

## ELECTION COMMISSION OF PAKISTAN

### PRESENT:

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

### 1. Case No. 4(7)/2021-MW (P/F)

In Ref: IMPLEMENTATION OF CODE OF CONDUCT ISSUED BY THE  
ELECTION COMMISSION OF PAKISTAN FOR THE CONDUCT OF  
LOCAL GOVERNMENT ELECTIONS IN 17 DISTRICTS OF KHYBER  
PAKHTUNKHWA-2021 (1<sup>ST</sup> PHASE)

#### On Commission's notice

1. Mr. Ali Amin Gandapur, MNA/Federal Minister for Kashmir Affairs
2. Mr. Umar Amin Gandapur, contesting candidate for the seat of City Mayor, DI Khan, Khyber Pakhtunkhwa

....Respondents

### 2. Case No. 7(2)/2022-Law

COMPLAINT UNDER SECTION 15 OF THE ELECTIONS ACT, 2017  
FOR VIOLATION OF SECTION 181 OF THE ELECTIONS ACT, 2017  
AND THE CODE OF CONDUCT OF THE LOCAL GOVERNMENT  
ELECTIONS

1. Senator Kamran Murtaza, Jamiat Ulema-e-Islam

....Complainant

Versus

1. Ali Amin Gandapur, MNA/Federal Minister for Kashmir Affairs, etc

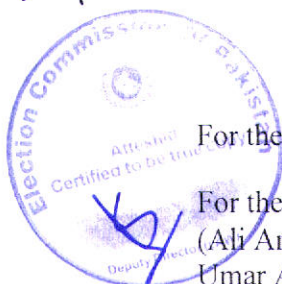
....Respondents

### 3. Case No. 14(3)/2022-MCO

VISUAL CLIPS, EVIDENCES FROM SOCIAL MEDIA/ELECTRONIC  
MEDIA IN RESPECT OF VIOLATION OF CODE OF CONDUCT BY ALI  
AMIN GANDAPUR, SUBMITTED BY THE MCO WING OF THE ECP

For the Complainant : Mr. Kamran Murtaza, Sr. ASC (in-person)

For the Respondents 1-2 : Mr. Ch. Muhammad Ashraf Gujjar, ASC  
(Ali Amin Gandapur & Umar Amin Gandapur)  
alongwith Mr. Umar Amin Gandapur



Date of Hearing : 04.02.2022

### ORDER

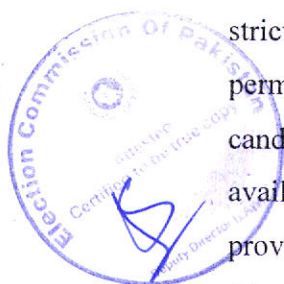
**Sikandar Sultan Raja, Chairman-** The learned counsel for the respondents No. 1 & 2 is present and has submitted separate replies on behalf of the respondents. Mr. Ali Amin Gandapur is also present in-person whereas Mr. Umar Amin Gandapur is not present and learned counsel has made a request for exemption of his appearance on account of his political engagements in forthcoming elections going to take place on 13.02.2022.

2. The learned counsel for respondents No. 1 & 2 through his oral and written comments/objections has thrown attack to the instant proceedings and to the complaint of Senator Kamran Murtaza, on the, *inter alia*, grounds that the initial notice of the DMO dated 06.12.2021 being vague and generic is not sustainable. The words 'reliable sources' mentioned in the notice are alien and stranger to section 234(1) of the Elections Act, 2017. The DMO has failed to mention the sources of his knowledge whereby he initiated his action against the respondent No.1. The DMO should have attached all the available evidences with the notice in order to confront them with the respondent No. 1. He argues that the notice of the DMO in question does not speak about any specific allegation of violations rather it contains general allegations which are not of substantial nature. The DMO should have ascertain and verify the authenticity and veracity of the alleged material/violations before referring the matter to this Commission. In terms of section 234(1) of the Act *ibid*, the DMO could have decided the violations based only on a written complaint. The word 'complaint' mentioned in section 234(1) of the Act, needs to be applied, interpreted and understood in its true perspective, as per its legal definition provided in different law dictionaries. The order of the DMO dated 09.12.2021, regarding imposition of penalty of Rs. 50,000/- upon respondent No. 1 is passed with ulterior motives and mala fide as no summary enquiry was conducted by him. In its order dated 09.12.2021, the DMO has failed to point out those facts which constrained him to conclude and hold that violations were committed by the respondent No.1. The said order also lacks the detail of political activities allegedly undertaken by the respondent. The third notice of the DMO dated 15.12.2021 also contains vague, general and unverifiable allegations without mentioning of any specific incident or complaint. Before initiation of action against the respondent, the DMO has not conducted summary enquiry as envisaged under the law. The due process of law as envisaged under Article 4 of the Constitution of Islamic Republic of Pakistan, has not been followed in the case of the respondents as proceedings in questions lack basic ingredients of fair





