

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE.  
JUDICIAL DEPARTMENT**

**W. P. No.221907 of 2018**

**Rao Muhammad Sarwar**

**Versus**

**Returning Officer, PP-77, Sargodha & another**

**J U D G M E N T**

- Date of hearing: 12.07.2018.
- Petitioners by: M/s Rao Fazal-ur-Rehman, Imran Raza Chadhar, Rabia Javed, Hafiz Muhammad Asad Munir, Shafqat Mehmood Chohan, Mian Muhammad Athar, Abdul Quddus Mughal, Sarfraz Hussain Bhatti, Ch. Ishtiaq Ahmad Khan, Muhammad Asghar Nadeem, Zahid Pervaiz Kahloon, Ch. Ahmad Masood Gujjar, Rizwan Zaka Gill, Syed Muhammad Ghazenfur, Rana Shakeel Ahmad Khan and Mian Muhammad Irfan, Advocates.  
Dr. Suhrab Aslam Khan, petitioner in person (W.P.No.223044 of 2018).
- Respondents by: M/s Ch. Imtiaz Illahi, Assistant Attorney General, Ch. Umar Hayat, Director (Legal), ECP, Imran Arif Ranjha, Legal Advisor, ECP and Naeem Sarwar, Legal Advisor, ECP.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** This consolidated judgment shall decide instant petition along with following connected cases, as common questions of law and facts are involved in these cases:-

- i. **W.P. No.221518 of 2018** titled Mian Muhammad Akram Usman v. Election Commission of Pakistan through Secretary, Election Commission, Islamabad & others
- ii. **W.P. No.221576 of 2018** titled Muhammad Ilyas v. The Appellate Election Tribunal, Punjab, Lahore High Court, Lahore & others
- iii. **W.P. No.223044 of 2018** titled Dr. Suhrab Aslam Khan v. Appellate Election Tribunal.

- iv. **W.P. No.222849 of 2018** titled Zaiba Ehsan v. Returning Officer, NA-131, Lahore-IX
- v. **W.P. No.223564 of 2018** titled Muhammad Sabir v. Returning Officer / Senior Civil Judge, PP-246, Bahawalpur-II, Bahawalpur & others.
- vi. **W.P. No.223312 of 2018** titled Syed Atta Ullah Shah Bukhari v. Election Appellate Tribunal NA-158, Multan-V & others.
- vii. **W.P. No.223482 of 2018** titled Sabtain Ali v. Appellate Election Tribunal, Lahore & another.
- viii. **W.P. No.221894 of 2018** titled Mian Ameer Hamza v. The Learned Returning Officer, PP-159, Lahore & another
- ix. **W.P. No.223304 of 2018** titled Muhammad Shahzad v. Election Commissioner of Pakistan through the Secretary, Election Commission & others.
- x. **W.P. No.223305 of 2018** titled Muhammad Shahzad v. Election Commissioner of Pakistan through the Secretary, Election Commission & others.
- xi. **W.P. No.223281 of 2018** titled Tariq Mehboob v. Appellate Election Tribunal, Punjab, Lahore & others.
- xii. **W.P. No.223502 of 2018** titled Ijaz v. Returning Officer, PP-115, Faisalabad & another.
- xiii. **W.P. No.223699 of 2018** titled Malik Asghar Ali v. Returning Officer, PP-147, Lahore.
- xiv. **W.P. No.222867 of 2018** titled Syed Ghulam Nabi Shah v. Govt. of Pakistan through Election Commission of Pakistan, Islamabad & others.

2. In the instant as well as connected petitions, petitioners are candidates from different constituencies. Their nomination papers were rejected by the concerned Returning Officers *inter alia* on the ground that their proposers and seconders were not voters of the same constituencies, from where the candidates intended to contest the General Elections, 2018. Feeling aggrieved, the candidates assailed orders of rejection of their nomination papers before learned Appellate Tribunal, but remained unsuccessful. Hence, these petitions.

3. Learned counsel for petitioners submit that the certificates issued by the respondent / Election Commission of Pakistan (“ECP”) to the proposers / seconders regarding their antecedents are silent qua the constituencies, therefore, petitioners cannot suffer on account of negligence committed by the respondent-ECP. They further submit that the Electoral Rolls were also not available at the time of filing of nomination papers on account of unresolved dispute of delimitation and this aspect of the matter has not been adverted to by the concerned Returning Officers as well as learned Appellate Tribunal while passing impugned orders, thus, same are not sustainable in the eye of law.

4. Conversely, learned Law Officer as well as learned Legal Advisors for respondent-ECP defend the impugned orders and reiterate the submissions made by them in the reply.

5. Arguments heard. Available record perused.

6. The learned Division Bench, after hearing the preliminary arguments of learned counsel for the parties, formulated the following questions emerging from the lis in hand:-

- 1) Whether it was not the essential duty of Election Commission to provide the detailed particulars of proposer, seconder and the candidate including the number of constituency. Apparently, the receipt / certificate issued by the Election Commission is silent about the number of constituency and on the basis of this deficient information provided by the Election Commission, the petitioner / candidate could be considered at fault entailing rejection of his nomination papers?
- 2) Whether the Election Commission though has completed the delimitation process on 03.05.2018 but had it provided the information to the public at large through all the sources as required by law?

