

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 NOS. 616 AND 617 OF 2014

(On appeal from the judgment dated 09.04.2014 of the Election Tribunal, Faisalabad passed in E.P.Nos.33 & 54 of 2013).

Sheikh Muhammad Akram.

(in both cases)

... ***Appellant***

Versus

Abdul Ghafoor and 19 others.

(in CA.616/14)

Muhammad Ahmed Ludhianvi and 19 others.

(in CA.617/14)

... ***Respondents***

For the Appellant:

(In both cases)

Mr. Makhdoom Ali Khan,

Senior Advocate Supreme Court

Mr. Tariq Aziz, Advocate on Record

For Respondents No.1-2:

(In CA.616/14 & for R.2 in CA.617/14)

Mr. Tariq Mehmood,

Senior Advocate Supreme Court

Syed Rifaqat Hussain Shah,

Advocate on Record

For Respondent No.1:

(In CA.617/14)

Mr. Babar Awan,

Senior Advocate Supreme Court

Date of Hearing:

8th December 2015.

JUDGMENT

QAZI FAEZ ISA, J. These two appeals assail the common judgment dated 9th April 2014 of the Election Tribunal, Faisalabad (hereinafter referred as the “**Tribunal**”) which had consolidated, heard and decided Election Petition Nos. 33 and 54 of 2013. The appellant was elected from the National Assembly constituency of NA-89 Jhang-I in the general elections held on 11th May 2013. The election petitions were accepted on two grounds, firstly, that the appellant did not disclose that a criminal case was pending against him at the place provided for such disclosure in the nomination form and, secondly, that incorrect particulars were written of the person who had seconded him. The Tribunal not only set aside the election of the appellant on the said two grounds,

but also declared elected the runner up candidate, namely, Muhammad Ahmed (referred to in the impugned judgment as Maulana Muhammad Ahmed Ludhianvi), who had filed Election Petition No. 54/2013.

2. Mr. Makhdoom Ali Khan, the learned counsel for the appellant, stated that a total of 168,551 valid votes were polled, out of which the appellant got 75,053 votes, Muhammad Ahmed obtained 72,320 votes and Abdul Ghafoor (who had filed Election Petition No. 33/2013) only 59 votes. The remaining votes were distributed amongst eighteen other candidates. The thrust of the arguments of the learned counsel was that on account of minor discrepancies in the appellant's nomination paper, which were also correctable in terms of the second proviso to subsection (3) of section 14 of the Representation of the People Act, 1976 ("**the said proviso**" and "**the Act**"), the election of the appellant could not have been set aside. He further contended that the nomination papers of the appellant were accepted without any objection and no appeal against the acceptance thereof was preferred, therefore, the defects, if any, in the nomination papers were waived and / or the matter with regard to the nomination paper had attained finality and could not be reopened in the election petitions after the elections had been held. He urged that the mandate given by the majority of the people, who had voted for the appellant, should be respected. It was additionally submitted, that the said discrepancies / objections were not such that disqualified the appellant from contesting elections in terms of section 99 of the Act and / or Articles 62 or 63 of the Constitution of the Islamic Republic of Pakistan ("**the Constitution**").

3. With regard to the non-disclosure of the criminal case, the learned counsel stated that the criminal case against the appellant was basically a traffic offence, which was registered under section 337-F read with section 279 of the Pakistan Penal Code ("**PPC**"). The complainant of the said case subsequently resiled from his own complaint and the appellant was acquitted, and no appeal against his acquittal was preferred; in this regard the learned counsel referred to the acquittal order dated 17th September 2013, wherefrom the following extract is reproduced:

“Complainant appeared before the court and submitted his affidavit and got recorded his statement on the back side of said affidavit. Complainant has resiled from his earlier statement and does not want to pursue the case further.”

“In this case, complainant is the star witness of the prosecution, who has resiled from his earlier statement. In these circumstances, if all the remaining witnesses are summoned and recorded, even then, there is no probability of conviction of accused in this case. The charge against the accused has become groundless and there is no probability of conviction of accused in this case. Hence, accused is hereby acquitted from this case.”