and reasonable opportunity to defend the allegations. A regulator authority like Election Commission is under legal obligation to make enquiry by adopting the rules/regulations applicable to the judicial proceedings and not to act upon hearsay evidences. In order to substantiate his argument and to explain the meaning of 'summary', 'summary conviction', 'summary enquiry' and 'summary proceedings', the learned counsel has relied upon various definitions of these terms provided in the law dictionaries. He further argued that the respondent No. 1 is a known political figure and maintains a dozen of social media accounts and not every account is being maintained and run by the respondent No.1. The material collected through social media, forming basis of present proceedings, is not a reliable evidence and source. In view of case law reported as 1998 SCMR 1863 "*Aftab Shahban Mirani vs. President of Pakistan & others*", if a person does not deny the correctness of a statement attributed to him in a press report or in an interview is not sufficient to conclude that the alleged statements attributed to him was factually made by him in its entirety. The respondent No. 1 being a political figure and worker needs to meet the masses and voters. However, he has not violated any instructions, directions of the Election Commission or the Code of Conduct. He is a law-abiding citizen and has a lot of respect for the Election Commission and assures that he will never violate any code of conduct. He has prayed for setting aside of notices, show-cause notice issued to the respondent No. 1 and dropping of instant proceedings against him. He has further relied upon 2016 SCMR 893 "*Muhammad Mujtaba Abdullah vs. Appellate Authority, etc.*" and PLD 2018 Lahore 784 "*Muhammad Nasir Cheema vs. Election Commission of Pakistan, etc.*" to maintain that the election laws more particularly disqualification provisions to disenfranchise a candidate, depriving him of a valuable right of franchise guaranteed under the Constitution were to be strictly construed and any ambiguity was to be resolved in favour of the candidate who could be permitted to participate in the electoral process. A constitution petition disenfranchising a candidate cannot be readily invoked when post-election challenge through an election petition is available. Extreme punitive action of disqualifying a candidate taken in violation of the provisions of Articles 4 & 10A of the Constitution, fails to qualify the standards and tests of fairness and procedural impropriety. He also places reliance on PLD 2018 Sindh 346 "*Bashir Ahmed Halepoto vs. Election Commission of Pakistan, etc.*" to maintain that Election Commission cannot disqualify an elected member on violation of Code of Conduct and can only initiate criminal prosecution against him by filing a criminal complaint before the court of competent jurisdiction. For the violation of Code of Conduct, the Election Commission has jurisdiction only to try the person for contempt of Court.

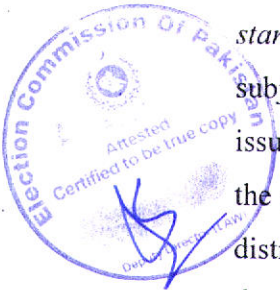




3. In his reply on behalf of respondent No. 2, Umar Amin Gandapur, learned counsel has taken almost the same legal grounds and objections reproduced above. In addition to, he has submitted that the respondent No.2 was never served with any notice by the DMO hence question of holding summary inquiry does not arise and present proceedings in lack thereof would necessarily fail under section 234(3) of the Elections Act, 2017.

