IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

C.P.L.As. 210, 211, 212 and 213 of 2024
(On appeal against judgments dated 16.01.2024 passed by the Lahore High Court, Lahore in W.Ps. No. 2610 and 2618, 2620 and 2664/2024)

Umar Farooq ... **Petitioner** in all cases

vs

Sajjad Ahmad Qamar and others ... **Respondents** in CPLA Nos. 210 and 212/2024

Ali Imran Aslam and others **Respondents** in CPLA Nos. 211 and 213/2024

For the petitioner(s) In all cases : Mr. Muhammad Shahzad Shaukat, ASC

For Respondent No.1 In all cases : Mr. Ahsan Bhoon, ASC (via Video-Link, Lahore)

For ECP : Mr. Khurram Shehzad, Addl. DG. Law And Mr. Falak Sher, Legal Consultant

Date of Hearing : 30.01.2024

JUDGMENT

Munib Akhtar, J.: The General Elections to the National and all four Provincial Assemblies were held on the same day, 08.02.2024. It is important to keep in mind that in law a general election to each Assembly is distinct and separate. Thus, constitutionally speaking on 08.02.2024 it was not one, but five, general elections that took place. Section 69(1) of the Elections Act, 2017 ("2017 Act") accommodates simultaneity, though it is again important to

understand that this is only permissive and not mandatory. More particularly, this provision cannot and does not override any requirement mandated by the Constitution itself such as, for example, the holding of a general election within 60 or 90 days (as the case may be) of the dissolution of the concerned Assembly. We are here concerned with two of the general elections, one in relation to the National Assembly (where the petitioner was a candidate for NA-99 (Faisalabad-V)) and the other in relation to the Punjab Assembly (where he was a candidate for PP-107 (Faisalabad-X)). All the leave petitions were heard together and were disposed of by means of short orders, which were identical in all material respects. It will be convenient therefore to set out only one of those orders, in relation to the National Assembly seat NA-99:

> "We have heard learned counsel for the petitioner as also the learned Additional DG (Law) and learned Legal Consultant and also learned counsel appearing for the private respondent.
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> 2. For detailed reasons to be recorded later and subject to such amplification and/or explanation therein as may be deemed appropriate, these leave petitions are converted into appeals and allowed. The impugned judgments of the learned High Court are set aside with the result that the nomination papers of the petitioner, now appellant, for NA-99 (Faisalabad) 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 Commission to ensure that this is done, be allocated an election symbol. (We may note that for this constituency the petitioner, now appellant, had filed two sets of nomination papers, both of which were dealt with in the same terms and the writ petitions filed in this regard in the High Court by the private respondent were allowed vide impugned judgments, which are identical in all material respects.)
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> 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."
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> The following are our reasons for the short orders.

2. In relation to each of the seats there were two leave petitions. The reason is that for each constituency, National and Provincial, two nomination papers were filed for the petitioner. It is pertinent

to note that, as set out in para (i) to the proviso to subsection (9) of s. 62 of the 2017 Act, the rejection of one nomination paper for a constituency does not invalidate the nomination of a candidate "by any other valid nomination paper". Thus, multiple nomination papers can be filed for a candidate for the same constituency and, if so, each has to be scrutinized on its own. Learned counsel for the petitioner submitted that the grounds taken by the returning officers for rejecting all four of the nomination papers overlapped and included some or all of the following: (a) the candidate was not present at the time of the scrutiny; (b) the signatures of the candidate on the nomination papers did not match those on his CNIC; (c) a criminal case, registered as FIR 835/23 on 10.05.2023 at police station Civil Line, Faisalabad was not disclosed in the affidavits accompanying the nomination papers; and (d) said affidavits were not attested by an oath commissioner. In the matters that came before us as CPLA Nos. 210 and 212/2024 (relating to NA-99) all four grounds were taken by the returning officer. In the matters that came before us as CPLA Nos. 211 and 213/2024 (relating to PP-107) two grounds were taken, being the first and the third. In respect of each rejection the petitioner filed an appeal, and the appeals were allowed by the Appellate Tribunal by various orders, which were all dated 05.01.2024 and substantially the same.

