

**SENATE APPELLATE TRIBUNAL, SINDH  
HIGH COURT OF SINDH AT KARACHI**

Election Appeal 05 of 2021

*Tufail Ahmed*

vs.

*Election Commission of Pakistan & Others*

For the Appellant : Mr. Mohammad Haseeb Jamali  
Advocate

Mr. Mohammad Najeeb Jamali  
Advocate

For the Respondent : Dr. Shahab Imam  
In person

Date of hearing : 22.02.2021

Date of announcement: 22.02.2021

**JUDGMENT**

**Agha Faisal, J.** The present appeal has been filed assailing the Order of the learned returning officer (“RO”) dated 18-02-2021 (“Impugned Order”), whereby the nomination form of the respondent No.1 was accepted with respect to candidature for election to the Senate, from the Province of Sindh, on a technocrat seat. It is considered illustrative to reproduce the Impugned Order herein below:

“Dr. Shahab Imam, filed his nomination papers on 13.02.2021 for Election to Senate from Sindh Province as Technocrat, the scrutiny whereof was fixed on 18.02.2021. Mr. Tufail Ahmed, objector present in person alongwith his counsel Mr. Muhammad Qasim, ASC Supreme Court, is of the view that Dr. Shahab Imam does not possess the qualification of Technocrat as defined in section 2(xxxix) of the Elections Act, 2017 as he is not having any record of achievement at national & international level. He relied upon PLD-2018 Page No.59 Balochistan.

The candidate himself is a practicing lawyer, and a retired bureaucrat presented a document containing detailed account of his achievement which shows that he has been awarded various certificates of merit/appreciation letters by different organizations. The candidate also briefed about his aforesaid achievements. The said document is on record.

Having heard the objections as well the candidate, I am of the view that the objection raised, merits no consideration and the candidate is eligible to contest the elections for seat of technocrat in terms of definition laid down in Section 2(xxxix) ibid. The said objection is therefore dismissed and the nomination form of the candidate is therefore accepted.”

### *Respective arguments*

2. Per appellant's learned counsel, the Impugned Order was untenable; hence, ought to be set aside. The appellant's plea was predicated primarily on the grounds that the respondent does not qualify within the definition of technocrat; as he neither had the relevant experience nor the requisite achievements. It was also alleged that the respondent remained in possession of official housing post retirement.

3. Per the respondent, this present appeal is not maintainable as the appellant does not qualify as an objector in the meaning of Act. It was further submitted that Impugned Order merited no interference in appeal. The defense of the Impugned Order was rested on the basis that the respondent has administration experience, with accelerated technical know-how acknowledged internationally, in excess of the requirements of the Act and further that his achievements are also arising from the relevant experience. In so far as the issue of housing is concerned, the respondent submitted that in cases of qualified premature retirement permission could be sought for time bound retention of housing and that the respondent's residence was duly sanctioned by the competent authority in pursuance of the law.

4. This Tribunal has considered the arguments articulated by the learned counsel and surveyed the law / record to which its attention was solicited. The question hereby framed for determination is whether the Impugned Order can be sustained under the law, as articulated vide the Election Act 2017 ("Act") and the rules, the Election Rules 2017 ("Rules"), made there under.

### *Ambit of the law*

5. This tribunal is constituted<sup>1</sup> to adjudicate appeals with respect to the acceptance or rejection of candidature, in respect of senate elections, by a learned returning officer<sup>2</sup>. The appeal is required to be decided summarily<sup>3</sup> and announcement of fixation thereof, *inter alia* via the media, is deemed to be

---

<sup>1</sup> 113 (1) A candidate or an objector may, within the time specified by the Commission, file an appeal against the decision of the Returning Officer rejecting or, as the case may be, accepting a nomination paper to the Tribunal constituted for the purpose consisting of a person who is a Judge of a High Court, appointed by the Commission in consultation with the Chief Justice of the High Court concerned.

<sup>2</sup> 105. For the purpose of an election to the Senate, the Commission shall appoint a Returning Officer for each Province, ... and shall also appoint such number of Polling Officers to assist the Returning Officer as it may consider necessary.

<sup>3</sup> 113 (2) An appeal filed under sub-section (1) shall be summarily decided within such time as may be notified by the Commission and any order passed on the appeal shall be final. Although Rule 100(5) of the Rules contemplates a discretionary inquiry. Per *Akhtar Zaman Maghlani J (as he then was) in Nawabzada Mir Balach Khan Marri vs. Mir Mohabbat Khan Marri & Others* reported as *PLD 2003 Quetta 42*.

sufficient notice of the date and time so appointed<sup>4</sup>. The domain of this determination is enunciated per section 113(3)<sup>5</sup> of the Act.

6. There is a myriad of guidance from the Superior Courts with regards to consideration of the eligibility of candidature in such pre-electoral matters; *inter alia* that it may be inopportune to disenfranchise a candidate at the pre-electoral stage as it would deprive him of candidature, even if subsequently found to be qualified<sup>6</sup>; matters requiring detailed inquiry / evidence could better determined in post-election proceedings<sup>7</sup>; and in the presence of a plausible explanation for any non-disclosure, acknowledgment whereof would not have entailed ineligibility, candidature may not be denied<sup>8</sup>.

