

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT**

BEFORE:

Mr. Justice Sardar Muhammad Shamim Khan, Chief Judge

Civil Appeal No.82 of 2023
In CPLA No.269 of 2023.

Ghulam Shehzad Agha

Petitioner

Versus

Khalid Khursheed & others

Respondents

PRESENT

For the Petitioner	:	Mr. Amjad Hussain Sr. Advocate
For the respondent No.1	:	Mr. Asadullah Khan Sr. Advocate
For Government of G.B	:	Mr. Muhammad Nazir, A.G. G.B
For Election Commission GB	:	Mr. Arif Nazir, Advocate/Legal Advisor Mr. Yasir Akhtar Assistant legal advisor Mr. Khurshid Ahmed Deputy Election Commissioner.

Date of Hearing: **19.04.2024**

Date of announcement **25.04.2024**

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge:- Through the instant Civil Appeal the petitioner namely Ghulam Shehzad Agha has challenged the findings of learned Chief Court passed in para No.13 & 14 of the judgment dated 04.07.2023 whereby protection/immunity was granted to respondent No.1 (Khalid Khurshid) from the application of penal/ criminal proceedings against him. The petitioner has further called in question the direction given by the learned Chief Court to Speaker, G.B Assembly to forward a Reference against the petitioner to the Chief Election Commissioner in terms of Article 51 sub-Article 3 of the Government of Gilgit-Baltistan Order, 2018 for his disqualification from the membership of G.B Assembly on account of being placed his name under Schedule IV of ATA 1997.

2. Brief facts necessary for disposal of instant Civil Petition are that the petitioner had filed writ petition No. 277/2023 before learned Chief Court

wherein he challenged the qualification of respondent No.1 (Khalid Khursheed) to be the member of G.B Assembly on the ground of obtaining, retaining and using forged / bogus degree of LLB at different forums, filing of false affidavit in GB Bar Council and Higher Education Commission and prayed that the respondent No. 1 may be disqualified to be Member of the G.B Assembly under Article 62(i) (f) and Article 63 of the Constitution of Pakistan read with Article 50(ii) (m) of Government of Gilgit-Baltistan Order, 2018 and section 231 of Elections Act, 2017. Vide impugned judgment dated 04.07.2023 passed in Writ Petition No. 277/2023, learned Chief Court declared the respondent No. 1 (Khalid Khursheed) disqualified from being Member of GB Assembly. However, in the same impugned judgment, learned Chief Court granted protection/immunity in favour of the respondent No. 1 from the application of criminal/penal proceedings as well as issued direction to Speaker GB Assembly for forwarding a Reference to Chief Election Commissioner G.B for proceedings against petitioner (Ghulam Shehzad Agha) in terms of Article 51 sub-Article 3 of the Government of Gilgit-Baltistan Order, 2018 on account of concealment of fact that his name was included in Schedule 4th of ATA, 1997. The validity and authenticity of remarks/observations pertaining to immunity of respondent No.1 from the application of penal/criminal proceedings against him as well as disqualification of the petitioner from the membership of G.B Assembly on account of placing his name under 4th Schedule of ATA, 1997 passed in the aforementioned judgment by learned Chief Court has been called in question through the instant Civil Petition.

3. Learned counsel for the petitioner contended that petitioner filed writ petition No.277 of 2023 before learned Chief Court seeking disqualification of respondent No.1 from the membership of G.B Assembly on the ground that he had obtained a bogus/forged degree of LLB; that vide impugned judgment dated 04.07.2023, learned Chief Court accepted the aforesaid writ petition and disqualified the respondent No.1 from the seat of G.B Assembly for the remaining term of G.B Legislative Assembly on account of retaining and using forged degree of LLB at different forums but the learned Chief Court while passing the judgment in para No.13 gave protection/immunity to respondent No.1 from the application of penal/criminal proceedings against him without

