

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE FAISAL ARAB
MR. JUSTICE TARIQ PERVEZ

CIVIL APPEAL NO.448 OF 2014

*(Against the judgment dated 5.3.2014 of
the Election Tribunal, Sukkur passed in
E.P.No.342/2013)*

Muhammad Ibrahim Jatoi

...Appellant(s)

VERSUS

Aftab Shaban Mirani etc.

...Respondent(s)

For the appellant(s): Mr. Muhammad Akram Sheikh, Sr. ASC

For respondent No.1: Sardar Muhammad Latif Khan Khosa, Sr. ASC
Mr. M. S. Khattak, AOR

For other respondents: Ex-parte

Date of hearing: 04.01.2016

...
ORDER

MIAN SAQIB NISAR, J.- This appeal under Section 67(3) of the Representation of People Act, 1976 (*Act*) assails the judgment dated 5.3.2014 passed by the learned Election Tribunal, Sukkur, whereby the Tribunal had accepted the election petition of the respondent.

2. The brief facts of the case are:- the appellant and respondent No.1 (*respondent*) contested for the National Assembly seat NA-202 Shikarpur-I in the general elections conducted on 11.5.2013. The appellant, who was declared a returned candidate by the Election Commission of Pakistan (*ECP*) vide notification dated 25.5.2013, obtained 54,633 votes whereas the respondent (*runner up*) secured 53,381 votes, with the differential between the two being 1,252 votes. The respondent challenged the election of the appellant primarily on the

grounds that the appellant secured his election by resorting to corrupt and illegal practices, and that a large number of bogus votes were got cast by him. In view of the divergent pleadings of the parties the following issues were framed:-

- “1. *Whether the petition is not maintainable in terms of S. 54 and 55 of Representation of People Act, 1976?*
2. *Whether Respondent No.1 Returned Candidate committed illegal and corrupt practices in the election process by way of coercive methods, manipulating bogus votes, stuffing the ballot boxes with bogus ballot papers?*
3. *Whether the Returning Officer and other election staff had acted in violation of provisions of the Representation of Peoples Act, 1976?*
4. *Whether the Respondent No.1 stuff the bogus votes using all foul means and the ballot papers bears bogus thumb impressions on counter-foils and such report is called from NADRA authorities by referring thumb impressions on the counter-foils, Pictorial Electoral List?*
5. *Whether free, fair and transparent election is not held in the constituency NA-202 Shikarpur-I?*
6. *What should the order be?”*

The parties led their evidence and after conclusion of the trial the learned Tribunal declared the result of 21 polling stations (*it is not necessary to give the number of each polling station*) declaring the appellant as the returned candidate as void and ordered re-polling of the said 21 polling stations. It may be pertinent to mention here that during the course of proceedings, the respondent moved an application seeking verification of the counterfoils of the said 21 polling stations and the learned

Tribunal through order dated 20.8.2013 allowed such material to be examined by NADRA. The NADRA team upon examination submitted a report to the learned Tribunal (*which shall be analyzed later*), however it is on the basis of such report that the election was directed to be re-conducted in the said 21 polling stations. In this regard it may be mentioned that as the appellant in his appeal against the impugned judgment could not get the interim relief and the election to the 21 polling stations were held in the meantime *per* the learned Tribunal's judgment and now on account of the result emerging due to re-election in these polling stations the respondent has been declared to be the returned candidate by a margin of 233 votes. It may also be stated here that the order dated 20.8.2013 through which the verification of the counterfoils by NADRA was directed, was assailed by the appellant through a constitution petition before the learned High Court of Sindh which has been dismissed vide judgment dated 25.3.2015 and no further challenge was made thereto, thus the order has attained finality.

3. As has been stated earlier the learned Tribunal founded its entire decision on the report of NADRA and thus the true attack made by the learned counsel for the appellant qua the said report is not only about its merits but also vis-à-vis the jurisdiction of NADRA to carry out such verification process under the Act and the National Database and Registration Authority Ordinance, 2000 (*NADRA Ordinance*). The learned counsel further submitted that the learned Tribunal also had no jurisdiction under the law to seek verification of the material of the 21 polling stations.

