adds that petitioner did not own even a single share in M/s. Mianland Husnain Pakistan Limited but said company was unjustifiably included in State Bank of Pakistan's letter, as M/s. Husnain Cotex Limited had some shares in the aforesaid company. He further submits that petitioner does not have any concern with M/s. Ibrahim Private Limited and ownership of shares in said company by his son does not debar him to contest the elections. He argues that nomination papers disclosed all requisite information but impugned orders have been passed without appreciating the true facts and documentary material brought on record. He next submits that petitioner did not get any loan written off, therefore, the Elections Act, 2017 & judgment of Hon'ble Supreme Court do not debar petitioner to contest elections after discharging the liability. He maintains that liabilities in relation to M/s. Ibrahim Private Limited have already been settled and regarding Saudi Pak Lease, stay order passed by learned Banking Court still holds the field. He contends that no personal loan was ever obtained by petitioner, therefore, loan indicated by State Bank of Pakistan in its letter regarding different companies, by no stretch of imagination, could be termed as default on the part of petitioner. He argues that since the written off loans / liabilities were fully satisfied, none of the financial institutions ever raised any demand or filed any suit and even the written off loans have not been questioned in *suo motu* case pending before the Hon'ble Apex Court, thus, it cannot be held that the said written off loans were not under *bona fide* business consideration with the contemplation of Section 8 of the Financial Institutions (Recovery of Finances)

Ordinance, 2001 (“**FIO, 2001**”). He goes on to argue that Article 63(1)(n) of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”) stipulates that loan must have been obtained by the candidate himself in his own name, therefore, the loan obtained by a Company incorporated by the candidate stands excluded from the purview of the said Article. He submits that Articles 62(1)(f) and 63(n) of the Constitution, have no application in petitioner’s case. He finally prays that nominations papers of petitioner may be ordered to be accepted, as contesting election is fundamental right of petitioner. He has relied upon *Shamroz Khan and another v. Muhammad Amin and another* (PLD 1978 Supreme Court 89), *Allah Bakhsh v. Ilahi Bakhsh and 3 others* (PLD 1975 Lahore 359), *Habib Bank Ltd. v. Monopoly Control Authority* (1986 CLC 2489) and *Messrs Dawood Yamaha Ltd. v. Government of Baluchistan and 3 others* (PLD 1986 Quetta 148).

4. Conversely, learned Legal Advisors of respondent-ECP, duly assisted by learned counsel for contesting respondents, have referred to judgments passed in previous round of litigation to contend that loans were not written off in accordance with law and by lifting the veil of incorporation, petitioner was held to be disqualified and the same was upheld up to the level of Hon’ble Supreme Court. They further submit that since loan was not written off under State Bank of Pakistan’s Circular No.29 and this Court, in litigation during elections of 2013, has already ruled that it was not *bona fide* transaction and now petitioners have to show whether they have paid the loan, which they have miserably failed to establish, hence, their nomination papers were rightly rejected. They have relied upon *Sami Ullah Baloch and others v. Abdul Karim Nousherwani and others* (PLD 2018 Supreme Court 405).

5. Arguments heard. Available record perused.

6. Admittedly, nomination papers of petitioner have been rejected by the Returning Officer as well as learned Election Tribunal through impugned orders on the ground of written off loans / liabilities, which are duly reflected in SBP report dated 11.06.2018, detail whereof is as under:-

(Rs. in Million)

CNIC/ Name	Relation with Candidate	Name of Company	FI Name	Overdue	Writeoff
35201-9482496-5 Muhammad Yaqoob Sheikh	SELF	Hussain Cotex Limited	Standard Chartered Bank Pak Ltd.	235.336	0
35201-9482496-5 Muhammad Yaqoob Sheikh	SELF	Husnain Cotex Limited	KASE Bank Ltd.	0	27.013
35201-9482496-5 Muhammad Yaqoob Sheikh	SELF	Hussain Cotex Ltd.	Faysal Bank Ltd.	66.852	0
35201-9482496-5 Muhammad Yaqoob Sheikh	SELF	Husnain Cotex Ltd.	Allied Bank Ltd.	90.426	0
35201-9482496-5 Muhammad Yaqoob Sheikh	SELF	Husnain Cotex Ltd.	The Bank of Punjab	0	80.952
35201-9482496-5 Muhammad Yaqoob Sheikh	SELF	Ibrahim (Pvt.) Ltd.	Askari Bank Ltd.	0	13.043
35201-9482496-5 Muhammad Yaqoob Sheikh	SELF	Ibrahim (Pvt.) Ltd.	Saudi Pak Leasing Co. Ltd.	33.36	0
35201-9482496-5 Muhammad Yaqoob Sheikh	SELF	Mainland Husnain Pakistan Ltd.	Silk Bank Ltd.	71.421	0
35202-7198187-3 Muhammad Ibrahim Yaqub	SON	Ibrahim (Pvt.) Ltd.	Askari Bank Ltd.	0	13.043
35202-7198187-3 Muhammad Ibrahim Yaqub	SON	Ibrahim (Pvt) Ltd.	Saudi Pak Leasing Co. Ltd.	33.36	0
35202-0343821-6 Rashida Yaqub	Spouse	Ibrahim (Pvt.) Ltd.	Askari Bank Ltd.	0	13.043
35202-0343821-6 Rashida Yaqub	Spouse	Ibrahim (Pvt.) Ltd.	Saudi Pak Leasing Co. Ltd.	33.36	0

