

# ELECTION COMMISSION OF PAKISTAN

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MR. SIKANDAR SULTAN RAJA,  
MR. NISAR AHMED DURRANI,  
MR. SHAH MUHAMMAD JATOI,

CHAIRMAN  
MEMBER  
MEMBER

## CASE No.F.17(1)/2024-Coord. (Main File)

Subject: **REFERENCE UNDER CLAUSE (2) OF ARTICLE 63 OF THE CONSTITUTION OF PAKISTAN FILED BY MAJID MEHMOOD.**

**AND**  
**REFERENCE UNDER CLAUSE (2) OF ARTICLE 63 OF THE CONSTITUTION OF PAKISTAN FILE BY SENATOR SHAHADAT AWAN.**

1. Majid Mehmood S/O Muhammad Arif (Applicant No. 1)
2. Senator Shahadat Awan (Applicant No. 2)

.....Applicant(s)

### VERSUS

Senator Saifullah Abro

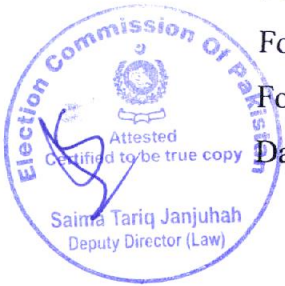
.....Respondent

For the Applicant No. 1 : Syed Qamar Hussain Sabzwari, ASC along with Shahrukh Marwat, AHC  
For the Applicant No. 2 : In Person  
For the Respondent : Barrister Shan Saeed Ghumman, AHC  
For the ECP : Special Secretary ECP  
Date of hearing : 07-01-2025

### ORDER

**Sikandar Sultan Raja, Chairman-** Brief facts of the case are that the Commission received two references under clause (2) of Article 63 of the Constitution of Islamic Republic of Pakistan from the Chairman Senate which were filed by Applicants Mr. Majid Mehmood and Senator Sahadat Awan against the Respondent namely Mr. Saifullah Abro for decision in terms of clause (3) of Article 63 of the Constitution of Pakistan. Aforementioned references of both the Applicants are consolidated and being disposed of through a single order having similar question for decision.

02. Upon receipt of the references from the Chairman Senate, notices were issued to the parties for appearance before the Commission on 23-10-2024. On



23.10.2024, no one appeared on behalf of Applicant No. 1, Majid Mehmood, however, Applicant No. 2, Senator Shahadat Awan appeared in-person. Junior counsel for the Respondent representing Senior Counsel Barrister Shan Saeed Ghumman, AHC appeared and submitted power of attorney which was placed on record. The matter was adjourned on the request of the junior counsel for the Respondent for submission of written reply for 11-11-2024 along with the direction to the office to repeat notice to the Applicant No.1, Mr. Majid Mehmood. On 11-11-2024 case was delisted due to non availability of the bench and matter was again fixed for hearing on 12-11-2024. On 12-11-2024 the junior counsel for Applicant No. 1, representing Senior Counsel Syed Qamar Hussain Sabzwari, ASC appeared and stated that the Senior Counsel is busy before the Court and he will argue the case on the next date of hearing and requested for short adjournment while on the other hand Applicant No. 2, appeared in-person and stated that he is going to Saudi Arabia for performing Umrah and also requested for short adjournment. The counsel for the Respondent appeared and objected that the instant references pending before the Commission are not maintainable and stated that he will file an objection application as well as written reply on the next date of hearing. The request from the parties was allowed and the matter was adjourned to 03.12.2024 for arguments and submission of written reply on behalf of Respondent. On 03-12-2024 the proxy counsel for the Respondent appeared and submitted the written reply on behalf of main Counsel. He sought an adjournment on the basis that Senior Learned Counsel is busy before the Court and he is also going abroad for few days. The copies of written reply were handed over to the Applicants. Upon the request of the parties the matter was adjourned to 24.12.2024. On 24.12.2024 the proxy counsel for the Respondent again requested for adjournment due to bad health condition of Senior Counsel who is based in Lahore. The Applicant No. 1, in-person and the counsel for Applicant No. 2, advanced their arguments. The request for adjournment on behalf of Respondent's Counsel was allowed as last opportunity and matter was adjourned to 07.01.2025.

03. Both the parties completed their arguments on 07.01.2025 which have been heard by the Commission and matter has been reserved for decision.