3. The objections to the nomination papers had been taken in the case of the National and Provincial Assembly seats by two persons, who were respectively the contesting private respondents in the leave petitions. Both of these persons filed writ petitions in the High Court against the orders of the Appellate Tribunal. These writ petitions were allowed by the impugned judgments, all dated 16.01.2024. The said judgments are substantially the same in all material respects. Briefly stated, it was held that in respect of the criminal case the petitioner had become an absconder and, being a fugitive from justice, could not be allowed to participate in the electoral process. Although it was noted that the petitioner had meanwhile obtained pre-arrest bail, that was held to be of no consequence. As a subsidiary to this point, on which all the impugned judgments were grounded, the learned High Court also

noted the absence of the petitioner when the nomination papers were scrutinized by the returning officers.

4. Learned counsel for the petitioner submitted that he was not nominated in the FIR lodged in the criminal case but was brought into the matter by means of a supplementary on 15.05.2023. It was contended that the petitioner had not been declared a proclaimed offender and there was nothing in the record as could lead to such conclusion. The allegation of his being a fugitive from justice was therefore of no moment. Finally, the petitioner was in any case on bail. It was submitted that the learned Appellate Tribunal had reached the correct conclusion and its orders ought to have been upheld by the learned High Court. It was prayed accordingly. Learned counsel for the contesting private respondents explained that the nomination papers, which were in the form set out in Forms A and B to the 2017 Act, did not as such require the candidate to disclose any criminal cases being faced. However, this Court in *Speaker, National Assembly of Pakistan and others v Habib Akram and others* PLD 2018 SC 678 ("*Habib Akram*") had set out an affidavit that had to be sworn by each candidate and appended to the nomination paper. That affidavit (pp. 681-85) called for the disclosure of a number of additional matters, one of which (para F) required the candidate to list such criminal cases (if any) as were pending against him six months prior to the filing of the nomination. Learned counsel submitted that para 8 of the decision (pg. 685) provided for the rejection of a nomination paper that was supported by an affidavit that was false or incomplete in any particular. It was contended that that was the case at hand, as the petitioner had not disclosed the criminal case per FIR 835/23. Learned counsel further submitted that the petitioner was in fact in Dubai at the relevant time and that was an additional reason why the nomination papers could not be accepted. It was prayed that the petitions be dismissed. The Election Commission ("Commission"), in effect, submitted that the law may take its own course.

5. After having heard the parties and the Commission we concluded that the petitioner was entitled to relief and made the short orders in terms as set out above. We begin by noting that the Appellate Tribunal had decided in favor of the petitioner in all the

cases and when the learned High Court accepted the writ petitions filed by the contesting private respondents it did so only for the reason as referred to above. All other grounds, whether taken before the returning officers or the Appellate Tribunal, accordingly fell by the way and cannot now be agitated before us. That includes the allegation that the petitioner was in Dubai at the relevant time. That point appears not to have been taken against him at any time prior to the petitions being heard here or, if taken, found no traction with any of the forums, including the High Court. It cannot therefore be allowed to be raised in this Court.

6. It will be seen that the matter was decided by the learned High Court entirely in relation to the criminal case registered as FIR 835/2023 in which the petitioner is (or was at the relevant time) alleged to be involved. Before considering this point, we may deal with a subsidiary matter. One of the grounds taken by the returning officers was that the petitioner was not in attendance when the nomination papers were scrutinized. While this ground was not, as such, taken up by the learned High Court, it was alluded to in passing (though very much in the context of the petitioner being a fugitive from justice) in the following terms: “under Article 225 of the Constitution the election laws fully apply to the process of holding elections under which the personal attendance of a candidate may be required by the Returning Officer”. With respect, we are unable to agree with this observation. As is well known, Article 225 provides that an election shall not be called in question “except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament)”. This relates to a time much after that point in the electoral process with which the learned High Court was concerned and has therefore nothing whatsoever to do with the requirement (if any) for the candidate to be in attendance before the returning officer at the time of scrutiny. Secondly, and in any case, there appears to be no such requirement in law. Subsection (2) of s. 62 is an enabling provision, which makes it permissible (but not mandatory) for, inter alia, a candidate to attend the scrutiny of his nomination paper. Thus, the returning officers were in law wrong to reject the petitioner’s papers on this

ground and the learned High Court was, with respect, also in error to allude to any such requirement.

