

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NO. 886 OF 2014

(On appeal against the judgment dated 16.06.2014
passed by Election Tribunal, Lahore in Election
Petition No. 262/2013)

Muhammad Yaqoob Nadeem Sethi

... Appellant

VERSUS

Muhammad Ilyas Khan etc

... Respondents

For the Appellant: Mr. Muhammad Shahzad Shoukat, ASC

For Respondent (1): Syed Hamid Ali Shah, ASC

Date of Hearing: 30.05.2016

JUDGMENT

FAISAL ARAB, J.- In the General Elections held on 13.5.2013 on for Provincial Assembly constituency PP-175 Kasur-I, the appellant was declared returned candidate whereas the respondent No. 1 was runner-up. The appellant secured 33758 votes whereas 29149 votes were bagged by respondent No. 1. The respondent No. 1, however filed election petition alleging that the appellant in connivance with the polling staff and the Returning Officer adopted illegal and corrupt practices and indulged in bogus voting. Both the parties adduced evidence in support of their respective pleas. During the pendency of the election petition, the respondent No. 1 applied for inspection of the election record under Section 45 of Representation of the People Act, 1976, which was allowed and thereafter also moved an application under

Section 46 of the Act which was also allowed vide order dated 17.4.2014. In pursuance of such order, the Election Tribunal appointed a retired District & Sessions Judge as Commission to inspect the election record and submit his report. The Commission duly submitted its report. Relying on the Commission's report, the Election Tribunal allowed the election petition and declared the election as a whole void and ordered to hold bye-election in the constituency. Aggrieved by such decision, the appellant has filed the present appeal.

2. Learned counsel for the appellant contended that the inspection report submitted by the Commission shows that the appellant secured 32603 votes and respondent No. 1 bagged 28621 votes, which result is more or less the same as was in the first count i.e. 33758 votes as against 29149 votes, yet, the Commission recommended re-election on the grounds, which could not have been made basis for invalidating the election result. He added that in his report, the Commission found that 25 counterfoils did not contain thumb impressions of the voters; 4 counterfoils did not contain CNIC numbers of the voters; 2947 counterfoils did not contain signatures of the Presiding Officer; 1127 counterfoils did not have the stamp of the Presiding Officers and 19771 counterfoils did not contain the signatures and stamps of the Presiding Officers. He submitted that this was ascertained from the counterfoils of 92659 votes that were polled whereas no objection was raised with regard to any ballot paper that was declared valid. He further added that all valid votes duly contained signatures as well as stamps of the Presiding Officers. He submitted that when

no ballot paper that was counted by the Commission in favour of the appellant was challenged as bogus and all votes were duly accounted in favour of the candidates in whose favour they were polled then merely because 23,845 counterfoils of such votes did not contain the CNIC numbers and thumbs impression of the voters of the constituency could not be made basis to nullify the election result. He submitted that had the 23,845 counterfoils been sent to NADRA for verification of CNIC numbers and thumb impressions of the voters and the outcome of such verification would have shown that a significant number of these counterfoils did not contain thumb impression of the voters of the constituency then it would have been a different case but in the present case no such verification was sought by respondent No. 1 nor any substantial change in the ratio between the result of two vote count was noticeable. He maintained that in the circumstances there was substantive compliance of all the requirement under Representation of the People Act, 1976 and the result of the election ought not to have been nullified. In support of his arguments, he relied upon the cases of Bhai Khan Vs. Shakeel (2009 SCMR 594), Muhammad Khan Vs. Nazir Ahmed (2003 SCMR 1911), Muhammad Asghar Vs. Shah Muhammad Awan (PLD 1986 SC 542), Abdus Sattar Rana Vs. S.M. Zaidi (PLD 1968 SC 331), Abdul Hafeez Khan Vs. Muhammad Tahir Khan Loni (1999 SCMR 284 at 295) and Jamshaid Ahmed Khan Vs. S.D.M/Assistant Commissioner (PLD 1987 SC 213).

3. Learned counsel for the respondent No. 1, on the other hand, argued that election result was nullified by applying the

provisions of Section 70 of Representation of the People Act, 1976. He submitted that the Commission's report shows that elections in the Constituency were not held in fair and transparent manner and its proof lies in the analysis of the counterfoils of the ballot papers made by the Commission in his report. He submitted that the Election Tribunal rightly held that election was rigged.

4. Except for the Commission's report, the learned counsel for respondent No. 1 did not draw our attention to any other piece of evidence from which it could be gathered that the appellant or his agent or any polling staff indulged in bogus voting on the polling day. With regard to Commission's report, we have noticed that the respondent No. 1 did not even seek verification of any set of ballot papers from NADRA. Each and every ballot paper that was declared valid by the Commission contained the signatures and stamps of the Presiding Officers. The tally of counterfoils of the votes cast in the constituency stood at 92837 and corresponding to this figure, the number of votes polled were 92659. There was difference of merely 178 votes and that too the votes count was less than the counterfoils. So the question of stuffing of the ballot boxes with bogus votes also does not arise. As the appellant's winning margin was 3982 votes, the difference of 178 missing votes would have made no impact on the final result. Hence nothing substantial came on record of the Election Tribunal which would have justified nullifying the election result. The impugned judgment was, therefore, liable to be set aside.

5. Vide short order dated 30.05.2016 we had allowed this appeal and these are the reasons of the same.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
30th of May, 2016
Approved For Reporting
Khurram