

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NO. 5-Q OF 2014

(On appeal against the judgment dated
18.03.2014 passed by the Election Tribunal-II,
Quetta in Election Petition No. 261/2013)

Mir Saleem Ahmed Khosa

... Appellant

VERSUS

Zafarullah Khan Jamali and others

... Respondents

For the Appellant: Mr. Kamran Murtaza, Sr. ASC

For the Respondents: Mr. Ahmed Raza Qasuri, Sr. ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing: 22.02.2017

JUDGMENT

FAISAL ARAB, J.-In the General Elections held on 11.05.2013, the appellant and respondent No. 1 were one of the several contesting candidates from National Assembly seat NA-266, Nasirabad-cum-Jaffarabad. The appellant secured 35703 votes whereas the respondent No. 1 secured highest number of votes i.e. 41706. Leading with a margin of 6003 votes, the respondent No. 1 was declared returned candidate. The appellant was not satisfied with the result and filed Election Petition before the Election Tribunal-II, Quetta under Section 52 of the Representation of the People Act, 1976 alleging that respondent No.1 committed corrupt and illegal practices. The Election Tribunal dismissed the election petition after holding that the allegations made in the election

petition were of general nature not substantiated by evidence. Being unsatisfied with such decision, the appellant preferred this appeal.

2. It was argued by learned counsel for the appellant that out of 380 polling stations that were setup in the constituency, rigging took place in 104 polling stations. He submitted that on most of these challenged polling stations, the appellant's polling agents were not allowed to enter by respondent No. 1's men; an atmosphere of fear was created and bogus votes were cast in favour of respondent No. 1. The learned counsel further submitted that during the pendency of the election petition, the appellant filed two applications before the Election Tribunal, one for verification of the counterfoils of 104 polling stations through biometric system of NADRA and the other for recounting of 24775 rejected votes which on the face of it was an unusual number but both these applications were dismissed by the Tribunal vide separate orders dated 06.01.2014 and 11.03.2014. He contended that had such applications been allowed, the extent of rigging as stated in the election petition would have been ascertained.

3. The main allegation of the appellant was that many of appellant's polling agents were harassed, some of them were denied entry in their respective polling stations and then bogus voting took place. Out of 104 polling station where rigging was alleged the appellant examined polling agents of 26 polling stations. No evidence was led with regard to the corrupt practices allegedly committed at the remaining 78 polling stations. Those polling agents who were examined had admitted in their cross-

examination that they did not file any written complaint either with the police or the Election Commission with regard to their expulsion, harassment or casting of bogus votes. The polling agents who stated that they witnessed casting of bogus votes also admitted in their cross-examination that they did not challenge a single vote at the time of polling. One polling agent in his cross-examination even acknowledged that during polling hours, the Returning Officer visited the polling station but he did not lodge written complaint with him about the alleged illegal practices that were being committed at the behest of respondent No. 1. Even after the polling was over, the appellant did not approach the Provincial Election Commission to report the alleged corrupt practices. There were 6 to 7 polling agents of other contesting candidates who obtained substantial number of votes but none were cited as witness to the alleged corrupt practices. No attempt was made to even call anyone as court witness in order to establish that polling took place in absence of appellant's polling agents or bogus votes were cast.

4. Apart from the failure to bring substantiated evidence of rigging on record, the appellant did not even place before the Election Tribunal a comparative table of 104 disputed polling stations and the remaining 276 undisputed polling stations in order to point out any phenomenal difference between the two sets of polling stations with regard to the voting pattern or voter turnout, which might have prevailed with the Tribunal to order either recount of votes or seek verification of counterfoils from NADRA. Merely on unsubstantiated allegations of rigging, the

Court cannot reach the conclusion that respondent No. 1 indulged in illegal and corrupt practices.

5. We on our part examined the election data of NA-266 available on website of Election Commission. It had 409664 registered voters out of which 161,162 votes were polled. Thus the turnout was only 39.34%. The respondent procured 41706 votes, which comes to 25.88% of the total votes polled. From these figures, what generally comes out is that neither unusual turnout of voters is reflected nor excessive polling in favour of the respondent No. 1 is apparent as was noticed by this Court in the case of Khalid Hussain Magsi Vs. Mir Abdul Rahim Rind (2016 SCMR 900), which led this Court to nullify the entire election result. No doubt the number of rejected votes in the present case were unusually high i.e. 24775. However, it has been pointed out by respondent No. 1's counsel that one Mr. Fateh Ali Khan Umrani was a contesting candidate from the same constituency and his name was already printed on the ballot papers but due to a decision of the Balochistan High Court he stood disqualified from contesting election and, therefore, votes cast in his favour had to be added to the list of rejected votes. This fact of belated disqualification of Mr. Umrani is acknowledged by the appellant himself in his cross examination. Hence the votes that were cast in favour of Mr. Umrani must have been added to the tally of rejected votes and thus the number of rejected votes swelled to 24775 votes.

6. Learned counsel also referred to a document to demonstrate that seals of several bags containing election material were found to be broken in order to support his plea of rigging. In our view, any careless or deliberate act on the part of any functionary of the Election Commission whereby the election record could not be adequately preserved and seals were broken would not result in nullifying the election result. There has to be some reliable material on record to reach the conclusion that the winning candidate indulged in illegal and corrupt practices otherwise every losing candidate after managing to get the seals of the bags containing election material broken would seek re-polling or re-election.

7. It was also argued by learned counsel for the appellant that the respondent was a defaulter of a bank, which fact was concealed by him in his nomination form, therefore, he stood disqualified from contesting the elections on this score alone. Suffice it to state that no doubt this plea was raised in the election petition but after the issue was decided by the Election Tribunal against him, no ground to challenge such finding was taken in the present appeal. Same is the position with regard to the other plea that appellant was an accused in the criminal case which fact was not disclosed by respondent No.1 in the nomination form. No ground on this issue either was taken in the memo of appeal. Mere reproduction of the issues framed by the Election Tribunal in the memo of appeal was not sufficient. As the findings given by the Election Tribunal on both these issues were not specifically made grounds of attack in the memo of appeal and only raised at the

argument stage before us, the same cannot be considered by this Court.

8. In order to prove a plea of rigging there has to be material on record to establish corrupt practices committed on behalf of the returned candidate. Section 55 of the Representation of the People Act, 1976, therefore, requires that precise statement of facts should be stated in the election petition with all material particulars with regard to the corrupt and illegal practices. In the present case however, only general allegations as to rigging were made. The evidence that was led was so deficient that it was not enough to establish prevalence of corrupt or illegal practices. We, therefore, do not find any legal error in the impugned judgment, which could warrant interference by this Court. This appeal is, therefore, dismissed with no order as to costs.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
22nd of February, 2017
Approved For Reporting
Khurram