4. Be that as it may, as mentioned above this appeal came up for hearing earlier and the appellant had asked for interim relief in the

form of suspension of the impugned judgment because thereunder the re-election to 21 polling stations was directed to be held but this temporary injunction was refused to the appellant vide order dated 8.4.2014 passed by this Court (*we shall analyze the order and the effect thereof in the course of this decision*). Learned counsel for the appellant has argued that the election petition filed by the respondent was not verified in accordance with law and it was not supported by a full affidavit as is mandated by the Sindh Chief Court Rules and therefore, such petition was liable to be dismissed summarily as per Section 55 of the Act. It is also submitted that the learned Tribunal has not taken into consideration the oral evidence led by the respondent (*election petitioner*), thus there was no positive evidence for the purposes of declaring the election as null and void, rather the learned Tribunal has simply relied upon the report of NADRA which according to the learned counsel for the appellant is an invalid report for the following reasons:-

- a) The absence of the authority of NADRA to either get involved in the process of verification or to provide any expert opinion under the Act;
- b) There is no mandate under the NADRA Ordinance enabling NADRA to carry out such kind of a function of verification or opining about the validity or otherwise of the counterfoils or to resolve election disputes;
- c) That NADRA did not have the capacity to render a reliable piece of admissible evidence which is above suspicion and beyond reproach on account of which it can be held that such is an expert evidence so as to be made the basis for annulling the election or resolving a dispute therein;

- d) That the obtaining of ridges and fingerprints on a piece of paper is totally different from the global model of obtaining fingerprints through a modern device such as live scan fingerprinting.

Learned counsel also referred to the parliamentary proceedings and submitted that the mere fact of non-verification of 60-65% of votes would not result in the automatic conclusion that the said percentage of votes is bogus.

5. While dealing with the fundamental rights of citizens under Article 17 which includes the right to seek election to Parliament and Provincial Assembly, every effort has to be made to safeguard and guarantee such rights and suspicious material should not be allowed to be made the basis for disenfranchising an elected representative of the people except on very strong and positive evidence. In this respect learned counsel for the appellant submitted that the material on the record in the shape of the NADRA report is not a replacement or substitute for the positive evidence needed in this regard.

6. It has also been submitted that according to the result which has emerged after the by-elections, the position of the 21 polling stations remained the same, in that, the appellant had obtained almost the same number of votes which he acquired in the general elections, whereas the respondent has an improved position but only for the reason that 8000 votes, earlier cast in favour of a candidate of a different party who did not contest the by-elections, came to his kitty. On various propositions learned counsel for the appellant had relied upon the judgments reported as **Lala Shakeel-ur-Rehman Vs. Dr. Muhammad Ashraf Chohan** (2009 CLC 1302); **Abdul Rahim Khoso**