**ARGUMENTS ADVANCED BY APPLICANT NO. 1.**

04. Counsel for the Applicant No. 01, appeared and argued that the Commission has to look into the matter in three aspects. Whether the Respondent is qualified in terms of the definition of Technocrat or not? Whether he has given false information in his Nomination Papers? and Whether he has concealed important facts regarding mentioning of their dependents in the Nomination Papers. The Counsel argued that the Respondent is not qualified to become a Senator on the seat of Technocrat as he does not fulfill the required criteria mentioned in the definition of Technocrat. He further



argued that at the time of filing of Nomination Papers some of the objectors raised objection regarding his qualification which was turned down by the Returning Officer vide order dated 18.02.2021 and appeal was filed before the Appellate Tribunal. The Appellate Tribunal dismissed the appeal vide order dated 22.02.2021 and allowed the Respondent to contest Senate election as Technocrat. He further stated that the order of the Appellate Tribunal was assailed before a divisional bench (DB) whereby relief was granted to the Respondent. He referred the order dated 01.03.2021 of Constitution Petition No.1408/2021 filed before the Sindh High Court. He mentioned that the order was assailed in the CPLA No. 702/2021 before august Supreme Court of Pakistan in which the august Court disposed of the matter vide order dated 02.03.2021 with the directions to assail the issue at appropriate forum. The counsel argued that the appropriate forum is the Election Commission of Pakistan under Article 63(3) of the Constitution. He also referred to the definition of Technocrat provided under Article 213 of the Constitution and Section 2(XXXIX) of the Elections Act, 2017 and stated that the Respondent do not have the record of national and international achievements. He argued that the Respondent had worked with a firm and has no independent work done by him. He also argued that material facts have been concealed by the Respondent regarding their dependents in the Nomination Papers. He further highlighted that the projects mentioned by the Respondent at the time of filing of Nomination Papers were incomplete and no completion certificate has been provided by him. He while concluding his arguments placed reliance on the judgments reported in PLD 2006 LHC 358 & PLD 2024 SC 1028. He prayed to confirm the reference and the Respondent may be disqualified as a Senator and his seat may be declared vacant.

**ARGUMENTS ADVANCED BY THE APPLICANT NO. 2.**

05. The Applicant No. 2, appeared in-person and adopted the arguments advanced by the Counsel for the Applicant No. 1. In addition to it he stated that clear criterion for election to the seat of technocrat in the senate is given under the Constitution which has to be followed. He stated that slightest deviation from the rules and law shall render the election illegal, against the constitution and void ab initio. He asserted that Mr. Saifullah Abro had not completed the 20 years relevant experience required to contest the Senate election on Technocrat's seat. He further stated that the Respondent has provided the record of fake achievements. He mentioned that the Respondent remained Project Manager Engineer of the company named Qalandar Bax Abro and Company from 2007 till 2021. He highlighted that all the achievements mentioned by Mr. Saifullah Abro were vague and lacked authentic documentations which could prove the involvement / achievements of Mr. Saifullah Abro.



**ARGUMENTS ADVANCED BY THE RESPONDENT.**

06. The counsel for the Respondent stated that the instant reference is not maintainable as Article 63(2) of the Constitution is exclusively attracted, when a member of the Parliament becomes disqualified by virtue of events after (subsequent to) the elections. He added that as per Article 63(2) of the Constitution, a reference can only be instituted if a member "had become disqualified", whereas the subject reference, under reply, pertains to alleged pre-election disqualifications concerning eligibility of the answering respondent to contest the elections. He stated that the Hon'ble Supreme Court of Pakistan, in its judgment titled "Imran Ahmed Khan Niazi vs. Mian Muhammad Nawaz Sharif" reported as PLD 2017 SC 265, has settled that Article 63(2) pertains to post-election disqualifications, therefore, it is only attracted when a sitting member of the Parliament, by virtue of events subsequent to the election becomes disqualified. He further stated that the Sindh High Court, in its judgment titled "Moulvi Iqbal Haider Vs. Federation of Pakistan and 42 other", reported as PLD 2017 Sindh 464, while discussing the parameters of maintainability of petition under Article 63(2), placed reliance on the judgment of the Lahore High Court, Lahore in its judgment titled as "Kanwar Intizar Muhammad Khan Vs. Federation of Pakistan and others", reported as 1995 MLD 1903, wherein the Hon'ble Court held that "pre-election alleged disqualification of a member of a Parliament, cannot form basis for a reference of disqualification, to be sent by the Speaker of the Assembly to the Chief Election Commissioner". He elaborated that the Hon'ble Peshawar High Court, Peshawar in its judgment titled "Naqeeb Ullah Khan vs. Malik Imran Khan" reported as PLD 2006 Peshawar 21, reiterated the same principle of law that Article 63(2) and (3) only pertains to post-election disqualifications and noted that sub Article 2 of the Article 63 of the Constitution deals with a disqualification which might occur during holding of the public office. i.e. during membership of the Assembly.

