

HIGH COURT OF AZAD JAMMU & KASHMIR

1. Writ petition No. 556/2021
Date of Institution 13.02.2021
Date of Decision 28.04.2021

Raja Zain-ul-Abiden Khan S/o Raja Abid Khan R/o Rampura Constituency No.28 Muzaffarabad-II presently settled in Dharian Bambian Ward No.11 Constituency No.29 Muzaffarabad-3, Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Petitioner

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary of Azad Jammu & Kashmir, office situated at New Secretariat Muzaffarabad;
2. Minister of Law, Justice, Parliamentary Affairs and Human Rights, being Chairman Majlas-e-Ammla amendment Act through Secretary Majlas-e-Ammla (Special Secretary), office situated at Assembly Secretariat Muzaffarabad;
3. Legislative Assembly Azad Jammu & Kashmir through speaker Azad Jammu & Kashmir office situated at Assembly Secretariat Muzaffarabad;
4. Department of Law, Justice, Parliamentary Affairs and Human Rights, through Secretary Law, office situated at New Secretariat Muzaffarabad;
5. Election Commission of Azad Jammu & Kashmir through Chief Election Commission, office situated at New Secretariat Blocks Muzaffarabad;

Respondents

2. Writ petition No. 588/2021
Date of Institution 17.02.2021

1. Abdul Qayyum Kiani S/o Muhammad Abdullah;
2. Gazala Kiani W/o Abdul Qayyum Kiani;
3. Bilal Ahmed Kiani S/o Abdul Qayyum Kiani;
4. Taimoor Ahmed Kiani S/o Abdul Qayyum Kiani;
5. Abdul Hadi Qammar S/o Muhammad Abdullah;
6. Fozia Begum W/o Abdul Hadi;
7. Adeel Ahmed Kiani S/o Abdul Hadi;
8. Afzal Ahmed Kiani S/o Abdul Qayyum Kiani;

9. Suraya Bano W/o Abdul Hadi;
10. Nazash Saleem W/o Taimoor Ahmed Kiani R/o Tariqabad Ward No.7 permanent resident of village Koli Mandal, Tehsil Leepa Karnah, District Jhelum Valley, Azad Jammu & Kashmir.

Petitioners

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary of Azad Jammu & Kashmir, office situated at New Secretariat Muzaffarabad;
2. Minister of Law, Justice, Parliamentary Affairs and Human Rights, being Chairman Majlas-e-Ammla amendment Act through Secretary Majlas-e-Ammla (Special Secretary), office situated at Assembly Secretariat Muzaffarabad;
3. Legislative Assembly Azad Jammu & Kashmir through speaker Azad Jammu & Kashmir office situated at Assembly Secretariat Muzaffarabad;
4. Department of Law, Justice, Parliamentary Affairs and Human Rights, through Secretary Law, office situated at New Secretariat Muzaffarabad;
5. Election Commission of Azad Jammu & Kashmir through Chief Election Commission, office situated at New Secretariat Blocks Muzaffarabad.

Respondents

3. Writ petition No. 588-A/2021
Date of Institution 17.02.2021

1. Raja Shahzad-Ul-Hassan Khan, Advocate High Court of Azad Jammu & Kashmir, Member Central Bar Association Muzaffarabad;
2. Ejaz-ul-Hassan Khan Raja S/o Raja Muhammad Saleem Khan;
3. Majid Saleem Khan S/o Raja Muhammad Saleem Khan;
4. Raja Adnan Saleem Khan S/o Raja Muhammad Saleem Khan;
5. Mahjabeen Anwar W/o Ejaz-ul-Hassan Khan;
6. Azad Saleem Khan S/o Raja Muhammad Saleem Khan;
7. Naeema Saleem Khan W/o Raja Muhammad Saleem Khan;
8. Rukhsana Shahzad Khan W/o Shahzad-ul-Hassan Khan;
9. Amina Saleem Khan D/o Raja Muhammad Saleem Khan;

10. Shahbaz Saleem Khan S/o Raja Muhammad Saleem Khan all residents presently settled in Upper Gojra Near Rizwan Public School Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Petitioners

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary of Azad Jammu & Kashmir, office situated at New Secretariat Muzaffarabad;
2. Minister of Law, Justice, Parliamentary Affairs and Human Rights, being Chairman Majlas-e-Ammla amendment Act through Secretary Majlas-e-Ammla (Special Secretary), office situated at Assembly Secretariat Muzaffarabad;
3. Legislative Assembly Azad Jammu & Kashmir through speaker Azad Jammu & Kashmir office situated at Assembly Secretariat Muzaffarabad;
4. Department of Law, Justice, Parliamentary Affairs and Human Rights, through Secretary Law, office situated at New Secretariat Muzaffarabad;
5. Election Commission of Azad Jammu & Kashmir through Chief Election Commission, office situated at New Secretariat Blocks Muzaffarabad;
6. Registration Officer Constituency No.LA-29 Muzaffarabad City 3, Azad Jammu & Kashmir.