7. The question of written off loans / liabilities was considered by learned Full Bench of this Court vide order dated 02.05.2013 in **W.P. No.9623 of 2013** arising out of rejection of nomination papers of petitioner by learned Election Tribunal in the matter of nomination papers filed by him for contesting the elections of NA-89 Jhang-I and PP-78 Jhang-II. In the said order, learned Full Bench of this Court, after deliberating upon the various loans obtained by the business concern of the petitioner, maintained the order of the Election Tribunal to the effect that the petitioner was found guilty of having overdue / written off

loans of more than two millions rupees in respect of Faysal Bank, Ltd., Standard Chartered Bank, Trust Investment Bank, Ltd. and KASB Bank, Ltd., which fact was concealed by him. The said order of learned Full Bench of this Court was challenged by the petitioner by filing **Civil Petition No.1206-L of 2013** in the Hon'ble Apex Court, which was dismissed vide order dated 01.10.2013, which reads as follows:-

“Learned counsel for the petitioner has been asked to satisfy that after the General Election, which the petitioner could not contest because of outstanding liability against him. Therefore, now any alive issue requiring adjudication by this Court exists. He stated that there is also a question of the liability of his spouse, who is the partner in M/s Ibrahim (Pvt.) Limited Company. We have pointed out to him that at this stage we are dealing with his case and if at any stage issue with regard to his spouse arose, she would be free to avail legal remedy in accordance with law but as far as the petitioner is concerned to his extent instant petition has become infructuous and if he contemplates to contest the election in future, he should present himself after discharging the liability, if any.”

The petitioner also filed **Civil Review Petition No.287 of 2013**, which was dismissed vide order dated 31.01.2014, which reads as under:-

“We have heard learned counsel for the petitioner. The order sought to be reviewed dated 1.10.2013 is clear. We have been informed that four election petitions have been filed against Rashida Yaqoob spouse of the present petitioner. The said petitions fall within the competence and jurisdiction of the Election Tribunal. Needless to say that the same shall be decided on their own merits. We do not find any justification for interfering in the order dated 1.10.2013. This review petition is, therefore, dismissed.”

8. In the order dated 01.10.2013, the counsel of petitioner himself did not press the Civil Petition to the extent of rejection of his nomination papers, which was maintained by learned Full Bench of this Court on the ground of outstanding liabilities against him and, while dismissing the Civil Petition as having become infructuous, it was observed in the order passed by the Hon'ble Supreme Court that if petitioner contemplates to contest

the election in future, he should present himself after discharging liabilities. This order was also maintained in the Civil Review Petition. Admittedly, written off loans / liabilities have not been settled after the above decisions of the learned Full Bench as well as that of Hon'ble Apex Court.

9. Learned counsel for petitioner has argued that the written off loans / liabilities were fully satisfied because none of the financial institutions has raised any demand or filed any suit and even otherwise, the written off loans have not been questioned in *suo motu* case pending before the Hon'ble Apex Court, thus, it cannot be held that the said written off loans were not under *bona fide* business consideration within the contemplation of Section 8 of the FIO, 2001. This argument does not carry any weight. The learned Full Bench of this Court, in order dated 02.05.2013, observed that neither petitioner nor representatives of the bank could disclose any *bona fide* business transaction which could have furnished basis for the aforementioned write offs. The above write offs were admittedly not under the BPD Circular 29 issued by the State Bank of Pakistan in the year 2001. Learned counsel for petitioner next argued that the term "he has obtained loan" or "in his own name" appearing in Article 63(1)(n) of the Constitution means that loan must have been obtained by the candidate himself in his own name and, therefore, the loan obtained by a Company incorporated by the candidate stands excluded from the purview of the said Article. Suffice it to say that this argument was also repelled by the learned Full Bench of this Court in the afore-referred order, relevant part of which is reproduced hereunder:-

