

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Munib Akhtar
Mr. Justice Shahid Waheed
Mr. Justice Irfan Saadat Khan

C.P.L.A.184/2024

(Against the judgment dated
12.01.2024 passed by Lahore High
Court, Lahore in WP No.2467/2024)

Sanam Javaid Khan (Presently confined ...Petitioner(s)
in Kot Lakhpat Jail, Lahore) through her
attorney Jawad Javaid Khan

Versus

Election Appellate Tribunal, Punjab and ...Respondent(s)
others

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

For ECP : Mr. Zafar Iqbal, Special Secretary
Mr. Muhammad Arshad DG Law
Mr. Mansoor Akhtar Sherwani,
DG Political Finance
Mr. Khurram Shahzad, Addl.
Director
Mr. Falak Sher, Legal Consultant
(on Court's call)

Date of Hearing : 26.01.2024

ORDER

Shahid Waheed, J: A prisoner has filed this
petition seeking leave to appeal against the order of the High
Court, dated 12th of January, 2024, upholding the orders
rejecting her nomination papers.

2. The name of the petitioner was proposed as a
candidate for election to the seat from constituency PP-150,
Lahore. On scrutiny, her nomination papers were not found
to be compliant with the provisions of the Elections Act,

2017 (**the Act**), and the Election Rules, 2017 (**the Rules**), made thereunder. As such, the Returning Officer (**RO**), by his order dated 30th of December, 2023, rejected her nomination papers, and on appeal, this order was maintained by the Election Tribunal vide order dated 7th of January, 2024. After that the High Court, within its constitutional jurisdiction, upheld the rejection of the petitioner's nomination papers on two grounds: first, the bank account declared by the petitioner for election expenses was a joint account, and second, her signatures and thumb impression on the nomination papers, Form-B and Affidavit were not genuine.

3. The order of the High Court is limited to the above-stated two grounds, and so, we confine ourselves to them and make a bid to examine their legal validity.

4. It cannot be denied that the bank account presented by the petitioner for election expenses in her nomination papers is a joint account. The High Court held that the said account should have been single and, therefore, did not satisfy the requirements of the law. As a result, the High Court upheld the orders of rejecting petitioner's nomination papers. The first question that has to be determined is whether this is correct? It may be noted here that the requirement to open an account for the purpose of election expenses is provided in section 60(2)(b) of the Act, which reads as under:

(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.

5. A careful perusal of the provision mentioned above makes it clear that it is not mandatory for the bank account opened or dedicated for the purpose of election expenses to be a single signature account. However, vide Notification SRO No.1793(I)/2023 dated 12th of December, 2023, the requirement has been made stringent by amending Rule 51, which states that the bank account so opened for the purpose to document election expenditure should not be a joint signatory account. Rule 51 is in the following terms:

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 with the nomination papers for election to an Assembly or the Senate on Form-A. The dedicated existing account shall start with entries of seven days prior to the election schedule. The bank account so opened or dedicated shall not be a joint signatory account.

6. At this stage, it is apposite to state that the Election Commission of Pakistan (the **Commission**),

exercising its delegated power under section 239 of the Act, has made the above rule. It is deeply rooted that if a rule goes beyond the rule-making power conferred by the statute or if a rule supplants any provision for which power has not been conferred, it becomes invalid. A delegated power to legislate by making rules cannot be exercised to bring into existence substantive rights, obligations or disabilities not contemplated by the provisions of the statute. The Commission, as a rule making body has no inherent power of its own to make rules but derives such power only from the Act, and so, it necessarily has to function within the purview of the Act. In light of above, it appears, the stipulation in Rule 51 that *the bank account so opened or dedicated should not be a joint signatory account* is inconsistent with the express provision of section 60(2)(b) of the Act. Since this rule travels beyond the ambit of the Act, it is *ultra vires* and cannot be given any effect, and resultantly, based on it the nomination papers could not be rejected.