Respondents

WRIT PETITIONS

Before;- Justice Sadaqat Hussain Raja, ACJ.

PRESENT:

M/s Raja Zulqarnain Abid Khan, Mr. Sajid Hussain Abbasi and Raja Sajjad Ahmed Khan, Advocates for the petitioners; Mr. Tahir Aziz Khan, Legal Advisor for the Department.

ORDER:

Through the above titled writ petitions filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the Azad Jammu & Kashmir Election amendment Act, 2021 dated 08.02.2021 to the extent of

Section 24 by omitting proviso and sub Sections 1 to 4 has been challenged for having been issued without lawful authority. A further direction is also sought to the respondents not to remove the petitioners and the other State Subjects in the voter list pertaining to the year, 2016 who have been enrolled after getting NOC for costing their right to vote on temporary address or the area they want to settle or resides in.

As common questions of fact and law are involved in the above titled writ petitions, hence, were heard together and decided as such through this single judgment.

Shortly stated facts of the supra titled writ petitions are that the Azad Jammu & Kashmir have promulgated amendment in Election Act, 2020 through Azad Jammu & Kashmir Election Amendment Act, 2021 on 08.02.2021 which is against the basic principle of natural justice, especially preventing the petitioners and other State Subject holders from using the rights of vote and Section 24 omitting the proviso as well as Sub Sections and lemmatizing the petitioners from costing their votes. The petitioners have challenged the amended Act I of 2021 dated 08.02.2021 to the extent of amendment in Section 24.

The instant 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.

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.

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

The learned counsel for the respondents raised a pivotal point that the instant writ petitions are not maintainable that the petitioners have not arrayed the necessary parties in the writ petitions i.e Public at Large.

As a matter of rule, all the beneficiaries were necessary party but the learned counsel for the petitioners failed to implead them as party. In my estimation, in absence of necessary party, no direction can be issued. Law is well settled that no writ can be issued in absence of a necessary party. A reference can be made to a case titled “*Shahbaz Khan V. Election Commission of Pakistan through Chief Election Commission, Islamabad*” [P.L.D 2003 (Lah.) 125], wherein at 135, it is observed as under:-

“It is better and appropriate to mention that final Notification was issued on 28.06.2002 in para.4 of which it is specifically mentioned that the Election Commission had received a total number of 945 objections/representations against preliminary delimitation of 849 constituencies out of which 307

pertained to the National Assembly and 638 to Provincial Assemblies. The details mentioned in the Notification reveal that the representations received qua District Sheikhupura were decided after providing hearing by the learned Member Election Commission on 15.06.2002. The petitioners did not implead any of the objectors as respondents. The petitioners did not attach order of the learned Member Election Commission along with the writ petitions. It is pertinent to mention here that the impugned Notification was finally issued on the basis of order of the learned Member Election Commission dated 15.06.2002. The petitioners did not challenge the vires of said order through these writ petitions. The writ petitions could, therefore, be dismissed as the petitioners failed to implead the objectors as respondents.”

The same principle has also been laid down in a case titled as “*Zahid Mehmood Shah and 24 others vs. Azad Govt. & 14 others*” [2011 SCR 159], which is as under:-

“5. I have heard the learned counsel for the parties and perused the record with utmost care. It is evident from the record that Member Board of Revenue dismissed the revision petition on 25th April, 2001. The order was challenged by way of writ petition in the High Court and only Member Board of Revenue was arrayed as party. The Board of Revenue was not arrayed as party in the case. For resolving the proposition whether the Board of Revenue is necessary party or not, we have to resort to section 6(3) of the Azad Jammu & Kashmir Board of Revenue Act, 1993. It provides that any order made or decree passed by a Member Board of Revenue would be deemed to be the order or decree of Board of Revenue, therefore, the Board of Revenue is a necessary party.”

Similarly, in the case reported as “*Shafqat Hayyat vs. Muhammad Shahid Ashraf & 18 others*” [2005 SCR 57], the Hon’ble apex Court of Azad Jammu & Kashmir observed as under:-

“Necessary Party----

----Writ was not properly constituted---Impugned orders were passed on the recommendations of the Selection Committee----The Selection Committee was not impleaded as party----If a necessary party in whose absence no effective writ could be issued was not impleaded, the writ is liable to be dismissed on this sole ground.”