any lawful justification; that in para No.13 of the impugned judgment, it was categorically held by learned Chief Court that a person who makes a false statement concerning his academic qualifications comes within the ambit of corrupt practices; that learned Chief Court was not empowered to give immunity from the application of criminal proceedings against the respondent No.1 as per mandate of section 78 of the Representation of the People Act 1976. It has further been contended by learned counsel for the petitioner that the observation of learned Chief Court pertaining to disqualification of respondent No.1 from the seat of G.B Assembly only for the remaining term of G.B Legislative Assembly is against the law in view of principle settled by Hon'ble Supreme Court of Pakistan in the case of Sami Ullah Baloch vs Abdul Karim Nausherwani (PLD 2018 S.C 405) wherein it has been held that when Article 62(1) (f) of the Constitution of Islamic Republic of Pakistan 1973 is attracted, the disqualification is for life time. It was further argued by learned counsel for the petitioner that learned Chief Court in para No.14 of the judgment also opined that petitioner himself is a proscribed person under section 11-EE of the ATA, 1997 and his name is placed in 4th schedule of the said Act but this fact was not disclosed by the petitioner at the time of contesting the election and filing of aforesaid writ petition before the Court, therefore, he is guilty of concealment of facts and that he suffers from disqualification to remain as member of the Gilgit Baltistan Assembly under the provisions of Article 51(3) of the G.B Order 2018; that this observation of the learned Chief Court is contrary to the provisions of section 231 & 232 of the Elections Act 2017 as neither the petitioner has been convicted by a court of competent jurisdiction nor he has been found guilty of any corrupt or illegal practice by the tribunal; that mere placing of name of the petitioner in 4th schedule under section 11-EE of the anti-Terrorism Act 1997 by the executive authorities does not debar him from the membership of G.B Assembly unless and until the conviction is recorded against him. Thus, it is submitted that by accepting the instant civil petition, the impugned remarks passed by the learned Chief Court in the judgment whereby protection/immunity was granted to respondent No. 1 from the application of penal/criminal proceedings against him may be expunged and that disqualification of respondent No.1 regarding the remaining term of G.B

Assembly may be enhanced to life time and finding of the learned Chief Court whereby direction was issued to Speaker G.B Assembly for forwarding a reference to Chief Election Commissioner in terms of Article 51 Sub-article 3 of the Government of Gilgit Baltistan Order 2018 for his disqualification from the membership of G.B assembly on account of placing his name under 4th Schedule of ATA 1997 may also be set aside.

4. On the other hand, learned counsel for the respondent No. 1 has vehemently opposed the instant civil petition on the grounds that a civil suit regarding declaration as to genuineness or otherwise of Law Degree of respondent No. 1 (Khalid Khursheed) is pending adjudication before the learned Civil Court, Islamabad; therefore, unless a declaration to that effect is passed by learned Civil Court Islamabad, no penal/criminal proceedings can be initiated against respondent No. 1; therefore, the learned Chief Court, G.B has rightly granted immunity in favor of respondent No. 1 from the application of criminal/ penal proceedings against him. It has further been contended by learned counsel for the respondent that the period of disqualification of the respondent is five years as per section 232(2) of the Elections Act 2017 which provision has been enacted through Elections (amendment) Act 2023, therefore, the stance of the petitioner regarding disqualification of the respondent for life time is totally illegal ; It has further been contended by learned counsel for the respondent that the petitioner is a member of proscribed organization and his name has been entered in the 4th Schedule under section 11-EE but he concealed this material fact from the learned Chief Court as well as at the time of contesting election for the seat of G.B Assembly therefore, learned Chief Court has rightly passed the impugned remarks against the petitioner and directed the Speaker G.B Assembly to forward a reference against the petitioner to the Chief Election Commissioner in terms of Article 51 Sub-Article 3 of the Government of Gilgit Baltistan Order 2018 for his disqualification from the membership of G.B assembly under section 231 of the Elections Act,2017 on account of placing his name under 4th Schedule of ATA 1997. Thus, it is submitted that the instant civil petition is liable to be dismissed.

