

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MOHAMMAD JATOI, MEMBER

Case No. 23(45)/2021-Law

In Ref: SNATCHING OF BALLOT PAPERS FROM POLLING STATION GPS GARHI
HIDAYAT GT ROAD OF VILLAGE/NEIGHBOURHOOD COUNCIL AFRIDI
GARHI-1

ON NOTICE

- 1) Ms. Gul Bano, Returning Officer, Tehsil City, ADC, Peshawar.
- 2) Mr. Daud Khan, Returning Officer No.8, Peshawar
- 3) SSP Investigations, Peshawar
- 4) SSP (Operations), Peshawar
- 5) SP, Peshawar
- 6) Mr. Zahid Alam, DSP, PS, Gulbahar, Peshawar
- 7) Mr. Ashfaq, Ex-SHO, PS, Gulbahar, Peshawar
- 8) Mr. Saeed Ahmed Khan, REC/DMO, Peshawar
- 9) Syed Zahoor Shah, DEC, Peshawar
- 10) Mr. Rehman Gul, Presiding Officer, Polling Station No.GPS Garhi Hidayat, Peshawar
- 11) Mr. Zeeshan, Contesting Candidate for the seat of General Councilor, Village/Neighbourhood Council Afridi Garhi-I (Neighbourhood Council-01) Peshawar

Respondents

For the Respondents No.1-10 : In person

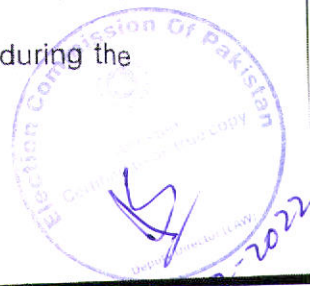
For Respondent No.11 : Obaid Ullah Riaz, Advocate
a/w respondent in person

For Inquiry Committee ECP : Mr. Zafar Iqbal Hussain, Chairman
Mr. Khurram Shehzad, Member
Mr. Waqas Ahmed Malik, Member

Date of Hearings : 21-12-2021, 03-01-2022, 04-01-2022,
12-01-2022 & 20-01-2022

ORDER

Nisar Ahmed Durrani, Member.— The instant matter pertains to the male polling station, Government Primary School Garhi Hidayat GT Road, Neighbourhood Council-1 Afridi Garhi, Peshawar where law and order situation deteriorated during the counting process of election for the seat of Mayor and General Councilor.

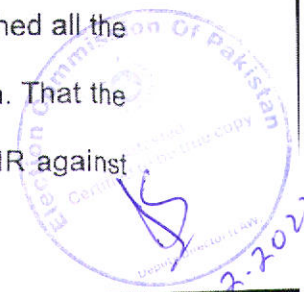


2. Ms. Gul Bano, Returning Officer, Tehsil City/ ADC Peshawar submitted her report to the Commission wherein she stated that, on polling day when election process was about to end, some unknown persons entered the polling station, opened fire, snatched all the polling materials including ballot papers and rushed outside the polling station. She directed Mr. Daud Khan, Returning Officer No. 08 to lodge an FIR against the culprits and report the matter to the District Returning Officer.
3. The instant matter was placed before this Commission on 21.12.2021 with the directions to the respondents for their appearance before the Commission along with their comprehensive reports. A fact finding Inquiry Committee comprising Mr. Zafar Iqbal Hussain, Special Secretary, Mr. Khurram Shahzad, ADG (Law) and Mr. Waqas Ahmad Malik, DEC, Islamabad was constituted vide ECP order No.F.16(1)/2021-LGE (KP), dated 23rd December, 2021 for probing and ascertaining the facts of incident, which took place at polling station Government Primary School Garhi Hidayat PS No. 2 G.T. Road Neighbourhood Council-01 Afridi Garhi Peshawar for the category of General Seat and seat of Mayor after close of poll to submit the report to the Commission within 7 days.
4. Respondents No. 1 to 10 appeared before the Commission and submitted their replies. Mr. Daud Khan, Returning Officer-8 stated in his report that at the end of the polling, Presiding Officer Rehman Gul and polling staff deputed at polling station GPS Garhi Hidayat G.T Road (Male) Peshawar (Neighbourhood Council-01 Afridi Garhi) completed the counting the votes, whereafter, the Presiding Officer contacted him on telephone and said that some unknown persons broke the door, started firing and then snatched all the ballot papers placed in packets and other documents of Presiding Officer. That Returning Officer directly contacted Tehsil Returning Officer Ms. Gul Bano and Superintendent of Police was also contacted to deploy a heavy contingency of



