

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MUNIB AKHTAR  
MR. JUSTICE SHAHID WAHEED  
MR. JUSTICE IRFAN SAADAT KHAN

**Civil Petition No.183 of 2024**

(Against judgment dated 12.01.2024  
passed by the Lahore High Court,  
Lahore in W.P. No.2361/2024.)

Shaukat Mahmood

... **Petitioner(s)**

***Versus***

Election Commission of Pakistan (ECP) ... **Respondent(s)**  
through its Secretary ECP Building,  
Islamabad and others

For the Petitioner(s) : Mr. Shazib Masud, ASC  
Mr. Moiz Tariq, ASC  
Assisted by:  
M/s Mian Ali Ashfaq,  
A. Ahad Khokhar,  
M. Fiaz Kandwal, Advocates  
Ch. Akhtar Ali, AOR

For ECP : Mr. Zafar Iqbal, Spl. Secy.  
Mr. M. Arshad, D.G. (Law)  
Mr. Mansoor Akhtar Sherwani, DG  
(Political Finance)  
Mr. Khurram Shahzad, Addl. Dir.  
Mr. Falak Shar, Legal Consultant  
(On Court's call)

Research Assistance : Ahsan Jehangir Khan, Law Clerk.

Date of Hearing : 26.01.2024

**JUDGMENT**

**Irfan Saadat Khan, J.-** Elections are the bedrock of a democracy; and as the 16<sup>th</sup> President of the United States of America, Abraham Lincoln, once said, elections belong to the people. Therefore, it is essential that those wishing to contest elections be facilitated as far as is legally permissible. It goes without saying that it is against democratic norms and principles to add technical bottlenecks in the way of any individual, who is a citizen of this country, trying to

contest elections. And in this backdrop, it is pertinent to say that electoral laws and rules cannot be used as an arbitrary filtering mechanism, dependent on the whims of a Returning Officer. Therefore, a Returning Officer should exercise the discretionary powers available to him in a rational and meticulous manner.

2. With that being said, we come to the matter at hand. The Petitioner filed nomination papers to contest the general election of 2024 as a Member of National Assembly ("**MNA**") from Bahawalnagar, electorally referred to as NA-163 Bahawalnagar-IV. However, vide Order, dated 30.12.2023, the Returning Officer, rejected the Petitioner's nomination papers for the following reasons:

"Whereas Section 60, subsection (2)(b) of the Election Act, 2017, states as under:

A declaration that before the date fixed for the scrutiny of nomination papers he will open an exclusive account or dedicate an existing account, with a scheduled bank for the purpose of election expenses, and has attached statement of the said bank account with the nomination paper, starting with entries of seven days prior to the election schedule.

2. And whereas the candidate namely Mr. Shaukat Mehmood has mentioned a joint Bank Account No. 3149301000001084 on his nomination paper instead of his personal account.

3. Therefore owing to the reasons mentioned above, the nomination paper of Mr. Shaukat Mehmood is hereby rejected as per section 62, subsection 9c & 9d of the Election Act, 2017."

3. Aggrieved of the Returning Officer's aforementioned Order, the Petitioner filed an Appeal under s. 63 of the Election Act, 2017 ("**Act**"), which was dismissed vide Order, dated 05.01.2024, by the Election Appellate Tribunal ("**Tribunal**"). Subsequently the Petitioner challenged both the Order of the Returning Officer and that of the Tribunal in the Lahore High Court, via Writ Petition No. 2361/2024. However, this Writ Petition was dismissed by a full bench of the Lahore High Court, vide Order, dated 12.01.2024 ("**Impugned Order**").

4. The Petitioner challenged the Impugned Order before this Court and sought Leave to Appeal. Mr. Shazib Masud, ASC appeared on behalf of the Petitioner and contended that the Impugned Order was in stark contrast with the disqualifications already laid out in Articles 62 and 63 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") and that the Lahore High Court had erred by confirming the Returning Officer's flawed Order by adding supplementary grounds of disqualification. The learned Counsel further contended that as per s. 60 (2)(b) of the Act, a candidate has to either open an exclusive account or dedicate an existing account with a scheduled bank for the purposes of election expenses, which the Petitioner had provided in his nomination papers. However, it is worthwhile mentioning that the bank account dedicated by the Petitioner happens to be a joint account, which the Petitioner shares with his wife. Counsel for the Petitioner informed us that to correct the apparent defect of a submitting a joint bank account, the Petitioner opened a new bank account on the day of the scrutiny of his nomination papers, 30.12.2023; however, the Returning Officer did not entertain the new bank account citing that the same had been submitted along with the nomination papers after office hours, on the day of scrutiny.

