

P L D 2024 Supreme Court 256

Present: Qazi Faez Isa, C.J., Syed Mansoor Ali Shah, Yahya Afridi, Amin-ud-Din Khan, Jamal Khan Mandokhail, Muhammad Ali Mazhar and Musarrat Hilali, JJ

HAMZA RASHEED KHAN and another---Appellants

Versus

ELECTION APPELLATE TRIBUNAL, LAHORE HIGH COURT, LAHORE and others---Respondents

Civil Appeals Nos. 982, 984 of 2018, 880 of 2015, C.M.As. Nos. 6370, 7534 of 2017 in Civil Appeal No. 880 of 2015, Civil Appeal No. 1946 of 2023, Civil Petition for Leave to Appeal No. 2680 of 2023, Civil Appeal No. 981 of 2018, C.M.As. Nos. 10919, 10920, 10921, 10939 of 2023, 2, 3, 4, 5, 6, 13 and 18 of 2024 in Civil Appeal No. 981 of 2018, Civil Appeal No. 985 of 2018, C.M. Appeals Nos. 22, 135 of 2022 in C.P. Nil of 2022 and Constitution Petition No. 40 of 2022, decided on 8th January, 2024.

Per Qazi Faez Isa, CJ., Syed Mansoor Ali Shah, Amin-ud-Din Khan, Jamal Khan Mandokhail, Muhammad Ali Mazhar and Musarrat Hilali, JJ.; Yahya Afridi, J. dissenting [Majority view]

Constitution of Pakistan---

---Arts. 10A, 17 & 62(1)(f)---Elections Act (XXXIII of 2017), S. 232(2)---Disqualifications for membership of Majlis-e-Shoora (Parliament)---Life time disqualification under Article 62(1)(f) of the Constitution---Constitutionality---Interpretation of Article 62(1)(f) of the Constitution in imposing a lifetime disqualification upon a person through an implied declaration of a court of civil jurisdiction while adjudicating upon some civil rights and obligations of the parties is beyond the scope of the said Article and amounts to reading into the Constitution---View taken in the case reported as Sami Ullah Baloch v. 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 62(1)(f) of the Constitution and making such declaration to have a lifelong disqualifying effect amounts to reading into the Constitution and is therefore overruled.

Per Qazi Faez Isa, CJ., Syed Mansoor Ali Shah, Amin-ud-Din Khan, Jamal Khan Mandokhail, Muhammad Ali Mazhar and Musarrat Hilali, JJ [Majority view]:

i. Article 62(1)(f) of the Constitution is not a self-executory provision as it does not by itself specify the court of law that is to make the declaration mentioned therein nor does it provide for any procedure for making, and any period for disqualification incurred by, such declaration.

ii. There is no law that provides for the procedure, process and the identification of the court of law for making the declaration mentioned in Article 62(1)(f) of the Constitution and the duration of such a declaration, for the purpose of

disqualification thereunder, to meet the requirements of the Fundamental Right to a fair trial and due process guaranteed by Article 10A of the Constitution.

iii. The interpretation of Article 62(1)(f) of the Constitution in imposing a lifetime disqualification upon a person through an implied declaration of a court of civil jurisdiction while adjudicating upon some civil rights and obligations of the parties is beyond the scope of the said Article and amounts to reading into the Constitution.

iv. Such reading into the Constitution is also against the principle of harmonious interpretation of the provisions of the Constitution as it abridges the Fundamental Right of citizens to contest elections and vote for a candidate of their choice enshrined in Article 17 of the Constitution, in the absence of reasonable restrictions imposed by law.

v. Until a law is enacted to make its provisions executory, Article 62(1)(f) of the Constitution stands on a similar footing as Article 62(1)(d), (e) and (g), and serves as a guideline for the voters in exercising their right to vote.

vi. The view taken in *Sami Ullah Baloch v. 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 62(1)(f) of the Constitution and making such declaration to have a lifelong disqualifying effect amounts to reading into the Constitution and is therefore overruled.

vii. Section 232(2) added in the Elections Act, 2017, vide the Elections (Amendment) Act, 2023 promulgated on 26 June 2023, prescribes a period of five years for the disqualification incurred by any judgment, order or decree of any court in terms of Article 62(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.

Sami Ullah Baloch v. Abdul Karim Nausherwani PLD 2018 SC 405 overruled.

Per Yahya Afridi, J. dissenting [Minority view]:

The extent of lack of qualification of a member of the Parliament, as envisaged under Article 62(1)(f) of the Constitution is neither lifelong nor permanent, and the same shall remain effective only during the period the declaration so made by a Court of law remains in force. Therefore, the conclusion so drawn by the Supreme

Court in Sami Ullah Baloch v. Abdul Karim Nousherwani (PLD 2018 SC 405) is legally valid, hence affirmed.