He elaborated that the issue of eligibility of the Respondent, in terms of Section 2 (XXXIX) of the 2017, Act, stands settled by the Division Bench of the Honb'le Sindh High Court, vide order dated 01.03.2021. He further argued that the reference alleges that the projects executed by the partnership concern of the Respondent are under investigation by the National Accountability Bureau (NAB). This can hardly be considered as a ground for disqualification without their being a corresponding conviction by the Court having jurisdiction. Furthermore, he stated that disqualification under Article 63(1)(f) of the Constitution is not attracted unless there is a declaration to that effect by a court of law, reliance is made in this respect on PLD 2018 Sindh 263. He contended that the subject reference has been filed with malafide intentions. He stated that in respect of nomination of the Respondent, he is a civil engineer with a substantially high level of expertise in construction and civil works and has personally supervised and



managed different large-scale and nationwide projects relating to the construction of Motorways, flyovers, Dams and various other such projects integral to the infrastructural development in Pakistan. It was on account of the high level of expertise and experience in the field of civil engineering. He referred to the definition of "Technocrats" and stated that in view of the above noted eligibility criteria, the Respondent stood qualified to contest the Senate elections against a Technocrat seat. He argued that Respondent satisfied the eligibility criteria of Technocrat as he has completed over sixteen(16) years of education and has obtained his bachelor's in engineering (Civil) from Mehran University, which is a Higher Education Commission (HEC) recognized university. Secondly, the answering Respondent also qualified the second limb of the eligibility criteria by virtue of having more than twenty (20) Years of experience, inter alia, in civil works and construction of nationwide large-scale projects. Importantly, the performance and achievements of the Answering Respondent, through his partnership/Association of Person (AOP), namely M/s Qalandar Bux Abro & Co. (hereinafter the "Partnership"), have been nationally recognized. He while concluding his arguments placed reliance on the judgments reported in PLD 2017 SC 265, PLD 2006 Peshawar 21, MLD 1995 1903, PLD 2018 SC 449, PLD 2012 SC 774 & PLD 1070 SC 98 and prayed that the references may be dismissed being not maintainable and relieve may be granted to the Respondent.

**REBUTTAL:**

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07. The counsel for the Applicant No. 1, in his rebuttal referred Article 63(1)(p) of the Constitution and stated that it is specifically provided under the said Article that "he is for the time being disqualified from **being elected or chosen as member of Majlis-e-Shoora or of Provincial Assembly under the law for time being in force**". He argued that the qualification and disqualification before and after election are covered under Article 62 and 63 of the Constitution. He also highlighted that Commission is competent forum to decide the matter referred by the Chairman Senate under Article 63(2) of the Constitution. He further stated that there are certain cases whereby the declaration has been confirmed by the Commission and the same is upheld by the Supreme Court of Pakistan i.e. reported in PLD 2013 SC 482, PLD 2018 SC 449, PLD 2006 LHC, 358, 2021 SCMR 1319, PLD 2023 PHC 35 & PLD 2010 SC 828. He also stated that the Supreme Court of Pakistan has categorically stated that the person who comes under the definition of technocrat must have specific distinctions and achievements at national and international level.

08. The Applicant No. 2, in his rebuttal stated that the Respondent is not qualified to become a Member of Parliament as he does not have the national and international achievements which mean a type of work which makes him distinct from



the others. He stated that the work of the contractor cannot be considered as his achievements. He further mentioned that the achievements include an honorary award, writing a book or publications which the respondent does not possess. He referred the judgments reported in PLD 2018 SC 449 and 1999 CLC 1491 in support of his arguments.

09. We have heard the arguments and gone through the available record.

10. Before going into the details of the case the relevant Article and definition of Technocrat is given below:-

**Disqualifications for membership of Majlis-e-Shoora (Parliament)**

**[63. (1)** A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if—

**(2)** If any question arises whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and if he fails to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission.

**(3)** The Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.]

**Section 2 of the Elections Act, 2017**

**(xxxix)** —technocrat means a person who—

**(a)** holds a degree requiring conclusion of at least sixteen years of education recognized by the Higher Education Commission; and

**(b)** has at least twenty years of 1 [post-qualification] experience including a record of achievement at the national or international level;

