

HIGH COURT OF AZAD JAMMU & KASHMIR

(1) Writ petition No. 1867/2021
Date of Institution 01.06.2021
Date of Decision 10.07.2021

1. Abdul Rasheed Mirza S/o Sher Muhammad Mirza R/o House No.35 Street No.8 Mohallah Islam-pura Shadara Lahore, Pakistan;
2. Rana Danish Saeed S/o Rana Ahmed Saeed R/o House No.127, Block-A, Phase-III, Iqbal Avenue Housing Society Lahore.

Petitioners

VERSUS

1. Commissioner Rehabilitation Azad Jammu & Kashmir having his office at Upper Chatter Muzaffarabad Azad Jammu & Kashmir;
2. Deputy Commissioner Rehabilitation Mirpur Azad Jammu & Kashmir;
3. Assistant Commissioner Rehabilitation Mirpur Azad Jammu & Kashmir;
4. Election Commissioner, through Secretary Election Commission having his office at New Secretariat Muzaffarabad;
5. Regional Election Commissioner, Azad Jammu & Kashmir having his office at Lahore opposite Ewan Adal, Pakistan;
6. Board of Revenue of the State of Jammu & Kashmir through Secretary Board of Revenue, Azad Jammu & Kashmir having his office at New Secretariat Muzaffarabad;
7. Nasir Hussain Dar, Minister Transport, State of Azad Jammu & Kashmir having his office at New Secretariat Muzaffarabad.

Respondents

(2) Writ petition No. 2377/2021
Date of Institution 02.07.2021

Abdul Rasheed Mirza S/o Sher Muhammad Mirza R/o House No.35 Street No.8 Mohallah Islam-pura Shadara Lahore, Pakistan;

Petitioner

VERSUS

1. Azad Jammu & Kashmir Election Commissioner, through Secretary Election Commission having his office at New Secretariat Muzaffarabad;
2. Chief Election Commissioner Azad Jammu & Kashmir having his office at New Secretariat Muzaffarabad;
3. Returning Officer Constituency LA-34 Jammu-I Karachi Sindh, Azad Jammu & Kashmir;
4. Nasir Hussain Dar S/o Muhammad Hussain Dar R/o Haveli Dhayan Singh Lahore City Ward No.34 Lahore, Pakistan.

Respondents

PRESENT:

M/s Raja Asif Bashir Khan and Sahibzada Mehmood Ahmed, Advocates for the petitioners;

Mr. Asghar Ali Malik, Advocate for respondent No.7 (Nasir Hussain Dar);

Mr. Tahir Aziz Khan, Legal Advisor for Election Commission.

Mr. Kamran Bashir Chaudhry, Advocate for intervener (Suleman Ali S/o Dewan Ali)

- (3) Writ Petition No.2257/2021.
Date of institution 18.06.2021.

1. Khushal Abbasi S/o Muhammad Azeem Khan Abbasi R/o House No.684J Street No.8 Mohalla Dhok Elahi Bakhsh Rawalpindi, Pakistan.
2. Naveed Razzaq Abbasi S/o Abdul Razzaq Abbasi R/o House No.414A Street No.1 Mohalla Mohan Pura Rawalpindi, Pakistan.(Refugees settled in Pakistan)

....*Petitioners*

VERSUS

1. Azad Jammu and Kashmir Election Commission through Chief Election Commissioner having his office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir.
2. Azad Govt. of the State of Jammu and Kashmir through Senior Member Board of Revenue Azad Jammu and Kashmir, having his office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir.
3. Azad Government of State of Jammu & Kashmir through Chief Secretary Azad Jammu and Kashmir, having his office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir.

4. Azad Jammu and Kashmir Legislative Assembly through Speaker Azad Jammu and Kashmir Legislative Assembly.
5. Board of Revenue Azad Jammu and Kashmir through Senior Member Board of Revenue Azad Jammu and Kashmir, having his office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir.
6. Azad Jammu and Kashmir Council through Secretary Council Azad Jammu and Kashmir, Islamabad.
7. Department of Law & Parliamentary Affairs Azad Govt. of the State of Jammu & Kashmir through Secretary Law & Parliamentary Affairs, having its office at New Secretariat Muzaffarabad.
8. Services & General Administration department Azad Government of the state of Jammu & Kashmir through Secretary Services & General Administration, having its office at New Secretariat Muzaffarabad.
9. Deputy Commissioner Muzaffarabad having his office at New District Complex, Muzaffarabad.
10. Deputy Commissioner Neelum, Azad Jammu and Kashmir.
11. Muhammad Nadeem, Returning Officer/District Election Commissioner Islamabad, constituency LA-44 Valley 5.
12. Mazhar Jamil Election Officer-I, Rawalpindi constituency LA-44 Valley 5.
13. Muhammad Tariq Election Officer Islamabad, constituency LA-44 Valley 5.
14. Noor-ul-Khitab District Election Commissioner, Attock, constituency LA-44 Valley 5.
15. Bashir Khan S/o Ghulam Hassan R/o Bela Muhammad Khan, Dudnial Tehsil Authmuqam District Neelum, presently House No.167 Street No.20 sector F-11/2 Islamabad.

