

## **HIGH COURT OF AZAD JAMMU & KASHMIR**

Writ petition No. 542-S/2021

Date of Institution 10.02.2021

Date of Decision 28.04.2021

1. Fojdar Butt S/o Lal Butt;
2. Ghulam Ali Khan S/o Ghulam Muhammad Khan;
3. Bashir Ahmed Butt S/o Khair-Ullah Butt;
4. Muhammad Shafi S/o Sayan Khan;
5. Abdul Rasheed Mir S/o Muhammad Sakandar Mir;
6. Muhammad Yaseen S/o Abdul Samad Lone;
7. Hameed Butt S/o Habib Butt;
8. Muhammad Younas Khan S/o Nasar Khan;
9. Muzaffar S/o Ghulam Rasool R/o Chellah Bandi Ward No. 18, Tehsil & District Muzaffarabad.

Petitioners

### ***VERSUS***

1. Azad Jammu & Kashmir Election Commission Secretariat Block No. 6 Civil Secretariat Chatter Muzaffarabad;
2. Chief Election Commission, having his office at Block No. 6 Civil Secretariat Chatter Muzaffarabad;
3. Secretary Election Commission, having office Block No.6 Civil Secretariat Chatter Muzaffarabad;
4. District Returning Officer, having office Block No.6 Civil Secretariat Chatter Muzaffarabad;
5. Assistant Election Commissioner, having office Block No.6 Civil Secretariat Chatter Muzaffarabad;
6. Assistant Commissioner/Registration Officer, having office Block-A, District Complex Muzaffarabad;
7. Tehsildar/Assistant Registration Officer, having his office at Block-A District Complex Muzaffarabad.

Respondents

### **WRIT PETITION**

***Before;- Justice Sadaqat Hussain Raja, ACJ.***

#### **PRESENT:**

Ch. Adnan Farooq, Advocate 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, following relief is solicited by the petitioners:-

“It is, therefore, very humbly prayed on behalf of the petitioners that by accepting the instant writ petition, respondents may kindly be restrained from shifting the votes of the petitioners from Mahajar Camp Chellah Bandi LA-29 to Mahajar Camp Thotha LA-30 in light of letter dated 28.01.2021. Any other relief which this Hon’ble Court deems fit may also kindly be granted in favour of the petitioners.”

Brief history of the case is that according to voter lists of year, 2016, the votes are entered in the list of Mahajar Camp Chellah Bandi and in the light of voters lists, the petitioners cast their votes in the polling station of Chellah Bandi. It is contended that the petitioners are permanent residents of Chellah Bandi moved an application on 25.01.2021 to Secretary Election Commission through which the votes cannot be transferred of those people who reside in Mahajar Camp Chellah Bandi LA-29 Chellah Bandi. It is further contended that some people also moved subsequent application to Secretary Election Commission to transfer the votes of those people who reside in Mahajar Camp Thotha LA-30 but the official respondents with mala fide intention shifted all Mahajar votes in Thotha LA-30. It is submitted that the official respondents want to shift the votes of the petitioners and in this regard, respondent No.1 issued letter dated 28.01.2021. The aforesaid act of the respondents is against the law.

The instant writ petition has 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.

To reach the just conclusion of the case, it is more appropriate to reproduce the impugned letter dated 28.01.2021 as under:-

آزادوں کشمیر انکیشن کمیشن سیکریٹریٹ  
پلاک نمبر 8 (گر اوڈر فلور) سول سیکریٹریٹ پتھر، مظفر آباد۔

بخدمت:

