

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

C.P No. D-1056 of 2019

Petitioners : Nazeer Ahmed Hisbani, through
Obaid-ur-Rahman, Advocate

Respondent No.1 : Pir Sadruddin Shah through Mansoor
ul Arfin and Salahuddin Ahmed,
Advocates.

Respondent No.2 : Federation of Pakistan, through
Khaleeq Ahmed, DAG.

Respondent No.3 : Province of Sindh, through Mukthiar
Ali Junejo, AAG and Sarmad Sarwar,
Law Officer.

Date of hearing : 17.03.2022

ORDER

YOUSUF ALI SAYEED, J. The Petitioner, who describes himself as a political worker carrying on such related activities within the Constituency of NA-209 Khairpur, has invoked the jurisdiction of this Court under Article 199 of the Constitution impugning the character of the Respondent No.1, a former member of the Provincial Assembly of Sindh from 2002 to 2008 and member of the National Assembly of Pakistan 2008 to 2018, on the ground that he allegedly made certain misdeclarations while submitting his nomination papers in respect of those earlier elections, and seeks that a declaration be made that the Respondent thus stands disqualified in perpetuity from holding either of the above elected offices in terms of Articles 62 and 63 of the Constitution, and that he be directed to return all the perks and benefits received as a member of those assemblies over the aforementioned periods.

2. The prayers advanced by the Petitioner on that score are as follows:

- “(a) Declare that the Respondent No.1 is not of good character, neither honest, nor amen, nor righteous, nor sagacious and fails to meet the standards set out by Articles 62 and 63 of the Constitution of Pakistan, 1973 and hence the Respondent No.1 stands disqualified in perpetuity from holding the public offices of Member of the National and Provincial Assembly and Senate;
- (b) Declare that under the doctrine of whistleblower this Hon"ble Court possesses Constitutional mandate to hear and adjudicate this Petition and for the reasons stated in the body of the Petition declare that the Respondent no. 1 is perpetually disqualified under Articles 62 and 63 of the Constitution of Pakistan 1973 from contesting elections of either the Provincial Assembly, the National Assembly or the Senate;
- (c) Direct the Respondent No.1 to return all perks and benefits which he derived as Member of the Provincial Assembly from 2002 till 2008 and as a member of the National Assembly since 2008 to 2018;
- (d) Permanently restrain the Respondents no. 2 and 3 from entertaining the Nomination papers of Respondent No.1 for any elections in the future;
- (e) Grant any other / further relief which the Honorable Court deems proper and fit in the circumstances of the case”

3. The Petition was met through an Application under Order VII Rule 11 CPC, raising a question of maintainability on the ground that the matter did not fall within the parameters of Article 199 of the Constitution, as at present the Respondent No.1 neither remained a member of either the Provincial or National Assembly, nor held any public office, hence a writ of *quo warranto* did not lie. Furthermore, as the scope of challenge fell beyond the orbit of that writ, the Petition was not maintainable as the Petitioner was not an ‘aggrieved person’ and lacked *locus standi* to otherwise mount the challenge envisaged, which also entailed factual questions that could only be determined on evidence.

4. Upon being called upon to address this aspect, learned counsel for the Petitioner, candidly conceded that a writ of quo-warranto did not lie under the given circumstances. However, he argued with reference to the Judgment of the Supreme Court in Human Rights Case No.3654 of 2018, in the matter regarding the appointment of Managing Director, Pakistan Television Corporation 2019 SCMR 1 (the “**PTV Case**”), as well as a judgment of a learned Division Bench of this Court in the case reported as Aam Log Ittehad through Secretary General and another vs. The Election Commission of Pakistan through Secretary and 4 others PLD 2020 Sindh 616 (the “**Aam Log Case**”), that an exception could nonetheless be carved out so to allow for the Court to conduct an inquiry as to the antecedents and character of a part member of an assembly or holder of public office in order to secure the return of any sums as may have been received through nepotism and misuse of authority. Reliance was also placed on the judgments of the Apex Court in the cases reported as Khawaja Muhammad Asif v. Muhammad Usman Dar and others 2018 SCMR 2128 (“**Khawaja Asif’s Case**”).

