

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE QAZI FAEZ ISA

CIVIL APPEAL NO.294 OF 2015

(On appeal from judgment dated
10.4.2015, passed by the Election
Tribunal, Hyderabad, in Election
Petition No.341/2013)

Muhammad Nawaz Chandio ... Appellant

Versus

Muhammad Ismail Rahu and others ... Respondents

For the Appellant : Mr. Farooq H. Naek, Sr. ASC
Raja Abdul Ghafoor, AOR

For Respondent No.1 : Mr. Wasim Sajjad, Sr. ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 10.12.2015

JUDGMENT

SH. AZMAT SAEED, J.- This Civil Appeal under Section 67(3) of the Representation of the People Act, 1976 (ROPA), is directed against the judgment dated 10.04.2015, passed by the learned Election Tribunal, Hyderabad, whereby Election Petition bearing No.341 of 2013, filed by Respondent No.1 was allowed and re-election in 37 Polling Stations of the Sindh Provincial

Assembly Seat No.PS-59-Badin (V), was directed to be held.

2. The brief facts necessary for the adjudication of *lis* at hand are that in the General Elections held on the 11th of May, 2013, the Appellant and Respondents No.1 to 12 contested for the Seat for the Provincial Assembly of the Province of Sindh from Constituency PS-59 Badin (V). After the elections, the Appellant was declared and notified as a Returned Candidate, having secured 38,315 votes, while Respondent No.1 was the runner up, securing 36,960 votes. The Appellant had lead of 1355 votes. Respondent No.1 challenged the said election through Election Petition No.341 of 2013, which was entrusted for adjudication to the learned Election Tribunal, Hyderabad. It was the case of Respondent No.1 that in the General Elections of 2008, there were only 97 Polling Stations, while with *mala fide* intention the number of Polling Stations were increased to 120 and most of such additional Polling Stations were established in the areas where the Appellant had influence. It was contended that in several identified Polling Stations, despite applications filed by Respondent No.1, neither the Police nor the Rangers were deployed and only Pakistan

Qomi Razakars were posted and such Pakistan Qomi Razakars in connivance with the polling staff not only permitted but participated in the harassment of voters by the Armed supporters of the Appellant and also facilitated in casting of bogus votes thereat and thereby rigged the elections to the benefit of the Appellant. Pursuant to notice, the present Appellant entered appearance and contested the Election Petition by filing a written statement, denying the allegations made therein. Furthermore, objections were taken regarding the very maintainability of the Election Petition, *inter alia*, on the ground that the mandatory provisions of Section 55(3) of the ROPA read with Order VI Rule 15 CPC with regard to the verification of the Election Petition had not been complied with.

3. On the divergent pleadings of the parties, issues were framed. Whereafter, the contesting parties i.e. the Appellant and Respondent No.1 produced their respective oral as well as documentary evidence. Both the Appellant and Respondent No.1 entered the witness box and were subjected to cross-examination. During the pendency of the Election Petition, Respondent No.1 filed an application before the learned Election Tribunal

purportedly under Section 84 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as the Order of 1984) seeking verification by National and Database Registration Authority (NADRA) of thumb impression of the voters on the counterfoils of the Ballot Papers of 37 specified Polling Stations. The said application was allowed by the learned Election Tribunal, Hyderabad, vide Order dated 23.10.2014. Pursuant to the said Order, the requisite election material was made available to NADRA. Whereafter, a Report (Exh.E/1) was received through Mr. Maqsood Ali, Manager, NADRA, who appeared as PW-4 and was subjected to cross-examination by the present Appellant. On the conclusion of the trial, after hearing the counsel for the parties, the Election Tribunal vide the judgment impugned dated 10.04.2015 allowed the Election Petition declaring the election at 37 Polling Stations as void due to illegal practices having been committed and it was directed that the Appellant be de-notified and re-election be held in the said 37 Polling Stations.