4. The learned counsel for the respondents No. 1 & 2, has contested the complaint of the complainant and has attacked its maintainability, *inter alia*, on the grounds that the subject complaint has been filed incompetently without any authorization from his party i.e. *Jamiat-Ulema-e-Islam (JUI)*, which is a body corporate and can sue and be sued. If the subject complaint is on behalf of the JUI, it lacks authorization/resolution in favour of the complainant to sue on its behalf. If the complaint has been made in-person then the complainant has no *locus standi* to institute the same as he is not a voter or resident of the constituency to which the subject matter pertains. The complainant belongs to province of Balochistan whereas the subject issue pertains to the district DI Khan of the province of Khyber Pakhtunkhwa. The allegations in the complaint that funds amounting to Rs. 1610. Million as technical supplementary grant for 14 districts of 2<sup>nd</sup> phase elections, being issued at the behest of the respondent No. 1 is baseless as the respondent No. 1, being an MNA and Federal Minister for Kashmir & Gilgit Baltistan Affairs, has no nexus, involvement and interference in release of these funds. The list attached with the complaint contains other 14 districts where 2<sup>nd</sup> phase elections are going to take place and not DI Khan district to which the respondents belong. How can it be attributed to the respondents? The complainant is just trying to settle the score. The complaint has been made under section 15 of the Elections Act, 2017 whereunder only an 'aggrieved person' can complain to the Election Commission. The complainant is not an aggrieved person as he is not a voter or resident of DI Khan.

5. The respondent No. 1, Mr. Ali Amin Gandapur with the permission of the Commission appears and states that he never violated the direction of the Commission and the Code of Conduct. The other political parties like JUI are arranging rallies, *jalsas*, blocking roads and affixing hoardings, etc. in violation of the Code of Conduct. He emphasizes that there should be equal level playing field for all the political parties and actions should be taken across the board. At the end, he requests for review of order dated 1<sup>st</sup> February, 2022 to the extent of banning of his entry in DI Khan district, on account of a forthcoming matrimonial ceremony in his family. He has assured and undertaken that he shall abide by the directions of the Commission and the



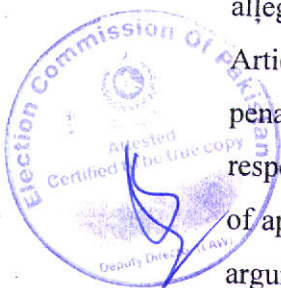


Code of Conduct. He was directed to submit undertaking in writing for consideration of the Commission. However, he has failed to submit the same till dictation and announcement of this order.

6. Conversely, Senator Mr. Kamran Murtaza maintains that his complaint is very much competent as relevant documents authorizing him to represent *JUI* are already on the record of the Election Commission. The question of his *locus standi* or grievance does not arise as he being a citizen of Pakistan has laid information before the Commission which in terms of sub-sections (3) & (4) of section 15, is fully empowered to act on its own accord and pass any order in respect of a complaint or otherwise. The respondents till time have not disputed the allegations/evidences either circulated via print media or electronic media, thus, by virtue of Article 164 of the Qanun-e-Shahadat Order, 1984, such allegations amount to admission. The penalty imposed by the DMO dated 09.12.2021 on respondent No.1, has attained finality as the respondent has deposited the same without any protest and even without availing the opportunity of appeal under section 234(5) of the Elections Act, 2017 before the Election Commission. The arguments of learned counsel for the respondents 1 & 2, in respect of summary enquiry and summary trial are misconceived as both these procedures have distinctive features and requirements and do not apply in the instant case. The respondent No. 1 is a Federal Minister and his other brother has recently been made Provincial Minister for Local Governments and Rural Department, Khyber Pakhtunkhwa and all this is being done at their behest.

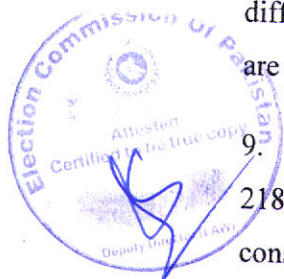
7. Mr. Zafar Iqbal Hussain, Special Secretary, Election Commission refers to the notice of DMO dated 06.12.2021 issued to the respondent No. 1 and states that the subject notice contains specific allegations regarding addressing of public meetings by the respondent No. 1 and announcement of development schemes of supply of gas, etc. The respondent No. 1 has violated the Code of Conduct more than once and the record available with the concerned office including audio, videos and photographs, etc. establish that respondent No.1 has deliberately committed violations before imposition of fine, after imposition of fine and even after taking notice by the Commission.