Alternatively, the learned counsel contended that, the language with regard to the disclosure of pending criminal case/s, as per paragraph 4 of the nomination form, is so worded that it could be easily misinterpreted, leading a candidate to genuinely presume that disclosure is required only of such case/s which had been lodged six months prior to the submission of the nomination form. The said paragraph 4 is reproduced hereunder:

“4. I hereby declare on oath that following cases of criminal offences were pending against me, six months prior to filing of this nomination:

Number of case	Name of the Court

OR

I hereby declare on oath that no case of criminal offences was pending against me, six months prior to filing of this nomination.”

A further alternative argument advanced by the learned counsel was that the appellant had not derived any benefit by not disclosing the said criminal case, and relied upon a three member Bench judgment of the Balochistan High Court in the case of Tariq Hussain v Sarfaraz Ahmed (2013 CLC 1620). He stated that the offence which the appellant was alleged to have committed was basically a traffic offence and did not disqualify the appellant from contesting elections.

4. As regards the purported incorrect particulars of the person who had seconded the candidature of the appellant (categorized in the nomination paper as ‘seconded’) the

learned counsel stated that unnecessary controversy had been created. The petitioners before the Tribunal had merely picked upon an inconsequential mistake, which was the seconder mistakenly mentioning the computerized national identity card (“CNIC”) number of another member of his family, which was 33202-2453953-3, instead of his own correct CNIC number, which was 33202-5145367-3.

The other discrepancy was that the seconder’s CNIC contained a patent mistake committed by the authority which issues CNICs, i.e. the National Database Registration Authority (NADRA), as instead of mentioning ‘Haji Zulfiqar Khan’ as the seconder’s father the seconder’s own name had been repeated in the place where his father’s name should have been written. Such mistake was subsequently corrected. The learned counsel stated that this apparent error was of no consequence as a copy of the seconder’s CNIC was attached with the nomination paper and the seconder’s identity was not disputed by anyone. He further contended that the nomination paper does not require that the seconder’s father’s name be mentioned.

The learned counsel for the appellant further stated, that the only requirement of a legal / valid seconder is that he should be registered as an elector in the electoral roll of the electoral area from where a person is a candidate, as provided in subsection (1) of section 12 of the Act, rule 3 of the Representation of the People (Conduct of Election) Rules, 1977 (“**the Rules**”) and in the prescribed Nomination Form I; the seconder admittedly was a voter of the constituency, therefore, he was qualified and competent to nominate the appellant, resultantly, the said discrepancies were inconsequential. Reliance was also placed upon the cases of Ghulam Nabi v. Khuda Bakhsh (PLD 1984 Karachi 245), Iqbal Begum v. District Returning Officer (2001 MLD 1796) and Muhammad Tajammal Husain v. Shaukat Mahmood (PLD 2007 Supreme Court 277).

5. Mr. Makhdoom Ali Khan also challenged the finding of the Tribunal on issue No.1, regarding the verification of the election petitions, which, according to him, was not in accordance with the law, and relied upon the cases of Ghazanfar Abbas Shah v. Khalid Mehmood Sargana (2015 SCMR 1585) and Zafar Abbas v. Hasan Murtaza (PLD 2005 Supreme Court 600).

6. Concluding his arguments, Mr. Khan contended, that the appellant had the support of the majority of the voters of the constituency who had consciously chosen the appellant to represent them, however, the learned presiding officer of the Tribunal handed over the representation of the constituency to the runner up candidate because he (Muhammad Ahmed) was qualified to contest elections, which was not a legally valid reason to substitute him in place of the appellant. The majority of the voters cannot be deemed to have thrown away their votes and be disenfranchised, was the proposition he next canvassed, and relied upon the cases of Rashid Ahmad v Barkat Ali (PLD 1968 Supreme Court 301), Junaid Ahmad Soomro v Mehboob Ali Bhayo (PLD 1986 Supreme Court 698), Ellahi Bakhsh v District and Sessions Judge, Rajanpur (PLD 2003 Supreme Court 268), Amjad Aziz v Haroon Akhtar Khan (2004 SCMR 1484), Bashir Ahmed Bhanbhan v Shaukat Ali Rajpur (PLD 2004 Supreme Court 570), Imtiaz Ahmed Lali v Ghulam Muhammad Lali (PLD 2007 Supreme Court 369) and Muhammad Munir v Election Tribunal (2009 SCMR 1368).