اسسٹنٹ کمشنر صاحب،

رجسٹریشن آفیسر،

مظفر آباد۔

منوان:- لہذا راج ووت تہا ملہ مہاجرین تہا ملہ کیس حال ٹھوٹھ۔

اسلام علیکم۔

معاملہ عنوان الصدر میں حسب استدعا مہاجرین تہا ملہ کیس حال ٹھوٹھ (تکلی نقل لف ہے) حسب ہدایت تحریر خدمت ہے کہ آپ محکمہ بحالیات سے ایسے تمام مہاجرین خاندان جو حکومت کی جانب سے ٹھوٹھ کے مقام پر بذریعہ الاٹمنٹ مستقل آباد ہو چکے ہیں کی تفصیل محکمہ بحالیات سے حاصل کی جائیں۔ رجسٹریشن آفیسر 11 اسسٹنٹ رجسٹریشن آفیسران اسپر ویز رز ڈٹا رکنہ گان کے برائے کتاچہ میں واقع کیا گیا ہے کہ 1989ء اس کے بعد مقبوضہ کشمیر سے ہجرت کر کے آزاد کشمیر کے عارضی سکیول میں رہائش پذیر مہاجرین کی بلحدہ فہرستیں مرتب کی جائیں گی۔ جنہیں ان کیس کے متعلقہ وارڈز کے ساتھ بلحدہ شامل کیا جائے گا۔ ان فہرستوں پر مہاجرین 1989ء واضح طور پر تحریر کیا جائے گا۔

اسلام

(محمد مرشد)

اسسٹنٹ انکیشن سیکریٹری (انتظامیہ)

In the aforesaid letter, only the detail is sought from rehabilitation authorities of refugees who have allotted the permanent residence in Thotha in the light of Government notification, therefore, neither any right of the petitioners have been infringed nor they are aggrieved persons for issuance of the impugned letter.

Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, is reproduced as under:-

***“Jurisdiction of the High Court:-***

(c) on the application of any aggrieved person, make an order giving such directions to the person or authority, including the Council and the Government, exercising any power or performing any function in, or in relation to, Azad Jammu & Kashmir as may be appropriate for the enforcement of any of the fundamental rights conferred by the Constitution.”

In the case in hand, I scared himself 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 redress of his/her grievance and no third party can be permitted to have access to the Court for the purpose of seeking redress for the person injured, therefore, the instant writ petition is 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 redress 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 petitioner could be said to be a 'person aggrieved' so as to be entitled to file the instant petition. 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 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 fulfils 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 probono 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.”

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 petition.

The record also reveals that the petitioners neither attached any proof regarding their competence to file the writ petition nor they appended any document to prove the facts that they are State Subjects, therefore, they are not aggrieved persons in the eye of law.

In the instant case, the petitioners in content No.6 of the writ petition, stated that the official respondents want to

shift the votes of the petitioners and in this regard, respondent No.1 issued a letter dated 28.01.2021. It is pertinent to mention here that the Election Commission has passed the impugned letter under the mandate of the Interim Constitution, 1974, hence, a valid law cannot be strike down on the ill will of the petitioners. Even otherwise, the Courts do not normally interfere a policy made by the Government unless it is proved mala fide or made in a colourful exercise of authority. An identical point came before the Apex Court of Azad Jammu & Kashmir in a case titled as “*Syeda Shazia Irshad Bokhari Vs. Government of Punjab through Secretary Health and another*” [PLD 2005 Lahore 428]. The relevant portion of the aforesaid judgment is reproduced as under:-

“14. It is also a recognized principle of law that Courts do not sit in judgment over a policy of the Government. The impugned scheme was introduced as matter of a public policy. The courts do not normally interfere or strike down a policy made by the Government unless it is proved mala fide or made in a colourful exercise of authority, etc. In this respect for guidance we may refer to Lt. Col. Farzand Ali and others Vs. Province of West Pakistan [PLD 1970 SC 8], Gul Khan v. Government of Balochistan [PLD 1989 Quetta 8].”

(Underling is mine)

The petitioners through the instant writ petition want to retain their right of vote at the residence of their sweet choice just to get undue benefits of temporary residence by simultaneously maintaining benefits of permanent residence like right of service, right of getting land and house etc. The



record shows that the respondents have awarded the land and houses for the petitioners/refugees in Thotha in the light of state policy, therefore, after availing all the benefits from the State, the petitioners are incompetent to file the writ petition. In my considered view, if the petitioners want to retain their right of vote at the residence of their sweet choice, then they will have to waive the privileges of permanent residence.

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 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 with no order as to the costs.

**Muzaffarabad;**  
**28.04.2021**

(Sd)  
**ACTING CHIEF JUSTICE**

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

(Sd)  
**ACTING CHIEF JUSTICE**