

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No. D-433 of 2020
C.P No. D-507 of 2020

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

For hearing of main case.

17.09.2020

Iqbal Kazmi petitioner in person in C.P No. D-433 of 2020.
Mr. Mamoon A.K Shirwani, advocate holds brief for Mr. Amir Mansoob Qureshi, advocate for the petitioner in C.P No. D-507 of 2020.
Mr. Salman Talibuddin, Advocate General, Sindh.
Mr. Shehriyar Mahar, A.A.G.
Mr. Yahya Iqbal, advocate for respondent No.5.
Mr. Fawad Kitchi, advocate
Mr. Raza Mian, Focal Person, I.G.P Sindh.

Per petitioner, appearing in person, certain allegations have been levelled, in the present petitions, against respondents/s, being sitting members of the Provincial Assembly of Sindh, and formation of a JIT is sought to determine the veracity of such allegations; where after disqualification of the said respondents has been sought from holding office.

The attention of the Court is drawn to the Article 225, which states that no election to the house or a provincial assembly shall be called into question except by an election petition presented to such tribunal and in such manner as may be determined by an act of Parliament¹. However, we are aware that the bar contained in Article 225 is not absolute and may be displaced under Article 199(1)(b)(ii) and/or Article 184(3)². In recent pronouncements the honorable Supreme Court has held / reiterated that facts about disqualification of a member of a house must be based on affirmative evidence and not upon presumptions, inferences and surmises³ and that interference may only be contemplated in the presence of admitted facts and / or irrefutable direct evidence available on the record to justify disqualification⁴. It has been maintained that settlement of factual⁵ issues was discouraged in the exercise of Constitutional jurisdiction; and that the court may not take such a task upon itself⁶.

In view hereof we consider it appropriate to frame the following preliminary question for determination:

¹ Representation of People Act 1976; repealed and replaced by the Elections Act 2017.

² *Malik Shakeel Awan vs. Sheikh Rasheed Ahmed & Others* reported as *PLD 2018 Supreme Court 643*.

³ Per *Umar Ata Bandial J. in Muhammad Siddiq Baloch vs. Jahangir Khan Tareen & Others* reported as *PLD 2016 Supreme Court 97*.

⁴ Per *Ijaz ul Ahsan J. in Imran Ahmed Khan Niazi vs. Muhammad Nawaz Sharif* reported as *PLD 2017 Supreme Court 265*.

⁵ *2015 PLC 45 & 2015 CLD 257*.

⁶ Per *Faisal Arab J. in Khawaja Muhammad Asif vs. Muhammad Usman Dar* reported as *PLD 2018 Supreme Court 2128*.

“Whether the present petition can be maintained / entertained in view of the bar contained in Article 225 of the Constitution?”

Learned Advocate General, Sindh has filed a statement, copy whereof has been supplied to Mr. Mamoon A.K Shirwani, advocate. To come up on 14.10.2020.

The office is directed to place a copy hereof in the connected matter listed above.

JUDGE

JUDGE

TariqAli/PA