

ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. SIKANDAR SULTAN RAJA, CHAIRMAN
MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MUHAMMAD JATOI, MEMBER

Case No. 23(91)/2022-Law

In Ref: **APPEAL UNDER SECTION 234(5) OF THE ELECTIONS ACT, 2017**
AGAINST THE IMPUGNED ORDER DATED 18.03.2022 PASSED
BY THE RESPONDENT

Junaid Akbar son Sultan Rome r/o Mohallah Amjad Shaheed Colony, PO Thana
Jadeed, Tehsil Batkhela, District Malakand

Vs.

Zia ur Rehman (DEC) District Monitoring Officer, Tehsil Batkhela, District Malakand

For the petitioner : Mr. Mubashar Najeeb Khattak, Advocate High Court

Date of Hearing : 01.04.2022

ORDER

Sikandar Sultan Raja, Chairman.- The present Appeal has been preferred by the appellant (a sitting member of the National Assembly) as a matter of right under section 234(5) of the Elections Act, 2017, against the order of the District Monitoring Officer, Malakand (DMO) dated 18.03.2022, whereby a fine amounting to Rs.40,000/- has been imposed upon him on account of violation of clauses 29 & 33 of the code of conduct and violating the directions of the Election Commission issued for compliance in respect of 2nd phase local government elections in the Khyber Pakhtunkhwa. Through the summary enquiry, the DMO had found the appellant involved in election campaign of Mr. Pir Islam, a contesting candidate for the seat of Chairman, Tehsil Dargai, who participated in the public meeting and during his speech, threatened the voters of the constituency that funds would not be provided for them if they do not vote for Mr. Pir Islam.

2. The learned counsel for the appellant denies violation of the code of conduct as well as the directions of the Election Commission by his client and states that



section 181A (inserted through the Elections (Amendment) Ordinance, 2022) in the Elections Act, 2017, allows the members of the Parliament to visit and address public meetings in any area or constituency during election campaign. The appellant has not threatened the voters of the constituency nor has violated the code of conduct.

3. We have heard the arguments of the learned counsel and have perused the record. It is to be noted that through the promulgation of the Elections (Amendment) Ordinance, 2022, Section 181A has been inserted in the Elections Act, 2017, by the Parliament whereby members of the Parliament, provincial assemblies, elected members of local governments and public office holders have been allowed to visit and address the public meetings during the poll campaign. This Ordinance to ourstanding has a direct impact on the standards of elections as provided in Article 218 (3) of the Constitution of Islamic Republic of Pakistan which mandates the Election Commission to ensure free, fair and transparent elections and to make such arrangements as are necessary to ensure that corrupt practices are guarded against. The august Supreme Court in a landmark judgment of Workers Party Pakistan reported as PLD 2012 SC 681 defined and elaborated the duties of the Election Commission and has set the standards of free, fair and transparent elections which are required to be implemented by the Election Commission in letter and spirit. For ease of reference, the relevant paragraphs of the judgment reads as under:-

"40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in Election Commission of Pakistan v. Javaid Hashmi and others (PLD 1989 SC 396), observed that "(g)enerally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including all stages involved in the election process. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein.



41. The Election Commission may also exercise its powers in anticipation of an ill that may have the effect of rendering the election unfair. In the case titled as In Re: Petition filed by Syed Qaim Ali Shah Jellani (PLD 1991 Jour. 41) the Elections Commission exercised its powers under Article 218(3) pre-emptively, by making all necessary arrangements to ensure that a certain class of people would be allowed to vote. This case implies that where a violation of the standards mentioned in Article 218(3) has not as yet taken place, the Election Commission is legally empowered under Article 218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Furthermore, Mst. Qamar Sultana v. Public at Large (1989 MLD 360) and In Re: Complaint of Malpractices in Constituency No. NA-57, Sargodha-V (supra) both reinforce the argument that the Election Commission is fully empowered by Article 218(3) to make 'such orders as may in its opinion be necessary for ensuring that the election is fair, honest etc'. These decisions recognize that the Election Commission enjoys broad powers not only to take pre-emptive action but also to pass any and all orders necessary to ensure that the standards of 'honesty, justness and fairness' mentioned in Article 218(3) are met."

4. Moreover, Section 233 of the Elections Act, 2017 mandates the Election Commission to frame the code of conduct for political parties, contesting candidates, election agents and polling agents in consultation with the political parties. The Election Commission accordingly held consultative meetings with the political parties and with their feedback, framed the code of conduct for political parties, contesting candidates, election agents and polling agents which, inter alia, provides that the President, Prime Minister, Chairman, deputy chairman Senate, speaker and deputy speaker of an assembly, federal ministers, ministers of state, governors, chief ministers provincial ministers and advisors to PM, CMs, mayors/chairmen/nazims, their deputies and other public office holders shall not participate in the poll campaign in any manner whatsoever. However, the parliamentarians i.e. members national assembly, provincial assemblies, senate and local governments are allowed to participate in the election campaign subject strict abidance of the code of conduct, directions, instructions and regulations issued by the Election Commission and violation thereof has legal consequences including contempt proceedings as contemplated in section 10 of the Elections Act, 2017.

5. The clauses 29 & 33 of the code of conduct are required to be implemented by all the concerned in letter and spirit. The said clauses of the code of the conduct and directions of the Commission provide the following:-

"29. The executive authorities in the federation and in the provinces and elected representatives of national and provincial assemblies shall neither use state resources in any constituency where election is being held for unfair advantage of a particular candidate or political party nor exercise undue influence affecting the interest of a candidate or party for participating in any election.



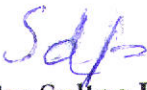
"33. Political parties, candidates, their supporters, government functionaries and elected representative, shall not announce or inaugurate, openly or in secret, their overall development schemes or development work or do anything which tends to influence the results of an election in favor of or against a particular candidate or political party after the announcement of the election programme till the day of polling and shall not give any subscription or donation, or make promise for giving such subscription or donation;

Provided that development work already in process or those schemes where work order issued before the announcement of election programme shall be continued."

The paragraph 2(i) of the Notification dated 09.02.2022 containing directions of the Commission also provides that "all executive authorities in the federation and in the provinces shall neither announce any development project nor use state resources in Local Government Elections calculated to influence the elections in favour of a particular candidates."

6. We have watched the videos, photographs and news clipping of the Appellant, his reply before the DMO as well as the contents of the instant Appeal and are of the affirmed view that the appellant has violated the code of conduct and the directions of this Commission. The fine imposed by the DMO upon the Appellant is not suffering from any legal or factual infirmity. We have also observed that the order dated 10.03.2022, passed by this Commission pursuant to the "Elections (Amendment) Ordinance, 2022" whereby code of conduct was amended, lacks attack till date from all sides including from the present appellant.

7. For what has been discussed above, we find no merit in the instant appeal which is dismissed accordingly. We direct the Appellant to deposit fine within fortnight with the relevant authorities, failing which action would be taken in accordance with law.


Sikandar Sultan Raja
Chairman


(Nisar Ahmed Durrani)
Member


(Shah Muhammad Jatoi)
Member