4. It was contended by the learned counsel for the Appellant that the Election Petition filed by Respondent No.1, on the face of it, was not verified in terms of Order

VI Rule 15 CPC, thereby the mandatory requirements of Section 55(3) of ROPA were not complied with, hence, the said Election Petition was not maintainable and ought to have been summarily dismissed. It is also contended that the application purportedly under Section 84 of the Order of 1984, filed by Respondent No.1 was illegally allowed by the learned Election Tribunal, as recounting and re-examining of the Ballot Papers and the election material, including counterfoils and Electoral Lists cannot be allowed as a matter of course. Applications, in this behalf, can only be entertained, if sufficient material has been brought on the record through cogent evidence to justify such a course of action. In the instant case, it was contended that the matter was referred to NADRA for verification of the thumb impressions without any legal or factual basis. It is added that the process of verification allegedly carried out by NADRA was conducted behind the back of the Appellant who was neither summoned nor associated with the said process, hence, such Report could not have been relied upon by the learned Election Tribunal. It is further added that the said Report was produced by PW-4 (Maqsood Ali), who admittedly was not the author of such Report nor

personally conducted the verification of the thumb impressions on the counterfoils of the Ballot Papers. Hence, such Report was not only inadmissible in evidence but could also not be relied upon by the learned Election Tribunal as a basis of passing the impugned judgment, which is therefore, not sustainable in law. It is contended that the allegations made in the Election Petition were not proved through cogent evidence, especially as Respondent No.1 did not file an affidavit-in-evidence in support thereof. The learned Election Tribunal, it is contended, illegally permitted Respondent No.1 to produce his Election Petition as evidence. Pleadings are not a substitute for substantive evidence. The learned counsel for the Appellant in support of his contentions relied upon the judgments in the cases, reported as (1) Mian Ejaz Shafi v. Syed Ashraf Shah, 1st Additional Sessions Judge, Karachi and Returning Officer, Karachi West-I and 12 others (1996 SCMR 605), (2) Lt. Col. (Retd) Ghazanfar Abbas Shah v. Mehr Khalid Mehmood Sargana and others (2015 SCMR 1585) and (3) Bhabhi v. Sheo Govind and others (AIR 1975 SC 2117).

5. The learned counsel for Respondent No.1 controverted the contentions raised on behalf of the

Appellant by contending that the Election Petition was duly verified and was compliant with the requirements of Section 55(3) of ROPA, as interpreted by this Court and the issue, in this behalf, has been adjudicated upon by the learned Election Tribunal in accordance with law. It is added that sufficient material was available on record to justify the referral to NADRA for verification of the thumb impressions on the counterfoils of the Ballot Papers. It is further added that according to the Report of NADRA, which is a neutral body, endowed with the statutory duty and requisite expertise to effect such verification, it is clear and obvious that more than five thousand votes were counted in the final tally, which were bogus and invalid and the lead of the Appellant is less than such invalid and bogus votes. Consequently, the learned Election Tribunal by way of the impugned judgment has rightly ordered a re-poll in the said 37 Polling Stations in respect whereof NADRA had submitted its Report. In support of his contentions, the learned counsel for Respondent No.1 relied upon the judgments in the cases, reported as (1) Mst. Khair-ul-Nisa and 6 others v. Malik Muhammad Ishaque and 2 others (PLD 1972 SC 25), (2) Sardarzada Zafar Abbas and others v.

Syed Hassan Murtaza and others (PLD 2005 SC 600), (3) Jam Mashooq Ali v. Shahnawaz Junejo (1996 SCMR 426) and (4) Muhammad Akram and another v. Mst. Farida Bibi and others (2007 SCMR 1719).

6. Heard and the available record perused.

7. Adverting first to the contention of the learned counsel for the Appellant that the Election Petition was not verified in accordance with law i.e. under Rule 15 CPC, hence, did not comply with the mandatory requirement of Section 55(3) of ROPA and, therefore, merited summary dismissal on this ground. We have examined the Election Petition, a copy whereof is available on the record. It bears verification on solemn affirmation that what has been stated therein is true to the best of knowledge and belief of the Election Petitioner. It bears the stamp and signature of the Oath Commissioner. The place (Hyderabad) whereat the contents of the Election Petition were verified is also stated therein. The date is also mentioned by the Oath Commissioner. The Election Petitioner i.e. the present Respondent No.1 entered the witness box as PW-1 and owned the said Election Petition by identifying his signatures thereupon. In this view of the matter, it

appears that the requirement of Order VI Rule 15 CPC has in essence been complied with. The additional requirements enjoined upon the Oath Commissioner referred to by the learned counsel for the Appellant by relying upon the judgment of this Court in the case of Lt. Col. (Retd) Ghazanfar Abbas's case (*supra*) are not really relevant as such requirements, if applicable, would be mandatory in the future as has been specifically mentioned in the said judgment. In this view of the matter, the learned Election Tribunal has correctly held that the Election Petition could not be dismissed on the ground that it was not duly verified.