5. Arguments heard. Record perused.

6. It has been noticed that Ghulam Shehzad Agha petitioner filed writ petition No.277 of 2023 before learned Chief Court seeking disqualification of respondent No.1 from the membership of G.B Assembly on the ground that he had obtained a bogus/forged degrees of LLB. Vide impugned judgment dated 04.07.2023, learned Chief Court accepted the aforesaid writ petition and disqualified the respondent No.1 from the seat of G.B Assembly in terms of section 231 of the Elections Act 2017 for the remaining term of G.B Legislative Assembly on account of retaining and using forged degree of LLB at different forums. Learned Chief Court while passing the judgment in para No.13 gave protection/immunity to respondent No.1 from the application of penal /criminal proceedings against him on account of pendency of civil suit filed by the respondent No.1 before the court of learned Civil Judge Islamabad. Learned Chief Court in para No.14 of the judgment also held that petitioner himself is a proscribed person under section 11-EE of the ATA, 1997 and his name is included in 4th schedule of the said Act by the Government but this fact was not disclosed by the petitioner at the time of contesting the election and filing the aforesaid writ petition before the Court, therefore, he is guilty of concealment of facts which prima facie establishes his disqualification under section 231 of the Elections Act 2017. The main thrust of arguments of learned counsel for the petitioner was that learned Chief Court while passing the impugned judgment was not competent to give immunity to respondent No.1 from the application of penal/criminal proceedings, if law otherwise permits such action and that disqualification of the respondent No.1 only for the remaining term of G.B Assembly is contrary to the law because the law provides the disqualification of the respondent No.1 for life time and further that petitioner is not a convicted offender and mere placing his name under 4th schedule of ATA 1997 does not debar him from disqualification from the membership of G.B Assembly unless and until the conviction is recorded against him.

7. Perusal of record reveals that Khalid Khurshid respondent No.1 was disqualified from the seat of G.B Assembly in terms of section 231 of the Elections Act 2017 on the basis of retaining and using forged degree of LLB at

different forums. This finding of the learned Chief Court is based on documentary evidence tendered by the petitioner as well as Higher Education Commission. The learned Chief Court while passing the impugned judgment categorically held that respondent No.1 made a false statement regarding his academic qualifications. Accordingly, he lacked the requisite qualification of being sagacious, righteous, non-profligate, honest and amen as prescribed in Article 62(1)(f) of the Constitution of Pakistan 1973, therefore, he comes within the ambit of corrupt practices and a person guilty of corrupt practices should be disqualified from membership of legislative assembly. Section 78 of Representation of People Act 1976 deals with Corrupt Practices, offence, penalty and procedure. The making of a false statement or submitting a false or incorrect declaration in a nomination paper filed by a candidate also amounts to the offence of 'corrupt practices' under section 78(3) (d) of the Representation of the People Act, 1976. In the cases wherein returned candidates had made a false statement in nomination papers about their education qualification, the Hon'ble Supreme Court of Pakistan has directed action to the Election Commission under section 78 of Representation of People Act 1976. Reference in this regard is placed on the case reported as *Mian Najeeb-ud-Din Owaisi vs Aamir Yar and 7-others (2011 SCMR 180)* wherein the Hon'ble Supreme Court of Pakistan observed as under:-

“S. 78—Constitution of Pakistan, Arts 62 & 63—Corrupt practices--- Election of the returned candidate to the parliament was challenged on the ground that he had procured a bogus B.A. degree and on the strength of the said bogus degree, allegedly issued by the University of Baluchistan, had successfully contested the election---Validity--- Held, that person who offered himself for an election for the seat of the Parliament or a Provincial Assembly so to represent electors of his own constituency was required to fulfill the qualification as laid down under Art. 62 of the Constitution and that he shall not suffer from any disqualification as envisaged under Art. 63 of the Constitution—In view of the facts and circumstances of the present case, the matter was required to be dealt with by Chief Election Commissioner in accordance with the provisions of Section 78, Representation of the People Act, 1976---Supreme Court directed the Chief Election Commissioner to proceed accordingly against the candidate following the observations made in the present judgment.”

Furthermore in the case reported as *Ghulam Akbar Lang vs Dewan Ashiq Hussain Bukhari and others (2012 SCMR 366)* it was categorically held by the August Supreme Court of Pakistan that disqualification clause under section 99(cc) of Representation of People Act 1976 entails penalty which is attracted only when it is established that the degree secured by a returned candidate was forged one. So far as the contention of learned counsel for the respondent No.1 that petitioner has filed the suit for Declaration pertaining to alleged fake decree of LLB against Higher Education Commission, (HEC) which is pending adjudication before the court of learned Senior Civil Judge Islamabad, therefore, unless a declaration to that effect is passed by learned Civil Court Islamabad, no penal/criminal proceedings can be initiated against respondent No. 1 is concerned, the same is without force because criminal as well as civil proceedings can run side by side and that on account of mere pendency of civil suit, the respondent No.1 is not entitled for protection/immunity from the application of penal/criminal proceedings against him. The Court can interpret the law but the court is not empowered to provide protection to any citizen from initiating penal/criminal proceedings if otherwise law permits the same. Keeping in view the facts and circumstances of the case and while seeking guidance from the aforementioned case laws, I am of the considered view that remarks/ findings passed by learned Chief Court in para No.13 of the judgment are not justified and same are against the law and facts on record. The said findings/remarks of the learned Chief Court are hereby reproduced as under:-