Vs. Mir Hazar Khan Bijrani (2004 CLC 77); Engineer Jameel Ahmad Malik Vs. Ghulam Sarwar Khan and 6 others (2004 CLC 914); Engineer Jameel Ahmad Malik Vs. Shaukat Aziz and 6 others (2007 CLC 1192); Bashir Ahmad Vs. Abdul Wahid (PLD 1995 Lah 98); Muhammad Anwar and others Vs. Mst. Ilyas Begum and others (PLD 2013 SC 255); In the matter of: Human Rights Cases Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759); Suo Motu Case No.13 of 2009 (PLD 2011 SC 619); A. C. Jose Vs. Sivan Pillai and others (AIR 1984 SC 921); Tanvir Ashraf Vs. Ch. Riasat Ali and 5 others (2004 YLR 659); Mian Ejaz Shafi Vs. Syed Ali Ashraf Shah and 11 others (PLD 1995 SC 43); Ali Hasan @ Jamshaid Vs. The State (2012 SCMR 242); Muhammad Ayub Vs. Iftikhar Ahmad Qureshi, Returning Officer, for Senate Elections 2006 FATA and 9 others (2007 CLC 1673); M. Budda Prasad Vs. Simhadri Satyanarayana Rao and others (1994 SCMR 446); Hari Ram Vs. Hira Singh and others (AIR 1984 SC 396); Chaitanya Kumar Adatiya Vs. Smt. Sushila Dixit and others (AIR 1975 SC 1718); Ram Sewak Yadav Vs. Hussain Kamil Kidwai and others (AIR 1964 SC 1249); Dr. Akhtar Hussain Khan and others Vs. Federation of Pakistan and others (2012 SCMR 455); The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi Vs. Saeed Ahmad Khan and others, and The Secretary, Department of Education, Government of Punjab Vs. M. R. Toosy, Ex-Principal, Government College, Sargodha and others (PLD 1974 SC 151); Hukmat Khan Vs. Sardar Asghar Ali and another (PLD 1958 (W.P.) Lah 962); Asif Nawaz Fatiana Vs. Walayat Shah and others (2007 CLC 610); Sardar Abdul Hafeez Khan Vs. Sardar Muhammad Tahir Khan Loni (1999 SCMR

284); Ch. Muhammad Abdullah Vs. Ch. Abdul Wakil and others (PLD 1986 SC 487); Samant N. Balakrishna, etc. Vs. George Fernandez and others etc. (AIR 1969 SC 1201); Maulvi Abdul Ghani and another Vs. Election Tribunal, Balochistan and others (1999 SCMR 1); Mian Shah Jehan Vs. Abdus Subhan Khan and others (1988 CLC 750); Capt. Syed Muhammad Ali Vs. Salim Zia (1999 CLC 1026); Capt. Syed Muhammad Ali Vs. The Returning Officer, P.S. 89, District Courts, Karachi and 11 others (1999 CLC 2039); Col. (Retd.) Syed Mukhtar Hussain Shah Vs. Wasim Sajjad and 30 others (PLD 1986 SC 178); Khan Muhammad Yusuf Khan Khattak Vs. S. M. Ayub and 2 others (PLD 1973 SC 160); Syed Saeed Hassan Vs. Pyar Ali and 7 others (PLD 1976 SC 6); Muhammad Saeed and 4 others Vs. (1) Election Petitions Tribunal, West Pakistan, (2) Mehr Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others (PLD 1957 SC (Pak.) 91); Syed Abdul Latif Shah Vs. Ali Muhammad Khan and others (2004 MLD 36); Peter John Sahotra Vs. Returning Officer and others (1995 CLC 394); Abdul Raja Razzak Vs. Abdul Hakeem Baloch and 27 others (2014 CLC 574); Bahader Khan Vs. The State and another (2012 PCrLJ 24).

7. On the contrary, learned counsel for the respondent has made reference to an order passed by this Court on 8.4.2014 and has argued that all the points which have been raised by the appellant's learned counsel have already been attended to and answered against him in the said order. It is also argued that the appellant had himself applied for the verification of votes at 16 polling stations by stating in clear and unequivocal terms that verification from NADRA should be obtained which is very reliable and this was consented to very candidly

by the respondent, however subsequently the appellant backed out and retreated from this offer, therefore it does not lie with the appellant to raise any objection to the competence and authority of NADRA for verification of the election material. It is also submitted that earlier the interim order through which the verification by NADRA was directed was challenged by the appellant through a constitution petition before the learned High Court which was decided against him and this order had not been challenged further resultantly the appellant is now precluded from challenging that said order by saying that it is against the authority of NADRA *(note:- it has been submitted that after the elections at 21 polling stations, the appellant only assailed before the Election Tribunal (perhaps) some illegalities qua 7 polling stations which were found to be very minor but no further challenge was put forth as the appellant did not file any election petition to challenge the outcome of the election after re-polling at these 21 polling stations).*

