

FORM NO. HCJDC/C-121

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

JUDGMENT

Writ petition No.20729 of 2024

Ch. Muhammad Arshad
Versus
Parvez Elahi and two others

Date of Hearing: 03.04.2024

Petitioner by: Mr. Muhammad Ramzan Ch., Advocate and
Barrister Abdul Qudoos Sohal, Advocates

Respondent No.1 by: M/s. Barrister Haris Azmat, Maryam Hayat,
Farman Manais and Mohsin Murtaza Cheema,
Advocates.

Respondent No.3 by: Mr. Imran Arif Ranjha, Advocate / learned
Legal Advisor alongwith Haroon Kasi,
Director Law, Election Commission of
Pakistan.

Tabish Mehmood Butt and Malik Ikram
Hussain, Returning Officers PP-32 in person.

MASUD ABID NAQVI, J: Through this writ petition, the petitioner has challenged the validity of impugned order dated 26.03.2024, passed by the learned Election Tribunal whereby the Election Appeal filed by respondent No.1 was allowed by setting aside order dated 21.03.2024 passed by the Returning Officer, PP-32, Gujrat-VI and the nomination papers of respondent No.1 were accepted.

2. At the very outset, learned counsel for the petitioner states that the petitioner is aggrieved from the findings of learned Election Tribunal in impugned order dated 26.03.2024 to the extent of Objections Nos.1, 8, 9, 10 & 11 and is assailing the impugned order to that extent. The learned counsel for the petitioner argues that in view of the provisions of relevant laws and as per Form-B, the respondent No.1 was/is under legal obligations to provide complete details of assets whether movable or immovable owned by him or his spouse but the respondent No.1 deliberately concealed those assets, informed by petitioner through fresh/new objections being voter of that constituency which were duly discussed by the Returning Officer. Hence, the respondent No.1 has not fulfilled the eligibility criteria, defined under the relevant laws & Constitution of Islamic Republic of Pakistan, 1973. In order to strengthen his arguments, the learned counsel for the petitioner has relied on number of judgments of Honourable Superior Courts for setting aside the impugned order. On the other hand, learned counsel for the respondent No.1 argues that in the previous two General Elections, the respondent No.1 filed nomination papers with the same details of assets and few objections on those nomination papers were either rejected by the Returning Officer or by the learned Election Tribunal, by this Court in writ petition and ultimately respondent No.1 contested General Election after the judgment of Hon'ble Supreme Court of Pakistan passed in C.P.No.181 of 2024. Learned counsel for respondent No.1 further

argues that respondent No.1 was arrested and imprisoned even before the last General Elections and he is still behind the bars, hence, it is not expected from an imprisoned candidate to provide all the details of his assets as well as assets of his spouse and the assets which have not been mentioned in the nomination papers are not of substantial nature. Further argues that in scrutiny process of respondent No.1's nomination papers, the Returning Officer miserably failed to proceed under the second proviso to Section 62(9) of the Act. Learned counsel for the respondent No.1 has also relied on number of judgments of Honourable Superior Courts in support of the impugned order. Learned Legal Advisor of Election Commission of Pakistan/respondent No.3 also assisted this Court about certain facts, argued by the contesting parties after going through the summoned record.

Although, learned counsel for the respondent No.1 raised a legal question about the jurisdiction of this Court in entertaining the instant writ petition by relying on judgments yesterday but today he simply argues on the facts & law(s) in support of the impugned order while learned counsel for the petitioner as well as learned Advisor of Election Commission of Pakistan opposed the stance of learned counsel for the respondent No.1 by not only relying on judgments but also by drawing our attention to previous litigation where the respondent No.1 himself filed a writ petition before a Full Bench on this Court. Hence, after hearing the arguments of learned counsels and considering the peculiar

facts of this litigation, there remains no doubt about the jurisdiction of this Court to entertain instant writ petition.

3. We have heard the arguments of the learned counsel for the parties and have minutely gone through record as well as the impugned order.

4. In recently decided election matters, Honourable Apex Court has educatively discussed about the democratic principles, duties of Returning Officers in election process and role of Courts as guardians of democracy and fundamental rights. Relevant portion of those judgments are reproduced hereunder for our guidance to decide instant petition;

C.P.No.151 & 152 of 2024.....Elections stand as a manifestation of the collective will of a nation, reflecting the diverse voices and choices of its citizens. In this democratic process, individuals exercise their right to vote, contributing to the formation of a representative government. The rights involved are not only of those participating in the elections but also of the public. The courts, in their role as guardians of democracy and fundamental rights, should approach electoral matters with circumspection, ensuring that their interventions uphold the democratic principles upon which the nation thrives and the fundamental rights of citizens to contest elections and vote for the candidates of their choice. The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. The working of democracy depends on whether the people can decide the fate of the elected form of government. It depends on the choices that people make in different ways. This choice of people cannot be compromised, as their mandate in

elections changes the destinies of government. Through the electoral process and voting, citizens participate in democracy. By voting, citizens take part in the public affairs of the country. Thus, citizens by voting enjoy their right to choose the composition of their government by exercising their choice and ability to participate.....electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership. With this approach rooted in the high constitutional rights and values, the courts are to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections.

