

**JUDGMENT SHEET**  
IN THE HIGH COURT OF BALOCHISTAN QUETTA.

**Constitution Petition No.364/2019.**  
(CC-39837)

Muhammad Khan Toor s/o Mekhtar  
Vs.

The Election Commission of Pakistan  
through its Secretary & another.

Date of hearing 02.10.2023 Announced on 17.11.2023

Petitioner by: M/s Syed Ayaz Zahoor and Aster Mehak, Advocates.

Respondents by: Mr. Naseer Ahmed Bangulzai Advocate assisted by M/s Shehzad Aslam, Muhammad Raees Law Officers Election Commission of Pakistan ('ECP') and Naseer Ahmed Assistant Private Secretary ECP.

**JUDGMENT**

**Naeem Akhtar Afghan, CJ.** - This judgment disposes of Constitution Petition No364/2019.

2. Relevant facts of the case are that complaint No.01/2012 dated 29.11.2012 titled as "*Regional Election Commissioner Zhob Division at Loralai v. Mr. Muhammad Khan Toor*" (the petitioner) was filed by Regional Election Commissioner Zhob Division at Loralai in the Court of learned Sessions Judge, Loralai ('**SJ Loralai**') contents whereof read as follows:

*"That the complaint (sic) is the Regional Election Commissioner, Zhob at Loralai who has been duly authorized by the Hon'ble Election Commissioner of Pakistan to lodge this complaint under section 94(2) of the Representation of the People Act, 1976 against the accused/respondent for commission of corrupt practice under section 78 (3) (d) read with sections 82 and 94 of the Representation of the People Act, 1976*

*and sections 199, 200 and 471 of the Pakistan Penal code, 1860 on the following facts and grounds:-*

- i) That the respondent contested election for the seat of Provincial Assembly from constituency No. \_PB-16 Loralai in the year 2008.*
- ii) That the respondent filed his Nomination Papers before the Returning Officer for the above said seat on 26.11.2007 declaring on oath therein that he is graduate and that he was qualified under Article 62 and was not subject to any disqualification provided under Article 63 of the Constitution of Islamic Republic of Pakistan to become a candidate for the seat of Provincial Assembly.*
- iii) That the accused was required under the law to be a graduate to contest the election of Provincial Assembly.*
- iv) That the bachelor degree of respondent issued by the University of Karachi on 08.06.1985 and annexed with his nominating papers was scrutinized by the Higher Education Commission (HEC) and reported vide its letter dated 05-08-2010 that the degree is fake as it does not exist in the record of University.*
- v) That the Sanad, Shahdat ul Aalmiya issued by Ittehad ul Madaras ul Arabia Pakistan, Mardan later on produced before the Nominated Officer of the Election Commission was also not recognized by the Higher Education Commission having been issued by the Institute which is not approved for the purpose.*
- vi) That sufficient opportunity was provided to the respondent to defend his case before the Nominated Officer and the Hon'ble Election Commission of Pakistan but he failed.*
- vii) That the Hon'able Chief Election Commissioner after going through the material on record prima facie held that the respondent has committed an offence of corrupt practice within the meaning of section 78(3) (d) Representation of*

*the People Act, 1976 which is punishable under section 82 and cognizable under section 94 of the said Act read with section 199, 200 and 471 of the Pakistan Penal Code and, therefore, approved to file the complaint with the DPO for registration of FIR. Accordingly the complaint was filed with the DPO, Loralai but FIR could not be registered as the MPA/respondent moved an appeal against the order dated 23.12.2010 passed by the CEC.*

viii) *That the appeal was heard by the Election Commission and the Honorable Commission vide judgment dated 11.10.2012 held that prima facie case of corrupt practice is made out against the respondent, therefore, a complaint be lodged before the learned Sessions Judge as ordained by the Supreme Court in the case of Rizwan Gill (PLD) 2010 SC 828) read with the case of Haji Nasir Mahmood vs Mian Imran Masood reported in PLD 2010 SC 1089.*

2. *In view of above submission, a case for commission of corrupt practice as aforesaid has, prima facie, been made out against Mr. Muhammad Khan Toor, MPA from constituency No.PB-16 Loralai. It is, therefore, respectfully prayed that the action may be taken against the respondent in accordance with law”.*

3. The petitioner raised objection about maintainability of the complaint which was overruled by SJ Loralai vide order dated 27.03.2013 against which the petitioner filed Criminal Revision No.21/2013 before this Court.

During pendency of Criminal Revision No.21/2013 before this Court, notice was issued to the petitioner by SJ Loralai which was also challenged by the petitioner before this Court.

4. During pendency of both above matters before this Court, the petitioner appeared before SJ Loralai where he was read over charge dated 01.04.2013 under section 78 (3)(d) of the Representation of the People Act 1976 punishable under section 82 read with section 199, 200 and 471 PPC.

