

[Supreme Court of Pakistan]

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

TAHIR SADIQ---Petitioner

Versus

FAISAL ALI and others---Respondents

Civil Petitions Nos. 150 and 152 of 2024, decided on 29th January, 2024.

(Against the judgments of the Lahore High Court, Lahore dated 16.01.2024, passed in W.Ps. Nos. 2974 and 2994 of 2024).

(a) Constitution of Pakistan---

----Arts. 17(2), 19, 62 & 63---Elections Act (XXXIII of 2017), S. 62---Elections---Right to vote for a candidate of one's choice---Scope---Interpretation of elections laws in favour of enfranchisement rather than disenfranchisement---Nomination papers for elections---Acceptance or rejection---Principles.

The courts, in their role as guardians of democracy and fundamental rights, should approach electoral matters with circumspection, ensuring that their interventions uphold the democratic principles upon which the nation thrives and the fundamental rights of citizens to contest elections and vote for the candidates of their choice. The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. The working of democracy depends on whether the people can decide the fate of the elected form of government. It depends on the choices that people make in different ways. This choice of people cannot be compromised, as their mandate in elections

changes the destinies of government. Through the electoral process and voting, citizens participate in democracy. By voting, citizens take part in the public affairs of the country. Thus, citizens by voting enjoy their right to choose the composition of their government by exercising their choice and ability to participate.

Reynolds v. Sims (1964) 377 U.S. 533 and Anoop Baranwal v. Union of India (2023) 6 SCC 161 ref.

The right to form or be a member of a political party under Article 17(2) of the Constitution includes not only the right to contest elections but also the right to vote for the candidate of one's choice. When viewed against the backdrop of the constitutional value of 'political justice', Article 17(2) remains hollow unless it also recognizes the right of citizens to choose their representatives fairly and freely from amongst the candidates. The right of citizens to participate in national elections as voters is the core of the democratic form of government. This right is also an expression of the choice of the citizens, which finds further support under Article 19 of the Constitution. In exercise of these fundamental rights, citizens shape their destiny by forming the government they want.

Wesberry v. Sanders (1964) 376 U.S. 1; 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; Province of Sindh v. M.Q.M. PLD 2014 SC 531; Nasir Iqbal v. Federation of Pakistan PLD 2014 SC 72 and Arshad Mehmood v. Delimitation Authority PLD 2014 Lah. 221 ref.

It is in this context of both the right of the candidates to contest the election and the right of the voters to vote for the candidate of their choice that the qualification and disqualification of a candidate become material. The aim of prescribing qualifications and disqualifications for candidacies to contest elections is to maintain the integrity and effectiveness of the political process. They are designed to ensure that individuals holding public office meet certain standards. In a well functioning democracy, the criteria for qualifications and disqualifications are clearly defined, publicly known and uniformly applied. Qualifications and disqualifications of a candidate for the electoral process must therefore be clearly spelled out in the Constitution or the law. Otherwise, electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership. With this approach rooted in the high constitutional rights and values, the courts are to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections.

(b) Elections Act (XXXIII of 2017)---

---Ss. 62, 231 & 232---Constitution of Pakistan, Arts. 62 & 63---Criminal Procedure Code (V of 1898), S. 87---Elections for seat of National Assembly---Nomination papers---Proclaimed offender---Nomination papers of petitioner (candidate) rejected by the High Court on the ground that he was a proclaimed offender in a criminal case---Validity---Counsel for the Election Commission of Pakistan (ECP) could not show any proclamation issued against the petitioner under Section 87 of the Code of Criminal Procedure 1898 ("Cr.P.C.")---Objector, too had no document to establish that the petitioner was a proclaimed offender---In the absence of proceedings taken under Section 87, Cr.P.C, an accused cannot be said or treated to be a proclaimed offender---Further, as the rule of declining discretionary reliefs to a proclaimed offender is one of propriety when the same is confronted with a right, it is the right, not the rule of propriety, that prevails---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 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"), status of being a proclaimed offender in a criminal case does not affect said right of a