7. Mr. Babar Awan, the learned counsel for Muhammad Ahmed, and Mr. Tariq Mehmood, the learned counsel for Abdul Ghafoor, opposed the appeals and contended that the judgment of the Tribunal was well reasoned and did not call for any interference. Their contentions were, as under:

The nomination paper of the appellant was invalid therefore his election was void in terms of section 68 (1) (a) and (b) of the Act; clause (a) of subsection (1) of section 68 was attracted as the appellant's nomination paper was not valid and clause (b) of subsection (1) of section 68 was applicable because he stood disqualified.

The nomination paper of the appellant contained a false declaration, as it did not disclose that there was a criminal case pending against the appellant, who had deliberately suppressed mentioning the same, in his nomination paper. The nomination paper thus contained a false declaration, therefore, the appellant was also not of good character, violated Islamic injunctions, did not practice obligatory duties prescribed by Islam, was not sagacious, righteous, honest and ameen; he thus attracted the disqualification respectively in terms of clauses (d), (e), and (f) of subsection (1) of

section 99 of the Act. Reliance in this regard was placed on the cases of Sadiq Ali Memon v Returning Officer, NA-237 (2013 SCMR 1246) and Abdul Ghafoor Lehri v Returning Officer, PB-29 (2013 SCMR 1271).

Under section 20 of the Electoral Rolls Act, 1974 no change or correction can be made in the voters list and in the CNIC of the seconder after the elections had been called, resultantly, the nomination paper of the appellant was defective and should not have been accepted.

The learned counsel referred to the case of Muhammad Tajammal Hussain v Shaukat Mahmood (PLD 2007 Supreme Court 277) to repel the contention of the appellant's learned counsel, that, the mere fact that the nomination papers of the appellant were accepted and had not been challenged prevented a subsequent challenge thereto by way of an election petition.

That as regards the objection of the appellant's counsel regarding the purported defect in the verification of the election petitions, the learned counsel for the contesting respondents also relied upon the case of Ghazanfar Abbas Shah (above) which, after setting out the correct mode of verification / attestation, had further held, that in view of the prevailing uncertainty in the law defective verifications / attestations in respect of the election petitions filed pursuant to the last elections have been condoned; thus, without conceding that there was any defect in the verification, such defect would be of no consequence.

8. It will be useful to reproduce the Issues, which were framed with the consent of the parties, by the Tribunal, as under:

1. Whether the petition is liable to dismissal for want of statutory pre-requisites of the Representation of the People Act, 1976?
2. Whether the nomination of the returned candidate was invalid, if so, on what scores and to what effect?
3. Whether the respondent No.1/returned candidate was ineligible to contest the election, if so, on what grounds, and of what consequence?
4. Whether the election of respondent No.1 was procured and induced by corrupt and illegal practices, if so, of what description and to what effect?

5. If the petition succeeds, to what relief the petitioner will be entitled to?

The learned presiding officer of the Tribunal however did not frame specific issues with regard to the nondisclosure of the criminal case and the discrepancies in the seconder's particulars, but these could be said to be covered under Issue Nos. 2 and 3. The appellant was unseated only on these two grounds, as can be seen from the operative part of the impugned judgment (paragraph 36), reproduced hereunder:

“In view of my findings on issues 2 and 3 in affirmative, it is held that nomination of the returned candidate / respondent No.1 was invalid, and he was not qualified to be elected as a member of the National Assembly and election of the returned candidate / respondent No.1 is thus declared void under Section 67 (1) (c) of the ROPA 1976. It may also be noted that the returned candidate had not availed himself the opportunity provided under Section 66 of the Representation of the People Act, 1976, for assailing the qualification of either of the petitioners. Therefore, simultaneously, the runner up candidate Maulana Muhammad Ahmed Ludhianvi is hereby declared as duly elected. Both the election petitions are, thus, accepted accordingly.”

We have to determine whether the findings of the learned Presiding Officer of the Tribunal on the said two matters is correct, and if so, whether the same would be sufficient to unseat the appellant, and then, whether the person who polled the next highest number of votes should have been declared elected?

9. We have heard the submissions of the learned counsel, considered the record and the cited precedents. Before we proceed to take up each of the matters mentioned above it will be useful to remind ourselves of the salient features of the election process. Each candidate must be proposed and seconded by a voter of the constituency. The Returning Officer is required to check the nomination papers submitted by potential candidates, and decide the objections with regard thereto. Appeals against the acceptance or rejection of nomination papers can be filed before the appellate authority which decides the same. This concludes the first stage of the election process.

