

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.181 of 2024.

*(Against the order of Lahore High Court, Lahore dated 13.1.2024,
passed in Writ Petition No.2433/2024)*

Pervez Elahi

.....Petitioner

Versus

Election Commission of Pakistan, etc

....Respondent(s)

For the Petitioner(s): Mr. Faisal Siddiqui, ASC.
 Barrister Haris Azmat, ASC.
 Mr. Aamir Saeed, ASC.
 Sardar Abdur Raziq, ASC
 (assisted by Ch. Muhammad Ali, Adv.)
 Ch. Akhtar Ali, AOR.

For the ECP: Mr. Muhammad Arshad, DG (Law).
 Mr. Masood Akhtar, DG (Finance)
 Mr. Khurram Shahzad, ADG (Law)
 Falak Sher, Consultant Law.

For Respondent No.4: Hafiz Ahsan Ahmed, ASC.
 a/w respondent No.4 in person.

Date of hearing: 26.01.2024

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JUDGMENT

Syed Mansoor Ali Shah, J. – At the heart of a thriving democracy lies the fundamental process of elections, an embodiment of the democratic principle that power should be vested in the hands of the people. And at its core, democracy is all about participation. Elections offer a structured and equitable way for citizens to participate in the democratic process and express their preferences for leaders and policies. The legitimacy of a democratic government hinges on its reflection of the people's will, and this is only possible through widespread and inclusive participation of the candidates and voters in the election process. Pro-enfranchisement policies ensure that every eligible citizen, irrespective of his or her background, has the

opportunity to vote, thus reinforcing the democratic tenet of equal representation. The threat of disenfranchisement by way of an improper rejection of nomination papers looms large in a democracy, which may undermine the fairness and integrity of the electoral process. A democratic society committed to fairness must actively combat disenfranchisement, ensuring that all voices are heard and valued in the political arena. Inclusive electoral processes contribute to political stability and social cohesion. This stability is essential for the long-term prosperity and peace of any society. The vitality of elections in a democracy cannot, therefore, be overstated. Further, the 'right to vote freely for the candidate of one's choice is the essence of a democratic society, and any [undue] restrictions on that right strike at the heart of representative government.'¹ It is with this approach we deal with and decide upon the issues involved in the present case.

2. Briefly, the petitioner filed nomination paper for the seat of a Member of the Punjab Provincial Assembly ("MPA") from PP-32, Gujrat-VI. Respondent No. 4 submitted his objections against the candidature of the petitioner. On 30.12.2023, the Returning Officer ("RO") rejected the nomination paper of the petitioner. The appeal of the petitioner before the Election Tribunal failed. The petitioner then preferred a writ petition in the Lahore High Court, which was also dismissed by a Full Bench of the Lahore High Court through the impugned order dated 13.01.2024. Hence, this petition for leave to appeal.

3. The nomination paper of the petitioner has been rejected mainly on two grounds: (i) that the petitioner did not maintain an exclusive account for the purpose of election expenses for every seat he proposed to contest under Section 60(2)(b) of the Elections Act, 2017 ("**Act**"); and (ii) that he failed to mention an asset, i.e., 10 marla land in Phalia, Mandi Bahauddin, Punjab, in the statement of his assets to be accompanied with the nomination paper through Form B under Section 60(2)(d) of the Act.

4. We have heard the learned counsel for the parties and have gone through the provisions of the Act. It may be noted at the very outset that the right to contest election is a fundamental right

¹ Wesberry v. Sanders 376 U.S. 1 (1964).

guaranteed by Article 17(2) of the Constitution,² while the qualifications and disqualifications for a candidate to enter the electoral contest are laid down in Articles 62 and 63 of the Constitution³ read with Section 232 of the Act. The right to contest election being a fundamental right, the provisions in the Act including Section 60 thereof that curtail or in any manner affect this right are to be construed strictly and applied restrictively. Since the matter relates to Section 60(2)(b)&(d) of the Act, the provisions thereof are reproduced here for ready reference:

60. Nomination for election. –

(1) ...