C.P.No.181 of 2024.....At the heart of a thriving democracy lies the fundamental process of elections, an embodiment of the democratic principle that power should be vested in the hands of the people. And at its core, democracy is all about participation. Elections offer a structured and equitable way for citizens to participate in the democratic process and express their preferences for leaders and policies. The legitimacy of a democratic government hinges on its reflection of the people's will, and this is only possible through widespread and inclusive participation of the candidates and voters in the election process. Pro-enfranchisement policies ensure that every eligible citizen, irrespective of his or her background, has the opportunity to vote, thus reinforcing the democratic tenet of equal representation. The threat of disenfranchisement by way of an improper rejection of nomination papers looms large in a democracy, which may undermine the fairness and integrity of the electoral process. A democratic society committed to fairness must actively combat disenfranchisement, ensuring that all voices are heard and valued in the political arena. Inclusive electoral processes contribute to political stability and social

cohesion. This stability is essential for the long-term prosperity and peace of any society. The vitality of elections in a democracy cannot, therefore, be overstated. Further, the right to vote freely for the candidate of one's choice is the essence of a democratic society, and any [undue] restrictions on that right strike at the heart of representative government. It is with this approach we deal with and decide upon the issues involved in the present case..... **Had the petitioner not disputed his ownership of the said land, the RO may have directed him to mention the same in his statement of assets; as the second proviso to Section 62(9) of the Act specifically prescribes for the ROs that they should not reject any nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.** These provisions show that the law is pro-inclusiveness in the election process. The rejection of the nomination paper of the petitioner on the said ground also is not legally sustainable.

C.P.No.183 of 2024..... It goes without saying that it is against democratic norms and principles to add technical bottlenecks in the way of any individual, who is a citizen of this country, trying to contest elections. And in this backdrop, it is pertinent to say that electoral laws and rules cannot be used as an arbitrary filtering mechanism, dependent on the whims of a Returning Officer. Therefore, a Returning Officer should exercise the discretionary powers available to him in a rational and meticulous manner.....**the Returning Officer must scrutinize all nomination papers submitted to him, in the best interest of justice and to uphold the fundamental right of any individual to contest elections. Returning Officers are an integral part of the electoral process and it is highly unbecoming of a Returning Officer to exercise the authority conferred upon him or her in a**

manner which sabotages the electoral process. Returning Officers must remember that it is a fundamental right of an individual to contest elections and if they sabotage an individual not only do they rob the individual of their fundamental right but they also rob the populace at large of voting for that individual, which is also a fundamental right protected by the Constitution.

5. In view of the above guidelines of Hon'ble Supreme Court of Pakistan and the facts and law, objection-wise findings of this Court are as under:-

(i) **Objection No.1:** There is no denial of the fact that the similar objection was raised in previous general election which was not held in the year 2023 and the returning officer rejected the nomination paper of respondent No.1 but vide order dated 14.04.2023, learned Election Tribunal accepted the respondent No.1's Election Appeal No.24179 of 2023 after adjudicating upon all the questions of fact & law and that order was not assailed which attained finality. The returning officer rejected the respondent No.1's nomination paper without even mentioning the order of learned Election Tribunal on the issue.

(ii) **Objection No.8:** Returning officer rejected the nomination paper of respondent No.1 due to the non-disclosure of respondent No.1's spouse land measuring 08-kanals 08-marlas in his statement of assets and while rejecting the nomination paper, the Returning Officer has not exercised his discretional powers available to him in a

rational and meticulous manner. It was the duty of Returning Officer to scrutinize nomination paper, in the best interest of justice and to uphold the fundamental right of the individual to contest elections. Instead of rejecting the nomination paper, Returning Officer can direct the respondent No.1 to mention the same in his statement of assets because the second proviso to Section 62(9) of the Act specifically prescribes for the Returning Officers that they should not reject any nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.

(iii) **Objection No.9:** Returning officer rejected the nomination paper of respondent No.1 due to the non-disclosure of respondent No.1's inherited land measuring 34 kanals 18 marlas in his statement of assets and while rejecting the nomination paper, the Returning Officer has not exercised his discretionary powers available to him in a rational and meticulous manner. It was the duty of Returning Officer to scrutinize nomination paper, in the best interest of justice and to uphold the fundamental right of the individual to contest elections. Instead of rejecting the nomination paper, Returning Officer can direct the respondent No.1 to mention the same in his statement of assets because the second proviso to Section 62(9) of the Act specifically prescribes for the Returning Officers that they should not reject any nomination paper on the ground

of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.

(iv). **Objection No.10**: Returning officer rejected the nomination paper of respondent No.1 due to the non-disclosure of respondent No.1's weapons in his statement of assets. There is no column in election form where a candidate can give the details of his weapons but the value of these weapons are duly disclosed/ mentioned in statement of assets.

(v) **Objection No.11**: There is no bar for a candidate to participate in the election as an independent candidate or to participate with certificate of a party being a party's candidate.

6. For the foregoing reasons, we are of the view that the learned Election Tribunal has exhaustively dealt with matter and the petitioner has miserably failed to substantiate his case by giving valid grounds for setting aside the impugned order dated 26.03.2024. Consequently, finding no merit in this petition, the same is **dismissed**.

(SHAHID BILAL HASSAN) (MASUD ABID NAQVI)
JUDGE JUDGE

Approved for reporting.

JUDGE

JUDGE