8. Mr. Adil Kahlon, Legal Consultant, Election Commission has invited attention of the Commission towards sections 3, 4, 15 and 234 of the Elections Act, 2017. Section 3 empowers Election Commission to regulate its own procedure in respect of performance of its duties, functions and exercise of powers. Section 4 contains powers of the Commission to issue directions necessary for the performance of its duties and functions including an order for doing





complete justice in any matter pending before it and any such direction or order is enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court. The learned Legal Consultant has emphasized on sub-section (4) of section 15 of the Act *ibid* to substantiate that the Election Commission on its own accord can take action against the violation of the Code of Conduct irrespective of any complaint. In order to clarify the position, he refers to sub-section (3) of section 234 of the Act *ibid* and submits that word 'report' mentioned in the said section does not refer to/mean a written report and report of violation can be through any medium. Lastly, he submits that the DMO concerned has fulfilled all the ingredients of a summary enquiry which do not call for any interference as the action of the DMO could be impugned only through an appeal in terms of section 234(5) of the Act *ibid*, which stage is over now and matter has been referred to the Commission for action under section 234(4) of the Act *ibid*. There is a lot of difference between summary enquiry and summary trial and counsel's arguments to that extent are misconceived. s



9. We have heard the arguments of the parties and perused all the record. Under Article 218(3) of the Constitution of Islamic Republic of Pakistan, this Commission is under constitutional obligation to conduct elections fairly, honestly and justly and in accordance with law and that corrupt practices are guarded against. Such duty is not confined to conducting the elections itself but also to make all necessary arrangements prior to the Election Day. Such principles in detail are enumerated in a famous judgment of the august Supreme Court reported as **PLD 2012 Supreme Court 681 "Workers' Party Pakistan VS Federation of Pakistan and 2 others"**. In this case the august Supreme Court was pleased to elaborate Article 218(3) of the Constitution and powers and duties of the Election Commission in the following terms: -

"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.



42. The Parliament has framed different laws to effectuate the above constitutional provision and to regulate elections to the National and Provincial Assemblies. ROPA reiterates and further vests the Election Commission with the responsibilities and powers to, inter alia, regulate and check intra-party affairs and actions taken by candidates and parties in anticipation of and on Election Day, resolve all election disputes, declare the election void and to award punishments for violating relevant election laws. In



appreciation of the arduousness of its task, section 5(2) of ROPA further empowers the Election Commission to "require any person or authority to perform such functions or render such assistance for the purposes of this Act as...it may direct". The Election Commission may, under section 103(c) of ROPA also "issue such instructions and exercise such powers, and make such consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provisions of this Act and the rules". Article 220 of the Constitution also directs the Federal and Provincial machinery to assist the Election Commission in fulfilling its constitutional responsibilities. The law, therefore, entrusts the Election Commission with exclusive, broad and extensive powers to attend to all issues related directly and ancillary to the election process.



43. Article 218(3) also empowers the Election Commission to ensure that the election process does not suffer from any corrupt and/or illegal practices. Sections 78, 79, 80, 80-A, 81 and 83 of ROPA comprehensively define the terms "corrupt practices" and "illegal practices". ROPA in sections 82, 99 and 100 further elaborates the consequences of such practices and enunciate that the same form a sufficient basis for the Election Commission to, inter alia, imprison, fine and disqualify those who violate them. These provisions, therefore, subsume all those impugned activities as cognizable by the Election Commission. Similarly, Section 103(a) of ROPA instructs the Election Commission to ensure a "fair election". In doing so it implies that "large scale malpractices including coercion, intimidation and pressures, prevailing at the election" would negate the 'fairness' elections are to embody. While sections 78, 79, 80, 80-A, 81 and 83 specify activities that the Election Commission can regulate and check under Article 218(3), section 103(a), substantially enhances this defined spectrum of cognizable activities and reinforces the obligation to check them. In section 103(c) section it empowers the Election Commission to issue instructions, exercise its powers and make orders to effectuate the said standard."

10. This would invariably include level playing field to all the contesting candidates. For this purpose, the legislature has introduced section 233 of the Elections Act, 2017, which speaks about the code of conduct. As per the Act, the code of conduct is framed after consultation with the political parties just to ensure that equal opportunity and level playing field is provided to all the political parties and their candidates. Section 234 states that Election Commission shall



constitute monitoring teams to monitor elections campaigns and decide any complaints regarding violation by a candidate or a political party. Furthermore, penal provision for violation is provided in section 234(3) & (4). The importance of the code of conduct can be seen from the fact, that the law even goes further in stating that if the violation by a candidate or a political party is repeated for the second time, the Commission is given the power to disqualify the violating candidate.

