

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. 1219 OF 2014**

(On appeal against the judgment dated 19.9.2014  
passed by the Election Tribunal-II, Quetta in  
Election Petition No. 178/2013)

Khalid Hussain Magsi

... Appellant

**VERSUS**

Mir Abdul Rahim Rind and others

... Respondents

For the Appellant: Kh. Saeed-uz-Zafar, ASC  
Mr. Muhammad Dawood Kasi, ASC

For the Respondent (1): Syed Iftikhar Hussain Gillani, Sr. ASC

Date of Hearing: 03.02.2016

**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 National Assembly seat NA-267 Kachi-cum-Jhal Magsi. For 1,47,595 registered voters of this constituency, the Election Commission setup 165 polling stations. In all 90728 votes were polled out of which 2448 were rejected for one reason or the other, leaving the tally of valid votes to 88280. The appellant bagged 42240 votes (48%) and the respondent No. 1 bagged 38915 votes (44%). Between them they both bagged 92% of the total valid votes that were cast in the constituency. Leading with a margin of 3325 votes the appellant was declared returned

candidate. The respondent No. 1 was not satisfied with the result. He alleged rigging on the part of the appellant and filed an election petition before the Election Tribunal, Quetta. The challenge was mainly based on two grounds i.e. (i) at the behest of the appellant, the District Returning Officer and Returning Officer were changed without prior notice to any of the contesting candidates and (ii) polling agents of respondent No1 were detained for the entire duration of the polling time which facilitated the appellant to cast bogus votes on 40 polling stations.

2. During pendency of the election petition, the respondent No.1 filed an application before the Election Tribunal seeking verification of thumb impressions of the voters of 40 disputed polling stations through biometric system of NADRA. This application was granted. Record reflects that the counterfoils and the ballot papers of 39 polling stations were dispatched to NADRA for verification. NADRA then submitted its report. In the report, it was stated that out of 30,649 votes that were cast on 39 disputed polling stations, there were no CNIC numbers on 2143 counterfoils; 40 votes were not even registered in the constituency; 783 votes were found to be issued more than once; counterfoils of 151 votes did not have fingerprints on them and fingerprints on 4438 counterfoils could not be authenticated through biometric system. Hence, doubt was cast on 7555 votes by NADRA that were polled on 39 disputed polling stations. The Election Tribunal after recording evidence and hearing both the parties, allowed the election petition and ordered fresh election in the constituency.

Aggrieved by this decision, the appellant has filed the present appeal.

3. Learned counsel for the appellant raised preliminary objection to the maintainability of respondent No.1's election petition before the Election Tribunal on the ground that the same was not verified on oath before the oath commissioner as required under Section 63 of the Representation of the Peoples Act, 1976. He relied upon judgments rendered in the cases of S.M.Ayub Vs. Yusuf Shah (PLD 1967 Supreme Court 486), Iqbal Zafar Jhagra Vs. Khalilur Rehman (2000 SCMR 250) and Ghazanfar Abbas Shah Vs. Mehr Khalid Mehmood Sargana (2015 SCMR 1585). Learned counsel for the appellant elaborated his argument on the preliminary objection by stating that election petition was signed on 2.7.2013 whereas the verification stamp of the oath commissioner is dated 3.7.2013, which clearly shows that the oath was not administered to the respondent before the oath commissioner. On merits, learned counsel for the appellant argued that the allegation against the appellant was that his two brothers detained the polling agents of the respondent No. 1 from going to their respective polling stations, which was practically not possible as two persons cannot prevent 40 polling agents from going to their respective polling stations of the constituency which was spread over about 200 kilometres. He also argued that the doubt cast by the NADRA on the validity of about 7555 votes does not mean that these votes were cast in favour of the appellant or that it was the appellant who indulged in any kind of rigging.

4. In response to the maintainability of election petition, the learned counsel for the respondent No. 1 argued that many a times date is printed on the petition but the same is presented for verification on oath on any subsequent date, therefore, the difference of one day between the printed date and the date on which the petition was actually verified on oath does not mean that no oath was administered to the respondent by the oath commissioner. He contended that the words '*sworn before me*' superimposed on the last page of the memo of election petition sufficiently demonstrate that the petition was duly verified. He further contended that not only this but a separate affidavit of service was also sworn by the respondent on oath, which was appended to the election petition and this also clearly establishes that all the requirements of law with regard to the verification of election petition were fulfilled.

5. With regard to the preliminary objection, all that we have to see is whether the memo of petition do reflect that the same was verified on oath and this is duly confirmed from the endorsement of the oath commissioner. The memo of petition clearly reflects the date of verification in the handwriting of the oath commissioner and also contains his stamp '*sworn before me*'. Hence, the election petition is to be taken as duly verified on oath.

6. As to the merits of the allegation, no doubt that nothing has come on record to establish that respondent No. 1's polling agents were physically prevented from going to the polling

stations. However, 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. It would be of considerable advantage to reproduce the data of the above referred 54 polling stations with the percentiles of votes that were cast in favour of each of the two main contesting candidates and then analyze the same.

