

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

Constitutional Petition No.142 of 2024

Nafeesa Rehman

v.

The Election Tribunal Balochistan, Quetta and others
(CC-100107700309)

J U D G M E N T

Date of hearing: 07 February, 2024 Announced on: 07 February, 2024

Petitioner by: Mr. Bahlol Khan Kasi, Advocate.

Respondent Nos.1 to 3 by: Mr. Shahzad Aslam, Asst: Director (Law), ECP.

Muhammad Ejaz Swati, J: Petitioner is aggrieved against the order dated 18.01.2024 passed by the Learned Election Tribunal Balochistan, Quetta, whereby Election Appeal No.406/2024 filed by the petitioner was dismissed and order dated 06.01.2024 passed by the Returning Officer for the reserved seats for women in National Assembly as well as in Provincial Assembly ('the seats') was upheld, whereby application filed by the petitioner was dismissed.

2. Facts of the case are that the Election Commission of Pakistan ('ECP') ('respondent No.3') issued revised schedule for filing of nomination paper in the forthcoming General Election to be held on 08.02.2024, wherein cut-off date for filing of nomination paper was till 24.12.2023. The petitioner had submitted an application on 30 December, 2023 to the Returning Officer and sought permission to file nomination paper. The said application was rejected by the Returning Officer vide order dated 30 December, 2023. Against which the petitioner filed Constitution Petition No.01/2024, which was disposed of by this Court vide order dated

04.01.2024 and petitioner was permitted to approach the office of Election Commission of Balochistan within two days, who after hearing the petitioner, should decide the matter in accordance with law. The Provincial Election Commission vide order dated 06.01.2024, rejected the application of the petitioner. The petitioner instead of filing Election Appeal had filed Constitution Petition No.35/2024, which was dismissed as withdrawn by this Court vide order dated 10.01.2024 on the ground to approach the learned Election Tribunal Balochistan, Quetta. The learned Election Tribunal Balochistan, Quetta vide impugned order dated 18.01.2024 dismissed the Election Appeal, which has been assailed by the petitioner by way of filing instant Constitution Petition.

3. Learned counsel for the petitioner contended that the petitioner has not been provided fair opportunity for submission of nomination papers and deprived her from her guaranteed right under Article 34 and 10A, the Constitution of the Islamic Republic of Pakistan, 1973 (‘ the Constitution’); that the filing of application for submission of nomination paper after due date was not due to omission of the petitioner but it was the omission of the respondent No.1 who had failed to display the priority list of candidates for reserved seats for women in accordance with law, therefore, the petitioner is also entitled to participate in the aforesaid reserved seats and contest the election in accordance with law. He placed reliance on the cases reported in PLJ 2013 Lahore 165, 2018 CLC 1657 and Constitution Petition No.126/24 dated 02.02.2024 passed by this Court.

4. Learned Law Officer of ECP contended that under Section 104 of the Election Act, 2017, no alteration or revision is allowed in the priority list submitted by the political party; that election program/schedule had already been announced and the petitioner was well aware about the cut-off date but she has failed to file nomination papers within the prescribed period and the all election process is time bound, which cannot be relaxed for individual as it would vitiate the election.

5. We have heard learned counsel for the parties and perused the record. The cut-off date for filing nomination paper as per revised schedule issued by Election Commission of Pakistan was 24.12.2023. The petitioner has submitted application on 30.12.2023 to the concerned Returning Officer for seeking permission to file nomination paper which was rejected vide order dated 06.01.2024. Relevant is reproduced herein below:

“11. I have heard the applicant, perused the available record and after going through The Elections Act-2017 and Elections Rules-2017 that plea of applicant is not maintainable and cannot be considered in purview of the provisions of Constitution of Islamic Republic of Pakistan and Elections Act and Rules-2017 and I have further reached to the conclusion that the election activities are time bound activities that are to be completed within stipulated period as fixed by the Hon’ble Election Commission of Pakistan, as laid down in Section 57 of Elections Act-2017. Hence, the instant application is rejected.”

6. Learned Election Tribunal Balochistan Quetta while rejecting the appeal filed by the petitioner also observed as under:

“5. Under Section 104 of the Election Act, 2017 it has been stipulated that list submitted by a political party shall not be subject to change or alteration either in the order of priority or through addition of new names in the list or omission of any name after expiry of the date of submission of nomination papers. In the same manner time was fixed by the ECP for submission of nomination papers. In the case of the appellant the date 24.12.2023 was fixed for submission of nomination papers. The appellant did not file the nomination papers within the schedule period rather approximately after delay of six (06) days she approached the Returning Officer and sought permission to file nomination papers which request was declined by the Returning Officer. Justification provided by the appellant for delay in filing nomination papers is also not acceptable as if out of schedule nomination papers are accepted it would open a pandora box and the whole process of forthcoming Election 2024 which is time bounded activity shall be disturbed adversely.”

7. It is the mandate of Section 104 of the Election Act, 2017 that for the purpose of election seats reserved for women and non-muslim in an Assembly, the political parties contesting election for such seats shall, within a period fixed by the Commission for submission of nomination paper, filed separate list of their candidates in order to priority for seats reserved for women and non-muslim with the Commission or, as it may direct, with the provincial Election Commission or other authorized officer of the commission, who shall forthwith cause such list to be published for information of the public.

Subsection 7 of Section 104 further mandate that the candidate contesting election of the said reserved seats for women or non-muslim shall

alongwith the nomination papers and its annexures, submitted to Returning Officer appointed by the Commission in this behalf. Admittedly, the petitioner had not submitted her nomination papers on the said reserved seats for women within the cut-off date i.e. 24.12.2023 and filed an application on 30.12.2023 after six days of cut-off date for seeking permission to file nomination papers, which was not permissible under Section 104 of the Act, 2017, therefore, the said application was rejected by the respondent No.1 on justifiable reason following the provision of law and the Election Tribunal has also passed order in accordance with law.

8. The word “election” in Article 225/226 of the Constitution of the Islamic Republic of Pakistan, 1973 connotes the entire electoral process commencing with the issue of notification calling the election and culminating in the declaration of result and that electoral process once started could not be interfered with at any intermediate stage by Court. The scheme of constitution under Article 224-225 of the Constitution and the Election Act, 2017 seems to be that any matter which has effect of vitiating the election should be brought up only at the appropriate stage in an appropriate manner before the Special Tribunal or not otherwise.

It is settled principle of law that when law stipulate that same has to be done in a prescribed manner it must be done in that manner and should not be done otherwise. Reliance is placed on the cases reported in Muhammad Hanif Abbasi v. Imran Khan Niazi (PLD 2018 SC 189), Shahida Bibi v. Habib Bank Ltd (PLD 2016 SC 995) and Human Rights Case No.4668 of 2006 (PLD 2010 SC 759).

In view of the above, the instant Constitution Petition No.142 of 2024 is dismissed.

Quetta:
Announced in open Court.
Dated, Quetta February, 2024

JUDGE

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