

BEFORE THE CHIEF ELECTION COMMISSIONER (BPP)

COMMODORE ASPI MARKER

COMPLAINT NOs.2 and 3 OF 2022

Yasmin Jal Mistry Complainant

Vs.

Dr. Zuleika Homavazir Respondent

AND

Dr. Zuleika Homavazir Complainant

Vs

Yasmin Jal Mistry Respondent

1. Ms. Yasmin Mistry ("**Yasmin**") filed a complaint by her email dated 6th April 2022 against Dr. Zuleika Homavazir ("**Zuleika**"). Yasmin has alleged that Zuleika and her father, Mr. Firdosh Homavazir, made various statements on a WhatsApp group titled Parsi Community Grievance. According to Yasmin, these statements amount to a personal attack on her, her credibility as also her husband. The above amounts to a breach of the provisions of the Code of Conduct ('**CoC**').
2. Zuleika filed a complaint by her email dated 14th April 2022 against Yasmin stating that by virtue of her marriage, Yasmin is a Muslim. In light of the above, Yasmin should be disqualified from contesting the Elections.

3. The Election Commission followed the published Protocol for Complaints. Both Yasmin as also Zuleika were permitted by the Election Commission (“EC”) to rely upon such documents as they deemed fit in support of their respective complaints as also their respective defences. A hearing in each of the above complaints was granted by the EC at 2.30 p.m. on 26th April 2022 at the board room of the Bombay Parsi Punchayet (“BPP”). The same was attended by the members of the EC as also Yasmin and Zuleika.
4. The issues in both the Complaints are interconnected and are therefore disposed of by this order. We have considered the respective submissions made by both the parties, during the personal hearing as well as in writing. For the sake of better understanding the context, we shall first deal with the complaint filed by Zuleika against Yasmin.
5. Zuleika relied on the following documents in support of her complaint above:
 - a. Zuleika relied on her complaint (email dated 14th April 2022) to contend that:
 - i. Yasmin was married to a Muslim;
 - ii. The marriage was done through a nikah ceremony;
 - iii. As a consequence of the nikah Yasmin has converted to Islam;

- iv. By virtue of the conversion Yasmin is not a Zoroastrian as having once converted to Islam, Yasmin could not have converted back to Zoroastrianism;
 - v. Yasmin is consequently not a Parsi as per the Scheme sanctioned by the Hon'ble Bombay High Court.
 - b. In support of the contention that a marriage could not be contracted with a Muslim until the non-Muslim (especially a fire worshipper) converted to Islam, an extract of the Quran was relied upon;
 - c. In support of the contention that conversion to Zoroastrianism was not permitted, reliance was placed on an email dated 16th February 2008 recording a resolution unanimously passed at a meeting of high priests against conversion to Zoroastrianism;
 - d. In support of the contention that Yasmin is not a Parsi as per the Scheme, Clause 1.11 thereof was relied upon.
 6. In reply, Yasmin placed the following documents on record each of which was seen / inspected by Zuleika:
 - a. original Certificate of Marriage dated 14th December 2002 issued under the Special Marriage Act, 1954. The same was returned to Yasmin and duly notarised copies of the same were retained;

- b. photographs evidencing her marriage ceremony. The original photographs were returned to Yasmin and copies of the same were retained;
 - c. Copy of an affidavit dated 4th April 2022 filed with the BPP affirming that (i) she has always professed the Zoroastrian faith and has never renounced it; and (ii) continues to remain a Zoroastrian even post marriage.
 - d. Original affidavit notarised on 27th April 2022 (at the oral direction of the EC issued on 26th April 2022) affirming that (i) she has always been a practicing Zoroastrian; and (ii) that her marriage was not solemnised by a nikah ceremony under Islamic law.
7. Of all the above documents the original marriage certificate dated 14th December 2002 is the most relevant document. The same is issued under the Special Marriage Act, 1954 which permits persons of different faiths to marry without renouncing their religion or converting to another religion. The above certificate along with the photographs establish that Yasmin has contracted a civil marriage under the Special Marriage Act, 1954. The above establishes the fact that Yasmin who was born of Zoroastrian parents has not given up the religion of her birth by virtue of her marriage.
8. In light of the above the question of Yasmin converting to Islam from Zoroastrianism by virtue of her marriage does not arise. Seen in this light, the extract of the Quran (requiring conversion to Islam before marriage)

and the resolution / opinion of the High Priests (against conversion into Zoroastrianism) become irrelevant to the decision in the present matter.

9. Yasmin has filed two affidavits as detailed above. These affidavits further establish that Yasmin has not undergone a nikah ceremony under Islamic Law or any other rites or ceremonies under Islamic Law.
10. As such, we are satisfied that Yasmin is a Parsi, within Clause 1.11 (i) of the Scheme, being born of both Zoroastrian parents, and by virtue of her civil marriage to a Muslim, has not renounced the Zoroastrian faith. We note that the Affidavit dated 4th April 2022 was filed by Yasmin voluntarily under Clause 17.11 of the Scheme, simultaneously along with her nomination form. Yasmin, by this Affidavit dated 4th April 2022 has sworn that by virtue of her marriage, she has not renounced the Zoroastrian faith but continues to profess it. This demonstrates that this was not an afterthought which arose after Zuleika's complaint was filed.
11. No document has been placed before us which could lead to any inference to the contrary. The statements contained in Zuleika's complaint viz. the email dated 14th April 2022, are shown to be completely unsubstantiated and contrary to the documents produced by Yasmin. Consequently the same cannot be accepted.
12. Having regard to the above position, there is no merit in Zuleika's complaint against Yasmin, and the same is dismissed. However, we must record that making an allegation in public against any person or candidate that he/she has renounced the Zoroastrian faith and / or has converted to Islam is an

extremely serious allegation. The tone and tenor of these statements were deliberately provocative, and designed to incite voters against Yasmin. We are constrained to observe that in this case this allegation was made without any supporting evidence against a competing candidate. Zuleika's actions therefore in filing this complaint were not bonafide.

