

**IN THE SUPREME APPELLATE COURT, GILGIT-BALTISTAN,
GILGIT**
(Original Jurisdiction)

SMC No. 13/2017

Case: In respect of Prince Saleem Khan, Member, GBLA-6 HNR-III, Gilgit-Baltistan Legislative Assembly only.

Petition No. 176/2017

1. Abaidullah Baig s/o Hafizullah Baig r/o Khomer, Tehsil and District Gilgit.

..... **Petitioner**

VERSUS

1. Prince Saleem Khan s/o Mir Ghazanfar Ali Khan r/o Kareem Abad Tehsil Aliabad, District Hunza & Others.

..... **Respondent**

Present:

1. Mr. Manzoor Ahmed Advocate for Prince Saleem Khan Member Gilgit-Baltistan Legislative Assembly.
2. Mr. Abaidullah Baig, Contesting Candidate GBLA-6 Hunza-III.
3. Mr. Munir Ahmed Advocate alongwith Mr. Abid Raza Election Commissioner Gilgit-Baltistan for Chief Election Commissioner Gilgit-Baltistan
4. Mr. Sher Madad, learned Advocate General Gilgit-Baltistan for the provincial government.
5. The Javaid Akhtar, Deputy Attorney General for Pakistan at Gilgit.

Date of Hearing: 05.04.2018

Date of Judgment: 09.04.2018

JUDGMENT

Dr. Rana Muhammad Shamim, CJ: The petition for leave to appeal filed by the National Bank of Pakistan through Manager Sost Branch, Hunza-Nagar against M/s Silk Route Dry Port Trust Sost Gojal through Chairman, Prince Saleem Khan s/o Mir Ghazanfar Ali Khan, Raja Shahbaz Khan r/o Gojal District Hunza and Barkat Ullah Baig r/o Gojal District Hunza against a Judgment dated 02.08.2016, passed by the Division Bench of Chief Court in case CFA No. 11/2015. Leave in this case was granted on 17.11.2016. Upon hearing, the appeal was allowed

vide order dated 19.09.2017. At the time of passing judgment, this Court took a Suo Moto Notice under Article 61 read with Article 95 of The Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, that Prince Saleem Khan at the time of filing his Nomination Papers to contest election for a member GBLA-6 HNR-III, was Judgment Debtor/defaulters. He is still a Judgment Debtor/defaulters after passing of the Judgment of this Court and how he was allowed to contest election. Consequently, the Chief Election Commissioner of Gilgit-Baltistan was directed to submit report alongwith the material on record regarding Prince Saleem Khan.

2. In compliance with the order of this Court, the learned Chief Election Commissioner Gilgit-Baltistan submitted the report alongwith the judgment passed by the two members of the Election Tribunal by giving divergent views. On account of divergence of opinion of two learned members of the Election Tribunal, the Chief Election Commissioner in pursuance of Section 6 of The Representation of People Act, 1976, held that since, the appeal has not been disposed of within the period prescribed in the election schedule, the same is deemed to have been rejected. Consequently, Prince Saleem Khan was held eligible to contest bye-election on the strength of Stay Order granted by the learned Chief Court. The learned Chief Election Commissioner announced the "Election Schedule" for Bye-Election in GBLA-6 HNR-III and directed that the bye-election is to be held on 29.08.2016. The nomination papers to contest election by Prince Saleem Khan were accepted on 24.07.2016 on the strength of purportedly "Stay Order" dated 22.07.2016 granted by the learned Chief Court Gilgit-Baltistan in Civil First Appeal No. 11/2015. The Bye-Election in GBLA-6 HNR-III was

held on the scheduled date and Prince Saleem Khan was declared successful as returned candidate.

3. Subsequently, Col, Abaidullah Baig also filed petition, challenging the election of returned candidate Prince Saleem Khan, which was converted into petition under Article 61 of The Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009. He has also challenged the Election of Prince Saleem Khan as returned candidate which was also heard together with this petition. On 09.03.2018 this Court raised following questions to be answered by the counsel of Prince Saleem Khan, Chief Election Commissioner and Chief Law Officer of the Province and Deputy Attorney General for Pakistan.

“i. Whether Prince Saleem Khan was qualified to contest the election of GBLA-6 HNR-III as provided under sub Section (c) & (f) of Section 12 read with Section 99(s) of the Representation of People Act, 1976 read with Article 62 and 63 of the Constitution of Islamic Republic of Pakistan 1973?

ii. Whether the Chief Election Commissioner Gilgit-Baltistan was empowered to hold the election after a divergent views taken by the leaned Members of the Election Tribunal instead of referring the case to a Referee Judge?

iii. Whether the Chief Election Commissioner Gilgit-Baltistan was empowered to holding election by presuming that the appeal has not been disposed off by the tribunal within a specific period and deemed to be rejected as provided under sub section 6 of Section 14 of the Representation of People Act, 1976?

iv. Whether the election of Prince Saleem Khan as Member GBLA-6 HNR-III was held/contested in accordance with law and without lawful authority?”