Police so as to rescue the worst situation at polling station, whereafter a heavy contingent of Police reached at the polling station. He further stated that as per statement of Presiding Officer, Kamran Khan, highest votes taking candidate along with other persons demanded result from him and threatened that they would not let him leave from polling station until he provided the result. That Presiding Officer called the polling agents to come back to the polling station. That few of them came back and the Presiding Officer prepared a result from rough data available with polling agents and hence the Presiding Officer prepared a result after tallying with available data with various polling agents on Form-17 for the category of General seat only by taking sign from the polling agents. That for the counting of Mayor seat, ballot papers were not completely available, not tallied among the polling agents and recovery of incomplete packets. He said that he directed the Presiding Officer to lodge FIR against the accused, who attacked the polling station, which was subsequently done vide FIR No. 1180, dated 19.12.2021 at Police Station Gulbahar, Peshawar. He has further stated that Presiding Officer came to his Office and submitted the situation report along with the remaining materials. He was asked by the Commission whether he has also lodged any complaint with the Police regarding the incident to which ^{he} informed that he has also submitted application to the Police Station and second FIR has also been lodged against the accused.

5. Mr. Saeed Ahmed Khan, Regional Election Commissioner/DMO, Peshawar in his reply has stated that at about 8:00 PM, Engr. Dawood, Returning Officer brought to his notice that Presiding Officer Rehman Gul, informed him that on a male polling station No.2 Afridi Garhi/Garhi Hidayat, the election process was about to complete, when some unknown persons entered into the polling station and opened fire, snatched all the polling record, ballot papers, documents and rushed outside the polling station. That the Returning Officer was asked to report the matter to his DRO and lodge an FIR against



the persons and report the matter to the Election Commission for re-poll on said polling station. That Returning Officer accordingly lodged the FIR. Regional Election Commissioner further stated that result of Tehsil Mayor was not announced as the ballot papers for the said category were not counted being snatched.

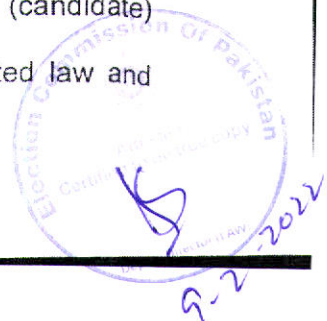
6. Mr. Rehman Gul, Presiding Officer GPS Garhi Hidayat G.T. Road Neighbourhood Council-01 Afridi Garhi has appeared and endorsed that the election process was at the end, counting was completed, Mr. Masood Khan, ASI in charge on the polling station took photo of the result informed the staff. He further stated that probably the loser candidate and his polling agents and some other persons broke the door and started firing. They snatched all the record including ballot papers placed in packets and other documents of his data taken during counting. Later on he contacted CPO police office for security and heavy contingent of police came to the polling station so as to rescue him and staff. He further stated that Kamran Khan, highest votes taking candidate along with other persons told him to handover the result or otherwise they would not let him leave the polling station. He asked polling agents to come back so that he could prepare a result on Form-17 without Ballot papers. That few of the polling agents came back and he tallied the data counted by various polling agents available with them. That he prepared a rough result tallied with data available with polling agents and took signs from the polling agents. He has further stated that Women, Peasant and Youth categories were elected unopposed and for Minority seat no nomination papers were filed. He further stated that for the counting of Mayor, ballot papers were not completely available, not tallied among the polling agents and incomplete recovery of packets, therefore he was unable to prepare the result of the Mayor seat. He has further stated that he lodged FIR No. 1180 on 19.12.2021, registered with Police Station Gulbahar, Peshawar on the spot as directed by RO-8 and Tehsil RO.



