JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : CRL. REV. NO.75-2023

Imran Ahmed Khan Niazi

Vs.

District Election Commissioner, Islamabad

Petitioner by	:	**Kh. Haris Ahmed, Sr. ASC, Dr. Yaser Aman Khan, ASC, Barrister Gohar Ali Khan, ASC, Ms. Zaynib Ch. and Mr. Salman Ayub, Advocates**
Respondent by	:	**Mr. Muhammad Amjad Pervaiz and Mr. Saad Hassan, Advocates for Election Commission of Pakistan with Khurram Shehzad, Additional D.G. (Law), Masood Sherwani, DG (PF) and Zaigham Anees, A.D. (Law), Election Commission of Pakistan.**
Date of hearing	:	**23.06.2023**

AAMER FAROOQ C.J. The instant Criminal Revision calls in question order dated 05.05.2023 passed by learned Additional Sessions Judge, Islamabad (West), whereby in the criminal complaint filed by Election Commission of Pakistan (ECP), the application for dismissal of the same, was dismissed.

2. The brief facts of the matter are that petitioner was elected as Member National Assembly from Mianwali in the General Elections of 2018. As required under section 137 of the Elections Act, 2017 (the Act), every Member of National Assembly as well as Senate, has to file a statement (s) of assets and liabilities. The petitioner accordingly, in compliance of law, did the needful, however, six Members of the National Assembly filed a Reference to the Speaker, National Assembly that the statements of assets and liabilities of the petitioner and his spouse with respect to the years 2018, 2019, 2020 & 2021, are not correct hence disqualifications provided in the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution) and the Act, are attracted. The Speaker, National Assembly referred the matter to ECP under Article 63(2) of the Constitution. ECP, after issuance notice to all, decided the matter on 21.10.2022 and disqualified the petitioner under Article 63(1)(p) of the Constitution read with sections 137, 167 & 173 of the Act. ECP also

directed its Office to initiate proceedings against the petitioner under section 190(2) of the Act. ECP filed a complaint on 07.11.2022 under section 190(2) of the Act for the offence of 'corrupt practice' by the petitioner as having made a false declaration as to the correctness of the assets and liabilities. The complaint was lodged through District Election Commissioner and the learned Additional Sessions Judge, seized of the matter, after recording cursory statements and examination of the documents, issued summons/notices to the petitioner. The petitioner, after entering appearance before the court, moved an application for dismissal of the complaint on 13.03.2023. In the referred application, the petitioner took the stance that criminal complaint has been filed without due authorization and that the same is also barred by limitation in light of law i.e. section 137(4) of the Act which provides limitation for initiation of criminal proceedings within 120-days on the submission of statement (s) of assets and liabilities. The petitioner, on 05.05.2023, filed another application for rejection of the complaint as being in violation of section 193 of the Code of Criminal Procedure, 1908 (Cr.P.C.); both the applications were dismissed through consolidated order dated 05.05.2023 (the impugned order). The instant petition assails the impugned order to the extent of dismissal of application on the basis of 'limitation' and 'authorization'.

3. Learned counsel for the petitioner *inter alia* contended that the reasons, which prevailed with learned trial court, are erroneous. It was submitted that the issues raised were dealt with in an arbitrary manner without application of mind and taking into account the law on the subject. While presenting his case qua 'authorization', it was submitted that under section 190(2) of the Act, a complaint can either be filed by ECP or any person duly authorized; he submitted that since in the instant case, Commission is the complainant, hence authorization to a person, ought to have been given only by the Commission, which is not the case. He drew attention of the Court towards authorization letter dated 07.11.2022 executed by the Secretary, Election Commission of Pakistan to submit that the referred authorization is inconsequential inasmuch as the same has been granted by the Secretary, ECP, who is not the Commission. Learned counsel submitted that under section 6 of the Act, the Commission can act

through the Chief Commissioner or Commissioner or any officer duly authorized and stated that authorization can only be given by the Commission. It was submitted that said District Election Commissioner, while appearing in the witness box, for the purpose of recording cursory statement, stated that he derives authority from the decision of the ECP dated 21.10.2022, whereas documents depict otherwise. Learned counsel emphasized that it is settled principle that when an act is required to be done in a particular manner then it has to be done in that manner. He stated that since complaint has been filed by an unauthorized person, then the effect of the same is that it is *non est* i.e. it is nullity in the eye of law and cannot be proceeded with. Learned counsel took the Court through long list of case law to substantiate his argument that due authorization and delegation is of utmost importance in the facts and circumstances. He also stated that it is also a settled principle that a delegatee cannot further delegate unless he has the power to do so; elaborating the referred arguments, learned counsel submitted that the Secretary, Election Commission could only delegate the District Election Commissioner, if ECP had authorized him to do so. To support his contentions, learned counsel made reference to cases mentioned in footnote [1].