Thereafter, elections are held and results are notified. Any candidate who wants to raise an election dispute may file an election petition. The Tribunal can declare the election of a returned candidate to be void if it is satisfied that (a) the nomination of the returned candidate was invalid, or (b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member, or (c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice, or (d) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his election agent (subsection (1) of section 68 of the Act). In these appeals we have only to consider whether the appellant fell foul of the said clauses (a), (b) and / or (c) of subsection (1) of Section 68 of the Act, as the appellant was not deseated on the ground contained in clause (d).

The matters with regard to the validity of a nomination paper and the qualification / disqualification of a candidate are attended to respectively in sections 14 and 99 of the Act, relevant portions wherefrom are reproduced hereunder:

14. Scrutiny

(3) The Returning Officer may, either of his own motion or upon any objection, either by an elector or by any person referred to in sub-section (1), conduct such summary enquiry as he may think fit and may reject nomination paper if he is satisfied that:

- (a) the candidate is not qualified to be elected as a member;
- (b) the proposer or the seconder is not qualified to subscribe to the nomination paper;
- (c) any provision of section 12 or section 13 has not been complied with or submits any false or incorrect declaration or statement in any material particular; or
- (d) the signature of the proposer or the seconder is not genuine:

Provided that:

- (i) the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper;
- (ia) the Returning Officer may, for the purpose of scrutiny, require any agency or authority to produce any document or record;
- ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his

proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll; and

- (iii) the Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.”

99. Qualification and disqualification.

(1) A person shall not be qualified to be elected or chosen as a member of an Assembly unless -

- (d) he is of good character and is not commonly known as one who violates Islamic Injunctions;
- (e) he had adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;
- (f) he is sagacious, righteous and non-profligate and honest and ameen;
- (g) he has not been convicted for a crime involving moral turpitude or for giving false evidence;

10. Admittedly, the appellant did not disclose that the said criminal case was pending against him in his nomination paper. The said case against the appellant was one of rash driving and, according to the complainant of the case, the complainant had been injured. The offence for which the appellant was charged carried a maximum prison term of two years. The complainant of this case however resiled from his own complaint and the appellant secured his acquittal. Would the non-disclosure of this case (lodged under sections 337-F read with section 279 of the PPC) be fatal to the candidature of the appellant?

11. It may however be mentioned that a candidate is not disqualified to contest elections merely because a criminal case is pending against him. Non-disclosure of a pending case can not be equated with the non-disclosure of a criminal case in which a person has been convicted and one which may entail his disqualification. Incidentally, no one objected to the appellant's candidature when he submitted his nomination papers. If such an objection had been taken, the appellant could have provided the requisite information of the said pending criminal case, as required by paragraph 4 (above) of the Nomination Form and resolved the matter, as the Returning Officer is required to provide the candidate an opportunity to, “*allow any such defect to be remedied forthwith*” if he deems that such defect is not of a “*substantial nature*” as per proviso (ii) to subsection (3) of

section 14 of the Act. However, no objection was raised and this defect in the nomination paper was not remedied and the appellant was allowed to contest the elections. The people of the constituency elected the appellant from a field of 21 candidates. Would the electorate, or sufficient number of them to change the result, not have voted for him if they knew about the pendency of the said case? We also need to consider whether due to the non-disclosure of the said criminal case the appellant, who had won the elections, should have been deseated and the voters who had voted for such a candidate be disenfranchised.

12. Needless to state that every candidate should make complete disclosure as required by the Nomination Form-I as prescribed in the Rules and must provide accurate information, this is required for a number of reasons. Firstly, to determine whether the candidate is qualified to contest elections, for instance is he of the requisite age. Secondly, to ensure that the candidate has not become disqualified, for instance having been convicted of an offence and such conviction entails his disqualification. Thirdly, the “*statement of assets and liabilities of his own, his spouse or his dependents*” contained in the Nomination Form must not be false, because if they are he could be deseated in terms of Section 76A of the Act. However, in the present case the appellant was qualified to contest elections and was not subsequently disqualified. Moreover, even if the non-disclosure of the criminal case is categorized as a “*false or incorrect statement*”, he could not be deseated on this score under Section 76A of the Act. Another reason to require additional particulars from a candidate such as pending criminal cases, could be to enable the electorate to have complete information about the candidate.

