

SENATE APPELLATE TRIBUNAL, SINDH HIGH COURT OF SINDH AT KARACHI

Election Appeal 04 of 2021

Ghulam Mustafa Memon

VS.

Election Commission of Pakistan & Others

For the Appellant : Mr. Rasheed A. Razvi, Advocate
Mr. Tahmasp A. Razvi, Advocate
Mr. Abbas Rasheed Razvi, Advocate
Mr. Nabeel Ahmed Khan, Advocate
Mr. Afab Aman, Advocate

For the Respondent : Mr. Haider Waheed, Advocate
Mr. Ahmed Masood, Advocate

Date of hearing : 22.02.2021

Date of announcement: 22.02.2021

JUDGMENT

Agha Faisal, J. The present appeal has been filed assailing the Order of the learned returning officer (“RO”) dated 18-02-2021 (“Impugned Order”), whereby the nomination form of the respondent no. 3 was accepted with respect to candidature for election to the Senate, from the Province of Sindh, on a technocrat seat. It is considered illustrative to reproduce the pertinent constituent of the Impugned Order herein below:

“3. The candidate was further asked for his qualification in terms of Section 2 (XXXIV) *ibid* which requires sixteen years of education as well as twenty years of experience with record of achievements at national or international level. In reply whereof, the candidate informed that he obtained the degree of B.E (Civil) from Mehran University of Engineering & Technology, Jamshoro in 1991. As mentioned at para “G” of the affidavit annexed to the nomination form, which proves that he possesses the requisite education. While describing his achievements at national level, he briefed that as a professional Engineer / Chief Executive Officer of Qalandar Bux Abro and Company, he made several contributions in construction of various flyovers and structures in different cities of the country. The detailed account of said achievements are available on record.

4. Having heard from both the parties present, and after examining nomination form and other material available on record, I am of the view that the above-referred objectors do not qualify to raise the objections in light of the section 112 (1 & 2) *ibid*, hence the same are dismissed. Moreover, keeping in view the educational qualification as well as professional achievements made by the candidate in the field of construction and engineering, I am of the considered opinion that the candidate Mr. Saifullah Abro he is qualified to contest election of Senate as Technocrat. His nomination papers are hereby accepted.’

Respective arguments

2. Per appellant's learned counsel, the Impugned Order was untenable; hence, ought to be set aside. The appellant's plea was predicated primarily on the grounds that the respondent does not qualify within the statutory definition of technocrat; the only achievement placed before the RO was a certificate dated 01.01.2020, issued to a firm for completion of some project, and the same cannot be considered a national or an international achievement of the respondent; the affidavit in respect of family, assets and liability is at variance to an affidavit submitted in 2018.

3. The respondent no. 3's learned counsel supported the Impugned Order and submitted that it merited no interference in appeal. The defense of the Impugned Order was rested on the basis that the present appeal is not maintainable per section 113(1) of the Election Act, 2017 ("Act") and no other provision of the law can be read in a manner to render another provision of the statutory stipulation as redundant; the respondent no. 3 has duly completed the relevant educational requirements and the achievements are demonstrated by completion of 13 construction projects within a period of 20 years; the allegations with respect to the dependents, assets and liabilities are unmerited as in the first instance they would require detailed scrutiny in appreciation of evidence; however, in any event the divergence between two affidavits is predicated upon the three years' intervening period, in respect whereof all the relevant documentation is available.

4. This Tribunal has considered the arguments articulated by the learned counsel and surveyed the law / record to which its attention was solicited. The question hereby framed for determination is whether the Impugned Order can be sustained under the law, as articulated vide the Act 2017 and the rules, the Election Rules 2017 ("Rules"), made there under.

Ambit of the law

5. This tribunal is constituted¹ to adjudicate appeals with respect to the acceptance or rejection of candidature, in respect of senate elections, by a learned returning officer². The appeal is required to be decided summarily³

¹ 113 (1) A candidate or an objector may, within the time specified by the Commission, file an appeal against the decision of the Returning Officer rejecting or, as the case may be, accepting a nomination paper to the Tribunal constituted for the purpose consisting of a person who is a Judge of a High Court, appointed by the Commission in consultation with the Chief Justice of the High Court concerned.

² 105. For the purpose of an election to the Senate, the Commission shall appoint a Returning Officer for each Province, ... and shall also appoint such number of Polling Officers to assist the Returning Officer as it may consider necessary.

and announcement of fixation thereof, *inter alia* via the media, is deemed to be sufficient notice of the date and time so appointed⁴. The domain of this determination is enunciated per section 113(3)⁵ of the Act.

6. In so far as the definition of technocrat is concerned the honorable Supreme Court has illumined that for determination of eligibility of candidature, in such pre-electoral matters; the record of achievements was to be subjected to the anvil of whether the same was nationally or internationally recognized⁶.

Maintainability

7. In the present facts and circumstances first issue to consider is the maintainability of the appeal since the respondent's counsel has invoked section 113(1) of the Act in an effort to non-suit the appellant.

On the contrary, learned counsel for the appellant had relied upon sections 112 and 113(3) to argue that the appellant was an objector before the RO, hence, is entitled to maintain present appeal.

These proceedings are of a summary nature and a detailed discourse into the respective arguments, harmonizing the individual constituents of the law, may be appropriately eschewed presently. However, it is clear that section 113(3) of the Act empowers this Tribunal to consider the issue of nomination of candidate on the basis of any information, material coming to its knowledge by any source. In view hereof, the objection to maintainability is not sustained and the matter shall be considered on merit.

