

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NO. 1628 OF 2017

(On appeal against the judgment dated 13.04.2017
passed by the Lahore High Court, Lahore in Election
Appeal no. 16/2016)

Zulfiqar Ali Ranjha and Mirza Habibullah

... Appellants

VERSUS

Zia Ullah Ranjha and others

... Respondents

For the Appellants: Mr. Hamid Khan, Sr. ASC

For the Respondents: Mr. Muhammad Munir Paracha, ASC
Mr. Dil Muhammad Khan Alizai, ASC

Date of Hearing: 08.03.2018

JUDGMENT

FAISAL ARAB, J.- Under the local government laws, election to the seats of chairman and vice chairman of a Union Council is contested in pairs. Four sets of candidates contested for the seats of chairman and vice chairman of Union Council No. 23, Minawal Ranjha, District Mandi Bahauddin, Punjab for which polling was held on 19.11.2015. The appellants ranked first by securing 2545 votes whereas respondent Nos. 1 & 2 stood runner-ups, bagging 2523 votes. Leading with a thin margin of 22 votes, the appellants were declared returned candidates. The respondent Nos. 1 & 2 disputed the vote-count of Polling Station No.200 and sought recount where a total of 1178 votes had been cast. Out of 1178 votes 1131 were declared valid of which the appellants bagged 712 votes, respondent Nos. 1 & 2 bagged 286 votes, respondent Nos. 3 &

4 bagged 130 votes and respondent Nos. 5 & 6 bagged 3 votes. 47 votes were rejected. The Returning Officer allowed the application of respondent Nos. 1 & 2 for recount of votes polled in polling station No.200. In the process of recounting, 17 votes from the count of the appellants and 4 votes from the count of respondent Nos. 1 & 2 were excluded whereas 8 votes were added to the count of respondent Nos. 3 & 4. After such minor adjustments the tally of valid votes in the second count came down to 1118 votes from 1131 votes and rejected votes increased to 60 votes from 47 votes. However these minor adjustments are not in issue in the present proceedings. The issue solely relates to 207 ballot papers that were excluded from the tally of 1118 valid votes on account of absence of signatures of the presiding officer. Of these 207 ballot papers 131 were polled in favour of the appellants, 53 in favour of respondent Nos. 1 & 2 and 23 in favour of respondent Nos. 3 & 4.

2. As in the initial counting of votes, the appellants were declared successful with a thin margin of 22 votes, upon exclusion of 207 ballot papers in the recount, the final tally of the entire constituency tilted in favour of respondent Nos. 1 & 2 which reflected that they bagged 2447 votes as against 2391 votes bagged by the appellants. Hence, the result was reversed in favour of respondent Nos. 1 & 2 which the Election Commission notified on 21.12.2015. The appellants being aggrieved with the reversal of the result filed Election Petition before the Election Tribunal, Gujranwala, however, the same was dismissed on 03.10.2016 on the basis of sub-rule 4 (c) (i) of Rule 35 of the Punjab Local Governments (Conduct of Elections) Rules, 2013 which provides

that in case the official mark and the signature of the presiding officer is missing on the back of the ballot papers, the same are to be excluded from the vote-count. Unsatisfied with the result of the Election Tribunal, the appellants filed Election Appeal in the Lahore High Court. The High Court came to the conclusion that Rule 35 (4) (c) (i) specifically provides that where ballot papers do not bear the official mark and the signature of the presiding officer, the same are to be excluded from the vote count. Thus, the order of the Tribunal was maintained. Aggrieved by such decision of the High Court, present appeal with leave of this Court has been filed.

3. Learned counsel for the appellants argued that exclusion of 207 ballot papers from the tally of valid votes on account of absence of the signatures of the presiding officer was not justified when the ballot papers were duly stamped with the official mark and thus substantial compliance of the Rule 35 (4) (c) (i) of Punjab Local Governments (Conduct of Elections) Rules, 2013 was made. In support of his contention, learned counsel relied upon the dicta laid down in the case of Muhammad Abdullah Vs. Abdul Wakil (PLD 1986 SC 487).