.... Respondents

(4) Writ Petition No.2378/2021.
Date of institution 03.07.2021.

1. Khushal Abbasi S/o Muhammad Azeem Khan Abbasi R/o House No.684J Street No.8 Mohalla Dhok Elahi Bakhsh Rawalpindi, Pakistan.
3. Naveed Razzaq Abbasi S/o Abdul Razzaq Abbasi R/o House No.414A Street No.1 Mohalla Mohan Pura Rawalpindi, Pakistan.(Refugees settled in Pakistan).

....Petitioners

VERSUS

1. Azad Jammu and Kashmir Election Commission through Chief Election Commissioner, having his office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir.
2. Azad Government of State of Jammu and Kashmir through Senior Member Board of Revenue Azad Jammu and Kashmir, having his office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir.
3. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary Azad Jammu and Kashmir, having his office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir.
4. Azad Jammu and Kashmir Legislative Assembly through Speaker Azad Jammu and Kashmir Legislative Assembly.
5. Board of Revenue Azad Jammu and Kashmir through Senior Member Board of Revenue Azad Jammu and Kashmir, having his office at new Secretariat Muzaffarabad, Azad Jammu and Kashmir.
6. Azad Jammu and Kashmir council through Secretary Council Azad Jammu and Kashmir.
7. Department of Law & Parliamentary Affairs Azad Government of the state of Jammu & Kashmir through Secretary Law & Parliamentary Affairs, having its office at New Secretariat Muzaffarabad.
8. Services & General Administration Department Azad Government of the state of Jammu & Kashmir through Secretary Services & General Administration, having its office at New Secretariat Muzaffarabad.
9. Deputy Commissioner Muzaffarabad having his office at New District Complex, Muzaffarabad.
10. Deputy Commissioner Neelum, Azad Jammu and Kashmir.
11. Mr. Muhammad Siddique Returning Officer/District Election Commissioner Rawalpindi, constituency LA-44 Valley 05.
12. Bashir Khan S/o Ghulam Hassan R/o Bela Muhammad Khan, Dudnial Tehsil Authmuqam District Neelum, presently House No.167 Street No.20 sector F-11/2 Islamabad.

.... ***Respondents***

PRESENT:

M/s Syed Shafqat Hussain Gardezi, Raja Asif Bashir Khan and Ahmed Nawaz Tanoli, Advocates for the petitioners.

Mr. Tahir Aziz Khan, Advocate/Legal Advisor for the official respondents.

Raja Gul Majeed Khan and Malik Bashir Murad, Advocates on behalf of respondent-Bashir Khan.

- (5) Writ Petition No.2379/2021.
Date of institution 03.07.2021.

Sardar Qamar Zaman Khan S/o Sardar Gul Zaman Khan, caste Maldiyal, R/o village Paniali, Tehsil and District Bagh, candidate for AJ&K Legislative Assembly for LA-16 Bagh-3.

....*Petitioner*

VERSUS

1. Election Commission of Azad Jammu and Kashmir through Secretary Election Commission of Azad Jammu and Kashmir, having his office in New Civil Secretariat Muzaffarabad.
2. Returning Officer LA-16 Bagh-3/ Hafiz Imran Wazir, Civil Judge Bagh.
3. Senior Member and Member Azad Jammu and Kashmir Election Commission, through Secretary Election Commission of Azad Jammu and Kashmir, having its office in New Civil Secretariat Muzaffarabad.
4. Sardar Mir Akbar Khan S/o Ali Akbar Khan R/o village Bhont Kohna Tehsil and District Bagh, candidate for AJ&K Legislative Assembly for LA-16 Bagh-3.

.... ***Respondents***

PRESENT:

M/s. Mushtaq Ahmed Janjua, Nasir Masood Mughal and Sardar Nazim Khan, Advocates for the petitioner.

Mr. Tahir Aziz Khan, Advocate/Legal Advisor for Election Commission of AJ&K.