8. The learned counsel for the Appellant also stressed the fact that Respondent No.1 did not file a separate affidavit-in-evidence and while entering the witness box as PW-1 had only tendered his Election Petition in evidence as Exh.F/1, which was objected to on the ground that pleadings are not substantial piece of evidence. The status of pleadings needs to be identified. This Court in the case, reported as Sardar Muhammad Naseem Khan v. Returning Officer, PP-12 and others (2015 SCMR 1698) has observed as follows:

“3. ... The importance of the pleadings and its legal value and significance can be evaluated and gauged from the fact that it is primarily on the basis thereupon that the issues are framed; though the pleadings by themselves are not the evidence of the case, the parties to litigation have to lead the evidence strictly in line and in consonance thereof to prove their respective pleas. ...”

As a general rule and practice, the statements of the witnesses are recorded via-voce, subject to the limitation, in this behalf, set forth in Qanun-e-Shahadat Order, 1984 including Article 137 pertaining to prohibition regarding leading questions and are also subject to cross-examination. Evidence may also be taken in the form of Affidavits, if so, directed or permitted by any Special Law or if specifically ordered by the Court or with the consent of the parties in terms of Order 19 Rule 1 CPC. The procedure adopted by the learned Election Tribunal, in this behalf, was perhaps not strictly in accordance with law and it would have been appropriate for Respondent No.1 to have at least filed a separate affidavit-in-evidence. Be that as it may, in pith and substance the judgment of the learned Election Tribunal is primarily based on the statements of other PWs, more particularly, his Election Agents (PWs 6 and 7) and the Report of NADRA (Exh.E/1) produced by PW-4. In the circumstances, the contentions

raised in this behalf by the counsel for the Appellant pale into insignificance and have no real bearing on the adjudication of the Election Petition.

9. The learned counsel for the Appellant has assailed the Report of NADRA (Exh.E/1) on two counts; firstly, that the Election Tribunal erred in law by allowing the application under Section 84 of the Order of 1984, for verification of the thumb impressions on the counterfoils of Ballot Papers in the absence of any material evidence on the record to justify such verification, as such verification or re-count cannot be ordered as a matter of course and secondly, that neither the Appellant nor his nominee were associated with the process of the said verification carried out by NADRA. Furthermore, the Report was not proved by the person who actually prepared the same.

10. A perusal of the record reveals that in the reply/counter affidavit filed by the Appellant to the application under Section 84 of the Order of 1984, no objection was raised by the Appellant that there wasn't sufficient material on the record to justify verification of the thumb impressions. In fact, it was pleaded that verification of the votes cast should be conducted at the

the home Polling Stations of Respondent No.1 i.e. PS-56 and PS-57 (however no such plea has been advanced before this Court). The Report of NADRA was received and adduced in evidence as Exh.E/1 without any objection being raised by the Appellant regarding its relevance or admissibility. Thus, there is no question about its admissibility in evidence before this Court.

11. The cross-examination of PW-4 reveals that the verification process was carried out in accordance with the predetermined Standard Operating Procedure (SOP) of NADRA and such Report was in fact generated by the Computers. No suggestion was given to PW-4 that the entries in such Computers were made incorrectly. Nothing has come on record to denude the Report of its veracity or to persuade us not to read it in evidence. The fact of the matter is that such Report is on record and therefore in evidence and cannot be ignored by this Court.

12. In the Constituency in question, there were 120 Polling Stations. There is no dispute between the parties with regard to the conduct of the Elections and the tally of the votes in 83 of such Polling Stations. According to the admitted final result of such undisputed

83 Polling Stations, the Appellant received 20855 votes, while Respondent No.1 received 26839 votes. Thus, Respondent No.1 had a lead of 5984 votes in the said 83 Polling Stations.