7. Mr. Kamran Khan, contesting candidate for the seat of General Councilor appeared and has stated that after the close of poll the Presiding Officer announced the result in presence of all agents and provided Form-17 wherein he was declared as returned candidate and police constable announced the result outside the polling station, thereafter the crowd forcibly entered the Polling Station and snatched the polling record. That after intervention of police officers, ballot papers were returned to the Presiding Officer. He has further stated that a video clip of delivery of Form-17 is available. He has prayed that official result of Polling Station No.2, Government Primary School Afridi Garhi of Neighbourhood Council-01 may be announced.

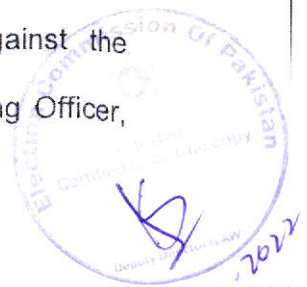
8. Senior Superintendent of Police (Investigation), Peshawar has submitted his report, dated 03.01.2021, which is placed on record. According to the reports some unknown person (symbol "Hanger") entered into the polling station by breaking the door and started firing. They snatched all the records including ballot papers and took it away with them outside the polling station. He further stated in his report that Zeeshan s/o Ibrahim contesting candidate (symbol Hanger), Hussnain Ali s/o Ali Haider Poling Agent (symbol Hanger), Raheel S/o Ibrahim Poling Agent (symbol Hanger) have been nominated as accused alongwith persons in the FIR No. 1180 dated 19.12.2021 registered with Police Station Gulbahar, Peshawar. That Mobile and Memory Card of Masood Khan, ASI (Duty on the Polling Station) was taken into the Police custody. Statements of polling staff including Security Personnel were recorded.

9. SSP Operation, Peshawar has submitted his report, dated 10.01.2022, which is placed on record. It has been stated in the report that on 19.12.2021 after completion of voting process in Government Primary School Garhi Hidayat Gulshan Colony and during counting, an incident took place in which accused Malik Zeeshan (candidate) along with supporters entered in the above said polling station and created law and



order situation. That they also insulted the Presiding Officers and Police personnel. That in order to tackle the situation, ASI Masood Khan called Peshawar emergency control for additional police force. That accused Malik Zeeshan and his supporters took advantage from the crowd and fled away. That an FIR has been registered vide FIR No.1480, dated 20.12.2021 under sections 506, 427 PPC and 196 of Elections Act, 2017 at Police Station Gulbahar against accused Malik Zeeshan, Hussain Ali, Raheel, Malik Murad, Abdul Nasir, Mehnaz, Nauman, Kashif, Hasnain Ali, Abdul Basit and investigation has been started. That Show Cause Notice was issued to the alleged official ASI Masood Khan Patty No.494 for his incompetence and showing negligence on 20.12.2021. That in response ASI Masood Khan submitted his reply which was found unsatisfactory and proper inquiry is initiated against him.

10. Mr. Obaid Ullah Riaz, learned counsel for the Respondent No.11 (Zeeshan) appeared and has stated that Respondent came to know on 19.12.2021 late night that his opponent party quarreled with the supporters of answering respondent at the above mentioned polling station. That at the time of the above said incident, the respondent was not present and he was unaware about the incident. That the respondent was nominated in the FIR No.1480, dated 19.12.2021 u/s 427, 506 PPC and Section 196 Elections Act, 2017 registered at Police Station Gulbahar, Peshawar. Learned Counsel has further stated that respondent sought pre-arrest bail in the above said FIR lodged by Presiding Officer in which he maliciously nominated the respondent. That the inquiry of the Commission against respondent has been initiated because of his malicious nomination in above mentioned FIR which amount to the principle of double jeopardy and res sub-judice as per procedural and Constitutional laws of Pakistan. That respondent has already submitted his statement before the Inquiry Committee. That the fact finding inquiry report on captioned incident maliciously formed against the respondent in connivance with the opponent contesting candidate, Returning Officer,



