

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE TASSADUQ HUSSAIN JILLANI, HCJ
MR. JUSTICE KHILJI ARIF HUSSAIN
MR. JUSTICE SH. AZMAT SAEED

CIVIL PETITION NOS. 25-Q & 399 OF 2014

(On appeal from the order dated 20.1.2014 passed by the High Court of Balochistan, Quetta in Constitutional Petition No. 949/2013 a/w C.P. No. 36/2014)

Muhammad Akram Baloch
Akbar Askani

(In CPs 25-Q/2014)

(In CP 399/2014)

... Petitioners

VERSUS

Election Tribunal Balochistan, Quetta etc (In both cases)

... Respondents

For the Petitioners:

Mr. Muhammad Aslam Chishti, Sr. ASC

Mr. S.A.M. Quadri, AOR

(For the petitioners in CP 25-Q/2014 & for the respondents in CP 399/2014)

Kh. Haris Ahmed, Sr. ASC

Mr. Aman Ullah Kanrani, ASC

(For the petitioners in CP 399/2014 and for the respondents in CP 25-Q/2014)

For the Respondent (3): Raja Abdur Rehman, ASC

(In CP 25-Q/2014)

Date of Hearing:

03.04.2014

ORDER

CIVIL PETITION NO. 25-Q/2014

TASSADUQ HUSSAIN JILLANI, CJ.- Petitioner and 5

others contested the General Elections held on 11.5.2013 from constituency No. PB-50 Kech-III, Balochistan and respondent No. 2 was declared the returned candidate. Petitioner filed an Election Petition under Section 52 of the Representation of the People Act, 1976 and during the pendency of the said petition, he filed an application praying that the record of Polling Stations No. 29 & 31 namely Jatjoo and Tulamb may be got verified through scanning by NADRA with a view to determine whether the thumb marks

appended to counterfoils of votes casted at the afore-referred polling stations were genuine or not. The learned Tribunal vide the order dated 23.12.2013 allowed the application but while doing so came to the conclusion that even the other candidates had leveled allegations of similar nature qua the other polling stations and, therefore, in the interest of justice the counterfoils along with photo voters' lists and statement of counts be sent to NADRA authorities for examination through the process of biometric examination / scanning of thumb marks appended to counterfoils of ballot papers with respect to all the polling stations, which according to learned counsel for the petitioner are 10 in number. Because although the total polling stations are 69 but the polling took place at 10 polling stations. This order was affirmed by a learned Division Bench of the Balochistan High Court vide the impugned order as the Court was of the view as follows:-

'We are not in agreement with the contention of the learned counsel for the petitioner for the reason that under Article 164 of the Qanoon-e-Shahat Order, 1984, if a Court considers appropriate, it may allow production of any evidence that may have become available through modern devices or techniques, therefore, the Tribunal, having power of a Civil Court, has rightly directed so, to reach a just and correct conclusion. The NADRA was since associated with the election process i.e. the preparation of electoral list and provided magnetic ink for the affixation of thumb impressions, therefore, it was the proper authority to conduct scanning of the thumb impressions through a mechanical process. For this reason, the Tribunal was satisfied and deemed it necessary to direct investigation through NADRA for scanning of the counterfoils and thumb impressions thereupon. The order impugned passed by the Tribunal is absolutely within the parameter of the provision of the Act, as such, it is within its jurisdiction.'

2. Learned counsel for the petitioner contended that the learned Tribunal has not given any ground tenable in law to go beyond the relief which was sought by the petitioner; that the suo

moto exercise of jurisdiction for such an exercise was not warranted and that the concurrent orders merit interference.

3. Learned counsel for the respondent No. 2 Khawaja Haris Ahmed has defended the judgment by submitting that both the respondent Nos. 2 & 3 had leveled allegations of similar nature qua other polling stations and it was in fitness of things if the comparison in question was carried out in respect of all the polling stations where the polling took place. Learned counsel relied on Muhammad Naeem Kasi vs. Abdul Latif (2005 SCMR 1699), Mian Ejaz Shafi Vs. Ali Ashraf Shah (PLD 1994 SC 867), Muhammad Azam Farooqi Vs. Muhammad Shafi Okarvi (1974 SCMR 471), Bhagwadas Vs. Returning Officer 1228 (1990 SCMR 1228), Shella B. Charles Vs. Election Tribunal (1997 SMR 941), Muhammad Asim Kurd Vs. Lashkri Khan Raisani (1999 SCMR 689), Muhammad Iftikhar Mohmand Vs. Javed Muhammad (1998 SCMR 328) & Abdul Ghani Vs. Election Tribunal, Balochistan (1999 SCMR 1) to contend that this petition even otherwise is not maintainable as the order passed by the Election Tribunal which stands affirmed by the High Court of Balochistan was a concurrent order which would ultimately merge in the final order and petitioner would have a right to challenge it in appropriate proceedings.

4. Having considered the submissions made by learned counsel for the parties, we are of the view that the learned Election Tribunal seized of the Election Petition having appraised the evidence has passed a reasoned order which is neither against the record nor the law declared. Even otherwise, being an interlocutory order, the Court ordinarily is reluctant to interfere unless the said

order is against the record or the mandate of law. More-so, when the said order has been concurred by a Division Bench of the High Court.

5. For what has been discussed above, the concurrent orders are unexceptionable, warranting no interference. The petition lacking in merit is accordingly dismissed and leave refused.

CIVIL PETITION NO. 399/2014

6. Learned counsel for the petitioner does not want to press this petition, which is disposed of accordingly.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
3rd of April, 2014
Not Approved For Reporting
Khurram