

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ
MR. JUSTICE MUHAMMAD NAWAZ ABBASI

CIVIL APPEAL NO. 970 OF 2003

(On appeal against the judgment dated 2.6.2003
passed by the Peshawar High Court, Peshawar
in Election Petition No. 29 of 2002)

Atique Rehman	Appellant
Versus			
Haji Khan Afzal, etc	Respondents

For the Appellant:	Mr. Wasim Sajjad, Sr. ASC Mr. Mehr Khan Malik, AOR
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For the Respondents:	Mr. Abdul Aziz Kundi, AOR
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Date of Hearing:	2.10.2006
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ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ: Instant appeal has been filed against the judgment dated 2nd June 2003 passed by the Peshawar High Court, Peshawar in Election Petition No. 29 of 2002.

Precisely stating facts of the case are that appellant submitted nomination papers on 23rd August, 2002 to contest the Election of the Office of MPA from PF 42, Hangu-I. The Returning Officer after having examined his documents vide detailed order dated 2nd September 2002 concluded that he was qualified to contest the election and thus in the contest, the appellant secured more votes to that of his opponent and as such was declared successful candidate. The respondent filed an Election Petition against the appellant, which was allowed by the election Tribunal constituted

under Representation of People Act, 1976 and presided over by a learned Judge of the Peshawar High Court, vide judgment dated 2nd June 2003. The appellant has thus filed the instant appeal under Section 67(3) of the *ibid* Act [hereinafter referred to as the Act].

Learned counsel for appellant contended that no such ground in respect of the age of appellant less than 25 years on the date of filing the nomination papers, was taken in the election petition or at any subsequent stage by any of the contesting candidate, rather the Presiding Officer of the Tribunal himself having posed the question regarding the age of the appellant on the date of filing of the nomination papers, held that he being less than 25 years of age was not qualified to contest the election. Learned counsel submitted that it was brought to the notice of Tribunal that much before the filing of nomination papers, a civil suit was filed by the appellant for correction of his date of birth which was subsequently decreed in his favour and according to the verdict given by the Civil Court, he was above 25 years of age on the date of filing the nomination papers and the decree having been not challenged, attained finality, which was still holding field to be given effect for all intents and purposes.

The learned counsel for the respondents, on the other hand, submitted that the decree in question was passed on the basis of medical certificate wherein the approximate age of the appellant was given which cannot be considered as conclusive evidence of his age and further the same having been obtained subsequent to the filing of nomination papers, may not be relevant to determine the correct age of the appellant on the target date, therefore, the High Court has rightly held that on the day of filing of the nomination papers, the appellant was not qualified to contest the election.

After hearing the learned counsel for the parties at length and having carefully perused the record with their assistance, we in the light of the provisions of Section 99 of the Act, 1976 have found that a candidate intending to contest election for the seat of member provincial Assembly must fulfill the condition contained therein including attaining the age of 25 years on the date of filing the nomination paper and should also be enrolled as voter in the constituency from which he is contesting the Election.

The appellant having fulfilled the above essential conditions contested the Election as a validly nominated candidate therefore, it would hardly make any difference that decree was passed subsequent to 23rd August 2002 which was the last date for filing the nomination papers. It is evident from the contents of the decree that appellant has attained the age of 25 years much before the target date and the same having been not assailed in the appropriate proceedings was still holding the field, so much so the application under Section 12 (2) CPC filed by the respondents for setting aside the decree was also dismissed. The validity of the decree passed by the civil court neither could be challenged before the Election Tribunal established under Representation of People Act, 1976 nor the same could be ignored to be given legal effect and thus we are of the considered opinion that so long the decree of the Civil Court determining the age of appellant above 25 years on the date of filing of nomination papers was intact, the objection that he was less than 25 years of age on the date of nomination papers could not be raised to contend that he was suffering from disqualification to contest the election. The contention regarding the other conditions relating to the eligibility of appellant to contest the election is also without any substance. The appellant was enrolled as voter in the constituency from which he was contesting the

election and he having been not found to have been suffering from any disqualification to contest the election was declared a validly nominated candidate. It may be noted that neither any appeal was filed against the acceptance of nomination paper of the appellant nor the order passed in the application under Section 12 (2) CPC challenging the decree was further assailed and thus the Tribunal being not competent to sit over the judgment of civil court would have no jurisdiction, to go beyond the decree and pass a contrary order in respect of age of appellant.

In the light of forgoing reasons the appeal is allowed, impugned judgment is set aside and Election Petition filed by the respondent is dismissed with costs of Rs. 10,000/- (Rupees ten thousand only).

Chief Justice

Judge

Islamabad
02.10.2006
MS/*

Not Approved For Reporting