5. Both the petitions pending before this Court were disposed of by this Court vide common order dated 29.10.2013, operating paras whereof are reproduced herein below:

*“The above provision of law cast a duty upon the trial Judge that upon receipt of a complaint, it shall at once examine the complainant upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant as well as by the Presiding Officer. Thereafter, the trial Court has to examine the complaint and the material collected for the purpose of taking cognizance of the offence and issuing notice to a person guilty of an offence. It is a settled principle of law that when an act is required to be done in a manner prescribed by a law, then that should be done accordingly. The trial Court did not follow the procedure provided by Section 200 Cr.P.C., therefore, the entire proceedings adopted by it after filing of the complaint are illegal.*

*Consequently the same are quashed and all the orders passed by the trial Court in the matter are set aside. The complaint filed by the respondent No. 1 before the trial Court shall be deemed to be pending. The trial Court is directed to start the proceedings by calling the complainant to examine him on oath. The complainant is at liberty to produce all the material before the trial Court, on the basis of which, the complaint has been filed. He may also produce his witnesses in support of the complaint before the trial Court. After adopting such procedure, if the trial Court comes to the conclusion that a cognizable offence is made out, a process be initiated against the petitioner. The*

*trial Court should decide the matter at the earliest, possibly within a period of three months.*

*Thus, in view of what has been stated and discussed hereinabove, both the petitions are disposed of.”*

6. In pursuance of above order passed by this Court, notices were issued to the complainant by SJ Loralai for his appearance on different dates but due to avoidance/non-appearance of the complainant, the complaint was dismissed in default and for non-prosecution by SJ Loralai vide order dated 11.03.2014 against which Mr. Javed Iqbal Regional Election Commissioner Quetta holding additional charge of Regional Election Commissioner Zhob Division filed Criminal Acquittal Appeal No.150/2014.

The political opponent of the petitioner/rival candidate Mr. Obaidullah Babat also filed Criminal Acquittal Appeal No.183/2014 against the acquittal order dated 11.03.2014 passed by SJ Loralai in favour of the petitioner.

7. Both the above appeals were accepted by this Court vide common order dated 28.03.2017 and matter was remanded to SJ Loralai with the following observations/directions:

*“We have heard the learned counsel for the parties and gone through the record with their assistance which reflects that the instant complaint was filed with the allegation against the respondent being involved in corrupt practice defined under section 78 subsection 3 (d) r/w section 82 and 94 of the Representation of People Act, 1976 and Section 199, 200 and 471 of the Pakistan Penal Code, 1860 who at the time of filing nomination papers for the seat of member to Provincial Assembly filed fake degree of education on the basis whereof his papers of nomination had been rejected. Learned counsel for the appellant laid*

*much stress that under section 247 Cr.P.C after taking cognizance the court cannot dismiss the complaint. This court in the judgment titled as Yahya Bakhtiar vs. Meer Shakeel-ur-Rehman & 2 others reported in PLD 1998 Quetta 37 while interpreting the above referred Section held as under:-*

*“there is no cavil to the proposition that by virtue of second proviso to section 247 Cr.P.C. reproduced below:-*

*“provided further that noting in this section shall apply where the offence of which the accused is charged is either cognizable or non-compoundable.”*

*“a complaint is not liable to dismissal nor an accused to be acquitted due to non-appearance of the complainant; if the offence of which the accused is charged, is either cognizable or non-compoundable, 1993 SCMR 1902, NLR 1996 (Criminal) 44 and 1993 P.Cr.L.J 865 referred.*

*In the instant case the trial Court without forming an opinion as to whether cognizable offence is made out or not, therefore, acted contrary to second proviso of Section 247 Cr.P.C.*

*In view of the above, Criminal Acquittal Appeal No.83 of 2014 and 150 of 2014 are partly allowed the impugned order dated 11.03.2014 passed by learned Sessions Judge, Loralai is without any lawful authority and of no legal consequence; which accordingly, is set aside and the case is remanded to the trial Court with direction to decide the same on its own merits in accordance with law. However, if the complainant failed to appear before the trial Court for examining himself on oath, for two consecutive hearing, it may decide the complaint accordingly. The trial court is directed to dispose of the matter within two months positively.”*

8. After remand of the matter, Mr. Obaidullah Babat submitted application soliciting permission of SJ Loralai to pursue the

complaint against the petitioner as intervener but the application of Mr. Obaidullah Babat was rejected by SJ Loralai vide order dated 25.10.2017.

9. After remand of the matter, SJ Loralai recorded statement of Mr. Noor Ahmed Laghari the then District Election Commissioner Loralai holding additional charge of Regional Election Commissioner Zhob under section 200 Cr.P.C whereafter the trial proceedings commenced against the petitioner.