person---Counsel for the ECP could not point out any provision either in the Constitution or in the Act that empowers the Returning Officers to reject the nomination papers of the candidates on the ground of their being proclaimed offenders---Since there is no law that makes a proclaimed offender disqualified from contesting election, the Returning Officers, the Appellate Tribunals or the Courts cannot on their own create such additional disqualification, without the backing of law---Articles 62 and 63 of the Constitution read with Sections 231 and 232 of the Act provide for qualification and disqualification of a candidate, which does not mention that a “proclaimed offender” is disqualified from being elected or from being a member of Parliament---Grounds provided for rejection of a nomination paper in Section 62(9) of the Act also do not empower the Returning Officers to reject the nomination paper of a candidate on the ground of his being a proclaimed offender---Petitions were converted into appeals and the same were allowed; the impugned orders of the High Court were set aside and the nomination paper of the petitioner for the seat of a Member of the National Assembly stood accepted.

Parvez Elahi v. E.C.P. 2024 SCP 41; Khan Mir v. Amal Sherin 1989 SCMR 1987; Muhammad Shafi v. State 2016 SCMR 1593 and Nawazish Ali v. E.C.P. 2018 CLC 1301 and Umar Aslam v. E.C.P. 2024 SCP 40 ref.

Muhammad Shahzad Shaukat, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Petitioner.

Muhammad Arshad, DG (Law) and Falak Sher, Consultant Law for the ECP.

Syed Azmat Ali Bokhari, Advocate Supreme Court and Faisal Ali, in person (for the objector).

Date of hearing: 29th January, 2024.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Elections stand as a manifestation of the collective will of a nation, reflecting the diverse voices and choices of its citizens. In this democratic process, individuals exercise their right to vote, contributing to the formation of a representative government. The rights involved are not only of those participating in the elections but also of the public. The courts, in their role as guardians of democracy and fundamental rights, should approach electoral matters with circumspection, ensuring that their interventions uphold the democratic principles upon which the nation thrives and the fundamental rights of citizens to contest elections and vote for the candidates of their choice. 'The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.'¹ The working of democracy depends on whether the people can decide the fate of the elected form of government. It depends on the choices that people make in different ways. This choice of people cannot be compromised, as their mandate in elections changes the destinies of government. Through the electoral process and voting, citizens participate in democracy. By voting, citizens take part in the public affairs of the country. Thus, citizens by voting enjoy their right to choose the composition of their government by exercising their choice and ability to participate.²

2. 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'³ The right to form or be a member of a political party under Article 17(2) of our Constitution⁴ includes not only the right to contest elections⁵ but also the right to vote⁶ for the candidate of one's choice. When viewed against the backdrop of the constitutional value of 'political justice', Article 17(2) remains hollow unless it

also recognizes the right of citizens to choose their representatives fairly and freely from amongst the candidates. The right of citizens to participate in national elections as voters is the core of the democratic form of government. This right is also an expression of the choice of the citizens, which finds further support under Article 19 of the Constitution.⁷ In exercise of these fundamental rights, citizens shape their destiny by forming the government they want.

3. It is in this context of both the right of the candidates to contest the election and the right of the voters to vote for the candidate of their choice that the qualification and disqualification of a candidate become material. The aim of prescribing qualifications and disqualifications for candidacies to contest elections is to maintain the integrity and effectiveness of the political process. They are designed to ensure that individuals holding public office meet certain standards. In a well-functioning democracy, the criteria for qualifications and disqualifications are clearly defined, publicly known and uniformly applied. Qualifications and disqualifications of a candidate for the electoral process must therefore be clearly spelled out in the Constitution or the law. Otherwise, electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership.⁸ With this approach rooted in the high constitutional rights and values, the courts are to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections.

4. Briefly, the facts of the case are that the nomination paper of the petitioner for the seat of a Member of the National Assembly from NA-49, Attock-I, was rejected by the Returning Officer on 30 December 2023, mainly on the ground that the petitioner was a 'proclaimed offender'. However, on appeals of the petitioner, the Appellate Tribunal accepted his nomination paper, on 6 January 2024. Thereafter, the respondent filed writ petitions before the Lahore High Court, which were decided vide the impugned orders dated 16 January 2023, and the nomination paper of the petitioner was once again rejected on the ground that the petitioner was a proclaimed offender. Hence, these petitions.

