

What is the standard of proof applicable in election matters?

In a chain of judgments of the apex court of the country has held that in election matters the standard of proof required is akin to that of criminal cases, where allegations must be proved beyond reasonable doubt. This high threshold is necessitated by the severe consequences that may ensue, such as the annulment of an election, the loss of civic rights, and the negation of the electoral will. The following precedents elaborate the concept of standard of proof in election matters, the relevant paras are given below for ease reference.

NAWAB ALI WASSAN---Appellant Versus Syed GHOU ALI SHAH and others Respondents 2018 S C M R 87 [Supreme Court of Pakistan]

10. It may be noted here that in order to successfully challenge an election on the ground that the same was induced through corrupt practices, the petitioner should be conscious of the fact that the charge of corrupt practices is in the nature of a criminal charge and has to be proved beyond any shadow of doubt. The standard of proof required for establishing such charge is the same as is applicable to a criminal charge. The evidence should be absolutely credible by the standards of the appreciation applicable to criminal cases and should be able to stand the test of strict and scrupulous scrutiny. It is also now well settled that the party seeking to challenge the validity of an election should essentially specify in the election petition the incident(s) of corrupt practice with as much precision as is possible and with all necessary details and particulars. The petitioner should keep in mind that no fresh charge or incident can be introduced during the trial. The other well pronounced principle is that the evidence in proof of the alleged corrupt practices is to be restricted to the instances as set out in the petition, and in order to succeed, the petitioner has to prove such ingredient of the corrupt practice alleged, affirmatively. Statement of allegation contained in the petition should therefore be precise and should clearly contain all the necessary details as required in terms of section 55 of the ROPA.

Mst. SUMAIRA MALIK---Petitioner Versus Malik UMAR ASLAM AWAN and others--Respondents 2018 S C M R 1432 [Supreme Court of Pakistan]

6. After having heard learned counsel for the parties, we concluded that the review ought to be allowed. We begin by referring to a point of fundamental importance, namely, the standard of proof applicable in election matters. The law in this regard is well settled, based on judgments of this Court going back several decades. We may note that a specific query in this regard was put to learned counsel for respondent No. 1 during the course of the hearing. The position was recently reaffirmed in Muhammad Siddique Baloch v. Jehangir Khan Tareen and others PLD 2016 SC 97, from which the following passages are relevant:

"15. The law regarding the quality of evidence necessary to prove an allegation of corrupt and illegal practices committed by a candidate during his election is by now well settled.... In view of the severe consequences following the proof of corrupt and illegal practices in particular by a returned candidate, different pronouncements by this Court adopt a cautious stance towards a defending incumbent of elected office. The earliest case on the subject is Muhammad Saeed v. Election Petitions Tribunal, West Pakistan and others (PLD 1957 SC 91) which holds that each ingredient of the misdemeanor of corrupt or illegal practices must be affirmatively proved by direct or circumstantial evidence. Circumstantial evidence is to be believed if all reasonable hypotheses

which are consistent with the non-commission of corrupt or illegal practices have been excluded. The said rule has been reiterated with approval in *Muhammad Yusuf v. S.M. Ayub* (PLD 1973 SC 160) and in *Muhammad Afzal v. Muhammad Altaf Hussain* (1986 SCMR 1736)." (pp. 111-2)

"29. At this juncture, it is important to emphasize that in cases involving a finding of fact about the disqualification of a returned candidate in election matters, such finding must be based on affirmative evidence and not on presumptions, inferences and surmises. That does not mean that proceedings in an election petition before an Election Tribunal are strictly criminal proceedings. It is settled law that even in civil proceedings, a finding of fact must be based on positive and affirmative evidence. This requirement rests in the basic principles of the Qanun-e-Shahadat Order, 1984 and is articulated in *Allah Din v. Habib* (PLD 1982 SC 465). For that reason and the serious consequences that follow a finding of disqualification under Article 62(1)(f) of the Constitution, an additional evidentiary safeguard is adopted by the Court, namely, that any reasonable hypothesis available in the recorded evidence to avoid the disqualification of the returned candidate ought to be adopted by the Court of law. The foregoing safeguards have already been laid down in relation to the proof of corrupt practice by a candidate in an election. Section 78(3)(d) of the ROPA treats a false statement by a candidate about his educational qualification to be a corrupt practice.

30. The earliest pronouncement on this subject is rendered by this Court in *Muhammad Saeed's* case (PLD 1957 SC 91), wherein it is held that:

"... the burden of proof of corrupt practices is on the petitioner; that the evidence of proof of such practices must be restricted to the charges or instances mentioned in the petition and the particular; that each ingredient of a corrupt practice so charged must be affirmatively proved by evidence, direct or circumstantial; and that where the evidence is wholly circumstantial, the commissioners before finding a corrupt practice proved must exclude all reasonable hypotheses which are consistent with that corrupt practice having not been committed... ."

