

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

Civil Appeal No. 1046 of 2024

*(Against the judgment dated 02.08.2024 of the
Election Tribunal Balochistan, Quetta, passed in
Election Petition No.47 of 2024)*

Ghulam Rasool *Appellant*

Versus

*Election Commission of Pakistan through
Secretary, Islamabad and others* *Respondents*

For the Appellant: Mr. Saeed Khurshid Ahmed, ASC.
Syed Rafaqat Hussain Shah, AOR.

For Respondent No.11: Mr. M. Akram Shah, ASC.

Other Respondent: Nemo.

Date of Hearing: 19.09.2024.

ORDER

Qazi Faez Isa, CJ. This appeal assails the judgment dated 2 August 2024 of the Election Tribunal Balochistan, Quetta (**'the Tribunal'**) passed in Election Petition No. 47 of 2024 filed by the appellant challenging the results of the elections held in the Provincial Balochistan constituency of PB-14 Naseerabad-II.

2. Twenty-six candidates had contested the elections from the said constituency on 8 February 2024. Muhammad Khan (respondent No. 11) received 21,103 votes which was the highest number, the runner up was the appellant who received 19,093 votes and the candidate who got the third highest number of votes received only 347 votes. The contest, therefore, was between the appellant and the respondent No. 11.

3. The learned Mr. Saeed Khurshid Ahmed representing Ghulam Rasool (the appellant) stated that the appellant had

questioned the election results and submitted an application for recounting of the votes. The Returning Officer recounted the votes which resulted in the respondent No. 11's votes being reduced to 20,706 and the appellant's votes being reduced to 18,787; the difference of votes between them was 1,919 votes. The Election Commission of Pakistan ('ECP') issued the requisite notification under section 98(2) of the Elections Act, 2017 ('the Elections Act') and declared respondent No. 11, who was recorded to have received the highest number of votes to have won the elections of PB-14 Naseerabad-II constituency.

4. The learned counsel representing the appellant submits that the respondent No. 11 had used his influence, family relations and connections which he had with the Presiding Officers of certain polling stations and with their help managed to manipulate the result of the polling stations over which they presided and illegally won the elections. In paragraph 8 of his Election Petition he identified eight such polling stations whereas in paragraphs 9 and 12 he mentioned ten such polling stations. The appellant further contended that he was in possession of the copies of Form-45s in respect of some polling stations which showed that the results thereof were tampered with, and if the same are taken into account it would result in the victory of the appellant.

5. The learned counsel representing the appellant also took issue with the fact that the learned Judge had reserved the judgment on 22 July 2024 but then *vide* order dated 23 July 2024 fixed it '*for rehearing with notice to learned counsel for the parties*'. On the next date, '*After rehearing learned counsel for the parties with consent of the parties*' the concerned Presiding Officers of the polling stations were ordered to be called as court witnesses, '*to verify the carbon copies of Form-45 produced by the petitioner*'. The appellant had also submitted an application to summon the said Presiding Officers but instead of allowing his application the court summoned them as court witnesses which according to the learned counsel was not correct. We fail to understand how this

would be to the disadvantage of the appellant or to have adversely affected his case. If at all the appellant may have obtained an advantage because he would get an opportunity to cross-examine the said Presiding Officers. The Presiding Officers testified as court witnesses and the parties were given an opportunity to cross examine them. Despite cross-examining them at length the alleged wrongdoing on their part could not be established nor could it be established that the copies of Form-45s produced by the appellant were copies of the actual Form-45s.

6. The appellant's allegation that the respondent No. 11 had familial and other ties with the Presiding Officers was also not established. These allegations were specifically denied by the respondent No. 11. There were ninety-six polling stations in the said constituency.

7. The Presiding Officer of each polling station after the close of elections counts the votes and is then required to prepare Form-45 in terms of section 90(10) of the Elections Act read with rule 81(1) of the Election Rules, 2017 (**'the Rules'**). The Returning Officer after receipt of all the Form-45s from the Presiding Officers calculates the votes and issues Form-47 under section 92 of the Elections Act read with rule 84(1) of the Rules. The final consolidated result is then submitted by the Returning Officer to the ECP under section 98(1) of the Elections Act read with rule 88(1) of the Rules.

8. The ballot papers that are cast are the determinative factor. What is recorded by a Presiding Officer or a Returning Officer in the requisite forms is not the final determination of the vote count if the votes are ordered to be recounted, which is done by opening the bags/packets containing the ballot papers. The ballot papers which are cast is the primary evidence of the election result. To the said forms attaches a presumption of correctness until the ballot papers are ordered to be recounted.

9. A candidate may request for recounting of the votes, and if such request is allowed, the votes are recounted, after issuance of notice to all the candidates, and recounting takes place in the presence of all those who elect to attend. If there is a dispute in this regard the actual votes which were cast determine the controversy. However, needless to state, if the seal of the bags/packets are found to be broken or tampered with the sanctity of votes therein stands compromised. This, however, was not the case of the appellant.

10. In the instant case the appellant had questioned the declared results and had sought recounting which was allowed. Pursuant to the recounting the votes received by the winning candidate (respondent No. 11) were reduced and so too those received by the appellant, however, the respondent No. 11 still emerged as the victorious candidate having received 1,919 more votes than the appellant.

11. The learned Judge of the Tribunal independently examined the case from all angles and attended to the allegations levelled by the appellant and correctly concluded that his allegations were not established, and that the election results were fair.

12. The learned counsel for the appellant was not able to persuade us that the appellant, and not respondent No. 11, had won the elections. Therefore, the impugned judgment is upheld and this appeal is dismissed.

Chief Justice

Judge

Judge

Islamabad
19.09.2024
(Muhammad Asif)

Approved for reporting