4. The case was heard on 05.04.2018 and the judgment was reserved.

5. We have heard Mr. Manzoor Ahmed Advocate, learned counsel for respondent Prince Saleem Khan, Member Gilgit-Baltistan Legislative Assembly, Mr. Munir Ahmed Advocate alongwith Mr. Abid Raza Election Commissioner Gilgit-Baltistan for Chief Election Commissioner Gilgit-Baltistan, Learned Advocate General of the Provincial Government of Gilgit-Baltistan, Mr. Javaid Akhtar learned Deputy Attorney General for Pakistan and Mr. Abaidullah Baig contesting candidate in GBLA-6 HNR-III and party in Petition No. 176/2017 at length.

6. Mr. Abaidullah Baig submits that since Prince Saleem Khan was Judgment Debtor/defaulters, on the day of accepting his nomination papers, as the Judgment/Decree passed against him dated 13.09.2012 was not suspended. The operation of impugned judgment passed by the learned Chief Court was suspended by this Court vide order dated 17.11.2016. He also contends that although he has not challenged the order of the Election Tribunal in any other forum as yet, as he believes that the judgment and decree passed against Prince Saleem Khan & others was never challenged by returned candidate Prince Saleem Khan which holds field. He submits that the returned candidate Prince Saleem Khan filed Civil Miscellaneous No. 110/2013, which was filed after delay of 11 months, only praying therein that his right of defense may be restored. He never challenged the Judgment/decree dated 13.09.2012 in the Appellate Court under The Financial Institutions (Recovery of Finance) Ordinance, 2001. He submits that the said Miscellaneous No. 110/2013 was dismissed being hopelessly time bared by 11 months. He

submits that instead of Challenging Judgment and Decree, Prince Saleem Khan filed Civil First Appeal No. 11/2015 against the order passed in Civil Miscellaneous No. 110/2013. It is shocking to observe that at the time of entertaining appeal, the office of the Chief Court Gilgit-Baltistan has not raised any objection that the Civil Misc No. 110/2013 was hopelessly time bared. No supportive application for condonation of delay under the Limitation Act was ever filed and the Division Bench of learned Chief Court closed their eyes and entertained the appeal and was allowed. The learned Chief Court instead of deciding the case in hand for restoration of the right of defense as prayed by Prince Saleem Khan, have decided the appeal and set aside the Judgment and decree dated 13.09.2012 passed by the Banking Court. Admittedly, no Banking Appeal under The Financial Institutions (Recovery of Finance) Ordinance, 2001 was ever filed challenging the Judgment/decree dated 13.09.2012 passed against Prince Saleem Khan and others. It is also very painful to note that while setting aside the Judgment and decree 13.09.2012, the learned Chief Court has closed their eyes that no banking appeal under Section 22 of The Financial Institutions (Recovery of Finance) Ordinance, 2001 was ever filed by Prince Saleem Khan and if, it is considered that it was an appeal, it was hopelessly time bared for about 2 years 6 months and 5 days. Such ignorance of law of the Division Bench of the learned Chief Court was not understandable. Mr. Abaidullah Baig relied upon a case Civil Appeal No. 22/2006 titled Muhammad Shareef v. Aftab Haider and 12 others and a case titled Rasheed v. Returning Officer Nankana Sahib reported as (PLD 2013 Lah 509).

7. Mr. Manzor Ahmed learned counsel for the respondent Prince Saleem Khan contended that neither the returned candidate Prince Saleem Khan was a defaulter in terms of Section 12 (c) of The Representation of People Act, 1976 as well as he was not disqualified under Article 62 and 63 of The Constitution of the Islamic Republic of Pakistan, 1973 at the time of filing his nomination papers to contest election of GBLA-6 HNR-III. He further submits that the learned Chief Election Commissioner has rightly ordered for holding election in pursuance of Section 6 of The Representation of People Act, 1976 that in case of divergent views of two judges of Election Tribunal, it would be considered that the appeal has not been disposed off within the period specified in Sub-Section 5 of Section 6 of The Representation of People Act, 1976 and shall be deemed to have been rejected. He further submits that on the day of filing of nomination papers and scrutiny, the returning officer has rightly accepted his nomination papers on the strength of stay orders dated 22.07.2016 passed by the learned Chief Court. He further contends that the Chief Election Commissioner was the lawful authority to announce "Election Schedule" and bye-election was also rightly announced and held on 29.08.2016. After the election and counting of votes, Prince Saleem Khan was declared successful as returned candidate. He relied upon the case of *The Federation of Pakistan and others v. Mian Muhammad Nawaz Shareef and others* (PLD 2009 SC 644) and submits that in the said case, there was a divergent view of two members of the Election Tribunal and the then Chief Election Commissioner of Pakistan, in pursuance Sub-Section 5 of Section 6 of The Representation of People Act, 1976, held lawful election. He submits that since, the appeal has not been disposed of within specific period, it