10. At the trial, SJ Loralai recorded statement of Mr. Arshad Javed Regional Election Commissioner Zhob on 25.08.2017 who exhibited the complaint as Ex.P/1-A.

Mr. Tayyab-ur-Rehman Superintendent/representative of the Returning Officer PB-16 Loralai was examined by SJ Loralai who produced nomination form of the petitioner as Ex.P/1-A comprising of four pages. He also exhibited the Deeni Asnads of the petitioner as Ex.P/1-B, Ex.P/1-C and Ex.P/1-D which were issued by *Jamia Aminia Quaidabad of Dar-ul-Uloom Islamia Anwar-ul-Uloom Mardan*. He also produced BA Degree issued in the name of petitioner by University of Karachi as Ex.P/1-E, Higher Secondary School Certificate issued by Board of intermediate Karachi in the name of petitioner as Ex.P/1-F and Secondary School Certificate issued by Board of Secondary Education Karachi in the name of appellant as Ex.P/1-G.

11. Mr. Ahsan Hashmi Assistant Director Higher Education Commission ('HEC') Regional Office Quetta was also examined as

prosecution witness by the SJ Loralai and he produced letters issued by HEC as Ex.P/2-A and Ex.P/2-B with regard to the decision of the equivalence committee of the HEC and recognition of the institutions for granting Sanad of *Shahadat-ul-Alamiya-Fil-Uloom-ul-Arabia Wal-Islamia*. He also exhibited the BA Degree of University of Karachi in the name of petitioner as Ex.P/2-C and report Ex.P/2-D issued by University of Karachi about the said degree being forged.

12. The petitioner was examined under section 342 Cr.P.C by SJ Loralai. The petitioner also recorded his statement under section 340 (2) Cr.P.C. The petitioner denied the filing/annexing BA Degree of University of Karachi with his nomination form dated 26.11.2007 with the contention that in his nomination form dated 26.11.2007 he had filed the Asnads of Madrassa having no knowledge about its non-recognition by HEC. The petitioner contended that he has no concern with the forged BA Degree of University of Karachi and same has been managed and placed on record by his rival for political gain and to damage his political career.

13. On conclusion of the trial proceedings, the petitioner was convicted and sentenced by SJ Loralai vide judgment dated 13.07.2018 as follows:

*“43. Thus, in view of the above legal aspect, accused/respondent Muhammad Khan Toor Ex-M.P.A PP-16 Loralai-II son of Mekhtar caste Utmankhail resident of village Patankot Tehsil Bori District Loralai is convicted under section 82 Representation of People Act 1976 and sentenced for a period of three (03) years RI and fine of Rs.5000/-; in default whereof, convict will further undergo 15 days SI. Accused/respondent is*



*Muhammad Khan Toor Ex-M.P.A PP-16 Loralai-II son of Mekhtar is also convicted under section 199 PPC and sentenced for a period of one (01) year RI and fine of Rs.1000/-. In default of payment of subject fine, convict will further undergo 10 days SI. Accused/respondent Muhammad Khan Toor Ex-M.P.A PP-16 Loralai-II son of Mekhtar is convicted under section 200 PPC and sentenced for a period of one (01) year RI and to pay fine of Rs.1000/-; in default whereof, convict will further undergo 10 days SI. Accused/respondent Muhammad Khan Toor Ex-M.P.A PP-16 Loralai-II son of Mekhtar is also convicted under section 471/468 PPC and sentenced for a period of three (03) years RI and to pay fine of Rs.50,000/- (Rupees fifty thousand only). In default whereof, convict will further undergo one month SI. All the sentences shall run concurrently, while convict is on bail, he be taken into custody to serve his awarded conviction and sent to Central Jail Zhob; and his bail bonds stands discharged after the lapse of appeal period. The copy of this judgment is provided free of cost at the time of its announcement. The case file after its completion be consigned to record.”*

14. The petitioner challenged the above conviction and sentence by filing Criminal Appeal No.223/2018 before this Court which was accepted vide short order dated 19.07.2018 (reasons whereof were also drawn on the same date) and after setting aside the conviction and sentence awarded to the petitioner, the matter was again remanded to SJ Loralai with certain directions. The operating paras of the judgment dated 19.07.2018 passed by this Court read as follows:

*13. On 18.7.2018, when the learned Law Officer, Election Commission of Pakistan was confronted with two different signatures of the Returning Officer on the*

*nomination form of the appellant dated 26.11.2007 Ex.P/1-A and on the photocopy of forged B.A degree Ex.P/1-E (allegedly filed by the appellant with his nomination form dated 26.11.2007), he made statement that according to his information, in the Elections of 2007 the appellant had filed two nomination papers.*