8. Heard. As far as the verification of the petition is concerned, suffice it to say that from the written statement filed by the appellant, there is no serious objection about the verification of the election petition, rather the objection raised was about the annexures to the petition and this also is not one of the grounds set out by the appellant in the present memo of appeal. As regards the argument now raised that the election petition is not supported by a full affidavit as per the requirement of the provisions of the Sindh Chief Court Rules, suffice it to say that when one looks at Section 55 of the Act, the only requirement of law is regarding verification as per the provisions of Order VI Rule 15 of the Code of Civil Procedure, 1908 (CPC) and not vis-à-vis any affidavit required to be given in support of the election petition. Therefore, the argument about a full length affidavit has no substance. As far as the verification of the election petition otherwise is

concerned, we have examined the document and find that a short affidavit to that effect in support thereof has been given which duly fulfills the requirements of Order VI Rule 15, CPC as has been held in the judgments reported as **Sardarzada Zafar Abbas and others Vs. Syed Hassan, Murtaza and others (PLD 2005 SC 600)** and **Lt. Col. (R) Ghazanfar Abbas Shah Vs. Mehr Khalid Mehmood Sargana etc. (2015 SCMR 1585)**. As regards the other plea that there is no positive evidence led by the respondent to prove corrupt and illegal practices or other illegalities in the conduct of the election and whatever evidence was led by the respondent was not believed by the learned Tribunal, suffice it to say that regardless of the evidence led by the respondent, the Tribunal for appropriate reasons had sought verification of the election material from NADRA and this order when challenged by the appellant in a constitution petition has been upheld by the learned Sindh High Court and no further challenge was made before this Court. Therefore for all intents and purposes the order has attained finality and it cannot be called into question in an indirect manner as has been now done by the learned counsel. Besides, it may be pointed out that the appellant himself through an application dated 24.8.2013 had sought the verification of the election material for 16 polling stations (*maybe for polling stations other than the said 21*) and categorically stated that “*verification of thumb impressions and CNIC Nos. from NADRA, would bring the credibility the result of election*”. Obviously in the above situation the appellant is estopped by his own conduct from saying now that the election material could not be referred to NADRA for examination and verification.

9. As far as the plea that NADRA does not have the requisite mandate under the provisions of the Act or the rules framed

thereunder, suffice it to say that this in no way takes away the jurisdiction of the learned Tribunal where the laws of the CPC and evidence are duly applicable to seek the assistance and expert opinion from any organization (*see Section 64 of the Act*). It is an exercise of appropriate authority by the learned Tribunal that verification was sought for. As regards the argument that there is no mandate with NADRA allowing for such verification, it may be mentioned that NADRA is meant for the purpose of registration of citizens of the country and maintaining a database for multiple uses in efficiently and effectively running the affairs of the State and the general public in order to achieve the goals of good governance, public service and minimizing scope for corruption and inefficiency (*as per the preamble to the NADRA Ordinance*). Furthermore, Section 7(1)(i) of the NADRA Ordinance allows for NADRA to provide the requisite access into the National Data Warehouse (*i.e. the central data warehouse based on the data and information from the Citizens Database*) to all Government, semi-Government and private institutions in such manner and for such fee as may be prescribed by regulations. The above section can be read with Section 5(4)(h) which allows NADRA to charge a prescribed fee for its services or for provision of any information or report to any Governmental, private entity etc. from its databases, and such services/information to our mind can always be received and resorted to by the Courts and the Tribunals of law and the skill and expertise of NADRA can be taken as an expert opinion in terms of Article 59 of the Qanun-e-Shahadat Order, 1984. Therefore, being the only body vested with the authority by statute to issue NICs, the numbers of which are used as the primary method for identification of voters for the purposes of issuance of ballot papers and to cast their vote at an election, obviously where a question of any

voter's identity is involved the process of verification and authentication should be carried out by NADRA. The process adopted by NADRA (*which is enunciated by the NADRA report not only in this case, but by similar NADRA reports in numerous cases before this Court*) is as follows:- the election material (*including the statements of count, used counterfoils and photo electoral rolls*) is received from the Election Tribunal which is subsequently scanned and loaded onto a database to preserve such material in electronic form. Such scanning operation is performed using auto-feed high speed scanners at an image quality of 400 dpi. Then the digitization operation takes place whereby the NIC numbers and fingerprints are electronically extracted from the scanned images. Before moving on to the actual verification of thumb impression process, NADRA first sifts the used counterfoils as follows:-