shall be deemed to have been rejected. The said order was challenged in a writ petition in the learned High Court Lahore, who, agreed with the views of learned Chief Election Commissioner of Pakistan which was, subsequently, upheld by the Supreme Court of Pakistan. However, the Review Petition was allowed and Mian Muhammad Nawaz Sharif was allowed to contest the election. He concluded his arguments that neither Prince Saleem Khan was a Judgment Debtor/defaulters and his nomination papers were rightly accepted on the strength of Stay Order dated 22.07.2016 passed by the learned Chief Court. Consequently, he was rightly elected on the strength of votes in his favour and he was declared successful returned candidate as Member of GBLA-6 HNR-III.

8. Mr. Munir Ahmed, learned Counsel for the Chief Election Commissioner, learned Advocate General Gilgit-Baltistan and Learned Deputy Attorney General adopted the arguments of Mr. Manzoor Ahmed, learned counsel for Prince Saleem Khan.

9. We have heard the learned counsel for the respective parties, perused the material on record, gone through the judgment/decrees dated 13.09.2012 passed in Suit No. 6/2010 by the Banking Court, Order dated 06.03.2015 passed in CM No. 110/2013, impugned Judgment dated 02.08.2016 passed in CFA No. 11/2015, order dated 22.07.2016 granting "Status Quo" on the strength of which nomination papers of Prince Saleem Khan were accepted to contest election of GBLA-6 HNR-III and the case law relied upon by the learned counsel for Prince Saleem Khan which is not applicable being distinguishable as every case is to be heard and decided in its own merits.

10. As per judgment/decrees dated 13.09.2012 passed in Suit No. 06/2010 by the learned Banking Court, whereby, five defendants

including Prince Saleem Khan were declared as "Judgment Debtor". Consequently, the Banking Judge converted it into Execution Petition. Prince Saleem Khan was aware about the proceedings in the Banking Court against him since its institution i.e. in the year 2010 till the judgment/decree passed against him on 13.09.2012. Prince Saleem Khan has never filed banking appeal in the Appellate Court against the judgment/decree dated 13.09.2012 passed by the Banking Court. Instead, he filed CMA 110/2013, after the delay of 11 months, praying therein for the restoration of his defense by setting aside the ex-parte decree dated 13.09.2012 passed by the Banking Court in Civil Suit No. 06/2010. Learned Banking Court was pleased to observe that the above application was filed after the delay of 11 month after passing the Judgment and decree. Consequently, the petition was dismissed vide order dated 06.03.2015 being hopelessly time bared.

11. Prince Saleem Khan, M/s Silk Route, Mir Ghazanfar Ali Khan, Raja Shahbaz Khan and Barkat Ullah Baig instead of filing Banking Appeal under Section 22 of The Financial Institutions (Recovery of Finance) Ordinance, 2001 within 30 days, filed first Civil Appeal No. 11/2015 on 18.03.2015 in the Chief Court Gilgit-Baltistan. It is shocking to observe that the appeal was entertained without any objection although it was filed after the delay of 2 years, 6 months and 5 days. No application for condonation of delay was ever filed by Prince Saleem Khan and other Judgment Debtors. Such unexplained delay was not mentioned anywhere while entertaining the appeal, or even during the hearing of said appeal, and subsequently, at the time of passing of impugned Judgment dated 02.08.2016 which is unprecedented in Judicial history of the world. We have also gone through the said order

dated 22.07.2016, the learned Division Bench directed only that the Status Quo existing be maintained till then. Admittedly, the operation of the impugned Judgment/decreed dated 13.09.2012 was never suspended which holds field.

12. We are fortified by the judgments of Indian Jurisdiction reported as AIR 1988 SC 127, AIR 1978 Gauhati 18 and AIR 2001 Karnataka 395 regarding granting of Status Quo.

