

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NO. 1033 OF 2014

(On appeal against the judgment dated 20.06.2014
passed by the Election Tribunal-II, Quetta in
Election Petition No. 28/2013)

Muhammad Arif Muhammad Hassani

... Appellant

VERSUS

Amanullah and others

... Respondents

For the Appellant: Mr. Kamran Murtaza, ASC
Mr. Qahir Shah, AOR

For the Respondent (1): Mr. Shakeel Ahmed, Sr. ASC
Mr. Abdul Sattar, ASC

Date of Hearing: 06.04.2016

JUDGMENT

FAISAL ARAB, J.- In the General Elections that were held on 11.5.2013, the appellant and respondent No. 1 were the main contesting candidates from Balochistan Provincial Assembly seat PB-39 Chagai-I. For 66842 registered voters of this constituency, the Election Commission setup 73 polling stations. In all 35197 valid votes were polled. The turnout was 55%. The appellant bagged 12289 votes and the respondent No. 1 bagged 13376 votes. The rest went to other candidates. Leading with a margin of 1087 votes, the respondent No. 1 was declared returned candidate. The appellant was not satisfied with the result. He alleged rigging on

the part of respondent No. 1 and filed an election petition before the Election Tribunal, Quetta. The challenge was mainly based on the grounds that (i) the respondent No. 1 employed corrupt and illegal practices in 25 polling stations and did not allow his polling agents to enter their respective polling stations; (ii) the Returning Officer had changed locations of certain polling stations without seeking prior permission from the Election Commission and without notice to the contesting candidates due to which voters of such polling stations could not cast their votes; and (iii) the Returning Officer, in connivance with respondent No. 1 made changes in the polling staff after appointment of the Presiding Officer and other polling staff without intimation to the Election Commission.

2. During the pendency of the election petition, the appellant filed an application before the Election Tribunal seeking verification of thumb impressions on the counterfoils of the votes polled in 25 disputed polling stations through biometric system of NADRA, which was granted. Record reflects that the election material was dispatched to NADRA for verification. As per NADRA's report out of 25 polling stations, it did not receive election material of two polling stations i.e. Polling Station Nos. 64 and 73. The Election Tribunal after recording evidence of the parties dismissed the election petition. Aggrieved by such decision, the appellant filed the present appeal.

3. Learned counsel for the appellant, Mr. Kamran Murtaza straightaway took us to paragraph 22 of the impugned judgment. This paragraph contains a table based on the figures taken from NADRA's report. For the sake of convenience, this table is reproduced below:-

1	Votes polled in polling stations whose election material was received by NADRA	10,273
2	Invalid NIC number mentioned on used counterfoils, this also includes such counterfoils that do not have CNIC mentioned over it.	748
3	Duplicate voters on used counterfoils	41
4	Used counterfoils without fingerprints	91
5	Fingerprints successfully authenticated on used counterfoils and ER	3,933
6	Fingerprints on used counterfoils and ER failing authentication	61
7	Fingerprints of bad quality affixed on used counterfoils resultantly NADRA was unable to decipher them due to non-utilization of proposed ink beside other possibilities.	5,399

4. From NADRA's report, the above table was taken. It shows that out of 10273 votes that were cast, CNIC numbers on 748 counterfoils were either missing or contained incorrect CNIC numbers; 41 votes were cast by 20 voters; 91 counterfoils did not contain thumb impressions; thumb impressions on 61 counterfoils could not be authenticated; on 5399 counterfoils thumb impressions were of bad quality as inedible ink was not used hence the same could not be deciphered; and, thumb impressions on 3933 counterfoils were authenticated. After adding up the figures contained in serial numbers 2, 3, 4 and 6 of the above table, learned counsel for the appellant submitted that when these 941 bogus votes are deducted from the vote count of respondent No. 1