4. Learned counsel for the respondents in rebuttal argued that Rule 35 (4) (c) (i) of Punjab Local Governments (Conduct of Elections) Rules, 2013 envisages existence of both the requirements i.e. official mark as well as the signature of the Presiding Officer which are mandatory and omission in the fulfilment of any of the two requirements would result in exclusion of ballot papers from the vote-count. With regard to the judgment cited by the counsel for the

appellants, learned counsel for the respondent Nos. 1 & 2 contended that the said judgment was rendered by this Court on the basis of the legal position obtaining under the then election laws which envisaged that such ballot papers are to be excluded from the vote-count that do not contain official mark or the signature of the presiding officer whereas under Rule 35 (4) (c) (i) of Punjab Local Governments (Conduct of Elections) Rules, 2013 every ballot paper has to contain an official mark as well as the signature of the presiding officer in order to be counted and for this reason the word 'and' has been used in sub-rule 4 (c) (i) between the two requirements and not 'or' as was the law when *Muhammad Abdullah's* case supra was decided, therefore, it is distinguishable on that score. He maintained that the word 'and' as provided under the law applicable to the case in hand, may not be read as 'or'. In support of this contention learned counsel placed reliance on a judgment of this Court rendered in the cases of Shah Muhammad Vs. Election Tribunal, Urban Local Council, Chishtian (PLD 1985 SC 287) and Zahid Iqbal Vs. Muhammad Adnan (2016 SCMR 430). To further strengthen his submission, learned counsel also placed reliance on the handbook issued by Election Commission of Pakistan to all Presiding and Assistant Presiding Officers deputed to conduct 2015 Local Government elections in Punjab. One of the directions contained in the handbook with graphic display provided that where a ballot paper does not bear the stamp of the official code mark and the signature of the Assistant Presiding Officer, the same is to be excluded from the vote-count.

5. The question which needs to be examined in this case is whether the omission on the part of Presiding Officer to sign ballot

papers would outright warrant their exclusion from the vote-count under sub-rule 4 (c) (i) of Rule 35 of Punjab Local Governments (Conduct of Elections) Rules, 2013. For the sake of convenience sub-rule 4 (c) (i) of Rule 35 is reproduced below:-

(4) Subject to the directions of the Election Commission, the Presiding Officer shall:

(a)

(b)

(c) count the votes cast in favour of each contesting candidate excluding from the count the ballot papers, which bear:

(i) no official mark and signature of the presiding officer;

6. Sub-rule 4 of Rule 35 facilitates in ascertaining whether the tally of final vote-count reconciles with the tally of legitimately issued ballot papers to the voters of a polling station at the time of polling. In case fake ballot-papers smuggled from outside are secretively stuffed in the ballot boxes, this would become apparent when the final vote-count exceeds the count of legitimately issued ballot papers. In such eventuality the official marks as well as the signatures of the presiding officer on the back of each ballot paper would facilitate in sorting out fake ballot papers from the genuine ones which could then be excluded from the vote-court. This appears to be the intent behind framing of sub-rule 4 of Rule 35. From the election data of the present case it is evident that a total of 1178 ballot papers were issued to the voters of which 1131 were

declared valid and 47 were rejected in the first count. When recounting was ordered it was conducted in two stages. In the first stage the tally of valid votes in the disputed polling station was reduced from 1131 to 1118 as 13 valid votes were rejected raising the tally of rejected votes from 47 to 60. This was the first stage of recounting of disputed votes which is not in dispute in these proceedings. Dispute arose when in the second stage of recounting 207 ballot papers from the tally of valid votes were excluded from the vote-count on account of absence of signatures of the Assistant Presiding Officer who conducted the elections at Polling Station No.200. After such exclusion, the final tally of valid votes came further down to 911 votes from 1118 votes. It may be mentioned here that the polling agents of the contesting candidates also keep an account of the ballot-papers issued to the voters by the presiding or assistant presiding officers. It has never been the case of respondent Nos. 1 & 2 that the final tally of ballot papers on the first or second count exceeded the number of ballot-papers legitimately issued at the disputed polling station during the polling process nor is their case that before commencing the count, the ballot boxes were removed from the sight of the their polling agents in order to give rise to the suspicion that the genuine ballot-papers may have been replaced with fake ones. In these circumstances the overall tally of ballot papers (inclusive of valid, rejected and excluded votes) issued at the time of polling at Polling Station No. 200 was 1178 and at both the stages of counting was also the same i.e. 1178 votes, totally ruling out bogus voting from the equation. The mischief which sub-rule 4 of Rule 35 intends to suppress is to prevent stuffing of ballot boxes with bogus votes which is not the

case in the present proceedings. This could be more conveniently comprehended from the following table:-

Voting result of Polling Station No. 200

	Position after first vote count	Adjustments made in the second vote count which was not disputed	Tally of votes after undisputed adjustments in second count	Deduction of 207 valid votes having no signature of Presiding Officer	Finally tally of votes after recount
Appellants	712	-17	695	-131	564
Resp Nos. 1 & 2	286	-4	282	-53	229
Resp Nos. 3 & 4	130	+8	138	-23	115
Resp Nos. 5 & 6	3	-	3		3
Total valid votes	1131		1118		911
Rejected votes	47	13	60	207	267
Total votes polled	1178		1178		1178