Presiding Officer, Additional Deputy Commissioner, ASI, APOs, PO and DMO/REC to illegally indulge the respondent is denied being contained contradictory statements. Learned counsel has prayed that the inquiry report regarding above said incident may be rejected and re-poll may be announced on the above said captioned polling station and provide an opportunity to the respondent to exercise his democratic right o contest election in the best interest of democracy and justice.

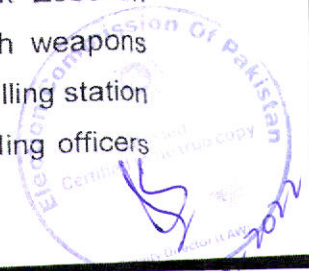
11. Mr. Zafar Iqbal Hussain, Special Secretary/Chairman Inquiry Committee appeared and apprised the Commission in detail about the findings of report and produced a USB containing the record of CCTV cameras installed on the polling stations. Contents of CCTV footage have been played on projector in the Court Room. The Inquiry Committee thoroughly probed the incidents and in its report submitted before us made following observations and recommendations:-

- i. The committee is of the view that the Commission may consider declaration of result to the extent of category of General councilor of polling station No.2 Government Primary School Garhi Hidayat whereas re-poll may be required at the polling station GPS Afridi Garhi to the extent of seat of Mayor City Peshawar because in the light of statement of presiding officer he could not complete the counting process to the extent of category of Mayor because record thereof was snatched by the culprits/accused.
- ii. Strict action is required to be taken against the accused persons nominated in the incident as clear and visible video is available about the commission of crime. In light of available footage police may need to cover all offences in the investigation.
- iii. The Hon'ble Commission may also lodge complaint against the culprits under section 190 of the Elections Act 2017."



12. We have heard the arguments of the parties and have minutely perused all the available record. The incident which took place on 19.12.2021 in the Constituency is admitted. An FIR No.1480, dated 20.12.2021 u/s 506/427/196/Election Act was registered at Police Station Gulbahar against accused Malik Zeeshan, Hussain Ali, Raheel, Malik Murad, Abdul Nasir, Menaz, Nu'an, Kashif, Abdul Basit, etc. We ascertain the following facts from the investigation so far made by the police in the subject matters, from the inquiry report, reports of District Returning Officer, Returning Officers, Regional Election Commission, Presiding Officer and available records:-

- 1) As per statements of Returning Officer, ASI, incharge of Police personnel at the polling station, Presiding Officer and candidate who obtained the highest number of votes against General Seat after completion of counting process, the result was announced and shared with the concerned polling agents. After that Police constable told the result outside the polling station, thereafter, unknown persons (Hanger Symbol) broke the door, entered into the polling station. They started firing and snatched all the polling material including ballot papers and rushed outside the polling station;
- 2) Accused Malik Zeeshan contesting candidate (Hanger Symbol) and his supporters took advantage of the crowd and fled away;
- 3) Presiding Officer, after completion of counting, announced the result for the category of General Councilor in presence of all agents and provided Form-17. Video supplied by Kamran Khan, highest votes taking candidate clearly shows that the agents are receiving results on Form-17;
- 4) Presiding Officer had lodged FIR No.1480, dated 20.12.2021 u/s 427/506 PPC and Section 196 Elections Act, 2017 registered at Police Station Gulbahar, Peshawar against unknown persons for firing and snatching all the polling material including ballot papers;
- 5) Mr. Masood Khan, ASI (Security Incharge) recorded his statement before the Inquiry Committee wherein he has stated that brother of Malik Zeeshan (Candidate), his cousin and other persons who were armed with weapons broke the main gate and started firing and then broke the gate of polling station and entered the room of Presiding Officers and insulted the presiding officers



as well as the police personnel. Due to less force, Police could not arrest the accused;