"17. The purpose behind the above article is to disqualify a candidate aspiring for a seat in the Parliament if he is a loan defaulter or has got his loan written off, the loan being an amount of Rs.2 million or more from any bank, financial institution, cooperative society or cooperative body, in his own name or his spouse or any of his dependent. It will be restricting the above constitutional disqualification if it were to only cover situations where the

aspiring the candidate has obtained loan as a natural person under his own name and disregard the loans obtained by the candidate through the vehicle of his business which may be a corporate entity. The disqualifications under Article 63 are penal provisions and in order to effectively enforce the same the Court is free to assess whether the candidate himself or through his business or any other corporate entity has obtained the loan that stands in default thereof. The “veil of the incorporation” is what separates the petitioner / candidate from the business corporate entity i.e., M/s. Ibrahim (Pvt.) Limited. The said veil can be lifted to determine whether the petitioner is the major beneficiary of the loan obtained by the corporate entity. It is established principle of Company Law that the Court has the power to lift the veil of incorporation while construing the statute or documents or when the Court is satisfied that the Company is a mere *façade* concealing the true facts or where it is established that the Company has an authorized agent as its controller or member. Reliance is placed on *Gower’s Principles of Modern Company Law*, 6th Edition, Sweet & Maxwell.

18. In the present case lifting of veil of incorporation (see relevant Form “A”) reveals that the petitioner is a majority shareholder in M/s Ibrahim (Pvt.) Limited, therefore, the loan obtained by the said Company is considered to be the loan obtained by the petitioner for the purposes of Article 63 (1) (n) of the Constitution. We, therefore, hold that the term “he has obtained loan” appearing in Article 63 (1) (n) of the Constitution includes loan obtained by a candidate or his business or by a corporate entity in which the candidate holds majority share holding establishing his control and management over the said business of corporate entity.”

The case law relied upon by learned counsel for petitioner is on distinguishable facts, hence, not relevant to resolve the controversy in hand.

10. So far as the case of petitioner’s spouse, namely Rashida Yaqoob is concerned, needless to mention here that she contested the General Elections, 2013. In previous round of litigation, in **Election Petition No.119 of 2013** titled *Moulana Muhammad Ahmad Ludhyanvi v. Rashida Yaqoob*, vide judgment dated 14.01.2016, passed by learned Election Tribunal, Lahore, she was held to be not sagacious, honest and righteous within the contemplation of the provisions of the afore-referred Article of the Constitution as default of financial institutions and

written off loans of her spouse were suppressed. She assailed the said judgment before the Hon'ble Apex Court through **Civil Appeals No.13-L to 15-L of 2016** titled Rashida Yaqoob v. Moulana Muhammad Ahmad Ludhyanvi & others, whereby vide judgment dated 07.10.2016, she was disqualified while upholding the judgment of learned Election Tribunal. The relevant observations are reproduced hereunder:-

17. The two orders passed by this Court in Civil Petition and in Civil Review Petition filed by the spouse of appellant do not in any manner help the case of appellant as the scheme of law is such that she has to sync or swim with attributes of default in payment of bank loans with her spouse. The aspect of default in payment of loans by the spouse of appellant was attended to by the full bench of Lahore High Court in considerable detail and such determination of the full bench of Lahore High Court was not disturbed up to this Court either in the Civil Petition filed by the spouse of appellant or in the Civil Review Petition. As regard the fact of settlement of loans and obtaining of clearance letter from the banks, we observe that the appellant's spouse failed to make out any case of settlement of loans and obtaining of clearance letter from the banks before the full bench of Lahore High Court and similarly this very aspect of the matter was not pressed by the spouse of appellant in Civil Petition before this Court or in the Civil Review Petition. We are unable to understand as to how this argument of settlement of loans or obtaining of clearance letter from the bank could succeed before us when this very aspect stood adjudicated and determined by full bench of Lahore High Court and maintained by this Court, where spouse of appellant was found to be defaulter of bank loans. This very submission about settlement of account etc. is even not supported by the letter dated 03.04.2013 of the State Bank of Pakistan addressed to the Chief Election Commission of Pakistan in respect of election of appellant."

The above judgment has also been upheld by the Hon'ble Supreme Court in **CRP Nos.431-433 of 2016**, with the following observations:-

"Learned ASC, after arguing the Civil Review Petitions, states that the petitioner will be content if the review petitions are disposed of with the observation that the petitioner may contest the future election in accordance with law. The review petitions, in such terms, are disposed of."

11. Needless to observe here that while deciding the matters, qua the acceptance or rejection of nomination papers,

