

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE FAISAL ARAB
MR. JUSTICE TARIQ PERVEZ

CIVIL APPEAL NO.651 OF 2014
*(Against the judgment dated 19.3.2014
of the Election Tribunal, Sukkur, passed
in E.P.No.271/2013)*

Raja Ghous Bux Bijarani
Sardar Ghulam Abid Khan etc.

...Appellant(s)

VERSUS

...Respondent(s)

For the appellant(s): Qazi Muhammad Anwar, Sr. ASC

For respondent No.1: Mr. Farooq H. Naek, Sr. ASC
Syed Rifaqat Hussain Shah, AOR

Date of hearing: 07.01.2016

...
ORDER

MIAN SAQIB NISAR, J.- The appellant contested the elections for PS-17 Kashmore-I, District Kahsmore. The respondent is the returned candidate who secured 20,530 votes while the appellant is the runner up who obtained 18,850 votes, thus the differential between the two is 1,680 votes. Aggrieved of the above result, the appellant filed an election petition and according to his case as finally propounded (*confined by the appellant*) it was that in ten polling stations, details whereof are given in paragraph 9 of the election petition, bogus votes were cast and, therefore, examination/verification of the counterfoils by NADRA was sought by him. The learned Tribunal acceded to the appellant’s request and NADRA was required to examine the counterfoils, the report of which is as follows:-

S.NO	Description	Count of Votes
1	Voters polled in polling stations whose election material was received by NADRA	8,099
2	Counterfoils did not qualify for fingerprint matching	2,415
3	Fingerprints successfully authenticated on used counterfoils and ER	3,176
4	Fingerprints on used counterfoils and ER falling authentication	0
5	Fingerprints of bad quality affixed on used counterfoils	2,508

After considering the report the learned Tribunal came to the conclusion

that on account of non-verification of 2,415 and 2,508 votes it cannot be held that these votes were bogus. Learned counsel for the appellant states that at least the votes, which have not been verified on account that the “*Counterfoils did not qualify for fingerprint matching*”, should be excluded from the total count, and since such unverified votes (2415 in number) are greater than the differential of 1,680 votes, therefore, the election result has been materially affected in terms of Section 70(a) of the Representation of People Act, 1976 (*the Act*), suffice it to say that the reasons provided by the Tribunal in the impugned judgment are apt and are hereby upheld. It may be pertinent to mention here that it was never the case of the appellant that the thumb impressions on the votes (2415 and 2508) do not match the NIC numbers of the voters or that more than one person has affixed their thumb impressions on the counterfoils to hold that the ballot papers were not validly issued to the voter rather his case is restricted to the fact that as the verification could not be conducted by NADRA therefore the necessary conclusion be drawn that these votes are bogus. We are not persuaded to agree with the appellant because this is not the position in the present matter. If the report however was unequivocal and positive to the effect that there is no mention of the NIC on the counterfoil; or that the thumb impression of the voters are not affixed thereto; or the NIC mentioned on the counterfoil is bogus meaning thereby that such card has not been issued by NADRA; or that the NIC numbers do not tally with the thumb impressions; or the thumb impressions do not correspond with the NIC numbers; or that the counterfoils bear the thumb impression of one person; or more than one person has affixed his thumb impression on a number of counterfoils, the learned counsel could possibly have some room to argue that in the above scenario such votes as per the quantum of these kind of counterfoils could be excluded from the count (*note:- we are however leaving this aspect of the case open to be considered in some other appropriate matter*). However as this is not the position in the instant case, thus such votes (*i.e. non-verified*)

cannot be declared to be bogus and excluded from the count altogether, so as to hold that the election result was procured by the respondent through illegal and corrupt practices or that there has been non-compliance of the provisions of the Act or the Rules made thereunder, thereby bringing the case within the purview of Section 70(a) or even (b) of the Act. No case for interference has been made out. Dismissed accordingly.

JUDGE

JUDGE

JUDGE

Islamabad, the

7th January, 2016

Not Approved For Reporting

Waqas Naseer/*