“On account of pendency of Civil Suit filed by the respondent in Civil Court Islamabad he is declared exempted from application of any other penal action concerning this particular matter”.

In view of the matter the aforesaid findings/remarks are hereby expunged from the judgment of the learned Chief Court.

8. So-far-as the observation of learned Chief Court pertaining to disqualification of respondent No.1 from the seat of G.B Assembly only for the remaining term of G.B Assembly is concerned, it has been noticed that this observation of the learned Chief Court is contrary to the provision of section 232(2) of the Elections (Amendment) Act 2023, promulgated on

26.06.2023. The aforesaid provision of section is reproduced as under for the sake of ready reference:-

232(2) Qualifications and disqualifications:

Notwithstanding anything contained in any other provisions of this Act, and other law for the time being in force and judgment, order or decree of any court, including the Supreme Court and a High Court, the disqualification of a person to be elected, chosen or to remain as a member of the Majlis-e-Shoora (parliament) or a Provincial Assembly under paragraph (f) of clause (1) of Article 62 of the Constitution shall be for a period not exceeding five years from the declaration by the court of law in that regard and such declaration shall be subject to the due process of law.

The aforesaid provision of section clearly prescribes a period of five years for the disqualification incurred by any judgment, order or decree of any court in terms of Article 61(1)(f) of the Constitution. The question of disqualification period of the candidates has been discussed in a renowned judgment of the Hon'ble Supreme Court of Pakistan in "*Hamza Rasheed Khan and another vs Election Appellate Tribunal, Lahore High Court, Lahore and others(PLD 2024 Supreme Court 256)*" wherein it has been held as under:

The view taken in Sami Ullah Baloch vs Abdul Karim Nausherwani (PLD 2018 SC 405) treating the declaration made by a court of civil jurisdiction regarding breach of certain civil rights and obligations as a declaration mentioned in Article 61(1) (f) of the constitution and making such declaration to have a lifelong disqualifying effect amounts to reading into Constitution and is therefore overruled.

Section (232)(2) added in the Elections Act,2017, vide the Elections (amendment) Act, 2023 promulgated on 26.06.2023, prescribes a period of five years for the disqualification incurred by any judgment, order or decree of any court in terms of Article 61(1)(f) of the Constitution and has also made such declaration subject to the due process of law. This provision is already in field, and there remains no need to examine its validity and scope in the present case.

9. Perusal of record reveals that the aforesaid provision of section was enacted through the Elections (Amendment) Act 2023, promulgated on 26.06.2023 and same was in field prior to the passing of the impugned judgment dated 04.07.2023 by learned Chief Court. Keeping in view the aforesaid provision of section and while seeking guidance from the above referred esteemed judgment, I am of the considered view that the learned

Chief Court while disqualifying the respondent No.1 from the seat of G.B Assembly for the remaining term of G.B Legislative Assembly did not comply with the mandatory provision of Section 232(2) of the Elections (Amendment) Act 2023, promulgated on 26.06.2023. In view of the matter, the observation of the learned Chief Court pertaining to disqualification of respondent No.1 from the seat of G.B Assembly for the remaining term of G.B Legislative Assembly is set aside and it is held that the period of disqualification of respondent No.1 is for five years as per spirit of section 232(2) of the Elections (Amendment) Act 2023. So far as the contention of learned counsel for the petitioner that in view of principle settled by Hon'ble Supreme Court of Pakistan in the case of *Sami Ullah Baloch vs Abdul Karim Nausherwani* (PLD 2018 S.C 405), the disqualification of the respondent No.1 is to be for life time is concerned, the same is without force because the said observation made in supra case has been overruled by the larger Bench of Hon'ble Supreme Court of Pakistan in the case reported as *Hamza Rasheed Khan and another vs Election Appellate Tribunal, Lahore High Court, Lahore and others* (PLD 2024 Supreme Court 256). The Hon'ble Supreme Court of Pakistan in this latest case, in the light of provision of section 232(2) of the Elections (Amendment) Act 2023 has settled the period of disqualification.