Sami Ullah Baloch v. Abdul Karim Nausherwani PLD 2018 SC 405 affirmed.

For the Appellants:

M. Saqib Jilani, Advocate Supreme Court (C.As. Nos. 981 and 985 of 2018).

Kamran Murtaza, Sr. Advocate Supreme Court (in C.A. No. 982 of 2018).

Sh. Usman Karim-ud-Din, Advocate Supreme Court (in C.A. No. 984 of 2018).

M. Ahmed Qayyum, Advocate Supreme Court (in C.A. No. 880 of 2015)

Waleed Rehan Khanzada, Advocate Supreme Court (in C.A. No. 1946 of 2023)

Syed Asghar Hussain Sabzwari, Sr. Advocate Supreme Court (in C.P. No. 2680 of 2023).

Saeed Khurshid Ahmed, Advocate Supreme Court (in Const. P. No. 40 of 2022).

Syed Ali Imran, Advocate Supreme Court/Secy. SCBA, Anis Muhammad Shahzad, Advocate-on-Record (in C.M. Appeal No. 22 of 2022).

Mir Aurangzeb, Advocate-on-Record (in C.M. Appeal No. 135 of 2022).

For the Applicants:

Nemo. (in C.M.A. No. 10919 of 2023).

Ch. Akhtar Ali, Advocate-on-Record (in C.M.A. No. 10920 of 2023).

Khurram Mahmood Qureshi, Advocate Supreme Court (in C.M.A. No. 10921 of 2023).

Dil Muhammad Khan Alizai, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record (in C.M.A. No.10939 of 2023).

Mian Abdul Rauf, Advocate Supreme Court (in C.M.A. No. 3 of 2024).

Shoukat Hayat, Advocate Supreme Court (in C.M.A. No.4 of 2024).

M. Anwar Malik, Advocate Supreme Court/Advocate-on-Record (in C.M.A. No. 5 of 2024).

M. Makhdoom Ali Khan, Sr. Advocate Supreme Court, Saad Mumtaz Hashmi, Advocate Supreme Court, Sikandar Bashir Mohmand, Advocate Supreme Court,

Barrister Imran Khan and Hamza Azmat Khan, Advocates (in C.M.A. No. 6 of 2024).

Ch. Munir Sadiq, Advocate Supreme Court and Syed Ali Imran, Advocate Supreme Court (in C.M.A. No.18 of 2024).

For the Respondents:

Khalid Ibn-e-Aziz, Advocate Supreme Court for Respondent No.1 (in C.A. 981 of 2018).

Nemo for Respondent No.3 (in C.A. No. 982 of 2018).

Nemo for Respondent No.1 (in C.A. No. 984 of 2018).

Nemo for Respondent No.2 (in C.A. 880 of 2015).

Barrister Khuram Raza, Advocate Supreme Court for Respondent No.3 (in C.A. No. 880 of 2015).

On Court's Notice:

For the Federation

Mansoor Usman Awan, Attorney-General for Pakistan.

Ch. Aamir Rehman, Addl. AGP.

Malik Javed Iqbal Wains, Addl. AGP and Raja M. Shafqat Abbasi, D.A.G.

For Government of Punjab:

Khalid Ishaq, Advocate-General, Punjab.

Sana Ullah Zahid, Addl. A.G. Punjab.

Wasim Mumtaz, A.A.G., Punjab.

For Government of Sindh:

Hassan Akhtar, A.G. Sindh.

Suresh Kumar, A.A.G. Sindh (through video-link, Karachi).

For Government of K.P:

Amir Javed, Advocate-General and Sultan Mazhar Sher Khan, A.A.G. Khyber Pakhtunkhwa.

For Government of Balochistan:

Ayaz Khan Swati, Additional Advocate-General, Balochistan.

For Islamabad Capital Territory:

Ayaz Shaukat, Advocate-General, Isb.

For ECP:

Muhammad Arshad, D.G. (Law) ECP and

Falak Sher, Legal Consultant, ECP.

Amici Curiae:

Uzair Karamat Bhandari, Advocate Supreme Court, Faisal Siddiqi, Advocate Supreme Court and Ms. Reema Omer, who submitted amicus brief in writing.

Dates of hearing: 2nd, 4th and 5th January 2024.

