

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No. 2189/2021

Date of Institution 14.06.2021

Date of Decision 28.06.2021

Tayyab Abbasi S/o Muhammad Sarwar Abbasi R/o village Dhak, Post Office Rangla, Tehsil Dirkot, Azad Kashmir.

Petitioner

VERSUS

1. Azad Jammu & Kashmir Election Commission Secretariat Block No.6 Civil Secretariat Chatter Muzaffarabad;
2. Chief Election Commission Azad Jammu & Kashmir having his office at Block No.6 Civil Secretariat Chatter Muzaffarabad;
3. Secretary Election Commission, having his office at Block No.6 Civil Secretariat Chatter Muzaffarabad;
4. Govt. of Azad Jammu & Kashmir through its Secretary Law having office Civil Secretariat Muzaffarabad;
5. Pakistan Peoples Party Azad Jammu & Kashmir through Secretary General Central Secretariat PPP AJ&K situated at victory Plaza F-8 Markaz Islamabad;
6. Pakistan Muslim League (N) AJ&K through Secretary General, Secretariat PML(N) Azad Jammu & Kashmir, Abbasi Plaza Chandi Chowk Rawalpindi;
7. Pakistan Tehreek-e-Insaf, Azad Jammu & Kashmir through Secretary General, Secretariat PTI AJ&K situated at Sohan Islamabad.

Respondents

WRIT PETITION

Before;- Justice Sadaqat Hussain Raja, CJ.

PRESENT:

Mr. Abdul Qadir, Advocate for the petitioner;

Raja Ikhtlaq Hussain Kiani, AAG for respondent No.1.

Mr. Tahir Aziz Khan, Legal Advisor for the Department.

Ch. Shoukat Aziz, Advocate for respondent No.5.

Miss Noshaba Iqbal, Advocate for respondent No.6.

ORDER:

Through the above titled writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, following relief is solicited by the petitioner:-

“It is earnestly prayed that respondents No. 5 to 7 registered with Election Commission of Azad Jammu & Kashmir may kindly be declared as foreign affiliated/aided parties and liable to dissolve;

It is further prayed that Election Commission of Azad Jammu & Kashmir may kindly be directed to proceed under Section 132 of Azad Jammu & Kashmir Election Ordinance, 2021;

It is further prayed that all the candidates of respondents No. 5 to 7 for the election of Legislative Assembly who were interviewed by the members of political parties of Pakistan and their tickets issued by the heads of political parties of Pakistan may kindly be disqualified;

It is further prayed that Government of Azad Jammu & Kashmir may kindly be directed to restrain the political parties of Pakistan to interfere in election process of Legislative Assembly of Azad Jammu & Kashmir in any manner whatsoever.”

Brief history of the case is that respondents No. 5 to 7 came within the prohibitory clause of Section 126(2) of Azad Jammu & Kashmir Elections Ordinance, 2021 and their registration is liable to be dissolved under Section 132 of Azad Jammu & Kashmir Elections Ordinance, 2021. It is contended that the petitioner filed an application before respondent No.2 for the dissolution of above mentioned political parties on 24.05.2021 through E-Mail and on 01.06.2021 through Registered Post but respondent No.2 has not proceeded in accordance with law, hence, the instant writ petition.

Pre-admission notices were issued to the respondents for filing para-wise comments but the needful has not been done on their behalf.

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

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

Without going into merits and demerits of the case, suffice it to observe that a larger bench of this Court has resolved the same controversy in a case titled as “*Sardar Muhammad Sayyab Khalid Vs. Mohtarama Benazir Bhutto and 39 others*” [Writ Petition No.64/98 decided on 16.01.1999]. In this case, the petitioner, therein, prayed for disqualification of the Members of Legislative Assembly elected on the party ticket of Pakistan People’s Party Azad Kashmir and impugned the registration of the party as being a branch of the foreign country party. The prayer clause of that writ petition is also follows as under:-

رٹ درخواست بدیں صراحت عدالت سے قرار دیا جائے کہ آزاد جموں و کشمیر میں سیاسی جماعتوں کی تشکیل کا حق صرف ریاستی باشندوں کو حاصل ہے اور کہ مسؤلان نمبر ۱ و ۲ غیر ریاستی باشندے ہونے کی وجہ سے آزاد جموں و کشمیر میں نہ تو سیاسی جماعت تشکیل دے سکتے ہیں۔ اور نہ ہی اپنی پاکستانی سیاسی جماعتوں کا دائرہ آزاد جموں و کشمیر تک بڑھا سکتے ہیں۔ اور کہ وہ بحیثیت سیاسی جماعت آزاد جموں و کشمیر میں انتخابات میں حصہ لینے کے قانوناً اہل نہیں ہیں۔ نیز یہ بھی قرار دیا جائے کہ مسؤلان ۴ تا ۳۶ بطور نامزد امیدوار پاکستان پیپلز پارٹی و پاکستان مسلم لیگ (ج) گروپ آزاد جموں و کشمیر اسمبلی یا کونسل کے انتخابات میں حصہ لینے کے قانوناً اہل نہیں ہیں۔ اور ان جماعتوں کے نامزد امیدواران کی حیثیت سے منتخب ہونے کے بعد وہ آزاد جموں و کشمیر قانون ساز اسمبلی اور جموں و کشمیر کونسل کے ممبران کے طور پر فرائض انجام دینے کے اہل نہیں۔ اور ان سے دریافت کیا جائے کہ وہ کس قانونی اختیار اور اتھارٹی کے تحت آزاد جموں و کشمیر قانون ساز اسمبلی / جموں و کشمیر کونسل کے ممبر کی حیثیت سے عہدہ سنبھالے ہوئے ہیں۔ اور پاکستان پیپلز پارٹی و پاکستان مسلم لیگ (ج) گروپ کے نمائندے ہونے کی وجہ سے کس قانون اور اتھارٹی کے تحت وہ وزیراعظم، سیکرٹری، ڈپٹی سیکرٹری، وزراء، مشیران، معاونین خصوصی اور پارلیمانی سیکرٹریز کے عہدہ جات سنبھالے ہوئے ہیں۔