31. A case directly pertaining to disqualification of a returned candidate was heard by this Court in *Mohammad Yusuf's* case (PLD 1973 SC 160) wherein whilst adopting the view taken in *Muhammad Saeed's* case (PLD 1957 SC 91) this Court has observed that finding of disqualification must be based on positive evidence and should not be rendered inferentially on mere surmises; that since a disqualification was penal in nature, therefore, the terms thereof were subject to strict interpretation; and the benefit of doubt was to be extended in favour of a returned candidate. The later judgments of this Court rendered in *Saeed Hassan's* case (PLD 1976 SC 6) and *Muhammad Afzal's* case (1986 SCMR 1736) approve the principles enunciated in the aforementioned two judgments." (pp. 119-20)

7. In our view, the foregoing passages encapsulate the bedrock principles that apply in relation to the standard of proof required in election matters. It will be seen that the standard is much higher than the well-known civil standard (balance of probabilities) though short of the criminal standard (beyond reasonable doubt). However, one thing is clear. If there be a (notional) halfway point between the civil and criminal standards, the standard laid down for election matters is well above and beyond that. Any evidence tendered in an election matter must be considered and "appreciated" by adhering to this standard, and not otherwise. Applying the correct standard of proof is crucial and goes to the very root of the decision. This brings us to the nub of the matter,

i.e., the visual examination by the Court itself of the photographs and the signatures. As noted, in this regard reference was made in the judgment under review to Article 84 of the QSO in para 37, where three earlier decisions of the Court were also cited. With respect, all three decisions were in relation to civil matters, where the standard of proof is substantively different. Had the Court been properly assisted, and the record examined in the perspective of the requisite standard, we are in no doubt that the matter would have been referred for expert consideration and analysis. Once such report was received, then the totality of the record would have been dealt with by applying the standard of proof required of election matters. That situation has now come about. With respect, the objections taken to the Agency's report by learned counsel for respondent No. 1 are not at all convincing. The report unequivocally concludes that all the photographs are those of the petitioner. Most crucially, that includes the photographs taken from the University record in relation to the B.A degree. That at once puts paid to the respondent No. 1's case that the degree was obtained by impersonation. No other conclusion is possible on an application of the requisite standard.

Syed HAFEEZUDDIN---Appellant Versus ABDUL RAZZAQ and others--- P L D 2016 Supreme Court 79

5.....Before we embark upon an analysis of the evidence and a determination about the correctness or otherwise of the findings of the learned Tribunal, it is pertinent to mention that **the rules of proof for the grounds challenging the election which are founded on corrupt and illegal practices are quite strict and stringent and the allegations in this regard must be absolutely proved through positive evidence without accepting any inferences and if there is any doubt, the benefit must go to the person against whom corrupt or illegal practices are being alleged**, as held been held by this Court in the cases reported as Muhammad Saeed and 4 others v. (1) Election Petitions Tribunal, West Pakistan, (2) Mehr Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others (PLD 1957 SC (Pak.) 91); Mian Jamal Shah v. (1) The Member Election Commission, Government of Pakistan, Lahore, (2) The Returning Officer, Constituency of the National Assembly of Pakistan No. NW-II, Peshawar II, and (3) Khan Nasrullah Khan (PLD 1966 SC 1); Khan Muhammad Yusuf Khan Khattak v. S. M. Ayub and 2 others (PLD 1973 SC 160) and Pyar Ali

Syed KHALIQ SHAH---Appellant Versus ABDUL RAHEEM ZIARATWAL and others--Respondents P L D 2017 Supreme Court 684

10. The onus to prove allegations of rigging and the use of corrupt and illegal practices is on the person alleging such practices. The quality of evidence and standard of proof must meet the benchmarks set by this Court by production of positive evidence. In Usman Dar and others v. Khawaja Muhammad Asif and others (2017 SCMR 292) we held as follows:-