Mr. Abdul Rasheed Abbasi, Advocate for respondent No.4.

WRIT PETITIONS

Before;- Justice Sadaqat Hussain Raja, CJ.

Judgment:

Through Writ Petition No.1867/21 filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, following relief is solicited by the petitioners:-

“It is, therefore, prayed on behalf of the petitioners that this Hon’ble Court may very graciously be pleased to issue high prerogative writ on the following grounds:-

- i. Set-aside the illegal State Subject and entry in voter list of private respondent No.5 in the light of land record and declaring the same as illegal, unlawful, unjust against the Act, 2021 passed by the Legislative Assembly, along with order dated 07.05.2021 of regional Election Commission Lahore may kindly be set-aside;
- ii. Directing the respondents to resolve the matter as soon as possible because the General Election of Azad Jammu & Kashmir Legislative Assembly is going to held and Election schedule is going to be announced within week;
- iii. It is further prayed that the certificates of Mahajir/State Subjects of the respondents No.7 and his family member may please be ordered to be declared as illegal, unlawful, void ab-initio, forge, fake, fabricated and bogus and further please be declared as were procured through fraud and collusion of respondent No.7 and his accomplices in the supreme interest of justice;
- iv. Any other relief which is just and proper in the estimation of this Hon’ble Court may also be granted to the petitioners in the interest of justice.”

2. Following relief is prayed for by the petitioner in Writ

Petition No.2377/21:-

“It is, therefore, very humbly prayed that by accepting the writ petition the impugned judgment of Chief Election Commissioner dated 30.06.2021 and judgment of Returning Officer Constituency No.LA-34 Jammu-I may kindly be set-aside. It is further prayed that by accepting the petitioner’s application the nomination papers filed by the private respondent No.4 may very kindly be restrained from contesting Election, 2021. Any other relief which is just and proper in the estimation of this Hon’ble Court may also be granted to the petitioners in the interest of justice.”

3. Brief history of Writ Petitions No.1867/21 and 2377/21 is that the petitioners are 1st Class State Subjects of Azad Jammu & Kashmir, refugees and are settled at Lahore Pakistan. It is contended that respondent No.7 is permanent resident of Sudhnoti Azad Jammu & Kashmir. It is further submitted that Act passed by the Legislative Assembly Azad Jammu & Kashmir Amendment Act, 2021 deals with the definition of the refugees. According to the Act, the private respondent is no more eligible for contesting the elections as refugees settled in Pakistan. It is submitted that the petitioners submitted their objections on voter list before Election Commission. The Election Commission/Chief Election Commissioner dismissed the appeal/application dated 07.05.2021 and 30.06.2021 respectively, which are liable to be set-aside. The order of Returning Officer Constituency LA-34 Jammu-I dated 22.06.2021 has also been challenged for having been issued without lawful authority. It is further submitted that the petitioners filed an application against respondent No.7 before respondents No. 1 to 5 for deletion of name of respondent No.7 and his family members from the voter list published by the Registration Officer Lahore but the needful has not been done, hence, the instant writ petitions.

4. Through Writ Petition No.2257/2021 filed under Article 44 of Azad Jammu & Kashmir Interim Constitution, 1974 the petitioners sought following relief:-

“It is therefore very humbly prayed that by accepting the instant writ petition the impugned state subject and domicile certificates of the non-petitioner and state subject and domicile certificate of father of the non-petitioner may very kindly be declared void and illegal and may be set-aside. The name of the private non-petitioner in the constituency LA-44 Valley 5 in the voter list kindly be set aside. Official non-petitioners may kindly be directed not to accept the nomination paper of private non-petitioner as candidate of Member Azad Jammu and Kashmir Assembly and also not allow the private non-petitioners to file the nomination paper as candidate Member Azad Jammu and Kashmir Legislative Assembly for the upcoming elections of Azad Jammu and Kashmir 2021 and private non-petitioner may kindly be declared ineligible to contest election against the reserved seat of refugees settled in Pakistan.

5. In another connected Writ Petition No.2378/2021, the petitioners, herein, challenged the impugned orders dated 09.06.2021 and 28.06.2021 passed by Election Commission of AJ&K. It is prayed that the voter list to the extent of private non-petitioner No.12 may be set-aside and private non-petitioner may be declared ineligible and disqualify for contesting election in the constituency LA-44 Valley-V as refugees settled in Pakistan.