11. We have carefully examined the entire record and notices issued to the respondent No. 1 as well as the order imposing penalty on the respondent No. 1. The allegations against the respondent No.1 in respect of violation of Code of Conduct are established from the available record as well as from the fact that order of imposition of penalty dated 09.12.2021, was implemented by him without any protest and without availing remedy of appeal before this Commission in terms of section 234(5) of the Elections Act, 2017. The order of the DMO thus has attained finality. The respondent No. 1 had clearly violated the directions and the Code of Conduct issued prior to the elections on 19.12.2021, for which his real brother Mr. Umar Amin Gandapur was a contesting candidate upon which the subject fine was imposed. He for the election campaign of his brother again and again violated the Code of Conduct and before conduct of election on 19.12.2021. The election to be held on 19.12.2021 in DI Khan district was postponed on account of death of a contesting candidate and was rescheduled for 13.02.2022. During this period, the record reveals that he has been participating in a number of public meetings, addressing public gathering canvassing for the candidates of his political party alongwith his brother contesting for the mayor's slot. The respondent No.1 till date has not denied the allegations of his participation in the election campaigns and addressing to the rallies, public gatherings and announcement of development scheme in violation of section 181 of the Elections Act, 2017 and the Code of Conduct. There is also no denial on part of the respondent No. 2 in this regard. The respondent No.1 even after imposition of penalty by the DMO and even after taking notice by the Commission has been violating the Code of Conduct.

12. From the available record, it seems that Respondent No.1, Mr Ali Amin Gundapur, has completely disregarded the aforementioned provisions of law and directions of this Commission and continued campaigning for his brother, Respondent No.2. The video clippings, pictures and material available on social media and obtained by the Commission from Pakistan Electronic Media Regulatory Authority (PEMRA), Islamabad clearly show the Respondent No.1 addressing public gathering and meeting. Furthermore, he completely ignored his covid positive report and





is making lives of the people around him in danger. Therefore, it makes it abundantly clear that Respondent No.1 has committed violations of the code of conduct and direction of this Commission.

13. In terms of section 234(4) of the Elections Act, 2017, reproduced hereunder, this Commission is fully empowered to initiate proceedings against the candidates violating the Code of Conduct in case of violation by the Political party against its candidate: -

“4. If the nominated officer after summary enquiry finds a candidate or a political party guilty of violation of the Act or the Rules for the second time, he shall refer the matter to the Commission for initiation of proceedings against such candidate or political party under the law, including proceedings for disqualification of the said candidate and in case of the political party, its candidate.”

14. Moreover, sub-section (c) of section 8 of the Act *ibid*, gives following powers to this Commission: -

“(c). issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of this Act and the Rules.”

15. From the available record and in the facts and circumstances of the case, we have no hesitation to hold that Mr. Ali Amin Gandapur, being a public office holder, has participated in the election campaign of his brother Umar Amin Gandapur, contesting candidate for seat of Mayor, DI Khan, addressed the public meetings, corner meetings and public rallies and has canvassed for the candidates in contest belonging to his political party in clear violation of the directions of this Commission and the Code of Conduct, more than once. Therefore, this Commission, in exercise of its powers under Article 218(3), read with sections 3, 4, 8(c) and 234(4) of the Elections Act, 2017, orders the following:-

- a) Mr. Ali Amin Gandapur is restrained from attending the public rallies, meetings and addressing the same in violation of the Code of Conduct and the directions of the Commission till culmination of the election process in Khyber Pakhtunkhwa and in case of violation strict action under the law shall be taken against him. However, he is allowed to enter DI Khan district for attending the family ceremony with a direction to abide by the Code of Conduct of local government





elections and not to interfere in any manner in the conduct of elections in a free and fair manner.

- b) The respondent No.2, Mr. Umar Amin Gandapur, contesting candidate for the seat of city Mayor, DI Khan is declared disqualified to contest the elections;

16. With the above observations and directions, these proceedings as well the complaint stands disposed of. Office to take follow-up action accordingly.

(Sikandar Sultan Raja)  
Chairman

(Israr Ahmed Durani)  
Member

(Shah Muhammad Jatoi)  
Member

Announced on 07.02.2022