13. Let us now examine whether the non-disclosure of the criminal case in the Nomination Form entailed the appellant’s disqualification or to be subsequently deseated. For the following cumulative reasons we are of the opinion that the appellant could not be deseated:

- (1) The criminal case was not a very serious offence, being basically a traffic offence;
- (2) The complainant of the case resiled from his own complaint, consequently, the appellant was acquitted;
- (3) The appellant was qualified to contest elections, was not disqualified because of the pendency of the criminal case, nor did non-disclosure entail that he be deseated in terms of Section 76A of the Act;
- (4) The appellant may have misunderstood the requirement of paragraph 4 of the Nomination Form, as stated by his counsel, to mean that disclosure was required of only such cases which had been lodged six months prior to the submission of the Nomination Form;
- (5) The appellant did not derive any benefit or advantage by not disclosing the said case;
- (6) At the stage of scrutiny of the appellant's Nomination Form no objection was taken regarding the non-disclosure of the said case, and if it had been taken, the appellant could have mentioned the same in paragraph 4 of the Nomination Form without any adverse consequences;
- (7) The appellant was not provided with an opportunity to correct his Nomination Form; and
- (8) The pendency of the case in respect of a traffic offence may not be a sufficient reason to dissuade those who had voted for the appellant not to have done so.

14. We have also read the judgments in the cases cited by the learned counsel for the contesting candidate. In Sadiq Ali Memon's case (above) the candidate was not qualified to contest the elections, as he held dual-nationality, which fact he had suppressed. In this context this Court had observed that such a person could not be categorized as sagacious, righteous, honest or *ameen* in terms of Article 62 (1) (f) of the Constitution. Similarly, in the case of Abdul Ghafoor Lehri (above) the candidate had fraudulently shown himself to be a graduate and thus be able to contest elections at a time when the law required candidates to be graduates or to have equivalent qualification. Such a person who by fraudulent means had participated in the elections was held to run foul of Article 62 (1) (f) of the Constitution.

However, the incumbent appellant was not disqualified, therefore, section 68 (1) (b) of the Act is not attracted. The appellant had also not lied to gain a benefit to which

he was not otherwise entitled to, i.e. to be able to contest elections, therefore, the disqualification contained in Section 99 (1) (d), (e) and (f) of the Act, which were the same as those contained in Article 62 (1) (d), (e) and (f) of the Constitution would not be attracted. It may also be observed that the stipulation requiring a candidate to be “*sagacious, righteous and non-profligate and honest and ameen*” contained in Section 99 (1) (f) of the Act was the same as contained in Article 62 (1) (f) of the Constitution prior to the Eighteenth Amendment. However, (after the Eighteenth Amendment) the said provision has been changed and to now attract the disqualification there must be a declaration by a court. Article 62 (1) (f) now reads as follows:

“he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law.”

In view of the aforesaid, therefore, it could also not be alleged that the nomination of the appellant was invalid in terms of Section 68 (1) (a) of the Act.

15. That, with regard to the discrepancies in the particulars of the seconder, it is not the case of the contesting respondents, nor had it been so established, that the seconder was not a registered voter of the constituency, from which constituency the appellant was a candidate, which may have been the only matter meriting consideration by the Tribunal. The said proviso specifically states that, “*the Returning Officer shall not reject a nomination paper*” with regard to the “*particulars of the candidate or his proposer or seconder*” and permits rectification thereof. The reliance, by the learned counsel for the respondents on section 20 of the Electoral Rolls Act, would also not assist the contesting respondents, since the corrections made in the seconder’s CNIC cannot be deemed to constitute correcting the electoral roll. The said section is reproduced hereunder:

“No correction to be made after constituency called upon to elect. No revision or correction of any electoral roll for an electoral area shall be made nor shall any order under section 19 be made in respect of any electoral roll at any time after the constituency of which such electoral area forms part has been called upon to elect its representative and before such representative has been elected.”

Admittedly, the seconder's name was in the electoral roll of the electoral area from where the appellant was contesting elections. The seconder simply sought the correction in his CNIC because in the place provided for his father's name his own name had been repeated. Similarly, mentioning the incorrect number of the CNIC could hardly be categorized as being of a substantial nature. The said proviso specifically permits the correction of such errors. The only requirement in the Act and the Rules for a proposer and seconder is for them to be electors of the constituency from where the candidate is standing. The relevant provisions are reproduced hereunder:

Section 12 (1) of the Act:

“Any elector of a constituency may propose or second the name of any duly qualified person to be a member for that constituency.”