10. Now I would like to discuss the observation of the learned Chief Court passed in para No.14 of the judgment whereby it has been held by the Court that *"petitioner himself is a proscribed person under section 11-EE of the ATA, 1997 and his name is placed in IV Schedule of the said Act but this fact was not disclosed by the petitioner at the time of contesting the election and filing the writ petition before the Court therefore, he is guilty of concealment of facts which prima facie tends to his disqualification under section 231 of the Elections Act 2017 and in this regard Speaker G.B Assembly was directed to forward a reference against the petitioner to the Chief election Commissioner in terms of Article 51 sub-Article 3 of the Government of Gilgit Baltistan Order 2018 for his disqualification from the seat of G.B Assembly"*. The relevant sections 231 & 232 of the Elections Act 2017 are hereby reproduced as under for the sake of ready reference :-

231 Qualifications and disqualifications:-

The qualifications and disqualifications for a person to be elected or chosen or to remain a Member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly shall be such as are provided in Articles 62 and 63.

232 Disqualification on account of offences:-

Where a person has been convicted for any offence under this Act or has been found guilty of any corrupt or illegal practice by a Tribunal, he shall, if the Commission is of the view that circumstances so warrant and makes an order to that effect, be disqualified for such period not exceeding five years as may be specified in the order from being, or being elected as a Member of an Assembly, the Senate or a local government.

Qualifications and Disqualifications for membership of Majlis-e-Shoora (parliament) have been respectively provided in Articles 62 and 63 of the Constitution of Islamic Republic of Pakistan 1973, perusal of which, reveals that only Articles 63(g) and 63(h) of the Constitution attract in the case of a convict person and furthermore a person would be disqualified to contest the election inter-alia if he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan or its judiciary or defames or brings into ridicule the judiciary or the Arms Forces of Pakistan and if any person has been convicted for moral turpitude. The order under section 11-EE of ATA, 1997 is passed by the executive authority to impose some restrictions on the movement and liberty of a person and just some preventive measures are adopted by the executive authority in order to ensure law and order situation and to avoid any untoward incident which may be a criminal offence, if committed. Thus, mere placing of the name of the petitioner in the 4th Schedule of the Act, cannot be equated with the conviction mentioned in the above quoted Article of the Constitution because the conviction is a sentence either an imprisonment or fine which is imposed after framing the charge, recording of evidence of the parties and also recording the stance of the accused in his defence. Consequently an order passed under section 11-EE of the Act cannot be equated with conviction, therefore, this Court has reason to believe that mere inclusion of name of the petitioner in 4th Schedule of ATA, 1997, it cannot be held that he had worked against the

integrity of the country or ideology of Pakistan and is no ground for his disqualification under section 231 of the Elections Act 2017. Keeping in view the facts and circumstances of the case, this court has reason to believe that the case of the petitioner does not come within the ambit of corrupt practices, therefore the observations of the learned Chief Court passed in para No.14 of the judgment to the extent of the petitioner are not sustainable in the eyes of law. The said findings/observations of the learned chief Court are hereby reproduced as under:-

It has been held by the Chief court that petitioner himself is a proscribed person under section 11-EE of the ATA, 1997 and his name is placed in IV Schedule of the said Act but this fact was not disclosed by the petitioner at the time of contesting the election and filing the writ petition before the Court, therefore, he is guilty of concealment of facts which prima facie tends to his disqualification under section 231 of the Elections Act 2017 and in this regard Speaker G.B Assembly was directed to forward a reference against the petitioner to the Chief Election Commissioner in terms of Article 51 sub-Article 3 of the Government of Gilgit Baltistan Order 2018 for his disqualification from the seat of G.B Assembly”

In view of the matter the aforesaid findings/observations of the learned Chief Court are hereby set aside.

11. With these modification in the impugned judgment dated 04.07.2023 passed by learned Chief Court, the instant Civil Appeal stands disposed of in the above terms.

Justice Sardar Muhammad Shamim Khan
Chief Judge