then keeping in view the small margin of 1087 votes with which the respondent No. 1 was declared successful and the fact that election material of polling station Nos. 64 & 73 was not dispatched to NADRA for verification, it would be sufficient to hold that election result of the constituency had been materially affected as envisaged under Sections 68 & 70 of the Representation of the Peoples Act, 1976 and the entire election of PB-39 is to be declared as void. The whole thrust of the argument of appellant's counsel was based only on the data contained in NADRA's report. In support of his contentions, he relied upon the case of Dr. Raja Aamir Zaman Vs. Omar Ayub Khan (2015 SCMR 890) as well as on a recent unreported judgment of this Court rendered on 2.3.2016 in Civil Appeal No. 1219 of 2014 (*Khalid Hussain Magsi Vs. Mir Abdul Rahim Rind*) where this Court upheld the judgment of the Election Tribunal which nullified the entire election result of NA-267 and ordered re-election in the entire constituency. The decision of this Court in the case of '*Khalid Hussain Magsi Vs. Mir Abdul Rahim Rind*' is distinguishable from the facts of the present case as the same was the result of phenomenal turnout of 96% shown on 54 polling stations of NA-267 and not only this but all such votes were shown to have been cast in favour of only one of the contesting candidates whereas the rival contesting candidate was shown to have bagged not a single vote. For the sake of convenience certain excerpts from the judgment in the case of '*Khalid Hussain Magsi Vs. Mir Abdul Rahim Rind*' are reproduced as follows:-

6.we have scrutinized the data of Form XVI which is a consolidated statement of the results of the vote-count of the entire constituency. From the consolidated statement it is apparent that on 54 polling stations, where one of the two contesting candidate had obtained no vote at all, the other contesting candidate had obtained almost all votes that were polled.

7. From thetables containing vote count of 54 polling stations, it is surprising to note that on 21 polling stations where the appellant obtained not a single vote, the respondent No.1 bagged 98.4% of the total votes that were cast. Similarly, on the remaining 33 polling stations where respondent No. 1 obtained not a single vote, the appellant bagged 99.8% of the total votes cast. It is also surprising to note that in the above discussed 54 polling stations, in all 50,922 votes were polled, the average of vote count comes to 943 votes per polling station whereas in the rest of 111 polling stations, where the remaining 37,358 votes were polled, this average stands at only 337 votes per polling station. The first question that comes to our mind is why on the above referred 54 polling stations where one contesting candidate had not even bagged a single vote, the percentage of polled votes in favour of the other is phenomenal i.e. around 99%. The other question that arises is why on these 54 polling stations the turnout was almost triple in comparison to turnout on the rest of 111 polling stations i.e. the percentage of turnout on the above mentioned 54 polling stations was 96% whereas turnout in the remaining 111 polling stations stood around 40% only. These unimaginable differences in the voting pattern on 54 polling stations as against the remaining 111 polling stations cannot be a simple case of mere coincidence, given the fact that both the contesting candidates were not candidates with marginal following. They were politically popular figures of the constituency as 92% of the total votes that were polled went to both of them only. When the issue is analysed from this perspective, the preponderance of probabilities leads us to believe that both the candidates must have exerted their respective political clout in their respective areas of influence in order to bag maximum number of votes.

5. From the above findings of this Court in the case of *Khalid Hussain Magsi* it is evident that unimaginable voting figures of 54 polling stations noticed by this Court coupled with the findings contained in NADRA's verification report confirmed prevalence of illegal practices on a very large scale which lead us to declare the elections of NA-267 constituency as a whole void in

terms of Section 70(b) of the Representation of the Peoples Act, 1976. There is no similarity of facts and circumstances between the above referred unreported case and the present one. In the present case, there were 21899 registered votes in the disputed 25 polling stations and a total of 11570 votes were cast in these polling stations. The turnout was 53% as against the turnout of 55% on the rest of the undisputed 48 polling stations. A comparative table of the voting pattern and the turnout on the disputed and undisputed polling stations is as follows:-