5. On the other hand, learned counsel appearing on behalf of the Respondent No.1 argued that the aforementioned judgments of the Honourable Supreme Court were distinguishable, as they turned on their own facts or were rendered in cases where there was a live question of usurpation of office, whereas the Respondent was no longer holding any elected or public office and the Petition did not even otherwise raise any issue of nepotism or corruption. Furthermore, it was also pointed out that even in the Aam Log Case, the learned Division Bench had been pleased to dismiss the Petition in respect of all those respondents who were no longer holding any public office.

6. Having heard learned counsel and considered the arguments advanced, it merits consideration that the PTV Case was one initiated *suo moto* by the Honourable Supreme Court in exercise of its powers under Article 184(3) of the Constitution, upon it coming to fore and attention of the Court that certain blatant irregularities/illegalities existed involving functionaries appointment as a Director and the Chairman of PTV and fixation of the related terms and conditions of that office, which were found to be based on nepotism and misuse of authority. It was in this context that the Apex Court held that:

“Hence notwithstanding the fact that Mr. Qasmi had resigned from his position, this Court has ample jurisdiction to consider a matter where it appears that public money has been misused through the corrupt practice of nepotism and favouritism by giving excessive salary/perks/privileges and incurring other undue expenses causing loss to the public exchequer. When the law is being blatantly flouted by the Executive at the expense awareness of a national institution promoting public and understanding of events, culture and heritage, and public money is showered on a chosen few as a favour without regard to qualification or merit, it undeniably becomes a matter of public importance. This Court is well within its powers to take cognizance of the matter under Article 184(3) of the Constitution on account of violation of the fundamental rights of the citizens, including those guaranteed under Articles 18 and 25 of the Constitution. Even otherwise, this Court has the power to do complete justice under Article 187 of the Constitution.”

7. As such, it is apparent that in view of the particular factual matrix underpinning that matter and the *suo moto* nature of the proceedings, the resignation of the incumbent was deemed insufficient to divest the Apex Court of its jurisdiction under Article 184(3), which is not subject to the constraints marking the jurisdiction of a High Court under Article 199. That case is further distinguishable as there is no allegation of nepotism or corruption in the matter at hand.

8. Conversely, in the Aam Log Case, being a proceeding under Article 199 of the Constitution, the learned Division Bench considered the effect of the judgment in the PTV Case while holding that a writ of quo warranto nonetheless did not lie against certain respondents in view of their retirements, with it being observed that:

“Since in the instant case, respondents No. 2, namely, Justice (Retired) Shakeel Ahmed Baloch and respondent No.5, namely, Abdul Ghaffar stood retired with effect from 26.01.2019, therefore, a writ of quo-warranto cannot otherwise, be issued against said respondents, more particularly, when there is no allegation or material produced to suggest that there has been an element of corruption or nepotism in their appointments as members of Election Commission of Pakistan. Reliance placed by the petitioners in Human Rights Case No.3654/2018 (2019 SCMR 1) in this regard is misplaced for the reason that incumbent holder of public office i.e. Managing Director, PTV was holding the public office wherein there were allegations of corruption and nepotism by appointing authority whereas eligibility of the incumbent was also under dispute.”

9. Even in Khawaja Asif Case, the facts were different from those prevailing in the matter at hand as that case entailed a live issue, where the matter had come up before the Honourable Supreme Court on appeal against the judgment of the Islamabad High Court, where a writ of *quo warranto* had been issued in proceedings under Article 199 of the Constitution against a respondent who at the time was a member of National Assembly and was holding the portfolio of Foreign Minister in the Federal Cabinet. Under the given circumstances, where the Respondent No.1 is not holding any office, a Petition under Article 199 would not lie and to entertain a matter of the given nature would otherwise result in opening the floodgates to an untold number of similar petitions seeing inquiries and action against former members of the assemblies on mere allegation of their past ineligibility.

10. Indeed, while examining the scope of the jurisdiction under Article 199, it falls to be considered that other than those matters covered under Sub-Article (b)(i) and (ii), being in the nature of *habeas corpus* or *quo warranto*, the same entails an application by an ‘aggrieved party’ or ‘aggrieved person’. The Petitioner does not qualify in that regard. Furthermore, in the absence of such circumstances as would support a writ of *quo warranto*, the prayers advanced are otherwise also not in consonance with such directions as may be issued under Sub-Articles (a) or (c).
11. That being so, it is apparent that the Petition is not maintainable. CMA 10970/19 thus stands allowed with the Petition being dismissed accordingly, along with other pending miscellaneous applications.

Judge

Chief Justice