- 6) Mr. Kamran Khan, candidate submitted an application before the Inquiry Committee wherein he has stated that after close of poll, Presiding Officer after completion of counting announced the result in presence of all agents and provided Form-17. After that a police constable told the result outside the polling station. Upon that the crowd climbed ^{over} the wall and snatched the polling record. Later on due to intervention of Police Officers ballot papers were returned to the Presiding Officer. He also supplied a video clip for delivery of Form-17 He requested that official result of Polling station No.2 Government Primary School Afridi Garhi of Neighbourhood Council-01 may be announced;
- 7) Police investigation report, dated 03.01.2021 shows that 9 accused were nominated in the above said FIR including Zeeshan contesting candidate (symbol Hanger), Hussnain Ali Poling Agent (symbol Hanger), Raheel Poling Agent (symbol Hanger) along with three security personnel;
- 8) The result of Tehsil Mayor was not announced as the ballot papers for the said category were not counted being snatched/misplaced and there are 1970 Male voters at Polling Station GPS Garhi Hidayat G.T. Road Neighbourhood Council-01 Afridi Garhi;
- 9) Police personnel were not deployed as per the strength shown in the contingency plan; and
- 10) Frontier constabulary was not deployed at the Polling stations as per assurance given to the Election Commission.

13. From the perusal of above mentioned facts available on record it is clear that Zeeshan (Respondent No.11), and other accused were involved in the above said incidents of snatching of polling material which squarely falls within the definition of corrupt practices as provided in Chapter-X of the Elections Act, 2017.



14. Under Article 140(A)(2) & 219(d) of the Constitution of Islamic Republic of Pakistan and section 219(4) of the Elections Act, 2017, it is the fundamental duty of the Election Commission to conduct the election to the local governments institutions within one hundred and twenty days of the expiry of the term of the local governments of a Province. Under Article 218(3) of the Constitution, it is also duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against. The Chapter-X of the Elections Act, 2017, prescribes certain punishments for the offences of such corrupt practices. The relevant provisions from Chapter-X governing the instant matter are reproduced as under:-

Section 167 of the Elections Act, 2017

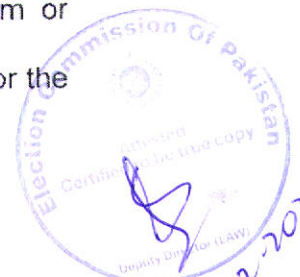
"167. Corrupt practice.— A person is guilty of the offence of corrupt practice if he—

- (a) is guilty of bribery, personation, exercising undue influence, capturing of polling station or polling booth, tampering with papers, and making or publishing a false statement or declaration;
- (b) calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, bradari, sect or tribe;
- (c) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting; or
- (d) contravenes the provisions of section 132."

Section 170 of the Elections Act, 2017

"170. Undue influence.— A person is guilty of exercising undue influence if he—

- (a) in order to induce or compel any person to vote or refrain from voting, or to offer himself as a candidate, or to withdraw his candidature or retire from the contest, at an election, directly or indirectly, by himself or by any other person on his behalf—
 - i) makes or threatens to make use of any force, violence or restraint;
 - ii) inflicts or threatens to inflict any injury, damage, harm or loss;
 - iii) calls down or threatens to call down divine displeasure or the displeasure or disapprobation of any saint or pir;
 - iv) gives or threatens to give any religious sentence;



- v) uses or threatens to use any official influence or governmental patronage;
 - vi) maligns the Armed Forces of Pakistan; or
 - vii) prevents any woman from contesting an election or exercising her right to vote.
- (b) on account of any person having voted or refrained from voting, or having offered himself as a candidate, or having withdrawn his candidature or having retired, does any of the acts specified in clause (a).
- (c) directly or indirectly, by himself or by any other person on his behalf—
- i) uses any place of religious worship, or any place reserved for the performance of religious rites, for the purpose of canvassing for the votes or not to vote at an election or for a particular candidate; or
 - ii) for any of the purposes specified in sub-clause (i) by words, spoken or written, or by signs or visible representation, publishes anything or does any act prejudicial to the glory of Islam or the integrity, security or defence of Pakistan or any part of Pakistan; or
- (d) by abduction, duress or any fraudulent device or contrivance—
- i) impedes or prevents the free exercise of the franchise by a voter; or
 - ii) compels, induces or prevails upon any voter to vote or refrain from voting.