13. With regard to the disputed 37 Polling Stations, according to the final tally, the Appellant had received 16012 votes, while Respondent No.1 received 8827 votes. According to the Report of NADRA (Exh.E/1), a total number of 26947 votes were polled at the disputed 37 Polling Stations and the counterfoils of Ballot Papers and other record thereby was sent to NADRA for verification. In the said Report, 4979 counterfoils of Ballot Papers contained thumb impressions, which did not correspond to the CNIC numbers scribed thereupon or did not have any CNIC number. 132 counterfoils contained thumb impressions of persons who had voted more than once. 85 counterfoils of Ballot Papers did not bear any thumb impression of the voters. Thus, a total of 5196 votes, on the face of it, appear to be bogus having not been polled by genuine voters. The thumb impressions on the remaining counterfoils were either found to be genuine or unverifiable due to defective ink used. It is also a matter

of record that out of the said 37 Polling Stations the Appellant had won in 34 Polling Stations.

14. The aforesaid Report of NADRA establishes that in the aforesaid 37 Polling Stations illegal practices as defined by Section 83 of the ROPA were indulged in inasmuch as Ballot Papers issued to and polled by persons not authorized or entitled under the law to do so. Double voting was also prevalent. However, it has not been proved that such illegal practices were conducted by the present Appellant. In the event of such illegal practices being proved the course of action to be adopted by the learned Election Tribunal and the Orders to be passed in this behalf are circumscribed by Section 70 of the ROPA, which reads as follows:-

"70. Ground for declaring election as a whole void.- The Tribunal shall declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by reason of –

(a) the failure of any person to comply with the provisions of the Act or the rules; or

(b) the prevalence of extensive corrupt or illegal practice at the election."

15. Before any Order can be passed by learned Election Tribunal, it must be established on the record

that the illegal practices have "materially affected" the result of the election. In the instant case, it is evident that the number of identified bogus votes (5196) is more than the lead ($38315 - 36960 = 1355$) of the Appellant as per the disputed election results notified by the Election Commission of Pakistan. If the result of the 37 Polling Stations in dispute were to be excluded in their entirety from the final tally i.e. it is Respondent No.1 who would have received more votes and would be entitled to be declared as a Returned Candidate. However, it is impossible to determine whether such bogus votes were in fact polled in favour of the Appellant or the Respondents, therefore, re-poll in the said Polling Stations is the only logical way of determining the will of the people of the Constituency in question, as has been ordered by the learned Election Tribunal.

16. It has been noticed that Section 70 of ROPA, endows the learned Election Tribunal with the jurisdiction, in case of commission of illegal practices, to declare the election as whole void. However, in the instant case by way of the impugned judgment, elections in 37 Polling Stations alone have been declared as void and re-poll thereat ordered. In the circumstances, it

needs to be examined whether such order/judgment could have been passed by the learned Election Tribunal.

17. An overview of the Constitution of the Islamic Republic of Pakistan, 1973, and ROPA reveals that political sovereignty is to be exercised by the chosen representatives of the people, as is apparent from the Preamble and the Article 2A of the Constitution. Such representatives must be chosen by the people through a free, fair and impartial election, as is mandated by Article 218 of the Constitution. In case of an election dispute, the same must be resolved through an Election Petition by the Election Tribunal, established in terms of Article 225 of the Constitution under ROPA. Such disputes, subject to mandatory procedural requirements, must necessarily be resolved in a manner that the Will of the people is given effect to and respected. Such is the obvious purpose of ROPA and its provisions, like that of any other law, must be construed through a purposive rather than a literal interpretation as is now settled law. Reference in this behalf may be made to the judgments of this Court, reported as (1) Rana Aamer Raza Ashfaq and another v. Dr. Minhaj Ahmad Khan and another (2012 SCMR 6), (2) Messrs Gadoon Textile Mills and 814 others

v. WAPDA and others (1997 SCMR 641) and (3) Federation of Pakistan through Ministry of Finance and others v. M/s. Noori Trading Corporation (Private) Limited and 14 others (1992 SCMR 710).