4. With respect to question of limitation, learned counsel took the Court through section 137(4) of the Act to argue that a Member National Assembly can only be proceeded for 'corrupt practices' within 120-days of the submission of the statement (s) of assets and liabilities; in this behalf, he submitted that it is for the courts to interpret whether any provision is mandatory or directory; learned counsel argued that in the instant case, since a person is to be prosecuted for an offence, hence intention of the legislation has to be taken that the limitation is mandatory and is not a mere technicality. It was submitted that generally the statute of limitation is not applicable in the criminal proceedings but where time cap is

[1] The State Vs. Syed Sardar Shah Bukhari (PLD 1975 Lahore 1407), Mst. Nawab Begum Vs. The State (1972 P.Cr.LJ 79), Ghulam Qadir Vs. The State (1990 P. Cr.LJ 1554), Kadir Bux Vs. The Crown (PLD 1955 Federal Court 79), The State Vs. Muhammad Nasim Baig (1989 P.Cr. LJ 1842), The State Vs. Nooro (1998 P.Cr.LJ 35), The State Vs. Hanif Ahmed (1994 SCMR 749), Liaqat Ali and others Vs. The State (1992 SCMR 372), Christopher Rollins Kelly Vs. The State (1997 P.Cr.LJ 51), The State Vs. Bashir Ahmed Chaudhry (PLD 2000 Karachi 198), Director, Directorate-General of Intelligence and Investigation Vs. Messrs Al-Faiz Industries Pvt. Ltd. (2006 SCMR 129), National Accountability Bureau Vs. Fazal Ahmad Jat (2018 SCMR 1005), Erum Naveed Vs. The State (1989 MLD 100), Chairman, Agricultural Development Bank of Pakistan, Islamabad Vs. Muhammad Khalid Rumani (1988 PLC 825), China Harbour Engineering Company Limited Vs. Karachi Port Trust (2020 CLC 1817), Messrs Sui Southern Gas Pipelines Limited Vs. Messrs Noor CNG Filling Station (2022 SCMR 1501)

introduced same is to be taken and interpreted seriously. Learned counsel drew attention of the Court to somewhat parallel provision existing in the erstwhile Representation of Peoples Act, 1976 to argue that no limitation was provided prior to the present law hence introduction was there for purpose and that is not to prosecute or punish any Member after lapse of a particular period of time. It was submitted that in another erstwhile statute i.e. Senate Elections Act, 1975, limitation was provided and has to be taken seriously. Reference was made to case law referred in the footnote [2]. Learned counsel emphasized again that learned trial court has not taken into account the relevant provisions of law and dealt with the matter in a slipshod manner.

5. Learned counsel for ECP controverted the submissions made by learned counsel for the petitioner and submitted that the complaint has been filed validly and does not suffer from any legal infirmity. Learned counsel submitted that ECP is the creation of the Constitution; in this behalf, reference was made to Article 218 of the Constitution; he also made reference to Article 218(3) to argue that to hold fair, free and transparent elections and to prevent corrupt practices, is the paramount duty of ECP. Learned counsel next submitted that under Article 222 of the Constitution, ECP is to perform functions as laid down in law and categorically provides that no law shall have the effect of taking away or abridging any of the powers of the Commissioner or the Election Commission. It was argued that to prevent corrupt practices is the most important duty of the ECP after holding elections, hence any abridgment, as to punish a Member, who commits the offence, would be in violation of Article 222 of the Constitution. It was argued that imposing limitation under section 137(4) of the Act would tantamount to legitimizing an offence, which can never be the purpose of law, as it is a settled principle that an offender should never go free. In emphasizing the obligations of ECP and the status it enjoys under the Constitution, reference was made to cases footnoted [3].