Explanation.—In this section, —harmll includes social ostracism or excommunication or expulsion from any caste or community.

Section 171 of the Elections Act, 2017.

"171. **Capturing a polling station or polling booth.**—A person is guilty of capturing a polling station or polling booth if he—

- (a) seizes a polling station or a polling booth or a place fixed for the poll or makes polling authorities surrender the ballot papers or ballot box or both and does any other act which affects the orderly conduct of elections;
- (b) takes possession of a polling station or a polling booth or a place fixed for the poll and allows his supporters to exercise their right to vote while preventing others from free exercise of their right to vote;
- (c) coerces, intimidates or threatens, directly or indirectly, any voter and prevents him from going to the polling station or a place fixed for the poll to cast his vote; or
- (d) being in the service of any Government or corporation or institution controlled by the Government, commits all or any of the aforesaid activities or aids or connives in, any such activity in furtherance of the prospects of the election of a candidate."

Section 174 of the Elections Act, 2017.



"174. Penalty for corrupt practice.—Any person guilty of the offence of corrupt practice shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one hundred thousand rupees or with both."

Section 175 of the Elections Act, 2017.

"175. Illegal practice.—A person is guilty of the offence of illegal practice if he—

- (a) is guilty of disorderly conduct near a polling station, canvassing in or near a polling station, interferes with the secrecy of voting, or adversely affects the interests of a candidate;
- (b) obtains or procures, or attempts to obtain or procure, the assistance of any person in the service of Pakistan to further or hinder the election of a candidate;
- (c) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for, or is disqualified from, voting;
- (d) votes or applies for a ballot paper for voting more than once in the same polling station;
- (e) votes or applies for a ballot paper for voting in more than one polling station for the same election;
- (f) removes a ballot paper from a polling station during the poll;
- (g) violates restrictions on publicity laid down in section 180 or restrictions on announcement of development schemes under section 181;
- (h) violates prohibition on public meetings during a certain period as provided in section 182;
- (i) fails to comply with section 134 relating to election expenses;
- (j) carries or displays any kind of weapon or fire arm in a public meeting or procession during campaign period, on the poll day and till twenty four hours after the announcement of the official results by the Returning Officer;
- (k) resorts to aerial firing or uses firecrackers and other explosives at public meetings or in or near a polling station; or
- (l) resorts to violence in any form or manner against an election official or any other person officially deputed to work at a polling station.

Explanation.—The word —weapon used in clause (j) includes a danda, lathi, knife, axe or any other thing which can be used as a weapon to inflict injury to a person.

15. Similarly, the relevant provisions of other applicable laws/Rules are also reproduced hereunder for ease of reference:-

Rule 4 of the KPK Local Government (Conduct of Elections) Rules 2021

"Rule-4 Procedure of the Commission.— The Commission shall regulate its business and procedure in all matters relating to and connected with the elections in accordance with Elections Act, the Act and rules made thereunder."



Rule 8 of the KPK Local Government (Conduct of Elections) Rules 2021

"Rule-8 Power of the Commission to ensure fair election.— Save as otherwise provided, the Commission may:-

- (a) stop the polls at one or more polling stations at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election;
- (b) review an order passed by an officer under the Act or these rules including rejection of a ballot paper; and
- (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 the Act, Elections Act and these rules."