The matter was referred to the Larger Bench by making following observations:-

- “4. ... Whereas on account of fresh delimitation many constituencies have been bifurcated-shuffled due to which

even the voters-people living the same street(s) according to new delimitation have been divided into two constituencies. This Court in such situation feels itself under legal obligation to answer, 'whether any concession can be granted to a candidate to rectify the error-mistake committed by him by submitting the nomination papers entering the names of proposer and seconder, not belonging to his newly created constituency on account of fresh delimitation whereas in the previous election, they were in the same constituency for which the candidate is now contesting the election.'"

7. Learned Legal Advisors for respondent-ECP, in order to satisfy the Court that respondent-ECP was not at fault or negligent in discharging its duties within contemplation of the Elections Act, 2017 and the Rules framed thereunder, explain that the final delimitation was published on 03.05.2018 in the gazette of Pakistan which was also uploaded on the website of respondent-ECP; the area assigned to each N.A. and P.P. constituency was also described in detail; the name of electoral area, Mauza / *Deh*, Census Block Code and *Patwar* Circle was also mentioned in the electoral rolls for the rural areas while in the urban areas, name of electoral area and Circle number are clearly mentioned; the relevant maps of extent of constituencies and relevant electoral rolls guide a candidate about the relevant constituency for filing nomination papers; and it was the duty of concerned candidate to ensure about his proposer and seconder before filing his nomination papers, after checking their Census Block Code and Circle, whether they are enrolled voters of his constituency.

8. In response, learned counsel for petitioners contended that due to fresh delimitation, many constituencies were bifurcated due to which voters living in the same street(s) were divided into two constituencies and dispute in this regard remained pending before Courts of law till 03.06.2018 when Hon'ble Apex Court finally intervened and directed respondent-ECP to hold the elections on scheduled date on the basis of existing delimitation already notified in the official Gazette, thus, lapse is on part of respondent-ECP.

When asked, whether any dispute of delimitation pertaining to any of the constituencies of present petitioners was pending before any Court of law, their reply was in negative, therefore, this argument carries no weight.

9. The provisions of Section 60 (1) of the Elections Act, 2017 lay down that any voter of a constituency, may propose or second the name of any qualified person to be a candidate for Member for that constituency. As per the provisions of Section 62 (9)(d)(ii) of the Act *ibid*, it is stipulated that as regards the defect in the nomination papers, being not of a material nature, such as error in the name, serial number in the Electoral Roll or other particulars of the candidate or his proposer or seconder, same can be remedied forthwith. However, no substitution of proposer or seconder is permissible. Such an omission / defect is treated as substantial in nature, hence, incurable as per the well settled principles of law laid down by the Hon'ble Apex Court in *Rana Muhammad Tajammal Hussain v. Rana Shaukat Mahmood* (PLD 2007 Supreme Court 277), *Sheikh Muhammad Akram v. Abdul Ghafoor and 19 others*, *Nadeem Shafi v. Tariq Shuja Butt and others* (PLD 2016 Supreme Court 944), and Hon'ble Full Bench of this Court in *Barkhurdar v. Appellate Tribunal / Additional District and Sessions Judge and 3 others* (PLD 2016 Lahore 101).

In the case of *Nadeem Shafi* supra, the Hon'ble Supreme Court has ruled as under:-

"7. ... Therefore, there can be no valid appellate orders allowing substitution or rectification of a defective nomination paper. In the case reported as Mudassar Qayyum Nahra Vs. Election Tribunal, Punjab, Lahore (2003 MLD 1089)(full bench of the Lahore High Court), it has been held:-

"The unqualified proposer or seconder leads to the rejection of nomination papers as provided in section 14(3)(b) and, therefore, such a defect cannot be held to be not of substantial nature because such a defect can be removed only by the substitution of the proposers or the seconders and the safety valve has been provided

to the candidates by permitting them by filing up to five nomination papers”.

Whilst the aforesaid finding is with respect to the equivalent provision of the Representation of the People Act, 1976 we see no reason to differ from an eminently logical interpretation of the same. The same finding is therefore upheld with respect to Rule 14(7) *ibid*; it does not allow substitution of proposer or seconder who is found to be unqualified to subscribe to a nomination paper.”

10. Since it has not been shown that respondent-ECP was at fault in performing its statutory obligations qua provision of requisite information for public at large or defect in question had occurred on account of changed circumstances, which were beyond control of petitioners, thus the omission being substantial in nature, no concession can be granted to a candidate to rectify it by substituting the names of proposer and seconder in nomination papers. Needless to say that where Hon’ble Supreme Court with the intention of settling the law, pronounces upon a question, such pronouncement is the law declared by Hon’ble Apex Court within the meaning of Article 189 of the Constitution, and is binding on all Courts in Pakistan. Reliance is placed upon *Muhammad Tariq Badr and another v. National Bank of Pakistan and others* (2013 SCMR 314), *Commissioner Income Tax v. Habib Bank Limited and ANZ Grindlays Bank PLC* (2014 SCMR 1557) and *Shahid Pervaiz v. Ejaz Ahmad and others* (2017 SCMR 206).

11. In view of the above discussion, instant petition, along with connected petitions, being devoid of any merit, is hereby **dismissed** with no order as to costs.

**(Mamoon Rashid Sheikh)**  
**Judge**

**(Muhammad Sajid Mehmood Sethi)**  
**Judge**

**(Shams Mehmood Mirza)**  
**Judge**