ORDER OF THE COURT

For the reasons to be recorded later and subject to amplifications and explanations made therein, by a majority of 6 to 1 (Yahya Afridi, J. dissenting), it is

decided and declared that:

- i. Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan ("Constitution") is not a self-executory provision as it does not by itself specify the court of law that is to make the declaration mentioned therein nor does it provide for any procedure for making, and any period for disqualification incurred by, such declaration.
- ii. There is no law that provides for the procedure, process and the identification of the court of law for making the declaration mentioned in Article 62(1)(f) of the Constitution and the duration of such a declaration, for the purpose of disqualification thereunder, to meet the requirements of the Fundamental Right to a fair trial and due process guaranteed by Article 10A of the Constitution.
- iii. The interpretation of Article 62(1)(f) of the Constitution in imposing a lifetime disqualification upon a person through an implied declaration of a court of civil jurisdiction while adjudicating upon some civil rights and obligations of the parties is beyond the scope of the said Article and amounts to reading into the Constitution.
- iv. Such reading into the Constitution is also against the principle of harmonious interpretation of the provisions of the Constitution as it abridges the Fundamental Right of citizens to contest elections and vote for a candidate of their choice enshrined in Article 17 of the Constitution, in the absence of reasonable restrictions imposed by law.
- v. Until a law is enacted to make its provisions executory, Article 62(1)(f) of the Constitution stands on a similar footing as Article 62(1)(d), (e) and (g), and serves as a guideline for the voters in exercising their right to vote.
- vi. The view taken in *Sami Ullah Baloch v. 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 62(1)(f) of the Constitution and making such declaration to have a lifelong disqualifying effect amounts to reading into the Constitution and is therefore overruled.
- vii. Section 232(2) added in the Elections Act, 2017, vide the Elections (Amendment) Act, 2023 promulgated on 26 June 2023, prescribes a period of five years for the disqualification incurred by any judgment, order or decree of any court in terms of Article 62(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.

2. Consequently, the present civil appeals and petitions are decided in the following terms:

- i. Civil Appeal No. 982/2018 is allowed to the extent of the appellant's disqualification to contest elections on the ground stated in the impugned

order of the Lahore High Court, dated 6 July 2018, passed in Writ Petition No. 22429/2018, which to that extent is set aside;

- ii. Civil Appeal No. 984/2018, which has impugned the order of the Lahore High Court, dated 11 July 2018, passed in Writ Petition No. 222868/2018 whereby the respondent's nomination papers were ordered to be accepted and the Returning Officer was directed to include his name (Fazal Mehmood) in the list of eligible candidates, is dismissed;
- iii. Civil Appeal No. 880/2015, which has impugned the judgment of the Election Tribunal, Multan, Punjab, dated 21 August 2015, whereby the election of the appellant (Ch. Muhammad Arif Hussain) as returned candidate in respect of General Elections held on 11 May 2013 was declared as void and the Election Commission of Pakistan was directed to hold fresh elections which were held and the term of the said assemblies has expired, is disposed of as having become infructuous;
- iv. Civil Appeal No. 1946/2023, which has impugned the order of the High Court of Sindh, dated 19 October 2023, passed in Constitution Petition No. 1082/2023 whereby the appellant's prayer for declaring him to be eligible to contest the upcoming elections was disposed of with the observation that the same would be decided at the appropriate stage if his nomination papers were rejected, is disposed of in view of the above declarations; and
- v. Civil Petition for Leave to Appeal No. 2680/2023 is converted into an appeal and allowed to the extent of the appellant's disqualification to contest elections on the ground stated in the impugned order of the Lahore High Court, dated 4 May 2023, passed in Writ Petition No. 27043/2023, which to that extent is set aside.

3. Learned Syed Ali Imran, the Secretary of the Supreme Court Bar Association ('SCBA'), stated that the SCBA sought to withdraw C.M. Appeal No. 22/2022 and Constitution Petition filed in 2022, which was under objection and not numbered, therefore, the said appeal and petition are dismissed as withdrawn. Civil Appeals Nos. 981 and 985/2018, C.M. Appeal No. 135/2022 in C.P. No. NIL/2022 and Constitution Petition No. 40 of 2022 are de-listed, which shall be posted for hearing separately before appropriate Benches.

Sd/-
Chief Justice
Sd./- Sd/-
Judge Judge
Sd./- Sd/-
Judge Judge
Sd./- Sd/-
Judge Judge

YAHYA AFRIDI, J.---With profound respect, I disagree. For reasons to follow, the extent of lack of qualification of a member of the Parliament, as envisaged under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973, is neither lifelong nor permanent, and the same shall remain effective only during the

period the declaration so made by a Court of law remains in force. Therefore, the conclusion so drawn by this Court in Sami Ullah Baloch v. Abdul Karim Nousherwani (PLD 2018 SC 405) is legally valid, hence affirmed.

MWA/H-1/SC Order accordingly.