

SENATE APPELLATE TRIBUNAL, SINDH HIGH COURT OF SINDH AT KARACHI

Election Appeal 06 of 2021

Muhammad Aquib Rajpar & Others

vs.

Returning Officer/Provincial Election Commissioner & Others

For the Appellants : M. Kamran Baloch, Advocate

Date of hearing : 22.02.2021

Date of announcement : 22.02.2021

JUDGMENT

Agha Faisal, J. The present appeal has been filed assailing the Order of the learned returning officer (“RO”) dated 18-02-2021 (“Impugned Order”), whereby the nomination form of the respondent No.2 was accepted with respect to candidature for election to the Senate, from the Province of Sindh, on a women seat. It is considered illustrative to reproduce the Impugned Order herein below:

“Ms. Palwasha Muhammad Khan Zai, filed her nomination papers on 13-02-2021. The Scrutiny of said Nomination Paper was held on 17.02.2021 at 09:50 AM. The candidate, her proposer and seconder were present during the Scrutiny. This office received objections from Mr. M. Aquib Rajper Advocate & others against above candidate.

2. The Objector did not attend the Scrutiny proceedings. However, the objection of above said objector was examined and the same was found not maintainable, thus dismissed. The nomination form of Ms. Palwasha Muhammad Khan Zai was examined alongwith annexures and it was found that she qualifies to contest for Senate Election for category of Woman seat. The nomination form of Ms. Palwasha Muhammad Khan Zai is hereby accepted.”

Arguments

2. Per appellants’ learned counsel, the Impugned Order was untenable; hence, ought to be set aside. The appellants’ plea was predicated primarily on the grounds that the respondent has transferred her vote from Punjab to Sindh and the same amounts to usurpation of the representation of Sindh; her residence is not hers and no title documentation has been produced before the RO; that assets declared in the nomination form, although being the same

as disclosed in her tax returns, denote a higher value than in the relevant tax returns.

3. This Tribunal has considered the arguments articulated by the learned counsel and surveyed the law / record to which its attention was solicited. The question hereby framed for determination is whether the Impugned Order can be sustained under the law, as articulated vide the Election Act 2017 (“Act”) and the rules, the Election Rules 2017 (“Rules”), made there under.

Ambit of the law

4. This tribunal is constituted¹ to adjudicate appeals with respect to the acceptance or rejection of candidature, in respect of senate elections, by a learned returning officer². The appeal is required to be decided summarily³ and announcement of fixation thereof, *inter alia* via the media, is deemed to be sufficient notice of the date and time so appointed⁴. The domain of this determination is enunciated per section 113(3)⁵ of the Act.

5. There is a myriad of guidance from the Superior Courts with regards to consideration of the eligibility of candidature in such pre-electoral matters; *inter alia* that it may be inopportune to disenfranchise a candidate at the pre-electoral stage as it would deprive him of candidature, even if subsequently found to be qualified⁶; matters requiring detailed inquiry / evidence could better determined in post-election proceedings⁷; and in the presence of a plausible explanation for any non-disclosure, acknowledgment whereof would not have entailed ineligibility, candidature may not be denied⁸.

¹ 113 (1) A candidate or an objector may, within the time specified by the Commission, file an appeal against the decision of the Returning Officer rejecting or, as the case may be, accepting a nomination paper to the Tribunal constituted for the purpose consisting of a person who is a Judge of a High Court, appointed by the Commission in consultation with the Chief Justice of the High Court concerned.

² 105. For the purpose of an election to the Senate, the Commission shall appoint a Returning Officer for each Province, ... and shall also appoint such number of Polling Officers to assist the Returning Officer as it may consider necessary.

³ 113 (2) An appeal filed under sub-section (1) shall be summarily decided within such time as may be notified by the Commission and any order passed on the appeal shall be final. Although Rule 100(5) of the Rules contemplates a discretionary inquiry. Per *Akhtar Zaman Maghlani J (as he then was) in Nawabzada Mir Balach Khan Marri vs. Mir Mohabbat Khan Marri & Others* reported as *PLD 2003 Quetta 42*.

⁴ 113 (4) Announcement of the day and time appointed for the hearing of an appeal under this section over the radio or television or by publication in the newspaper shall be deemed to be sufficient notice of the day and time so appointed.

⁵ 113(3) If, on the basis of information or material coming to its knowledge by any source, a Tribunal constituted under sub-section (1) is of the opinion that a candidate whose nomination paper has been accepted is a defaulter of loans, taxes, government dues and utility expenses or has had any loan written off or has willfully concealed such fact or suffers from any other disqualification from being elected as a Member of the Senate, it may, on its own motion, call upon such candidate to show cause why his nomination papers may not be rejected, and if the Tribunal is satisfied that the candidate is actually a defaulter or has had a loan written off or suffers from any disqualification, it may reject the nomination paper of the candidate.

⁶ Per *Qazi Muhammad Farooq J (as he then was) in Waqas Akram vs. Dr. Muhammad Tahirul Qadri & Others* reported as *2003 SCMR 145*; Per *Ajmal Mian J (as he then was) in Ghulam Mustafa Jatoi vs. ADJ / RO NA 158 Naushahro Feroze & Others* reported as *1994 SCMR 1299*; Per *Akhtar Zaman Maghlani J (as he then was) in Nawabzada Mir Balach Khan Marri vs. Mir Mohabbat Khan Marri & Others* reported as *PLD 2003 Quetta 42*.

⁷ Per *Ajmal Mian J (as he then was) in Rafiq Haider Khan Leghari vs. Election Tribunal & Others* reported as *PLD 2003 Quetta 42*.

⁸ Per *Amir Hani Muslim J (as he then was) in Murad Bux vs. Karim Bux & Others* reported as *2016 SCMR 2042*; *Illahi Bux Soomro vs. Aijaz Ali Jakhrani & Others* reported as *2004 CLC 1060*.

Application of the law to the present lis

6. Learned counsel sought to place reliance upon the Electoral Rolls Act, 1974, however, the same stood repealed by section 241 of the Act. Upon being confronted in such regard, and asked as to what qualification requirement was not met by the respondent, learned counsel submitted that while the respondent is qualified in accordance with law, for the time being in force, however, in consideration of the arguments recorded supra, the respondent ought to be disqualified.

7. The eligibility / qualification for candidature to the Senate is delineated in the Act, however, the same need not to be adverted to since the learned counsel for the appellant has expressly stated that the respondent duly qualifies in such regard.

8. Learned counsel has admitted that the vote of respondent was duly transferred from another province to Sindh, however, he has been unable to assist this Tribunal with any law that precludes candidature to the Senate as a consequence thereof.

9. In so far as the title of property and appraisalment of the value of assets is concerned, delving into that realm is not preferable in pre-electoral proceedings; *inter alia* as the same would require evidence to be led.

Conclusion

10. In view of the reasoning and rationale herein contained, this Tribunal is of the considered view that this appeal is devoid of merit, hence, the same, along with pending application/s, is hereby dismissed *in limine*.

11. The office is hereby instructed to convey a copy hereof to the learned returning officer, in *mutatis mutandis* application of Rule 54(5) read with Rule 100(6) of the Rules, forthwith.

JUDGE