- (i) invalid CNIC on counterfoils, meaning thereby that such used counterfoils had NIC numbers which were never issued by NADRA, and also includes those counterfoils which contained no NIC number whatsoever;
- (ii) 'out of constituency' votes (*but only if NADRA has the constituency mapping of the seat in question with their respective voter entries*);
- (iii) duplicate voters on counterfoils, i.e. one CNIC appeared on more than one used counterfoil; and
- (iv) used counterfoils without fingerprints.

After excluding the aforementioned categories of counterfoils, the remaining counterfoils' fingerprints are run through the authentication process which is done by an Automated Fingerprint Identification System (*AFIS*), whereby fingerprints on used counterfoils are matched against the NADRA database of fingerprints. This process entails three results:-

- (i) fingerprints successfully authenticated, i.e. the fingerprint affixed on a used counterfoil (*which contains a valid NIC*) matches the fingerprint of the registered voter/citizen held with NADRA in its citizen database; and
- (ii) fingerprints failing authentication, i.e. the fingerprint

affixed on the used counterfoil (*which contains a valid NIC*) did not match the fingerprint of the registered voter/citizen held with NADRA in its citizen database; (iii) cases where there are some residue used counterfoils, i.e. where the fingerprints on used counterfoils (*which contains a valid NIC*) were of poor quality (*for e.g. the ink was smudged, etc.*) and thus could not be processed through the AFIS.

10. Besides from the statement of CW-1, a representative of NADRA, it is very much clear that NADRA has the requisite expertise in this behalf. Moreover, NADRA has prepared Standard Operating Procedures (SOPs) to which reference has been made in paragraph 6 of the report upon which the process identified in the report was observed. Obviously befalling such procedure the verification has been made and from the cross-examination of CW-1 conducted by the appellant we are of the considered view that a dent has hardly been made either qua the authority, expertise, skill or even the verification on merits of the report submitted by NADRA. It may also be added here that according to the NADRA report, the following illegalities have been found in the votes:-

S. NO	Description	Count of Votes
1	<i>Votes polled in polling stations whose election material was received by NADRA</i>	16,469
2	<i>Invalid NIC number mentioned on used counterfoils, this also includes such counterfoils that do not have CNIC mentioned over it.</i>	2,283
3	<i>Duplicate voters on used counterfoils</i>	1,098
4	<i>Used counterfoils without fingerprints</i>	35
5	<i>Fingerprints successfully authenticated on used counterfoils and ER</i>	2,320
6	<i>Fingerprints on used counterfoils and ER failing authentication</i>	1,133
7	<i>Fingerprints of bad quality affixed on used counterfoils</i>	9,600

From the above, it is sure that excluding 4,549 votes (*combined count of votes at serial numbers 2, 3, 4, and 6*) which is greater in number than the difference between the total number of votes obtained by the appellant and the respondent, i.e. 1,252 votes, would render the election result as being materially affected, and this is the reason which prevailed with the learned Tribunal for holding of fresh elections at 21 polling stations. We are not impressed with the argument of the learned counsel for the appellant that NADRA does not have any expertise in the matter or does not have the capacity or the mandate or the Election Tribunal had no authority to refer the election material to NADRA for the purposes of the dispute.

11. In view of the foregoing, we find that the learned Tribunal was justified and correct in declaring the result of 21 polling stations declaring the appellant as a returned candidate as void and ordering for re-election in the said 21 polling stations.

12. The above are the detailed reasons for the short order of even date whereby the appellant's civil appeal was dismissed, which reads as:-

“For the reasons to be recorded later, this appeal has no merit and is hereby dismissed.”

JUDGE

JUDGE

JUDGE

Islamabad, the
4th January, 2016
Approved For Reporting
Waqas Naseer/*