5. The Director General ("**DG**") (Law) and DG (Political Finance) represented the Election Commission of Pakistan ("**ECP**"), and whilst placing reliance on r. 51 of the Election Rules, 2017 ("**Rules**") stated that joint bank accounts are not permissible for election expenses, and since the Petitioner had only provided a joint account, the Returning Officer's Order and all subsequent Orders upholding the Returning Officer's Order were legally correct. Counsel for ECP

further contended that if s. 60 (2) (b) of the Act is read with r. 51 of the Rules, along with its proviso, it becomes clear that the intention of the rule making body, ECP, was to make sure that the bank account opened or being dedicated by the person filing nomination papers should not be a joint signatory account but a single account through which all the expenses incurred by the person contesting the election could be verified by the ECP. According to the learned Counsel the rationale and the logic for adding the aforementioned proviso is quite simple: the person contesting the election should be made accountable and responsible for any extraneous amount expended by him in contesting the election which is not borne out of the said bank account. He, therefore, stated that the contention of the learned Counsel for the Petitioner that there is a conflict between the Act and the Rules is misplaced and misconceived. He stated that since this mandatory requirement was not fulfilled by the Petitioner, therefore, his nomination papers were rightly rejected by the Returning Officer. Be that as it may, the learned Counsel during his arguments advanced at the Bar conceded that the Petitioner had submitted a single account; however, he contended that since this was done after office hours, hence the same was rightly discarded by the Returning Officer, and therefore, no relaxation in this regard could be given to the Petitioner. The Counsel supported the Order of the High Court and stated that the instant Petition being bereft of merits may be dismissed.

6. We have heard the parties and perused the record with their able assistance. Since the crux of the matter revolves around ss.(2)(b) of s.60 and ss.9(c) and (d) of s.62, it is pertinent to reproduce both:

“60. Nomination for election.—

...

(2) (b) a declaration that before the date fixed for scrutiny of nomination papers he will open an exclusive account, or dedicate an existing account, with a scheduled bank for the purpose of election expenses, and has attached statement of the said bank account with the nomination paper, starting with entries of seven days prior to the election schedule;

...

62. Scrutiny.—

...

(9) Subject to this section, the Returning Officer may, on either of his own motion or upon an objection, conduct a summary enquiry and may reject a nomination paper if he is satisfied that— (c) any provision of section 60 or section 61 has not been complied with or the candidate has submitted a declaration or statement which is false or incorrect 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; or (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."

...

7. A mere cursory glance at s. 60(2)(b) of the Act shows that there is a requirement of a declaration that an 'exclusive' bank account, for the purpose of recording election expenses, has been opened, or an existing bank account be dedicated for the same, to be nominated for an election. However, the aforementioned section, or rather any section of the Act, does not create a distinction between an 'exclusive bank account' or a 'joint bank account.' After all, a 'joint bank account' could be 'exclusive' as well. There is nothing on the record to suggest that the 'joint bank account' which is at the forefront of the *lis* before us, was not being exclusively used by the Petitioner and his wife. Moreover, s. 60(2)(b) of the Act gave the Petitioner the option to dedicate an existing bank account for recording election expenses; in this regard, the Act does not specify, once again anywhere in the 241

sections of Act, that this existing bank account cannot be a joint account.

8. However, the learned Counsel representing the ECP, pointed out that the Rules were a source of guidance vis-à-vis the status of a 'joint bank account', in particular the proviso to r. 51:

"51. Nomination paper. --- A nomination paper by which the proposal is made under section 60 for general seats shall be in the Form-A appended to the Act.

Provided that a candidate shall open an exclusive bank account or dedicate an existing bank account already opened with a scheduled bank to maintain transactions of election expenses and shall attach a statement of the said bank account starting with entries of seven days prior to the election schedule with the nomination papers for election to an Assembly or the Senate on Form A. The bank account so opened or dedicated shall not be a joint signatory account."

(Underlining is ours)

9. The last sentence of the proviso to r. 51, as underlined above, was added via an amendment of the Rules, vide notification, S.R.O. No. 1793(I)/2023 dated 12.12.2023. In *Sh. Abdur Rahman*<sup>1</sup> this Court observed that Rules have to be consistent with the statute under which they are framed and with all that is deemed to be incorporated in the statute. This observation in *Sh. Abdur Rahman* was further confirmed by this Court in *Province of East Pakistan*<sup>2</sup> by stating that the rule making authority cannot clothe itself with power which the statute itself does not give. Since the Rules are the wheels on which the hypothetical vehicle of the Act runs, it is tantamount that both work in harmony; otherwise, the Act would not be able to serve the purpose for which it was passed by the legislature.