7. With this subsidiary point out of the way, we turn to the substantive ground actually taken by the learned High Court. Two points arise in relation thereto. Firstly, what is the position, in the context of contesting an election, of a person who is alleged to be an absconder, i.e., a fugitive from law, or even one who is a proclaimed offender? This question has been considered by a learned three member Bench of this Court in judgment in CP Nos. 150 & 152/2024 dated 29.01.2024, titled *Tahir Sadiq v Faisal Ali and others* (2024 SCP 48). It was, inter alia, observed as follows:

> "It is also important to note that the disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a person has been so proclaimed, and not to the other cases or matters which have no nexus to that case. For instance, a proclaimed offender is not disentitled to institute or defend a civil suit, or an appeal arising therefrom, regarding his civil rights and obligations. The same is the position with the civil right of a person to contest an election; in the absence of any contrary provision in the Constitution or the Elections Act 2017 ("Act"), his status of being a proclaimed offender in a criminal case does not affect his said right."

We respectfully agree. Clearly, if a proclaimed offender can contest elections someone who is only alleged to be an absconder can equally do so. Thus, the ground considered and accepted by the learned High Court was not sustainable in law.

8. While the above is dispositive, there is also a second point to consider. That relates to the non-mentioning of the criminal case in the affidavits statedly required to be filed along with the nomination papers, in terms of *Habib Akram*. Since this point was canvassed by learned counsel for the contesting private respondents it will be appropriate also to deal with it. This requires a consideration of the cited decision.

9. The order in *Habib Akram* was made on 06.06.2018, i.e., on the cusp of the General Elections of 2018, which were held on 25.07.2018. (We may note that on that date, elections were held to both the National and Provincial Assemblies. Thus, as noted at the beginning of this judgment, the cited decision applied to what were, constitutionally speaking, five general elections.) In our view,

the crucial question is as to the scope of this order. More precisely, to what was it intended to apply? Now, an examination of the decision shows that it was made on a joint hearing of a number of matters, as listed (see pg. 678). Some of these were appeals and others were petitions under Article 184(3). However, it is important to keep in mind that none of these matters was actually decided. Thus para 5 (pg. 681) clearly describes the order as an "interim measure", and the order closes (in para 10, pg. 685) by adjourning the matters to a date in office. All of the said matters in fact remain pending. Thus, the cited decision was not a conclusive and dispositive determination of the issues raised in the matters that were listed for hearing but rather only an interim step, for a certain specified purpose, i.e., the General Elections of 2018.

10. The backdrop to the making of the order in *Habib Akram* is set out in para 3 thereof. There the Court compared the position of nomination papers under the 2017 Act with that under the previous legislation, the Representation of the People Act, 1976 ("1976 Act"). It was noted that a number of particulars, which were required in terms of the nomination paper to be filed under the latter, were omitted under the former. It was this divergence that was sought to be bridged by means of the affidavit set out in the order. Now, the 2017 Act is omnibus legislation, which repeals (in s. 241) and replaces a number of laws (including the 1976 Act) in relation to elections to the two Houses of Parliament and the Provincial Assemblies. (The 2017 Act also deals with local government elections, at least in part.) It is therefore necessary to consider how nomination papers were dealt with under the two laws.

11. Section 12(2) of the 1976 Act provided that a nomination paper was to be in the prescribed form. "Prescribed" had its usual meaning, and the rule-making power was conferred upon the Commission under s. 107. In exercise of such powers the Representation of the People (Conduct of Election) Rules, 1977 ("1977 Rules") were framed. Rule 3 provided that the nomination paper "by which the proposal is made under section 12" was to be in the various forms as appended to the 1977 Rules. The forms so appended contained a requirement that a candidate make a declaration in relation to criminal cases, in terms substantially the

same as those set out in para F of the affidavit in *Habib Akram*, already referred to above. Thus the said affidavit simply tracked a requirement that had been part of the earlier electoral framework. In contrast, the 2017 Act, while conferring as before rule-making power on the Commission (s. 239) takes the form and contents of the nomination paper entirely out of its jurisdiction and power. A nomination paper has to be in the form set out in Forms A and B to the statute. The rule-making power of the Commission cannot vary the same, whether by way of addition, substitution or deletion. Thus, rule 51 of the Election Rules, 2017 framed by the Commission simply states that "[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".

