

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.D-1447 of 2021

DATE ORDER WITH SIGNATURE OF JUDGE

Present:-

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Amjad Ali Sahito

Muhammad Aquib Rajpar & others.....Petitioners

Versus

Returning Officer/Provincial Election

Commissioner (Sindh) and others.....Respondents

01.03.2021

Mr. Muhammad Kamran Baloch, Advocate for the
Petitioners along with M/s.Fahim Zia, Irfan Ali, Abdul Latif
Mirbehar and Muttee Ali Abbasi, Advocates

Mr. Farooq H. Naek, Advocate for the Respondent No.2
along with M/s.Zia-ul-Haq Makhdoom, Shahadat Awan,
Siraj Rajpar, Wali Soomro, Faisal Aziz and Ms. Hira Agha,
Advocates.

Barrister Hussain Bohra, Assistant Attorney General.

Mr. Abdullah Hanjrah, Senior Law Officer,
Election Commission of Pakistan is present.

Muhammad Ali Mazhar, J: This Constitution Petition has been
brought to challenge the order dated 18.02.2021 passed by
Provincial Election Commissioner (Sindh)/Returning Officer for
Senate Elections-2021 from Sindh Province whereby the
nomination form of respondent No.2 for contesting Senate
Elections, 2021 was accepted and the order dated 22.02.2021
was passed by learned Senate Appellate Tribunal, Sindh
affirming the order of the Returning Officer. The order passed by
the Returning Officer for the ease of convenience is reproduced
as under:

“Ms. Palwasha Muhammad Khan Zai, filed her nomination
paper 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. Aquuib 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.”;

whereas the relevant portions of the order passed by the learned Senate Appellate Tribunal, Sindh are also produced as under:

“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 Learned counsel sought to place reliance upon the Electoral Rolls Act, 1974, however, the same stood repealed by section 241 of the Act.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*.”

2. The counsel for the petitioners argued that the concurrent findings recorded by the Returning Officer and the learned Senate Appellate Tribunal, Sindh are contrary to law. They failed

to consider that the respondent No.2 illegally managed to get her vote transferred in the Province of Sindh by some manipulation. It was further contended that some concealments were also made by the respondent No.2 in her nomination papers with regard to the net worth of her assets. She got her new CNIC with change of her present address at Karachi on 11.01.2021 and the election schedule was announced on 11.02.2021, whereas she submitted her nomination form on 12.02.2021 otherwise the permanent address of respondent No.2 is of Chakwal, Province of Punjab. It was further argued that the respondent No.2 made a false declaration in her nomination papers about her income and net assets. She filed a false and fake declaration/affidavit, therefore, she is not Sadiq and Ameen under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973.

3. Mr. Farooq H. Naek, learned counsel appeared for the respondent No.2 and argued that Section 37 of the Elections Act, 2017 pertains to the enrollment and correction other than periodical revision and under clause (d) of the same section a person may apply for transfer of vote from the electoral roll of an electoral area of a district to the electoral roll of an electoral area of the other district. He further argued that under clause (f) of the same section any person aggrieved by the order of the Registration Officer may file an appeal to the Appellate Authority to be appointed by the Commission but no such appeal has been filed. It was further argued that before the Returning Officer the only objection raised by the petitioners was with regard to the transfer of vote from Chakwal, Punjab to Sindh and no other objection was raised, whereas in this Constitution Petition some more objections have been added which the petitioners are not permitted to raise in the constitutional jurisdiction which otherwise requires evidence. He referred to the judgment rendered by the Lahore High Court in the case of **Raja Pervaiz Ashraf vs. Election Tribunal (PLD 2013 Lahore 552)** and the

judgment of the hon'ble Supreme Court in the case of **Pakcom Limited vs. Federation of Pakistan (PLD 2011 Supreme Court 44)**.