(2) Every nomination shall be made by a separate nomination paper on Form A signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, be accompanied by—

(a) ...

(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;

(c) ... and

(d) a statement of his assets and liabilities and of his spouse and dependent children as on the preceding thirtieth day of June on Form B.

A bare reading of the above provisions shows that under Section 60(2)(b), a candidate is to submit a declaration that he has opened an exclusive account, or dedicated an existing account, in a scheduled bank for the purpose of election expenses.

5. As for the first ground of rejection of nomination paper, the contention of the respondents is that the exclusive bank account has to be for every seat the candidate is contesting for and as the petitioner is also contesting for other seats, but he has mentioned one and the same bank account for all his nomination papers filed for several seats. We are afraid, the contention is misconceived. Our reading of the said provision is that the exclusivity of the required

² Javed Jabbar v. Federation of Pakistan PLD 2003 SC 955; Pakistan Muslim League (Q) v. Chief Executive of Islamic Republic of Pakistan PLD 2002 SC 994; Nawaz Sharif v. President of Pakistan PLD 1993 SC 473.

³ The Constitution of the Islamic Republic of Pakistan, 1973.

bank account is for the “purpose of election expenses”, and not for the number of seats the candidate is contesting for in the elections. One exclusive bank account for the election expenses to contest for any number of seats, in our view, meets the statutory requirement. For the purpose of requiring such exclusive bank account is to ensure compliance with the provisions of Section 132(3) of the Act, which has prescribed an upper limit of expenses for election to a seat in the Senate, the National Assembly and a Provincial Assembly. If a person contests for election to more than one seats, his expenses should not exceed the aggregate of the prescribed expenses for all those seats. The stance taken by the respondents that the candidate must open a separate bank account for every seat he is contesting for, is not the intent and purpose of the law and is therefore not legally sustainable. Even otherwise, as the petitioner has withdrawn his petitions filed against the rejection orders of his nomination papers for other seats, this ground has become infructuous.

6. As far as the objection of misdeclaration of the asset in Form B is concerned, the said asset is a 10 marla land in Tehsil Phalia, District Mandi Bahauddin. According to the mutation placed before us the land was purchased on 30.11.2023, whereas the requirement of Section 60(2)(d) is that the statement of assets and liabilities should be as on the preceding 30th day of June i.e., 30.06.2023 and, therefore, the alleged procurement of the asset in question, though denied by the petitioner, has no bearing on the nomination paper filed by the petitioner. Perusal of the Form B submitted by the petitioner clearly shows that the listed assets are as on 30.06.2023. Even otherwise, the petitioner has categorically denied that he has purchased the said property and no summary inquiry has been conducted by the RO to ascertain the factual position under section 62(9) of the Act. The rejection order of the RO was therefore not legally sustainable on this ground. Probably for this reason the Appellate Tribunal, while hearing the appeal against rejection of the nomination paper by the RO, has discarded the said objection and maintained the RO's order only on the ground of not holding an exclusive bank account for every seat. The High Court, on the challenge laid by the petitioner, re-introduced the said ground for upholding the RO's order on both the said two grounds. By doing, the Lahore High Court exceeded its jurisdiction. Had the petitioner not

disputed his ownership of the said land, the RO may have directed him to mention the same in his statement of assets; as the second proviso to Section 62(9) of the Act specifically prescribes for the ROs that they should not reject any nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith. These provisions show that the law is pro-inclusiveness in the election process. The rejection of the nomination paper of the petitioner on the said ground also is not legally sustainable.

7. For the above reasons, we convert this petition into an appeal and allow the same. The impugned order as well as the orders of the Appellate Tribunal and the RO are set aside. Consequently, the nomination paper of the petitioner filed for the seat of a Member of the Punjab Provincial Assembly, PP-32, Gujrat VI, stands accepted. The Election Commission of Pakistan shall ensure that all the necessary actions in the electoral process are duly taken so that the petitioner can contest the election for the said seat on the scheduled date without fail.

Judge

Judge

Judge

Islamabad,
14th January, 2024.
Approved for reporting
Sadaqat