

Stereo. H.C. JD A 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR.
ELECTION TRIBUNAL
JUDICIAL DEPARTMENT

Election Appeal. No.03 of 2023

Saif Ullah

Versus Muhammad Shafique Chief Officer(DC,R.Y.Khan)Returning Officer PP-261 Rahim Yar Khan-VII.

JUDGMENT

Date of hearing	12.04.2023
Appellant represented by:	Ch.Saqib Tariq, Advocate.
Respondent by:	Mr. Muhammad Jafar, Law Officer for the Respondent and Election Commission of Pakistan.

SADIO MAHMUD KHURRAM, J.- This election appeal has been filed by the Appellant under Section 63 of the Elections Act, 2017 read with Rule 54 of the Election Rules, 2017 for setting aside the order dated 18.03.2023 passed by the Respondent Returning Officer, Constituency PP-261, Rahim Yar Khan -VII who rejected the nomination papers of the appellant.

2. Brief facts of the case are that the Election Commission of Pakistan called upon the voters of the Constituency PP-261, Rahim Yar Khan -VII, to elect a Member from the said Constituency and the schedule of the election was announced. The appellant namely Saifullah along with others filed nomination papers before the returning officer (the respondent). The

nomination papers of the appellant namely Saifullah were rejected by the Respondent Returning Officer, Constituency PP-261, Rahim Yar Khan -VII vide order dated 18.03.2023.

3. The learned counsel for the appellant submitted that the order dated 18.03.2023 passed by the Returning Officer, PP-261 Rahim Yar Khan-VII, whereby he proceeded to reject the nomination papers of the appellant on the ground that the *Computerized National Identity Card (C.N.I.C)* of the proposer was expired, was liable to be set-aside being against the facts and the law; that the expiry of *Computerized National Identity Card (C.N.I.C)* does not act as obliterating the very identity of the proposer as a voter; that even according to section 26 of the Elections Act, 2017, an expired *Computerized National Identity Card (C.N.I.C)* of a person is deemed to be valid for the purpose of his registration as a voter.

4. Mr. Muhammad Jaffar, Law Officer, Election Commission of Pakistan has submitted the original record and stated that the Respondent had rightly rejected the nomination papers of the appellant .

5. Arguments of all the parties have been heard and the available record has been perused.

6. A perusal of the record reveals that the nomination papers of the appellant were rejected by the Returning Officer, Constituency PP-261, Rahim Yar Khan -VII on the ground that the *Computerized National Identity Card (C.N.I.C)* of Ghulam Fareed , the proposer of the appellant , was expired and that the signatures on the *Computerized National Identity Card (C.N.I.C)* of Ghulam Fareed were different from the signatures of Ghulam Fareed available on FORM A .It is trite that the expiry of the *Computerized National Identity Card (C.N.I.C)* does not act as obliterating the very identity of the

proposer as a voter. According to section 26 of the Elections Act, 2017, an expired *Computerized National Identity Card (C.N.I.C)* of a person is deemed to be valid for the purpose of his registration as a voter. The section 26 of the Elections Act, 2017 provides as under :-

26. Preparation of preliminary electoral rolls.—(1) Subject to the superintendence, directions and control of the Commission, the Registration Officer shall prepare the electoral rolls by including in the electoral rolls, the name of every person entitled to be enrolled as a voter in an electoral area under this Act.

(2) A person shall be entitled to be enrolled as a voter in an electoral area if he—

(a) is a citizen of Pakistan;

(b) is not less than eighteen years of age;

(c) possesses a National Identity Card issued by the National Database and Registration Authority at any time till the last day fixed for inviting claims, objections and applications for preparation, revision or correction of electoral rolls;

(d) is not declared by a competent court to be of unsound mind; and

(e) is or is deemed under section 27 to be resident in the electoral area.

Explanation.—The National Identity Card issued by the National Database and Registration Authority shall be deemed to be valid for the purpose of registration as a voter or for casting vote in an election, notwithstanding the expiry of its validity period. (emphasis supplied)

Proposer and/or seconder are not defined anywhere in the Elections Act, 2017 or the Election Rules, 2017. The provisions of the Punjab Local Governments (Conduct of Elections) Rules, 2013 are in *pari materia* to the relevant provisions under the Elections Act, 2017. The august Supreme Court of Pakistan , in the case of *Nadeem Shafi Versus Tariq Shuja Butt And Other (P L D 2016 Supreme Court 944)* , while dilating upon the provisions of Punjab Local Governments (Conduct of Elections) Rules, 2013, held as under:-

“Proposer and/or seconder are not defined anywhere in the Act ibid or the 2013 Rules, therefore, it would appear that the only qualification of a proposer and/or seconder are that he/she be a voter of the constituency.”

The requirement of being qualified to subscribe to the nomination paper as a proposer, therefore, is that the proposer must be a voter of that constituency for which the candidate aspires to be elected as a member. When an expired *Computerized National Identity Card (C.N.I.C)* of a person is deemed to be valid for the purpose of his registration as a voter, then a proposer whose Computerized National Identity Card (C.N.I.C) is expired at the time of subscribing to the nomination paper or at the time of scrutiny of the nomination paper of a candidate, the proposer or the seconder cannot be termed as not qualified to subscribe to the nomination paper for that reason. With regard to the observation of the Returning Officer, Constituency PP-261, Rahim Yar Khan -VII that the signatures on the *Computerized National Identity Card (C.N.I.C)* of Ghulam Fareed were different from the signatures of Ghulam Fareed available on FORM A, it is observed that such determination could not have been made by the Returning Officer, Constituency PP-261, Rahim Yar Khan -VII without having referred the matter to an expert. Reliance in this regard is placed on the case of *Mst. Sumaira Malik versus Malik Umar Aslam Awan And Others (2018 S C M R 1432)*, wherein the august Supreme Court of Pakistan has held as under:-

“Insofar as Article 84 is concerned, we are of the view that keeping in mind the requisite standard of proof it is unsafe for the Court (which would here include an election tribunal) to itself carry out a visual examination and comparison of the record. In election matters, if at all such an exercise has to be carried out, it must be referred to expert opinion (which would here include the opinion of any relevant regulatory body or authority such as NADRA). The totality of the evidence must be considered only while taking such report into account and applying the requisite standard.”

At this stage, the Tribunal is of the view that if the appellant is allowed to contest the election and even if he succeeds, there would still be a remedy to challenge the election by way of an Election petition whereas on the other hand, if this appeal is rejected, the appellant would be ousted from the election arena which would be irreparable damage. The wisdom of summary inquiry contemplated under the provisions of Election Rules, 2017 has this rationale behind it.

7. In view of the settled provisions of law as mentioned above, this appeal is **accepted** and the Returning Officer, Constituency PP-261, Rahim Yar Khan -VII is directed to accept the appellant's nomination papers, if he is not otherwise disqualified on different/other grounds. Notwithstanding anything stated above, it is clarified that the findings recorded and observations made herein are based only on a tentative assessment of the material before the Tribunal, in the facts and circumstances brought to the notice of the Tribunal, for the limited purpose of deciding this appeal.

**(SADIQ MAHMUD KHURRAM)
JUDGE/APPELLATE TRIBUNAL**

Raheel/

APPROVED FOR REPORTING

JUDGE