### *Maintainability*

7. The first issue to consider is the maintainability of the appeal since the respondent has *inter alia* challenged the *locus standi* of the appellant to maintain the present proceedings. On the contrary, learned counsel for the appellant had relied upon sections 112 and 113(3) of the Act to argue that the appellant was an objector before the RO, hence, is entitled to maintain present appeal.

These proceedings are of a summary nature and a detailed discourse into the respective arguments, harmonizing the individual constituents of the law, is not merited at this stage. However, it is clear that section 113(3) of the Act empowers this Tribunal to consider the issue of nomination of candidate on the basis of any information, material coming to its knowledge by any source. In view hereof, the objection to maintainability is not sustained and the matter shall be considered on merit.

---

<sup>4</sup> 113 (4) Announcement of the day and time appointed for the hearing of an appeal under this section over the radio or television or by publication in the newspaper shall be deemed to be sufficient notice of the day and time so appointed.

<sup>5</sup> 113(3) If, on the basis of information or material coming to its knowledge by any source, a Tribunal constituted under sub-section (1) is of the opinion that a candidate whose nomination paper has been accepted is a defaulter of loans, taxes, government dues and utility expenses or has had any loan written off or has willfully concealed such fact or suffers from any other disqualification from being elected as a Member of the Senate, it may, on its own motion, call upon such candidate to show cause why his nomination papers may not be rejected, and if the Tribunal is satisfied that the candidate is actually a defaulter or has had a loan written off or suffers from any disqualification, it may reject the nomination paper of the candidate.

<sup>6</sup> Per Qazi Muhammad Farooq J (as he then was) in *Waqas Akram vs. Dr. Muhammad Tahirul Qadri & Others* reported as 2003 SCMR 145; Per Ajmal Mian J (as he then was) in *Ghulam Mustafa Jatoi vs. ADJ / RO NA 158 Naushahro Feroze & Others* reported as 1994 SCMR 1299; Per Akhtar Zaman Maghlani J (as he then was) in *Nawabzada Mir Balach Khan Marri vs. Mir Mohabbat Khan Marri & Others* reported as PLD 2003 Quetta 42.

<sup>7</sup> Per Ajmal Mian J (as he then was) in *Rafiq Haider Khan Leghari vs. Election Tribunal & Others* reported as PLD 2003 Quetta 42.

<sup>8</sup> Per Amir Hani Muslim J (as he then was) in *Murad Bux vs. Karim Bux & Others* reported as 2016 SCMR 2042; *Illahi Bux Soomro vs. Aijaz Ali Jakhrani & Others* reported as 2004 CLC 1060.

*Merit*

8. The basic challenge of the appellant is with respect to the qualification of the respondent no.1 within the definition of technocrat, per section 2(xxxix) of the Act, which is reproduced herein below:

“technocrat means a person who

(a) holds a degree requiring conclusion of at least sixteen years of education recognized by the Higher Education Commission; and

(b) has at least twenty years of experience including a record of achievement at the national or international level;”

9. There appear to be three integral constituents of this definition; holding a degree requiring conclusion of 16 years education recognized by the High Education Commission (“HEC”); 20 years of experience; and record of achievement at the national or international level. This Tribunal will endeavor to consider each respective aspect individually.

10. The respondent no.1 is stated to have B.A., LL.B and MBBS degrees; therefore, the 16 years education stipulation appears to *prima facie* be complied with.

11. The respondent no.1 is also stated to have been employed with the Health Department till November 1995, where after, subsequent to succeeding at the Central Superior Services examination, he has served in public administration; having sought premature retirement in 2018 as an Additional Collector, Customs Department. The experience of respondent is in the field of administration and his educational qualifications do not place any bar or hinder the task of public administration in any manner. The relevant experience is spanned over 23 years, thus, the experience requirement also appears to have been satisfied.

12. The final aspect to consider is whether the respondent demonstrated a suitable record of achievements, at the national or international level, before the RO, to qualify him for candidature to the technocrat seat of the Senate. In his submission before the RO, the respondent has itemized his international and national achievements as follows:

**International**

“WHO’s WHO Pakistan 2018 Awards presented to Dr. Shahab Imam by Director General South Asia WHO’s WHO Global;

Certificate by World Customs Organization on “the WCO Regional Workshop on Global Operation’s Sky. NET.II” dated 20 to 22 October, 2015 at Shanghai China;

Certificate by DHS Homeland Security Investigations United States of America on Capacity Building Workshop on "Cross Border Financial Investigations" dated April 21-May 4, 2013 at Abu Dhabi, United Arab Emirates;

Honorary, Citizenship of the City of Toledo granted by Toledo City Council, United States of America through Resolution of Toledo City Council dated Oct 28, 2009. Recognizing Dr. Shahab Imam as Honorary Citizen of the City of Toledo;

Workshop on Climate Change by City Council of New York City, 2008."

## National

"Certificate of Merit Presented to Dr. Shahab Imam by Pakistan Custom on International Customs Day 26<sup>th</sup> January 2021.

