

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

W. P. No.224911 of 2018

Muhammad Nasir Cheema

Versus

**Election Commission of Pakistan through its
Secretary, Islamabad & others**

J U D G M E N T

Date of hearing: 17.07.2018.
Petitioner by: M/s Khalid Ishaq, Wajahat Ali, Adeel Shahid Karim, Babar Afzal and Ahmed Saeed, Advocates.
Respondents by: M/s Ch. Umar Hayat, Director (Legal), ECP, Imran Arif Ranjha, Legal Advisor, ECP, Naeem Sarwar, Legal Advisor, ECP and Hafiz Adeel Ashraf, Assistant Law Officer.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant petition, petitioner has assailed order dated 09.07.2018, passed by respondent No.1 / Election Commission of Pakistan (“ECP”), in the complaint filed by respondent No.3, whereby petitioner has been disqualified from contesting General Elections, 2018 from PP-53, Gujranwala-III.

2. Brief facts of the case are that petitioner is a validly nominated contesting candidate from PP-53, Gujranwala-III, as per the list of validly nominated candidates issued under Section 64 of the Elections Act, 2017 (“the Act of 2017”). On the basis of a complaint / application, filed by respondent No.3, notice was issued to petitioner on 29.06.2018, alleging violation of the Code of Conduct (“the COC”) regarding General Elections, 2018 for

displaying the photographs of the Hon'ble Chief Justice of Pakistan as well as the Chief of Army Staff on the banner upon a billboard. Petitioner submitted reply to the said notice. Respondent-ECP, after hearing arguments, proceeded to disqualify the petitioner from contesting General Elections, 2018 from the aforesaid constituency vide order dated 09.07.2018. Hence, this constitutional petition.

3. Learned counsel for petitioner submits that the complaint filed by respondent No.3 neither mentions the name of petitioner nor it alleges any specific allegation, rather the allegations contained in complaint are attributed towards the political party, which even otherwise are not of substantial nature. He adds that punitive action has been taken against petitioner without ascertaining / establishing the veracity, authenticity or genuineness of the alleged photographs. He further submits that the purported banner / billboard containing photographs in question pertains to the period from 18.04.2018 to 21.04.2018, whereas schedule for the General Elections, 2018 was issued by respondent No.1 on 31.05.2018, and the COC for said elections was published in the official gazette on 14.06.2018, therefore, impugned disqualification is absolutely illegal and without any lawful justification. He further submits that the penal provisions, entailing disqualification of a validly nominated candidate, are not attracted in the matter. In the end, he submits that impugned order is not sustainable in the eye of law. In support of his submissions, he has placed reliance upon Muhammad Mujtaba Abdullah and another v. Appellate Authority / Additional Sessions Judge, Tehsil Liaquatpur District Rahim Yar Khan and others (2016 SCMR 893) and Bashir Ahmed Halepoto v. Election Commission of Pakistan, through Chief Election Commission, Islamabad and 2 others (PLD 2018 Sindh 346).

4. Conversely, learned Legal Advisors for respondent-ECP defend the impugned order and submit that petitioner has failed to

point out any illegality or legal infirmity in the impugned order, thus, same is liable to be upheld in circumstances.

5. Arguments heard. Available record perused.

6. Election Commission of Pakistan has disqualified the petitioner from contesting General Elections, 2018 on the ground that petitioner displayed the photographs of the Hon'ble Chief Justice of Pakistan and the Chief of Army Staff on the banner upon a billboard, invoking provisions of clause 27 of the COC, which prohibits displaying of such photographs. Section 4 of the Act of 2017 empowers the respondent-ECP to issue directions for carrying out the purposes of this Act. Section 170(a)(v) of the Act ibid prohibits using any official influence or Government patronage. Section 234 of the Act of 2017 empowers the respondent-ECP to constitute a monitoring team for deciding the complaints regarding any violation of provisions of the Act, Rules or the COC by a candidate or political party, and after summary inquiry regarding reported violation, the monitoring team may impose fine not exceeding Rs. 50,000/-. If the monitoring team constituted under section 234 of the Act, after conducting summary inquiry, finds a candidate guilty of violation of provisions of the Act, Rules or the COC for the second time, proceedings for disqualification can be initiated.

7. In the case in hand, a complaint was received by respondent-ECP from a complainant, who is stated to be a resident of Karachi, alleging violation of the above provisions of law by displaying photographs of the said dignitaries. ECP took suo moto notice against the petitioner on the application of the said complainant who never appeared before the respondent-ECP and issued Show Cause Notice to the petitioner which was duly replied by the petitioner. It is the case of the petitioner that the purported banner / billboard containing photographs in question pertained to the period

from 18.04.2018 to 21.04.2018, whereas schedule for the General Elections, 2018 was issued by respondent-ECP on 31.05.2018, and the COC for said elections was published in the official gazette on 14.06.2018, therefore, violation of any provision of COC is out of question. Despite the fact that the petitioner denied the allegation of violation of COC issued by respondent-ECP, no summary inquiry was held by monitoring team constituted for the concerned constituency. In case the petitioner was committing violation of any provision of the Act, Rules or COC issued by respondent-ECP, the concerned monitoring team was required to report the said violation to the officer nominated by respondent-ECP under clause (1) of Section 234 of the Act of 2017, and the said officer could impose fine upon the petitioner under clause (3) of the Section 234 of the Act if, after holding a summary enquiry, he found the petitioner guilty of commission of reported violation. Under clause (4) of the Section 234 of the Act, if the nominated officer after summary enquiry finds a candidate or a political party guilty of violation of the Act or the Rules for the second time, he has to refer the matter to the ECP for initiation of proceedings against such candidate or political party under the law, including proceedings for disqualification of the said candidate and in case of the political party, its candidate. But in the instant case, no such procedure has been adopted by the respondent-ECP. Even if the respondent-ECP, while exercising inherent powers, noticed any violation of the provisions of COC, it could only try the petitioner for contempt of court in the manner prescribed in the Act of 2017. Reference can be made to the case of Bashir Ahmed Halepoto supra.

8. It is well established that when law requires something to be done in a particular manner, that has to be done in the manner so prescribed and not otherwise. Any deviation thereof constitutes patent illegality. Moreover, election laws, more particularly disqualification provisions to disenfranchise a candidate, thus

depriving him of a valuable right of franchise guaranteed under the Constitution, are to be strictly construed. Any ambiguity is to be resolved in favour of candidate, who could be permitted to participate in the electoral process and benefit of doubt has to be given to the candidate. Reference is made to the case of Muhammad Mujtaba Abdullah supra. In the instant case, the extreme punitive action of disqualifying the petitioner has been taken in violation of the provisions of Articles 4 & 10A of the Constitution of the Islamic Republic of Pakistan, 1973, which even otherwise fails to qualify the standards and tests of fairness and procedural impropriety.

9. In view of the above discussion, instant petition is allowed. The impugned order dated 09.07.2018, passed by respondent-ECP is declared to be illegal and without lawful authority. No order as to costs.

(Amin-ud-Din Khan)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

Approved for reporting.

Judge

Judge