**Result of 21 out of above referred 54 polling stations where appellant obtained zero votes:**

S. No.	Polling station	Appellant's Votes	Respt No1 Votes	Total of valid votes cast	Percentage of rsptd No. 1's Votes
1	Dispensary Rind Ali Balina (Female) (P)	0	242	277	87.3%
2	Girls M/s Chalgari (Female) (P)	0	415	443	93.7%
3	Haft Wali Balina (Combined) (P)	0	319	321	99%
4	P/S Kot Misri (Combined) (P)	0	1034	1034	100%
5	P/s Siah Pad (Combined) (P)	0	1056	1057	99.9%
6	P/S Sarkandhar (Combined) (P)	0	2399	2400	99.9%
7	Dispensary Shoran (Male) (P)	0	799	799	100%
8	Girls P/S Shoran (Female) (P)	0	469	469	100%
9	P/S Chalwani (Combined) (P)	0	623	623	100%
10	Boys H/S Shoran (High Section (Combined) (P)	0	1497	1497	100%
11	Boys H/S Shoran (High Section (Combined) (P)	0	1140	1140	100%
12	M/S Muan Shoran (Combined) (P)	0	1290	1292	99.9%
13	Boys P/S Azadi (Combined) (P)	0	1000	1000	100%
14	P/S Esbani (Female) (P)	0	567	650	87.2%
15	Improvised Eisbani (Male) (T)	0	900	900	100%
16	P/S Eri Tunia (Combined) (P)	0	2143	2145	99.9%
17	P/S Tendo Gulab (Combined) (P)	0	1237	1240	99.8%
18	P/S Godri (Combined) (P)	0	1033	1037	99.6%
19	P/S Arzi (Combined) (P)	0	2540	2540	100%
20	P/S Jhok Shahbaz (Combined) (P)	0	1505	1505	100%
21	P/S Siyanch (Combined) (P)	0	749	749	100%
Total votes		23118			

**Result of 33 out of above referred 54 polling stations where respondent No.1 obtained zero votes:**

S. No.	Polling station	Appellant's Votes	Respondt No.1's Votes	Total valid votes cast	Percentage of votes secured by rspdt No. 1
1	P/S Mehr Ghar (Combined)	225	0	228	98.7%
2	Girls H/S Mithri (Female) (P)	898	0	899	99.89%
3	Boys H/S Jhall Magsi (Male) (P)	1340	0	1340	100%
4	Girls H/S Jhall Magsi (Female) (P)	1261	0	1261	100%
5	Boys M/S Jhall Magsi (Combined) (P)	1483	0	1498	99%
6	Boys H/S Sarghani (Male) (P)	702	0	702	100%
7	Basic Health Unit Sargani (Female) (P)	698	0	698	100%
8	Boys M/S Kabbar (Combined) (P)	747	0	756	98.8%
9	Govt P/S Kochho (Ghulam Rasool Burghrani) (Combined) (P)	494	0	496	99.9%
10	P/S Khas Kheli (Combined) (P)	960	0	960	100%
11	Boys M/S Khichi Jadeed (Combined) (P)	740	0	740	100%
12	Boys P/S Amir Abad (Combined) (P)	724	0	724	100%
13	Boys M/S Band Mehmood (Combined) (P)	427	0	427	100%
14	Boys M/S Shahmir Khan (Combined) (P)	733	0	735	99.7%
15	Boys H/S Sakhani (Combined) (P)	1177	0	1177	100%
16	Boys H/S Kot Magi (Combined) (P)	1104	0	1104	100%
17	Boys H/S Chokhi (Combined) (P)	837	0	837	100%
18	Boys M/S Panjuk (Combined) (P)	1007	0	1008	99.9%
19	Boys M/S Khan Pur (Combined) (P)	315	0	315	100%
20	Boys P/S Bet Siddique (Combined) (T)	625	0	625	100%
21	Boys M/S Safrani (Combined) (P)	878	0	883	99.4%
22	Boys P/S Mat Kaloo Goth Shafi Mohammad (Combined) (T)	559	0	559	100%
23	Boys M/S Hathyari (Combined) (P)	1428	0	1430	99.9%
24	Boys M/S Matt Sindhurr (Combined) (P)	1038	0	1044	99.4%
25	Boys H/S Barjia (Combined) (P)	1161	0	1163	99.8%
26	Girls P/S Barjia (Combined) (P)	800	0	801	99.9%
27	Boys H/S Shambani (Combined) (P)	933	0	933	100%
28	Boys P/S Kohna Shadiharr (Combined) (P)	592	0	597	99.1%
29	Boys P/S Korjia (Combined) (T)	781	0	781	100%
30	Boys P/S Saif Abad (Male) (P)	1156	0	1156	100%
31	Civil Dispensary Saif Abad (Female) (P)	500	0	500	100%
32	Boys M/S Dhorri (Combined) (P)	840	0	840	100%
33	Boys M/S Mitho (Combined) (P)	589	0	589	100%
	<b>Total votes</b>	<b>27806</b>			

7. From the above two tables 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.

8. The analysis of above referred data, gathered from Form XVI, overshadows the submissions of the counsel of both the parties which they had advanced in favour of their respective clients as the polling data speaks louder than the words. This analysis of Form XVI coupled with the findings of NADRA in its report, where 7555 votes have been made doubtful as against returned candidate's winning margin of only 3325 votes, confirms the prevalence of illegal practice at the election. We are, therefore, satisfied that the election to the National Assembly seat NA-267 Kachi-cum-Jhal Magsi was not conducted in fair manner and is liable to be declared as a whole void in terms of Section 70(b) of the Representation of the Peoples Act, 1976. This appeal fails and is hereby dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the  
Announced on \_\_\_\_\_

Approved For Reporting  
**Khurram**