Result of 25 disputed polling stations		Result of 48 undisputed polling stations
Total registered votes	21899	44943
Total votes polled	11570 (53%) turnout	24887 (55%) turnout
Total valid votes cast	11005	24192
Votes obtained by appellant	2149	10140
Votes obtained by respondent No. 1	5447	7929
Lead of votes	3298 votes lead gained by respondent No. 1	2213 votes lead gained by the appellant

6. Thus it is apparent from the above table that on both the sets of polling stations no phenomenal difference in the polling pattern or the voters' turnout was noticeable as was noticed in the case of *Khalid Hussain Magsi* referred above. Then the argument of appellant's counsel for deduction of 941 votes from the tally of respondent No. 1's vote count also does not appeal to reason. If we accept the argument of the appellant's counsel that based on NADRA's report 941 votes be deducted from the tally of the votes

cast in favour of respondent No.1 then it would mean to lay down a principle that all disputed votes on a certain set of polling stations should be deducted from the vote-count of such candidate who had secured the highest number of votes in such polling stations, in absence of the evidence as to which of the contesting party was involved in corrupt practices. One cannot rule out the possibility that a candidate may still loose though he may have himself indulged in rigging practice. Without any substantial material coming on record why it should be assumed that the winning candidate has indulged in rigging. When the principle suggested by appellant's counsel is made applicable to a selected number of polling stations of a constituency then the winning candidate may also come up with his own list of selected polling stations of the constituency where the runner-up candidate had secured the highest number of votes in order to seek verification and then get all the disputed votes, in case such are pointed out by NADRA, deducted from the tally of votes bagged by the runner-up candidate. We may mention here that in the remaining 48 polling stations, it was the appellant, who was runner-up, had secured the highest number of votes i.e. 10,140 as against 7927 votes secured by respondent No.1 the winning candidate. We see no reason to deduct all disputed votes from the vote count of respondent No. 1. Therefore, the principle sought to be devised by appellant's counsel on the basis of NADRA's verification of selected polling stations of a constituency would not resolve the controversy but would further complicate the controversy.

7. Furthermore, in NADRA's report it is stated that 748 used counterfoils had invalid CNIC numbers. The report describes invalid CNIC numbers to mean such counterfoils on which either CNIC numbers do not relate to the voters of the constituency or on which CNIC numbers were missing. NADRA's report does not say that on these 748 counterfoils thumb impressions were missing or that the thumb impressions were not verifiable. We don't know that the thumb impressions on all or some of these 748 counterfoils were found to be correct. If thumb impressions on any of these 748 counterfoils had matched with that of the voters of the constituency then such votes cannot be described as invalid votes, irrespective of the fact that they contained incorrect CNIC numbers or CNIC numbers were altogether missing. The reason being that the possibility that the polling staff may have wrongly written or omitted to write CNIC numbers on these 748 counterfoils cannot be ruled out. Why a candidate be penalized for such an error or omission. So the figure of 748 votes, as contained in NADRA's report, cannot be treated as invalid votes that were cast at the behest of respondent No. 1. Furthermore, NADRA's report shows that there was duplication with regard to 41 votes as all these 41 votes were polled by 20 voters of the constituency. This shows that 20 duly registered voters polled more than once so in reality 21 votes were invalidly cast by them and not all of 41. It also cannot be ascertained as to in whose favour these 21 bogus votes were polled. Apart from the above analysis of NADRA's report, if the voting pattern and the turnout of voters, as discussed earlier, on 25 disputed polling stations is compared with the voting pattern

and the turnout on rest of the 48 polling stations, nothing phenomenal is noticeable to hold prevalence of corrupt practices so as to nullify the entire election result.