Merits

8. The basic issue is with respect to the alleged non-conformity of the respondent within the definition of technocrat, per section 2(xxxix) of the Act, which is reproduced herein below:

³ 113 (2) An appeal filed under sub-section (1) shall be summarily decided within such time as may be notified by the Commission and any order passed on the appeal shall be final. Although Rule 100(5) of the Rules contemplates a discretionary inquiry. Per *Akhtar Zaman Maghlani J (as he then was) in Nawabzada Mir Balach Khan Marri vs. Mir Mohabbat Khan Marri & Others* reported as *PLD 2003 Quetta 42*.

⁴ 113 (4) Announcement of the day and time appointed for the hearing of an appeal under this section over the radio or television or by publication in the newspaper shall be deemed to be sufficient notice of the day and time so appointed.

⁵ 113(3) If, on the basis of information or material coming to its knowledge by any source, a Tribunal constituted under sub-section (1) is of the opinion that a candidate whose nomination paper has been accepted is a defaulter of loans, taxes, government dues and utility expenses or has had any loan written off or has willfully concealed such fact or suffers from any other disqualification from being elected as a Member of the Senate, it may, on its own motion, call upon such candidate to show cause why his nomination papers may not be rejected, and if the Tribunal is satisfied that the candidate is actually a defaulter or has had a loan written off or suffers from any disqualification, it may reject the nomination paper of the candidate.

⁶ Per *Shafiur Rehman J (as he then was) in Sh. Ihsanul Haq Piracha vs. Wasim Sajjad & Others* reported as *2003 SCMR 145*.

“technocrat means a person who

(a) holds a degree requiring conclusion of at least sixteen years of education recognized by the Higher Education Commission; and

(b) has at least twenty years of experience including a record of achievement at the national or international level;”

9. There appears to be three integral constituents of this definition; holding a degree requiring conclusion of 16 years education recognized by the High Education Commission (“HEC”); 20 years of experience; and record of achievement at the national or international level. This Tribunal will endeavor to consider each respective aspect individually.

10. In so far as the educational qualification is concerned, the record demonstrates that the respondent qualified as a civil engineer. Appellant’s counsel articulated no cavil with respect to the requisite period of education, however, argued that the degree certificates themselves had not been certified by the HEC.

It is the duty of the HEC to accredit and certify educational institutions, both foreign and domestic. There is no cavil articulated before this Tribunal to suggest that the university, from which the respondent obtained his qualifications, was not accredited with the HEC. On the contrary, learned counsel for the respondent has demonstrated from the record that based upon the educational credentials, the respondent has also obtained registration with the Pakistan Engineering Council, which could not have been done if the credentials were suspect.

It is, thus, observed that this first facet of the definition of technocrat, per section 2(xxxix)(a) of the Act appears to have been complied with.

11. Proceeding to the second facet, being experience, attention was drawn to the nomination papers, wherein the experience of the respondent is stated. It is manifest there from that the respondent has over 20 years of experience in a field to which his educational qualifications pertained. Therefore, the second aspect of the relevant definition appears also to be satisfied.

12. The final aspect to consider is whether the respondent demonstrated a suitable record of achievements, at the national or international level, before the RO to qualify him for candidature to the technocrat seat of the Senate.

Learned counsel for the appellant had referred to the performance certificate issued in the name of a firm and submitted that this was only document placed before the RO in such regard.

On the contrary, learned counsel for the respondent has placed a booklet⁷, wherein it is shown that 13 civil works projects were completed by the relevant firm within a span of 20 years and that in itself qualifies as a national achievement, hence, entitling the respondent to qualify as a candidate.

13. There are several seats in respect whereof election may be sought to the Senate and while there is no significant achievement qualification requirement for a general seat, the same is not that the case with technocrat seat. The statutory definition specifically mandates that a candidate, in addition to the other requirements, should have a record of achievement at the national or international level.

14. Even if the record of Qalander Bux Abro and Co, completing 13 construction projects, is accepted, it is the record of that entity itself and not that of the respondent personally and nothing has been articulated before this Tribunal to suggest the completion of these projects is an achievement of respondent himself.

Even though the learned counsel for the appellant has argued that there is no corroboration from the record that this booklet was ever submitted before the RO, it is considered appropriate to observe that the list of 13 projects is *para materia* to the one certificate which is on record, demonstrating that the firm had completed a project within a certain time. The completion of any contract within the stipulated time can only be lawfully expected and mere compliance of a contractual obligation, by a third party, cannot be considered an achievement at an national or international level.

15. It is manifest from the record that no record of any achievement, of the respondent no. 3, at an inter / national level was placed before the RO and none has been placed before this Tribunal. In view hereof, the acceptance of the relevant nomination form appears to be in direct violation of section 2(xxxix)(b) of the Act, hence, cannot be sustained.

⁷ stated to have been provided to the RO, however, no record of that is available before this Tribunal.

Conclusion

16. In view of the reasoning and rationale herein contained, this Tribunal is of the deliberated view that acceptance of that Impugned Order was contrary to the law; hence, this appeal is allowed and candidature / nomination form of the respondent no. 3 is hereby rejected.

17. The office is hereby instructed to convey a copy hereof to the learned returning officer, in *mutatis mutandis* application of Rule 54(5) read with Rule 100(6) of the Rules, forthwith.

JUDGE

Khuhro/PA