"Reference may be made to Muhammad Saeed v. Election Petitions Tribunal, West Pakistan, etc. (PLD 1957 SC (Pak.) 91) wherein it was held that, "The law relating to the trial of elections petition, though volumes have been written on it, in so far as it is relevant to the present case, is so simple that it can be summed up in one sentence, namely, where an election is sought to be set aside on the ground of commission of corrupt practices, the party challenging its validity must specify in the petition the corrupt practices committed, giving in the list attached to the petition or in his statement before the settlement of issues full particulars of those corrupt practices; that no fresh charge or instance of a corrupt practice can be added at the trial, that the burden of proof of

corrupt practices is on the petitioner; that the evidence in proof of such practices must be restricted to the charges or instances mentioned in the petition and the particulars; that each ingredient of a corrupt practice so charged must be affirmatively proved by evidence, direct or circumstantial; and that where the evidence is wholly circumstantial, the commissioners before finding a corrupt practice proved must exclude all reasonable hypotheses which are consistent with that corrupt practice having not been committed". Reference may also be made to the case of Hafeezuddin v. Abdul Razzaq (PLD 2016 Supreme Court 79) in which this Court held that, 'Before we embark upon an analysis of the evidence and a determination about the correctness or otherwise of the findings of the learned Tribunal, it is pertinent to mention that the rules of proof for the grounds challenging the election which are founded on corrupt and illegal practices are quite strict and stringent and the allegations in this regard must be absolutely proved through positive evidence without accepting any inferences and if there is any doubt, the benefit must go to the person against whom corrupt or illegal practices are being alleged, as held by this Court in the cases reported as Muhammad Saeed and 4 others v. (1) Election Petitions Tribunal, West Pakistan, (2) Mehr Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others (PLD 1957 SC (Pak.) 91); Mian Jamal Shah v. (1) The Member Election Commission, Government of Pakistan, Lahore, (2) The Returning Officer, Constituency of the National Assembly of Pakistan No.NW-11, Peshawar II, and (3) Khan Nasrullah Khan (PLD 1966 SC 1); Khan Muhammad Yusuf Khan Khattak v. S. M. Ayub and 2 others (PLD 1973 SC 160)".

**USMAN DAR and others---Appellants Versus Khawaja MUHAMMAD ASIF and others--
-Respondents 2017 S C M R 292 [Supreme Court of Pakistan]**

24. We therefore find that even if there may have been negligence or inefficiency on the part of the election staff, such acts/omissions did not occur on account of any act of respondent No.1. Further, the same neither materially affected the result of the election nor substantially contributed to the appellant's loss. It is settled law that the election petitioner who alleges the use of illegal or corrupt practices or rigging has to establish his case on the same standard of proof as a criminal case i.e. beyond reasonable doubt. Reference may be made to Muhammad Saeed v. Election Petitions Tribunal, West Pakistan and others (PLD 1957 SC (Pak) 91), wherein it was held that "A charge of a corrupt practice is a quasi-criminal charge and, as the Tribunal has stated in its report, the great volume of authority in the corpus of election law is to the effect that such an allegation must be treated, for the purposes of evidence on the principles applicable to the trial of criminal charges. One such principle is that in case of doubt raised upon the evidence, the benefit of such doubt must go to the accused person".

**MUHAMMAD SIDDIQUE BALOCH---Appellant Versus JEANGIR KHAN TAREEN
and others---Respondents P L D 2016 Supreme Court 97**

15. The law regarding the quality of evidence necessary to prove an allegation of corrupt and illegal practices committed by a candidate during his election is by now well settled. "Corrupt practice" is defined in Section 78 of the ROPA while "Illegal practice" is defined in Section 83 of the said statute. The allegation in the present case would, prima facie, fall within the ambit of Section 83(1)(b) of the ROPA. The delinquent conduct under the said provision pertains to, inter alia, procuring the assistance of any person in the service of Pakistan to further or hinder the election of a candidate. The successful proof of the commission of the said wrong by a returned

candidate not only annuls his election under Section 68(1)(d) as well as Section 70(b) of the ROPA but also disqualifies him from contesting an election for a period of five years under Section 99(1A)(l) of the ROPA and exposes him to criminal prosecution for an offence carrying punishment of six months imprisonment. In view of the severe consequences following the proof of corrupt and illegal practices in particular by a returned candidate, different pronouncements by this Court adopt a cautious stance towards a defending incumbent of elected office. The earliest case on the subject is Muhammad Saeed v. Election Petitions Tribunal, West Pakistan, etc. (PLD 1957 SC 91) which holds that **each ingredient of the misdemeanor of corrupt or illegal practices must be affirmatively proved by direct or circumstantial evidence. Circumstantial evidence is to be believed if all reasonable hypotheses which are consistent with the non-commission of corrupt or illegal practices have been excluded.** The said rule has been reiterated with approval in Muhammad Yusuf v. S.M. Ayub (PLD 1973 SC 160) and in Muhammad Afzal v. Muhammad Altaf Hussain (1986 SCMR 1736).

Conclusion:-

The above precedents show that allegations in election disputes be proven to the same standard as criminal charges—beyond a reasonable doubt. This strict standard ensures that only credible and substantial evidence can annul election results or disqualify candidates, thereby protecting the integrity of the electoral process and the democratic will of the people.