4. Mr. Abdullah Hanjrah, Senior Law Officer, Election Commission of Pakistan fully supported the orders of the Returning Officer and the learned Senate Appellate Tribunal, Sindh and submitted that the entire process for transferring of vote was completed much earlier before announcement of schedule of Senate Elections and no appeal was ever preferred by any objector to the transfer of vote. At the time of submission of nomination paper, the Returning Officer has to conduct summary proceedings and he had checked the CNIC issued to the respondent No.2 with the present address in Sindh and after complying with all requisite formalities the nomination form of the respondent No.2 was accepted and that order was also affirmed by the learned Senate Appellate Tribunal, Sindh.

5. We have heard the arguments. The order of the Returning Officer unequivocally demonstrates that though the objections were filed but at the time of scrutiny the objector was not present and despite that the Returning Officer examined the objections and found not maintainable. We have also gone through the objections available on record which were filed before the Returning Officer in which the petitioners only raised the plea with regard to the transfer of vote from Punjab to Sindh and no other objection was raised but in the writ petition we have found that the petitioners have raised some other grounds which were neither taken before the Returning Officer nor before the learned Senate Appellate Tribunal, Sindh which cannot be considered at this stage. The petitioners also want us to declare that the respondent No.2 is not Sadiq and Ameen for which the counsel for the respondent No.2 rightly relied on the case of Raja Pervaiz Ashraf supra in which the learned Full Bench of the Lahore High Court has already dilated upon the issue and held that it is

settled law that neither the Returning Officer nor the Election Tribunal has the power to issue any declaration by itself in a summary jurisdiction under the provisions of Representation of the People Act, 1976, unless there is a declaration issued by a court of law placed before them, in which event they can invoke the provisions of Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973. At this juncture it is also very important as to whether the petitioners had any right to file objections. The answer to this question is built-in under Section 112 of the Elections Act, 2017 which clearly explicates that the candidates, their proposers and seconders, and the agent authorized in writing in this behalf by each candidate, may attend the scrutiny of the nomination papers and the Returning Officer shall give them reasonable opportunity for examining all the nomination papers. Sub-section (2) further clarifies that the Returning Officer shall, in presence of the persons attending the scrutiny under sub-section (1), examine the nomination papers and decide any objection raised by any such person to any nomination. The petitioners could not justify whether they filed the objections to the nomination form of the respondent No.2 in the capacity of candidates, their proposers and seconders or an agent authorized in writing in this behalf by any candidate, therefore, on this ground alone their objections were not maintainable before the Returning Officer.

6. If the petitioners had any objections with regard to the transfer of vote, a detailed procedure is already provided under Sections 31 and 37 of the Elections Act, 2017 and the definition of 'electoral area' is provided in clause (xvi) of Section 2 of the Elections Act, 2017. The petitioners admit that they did not file any objections to the transfer of vote but they simply placed the justification that it was not in their knowledge that respondent No.2 got her vote transferred from Punjab to Sindh.

7. It is well settled exposition of law that in the constitutional jurisdiction factual controversy cannot be decided and the entire focus must be on the question of law if any violated by the courts below. We repeatedly asked the learned counsel for the petitioners that they must demonstrate some violation of law if any committed by the courts below but they could not justify except that the vote has been transferred from Punjab to Sindh but they could not satisfy this court that under the law there was any bar. They have themselves attached the nomination form of the respondent No.2 which was submitted on 12.02.2021. The CNIC attached with the petition shows that it was issued on 11.01.2021 with the present address of the respondent No.2.

8. The learned Appellate Tribunal, Sindh has already taken into consideration the entire material and it was rightly pointed out that the Electoral Rolls Act, 1974 has been repealed by Section 241 of the Elections Act, 2017 which fact was also admitted by the petitioners not only before the learned Appellate Tribunal, Sindh but in front of us also. The petitioners failed to point out that the nomination papers of respondent No.2 could be rejected on the sole ground that the vote was transferred from Punjab to Sindh as there is no such condition available under the law for the eligibility / qualification for candidature to the Senate.

9. The concurrent findings recorded by the Returning Officer and the learned Appellate Tribunal, Sindh do not require any interference. The petition is dismissed with pending application.

Judge

Judge