12. It will be seen from the foregoing that there is a clear divergence between the approaches taken by the 1977 Act and the 2017 Act in relation to the form and content of the nomination paper. In terms of the latter, Parliament has kept the matter exclusively within its own preserve, with the result that any changes thereto require (primary) legislative action. In terms of the former, the matter was delegated to the Commission, which could settle its terms, both as to form and content, in exercise of rule making power. Any changes only required subordinate legislative action. When this contrast is kept in mind, the interim nature of the order in *Habib Akram* (as specifically so described in the decision itself) is highlighted. Had the position under the 2017 Act been the same as under the 1976 Act, it could have been possible for the Court to direct the Commission to exercise its rule-making power and suitably alter the form of the nomination paper. That however, was not possible since the matter lay with Parliament. The Court therefore sought, but only as an interim measure, to align the information required to be provided under the 2017 Act with the position under the 1976 Act, by means of an affidavit to be filed by a candidate. The Commission specifically assured the Court that this requirement would not "in any manner upset the schedule of the Elections so as to delay of holding of the General Elections on 25.7.2018, as already announced" (para 7, pg. 685). The consequences in relation thereto were spelt out in the next para (*ibid*). These included not merely the rejection of the

nomination paper but also “such penalty as is of filing a false affidavit before this Court”.

13. This brings us to the nub of the matter. Since the arrangement brought about by *Habib Akram* was only an interim measure, the question is what was it intended to cover? Looking at the order as a whole and the context in which it came to be made, in our view it applied only to the General Elections of 2018 and, at most, to the 2018 election cycle that those elections engendered. That would include any bye-elections held in that cycle and also elections to the Senate held during that period. But that is all. To conclude otherwise, i.e., that the order extended beyond that cycle, would be incorrect. Firstly, that would give the order a degree of permanence and continuity quite contrary to its stated interim nature. It would be as though the matters in which the order was made had been finally decided and disposed of. That, of course, is not the case. Secondly, such characterization and application of the order would run against the grain of the present electoral framework, where the form and contents of the nomination paper are within the domain of the primary legislative process. Therefore, if at all the order is to extend and apply to an election cycle after the 2018 one, i.e., to the General Elections of 2024 and the election cycle thereby ushered in, that would require for either the matters in which it was made to be finally and substantively decided in the same or similar terms or for *Habib Akram*, as an interim measure, to be expressly so extended by the Court. Neither of these situations obtains. Thirdly, for the Commission itself to have required candidates for the General Elections of 2024 or for any elections held in the present election cycle (including those relating to the Senate) to file affidavits as set out in *Habib Akram* would, in effect, allow it to alter the shape and content of the nomination papers. But that, as has been seen, is beyond its jurisdiction and power, in light of the 2017 Act. As is well settled, something that cannot be done directly cannot be done indirectly. (If, as is more often than not its wont, the Commission seeks to invoke Article 218(3) of the Constitution, that would require for it to approach the Court and obtain a declaration that the relevant provisions of the 2017 Act are *ultra vires*. Absent such declaration, the Commission is bound by the terms of the relevant legislation.)

Therefore, it is our view that *Habib Akram*, being an interim measure, has ceased to be operative, since the 2018 election cycle has come to an end. It had, and has, no application for the General Elections of 2024 or for any elections held or to be held in the present election cycle. Inasmuch as candidates have been required to file affidavits in terms thereof or with reference thereto for the said General Elections or any elections thereafter, that cannot entail any legal consequences or penalties at any stage of the relevant electoral process, including any election dispute taken, or to be taken, to an Election Tribunal set up under Article 225. This will continue to be so until either the electoral framework relating to nomination papers is altered by primary legislation, or the matters in which the order in *Habib Akram* came to be made are decided finally and conclusively in the same or similar terms, or the said order is expressly extended by the Court. Certainly, absent any such contingencies, the Commission cannot require candidates for any election in the present election cycle to file such affidavits. For purposes of the petitions at hand it follows from the foregoing that the non-mentioning of the criminal case by the petitioner in the affidavits filed by him did not, and could not, entail any penal or legal consequences including, in particular, the rejection of the nomination papers. The submission made by learned counsel for the contesting private respondents cannot therefore, with respect, be accepted.

15. For the foregoing reasons, the leave petitions were converted into appeals and allowed in terms of the short orders.

Judge

Judge

Judge

Islamabad
Naveed/*

Approved for reporting