11. Election Commission of Pakistan is an independent Constitutional body charged with the duty to organize and conduct elections and to make such arrangements that the elections are conducted honestly, justly, fairly and in accordance with law. Apart from it, there are certain functions and duties bestowed upon the Commission by the Constitution of Islamic Republic of Pakistan and law framed by the Parliament. One of the important example is the provision of Article 63(3) of the Constitution whereby, upon receipt of the reference / question of disqualification from the Speaker National Assembly or Chairman Senate, the Commission is obliged to decide the question within 90 days from its receipt. The above mentioned references were received from the Chairman Senate upon the applications filed by the Applicants No. 1 & 2 against Mr. Saifullah Abro. The Applicants contended that the Respondent is not qualified to become



a Senator (Member of Parliament) on the ground of having less experience of Technocrat i.e 20 years experience including a record of national and international achievements. It is also contended that the Respondent has mentioned the achievements in the Nomination Papers in the shape of certain construction projects but at the time of election for Senate those projects were not completed and he did not provide completion certificates of the said projects. The contentions of both the parties have been heard by the Commission along with their supporting judgments and documents.

12. It is observed that both the parties confirmed that the Nomination Papers filed by the Respondent were objected to by the objectors and the Returning Officer overruled the objections and declared the Respondent an eligible candidate to contest the election for Senate. The said order of the Returning Officer was challenged before the Appellate Tribunal whereby the order passed by the Returning Officer was turned down and the Respondent was declared in-eligible to contest the said election. The said order of the Appellate Tribunal was challenged through a CP No. 1408/2021 before a divisional bench of Sindh High Court at Karachi. The Hon'ble High Court vide order dated 01.03.2021 decided the matter and declared the Respondent eligible to contest Senate election. The operative part of the order is reproduced below:-

*11. We are unable to agree with the conclusion of the learned Tribunal regarding completion of any contract within the stipulated time can only be lawfully expected and mere compliance of a contractual obligation, by a third party, cannot be considered an achievement at a national level. In the present case, the petitioner's company has completed near about 13 projects including Metro Bus Project, Multan, overhead Bridge on Railway Line between Kotri City, Industrial Area Kotri and others. The petitioner has also produced a performance certificate issued by Project Manager Hyderabad-Mirpurkhas Dual Carriageway project dated 01.01.2020 that M/s. Qalandar Bux Abro and Co. completed a huge project even before the stipulated completion date which is a major icon in its achievement. In the end, it is written that "It is a great achievement at a national level in the supervision of Chief Executive Officer Engr. Saifullah Abro." Further, a letter is also available on page-249 in the file in which it has been written that "With the help and grace of Allah Almighty great danger was evaded and a significant achievement was accomplished by the team of M/s. Qalandar Bux Abro and Co. such efforts of M/s Qalandar Bux Abro and Co. secured the safety of the Canal and also saved human lives, public properties and Government's interests". He has also produced certain documents and pictures which show that the projects, which he has started, have been completed within time. From the perusal of the file, it reveals that the petitioner is a resident of Village Aghan No. 2 of Bangal Dero Mullan Kalhoro Ratodero Larkana and has completed his Bachelor of Engineering (Civil Engineer) from Mehran University of Engineering and Technology, Jamshoro in the year*

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1991. From 1993 to 2006, the petitioner was a government servant and employed on the post of Sub-Engineer (Civil) with the Highways Department, Government of Sindh. However, after resigning from the aforesaid position, the petitioner began working with the Qalandar Bux Abro and Co. as Project Manager/ Engineer in 2007 and remained in this position till October 2014. During the said period, his position entailed overseeing various construction projects and providing his expertise for the same as a Civil Engineer.

12. The deed of partnership was made in the year 2015 in which the shares of Mst. Laila Abro was decreased from 50% to 10% whereas shares of the petitioner were increased by 50% to 90% so, in this way, he has become a major partner in the M/s. Qalandar Bux Abro and Co. The partnership Act, 1932 defines the law pertaining to partnership. Section 2 (a) of the Partnership Act, 1932 defines an "act of firm" as any act or omission by all the partners or by any partner or agent of the firm which give rise to a right enforceable by or against the firm. It is therefore, evident that each partner incurs legal liability for his/ her own action. Furthermore, Section 18 of the Partnership Act, 1932 stipulates that "A partner is the agent of the firm for the purpose of the business of the firm." Reliance is placed in the case of Haji Bashir Ahmed and 9 others vs. Federal Law Commission, Islamabad (PLD 1985 Karachi 38). A certificate of Pakistan Engineering Council is available in the file which shows that the petitioner's company was registered as No limit construction company and he remained it's a Civil Engineer from 2008 and completed so many projects which are available in the file, from the above narrated facts, it can safely be said that petitioner Saifullah Abro has professional qualification. The findings of learned Tribunal that the petitioner has completed 13 projects which are not his achievement in the field are not correct.