*Learned Law Officer, Election Commission of Pakistan requested for an opportunity to procure the original record of the nomination forms from Loralai. Opportunity was afforded to the learned Law Officer and the matter was fixed for today i.e. 19.7.2018.*

14. *Today, complete record of all the nomination forms of 2007 of PB-16 Loralai (comprising of pages 1 to 505) was produced before this Court by Additional Deputy Commissioner, Loralai.*

*Learned Law Officer, Election Commission of Pakistan stated that as per record of the nomination forms of 2007 of PB-16 Loralai (comprising of pages 1 to 505), the appellant had filed only one nomination form on 26.11.2007 from PB-16 Loralai.*

*While arguing the appeal on merits, learned Law Officer, Election Commission of Pakistan (ECP) supported the impugned judgment passed by the trial Court and prayed for dismissal of appeal.*

15. *On consulting the record of nomination forms of 2007 of PB-16 Loralai (comprising of pages 1 to 505), it revealed that the original nomination form of the appellant dated 26.11.2007 (pages 472 to 475) is accompanied with three sanads of the appellant (pages 479 to 481) issued by Jamia Aminia Quidabad which bear attestation of Tehsildar Bori/ Loralai, but same have not been exhibited at the trial.*

*The original nomination form of the appellant dated 26.11.2007 (pages 472 to 475) has also not been exhibited at the trial.*

*Record of nomination forms of PB-16 Loralai (comprising of pages 1 to 505) also contain photocopy of the nomination form of the appellant dated 26.11.2007 (pages 89 to 92) and same is annexed with Secondary School Certificate of 1978, Higher Secondary Certificate of 1980 and B.A Degree of University of Karachi (pages 93 to 95) in the name of the appellant which have been attested by Tehsildar Bori/ Loralai, but same have also not been exhibited at the trial.*

*16. The photocopies of Secondary School Certificate, Higher Secondary Certificate and B.A Degree in the name of the appellant which have been exhibited at the trial as Ex.P/1-E, Ex.P/1-F and Ex.P/1-G bear attestation of Executive District Officer (Revenue) Loralai/Returning Officer for PB-16, whose signatures are altogether different from the signature of Returning Officer on the nomination form of the appellant dated 26.11.2007.*

*17. The photocopies of Secondary School Certificate of 1978, Higher Secondary Certificate of 1980 and B.A Degree having attestation of Executive District Officer (Revenue) Loralai/Returning Officer for PB-16 are not part of the record of the nomination forms of 2007 of PB-16 Loralai (comprising of pages 1 to 505) produced before this Court by Additional Deputy Commissioner, Loralai.*

*18. Learned Law Officer, Election Commission of Pakistan tried to explain that when initially the matter was taken up by the Election Commission of Pakistan and record was called for, at that time, the then Executive District Officer (Revenue) Loralai (who was not returning officer in November 2007) had sent the photocopies of the said degrees to the Election Commission of Pakistan after attesting the same.*

19. *All the above aspects have created an ambiguity which has to be resolved effectively, particularly with reference to the defence plea of the appellant that he had annexed sanads of Madrassa with his nomination form and that he did not annex forged B.A degree with his nomination form and same has been managed and placed on record by his rivals for their political gain and to damage his political career.*

20. *The trial Court has committed grave illegality in exhibiting photocopy documents instead of getting all the relevant documents exhibited from the original record of the nomination forms of 2007 of PB-16 Loralai (comprising of pages 1 to 505) produced before this Court by Additional Deputy Commissioner, Loralai).*

21. *It further reveals that charge was read over to the appellant on 1.4.2013 when the appellant had challenged the maintainability of the complaint before this Court by filing Crl. Revision No.21 of 2013 and when the appellant had challenged issuance of notice for his appearance by the trial Court by filing a petition before this Court.*

*Both the matters were disposed of by this Court vide common order dated 29.10.2013 (operating portion whereof has been reproduced in para-5).*

*While disposing of the above matters vide order dated 29.10.2013, the entire proceedings adopted by the trial Court after filing of the complaint were held illegal and same were quashed by this Court.*

22. *In view of the above, while proceeding further with the trial against the appellant in pursuance of order dated 28.3.2017 passed by this Court in Crl. Acquittal Appeal Nos.150 & 83 of 2014 (operating portion whereof has been reproduced in para-7), the trial Court should have framed the charge afresh before recording evidence.*

*There was no occasion for the trial Court to further proceed with the trial against the appellant on the basis of charge dated 1.4.2013 as all the proceedings of the trial prior to 29.10.2013 were quashed by this Court. The trial Court had put the appellant on trial without framing charge.*

*The above illegality committed by the trial Court cannot be cured by this Court.*