18. It is in the above context that the provisions of ROPA must necessarily be construed so that the self-evident purpose of ROPA and its provision is achieved. Upon the culmination of proceedings upon an Election Petition filed before it the Election Tribunal can pass any of the orders or grant any of reliefs as contemplated by Section 67(1) of ROPA, which for ease of reference is reproduced hereunder:

"67. Decision of the Tribunal.- (1) The Tribunal may, upon the conclusion of the trial of an election petition, make an order-

- (a) dismissing the petition;
- (b) declaring the election of the returned candidate to be void;
- (c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected; or
- (d) declaring the election as a whole to be void.

19. On close scrutiny, it would appear that the relief contemplated by Section 67(1)(d) of ROPA "declaring

the election as a whole to be void" has been used in contradiction to the relief which may be granted under Section 67(1)(c) of ROPA, declaring the election of a returned candidate to be void. It is in the above context that the phrase "as a whole to be void" must necessarily be interpreted.

20. It is a settled law that as a general principle of construction a word or phrase implying the word "whole" ordinarily includes any part thereof. Reference in this behalf may be made to the "Statutory Interpretation" A Code (Fourth Edition) by F A R Bennion MA (Oxon) Barrister, wherein it has been observed, as follows:

"Greater includes less The requirement that commonsense shall be used in interpretation brings in such obvious principles as that the greater includes the less: omne majus continent in se minus. This is a principle the law recognizes in many contexts.

.....

Example 197.5 Section 3(1) of the Criminal Law Act 1967 states that a person may use such force as is reasonable in the prevention of crime. Milmo J said 'It is, of course, true that the charge against the defendant was not that he used force but that he *threatened* to use force. However if force is permissible, something less, for example a threat, must also be permissible ...'"

The aforesaid quoted maxim of interpretation is not unknown to the Courts in Pakistan. Reference in this behalf may be made to the judgment, reported as Reference under S. 12, Sindh Courts' Act, 1926 [PLD 1956 (W.P.) Karachi 178], wherein Justice S.A. Rehman, as he then was, observed as follows:

"Omne majus continet in se minus - the greater contains the less - is a well known maxim of the law."

21. The aforesaid indicates that the possibility of declaring a part of the election i.e. in some of the Polling Stations to be void appears to have been catered for and flows from Sections 67 and 70 of ROPA when interpreted in accordance with the settled rules of statutory construction especially as both the aforesaid provisions enumerate the reliefs that can possibly be granted by an Election Tribunal upon an Election Petition. It is an equally settled principle of law and a concept firmly embedded in our jurisprudence that a Court or Tribunal endowed with the jurisdiction to grant an entire relief is equally authorized to give partial relief. Reference in this behalf may be made to the judgment, reported as Sind Employees' Social Security Institution and another v.

Adamjee Cotton Mills Ltd (PLD 1975 SC 32), wherein it has been held as follows:

“It is not disputed that the Social Security Court, on an appeal brought before it under the above section can set aside the order appealed against in its entirety or may grant even partial relief depending upon the facts of a particular case. ...”

22. There is yet another aspect of the matter that the Principle of Severability is well recognized and held applicable to election matters. In this behalf, this Court in the judgment, reported as Haji Behram Khan v. Abdul Hameed Khan Achakzai and others (PLD 1990 SC 352), held as follows:

“We agree with the High Court that in a case where a serious violation of law or any statutory rule is established by a group of miscreants or by the supporters of a losing candidate in one or two polling stations, the election of the whole constituency may not be set aside if on the strength of the votes cast in other polling stations and the available record a clear result is determinable. In this case, respondent No.1 had obtained 5,122 votes and the next highest number of votes obtained were by the petitioner Haji Behram Khan namely 2,625 votes. Admittedly, the three ballot boxes which were not recovered contained only 1,785 votes and even if all of them had been cast in favour of Haji Behram Khan (petitioner herein) he would still have lost. In these circumstances, to declare the election of the whole constituency as void on account of the misdoings or the

hooliganism perpetrated by the supporters of other candidate would be to encourage candidates who felt that they are losing getting the whole election annulled and frustrating the wishes of the electorate. This Court will not easily countenance such a malversion of the electoral process. It has been repeatedly held by this Court that it shall not act in aid of injustice and where an order of the High Court has been passed to bring about a just, proper and fair result, this Court will not interfere."