5. We have heard the learned counsel for the petitioner and the Election Commission of Pakistan ("ECP") as well as the objector who appeared in person and examined the record of the case.

6. Since the petitioner's nomination paper has been rejected on the ground of his being a proclaimed offender, we in the course of the hearing asked the learned counsel for the ECP to show the order made and the proclamation issued against the petitioner under Section 87 of the Code of Criminal Procedure 1898 ("Cr.P.C.") but he was unable to refer to any such order and proclamation. We then called upon the objector, who was present in court, to tell us the source of his objection. He frankly submitted that some of his friends had mentioned it to him, but he has no document to establish that the petitioner is a proclaimed offender. Hence, there is nothing on the record that the petitioner is a proclaimed offender. Needless to say, in the absence of proceedings taken under Section 87, Cr.P.C, an accused cannot be said or treated to be a proclaimed offender.⁹ Further, as the rule of declining discretionary reliefs to a proclaimed offender is one of propriety when the same is confronted with a right, it is the right, not the rule of propriety, that prevails.¹⁰ 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.¹

7. The learned counsel for the ECP could not point out any provision either in the Constitution or in the Act that empowers the Returning Officers to reject the nomination papers of the candidates on the ground of their being proclaimed offenders. Since there is no law that makes a proclaimed offender disqualified from contesting election, the Returning Officers, the Appellate Tribunals or the Courts cannot on their own create such additional disqualification, without the backing of law.² As per the constitutional command of Article 4 of the Constitution, they all are bound to treat every citizen in accordance with law and cannot prevent or hinder a person from doing that which is not prohibited by law.

8. Articles 62 and 63 of the Constitution read with Sections 231 and 232 of the Act provide for qualification and disqualification of a candidate, which does not mention that a "proclaimed offender" is disqualified from being elected or from being a member of Parliament. The grounds provided for rejection of a nomination paper in Section 62(9) of the Act also do not empower the Returning Officers to reject the nomination paper of a candidate on the ground of his being a proclaimed offender. Although no provision of the Act has been pointed out to us that requires the necessary presence of the candidate during the electoral process, we may observe that if there is any such provision, the absence of the candidate may have its own consequences under that provision, but his nomination paper cannot be rejected on such ground unless the legislature so provides in Section 62(9) of the Act. Therefore, the High Court is found to have made a legal error in rejecting the petitioner's nomination paper on the ground of his being allegedly a proclaimed offender. Because of the current stage in the electoral process, we allowed interim relief to the petitioner on 26 January 2024. ECP shall be free to recover the expenses incurred in this case, if any, from the objector.

9. In view of the above legal position, these petitions are converted into appeals and the same are allowed. The impugned orders of the High Court are set aside and the nomination paper of the petitioner for the seat of a Member of the National Assembly from NA-49, Attock-I, stands accepted. The ECP 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/T-1/SC

Appeals allowed.

¹ Reynolds v Sims (1964) 377 U.S. 533.

² Anoop Baranwal v. Union of India (2023) 6 SCC 161.

³ Wesberry v. Sanders (1964) 376 U.S. 1.

⁴ The Constitution of the Islamic Republic of Pakistan.

⁵ 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 and Nawaz Sharif v. President of Pakistan PLD 1993 SC 473.

⁶ Province of Sindh v. M.Q.M. PLD 2014 SC 531; Nasir Iqbal v. Federation of Pakistan PLD 2014 SC 72 and Arshad Mehmood v. Delimitation Authority PLD 2014 Lah 221.

⁷ Ibid.

⁸ Parvez Elahi v. E.C.P. 2024 SCP 41.

⁹ Khan Mir v. Amal Sherin 1989 SCMR 1987.

¹⁰ Muhammad Shafi v. State 2016 SCMR 1593.

¹¹ We approve the similar view taken by a Division Bench of the Lahore High Court in Nawazish Ali v. E.C.P. 2018 CLC 1301.

¹² Umar Aslam v. E.C.P. 2024 SCP 40.