10. The legislature for all intents and purposes has framed s. 60(2)(b) of the Act quite simply: individuals who seek nomination for

<sup>1</sup> *Sh. Abdur Rehman v. The Collector and Deputy Commissioner, Bahawalnagar* (PLD 1964 SC 461)

<sup>2</sup> *Province of East Pakistan v. Nur Ahmad* (PLD 1964 SC 451)

elections are to declare that they have opened an exclusive bank account or dedicate an existing bank account, with a scheduled bank. If the legislature so desired that this exclusive bank account be owned 'exclusively' by one individual, or that an existing account which has to be dedicated is to be solely owned by the individual seeking nomination for elections, it would have added a proviso on its own, rather than the rule making authority, ECP. With respect to the apex electoral watchdog of the country, it cannot be allowed to don the cloak of the legislature and interpret the legislature's wisdom by adding provisos in stark contrast with the Act itself. This Court in *Mehraj Flour Mills*<sup>3</sup> declared:

"There is no cavil with the proposition that the rule shall always be consistent with the Act and no rule shall militate or render the provisions of the Act ineffective. The test of consistency is whether the provisions of the Act and that of rules can stand together. Main object of rules is to implement the provisions of the Act and in case of conflict between them the rule must give way to the provisions of the Act. In any case, the rules shall not be repugnant to the enactment under which they are made."

11. Moreover, in *Suo Moto Case No. 13 of 2009*<sup>4</sup> this Court has laid out the criterion by which a subordinate legislative instrument can be struck down if it is not consistent with its parent statute:

"In order to strike down a subordinate legislative instrument, challenger has to show that any of the disqualification exist namely (a) it impinges upon fundamental rights guaranteed under the Constitution (b) it is in conflict with any Constitutional provision (c) it is beyond the legislative competence of the delegatee making it and or (d) it is violative or beyond the scope of the parent or enabling statute."

12. In our view, the Petitioner has showed that S.R.O. No. 1793(I)/2023, dated 12.12.2023, which amended r. 51 of the Rules,

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<sup>3</sup> *Mehraj Flour Mills v. Provincial Government* (2001 SCMR 1806)

<sup>4</sup> *Suo Moto Case No. 13 of 2009*, in the matter of: Action on press clipping from the Daily "Patriot", Islamabad dated 4-7-2009 regarding Joint Venture Agreement between CDA and Multi-Professional Cooperative Housing Society (MPCHS) for development of land in Sector E-11 Islamabad (PLD 2011 SC 619)

by adding the proviso, impinges upon the fundamental rights guaranteed under the Constitution and is in conflict with the Constitution, specifically the right to contest elections, which is a fundamental right guaranteed by Article 17(2)<sup>5</sup> of the Constitution, and has been upheld by this Court numerous times.<sup>6</sup> The Petitioner, has also been successful in showing that the aforementioned proviso was beyond the legislative competence of the delegatee, the ECP, making it and that the proviso is violative and beyond the scope of its parent and enabling statute, the Act of 2017. In this regard, *Suo Moto Case No. 13 of 2009* is quite clear:

“By reason of any legislation whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such legislation, however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith.

... that a rulemaking body cannot frame rules in conflict with, or in derogation of, the substantive provisions of the law or statute, under which the rules are framed. Rules cannot go beyond the scope of the Act. Thus, we are inclined to hold that no rule can be made which is inconsistent with the parent statute, whereas, no regulation can be made inconsistent with the parent statute or the rules made thereunder and the provisions of these rules or regulations, as the case may be, to the extent of their inconsistency with the parent statute or the rules shall be inoperative.”