23. In the case of Mrs. Monica Kamran Dost v. Mrs. Lilavati Barchandani and another (PLD 1987 SC 197), equal numbers of valid votes were polled in favour of the two contesting candidates. The Returning Officer misapplied the provisions of sub-rule 5 of rule 66 of the Representation of the Peoples (Conduct of Election) Rules, 1977. On an Election Petition, the Election Tribunal apparently following a literal interpretation of Section 70 of ROPA, declared the election as a whole void. On appeal, this Court modified the result and the contention that the Election Tribunal should have declared the election of the Appellant to be void was repelled.

24. Furthermore, such an interpretation would encourage and enable a losing candidate to precipitate a re-poll in the entire Constituency by disturbing the

election at one or two Polling Stations and thereby frustrating and subverting the purpose of the law.

25. The ROPA in addition to the powers conferred on the Election Tribunal has also conferred powers on the ECP to pass appropriate orders regarding the conduct of the election, including Section 103-AA, which is reproduced hereunder:

“Sec. 103-AA. Power of Commission to declare a poll void.—(1)

Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such summary inquiry as it may deem necessary, the Commission is satisfied that, by reason of grave illegalities or violation of the provisions of this Act or the rules, the poll in any constituency ought to be declared void, the Commission may make a declaration accordingly and, by notification in the official Gazette, call upon that constituency to elect a member in the manner provided for in section 108.

(2) Notwithstanding the publication of the name of a returned candidate under sub-section (4) of section 42, the Commission may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the Commission does not finally dispose of a case within the said period, the election of the returned candidate shall be deemed to have become final, subject to a decision of a Tribunal.

(3) While exercising the powers conferred on it by sub-section (1), the Commission shall be deemed to be a

Tribunal to which an election petition has been presented and shall, notwithstanding anything contained in Chapter VII, regulate its own procedure."

A perusal of the aforesaid provisions makes it clear and obvious that *inter alia* on account of violation of any of the provisions of ROPA or the Rules framed thereunder or on account of grave illegality, the ECP may declare the poll in any Constituency as void. It may be noticed that no specific power has been conferred to declare an election in a part of the Constituency as void or to direct a re-poll at a few Polling Stations, yet in exercise of the powers conferred by Section 103-AA of ROPA, the ECP on many occasions has ordered re-poll in a few specific Polling Stations. An order in one of such cases was challenged, *inter alia*, on the ground that in terms of Section 103-AA of ROPA, election as a whole could be declared void and no partial re-poll in a few Polling Stations could be ordered. In the said case, reported as Aftab Shahban Mirani and others v. Muhammad Ibrahim and others (PLD 2008 SC 779) it was held as follows:

"The emphasis of the learned counsel for the respondent that the Election Commission, without holding proper inquiry could not exercise powers under section 103-AA of the Act to declare the election of a constituency as

a whole void and there is also no concept of partial declaration of election void, has no legal foundation. The Election Commission of Pakistan may exercise power under section 103-AA of the Act in the manner provided therein and not beyond that, but the plain reading of section 103-AA of the Act would show that meaning of expression "in the constituency void" is not only referable to the whole constituency rather its true import is election in the constituency as a whole or at one or more polling stations. It was held in Abdul Hamid Khan Achakzai v. Election Commission of Pakistan 1989 CLC 1833 as under:--

"Election commission's jurisdiction for declaring election of the whole constituency as void would depend on being satisfied about the existence of grave illegalities or serious violations of the provisions of the Act LXXXV of 1976 or Election Rules in the conduct of polls in any constituency."

It was further held that:-

"No doubt Election Commission is vested with jurisdiction to declare void, results of the entire constituency within the purview of section 103-AA but such authority is exercisable only when other express provisions of law are not suitable to cater for the given situation."

Holding of a re-poll in a few Polling Stations is not alien to our electoral jurisprudence.

