

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Yousuf Ali Sayeed and Agha Faisal, JJ.**

CP D-6006 of 2018 : Pak Sarzameen Party
vs. E.C.P. & Others

For the Petitioner : Mr. Hassan Sabir, Advocate

Date of hearing : 21.09.2020

Date of announcement : 21.09.2020

ORDER

Agha Faisal, J. The Petitioner has been levelled certain allegations with respect to the conduct of the General Elections 2018 and seeks *inter alia* a forensic investigation into the allegations; a declaration that the 2018 elections may be declared *void ab initio*; and directions that the notifications of respondent nos. 11 to 73, said to be members of the national / provincial assemblies, be withdrawn and fresh elections be ordered in the respective constituencies.

2. At the very onset the learned counsel for the petitioner was required to address the Court with respect to the maintainability of the petition, in view of the bar contained in 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.

Per learned counsel, the petitioner was entitled to maintain the petition and seek the required relief within the ambit of Article 199, hence, argued that his claims may be ascertained in the manner sought and appropriate relief granted as a consequence of such an exercise.

3. It is noted that Article 225 places a constitutional bar upon calling elections to the house or provincial assembly into question. However, we are aware that the bar contained in Article 225 is not absolute and may be displaced² under Article 199(1)(b)(ii) and/or Article 184(3)³. 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 surmises⁴ and that interference may only be contemplated in the presence of admitted facts and / or irrefutable direct evidence available on the record to justify disqualification⁵. It has been maintained that settlement of factual⁶ issues was discouraged in the exercise of Constitutional jurisdiction; and that the court may not take such a task upon itself⁷.

¹ Representation of People Act 1976; repealed and replaced by the Elections Act 2017.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 Being the prerogative of the august Supreme Court.

⁴ Per *Umar Ata Bandial J. in Muhammad Siddiq Baloch vs. Jahangir Khan Tareen & Others* reported as *PLD 2016 Supreme Court 97*.

⁵ Per *Ijaz ul Ahsan J. in Imran Ahmed Khan Niazi vs. Muhammad Nawaz Sharif* reported as *PLD 2017 Supreme Court 265*.

⁶ *2015 PLC 45 & 2015 CLD 257*.

⁷ Per *Faisal Arab J. in Khawaja Muhammad Asif vs. Muhammad Usman Dar* reported as *PLD 2018 Supreme Court 2128*.

4. The petitioner itself seeks a forensic investigation to determine the authenticity (or otherwise) of its allegations, hence, it is *prima facie* apparent that there are no admitted facts and / or irrefutable direct evidence available on the record. It is thus observed that the present petition does not qualify within the ambit of Article 199(1)(b)(ii) in view of the principles of law settled by the honorable Supreme Court.

No justification was articulated to support the petitioner's plea for this Court to initiate an inquiry, forensic or otherwise, when the law, as cited *supra*, specifically discourages such an exercise within the ambit of the writ jurisdiction.

5. Learned counsel was specifically queried as to whether the respective candidates, of the petitioner, had preferred election petitions to challenge the election of the returned candidates, de-notification whereof was sought *vide* the present petition, upon ground inclusive of those invoked herein. The query answered unequivocally in the negative.

6. Article 199 specifically stipulates that jurisdiction is to be entertained upon invocation by an aggrieved⁸ person, an exception in such regard being a *writ of quo warranto*, however, this petition is not seeking such a writ. Learned counsel for the petitioner has been unable to articulate to this Court as to how the petitioner was aggrieved by the conduct of the electoral process when none of its unsuccessful candidates were similarly aggrieved, since no election petitions were instituted per admission of learned counsel.

7. In view of the reasoning and rationale herein contained, we are of the considered view that the petitioner has been unable to set forth a case for the exercise of extra ordinary Constitutional jurisdiction by this Court, hence, this petition is hereby dismissed.

JUDGE

JUDGE

⁸ 2019 SCMR 1952.