23. *The last sub-para of para-25 of the impugned judgment reveals that the trial Court has considered the statement of PW-1A (complainant) as confidence inspiring without discussing and appreciating the same.*

*The trial Court has not mentioned the name of PW-1A, which has given rise to another confusion as the trial Court has recorded statement of Mr. Noor Ahmed Laghari as complainant on 27.4.2017 u/s 200 at the stage of inquiry which cannot be considered as evidence at the trial.*

*Subsequently on 25.8.2017, the trial Court has recorded statement of Arshad Javed as complainant/PW-1A, which has been cross-examined by learned counsel for the appellant.*

*It is not clear as to whose statement as complainant has been considered and held confidence inspiring by the trial Court in last sub-para of para 25 of the impugned judgment.*

24. *In view of all the above ambiguities and illegalities, we are unable to decide the appeal on merits and are constrained to remand the matter to the trial Court.*

*For the above reasons, without touching merits of the case, the appeal is accepted, the impugned judgment dated 13.7.2018 passed by learned Sessions Judge, Loralai against the appellant in Election Complaint No.01/2013 is set aside and the matter is*

*remanded to learned Sessions Judge, Loralai with the following directions:*

- *To frame/read over charge to the appellant under the relevant provisions,*
- *To recall and reexamine PW-1 Tayyab Rehman, Superintendent of Deputy Commissioner, Loralai along with original record/file of the nomination forms of year 2007 of PB-16 Loralai (comprising of pages 1 to 505) and to exhibit the following documents from the said record/file:*
  1. *The original nomination form of the appellant dated 26.11.2007 (available at pages 472 to 475 of the record/file)*
  2. *The three sanads of the appellant issued by Jamia Aminia Quidabad bearing attestation of Tehsildar Bori/Loralai (available at pages 479 to 481 of the record/file) which are annexed with the original nomination form of the appellant dated 26.11.2007.*
  3. *The photocopy of nomination form of the appellant dated 26.11.2007 (available at pages 89 to 92 of the record/file).*
  4. *Secondary School Certificate, Higher Secondary Certificate and B.A Degree of University of Karachi in the name of the appellant bearing attestation of Tehsildar Bori/ Loralai (available at pages 93 to 95 of the record/file) annexed with the photocopy nomination form of the appellant dated 26.11.2007.*
  5. *To afford opportunity to the complainant /prosecution to lead further evidence.*
  6. *To reexamine the appellant u/s 342 Cr.P.C. and if opted by the appellant, to record his*

*statement on oath u/s 340(2) Cr.P.C, to lead evidence in his defence and thereafter,*

7. *to pronounce judgment on merits in accordance with law by or before 29.9.2018 without being influenced by the findings made in its earlier judgment dated 13.7.2018.*

*The appellant, being in custody, is ordered to be released forthwith on the basis of bail bond/surety which was previously submitted by him and which is still intact. The appellant will remain on bail till final decision of complaint by learned Sessions Judge, Loralai.*

*The appellant is directed to appear before learned Sessions Judge, Loralai on 7.8.2018.*

15. The above judgment passed by this Court was challenged by the petitioner before the Supreme Court by filing Criminal Petition No.57-Q of 2018. The same was disposed of by the Supreme Court vide order dated 12.10.2018 by upholding the judgment passed by this Court with observations that if the trial Court feels that any piece of evidence is necessary for just, fair and correct decision of the case, then it has the authority/jurisdiction to procure such evidence at its own initiative.

16. In the meanwhile general elections of 2018 were announced and the petitioner also contested the general election of 2018 and he was declared as Returned Candidate (Member of Balochistan Provincial Assembly) from PB-4 Loralai.

17. The petitioner was issued show cause notice dated 08.10.2018 by Election Commission of Pakistan ('ECP') to explain

as to why his election may not be declared void on the ground of his disqualification under Article 62 (1) (f) of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter “**the Constitution**”).

18. The petitioner submitted reply dated 11.10.2018 to ECP to the above show cause notice with the contention that there does not exist any declaration by the Court of law to the extent that he does not fulfill the requirement as envisaged under Article 62 (1) (f) of the Constitution and on the ground that the complaint filed by ECP against the petitioner is pending trial before SJ Loralai after remand of the matter by the High Court.

19. In response to the notice dated 30.01.2019 issued by ECP for hearing of the matter on 13.02.2019, the petitioner also made written submissions in detail. In February 2019, the petitioner also submitted application to ECP for filing certain relevant documents.

20. Subsequently, after hearing learned counsel for the petitioner, vide short order dated 10.04.2019, the Chairman ECP and its 02 members disqualified the petitioner from being member Provincial Assembly from Constituency No.PB-4 Loralai under Article 62 (1) (f) of the Constitution. On the same date i.e. 10.04.2019, the Provincial Election Commissioner was directed in writing by ECP to conduct bye-election in Constituency PB-4 Loralai.