26. The provisions of the Indian Representation of the People Act, 1951, with regard to the Election Petitions

are not dissimilar to that of ROPA. Though no doubt, the phrase "declaring the election as a whole void" has not been employed yet in the relevant provisions, no specific power to declare the election in a few Polling Stations as void is granted. The Supreme Court of India upon an Election Petition has repeatedly declared the result of a few Polling Stations to be void and a re-poll in such Polling Stations ordered. Reference in this behalf may be made to the judgments, reported as Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others (AIR 1978 SC 851) and A. C. Jose v. Sivan Pillai and others (AIR 1984 SC 921).

27. In view of the above, it appears that to interpret Sections 67 and 70 of ROPA so as to limit the jurisdiction of the Election Tribunal in case of presence of illegal practices to declare the election as a whole void, would be too literal, rigid and ritualistic to be accepted in this day and age of purposive, realistic and beneficial interpretation. Such interpretation would also offend against the well recognized common sense principle of interpretation and is contrary to the erstwhile maxim of "the greater contains the less" which has been applied by the Courts. We cannot also loose sight of the fact that the

Election Tribunal is for all intents and purposes a Court and it is settled law that Courts and Tribunals can not only grant the entire relief permitted by law but also any part thereof. The principle of severability is also well recognized and the same is duly attracted to elections thereby isolating the result in a few Polling Stations where poll was contaminated and directing a fresh poll thereat. It is also obvious that such principles have been applied by this Court, both with reference to the powers of the ECP under Section 103-AA and by the Election Tribunal, as is evident from the judgments referred to and reproduced hereinabove. Directing a re-poll in some Constituencies as was done in the instant case is also a course of action adopted and followed by the Supreme Court of India in the election matters. Such interpretation besides conforming to the established principle of interpretation advances the object and intent of Articles 218, 219 and 225 of the Constitution and the provisions of ROPA. Furthermore, thereby the mischief of encouraging disruption of the poll is suppressed.

28. The legal position that emerges is that in terms of Section 70 of ROPA in the eventuality of a failure to comply with the mandatory provisions of ROPA and the

Rules or in the presence of illegal practices, an Election Tribunal in exercise of powers under Section 70 of ROPA, may declare the election as a whole to be void. However, the Election Tribunal is not denuded of the jurisdiction to grant partial relief of declaring the election at a few Polling Stations to be void and directing a re-poll thereat. Which of the two available courses of action to be followed would depend on the facts and circumstances of each case. The real and decisive factor would be the fulfillment of the mandate of the Constitution and ROPA of ensuring the will of the people is given effect to through a free, fair and impartial election. It should be ensured that no prejudice is caused to any of the candidates. In the instant case, it is not even the case of the Appellant that any prejudice has been caused to him nor any such plea has even been taken in grounds of Appeal or otherwise canvassed at the bar.

29. We are aware that a different view regarding the interpretation of Section 70 of ROPA has been taken in the majority decision of the case reported as Dr. Raja Aamer Zaman v. Omar Ayub Khan and others (2015 SCMR 1303). However, for the aforesaid reasons, we are unable to agree therewith.

30. In the instant case, there is no dispute in 83 Polling Stations, the re-election in 37 Polling Stations will cause no prejudice to the Appellant. No such prejudice or disadvantage has been pleaded. In fact this aspect of the order of directing the re-election in only 37 Polling Stations has not been called into question by the Appellant either in the grounds of appeal or at the bar by his counsel during the course of arguments.

31. In short, no exception can be taken to the judgment of the learned Election Tribunal dated 10.04.2015. No legal or factual grounds exist warranting interference therewith by this Court. Consequently, this Civil Appeal being without merit is dismissed with no order as to cost.

Judge

Judge

Islamabad, the
10th December, 2015
Approved For Reporting
Mahtab H. Sheikh/*

Judge

Qazi Faez Isa, J.- I agree with my most distinguished colleague that the appeal merits dismissal. However, I do not want to express any view on whether partial re-poll is permissible under section 70 of the Representation of the People Act, 1976 since the learned counsel for the appellant Mr. Farooq H. Naek did not raise this point and neither counsel made any submission thereon. Therefore, the discussion and findings on the said issue, contained in paragraphs 16 through to 29 of the Judgment, should not be construed as concurrence by me of the same.

Judge