8. In view of the above discussion, we are of the view that NADRA's verification report relating to election material of only 25 polling stations cannot be made basis for nullifying the entire election result of the constituency. There has to be some convincing material or record to reach the conclusion that the election as a whole needs to be declared void. We may mention here that in the election petition, it was claimed that appellant's 25 polling agents were denied entry in the polling stations. We have noticed that appellant examined 14 witnesses of which only 10 were polling agents of the appellant. Of these polling agents 6 claimed that they were denied entry in the polling stations. Four polling agents did not even deny their entry in the polling stations. None of the 15 remaining polling agents of 15 disputed polling stations were even examined as witnesses. No attempt was made by the appellant to even call Presiding Officers of the disputed polling stations as court witnesses in order to establish that appellant's polling agents were denied entry in the polling stations on the polling day. Apparently on account of lack of evidence that the counsel for the appellant did not even refer to any piece of evidence to establish that respondent No.1 had in any manner resorted to rigging practices except for the figures of disputed votes contained in NADRA's report. Unsubstantiated and bald

allegations of rigging cannot be made basis to nullify the entire election result.

9. We are therefore of the view that no evidence has come on record of the present case to nullify the election result of Balochistan Provincial Assembly seat PB-39. This appeal fails and is hereby dismissed.

JUDGE

JUDGE

JUDGE

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

Approved For Reporting
Khurram

Result of 24 out of 25 disputed polling stations where respondent No. 1 got lead:

S.No.	Polling Station No.	Respondent's votes	Appellant's votes	Total of valid votes cast	Percentage of rspdt No. 1's Votes
1	4	217	205	513	
2	5	132	93	358	
3	6	85	68	242	
4	10	441	176	742	
5	11	413	188	798	
6	19	364	7	518	
7	20	421	17	613	
8	21	198	21	335	
9	22	207	70	418	
10	23	189	46	313	
11	25	262	126	526	
12	26	182	82	344	
13	35	107	94	337	
14	40	309	160	634	
15	53	121	39	219	
16	55	244	44	490	
17	57	125	21	251	
18	62	365	148	801	
19	63	49	5	111	
20	64	143	63	344	
21	65	204	45	277	
22	69	154	3	316	
23	71	78	62	192	
24	73	137	1	178	
	Total votes	5147	1784		

Result of 23 undisputed polling stations where respondent No. 1 got lead:

S.No	Polling Station No.	Respondent's votes	Appellant's votes	Total of valid votes cast	Percentage of rspdt No. 1's Votes
1	3	325	239	731	
2	7	244	221	528	
3	8	174	165	388	
4	9	469	242	973	
5	12	223	171	547	
6	13	177	118	384	
7	14	335	317	908	
8	15	136	2	214	
9	16	124	115	315	
10	24	180	63	450	
11	18	97	26	233	
12	29	336	139	529	
13	34	205	15	332	
14	36	116	43	293	
15	37	469	289	989	
16	38	249	206	637	
17	43	293	233	800	
18	54	197	8	261	
19	56	102	48	186	
20	58	255	116	659	
21	59	223	85	524	
22	60	241	157	777	
23	67	119	9	177	
	Total votes	5289	3027		

Result of 26 polling station (including one disputed polling station) where appellant got lead:

S.No	Polling Station No.	Respondent's votes	Appellant's votes	Total of valid votes cast	Percentage of rspdt No. 1's Votes
1	1	180	242	555	
2	2	143	204	453	
3	17	54	268	363	
4	27	126	303	507	
5	28	151	243	460	
6	30	105	312	443	
7	31	1	627	673	
8	32	55	219	293	
9	33	8	646	702	
10	39	99	102	426	
11	41	220	407	877	
12	42	156	198	499	
13	44	190	587	870	
14	45	230	572	895	
15	46	110	275	502	
16	47	34	270	446	
17	48	101	280	516	
18	49	107	292	366	
19	50	30	157	222	
20	51	90	145	347	
21	52	129	221	514	
22	61	21	36	165	
23	66	6	144	155	
24	68	3	68	87	
25	70 (Disputed)	300	365	1135	
26	72	78	175	378	
	Total votes	2727	7358		