16. In view of the foregoing discussion, we are of the considered view that petitioner Saifullah Abro is qualified to contest the Senate Election, 2021 and objectors had no locus standi to file an objection before Returning Officer for Senate Election-2021. The instant Constitution Petitions were allowed by short order. Consequently the impugned orders dated 22.02.2021 passed by learned Senate Appellate Tribunal, Sindh are set aside. Above are the reasons of our short order dated 25.02.2021.

13. This order of the Hon'ble High Court of Sindh was challenged before the august Supreme Court of Pakistan through CPLA No. 702/2021 and the august Court allowed the Respondent to contest the elections. Relevant para of the judgment is reproduced below:-

*In the circumstances, we note that the question of qualification of Respondent No.1 can always be agitated after the elections are concluded before the appropriate forum, which will hear and decide the same in accordance with law. Disposed of accordingly.*



14. It is evident from the above mentioned order of the Supreme Court of Pakistan that the matter was simply disposed of with the observations that the same may be agitated at any time after the elections before the appropriate forum which will be heard and decided in accordance with law. The august Supreme Court of Pakistan did not set-aside the order passed by the Divisional Bench of Sindh High Court dated 01.03.2021 and even no observations have been passed by the august Court in this regard. The Responded was allowed to contest the elections for Senate.

15. Law provides specific remedies for resolution of disputes arising out of the elections for Assemblies and Senate including qualification and disqualification of a Candidate/ Contesting Candidate/ Returned Candidate. Article 225 of the Constitution of Islamic Republic of Pakistan provides that “no election to a House or Provincial Assembly shall be called in question except by an election petition presented to such Tribunal in such manner as may be determined by Act of Majlis-e-Shoora (Parliament)”. Similarly Section 139 of the Elections Act, 2017 provides that election for the House of the Parliament or Provincial Assembly shall be called in question through an election petition filed before an Election Tribunal.

16. It is also observed that the question raised in the applications filed by the Applicants and referred by the Speaker to the Commission for decision, requires interpretation of the definition of word “Technocrat” and decision by a competent Court of law through a declaration. The august Supreme Court of Pakistan in the case reported in PLD 2020 SC 591 titled “Allah Dino Khan Bhayo Vs. ECP & Others” has held that “Disqualification under Article 62 & 63 of the Constitution can only be imposed by or under a declaration made by a Court of law after recording of evidence including the right of cross examination, hearing of arguments of the parties and through a reasoned judgment passed by a Court of law.” It is also held in the judgment that “even an Election Tribunal could only disqualify a Candidate when its declaration was issued on the basis of evidence before it, such a requirement was implicit in under Article 10A of the Constitution which made both due process and fair trial a fundamental right in law full judicial proceedings”.

17. Similarly, the august Supreme Court of Pakistan in case reported in PLD 2017 SC 265 titled “Imran Ahmed Khan Niazi vs. Mian Muhammad Nawaz Sharif & 9 others” has held that:-


*Forums/courts for challenging the qualification or seeking disqualification of a Member of Parliament---Where a candidate was not qualified or was disqualified from being elected or chosen as a Member of Parliament in terms of Arts. 62 & 63 of the Constitution, his nomination could be rejected by the Returning Officer or any other forum functioning in the hierarchy---Where, however, the returned candidate was not, on*




*the nomination day, qualified for or disqualified from being elected or chosen as a member, his election could be declared void by the Election Tribunal constituted under Art.225 of the Constitution---Election of a member of Parliament whose disqualification was overlooked, illegally condoned or went unquestioned on the nomination day before the Returning Officer or before the Election Tribunal, could still be challenged before the High Court or the Supreme Court under Art.199(1)(b)(ii) and Art. 184(3) of the Constitution respectively.*


18. Furthermore, there is a maxim that “law favors the vigilant and not the indolent” and “delay defeats equity”. The above mentioned order of the august Supreme Court was passed in March 2021 and the references for disqualification of the Respondent are moved before the Chairman Senate by the Applicants in the month of October 2024 after lapse of almost 3 years and 7 months. The Applicants also did not file an election petition before the Election Tribunal or a civil suit for declaration before a competent court of law. It is also observed from the order passed by the Divisional Bench 01.03.2021 that a declaration has been made by the High Court regarding the national achievements of the Respondent and completion of major projects before the given stipulated time period. The Respondent has also submitted list of projects and details of the years worked as Civil Engineer including services at Government Organization etc.

19. Therefore, in view of the above mentioned discussion the question referred by the Chairman Senate through the above mentioned references are decided in negative being devoid of merits and force without evidence

  
**Sikandar Sultan Raja**  
Chairman

  
**Nisar Ahmea Durrani**  
Member

  
**Shah Muhammad Jatoi**  
Member

  
Dated: 08.01.2025