Rule 3 of the Rules:

“Nomination paper: A nomination paper by which the proposal is made under section 12 shall be in Form for general seats, in Form 1A for the seats reserved for non-Muslims and in Form 1B for the seats reserved for women.”

Nomination Form-I

“(To be filled in by the Secunder)”

(1) I (name of the seconder) having National Identity Card No. registered as an elector at serial number in the electoral roll for electoral area in Tehsil/Taluka in District/Political Agency do hereby second the nomination of whose address is as a candidate for election to general seat from constituency.

(2) I hereby certify that I have not subscribed to any other nomination paper either as proposer or seconder.

Date

Signature of Secunder”

Since, the seconder was an elector of the constituency from where the appellant was contesting elections therefore in this regard the nomination paper submitted by the appellant was valid. The stated discrepancies in some of the particulars of the seconder could not have been made a ground for unseating an elected candidate in a post election dispute.

16. The mandate given by the electorate must not be interfered with on hyper-technical grounds. Unfortunately, the Hon'ble Tribunal thought otherwise, as it not only set aside the election of the most popular candidate chosen by the people to

represent them, but did so for factors wholly extraneous to the law. Moreover, it substituted the elected candidate with a defeated one. Under section 69 of the Act a runner up candidate or any other contesting candidate could be declared elected, but before declaring so such other candidate's entitlement must be established. To examine this matter further it would be appropriate to reproduce the said legal provision, as under:

“69. Ground for declaring a person other than a returned candidate elected. The Tribunal shall declare the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected, if it is so claimed by the petitioner or any of the respondents and the Tribunal is satisfied that the petitioner or such other contesting candidate was entitled to be declared elected.”

The Tribunal must therefore be “*satisfied*” that another candidate was “*entitled*” to be declared elected as per the legal requirement of section 69 of the Act. The present case was not one where the appellant was found to have committed any corrupt practice nor was it a case where a mistake had been committed in counting the votes or compiling the results and a recount or recompilation produced a different result. After declaring the elections of the appellant as void the runner up candidate was declared to be elected by Mr. Javaid Rashid Mahboobi, the learned presiding officer of the Tribunal, because “*the returned candidate had not availed himself the opportunity provided under section 66 of the Representation of the People Act, 1976, for assailing the qualification of either of the petitioners. Therefore, simultaneously, the runner up candidate Maulana Muhammad Ahmed Ludhianvi is hereby declared as duly elected.*” With respect to the understanding of the learned presiding officer of the Tribunal, it was inconsequential that the appellant had not assailed the qualification of the petitioners. The statute requires that the other candidate must be “*entitled*” to be declared elected, which aspect was completely overlooked. Moreover, not a word was mentioned that the Hon’ble Tribunal itself was “*satisfied*”. Thus, the learned presiding officer not only disregarded the law, but proceeded to apply what he wrongly presumed it to be.

17. The learned presiding officer of the Tribunal also did not determine whether the votes cast in favour of the appellant had been *thrown away*. The *thrown away votes*

concept has been referred to in a number of judgments; it means that voters intentionally cast votes in favour of a candidate who was known to the voters to be manifestly disqualified, resultantly the votes so cast may be treated to have been thrown away. In the present case the appellant was not disqualified to contest elections, therefore, the votes polled by the appellant, who incidentally had received the majority of the votes, could not have been disregarded. Nor could it have been presumed that the runner up would have got the appellant's votes. The Tribunal proceeded to declare the runner up to be elected without any reason whatsoever.

18. As we have already determined that the appellant's election could not have been declared to be void and further that the Tribunal was also wrong to declare Muhammad Ahmed elected in his place there is no need to express our views on the other points raised by the learned counsel.

19. Therefore, for the aforesaid reasons, both these appeals are allowed and the impugned judgment dated 9th April 2014 of the Election Tribunal, Faisalabad is set aside. Consequently, the election results notified by the Election Commission of Pakistan, which had declared the appellant to be the elected candidate from NA-89 Jhang-I constituency, is maintained. There shall however be no order as to costs.

Judge

Judge

Judge

Announced in open court

On 3rd February 2016

By Justice Qazi Faez Isa

At Islamabad

APPROVED FOR REPORTING
(Zulfiqar)