BRAND OF THE YEAR AWARDS 2019- Certificate of Special Acknowledgment by Brands Foundation by the hands of Honorable Chef Guest. Barrister Dr. Muhammad Farogh Naseem Federal Minister for Law and Justice Government of Pakistan September 06, 2020;

Certificate "Consumers Road Safety Conference 2019. Presented to Dr. Shahab Imam, Chairman Consumers Association;

Shield in Recognition of Meritorious Services presented to Dr. Shahab Imam by Officers of Pakistan Custom Service & Sindh Commoners November, 2019;

Shield Presented to Dr. Shahab Imam President KATI hosted lunch and also awarded flowers on the Eve of Premature Voluntarily Retirement December, 2019;

Shield Presented to Dr. Shahab Imam by Member Customs Mr. Muhammad Zahid Khokhar on Premature Voluntarily Retirement November, 2019;

Shield Presented to Guest of Honor - Dr. Shahab Imam by H.E President of Pakistan. DR. ARIF ALVI "*I.T Minister's Forum for Youth, Innovation, Industry Ease of Doing Business.*" 19 September, 2019;

Letter of Appreciation for Dr. Shahab Imam by National Ozone Unit, Ministry of Climate Change, Government of Pakistan dated 19<sup>th</sup> September, 2019;

Shield Presented to Guest of Honor - Dr. Shahab Imam" by Honorable Federal Minister of Information Technology & Telecommunication Dr. Khalid Maqbool Siddiqui on "Consumers Association of Pakistan" on 30<sup>th</sup> March, 2019;

President KATI hosted lunch and also awarded flowers on the Eve of Premature Voluntarily Retirement December, 2019;

Farewell Dinner Oct. 20, 2018 in the honor of Dr. Shahab Imam at the Residence of Farhan Hanif Chairman, Crown Group of Companies. Widely attended by notables hailing from the Civil Society; to name few S.M. Muneer, Aqeel Kareem Dhehdi; Arif Habib, Zubair Tufail, Farhan Hanif, Federal Minister Law Dr. Farogh Naseem, Federal Minister I.T. DR. Khalid Maqbool many officers of PAS, Police, Customs, Inland Revenue Services graced the august Occasion, 2018;

Certificate "Seminar February 14, 2017. Palm Oil, The Healthy Edible Oil for Consumers;

Cash Grant of Reward for Meritorious Services for filed formations of Customs (FY 2015-16) by Federal Board of Revenue vide letter C.No.7(2)E&C/2015/83116 dated 12<sup>th</sup> June, 2015;

Cash Reward for completion of task of developing & feeding. Structured description Customs tariff in the System by Federal Board of Revenue vide letter CNO. 7(3) E&C/2015/67458. Dated 14<sup>th</sup> May 2015;

Cash Grant of reward for field formation of Customs (FY 2012-2013) by Federal Board of Revenue vide letter C NO.7(2) AS&C/2013/80070. Dated 14-06-2013;

Qualified for Internal Job Postings vide letter S1/Misc./12/2007/H.Q. Ex. Dated 15.08.2011 for Special Pay Position duly notified vide letter'

Hepatitis Prevention & Control Program Sindh (Chief Minister's Initiative) Shield Presented to Dr. Shahab Imam EDO (HEALTH) Karachi CDGK. In appreciation of his Services for the Program on the Occasion of World Hepatitis Day on 19 May 2010;

Certificate of Appreciation as Most Well deserved person by National Institute of Management, Karachi dated 22 December 2010;

Appreciation Award on World Consumers Right Day Awarded to Dr. Shahab Imam EDO E&IP, CDGK 2009;

Shield Presented to Dr. Shahab Imam by President Karachi Chamber of Commerce & Industry January 24, 2008;

Shield Presented to Dr. Shahab Imam Executive Member by Muhammad Yamin Khan, Chairman, Civil Services Academy Alumni Sindh in 2003;

Shield on Silver Jubilee 1980-2005 Civil Services Academy Alumni Sindh presented to Dr. Shahab Imam by Muhammad Yamin Khan in 2005;

The achievements, national and international, relied upon by the respondent pertain to the field of public administration and documentary corroboration is available on file in such regard.

13. The veracity of such achievements have not been assailed before this Tribunal and even otherwise such an exercise is not merited at the pre-electoral stage. It may suffice to state that the RO appears to have satisfied himself that the candidature of the respondent fell within the parameters of technocrat, as defined under the Act, and the respondent did in fact demonstrate the *prima facie* preponderance of record of achievement at the national and international level; hence his nomination form was accepted. It is the considered view of this Tribunal that the Impugned Order merits no interference in appeal.

#### *Conclusion*

14. In view of the reasoning and rationale herein contained, this Tribunal is of the considered view that this appeal is devoid of merit, hence, the same, along with pending application/s, is hereby dismissed.

15. The office is hereby instructed to convey a copy hereof to the learned returning officer, in *mutatis mutandis* application of Rule 54(5) read with Rule 100(6) of the Rules, forthwith.

JUDGE

MAK/PS