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[2] Reference by the President of Pakistan under Article 162 of the Constitution of Islamic Republic of Pakistan (PLD 1957 SC (Pak) 219), E.A. Evans Vs. Muhammad Ashraf (PLD 1964 SC 536), Atta Muhammad Qureshi Vs. The Settlement Commission, Lahore Division, Lahore (PLD 1971 SC 61) & Messrs V.N. Lakhani & Company Vs. M.V. Lakatoi Express (PLD 1994 SC 894).

[3] Abdul Malik Vs. The State (PLD 2006 SC 365), Muhammad Rizwan Gill Vs. Nadia Aziz (PLD 2010 SC 828), Mian Najeeb-ud-Din Owaisi Vs. Amir Yar (PLD 2013 SC 482), Shoukat Aziz Bhatti Vs. Major (R) Iftikhar

6. In so far as 'authorization' is concerned, learned counsel contended that decision dated 21.10.2022 is an authorization in itself to the officers of the ECP to file a complaint. It was submitted that since ECP is a constitutional body, no particular form of authorization is prescribed and once, through a decision, has expressed its mind to initiate criminal proceedings that, in itself, is an authorization; without prejudice to the above arguments, even-otherwise, lack of authorization at the time of initiation of proceedings is never fatal and can always be either ratified or examined during course of evidence where the person doing so lacked the authority. It was submitted that in the instant case, District Election Commissioner had the requisite authority and the complaint was accordingly filed. In support of his contentions regarding authorization and the fact that complaint has been filed in accordance with law, reference was made to case law mentioned in footnote [4].

7. In rebuttal, learned counsel for the petitioner *inter alia* contended that Article 222 (e) of the Constitution does not envisage acting of the sort as argued by learned counsel for the ECP. He also submitted that it is a settled principle of interpretation that no words in statute are to be made redundant and in case limitation is disregarded, that would amount to making the concept of limitation redundant. It was added that another petition (W.P. No.4041-2022) is pending before this Court challenging the order dated 22.10.2022 passed by ECP, in which, *inter alia* same grounds have been agitated as in the present petition; hence the instant petition be heard with the referred petition.

8. Submissions made by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

Mehmood Kiyani (PLD 2018 SC 578), Khawaja Asif Vs.Muhammad Usman Dar (2018 SCMR 2128), Muhammad Fiaz Khan Vs. Ajmer Khan (2010 SCMR 105), Farooq Yousaf Ghurki Vs. Federation of Pakistan (PLD 2017 Lahore 159), Chief Settlement Commissioner Vs. Raja Muhammad Fazil Khan (PLD 1975 SC 331), Mst. Athar Jabeen Vs. Deputy Settlement Commissioner (PLD 1993 Lhr 842), Muhammad Yaqoob Vs. The State (1997 P.Cr.LJ 1979), Khair Din Vs. Mst. Salaman (PLD 2002 SC 677) & Sardar Muhammad Muqeem Khoso Vs. President of Pakistan (PLD 1994 SC 412)

[4] Order dated 14.06.2022 in ICA No.166-2020 in case titled 'Pakistan Tehreek-e-Insaaf Vs. Election Commission of Pakistan, Kadir Bux Vs. The Crown (PLD 1955 Federal Court 79), The State Vs. Mian Muhammad Shahbaz Sharif (PLD 2002 Karachi 8), NAB Vs. Mian Muhammad Abbas Sharif (PLD 2001 Lahore 157), Mir Shakil-ur-Rehman Vs. M/s Creek Developer (PLD 2019 Sindh 670), Bilal Hussain Vs. President National Bank of Pakistan (2022 SCMR 313), State Bank of Pakistan Vs. Franklin Credit Investment (2010 SCMR 121), Mrs. Shaheena Shakil Vs. Chairman NAB (2020 P Cr. LJ 1004), Rahat and Company Vs. Trading Corporation of Pakistan (PLD 2020 SC 366) & Liberty Car Parking Vs. Commissioner Inland Revenue (2021 SCMR 375).

9. The controversy, leading to filing of instant Criminal Revision, has already been spelt out hereinabove hence need not be reproduced.

