

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Athar Minallah

Civil Petition No.159 of 2024.

(Against the order of Lahore High Court, Lahore dated 12.1.2024, passed in Writ Petition No.2224/2024)

Umar Aslam Khan

.....Petitioner

Versus

Election Commission of Pakistan, etc

....Respondent(s)

For the Petitioner(s): Syed Ali Zafar, ASC.
 Zahid Nawaz Cheema, ASC.
 Ch. Akhtar Ali, AOR.

For the respondents: Mr. Rashid Hanif, ASC.
 Mr. Mehr Khan Malik, AOR.

For the ECP: Falak Sher, Consultant Law.

Date of hearing: 26.01.2024

ORDER

Syed Mansoor Ali Shah, J. – The petitioner seeks leave to appeal against the order dated 12.01.2024, passed by a Full Bench of the Lahore High Court, Lahore, whereby his nomination paper for seat of the National Assembly from NA-87, Khushab, was rejected on the ground that he is a proclaimed offender in a criminal case.

2. Briefly, the facts are that the nomination paper of the petitioner was rejected by the Returning Officer ("RO") on the same ground on 30.12.2023, however, on appeal, the Appellate Tribunal set aside the order of the RO and accepted the nomination paper of the petitioner. The objector-respondent challenged the order of the Appellate Tribunal through a writ petition in the High Court, which vide order dated 12.01.2024 was allowed and the nomination paper of the petitioner stood rejected.

3. We have heard the learned counsel for the parties and have gone through the record. It is pointed out that the same bench of the High Court vide order of the even date in another election case (W.P. 2383/2024) titled *Tajammal Abbas v. Returning Officer, etc* discarded

the ground of proclaimed offender and accepted the nomination paper of the candidate by holding that "[i]t is settled law that if a person is fugitive from law, he does not lose all his rights and mere abscondence of an accused is nowhere recognized ground to eliminate him to contest the election." Yet a diametrically opposite view was taken by the same bench of the High Court, in a case having similar facts, in the impugned order.

4. Learned counsel for the respondent as well as the learned counsel for the ECP were asked to refer to any provision of law that disqualifies a proclaimed offender from contesting the elections but they were unable to refer to any provision from the Elections Act, 2017 or from the Constitution. Since there is no provision either in the Constitution or in the Elections Act that makes a proclaimed offender disqualified from contesting the election, the courts cannot on their own create such additional disqualification, without any backing of the law. Further, in this particular case, the petitioner was declared a proclaimed offender in criminal case FIR No. 231/23 registered at Police Station, Khushab. However, he obtained a protective bail in the said case by surrendering himself to the court; he, therefore, cannot be considered a proclaimed offender. We may point out that Article 62 (1) (d), (e), (f) and (g) has been recently declared by this Court, in Civil Appeal No. 982 of 2018 etc titled *Hamza Rasheed Khan v. Election Appellate Tribunal & Others*, not to be self-executory and to serve as guidelines for the voters in exercising their right to vote, hence even being a proclaimed offender does not attract the disqualification under the said provisions.

5. In view of the above, this petition is converted into an appeal and the same is allowed. The impugned order of the High Court is set aside and the nomination paper of the petitioner for the seat of a Member of the National Assembly, NA-87, Khushab-I, stands accepted. The Election Commission of Pakistan shall ensure that all the necessary steps to be taken in the electoral process are completed forthwith so that the petitioner can contest the election on the scheduled date for the said seat, without fail.

Judge

Islamabad,
26th January, 2024.
Approved for reporting

Judge

Sadaqat

Judge