On the same date i.e. 10.04.2019, separate Notification was also issued by ECP whereby the petitioner was de-notified as Returned Candidate from PB-4 Loralai in the Balochistan Provincial Assembly.



21. Feeling aggrieved of all the above, the petitioner filed the instant Constitution Petition before this Court on 11.04.2019, claiming the following relief:

*“a). That the impugned short order dated 10.04.2019 passed by respondent No.1 followed with Notification dated 10.04.2019 and letter dated 10.04.2019 for conducting bye-election in constituency PB-4 Loralai have been passed in excess and mis-exercise of authority/jurisdiction vested in the Commission i.e. (respondent No.1) as well as violative of the provisions of Article 62 (1) (f) of the Constitution of Islamic Republic of Pakistan, 1973;*

*b). Further declaring that as there is no declaration has so far been given by any Court of law against the petitioner to the extent of Article 62 (1) (f) of the Constitution, therefore, the impugned short order dated 10.04.2019 passed by respondent No.1 followed with Notification dated 10.04.2019 and letter/directives dated 10.04.2019 for conducting bye-election in Constituency PB-4 Loralai issued by Election Commission of Pakistan be set aside after declaring it to be without lawful authority and jurisdiction as well as contrary to the provisions of the Constitution of Islamic Republic of Pakistan as referred to hereinabove;*

*c). Further declaring that all the proceedings conducted against the petitioner by the respondent No.1 in view of the notices issued in the year 2018 & 2019 and till the date of passing of the short order dated 10.04.2019 be declared as totally illegal, without lawful authority and jurisdiction and of no legal consequences;*

*d). Permanently, suspending the operation of the impugned short order dated 10.04.2019 passed by respondent No.1 followed with Notification dated 10.04.2019 and the letter dated 10.04.2019 issued by Deputy Director (Cord) Election Commission of Pakistan for conducting bye-elections;*

*e). Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be passed in favour of the petitioner”.*

22. While admitting the instant Constitution Petition for regular hearing on 12.04.2019, implementation of the impugned order dated 10.04.2019 passed by ECP was suspended by this Court till the next date. The interim order was further extended on all the subsequent dates.

23. During pendency of the instant Constitution Petition, the petitioner was acquitted of the charge in complaint No.01/2012 by SJ Loralai vide judgment dated 25.06.2020 against which the Regional Election Commissioner Loralai (i.e. the complainant) filed Criminal Acquittal Appeal No.159/2020 before this Court which alongwith CMA No.334/2020 (filed under section 417 (3) Cr.P.C) was dismissed by this Court being barred by limitation vide judgment dated 02.07.2021.

24. The ECP/Regional Election Commissioner Loralai did not file any petition before the Supreme Court against the judgment dated 02.07.2021 passed by this Court. Resultantly the acquittal of the petitioner in complaint No.01/2012 is holding the filed.

25. During pendency of the instant Constitution Petition, the Balochistan Provincial Assembly was dissolved on 12.08.2023 on completion of its tenure and as such the petitioner is no more member of Balochistan Provincial Assembly from the constituency PB-4 Loralai.

26. After hearing learned counsel for petitioner and learned counsel for ECP assisted by Law Officers of ECP, we have perused the available record. Article 62 (1) (f) of the Constitution reads as follows:

**62. Qualifications for membership of Majlis-e-Shoora (Parliament).**

*(1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—*

*(a).....*

*(b).....*

*(c).....*

*(d).....*

*(f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law”.*

27. The charge read over to the petitioner by SJ Loralai in complaint No.01/2012 reads as follows:

*“That on 26.11.2007, you had filed Nomination Papers before Returning Officer PB-16 Loralai to contest for the Provincial Assembly constituency seat in the year 2008, duly declaring on oath that you are a graduate and was qualified under Article 62 and no subject to any disqualification under Article 63 of the Constitution of Islamic Republic of Pakistan, yet have filed a copy of B.A degree issued by the University of Karachi on 8.6.1985, which on scrutiny by the Higher*

*Education Commission (H.E.C) was found fake, whereas the Sanad Shahdat ul Almaiya issued by Itihad ul Madaras ul Arabia Pakistan, Mardan was also found not recognized by H.E.C to be issued by un approved institution or equivalent to graduate degree. Thereby, you have committed offence of corrupt practice within the meaning of section 78 (3) (d) Representation of the People Act 1976 punishable under section 82 ibid read with section 199, 200 and 471 PPC, which is within the cognizance of this Court.*

*And I hereby direct that you be tried by this Court for the said charge”.*

28. On the basis of same allegations as contained in the above charge for which the petitioner was facing trial before SJ Loralai in complaint No.01//2012, ECP also initiated proceedings against the petitioner for disqualifying the petitioner as member of Balochistan Provincial Assembly from PB-4 Loralai under Article 62 (1) (f) of the Constitution.