10. A challenge has been made to the complaint filed by ECP, by the petitioner, on two scores; firstly that ECP has initiated the matter without authorization and secondly the complaint is time barred, as it has been filed after a period of 120-days of the submission of statement (s) of assets and liabilities.

11. As one can make out from the above submissions by learned counsel for the parties that elaborate arguments have been addressed on the legal issues involved and important questions of law have been raised. To sum up the submissions made by both the parties, legal questions which are required to be answered are as follows:-

a) whether the complaint has been filed on behalf of ECP by a duly authorized person;

b) whether the decision of ECP dated 21.10.2022 is a valid authorization to any officer of ECP to file a complaint;

c) whether the question of authorization is a question of fact and evidence and can be ratified subsequently during course of proceedings or is fatal to the complaint making it *non est*;

d) whether the limitation provided in section 137(4) of the Act is for complaint under section 190(2) of the Act to both ECP and any person;

e) the concept of limitation in section 137(4) is only with respect to ECP initiating criminal complaint and is not mandatory and is directory;

f) whether introduction of limitation is putting a cap on the powers of the ECP as provided in Articles 218 (3) and 222 of the Constitution;

g) whether this Court, while interpreting section 137(4) of the Act and the provisions of the Constitution, has to see the effect of limitation;

h) whether limitation is purely a legal question in the facts and circumstances or makes question of law or facts;

12. The examination of above mentioned issues, on the basis of arguments made before this Court, clearly shows that same have not been

addressed by learned trial court and have been brushed aside and/or dealt with in a very cursory and shoddy manner.

13. The instant petition is under section 439 of the Code of Criminal Procedure wherein this Court has wide supervisory powers, in fact the same are wider than the appellate powers, however, in order to interfere, it is to be seen whether learned trial court has exercised its jurisdiction properly and dealt with all the issues one way or the other. As noted above, the examination of the impugned order shows that issues have not been dealt with in a proper manner, as it should have been and in such a situation, to substitute the findings, this Court would be supplementing the findings which would be inappropriate exercise of the jurisdiction as detailed findings ought to have been given in a proper manner in order for this Court to examine the same in supervisory jurisdiction whether legal issues have been dealt with rightly. The Court, in its exercise of jurisdiction, has the power to do complete justice and should avoid supplementing the findings. Reference is made to case law reported as Syed Azmat Ali Vs. The Chief Settlement and Rehabilitation Commissioner, Lahore (PLD 1964 Supreme Court 260), wherein the Supreme Court observed that Where a superior Court calls for the records of judicial or quasi-judicial authorities or Tribunals, which are not subject to its appellate jurisdiction, the superior Court no doubt has the full power to do justice but does not as a rule, even in a case where it does interfere, substitute its own decision for the decisions of the inferior authority or Tribunal. Where it is felt that questions have been left undecided by such Tribunal or authority or a question has to be decided after the taking of fresh evidence, it is more appropriate to return the case to the authority or Tribunal concerned for a decision in accordance with law, after quashing the order complained against. In case reported as Anwar Hussain and 5 others Vs. The State (1983 SCMR 233), where the High Court had given tentative observation but had remanded the matter for decision afresh, the Supreme Court endorsed the view of the High Court.

14. It is reiterated that learned trial court has left the issues undecided and has dismissed the application of the petitioner with scanty reasons which left the main legal issues undecided or unresolved. It would be only proper for the learned trial court to decide the application afresh after

hearing the parties with detailed reasons keeping in view the provisions of Article 10-A of the Constitution as the foremost consideration.

15. In so far as request of the learned counsel for petitioner regarding hearing of the instant petition with W.P. No.4041-2022 is concerned, the same cannot be acceded to, as the examination of file in referred case shows that application for withdrawal has been made in the said petition due to pendency of writ petition before Lahore High Court against the decision of ECP dated 22.10.2022.

16. For the above reasons, the instant petition is allowed and the impugned order to the extent of dismissal of application, mentioned above, is set aside; consequently, the application in question shall be deemed to be pending and decided afresh by the learned trial court within seven days from the receipt of this judgment, keeping in view the law in question and observations made above.

(CHIEF JUSTICE)

Announced in Open Court on 04.07.2023

(CHIEF JUSTICE)

Zawar