“Necessary Party----

---Minister Incharge was the competent authority-- He should have been impleaded in the line of respondents because he had to implement the directions of mandamus issued by the Court---He was not impleaded----On account of this formal defect the writ petition was not properly constituted.”

It is pertinent to mention here that the petitioners are not aggrieved persons, therefore, they cannot file the instant writ petitions. It is a settled principle of law that every person by his own sweet will cannot file the writ petition as pro bono publico until and unless he fulfills the conditions to invoke the constitutional jurisdiction of this Court. The petitioner while invoking such jurisdiction has to show that he was litigating firstly, in public interest and secondly, for public good or for welfare of general public. The petitioners failed to show any such interest, therefore, they are not aggrieved persons and they could not invoke the constitutional jurisdiction of this Court as pro bono publico as laid down in a case reported as **“Javed Ibrahim Paracha Vs. Federation of Pakistan and others”** [PLJ 2004 SC 824], wherein it has been held as under:-

“No doubt with the development of new concept of public interest litigation in the recent years, a person can invoke the constitutional jurisdiction of the Superior Courts as *pro bono publico* but while exercising this jurisdiction, he has to show that he is litigating, firstly in the public interest and secondly, for the public good or for the welfare of the general public.”

The same principle has been laid down in the cases titled “*Col. (Retd.) Muhammad Akram Vs. Federation of Pakistan through Secretary, Ministry of Defence and others*” [1998 SCMR 2073] and “*Ghiasul Haq and others Vs. Azad Government of the State of Jammu & Kashmir etc*”. [PLD 1980 SC AJ&K 5].

The same view has been taken by the Hon’ble apex Court of Azad Jammu & Kashmir in an unreported judgment titled “*Fazal Mehmood Baig, Advocate Vs. The University of Azad Jammu & Kashmir and others*” decided on 06.06.2017, wherein, it has been held as under:-

“We have given our serious thought to the relevant provisions of section 44 of the Azad Jammu & Kashmir Interim Constitution Act, 1974, which postulates that one can move the Court *pro bono publico* to challenge the vires of law on the ground that the same offends the provisions of the Constitution. The person who seeks a command from the High Court for enforcement of fundamental right must first show as to how he is an aggrieved person. A writ can be issued only on the petition of an aggrieved person and not by a *pro bono publico* litigant. In other words a person whose interests have been adversely affected by the impugned legislation or order under

challenge, he can competently file a writ petition and then file an appeal before the Supreme Court against the judgment of the High Court as required by law.”

In case in hand, I am not in position to gather anything to ascertain that how the petitioners are aggrieved persons by the act of respondents, herein. Suffice it to observe that only a person who has suffered legal injury can file a writ petition for redressal of his/her grievance and no third party can be permitted to have access to the Court for the purpose of seeking redressal for the person injured, therefore, the instant writ petitions are liable to be rejected at the threshold on the ground that the petitioners have no locus standi to file the writ petition. The traditional rule in regard to locus standi is that judicial redressal is available only to a person who has suffered a legal injury by reason of violation of his/her legal right or legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his/her legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. This Court is

concerned with the question whether the petitioners could be said to be “*persons aggrieved*” so as to be entitled to file the instant petitions. The Court in a unanimous view held that the petitioner was not entitled to file the petition because he was not a “*person aggrieved*” by any way. According to law a “*person aggrieved*” must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

It is worthwhile to mention here that on the basis of permanent address, the petitioners as well as every State Subject holder claims the privileges like service, seats for admission in professional colleges etc. It is very astonishing that the petitioners deny the right of vote from where they claim their residence on permanent basis. If any person does not want to cast his vote on the basis of permanent residence then he must waive the privileges of permanent residence. The petitioners themselves mentioned their permanent residence in CNIC and in the writ petitions claiming that they are residing at the present address for last many years, therefore, the aforesaid contention of the petitioners reveals that they have wrongly declared their permanent residences in the Application Form for CNIC. The Election Commission, NADRA, Azad

Govt. or any other authority has not mentioned the permanent address of the petitioners in their respective CNIC. It is very alarming that during the course of arguments, it was submitted by the learned counsel for the petitioners that they have no residence at their permanent address.

The whys and wherefores lead me to the conclusion that no legal right of the petitioners appears to be infringed, therefore, they do not fall within the definition of aggrieved persons and have no locus standi to file the instant writ petitions.

In the light of what has been stated above, finding no force in the above titled writ petitions, therefore, the same stand dismissed with no order as to the costs.

Muzaffarabad;
28.04.2021

(Sd)
ACTING CHIEF JUSTICE

Note:- Judgment is written and duly signed. Deputy Register Headquarter High Court is hereby directed to announce the judgment in presence of the parties or their counsel.

(Sd)
ACTING CHIEF JUSTICE