7. We are conscious of the fact that acts performed and orders made by public authorities deserve due regard by courts, every possible explanation for their validity should be explored, the whole field of powers in pursuance of which the public authorities act or perform their functions to be examined and only then if it is found that the act done, order made or proceedings undertaken is without lawful authority, should the Courts declare them to be of no legal effect.¹ Therefore, notwithstanding the inconsistency between

¹ *Sanaullah Sani v. Secretary Education Schools* [2024 SCMR 80].

section 60(2)(b) of the Act and Rule 51 of the Rules, we examine the matter at hand from a different angle. Without prejudice to the above, we endeavour to seek the answer to the question under consideration by reading into the declaration, printed on the nomination paper, the condition of single signatory account. Before delving into that exercise, we consider it necessary to mention here that the nomination papers were printed by the Commission under section 60(2) of the Act and if there is any discrepancy in it, the candidate will benefit from it. It is with this principle in mind that we examine Column No.3 of the declaration, provided in the nomination papers, by which a candidate is required to declare his/her bank account. Column No.3 is reproduced hereunder:

"I, the above mentioned candidate, declare that I have opened an exclusive Account No._____ with _____ (Name and Branch of Scheduled Bank)
OR
I will use my existing Account No._____ with _____ (Name and Branch of Scheduled Bank for the purpose of Election expenses) (Please enclose statement of the Bank Account)"

The tenor of column No.3 of the declaration provides two options for a candidate. First, the candidate has to declare that he/she has opened an exclusive single signatory account, which means that before filing nomination papers, the candidate has opened an exclusive single signatory account for the purpose of documentary evidence of election expenses. If, for any reason, the candidate cannot open an exclusive single signatory account before filing the nomination papers, the other option for him/her is to declare

that he/she will use his/her existing account for the purpose of election expenses. This implies two things: firstly, the existing account may be single or joint, and secondly, a candidate is given the opportunity, if their account is joint, to have it converted into a single signatory account for the purpose of election expenses later on. This option seems to be for those candidates who, due to some exigencies including illness, imprisonment, etc., cannot open their exclusive single signatory bank account or convert their existing joint account to a single signatory account before filing nomination papers. The purpose of providing such a facility can only be to ensure that the citizens are not deprived of their fundamental right, that is, to contest election freely.² So viewed the objection, if any, with regard to the joint bank account declared by the petitioner, it could not be held to be a defect which was substantial in nature as the petitioner had the option, as stated above, to rectify it under proviso (ii) to sub-section (9) of section 62 of the Act, and convert it into single signatory account. This aspect of the matter escaped consideration of the High Court, and so, we conclude that it misdirected itself while declining the petitioner's prayer.

8. The second ground which prevailed with the High Court to reject the nomination papers of the petitioner was that her signatures and thumb impression on nomination papers, Form-B and the Affidavit were not properly attested and, therefore, not genuine. The High

² *Miss Benazir Bhutto v. Federation of Pakistan* [PLD 1988 SC 418].

Court has taken this view because the petitioner is an *undertrial* prisoner, and the said documents were not verified or attested by the Superintendent Jail. We are afraid that while forming this opinion the High Court did not consider the provision of sub-section (9) of section 62 of the Act which provides for inquiry by RO to reject the nomination papers. According to it, the RO may conduct a summary inquiry and may reject the nomination papers 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 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.* This scope of inquiry does not permit the RO to get the signature of the petitioner verified from the jail authorities, nor the non-verification or attestation of the nomination papers by the jail authorities is a condition precedent, nor was the difference in the candidate's signature a valid reason for rejecting the nomination papers, particularly when the petitioner/candidate filed an appeal admitting her signature, and then a constitutional petition. Thus, this ground could not be used as a basis to draw the inference that signatures were not genuine and to reject the nomination papers.

9. The above are the reasons which persuaded us to convert this leave petition into an appeal and allow the

same by our short order dated 26th of January, 2024, which is as follows:

"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 PP-150 (Lahore) are deemed accepted and her 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 her 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