The aforesaid writ petition was dismissed by the larger bench of this Court. The relevant portion of the aforesaid judgment is also reproduced as under:-

“3. After hearing the petitioner, we have considered the arguments advanced at bar and have gone through the law regarding formation of a political party, election to the assembly and the council etc. The question as to whether a political party is a foreign party or a foreign aided party, can be determined by the government in view of Section 9 of the Political Parties Act, 1987 and in case the government is satisfied that a political party is a foreign aided party and has been formed for operating in a pre-judicial manner in Azad Kashmir, the government shall make such a declaration and that party shall stand dissolved whereafter the matter shall be referred by the Govt. to the Supreme Court whose decision shall be final. Relevant Sec. 9 of the Political Parties Act, 1987 is reproduced as follows:-

“8). **Dissolution Of Political Parties:---** (1) Where the government is satisfied that a political party is a foreign aided party or has been formed or is operating in a manner prejudicial to the Islamic Ideology or Ideology of State’s accession to Pakistan or the sovereignty and integrity of Pakistan or security of Azad Jammu & Kashmir or Pakistan, or morality, or maintenance, of public order or has contravened the provisions of sec.4, it shall make such a declaration and publish the same in the official gazette and upon such publication, the political party concerned shall, subject to the provisions of sub sec.(2) stand dissolved, and its all properties and funds shall be forfeited to the government.

(2) Within fifteen days of the making of a declaration under such sec (1) the government shall refer the matter to the supreme Court whose decision on such reference shall be final.”

Similarly the question as to whether a member of the assembly has become disqualified for being a member can be determined by the chief Election Commissioner on a reference made by the speaker under sub sec 2 of sec 25 of the constitution which is reproduced as follows:-

“25(2) If any question arises whether a member has, after his election become disqualified from being a member of the assembly, the speaker shall refer the question to the chief Election Commissioner and, if the chief Election Commissioner is of the opinion that the member has become disqualified, the member shall cease to be a member and his seat shall become vacant.”

(Underlining is mine)

The aforesaid judgment was assailed before the Apex Court in shape of appeal, which was dismissed vide reported judgment *1999 SCR 396*.

It is pertinent to mention here that fundamental right No.7 can be controlled by an Act as is provided in the right itself, but there is no law in force in Azad Jammu & Kashmir that a political party in Azad Jammu & Kashmir cannot be affiliated with a political party in Pakistan or a political party of Pakistan cannot set up a branch in Azad Jammu & Kashmir. My this view finds support from the reported judgment of the Apex Court [*1999 SCR 396*].

It is worthwhile to mention here that this Court can only pass an order which is authorized by law. While deciding the writ petition, this Court can issue a direction or declaration, if it is shown that a law has been violated. In the present case, no such situation exists.

The only restrictions imposed by law are those which are contained in the Azad Jammu & Kashmir Political Parties Act, which regulates the formation and functioning of

the political parties. Admittedly, the power of dissolution of a political party which has been formed or is operating in transgression of law has been vested in the Government. No such power has been granted to this Court.

Even otherwise, the question raised by the learned counsel for the petitioner is pure of political nature. Whether this is right or wrong is a political question which cannot be decided by Courts of law. Such matters can be controlled by laws which are made by the Legislature, not by the Courts. The Courts are not authorized to make laws. They also cannot decide political questions.

The phraseology of Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 clearly indicates that writ jurisdiction is exercisable if a grievance is based on violation of a law. Under Article 44, if an act is without lawful authority, a writ can issue to direct the respondent to do that which he is required by law to do or to forbid him from doing an act which he is not allowed by law to do. The requirement clearly is that a grievance raised in a writ petition must be based on law. Writ lies if law has been violated or, in case of a writ of prohibition, when it is apprehended that it will be violated by a Government functionary. My this view finds support from the precedent *1997 SCR 336*.

It is also pertinent to mention here that writ jurisdiction can be exercised only, where there is violation of law or principle of law. The similar view has been reiterated by the Hon'ble apex Court in case titled '*Perveen Azam & others v. SSP District Mirpur & 4 others*, [2015 SCR 837]. The relevant observation reads as under:-

"7. According to the spirit of the constitution, writ jurisdiction can be exercised where there is violation of law or principle of law. In this case, no such situation exists for interference in the domain of Investigating agency. The extraordinary writ jurisdiction is very limited and can be exercised in extra-ordinary circumstances. This Court while attending the identical proposition with reference to Section 561-A Cr.PC, which vests vast powers in the High Court has enunciated the principle of law in the case reported as 'Muhammad Saleem v. Muhammad Zaman & others, [2014 SCR 809] that interference in the matters falling the domain of Investigating agency, is not permissible."

(Underlining is mine)

It is a settled principle of law that an order/letter can only be set-aside in exercise of writ jurisdiction, if it violates any legal provision but no such situation exists in the present case, as no violation of law or of any instrument having the force of law has been shown. My this view finds support from *PLD 2012 Lahore 52, PLD 2009 SC 28 and 2007 SCMR 1318*.

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

Muzaffarabad;
28.06.2021

-Sd-
CHIEF JUSTICE

Approved for reporting.

-Sd-
CHIEF JUSTICE