

2018 S C M R 1952

[Supreme Court of Pakistan]

Present: Mian Saqib Nisar, C.J., Umar Ata Bandial and Ijaz ul Ahsan, JJ

SHER BAZ KHAN GAADHI---Petitioner

Versus

MUHAMMAD RAMZAN and others---Respondents

Civil Petition No. 2607 of 2018, decided on 5th July, 2018.

(Against the judgment dated 28.6.2018 of the Lahore High Court, Lahore, passed in Writ Petition No. 222355 of 2018)

(a) Constitution of Pakistan---

---Art. 63(1)(c)---Representation of the People Act (LXXXV of 1976), S. 12(2)(a)---Candidate contesting General Elections---Nomination papers, rejection of---Dual citizenship--Submitting false affidavit with respect to dual citizenship---Record indicated that the respondent-candidate submitted his nomination papers on 10.6.2018 and filed the relevant affidavit in such regard on 11.6.2018---Two days later, he renounced his foreign citizenship on 13.6.2018---On the day the respondent filed his nominated papers he had not renounced his foreign citizenship and was a foreign citizen---Even, if it was assumed that the application of renunciation of foreign citizenship had been filed earlier, no disclosure of the same had been made by the respondent in the relevant column of the affidavit---Respondent had filed a false affidavit and made a false declaration on oath, therefore, he was disqualified from contesting elections---Appeal was allowed accordingly.

(b) Constitution of Pakistan---

----Art. 62(1)(f)---Representation of the People Act (LXXXV of 1976), S. 12(2)(a)---Candidate contesting General Elections---Nomination papers, rejection of---Failure to disclose expenses incurred on foreign travel---Affidavit that had to be submitted along with nomination papers required a candidate to disclose his foreign travels during the last three years and the costs incurred thereon---Respondent-candidate crossed out the column on the affidavit requiring details of such travels and their costs---Report submitted before court by the relevant Authority showed that the respondent had a rich travelling history during the last three years---Respondent did not deny his travel history but tried to argue that at the relevant time he was a foreign national and thus not required to disclose his travel history---Such argument could not be accepted by the court---Respondent deliberately concealed his travel history in the relevant affidavit at the time of filing his nomination papers---Respondent concealed material facts under oath which he was required to disclose in his nomination papers/affidavit, therefore, he was disqualified from contesting elections---Appeal was allowed accordingly.

Barrister Haris Azmat, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Petitioner.

Saad Rasool, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Respondent No.1.

M. Arshad, D.G. Law, ECP for Respondent No. 2.

Date of hearing: 5th July, 2018.

ORDER

IJAZ UL AHSAN, J.---The petition seeks leave to appeal against a judgment dated 28.06.2018, passed by a learned Division Bench of the Lahore High Court, Lahore. Through the impugned judgment, a constitutional petition filed by Respondent No. 1, who is a rival candidate, was accepted and he was allowed to contest the General Elections, 2018 from Constituency (PP-120), Toba Tek Singh.

2. It appears that Respondent No. 1 had submitted his nomination papers before the Returning Officer which were accepted. The petitioner filed an appeal against such acceptance before the Election Tribunal which was allowed and the nomination papers of Respondent No.1 were rejected. The said decision of the Election Tribunal was assailed by Respondent No. 1 by way of a constitutional petition, which was allowed by the learned High Court vide impugned judgment dated 28.06.2018. Hence, this petition.

3. We have heard the learned counsel for the parties and examined the record with their assistance. The record indicates that Respondent No. 1 submitted his examination papers on 10.06.2018 and filed his affidavit on 11.06.2018. Two days later, he renounced his British Citizenship on 13.06.2018. It is clear and obvious that on the day that Respondent No.1 filed his nomination papers he had not renounced his citizenship and was a British Citizen. Even if, for the make of argument, it is assumed that application for renunciation of citizenship had been filed earlier no disclosure in this respect was made by Respondent No.1 in the relevant column of the affidavit. The Respondent No. 1 categorically and under solemn affirmation stated in his affidavit as under:--

"R. I have not ceased to be a citizen of Pakistan nor have I acquired or applied for the citizenship of a foreign state

OR

I possess Foreign Passport No._____N/A___ issued by____ N/A_____"

The aforementioned blank spaces carried the words "N/A". (Not applicable meaning, thereby that he did not possess a British Passport).

4. On the day when the affidavit was sworn both the aforementioned statements were not correct. Respondent No.1 had filed a false affidavit and had made a false declaration on Oath. He was therefore liable to be disqualified from contesting elections.

5. This Court has held in various cases that a person who holds dual citizenship and wishes to contest elections to the Houses of the Parliament must renounce his foreign citizenship before filing his nomination papers. The learned counsel for Respondent No. 1 on being confronted by us was unable to contradict the fact that the nomination papers were filed on 10.6.18, the affidavit was filed on 11.6.18 and the application for renunciation of the British Citizenship was filed on 13.6.18. As such we are in no manner of doubt that the Respondent No.1 had made a false declaration in his affidavit filed before the Returning Officer.

6. We have also noticed that paragraph "L" of the affidavit requires a candidate to disclose his foreign travels during the last three years and the costs incurred thereon. The Respondent No.1 crossed out the said column requiring details of such travels and their costs. However, as per report procured from the FIA, Respondent No. 1 last visited Manchester on 6.4.18 by PK-709. It has also been pointed out to us that according to the updated report submitted by the FIA, the Respondent No. 1 had a rich travelling history in the last three years. We have confronted the learned counsel regarding Respondent No.1's travelling history. He did not deny the fact of such travels but unsuccessfully tried to explain away the situation by stating that at the relevant time he was a British National and was not required to disclose the travel history. Unfortunately, we are unable to accept this argument and have failed to fathom the logic of this arguments.

8(sic.) It is clear and obvious to us that Respondent No. 1 had deliberately concealed his travel history and had also concealed the fact that he held a British Passport on the day that he filed his nomination papers as well as the affidavit.

9. This court in its judgment rendered in Civil Appeals Nos. 56-L and 57-L of 2018 had held as follows:--

"It is clarified that failure to file such Affidavit before the Returning Officer would render the Nomination Papers incomplete and liable to rejection. If the Affidavit or any part thereof is found false then it shall have consequences, as contemplated by the Constitution and the law. Since the Affidavit is required to be filed in pursuance of the orders of this Court, therefore, if any false statement is made therein, it would also entail such penalty as is of filing a false affidavit before this Court."

10. Although the learned counsel for the petitioner has pointed out other defects in the affidavit filed by Respondent No.1 relating to concealment of his assets and income, we consider it unnecessary at this stage to comment on the same. Suffice, it to say that we have found that Respondent No.1 has filed a false affidavit, concealed and misstated the material facts under Oath which he was required to disclose in his affidavit/nomination forms. He is therefore liable to be disqualified from contesting elections and the impugned judgment of the High Court having failed to take note of the aforementioned points of fact and the law is not sustainable.

11. Above are the reasons for our sort order dated 05.07.2018. The same for case of reference is reproduced below:--

"For the reasons to be recorded later, this petition is converted into an appeal and allowed and the impugned order is set aside."

MWA/S-32/SC

Petition allowed.