

# SENATE APPELLATE TRIBUNAL, SINDH HIGH COURT OF SINDH AT KARACHI

Election Appeal 10 of 2021

*Yasha Ullah Khan Afghan*

vs.

*Election Commission of Pakistan & Another*

For the Appellant : Mr. Yasha Ullah Khan Afghan  
In Person

For the Respondents : Mr. Abdullah Hinhrah,  
Law Officer - Election Commission of Pakistan

Date of hearing : 23.02.2021

Date of announcement : 23.02.2021

## 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 appellant was rejected with respect to candidature for election to the Senate, from the Province of Sindh, for a technocrat seat. It is considered illustrative to reproduce the Impugned Order herein below:

"Mr. Yashaullah Khan Afghan filed his nomination papers on 15-02-2021 to contest the Senate election for the seat of technocrat. The date of scrutiny was fixed on 18-02-2021 at 4:50 PM. Mr. Yashaullah Khan appeared before the undersigned for the scrutiny of his nomination form on given date and time along with his proposer and seconder. During the scrutiny, it was found that the candidate does not fulfill the qualification to contest the Senate Election for the category of Technocrat as defined in sub section (xxxix) (a) and (b) of section 2 of the Election Act, 2017. Hence, the nomination form of Mr. Yashaullah Afghan is hereby rejected."

### *Respective arguments*

2. Per the appellant, he is graduate in the computer engineering and has completed the requisite 16 years education requirement; the experience of the appellant, in matters commensurate to his degree, are available on file and the appellant has experience in such regard since 1995; a list of national and international achievement was also placed before the RO, however, the uncontroverted record was not considered and the Impugned Order was passed in perfunctory manner; hence, ought to be set aside.

3. Mr. Abdullah Hinjrah submitted that in the nomination form, the appellant has only mentioned his Matric qualification, however, his college degree was presented before the RO in its original form. It was further added that mere consideration of the degree of the appellant does not demonstrate whether 16 years educational requirement has been satisfied or otherwise. No cavil was articulated with respect to the veracity of the matriculation, intermediate and graduation certificates of the appellant.

#### *Ambit of the law*

4. This tribunal is constituted<sup>1</sup> to adjudicate appeals with respect to the acceptance or rejection of candidature, in respect of senate elections, by a learned returning officer<sup>2</sup>. The appeal is required to be decided summarily<sup>3</sup> and announcement of fixation thereof, *inter alia* via the media, is deemed to be sufficient notice of the date and time so appointed<sup>4</sup>. The domain of this determination is enunciated per section 113(3)<sup>5</sup> of the Act.

5. There is a myriad of guidance from the Superior Courts with regards to consideration of the eligibility of candidature in such pre-electoral matters; *inter alia* that it may be inopportune to disenfranchise a candidate at the pre-electoral stage as it would deprive him of candidature, even if subsequently found to be qualified<sup>6</sup>; matters requiring detailed inquiry / evidence could better determined in post-election proceedings<sup>7</sup>; and in the presence of a plausible explanation for any non-disclosure, acknowledgment whereof would not have entailed ineligibility, candidature may not be denied<sup>8</sup>.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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*.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> Per *Qazi Muhammad Farooq J (as he then was) in Waqas Akram vs. Dr. Muhammad Tahirul Qadri & Others* reported as *2003 SCMR 145*; Per *Ajmal Mian J (as he then was) in Ghulam Mustafa Jatoi vs. ADJ / RO NA 158 Naushahro Feroze & Others* reported as *1994 SCMR 1299*; 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*.

<sup>7</sup> Per *Ajmal Mian J (as he then was) in Rafiq Haider Khan Leghari vs. Election Tribunal & Others* reported as *PLD 2003 Quetta 42*.

<sup>8</sup> Per *Amir Hani Muslim J (as he then was) in Murad Bux vs. Karim Bux & Others* reported as *2016 SCMR 2042*; *Illahi Bux Soomro vs. Aijaz Ali Jakhrani & Others* reported as *2004 CLC 1060*.

*Application of the law to the present lis*

6. The premise for the rejection of the appellant's candidature is with respect to his qualification within the definition of technocrat, per section 2(xxxix) of the Act, which is reproduced herein below:

"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;"

7. There appear 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.

8. The nomination form does in fact only refers to the matriculation of the appellant, however, it has been submitted that the said stipulation was annotated on a misapprehension that only the basic qualification was required to be stated in the form. It is however apparent from the record that the intermediate certificate of the appellant was also filed along with the certificate conferring the subsequent Bachelor of Computer Science degree upon the appellant. The appellant also placed on record an excerpt from the HEC website, veracity whereof was admitted by the ECP law officer, demonstrating that the university which granted the appellant his degree was a constituent of the educational institutions listed by the HEC under the US-Pakistan Knowledge Corridor (QS Global Ranked & Land-Grant Universities). Since no cavil has been articulated with respect to the veracity of the documentation under consideration, hence, the only question that remains is the aggregation of the time spent in such regard.

It was stated that the bachelor degree from United States is a four years program and the pre-requisite in respect thereof is a 12 years prior education, being the aggregate time required in the United States to complete high school. The certification on record demonstrates three certificates i.e. matriculation, intermediate and graduation, aggregating into 16 years and there is nothing on the record to dispel this notion.

9. The appellant has stated to have been working, in the field commensurate with his qualifications, since 1995, and the particulars thereof

are listed from the page 61 onwards of this file. In such regard, the experience requirement also appears to have been satisfied.

10. In so far as the achievements at the national and international level are concerned, the attention of this Tribunal was drawn to the documentation available, whereby, *inter alia*, it was demonstrated that the appellant was the architect of a “digital” health care cloud information network enabling integration and interoperability of real-time, life-critical data via HIE network to unite patients, physicians, providers, hospitals, clinics, imaging centers, laboratories, pharmacies and government across UAE; led the digital transformation in Fintech PSP (Canada) based on Decentralized Ledger with functionality of cross border P2P payments; instituted the first ever Oracle University in Pakistan, and brokered “Train the Trainer” Program between Oracle Corp. and Punjab Institute of Technology Board, Government of Punjab; and pioneered, structured and launched services in realm of Data Disaster Recovery and Electronic Security Services in Pakistan. The veracity of such achievements have not been assailed before this Tribunal and even otherwise such an exercise is not merited at the pre-electoral stage.

11. It may suffice to observe that the RO appears to have erred in disregarding the preponderant record available there before demonstrating *prima facie* that the candidature of the appellant fell within the parameters of technocrat, as defined under the Act. It is the considered view of this Tribunal that the Impugned Order merits interference in appeal.

### *Conclusion*

12. In view of the reasoning and rationale herein contained, this Tribunal is of the deliberated view that the Impugned Order cannot be sustained; hence, this appeal is hereby allowed, and the candidature of the appellant is accepted.

13. 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