In AIR 1988 SC 127 the Hon'ble Supreme Court of India was pleased to observe that the expression "Status Quo" is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty. According to the ordinary legal connotation, the term Status Quo applies the existing status of things at any given point of time.

In AIR 1978 Gauhati 18, the Hon'ble Court was pleased to hold that 'to maintain the Status Quo of the suit premises' does not include any act relating to such premises. It only imposes restriction on making any physical change in the premises such as demolition and alteration. Therefore, issuing lawyer's notice requiring tenants of the premises to pay rents and termination of tenancy was not disobedience of order granting Injunction. Even so, injunction restraining "entering and interfering in peaceful possession of the plaintiff".

In AIR 2001 Karnataka 395, the hon'ble Court held that the order of Status Quo should clarify the conditions in context of which or subject to which Status Quo is ordered. The Court while making the Order to maintain the Status Quo, should endeavor to clarify the condition in the context of which or subject to which such directions are issued, as the word Status Quo takes contextual meaning and may give room for several difficult interpretations. An order of Status Quo is a

specie of interim orders, when granted indiscriminately and without qualifications or condition, leads to ambiguity, leads to difficulties and injustice. If Court wants to give interim relief, they should endeavor to give specific injunctive relief. If grant of order of Status Quo is found to be the only appropriate relief, then courts should indicate the nature of Status Quo, that is whether the Status Quo is in regard to possession, title, nature of property or some other aspect. Merely, saying 'Status Quo' or 'Status Quo to be maintained' should be avoided.

13. In pursuance of the above observations of the higher court of Indian jurisdiction, Status Quo means the things at the time of grant of Status Quo must remain or exist as it is. If we take the case of Prince Saleem Khan that on 22.07.2017, he was judgment debtor and declared defaulter or otherwise. Since, the impugned Judgment/Order dated 02.08.2016 was non-existent, he was not qualified to contest the election on the basis of such Status Quo. The decree & judgment passed by the Banking Court was never suspended rather Status Quo was granted which means that on the day of granting Status Quo Prince Saleem Khan was Judgment Debtor/defaulters. The existing position/Status Quo be considered without restraining order and different from granting interim injunction/Stay Order. The order passed by the Chief Election Commissioner for allowing to contest election on the strength of impugned Status Quo is not tenable in law. The day i.e. 24.07.2016, Prince Saleem Khan was declared qualified, he was admittedly a Judgment Debtor/defaulters and cannot contest bye-election of GBLA-6 HNR-III. The impugned judgment dated 02.08.2016 passed by the Chief Court was suspended by this Court vide order dated 17.11.2016 & consequently, the appeal filed by the National Bank of Pakistan through

Manager Sost Branch, Hunza Nagar against Prince Saleem Khan & others was allowed. The office of the Election Commission has not taken notice of order dated 17.11.2016 and Judgment dated 19.09.2017 passed by this Court and kept their eyes closed for the reasons best known to them.

14. Mr. Justice Wazir Shakeel Ahmed hearing the First Civil Appeal No. 11/2015 should have refrained to sit as member of the Election Tribunal.

15. We have also gone through impugned judgment passed by the learned Chief Court and also judgment/decreed passed by the learned Banking Court and we, with pain, observe that the learned Chief Court should not have entertained, the admittedly (2 years, 6 months and 5 days) time bared appeal, filed by the Sost Dry Port etc including Prince Saleem Khan. It should had been dismissed on account of hopelessly time barred only specially when no application for condonation of delay was filed with the appeal. The plea of petitioner Abaidullah Baig that after disqualifying Prince Saleem Khan being Judgment Debtor/defaulters on the day of filing Nomination Papers, he be declared as returned candidate, is also not tenable, as there is no allegation of rigging etc. Prince Saleem Khan returned candidate and Mr. Abaid Ullah got majority of votes in their favour, hence, the voters of the constituency GBLA-6 HNR-III cannot be deprived to elect the Member of Gilgit-Baltistan Legislative Assembly of their own choice.

16. In view of above discussion, a Judgment Debtor/defaulters cannot contest election and we declare and hold that the Bye-Election held on 29.08.2016 in GBLA-6 HNR-III were ab initio void, illegal and have been held without lawful authority, hence, is set aside. The office of

Chief Election Commissioner is directed to de-notify Prince Saleem Khan as member Gilgit-Baltistan Legislative Assembly from the GBLA-6 HNR-III forthwith. The Chief Election Commissioner Gilgit-Baltistan is also directed to announce "Election Schedule" of Bye-Election GBLA-6 HNR-III within two weeks for holding Bye-Election of GBLA-6 HNR-III within prescribed time in accordance with law.

17. Announced in open court.

Chief Judge

Judge