

ELECTION COMMISSION OF PAKISTAN

PRESENT:

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

Case No. 23(92)/2022-Law

In Ref: **APPEAL UNDER SECTION 234 OF THE ELECTIONS ACT, 2017**

Mr. Murad Saeed, Federal Minister for Communication, Islamic Republic of Pakistan

Vs.

District Monitoring Officer, Balamat, Khyber Pakhtunkhwa

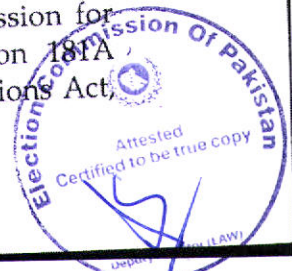
For the petitioner : Mr. Ali Gohar Durrani, Advocate High Court alongwith
Mr. Zarak Arif Shah, Advocate High Court

Date of Hearing : 01.04.2022

ORDER

Sikandar Sultan Raja, Chairman.- The present Appeal has been preferred by the appellant (a Federal Minister/sitting MNA) as a matter of right under section 234(5) of the Elections Act, 2017, against the order of the District Monitoring Officer, Lower Dir (DMO) dated 18.03.2022, whereby a fine amounting to Rs.50,000/- has been imposed upon him on account of violation of clause 16 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 the contesting candidate of his party by participation in the public gathering/jalsa on 11.03.2022 at Tehsil Balabat and has used state resources/government machinery.

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. He refers to section 234 of the Elections Act, 2017 and also explains the definition of a 'political party' to maintain that no notice of violation of the code of conduct has been issued to the political party and it has been issued to a public office holder. The provisions of section 234 are not violated as they are in respect of a political party or candidate and the appellant is not a candidate nor a political party. He further maintains that revised code of conduct framed after the promulgation of the Amendment Ordinance has not been published on the official website of the Election Commission. Under the provisions of section 234 of the Act *ibid*, action should be taken first against the political party and then the DMO has to refer the matter to this Commission for proceedings including for disqualification. He further states that section 181A (inserted through the Elections (Amendment) Ordinance, 2022) in the Elections Act,

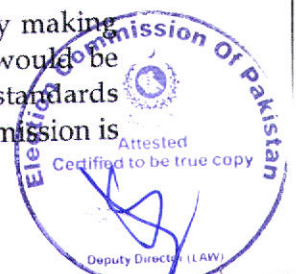


2017, allows the members of the Parliament to visit and address public meetings in any area or constituency during election campaign which is still in field and notice by the DMO as well as the present proceedings are in violation and negation of section 181A of the Elections Act, 2017.

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 our understanding has a direct impact on the standards of elections as envisaged 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 read 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



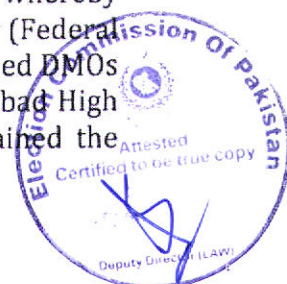
legally empowered under Article 218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Furthermore, *Mst. Qamar Sultana v. Public at Large* (1989 MLD 360) and *In Re: Complaint of Malpractices in Constituency No. NA-57, Sargodha-V* (*supra*) both reinforce the argument 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 a code of conduct for political parties, contesting candidates, election agents and polling agents in consultation with the political parties. The Election Commission after the promulgation of the Amendment Ordinance *supra* held consultative meeting with the major political parties and with their feedback, framed the revised 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 to 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. It is also observed by this Commission that Section 181A inserted through the Amendment Ordinance, 2022 has made Article 219 of the Constitution redundant which can never be an intention of the legislature.

5. The code of conduct and directions of this Commission are required to be implemented by all the concerned in letter and spirit. The clause 16(2) of the code of conduct allegedly violated by the respondent provides the following:-

"2. The public officer holders including president, prime minister, chairman, deputy chairman senate, speaker, deputy speaker of an Assembly, federal ministers, ministers of state, governors, chief ministers, provincial ministers and advisors to the prime minister, mayors/chairman/nazim, their deputies, shall not participate in any manner whatsoever."

6. The reliance of the respondent's counsel on Section 181A amended through the Amendment Ordinance is misconceived as after the promulgation of said ordinance, this Commission in consultation with the major political parties framed and revised the code of conduct on 10th March, 2022 and also passed an order to this effect. The order of this Commission dated 10.03.2022 remained unchallenged except through a Writ Petition No. 897/2022, titled "*Imran Khan, etc vs. Election Commission of Pakistan, etc*" whereby the petitioners (Mr. Imran Khan (Prime Minister of Pakistan and Mr. Asad Umar (Federal Minister for Planning) had challenged the notices issued to them by the concerned PMOs on account of violation of clause 16 of the code of conduct. The Hon'ble Islamabad High Court, cognizant of the said matter, vide order dated 28.03.2022, has restrained the



Election Commission only from passing any adverse order against those petitioners and no any other order or directions in general with regard to the effectiveness of the order of this Commission dated 10.03.2022, is in field.

7. As per the revised code of conduct, inter alia, a public office holder is also not allowed to participate in a public meeting/*Jalsa*/election campaign of a candidate and cannot use state resources. The appellant being a public office holder participated in the *Jalsa*/election campaign, which he has admitted before us. The appellant is a member of a political party in terms of section 2(28) of the Elections Act, 2017, and the revised code of conduct was framed by the Commission in consultation with all the heads of the political parties on 10.03.2022. The political parties are combination of citizens and are duty bound to obey the law and the command of the Constitution under Article 5 of the Constitution. The appellant is also member of the Federal Cabinet and represents party in the Parliament. This Commission under Article 218(3) of the Constitution as well as in compliance of directions of the august Court in Workers Party case referred supra, has to ensure free, fair and transparent by providing level playing field to all political parties.

8. We have perused the entire available record as well as the contents of the instant Appeal and are of the affirmed view that the appellant has violated clause 16(2) of 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 which is hereby upheld.

9. 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.

Sd/-
Sikandar Sultan Raja
Chairman

Sd/-
(Nisar Ahmed Durrani)
Member

Sd/-
(Shah Muhammad Jatoi)
Member