6. Through Writ Petition No. 2379/21 filed under Article 44 of Azad Jammu & Kashmir Interim Constitution, 1974 the petitioner sought following relief:-

“It is therefore, respectfully submitted that by declaring without lawful authority the order of Returning Officer dated 22.06.2021 and the order of the Election Commission of Azad Jammu and Kashmir dated 30.06.2021 passed by its Members, the nomination papers submitted by respondent No.4 may kindly be rejected by declaring respondent No.4 to be disqualified candidate in view of section 31(2)(XVIII) and (XXII) of Azad Jammu and Kashmir Election Act, 2020; the official respondents may kindly be directed to strike off the name of the respondent No.4 from validly nominated candidate for the Election of Legislative Assembly of Azad Jammu and Kashmir going to be held on 25th July 2021. The respondent No.4 may kindly be restrained from taking part as candidate into the Election going to be held on 25.07.2021.”

7. Brief facts forming background of the aforesaid writ petition are that the petitioner and respondent No.4 submitted their nomination papers for contesting Election 2021 from LA-16 Bagh-III of Azad Jammu and Kashmir Legislative Assembly. It is averred that in view of section 31(XVIII) and (XXII) of Azad Jammu and Kashmir Election Act, 2020, the respondent No.4 being a “morally corrupt” person as well as having outstanding government dues amounting to Rs.12,18,339/- and was disqualified to contest the election. It is

claimed that petitioner submitted objections to the nomination of respondent No.4 alongwith report of Auditor and Order of the Director General Audit, before Returning Officer on 22.06.2021. It is contended that Returning Officer vide order dated 22.06.2021 overruled the objections submitted by the petitioner and the petitioner submitted appeal against the order of the Returning Office before AJ&K Election Commission, which was dismissed vide impugned order dated 30.06.2021.

8. The writ petitions have been resisted by the respondents by filing written statement, wherein the claim of the petitioners has been negated and prayed for dismissal of the instant writ petitions.

9. The learned counsel for the parties reiterated the facts and grounds as taken in the writ petitions as well as written statement, therefore, there is no need to reproduce the same.

10. I have heard the learned counsel for the parties and gone through the record carefully.

11. In all the writ petitions, the eligibility of rival candidates has been challenged on different grounds. The following common question is involved in all the above titled writ petitions. Hence, all the writ petitions are clubbed and the same are hereby decided through this single judgment:-

Whether the writ petitions should be decided on merit at this stage or the points raised in the writ petitions should be left open for Election Tribunal?

12. Without going into the merits of the case and validity of the objections raised by the learned counsel for the petitioners before concerned Returning Officers, it is observed that according to Chapter IX of Azad Jammu and Kashmir Election Act, 2020, the procedure of elections dispute is provided.

13. The word “election” has both “**narrow**” and “**wide**”, meanings. In the narrow sense, it amounts to the selection of the candidates and in wider sense, it connotes the entire election process starting from issuance of election schedule to the notification of elected candidates and in election disputes it should be used in wider sense.

14. As mentioned-above that election process starts from notification calling the elections and completes on declaration of result and every matter arising during this period regarding elections amounts to election disputes and law has provided a remedy to resolve such disputes by filing election petitions before competent forum. Any verdict of this Court while exercising writ jurisdiction will affect the rights of the parties as well as of public at large.

15. Democracy is the basic feature of our Constitution and conducting of free and fair elections is absolutely

necessary for democracy. “*Sir Winston Churchill*” described the elections in the following words:-

“At the bottom of all tributes paid to democracy is a little man, walking into little booth, with a little pencil making a little cross on a little bit of paper.”

16. This saying reveals the importance of a common man in elections and democracy. It is further observed that in General Elections the whole community is involved and silently present in such like cases and want to elect their representatives. Hence, I am of the view that once electoral process has been started, it should not be interfered with at any intermediary stage by the Courts.

17. As the Election schedule has been announced and the election process has already been completed by the AJ&K Election Commission including scrutiny of nomination papers and allotment of election symbols etc. The General Elections are going to be held after some days, hence, at this time, any verdict of this Court will affect the whole election process, therefore, the points raised in the writ petitions are left open for the Election Tribunal. If private respondent become returned candidates, the other party may approach to the aforesaid Tribunal in accordance with law on the points raised in the writ petitions.

In the light of what has been stated above, the instant writ petitions are hereby disposed of.

Muzaffarabad;
10.07.2021

-Sd-
CHIEF JUSTICE

Note:- Judgment is written and duly signed. The office is directed to intimate the parties or their counsel.

-Sd-
CHIEF JUSTICE

Approved for reporting:

-Sd-
CHIEF JUSTICE