[Emphasis added]

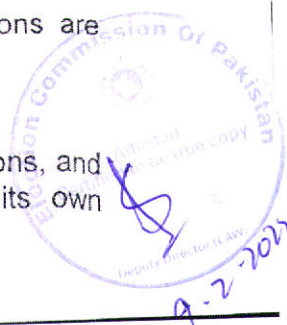
16. From the plain reading of the above provisions of law, it is abundant clear that Commission has ample powers to stop the polls at one or more polling stations at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election.

17. Clause (3) of Article 218 of the Constitution of Pakistan mandates the Election Commission to hold the elections and to make arrangements for free, fair and transparent elections in the following terms:-

sed
"It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against."

18. Further, sections 3, 4 and 8 (c) of the Elections Act, 2017, empower the Election Commission to regulate its own procedure and issue such orders as are necessary for ensurance of free, fair and transparent elections. These sections are reproduced hereunder:-

"3. Procedure of the Commission.—(1) In the performance of its functions, and duties and exercise of its powers, the Commission shall regulate its own



procedure.

4. Power to issue directions.—(1) The Commission shall have the power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order for doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.

(3) Anything required to be done for carrying out the purposes of this Act, for which no provision or no sufficient provision exists, shall be done by such authority and in such manner as the Commission may direct.

8. Power of Commission to ensure fair election.—Save as otherwise provided, the Commission may—

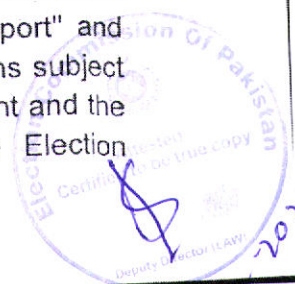
(a)

(b)

(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.

19. The august Supreme Court in a land mark judgment reported as **PLD 2012 Supreme Court 681 "Workers' Party Pakistan Vs. Federation of Pakistan and 2 others"**, defined the 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 "(generally 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

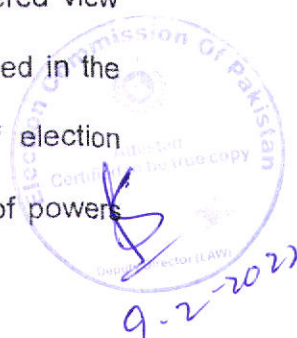


Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein."

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.

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."

20. Keeping in view the above investigation made by the Police, video footages and the inquiry conducted by the Committee, we are of the considered view that Malik Zeeshan, Respondent No.11 along with other accused were involved in the abovementioned incidents of attacking the polling stations, snatching of election material, harassing and threatening the polling staff. Therefore, in exercise of powers



under Article 218(3) of the Constitution read with sections 3, 4 and 8(c) of the Elections Act, 2017, and deriving strength from the judgment of the august Supreme Court *supra*, we hold and direct as under:-

- a. Result for the seat of General Councilor of polling station No. 2 Government Primary School Garhi Hidayat shall be declared as the result was prepared and Form-XVII were provided to the polling agents before the snatching of polling material;
- b. Malik Zeeshan, who was a contesting candidate for the seat of General Councilor from the constituency Neighbourhood Council-01 Garhi Hidayat, Peshawar is disqualified for a period of five years and barred from contesting any election on account of involvement in the corrupt practices;
- c. Re-poll shall be held only for the category of Mayor at polling station No.2 Government Primary School Garhi Hidayat, Peshawar because counting process was not completed due to snatching of polling materials including ballot papers by the culprits/accused;
- d. The Provincial Election Commissioner, KPK is directed to file complaints of corrupt practices against Malik Zeeshan under the relevant provisions of the Elections Act, 2017, and the Pakistan Penal Code; and
- e. The Police is directed to investigate the case from all angles and arrest the remaining accused and make best efforts for better and effective criminal prosecution of the cases/FIRs registered in this matter to punish the accused involved in these crimes.

21. With the above observations and directions, the subject matter stands disposed of.

(Nasir Ahmad Durrani)
Member
(Shah Muhammad)
Member

Islamabad
the 20th January, 2022