29. It cannot be ignored that the conviction and sentence awarded to the petitioner by SJ Loralai in complaint No.01/2012 vide judgment dated 13.07.2018 was set aside by this Court while accepting Criminal Appeal No.223/2018 of the petitioner vide order dated 19.07.2018 and the matter was remanded to SJ Loralai to proceed with the trial proceedings of complaint No.01/2012 with certain directions (reproduced in para-14 above) and during pendency of the trial proceedings of complaint No.01/2012, without there being any conviction of the petitioner for the allegations, ECP disqualified the petitioner under Article 62 (1)(f) of the Constitution vide impugned order dated 10.04.2019.

30. The petitioner has earned acquittal in complaint No.01/2012 from the Court of SJ Loralai vide judgment dated 25.06.2020 against which the Criminal Acquittal Appeal No.159/2020 has been dismissed by this Court being barred by limitation vide judgment dated 02.07.2021 which was not challenged by ECP before the Supreme Court.

31. The acquittal of the petitioner in complaint No.01/2012 for same set of allegations on the basis whereof ECP has disqualified the petitioner under Article 62(1)(f) of the Constitution vide order dated 10.04.2019 is holding the field.

32. While disqualifying the petitioner under Article 62(1)(f) of the Constitution, ECP has failed to appreciate that earlier to contesting the election for the Balochistan Provincial Assembly Constituency PB-16 Loralai in the year 2008, the petitioner had contested the general election in the year 2002 for the seat of MPA from the same constituency on the basis of his Asnads of Jamia Aminia Quaidabad of Dar-ul-Uloom Islamia Anwar-ul-Uloom Mardan and his nomination papers were rejected by the Returning Officer against which the petitioner preferred Election Appeal No.54/2002 which was accepted by this Court and the Asnads of the Madrassa filed by the petitioner with his nomination papers were declared valid for contesting the elections by this Court vide order dated 11.09.2002 which was not challenged by ECP or by any rival candidate.

33. While disqualifying the petitioner under Article 62(1)(f) of the Constitution, ECP has failed to appreciate that on the basis of same Asnads of Madrassa, the petitioner filed his nomination papers on 26.11.2007 for contesting general election of 2008 from PB-16 Loralai and the record of nomination forms of year 2007 of PB-16 Loralai (comprising of pages 1 to 505) reveal that the original nomination forms of the petitioner dated 26.11.2007 (at pages 472 to 475) was accompanied with Degrees issued by Itehad-ul-Madaaris Al Arabia Pakistan of “*Shahadat-ul-Mutawassatah Fil Uloom Al Arabia Wal Islamia*” (equivalent to middle), “*Shahadat-ul-Sanniya Al Ammatah Fil Uloom Al Arabia Wal Islamia*” (equivalent to Matric), “*Shahadat-ul-Sanniya Al Khasa Fil Uloom Al Arabia Wal Islamia*” (equivalent to FA) and “*Shahadat-ul-Alamiyah Fil Uloom Al Arabia Wal Islamia*” (equivalent to BA) of Jamia Aminia Quaidabad Dar-ul-Uloom Islamia, Anwar-ul-Uloom Mardan bearing attestation of Tehsildar Bori/Loralai and it was not accompanied by any BA Degree dated 08.06.1985 of University of Karachi.

34. ECP has also failed to appreciate that the nomination forms of the petitioner dated 26.11.2007 annexed with Deeni Asnads of the petitioner were accepted by the Returning Officer without any objection of whatsoever nature.

35. While disqualifying the petitioner under Article 62 (1)(f) of the Constitution, ECP has also failed to appreciate that record of the nomination forms of PB-16 Loralai also contained photocopy of the nomination forms of the petitioner dated 26.11.2007 for which no

justification is available on record and the photocopy nomination forms of the petitioner were annexed with photocopies of Secondary School Certificate ('SSC') of 1978, Higher Secondary Certificate ('HSC') of 1980 and BA Degree of University of Karachi in the name of the petitioner, copies whereof after attestation were sent to ECP during the proceedings initiated against the petitioner by ECP. ECP has wrongly relied upon the same to disqualify the petitioner without appreciating that the Degrees of BA, HSC and SSC were not annexed with original nomination forms dated 26.11.2007 of the petitioner and in his original nomination forms dated 26.11.2007, the petitioner had mentioned about his Degree of Madrassa equivalent to BA for contesting the elections of 2008.