13. When the legislature has already mandated that the declaration required for nomination for election will be that of opening an exclusive bank account or dedicating an existing bank account, it was beyond the legislative competence of the ECP to

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<sup>5</sup> Article 17 (2): Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final

<sup>6</sup> See: *Nawaz Sharif v. President of Pakistan* (PLD 1993 SC 473); *Pakistan Muslim League (Q) v. Chief Executive of Islamic Republic of Pakistan* (PLD 2002 SC 994); *Javed Jabbar v. Federation of Pakistan* (PLD 2003 SC 955).



require that such bank account shall not be a joint signatory account. At this juncture, it is quite clear to us that the legislature did not envision such a bifurcation, and therefore the proviso added by the ECP (and that too a mere 8 days prior to the date of filing nomination papers)<sup>7</sup> is violative and beyond the scope of its parent statute. Therefore, S.R.O. No. 1793(I)/2023, dated 12.12.2023, which amended r. 51 of the Rules, by adding the proviso, is in conflict and contradiction hence is not applicable to the matter at hand. Insofar as the question of vires of r. 51 is concerned, that may be taken up in another case.

14. Having said that, we also find it pertinent to mention that the impugned judgement states:

“10. Under Jail Manual, under trial prisoners cannot sign any document without verification or attestation. If power of attorney to contest a case is required to be formed through the Superintendent Jail then document/form which is to be presented before an authority for the purposes of public representation has to be properly authenticated. Unfortunately, this was lacking in the petitioner case which prompted the Returning Officer as well as Election Tribunal to reject her nomination papers. At this stage, no exception can be drawn in favour of the petitioner.”

The learned Counsel for the Petitioner made us aware of the fact that the Petitioner was not in jail at the time of filing the nomination papers; and the Counsel for the ECP also admitted at the bar that the Petitioner was indeed not behind bars. With respect to the High Court, it has seriously erred in making the aforementioned observation and deliberated on a fact that was not true. Perhaps due to the paucity of time in deciding election matters, the High Court may have mixed up facts of the cases pending before it.

15. We also wish to delve upon the conduct of the Returning Officer towards the Petitioner. As noted in Paragraph 4 of this

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<sup>7</sup> Election Schedule Notification # No.F.2(3)/2023-Cord.

judgement, Counsel for the Petitioner stated in his arguments advanced at the bar that the scrutiny for nomination papers of the Petitioner was fixed for 03:00 PM on 30.12.2023; whereas the Petitioner reached the Returning Officer's office at about 4:00 PM. The Returning Officer did not entertain the Petitioner citing the reason that his application was submitted after office hours. The election programme/schedule<sup>8</sup> announced by the ECP, dated 15.12.2023, no Serial No. 4 states that the last date for scrutiny of nomination papers by the Returning Officer is from 24.12.2023 to 30.12.2023. We have carefully perused the one-page notification multiple times, and in any of those instances have not come across any official "office hours." With due respect to the Returning Officer, if the ECP has fixed the last date for scrutiny of nomination papers as 30.12.2023, the Returning Officer has no right to determine the cut-off period on 30.12.2023 or what "office hours" he or she will operate until on the last date, i.e. 30.12.2023. In our view, until the clock strikes midnight on 30.12.2023 or whatever the last date of the scrutiny of nomination paper may be for any future election, the Returning Officer must scrutinize all nomination papers submitted to him, in the best interest of justice and to uphold the fundamental right of any individual to contest elections. Returning Officers are an integral part of the electoral process and it is highly unbecoming of a Returning Officer to exercise the authority conferred upon him or her in a manner which sabotages the electoral process. Returning Officers must remember that it is a fundamental right of an individual to contest elections and if they sabotage an individual not only do they rob the individual of their fundamental right but they

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<sup>8</sup> Election Schedule Notification No. F.2(3)/2023-Cord.

also rob the populace at large of voting for that individual, which is also a fundamental right protected by the Constitution.

16. The above are the reasons for our short Order, dated 26.01.2024, reproduced below:

“We have heard learned counsel for the petitioner as also the learned DG (Law) and learned DG (Political Finance).

2. For detailed reasons to be recorded later and subject to such amplification and/or explanation therein as may be deemed appropriate, this leave petition is converted into an appeal and allowed. The impugned judgment of the learned High Court as well as the orders of the fora below are set aside with the result that the nomination papers of the petitioner, now appellant, for NA-163 (Bahawalnagar) are deemed accepted and his name is deemed included in the final list of candidates for the General Elections of 2024. This candidate shall immediately and forthwith, and it shall be the duty of the Election Commission to ensure that this is done, be allocated an election symbol.

3. The name of the candidate and his election symbol must appear on the ballot papers used in and for the general election to the constituency aforementioned and the said election for this constituency must be held on 08.02.2024, as scheduled.”

Judge

Judge

Judge

Islamabad, the  
26<sup>th</sup> January, 2024  
Arshed/AJK, L.C.

Approved for Reporting