

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.A.244/2024

(Against judgment dated 12.01.2024
passed by the Lahore High Court,
Lahore in W.P. No.2435/2024.)

Malik Ahmad Usman Nawaz	...	Petitioner
Vs		
The Appellate Tribunal (Elections Act, 2017) for PP-254 Bahawalpur and others	...	Respondents
(Bahawalpur-X)		

For the Petitioner : Mr. Umair Majeed Malik, ASC
Assisted by
Mr. Abdullah Sajid, Adv.
Syed Rifaqat Hussain Shah, AOR

For the Respondents : Mr. Khurram Shehzad, Addl. D.G.
Law
Mr. Falak Sher, Legal Consultant

Date of Hearing : 30.01.2024

JUDGMENT

Munib Akhtar, J.: This leave petition was disposed of at the conclusion of the hearing in terms of the following short order:

“We have heard learned counsel for the petitioner as also the learned Addl. DG (Law) and learned Legal Consultant.

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 254 (Bahawalpur) 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."

The following are the reasons for the short order.

2. Learned counsel for the petitioner submitted that the returning officer, on an objection taken, rejected the nomination paper of the petitioner by order dated 30.12.2023. The reason given was that the signature of the candidate (i.e., the petitioner) on the paper did not match that on the CNIC. The alleged mismatch was not admitted by the petitioner. An appeal was rejected by the Appellate Tribunal, though for a different reason, by order dated 08.01.2024. The reason given was that the petitioner was an accused in a criminal case in respect of which he had been declared a proclaimed offender and, being a fugitive from law, was not entitled to participate in the electoral process. Learned counsel submitted that the petitioner, in addition to the constituency now under consideration, was also a candidate for two others, one for the National Assembly (NA-168) and the other for another Punjab Assembly seat (PP-252). The nomination of the petitioner for the other two constituencies was also rejected by the returning officer by orders of the same date, i.e., 30.12.2023. The order of the Appellate Tribunal was a consolidated one, as it dealt with the appeals for all three constituencies. It was submitted that the reason as found favor with the Appellate Tribunal was without merit since it was noted in its order that the petitioner had in fact already obtained protective pre-arrest bail from the Peshawar High Court. In any case, the matter of the petitioner being a proclaimed offender was the reason for which the papers were rejected for the other two constituencies only. The nomination for the constituency under consideration was not rejected for this reason. Yet, the learned Appellate Tribunal did not at all advert to the case at hand in its consolidated order.

3. Learned counsel submitted that when the matter went further, to the High Court in writ jurisdiction, the same was dismissed by means of the impugned judgment. The learned High

Court upheld the order of the learned Appellate Tribunal for the reason as stated by the latter. That ground patently had no relevance for the present case and was even otherwise not applicable on account of the bail obtained. It was prayed that the petition be allowed. On the other hand, the learned officers appearing for the Election Commission submitted that the petitioner's case, even for the constituency under consideration, had been rightly dealt with and prayed that the leave petition be dismissed.

4. The criminal case in question, being vide FIR 400/23, was registered at Cantonment Police Station, Bahawalpur on 10.05.2023. The further details in respect thereof have been given in the order of the learned Appellate Tribunal and need not be rehearsed here. It suffices to note that the ground taken against the petitioner could not operate against him as he had admittedly obtained bail from the Peshawar High Court. This aspect of the matter was dealt with in the impugned judgment with the observation that "it cannot be inferred that proceedings being taken qua his absconsion have been brushed aside". With respect, we are not persuaded that this is the correct approach or conclusion when the point in issue is the nomination of a candidate to participate in a general election. More generally, the matter of being an absconder or proclaimed offender, and its effect qua the right to contest a general election, 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. Thus, the ground taken by the learned Appellate Tribunal and upheld by means of the impugned

judgment was not sustainable in law. This was all the more so for the reason that this was not why the nomination paper was rejected by the returning officer for the constituency under consideration. The failure of the learned Appellate Tribunal to attend to the ground actually taken for rejection of the nomination paper was a material and, in our view, fatal defect in its order which, regrettably, was repeated by the learned High Court in the impugned judgment.

5. The ground actually taken by the returning officer, as to the alleged mismatch between the signatures, was also, in our view, wholly without merit. The petitioner has appeared throughout in the proceedings regarding his nomination, up to this Court, and has owned the nomination paper as filed. At no stage did he disown or repudiate the same or the signature thereon. The returning officer has the jurisdiction to reject a nomination paper in terms of s. 62(9) of the Act after a summary enquiry. Clause (d) of subsection (9) allows for rejection if the returning officer is satisfied that the signatures of either the proposer or the seconder are "not genuine". It will be seen that clause (d) (which deals specifically with the issue of signatures) does not at all speak of the candidate. The rejection of the petitioner's nomination paper for an alleged mismatch between his signatures as on the nomination paper and on his CNIC was therefore not possible in terms of this clause. A candidate does sign the nomination paper, which has to be in the form as set out in Annex A to the Act. As presently relevant, Form A relates to s. 60(2). Clause (c) of subsection (9) of s. 62 allows for the rejection of the nomination paper if the returning officer is satisfied that "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". Thus, the matter of the alleged mismatch could, if at all, have been considered only in terms of this provision. In our view it was not attracted in the facts and circumstances of the case. The first part thereof, namely that any provision of s. 60 had not been complied with, was clearly not attracted: the nomination paper was signed by the petitioner who, as noted, has never repudiated or disowned the same. The latter part, namely that any declaration or statement had been made

with was false or incorrect in any material particular, was also not applicable. Firstly, the candidate's signature is neither a "declaration" nor a "statement" within the meaning of either this provision or s. 60. Secondly, and more importantly, the falsity or incorrectness has to be "material". It is a mandatory legal obligation for the returning officer to apply his mind to the test of materiality and record appropriate reasons in this regard. The order in the present case shows no such thing. Furthermore, the alleged mismatch in signatures was in any case not material. This conclusion is bolstered by a reference to para (ii) of the proviso to s. 62(9). Clearly, any mismatch in signatures could be "remedied forthwith" within the meaning thereof, and anything capable of being so dealt with (regardless of whether or not it is actually so rectified) cannot be "material" within the meaning of clause (c). Thus, on any view of the matter, the objection ought to have been overruled by the returning officer instead of being sustained.

6. For the foregoing reasons, we concluded that the petitioner was entitled to participate in the general election to the Punjab Assembly as a candidate for PP 254, and allowed the leave petition in terms of the short order.

Judge

Judge

Judge

Islamabad
Naveed/*

Approved for reporting