36. In the trial proceedings of complaint No.01/2012 the prosecution witness Tayyab-ur-Rehman Superintendent/ representative of the Returning Officer PB-16 Loralai admitted that in column No.5 of his original nomination forms dated 26.11.2007, the petitioner had mentioned his educational qualification of Madrassa equivalent to BA.

37. In view of anxiety of the political opponent of the petitioner/rival candidate Mr. Obaidullah Babat for prosecution of the petitioner in Complaint No.01/2012, his filing of Criminal Acquittal Appeal No.183/2014 before this Court against acquittal of the petitioner by SJ Loralai vide order dated 11.03.2014 and submitting application by him before SJ Loralai soliciting permission to pursue the complaint No.01/2012 against the petitioner as intervener (which

was rejected by SJ Loralai vide order dated 25.10.2017), manipulation in the record of the nomination forms of PB-16 after the election of 2008 by placing on record photocopy of the nomination forms of the petitioner by annexing therewith forged Degree of BA of Karachi in the name of petitioner by or at the behest of the political opponent of the petitioner/rival candidate cannot be ruled out of consideration.

38. ECP has also disqualified the petitioner under Article 62 (1) (f) of the Constitution on the ground that the Madrassa/institution wherefrom the Asnads of the petitioner were issued was not recognized by HEC but in this regard ECP has failed to appreciate that the petitioner had filed his Asnads with his original nomination forms dated 26.11.2007 for contesting the general elections of 2008 for the seat of Balochistan Provincial Assembly from PB-16 Loralai and at that time HEC had not issued letter of recognition of the Madrassas/institutions of the country to be the recognized Madrassas for granting the Sanads equivalent to Middle, Matric, FA and BA Degrees. HEC had issued the letter of recognition of ten Madrassas/institutions of Pakistan on 19.10.2010 authorized to issue the Sanads equivalent to Middle, Matric, FA and BA Degrees.

39. Hence the petitioner cannot be penalized for disqualification by ECP as on 26.11.2007 when the petitioner had filed his nomination forms on the basis of Asnads issued by Jamia Aminia Quaidabad Dar-ul-Uloom Islamia Anwar-ul-Uloom Mardan, no letter with regard to the recognized Madrassas of the country was



issued by HEC and same was issued by HEC subsequently on 19.10.2010.

40. In the above regard the observations made by this Court in an election matter in the judgment dated 08.04.2013 passed in Criminal Appeal No.(S) 60/2013 titled as “*Humayun Aziz Kurd v. Deputy Election Commissioner Naseerabad*” are relied upon, operating portion whereof reads as follows:

*“ In such circumstances, in my view it is the responsibility of the State including the Higher Education Commission to prohibit or point out such institutions and if any such certificate, permission and registration given by the State or the Higher Education Commission to a institute who having no accreditation and his degree treated not equivalent to the degree issued or awarded by the State or the Higher Education Authority than in such case, a student would be justified to sue the State for the expenses which he has spend in a bogus or unacceptable institution, functioning in supervision or control of the State. The institution and its functionaries are liable to be penalized but not the student who bona fidely took the admission or got the education.*

*Thus, in view of the above discussed circumstances, the appeal is allowed and the judgment dated 2<sup>nd</sup> April, 2013 passed by learned Sessions Judge, Sibi Division Sibi, in complaint case No.02/2012 being illegal and improper, is set aside.”*

41. In view of all the above, in view of the acquittal of petitioner by SJ Loralai in complaint No.01/2012 holding the field, in view of the dictum laid down by the Supreme Court of Pakistan in the cases of Ishaq Khan Khakwani v. Mian Muhammad Nawaz Sharif,

PLD 2015 Supreme Court 275 and Muhammad Siddique Baloch v. Jahangir Khan Tareen, PLD 2016 Supreme Court 97 and in absence of any declaration to the contrary under Article 62(1) (f) of the Constitution against the petitioner by a “*Court of law*”, there was no occasion for ECP to disqualify the petitioner under Article 62(1)(f) of the Constitution vide impugned order dated 10.04.2019.

42. The cases of Abdul Ghafoor Lehri v. Returning Officer, PB-29, 2013 SCMR 1271, Iqbal Ahmed Langrial v. Jamshaid Alam, PLD 2013 Supreme Court 179 and Sher Alam Khan v. Abdul Munim, PLD 2018 Supreme Court 449 relied upon by learned counsel for ECP are distinguishable and same are not attracted to the facts and circumstances of the instant case.

For the above reasons, the instant Constitution Petition is accepted. The disqualification of the petitioner under Article 62(1)(f) of the Constitution by ECP vide impugned order dated 10.04.2019 is declared null, void and of no legal effect.

Announced in open Court  
on 17<sup>th</sup> November 2023

**CHIEF JUSTICE**

**JUDGE.**