7. From the above data, it can be seen that in all 1178 ballot papers were issued at the disputed polling station to the voters at the time of polling and the tally of vote-count in the two stages of recounting also remained the same i.e. 1178 votes (911 valid and 267 rejected/excluded). This establishes that the disputed 207 ballot papers were not smuggled from outside and polled but were part of 1178 ballot papers that were issued to the genuine voters who came to cast their votes at Polling Station No.200 but were excluded in the second count only for the reason that these ballot-papers did not bear the signature of the Presiding Officer, which is one of the two requirements of sub-rule 4 of Rule 35. In our opinion a ballot paper warrants out-right exclusion from the count if the signature as well as the official mark, both, are missing. In case only one of the two requirements exists and yet the final tally of votes cast at a polling station exceeds the number of ballot

papers issued to the voters then too such ballot-papers should be excluded from the vote-count as excess of votes upon their count establishes that bogus voting has taken place. None of these two situations, as illustrated above, exists in the present case. Why then these 207 voters, who legitimately exercised their right of vote, stand disenfranchised merely because the presiding officer committed mistake of not signing on them. In *Muhammad Abdullah's* case supra referred to by the learned counsel for the appellants, reliance was placed on an earlier judgment of this Court in the case of Jamal Shah v. The Member Election Commission (PLD 1966 SC 1) which is a unanimous decision of five member bench. In this case late A. R. Cornelius, C.J. had observed thus *"Moreover, the Member's argument is not without weight, viz that an error in this respect is totally outside the obligation of the elector, and the law could not intend that he should be penalized for it. It is the duty of the Presiding Officer, under section 32, before he hands a ballot-paper over to the voter, to apply the official mark to it, and at the same time, to place his initials on it. There is ground, therefore, for thinking that the existence of the official mark is by itself sufficient to show that the paper passed through this process at the hands of the Presiding Officer, and it was mere act of inadvertence on his part that he failed to initial it at the same time. These considerations are relevant for the decision of the question of construction, viz whether the conjunction 'or' as used in the expression 'no official mark or initials' appearing in section 36 (1) (b) (i) enjoining exclusion of the vote by the Presiding Officer and section 38 (2) (a) enjoining rejection by the Returning Officer was not to be understood in a conjunctive, rather than in a disjunctive sense."*

8. When only 1178 ballot papers were issued to the voters at the time of polling at the disputed polling station and the final count of all the votes in the second round was also 1178 votes (911 valid and 267 rejected/excluded) and the disputed 207 ballot papers are inclusive of these 1178 ballot papers then on what material it could be said that the election in the disputed Polling Station was so badly conducted that the sanctity of vote was violated. Election laws are meant to prevent illegal and corrupt practices in an election process. Any omission on the part of the election officials in the enforcement of a rule which has nothing to do with the contesting candidate or the voters and such omission does not lead to form an opinion that bogus voting may have taken place then one cannot assume that object of sub-rule 4 of Rule 35 would be defeated if 207 validly cast votes are treated as valid and counted. On the contrary the said object would stand fully achieved, notwithstanding the omission of one of the two requirements of sub-rule 4 of Rule 35. When one of the two requirements have been fulfilled establishing that the disputed 207 ballot papers were issued to genuine voters of the constituency then there appears to be no reason to exclude them from the vote-count merely because one of the two requirements of sub-rule 4 of Rule 35 was not fulfilled by seeking strict compliance of both the requirements simultaneously. The object of sub rule 4 of Rule 35 of Punjab Local Governments (Conduct of Elections) Rules, 2013 is to exclude bogus and not genuine vote from the vote count. In the light of specific facts and figures of this case discussed above, exclusion of 207 votes would amount to excluding genuinely cast 207 votes from the count, which

in the circumstances of the case would amount to disenfranchising 207 genuine voters. A five member bench of this Court in the case of *Jamal Shah* supra has held that omission on the part of the presiding officer to sign ballot papers is totally outside the obligation of the voters and for that they cannot be penalized by excluding their votes which were nevertheless duly stamped with the official mark. This dictum of *Jamal Shah's* case was not touched upon by three member bench of this Court in the case of *Shah Muhammad* supra though it was cited.

9. In view of the above discussion, we allow this appeal on the basis of dictum laid down in *Shah Jamal's* case and declare that 207 disputed ballot papers are to be treated as valid and shall be taken into vote-count.

JUDGE

JUDGE

JUDGE

Islamabad, the
Announced on 04.05.2018 by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting
Khurram