

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Jamal Khan Mandokhail and Athar Minallah, JJ

UMAR ASLAM KHAN---Petitioner

Versus

ELECTION COMMISSION OF PAKISTAN and others---Respondents

Civil Petition No. 159 of 2024, decided on 26th January, 2024,

(Against the order of Lahore High Court, Lahore dated 12.1.2024, passed in Writ Petition No.2224 of 2024)

Elections Act (XXXIII of 2017)---

---S. 62---Constitution of Pakistan, Art. 62(1)(d), (e), (f) & (g)---Elections for seat of National Assembly---
 Nomination papers---Nomination papers of petitioner (candidate) rejected by the High Court on the ground that
 he was a proclaimed offender in a criminal case---Validity---There was no provision either in the Constitution
 or in the Elections Act, 2017 that made a proclaimed offender disqualified from contesting the election, and the
 courts cannot on their own create such additional disqualification, without any backing of the law---Further, in
 this particular case, the petitioner was declared a proclaimed offender in a criminal case, however, he obtained
 a protective bail in the case by surrendering himself to the court; he, therefore, could not be considered a
 proclaimed offender---Furthermore Article 62(1)(d), (e), (f) and (g) was not self-executory and served as
 guidelines for the voters in exercising their right to vote, hence even being a proclaimed offender did not attract
 the disqualification under the said provisions--- Petition was converted into an appeal and the same was allowed;
 the impugned order of the High Court was set aside and the nomination paper of the petitioner for the seat of a
 Member of the National Assembly stood accepted with the direction to the Election Commission of Pakistan
 (ECP) to ensure that all the necessary steps to be taken in the electoral process were completed forthwith so
 that the petitioner could contest the election on the scheduled date for the seat in question, without fail.

Hamza Rasheed Khan v. Election Appellate Tribunal and others Civil Appeal No. 982 of 2018 ref.

Syed Ali Zafar, Advocate Supreme Court, Zahid Nawaz Cheema, Advocate Supreme Court and Ch. Akhtar
 Ali, Advocate-on-Record for Petitioner.

Rashid Hanif, Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Respondents.

Falak Sher, Consultant Law for ECP.

Date of hearing: 26th January, 2024.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner seeks leave to appeal against the order dated 12.01.2024,
 passed by a Full Bench of the Lahore High Court, Lahore, whereby his nomination paper for seat of the National
 Assembly from NA-87, Khushab, was rejected on the ground that he is a proclaimed offender in a criminal
 case.

2. Briefly, the facts are that the nomination paper of the petitioner was rejected by the Returning Officer ("RO")
 on the same ground on 30.12.2023, however, on appeal, the Appellate Tribunal set aside the order of the RO
 and accepted the nomination paper of the petitioner. The objector-respondent challenged the order of the
 Appellate Tribunal through a writ petition in the High Court, which vide order dated 12.01.2024 was allowed
 and the nomination paper of the petitioner stood rejected.

3. We have heard the learned counsel for the parties and have gone through the record. It is pointed out that the
 same bench of the High Court vide order of the even date in another election case (W.P. 2383/2024) titled
 Tajammal Abbas v. Returning Officer and others discarded the ground of proclaimed offender and accepted the
 nomination paper of the candidate by holding that "[i]t is settled law that if a person is fugitive from law, he
 does not lose all his rights and mere abscondence of an accused is nowhere recognized ground to eliminate him
 to contest the election." Yet a diametrically opposite view was taken by the same bench of the High Court, in a
 case having similar facts, in the impugned order.

4. Learned counsel for the respondent as well as the learned counsel for the ECP were asked to refer to any
 provision of law that disqualifies a proclaimed offender from contesting the elections but they were unable to
 refer to any provision from the Elections Act, 2017 or from the Constitution. Since there is no provision either

in the Constitution or in the Elections Act that makes a proclaimed offender disqualified from contesting the election, the courts cannot on their own create such additional disqualification, without any backing of the law. Further, in this particular case, the petitioner was declared a proclaimed offender in criminal case FIR No. 231/23 registered at Police Station, Khushab. However, he obtained a protective bail in the said case by surrendering himself to the court; he, therefore, cannot be considered a proclaimed offender. We may point out that Article 62(1)(d), (e), (f) and (g) has been recently declared by this Court, in Civil Appeal No. 982 of 2018 etc titled Hamza Rasheed Khan v. Election Appellate Tribunal and others, not to be self-executory and to serve as guidelines for the voters in exercising their right to vote, hence even being a proclaimed offender does not attract the disqualification under the said provisions.

5. In view of the above, this petition is converted into an appeal and the same is allowed. The impugned order of the High Court is set aside and the nomination paper of the petitioner for the seat of a Member of the National Assembly, NA-87, Khushab-I, stands accepted. The Election Commission of Pakistan shall ensure that all the necessary steps to be taken in the electoral process are completed forthwith so that the petitioner can contest the election on the scheduled date for the said seat, without fail.

MWA/U-1/SC Appeal allowed.