13. As regards Yasmin's complaint against Zuleika and her father: Yasmin has stated that the statements made by the above two persons on a WhatsApp group titled Parsi Community Grievance amounts to a personal attack on her, her credibility as also her husband. This according to Yasmin is contrary to the provisions of Clause 12 of the CoC. Typed copies of the statements made by the above persons have been attached to her email to the EC dated 6th April 2022. These statements are not denied by Zuleika.
14. These statements need to be examined. The first statement is by Mr. Firdosh Homavazir, viz. Zuleika's father. This statement specifically states that:
 - a. Yasmin's marriage (to a Muslim) is a "*blunder*". The above clearly amounts to a comment on Yasmin's personal life / personal choices;
 - b. "*Now what are these Trustees going to do as Mrs. Yasmin Maqsood Shaikh contests the oncoming Elections*". This clearly insinuates that Yasmin is a Muslim by marriage and not a Parsi under the Scheme. This, as detailed above, is clearly not the case and appears to be done only with a view to dissuade community members from

voting in her favour on the ground that she is not a Parsi under the Scheme;

c. *“The job of the Ethical Conservative Orthodox of our Community is to drive out Non-Zoroastrians from all our Zoroastrian Organizations and Trusts which please note. Stop the decline of our Community”*. This, once again, is an attempt to influence voters to not vote for Yasmin on the ground that she is not a Parsi under the Scheme and that voting for her would lead to the decline of the Zoroastrian community.

15. The above statement was responded to by Mr. Kersi Randeria. To this response Zuleika has rejoined. The rejoinder specifically states: *“Would it be apt to state that her husband’s name WAS Maqsood Shaikh? So to assume that she was always known as Yasmin Mistry (with all due respect for the lady) however in view of transparency, is it not a candidate’s duty to have mentioned to the Community, of having been married earlier to a Muslim unless you think otherwise?.....”*. It is pertinent that the above continues the insinuation that Yasmin, by virtue of her marriage is no longer a Parsi under the Scheme. This is incorrect as detailed above. This clearly is also an attempt to dissuade persons voting for Yasmin on the ground that she is not a Parsi under the Scheme.

16. At the hearing Zuleika has sought to explain away the above statements by contending that under Clause 12 of the CoC she is entitled to comment upon the past record of a candidate. The comments by her as also her father must be seen in that light.

17. In light of the above, Clause 12 of the CoC is very relevant and deserves to be cited in verbatim: -

“Criticism of other candidates should be restricted only to their policies, programme, past record and work. No ad-hominem allegations or allegations of a personal nature should be made by any candidate, his/her family members or authorized representatives against another candidate or his/her authorized representatives or family members. No unparliamentary or abusive language shall be permitted in print or in speech as part of an election campaign. No aspect of the private life of the candidates or their family members or workers shall be permitted to be criticized. Candidates or their family members or workers shall not be criticized based on unsubstantiated or unverified allegations or on distortions.”

18. Clause 12 of the CoC only permits a candidate / family members of a candidate to criticise the *“policies, programme, past record and work”* of other candidates. Clause 12 specifically prohibits *“ad-hominem allegations or allegations of a personal nature”* being made *“by any candidate, his/her family members or authorized representatives against another candidate or his/her authorized representatives or family members”*. Clause 12 further prohibits comments upon *“the private life of the candidates or their family members or workers”*.

19. We have perused and analysed the WhatsApp messages sent by Zuleika’s father as well as the messages emanating from Zuleika herself as detailed above. Our analysis leaves no room for doubt that the criticism of Yasmin

goes well beyond what is permitted by Clause 12. The criticism certainly does not fall within “*past record*” as contended by Zuleika. The criticism amounts to ad-hominem allegations i.e. allegations of a personal nature against Yasmin. The same deal with Yasmin’s private life which is prohibited by Clause 12 above.

20. The statements made by Zuleika and her father are consequently in breach of Clause 12 of the CoC. The Election Commission severely deprecates this conduct of Zuleika / her father. While we would have been justified in initiating proceedings to disqualify Zuleika as a candidate, we have restrained ourselves from doing so, and call upon her to forthwith desist from any further breaches of the CoC whether against Yasmin or any other candidate or person. In the event the above conduct is repeated, the same could entail serious consequences for her candidature.
21. Accordingly, we pass the following directions and order: -
 - (1) We find no merit in Zuleika’s complaint. Yasmin is a ‘**Parsi**’ within the meaning of the Scheme and satisfies the Eligibility Criteria for being a candidate at the forthcoming elections in terms of Clause 6 of the Scheme. Zuleika’s complaint is therefore dismissed.
 - (2) We find substance in Yasmin’s complaint that Zuleika and her father have breached the provisions of Clause 12 of the CoC. The allegations and statements made by both of them against Yasmin are personal in nature, trench upon Yasmin’s private life and are not bona fide. We are cautioning Zuleika that any repeat of any such breach whether

against Yasmin and/or any other candidate or person will entail serious consequences including a possible disqualification of her candidature.

Chief Election Commissioner,
Commodore Aspi Marker.
30th April 2022.