

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI	MEMBER
MR. SHAH MUHAMMAD JATOI	MEMBER
MR. BABAR HASSAN BHARWANA	MEMBER
MR. JUSTICE (R) IKRAMULLAH KHAN	MEMBER

Case No. F. 23(231)/2022-Law

In ref: APPLICATION AGAINST RETURNING OFFICERS IN REGARDS TO THEIR STRICT ORAL INSTRUCTIONS FOR THE NOMINATION OF POLLING AGENTS.

Case No. F. 12(1)/2022-Law

PETITION OBJECTIONS REGARDING PROCESS OF ELECTORAL ROLLS REGISTRATION AND ITS REVISION.

Case No. F. 12(1)/2021-ER

APPLICATION FOR REDRESSAL OF GRIVANCES AS AGITATED BEFORE THIS COMMISSION THROUGH SEVERAL PETITIONS.

Omar Ayub Khan S/o Gohar Ayub Khan R/o House No. 320, Street No. 58,
Sector F-10/3, Islamabad ...Petitioner

For the Petitioner : Dr. Babar Awan, ASC

Date of Hearing : 15.7.2022

ORDER

Nisar Ahmed Durrani, Member.— Petitioner Mr. Omar Ayub Khan S/o Gohar Ayub Khan has submitted subject applications through Kazi Sheharyar Iqbal, Advocate Supreme Court against the oral instructions of the Returning Officers of 20 bye-elections in the province of Punjab regarding nomination / appointment of polling agents. He has prayed that appropriate instructions may be issued to the Returning Officers to allow polling agents from outside the constituencies in terms of section 77 of the Elections Act, 2017 "the Act".

2. The subject applications of Mr. Omar Ayub, petitioner were placed before the Commission for orders. The Commission decided to fix the same for hearing with notices to the petitioner.



3. The learned counsel for the petitioner Mr. Babar Awan, ASC while arguing in support of his applications submitted that the petitioner came to know that the Returning Officers of different constituencies of bye-elections of Punjab Assembly issued strict oral instructions to the candidates and their election agents that the polling agent appointed should belong to the same constituency. He submitted that such instructions are being issued without any clarification from the Election Commission which shows malafide on the part of the Returning Officers. He drew attention of the Commission towards section 77 of the Elections Act, 2017 "the Act" and submitted that the contesting candidate or his election agent may, before the commencement of or during the poll, appoint for each polling station as many polling agents as may be prescribed and shall give notice in writing to the Presiding Officer communicating the appointment. He contended that the appointment of a polling agent may at any time be revoked by the candidate or his election agent and, when it is so revoked or if the polling agent dies, another person may be appointed by the candidate or his polling agent and a notice of such appointment shall be given to the Presiding Officer. He argued that there is no embargo on the nomination and appointment of polling agent from outside the constituency. He contended that the oral instructions of the Returning Officers requiring the candidates or election agents to nominate the polling agents from the constituency is against the spirit of section 77 of the Act. He argued that no embargo can be placed by the Returning Officers on the nomination of polling agents and fair elections are the inviolable right of every citizen guaranteed by the Constitution and the sole purpose of the Election Commission is to protect that right. He further argued that the law does not place any bar on nomination of polling agents from outside the constituency as provided in section 77 of the Act, therefore, the oral instructions of the Returning Officers are coram no iudice and the same are liable to be set aside.

4. The counsel for the petitioner has also requested that the provincial Government may be restrained from announcing developmental schemes. Learned counsel for the petitioner further argued that a large number of voters have reported that they have been showed as dead person in preliminary Electoral Rolls while they are still alive. He further argued that the petitioner has been provided electoral roll which are altogether illegal, fake, forged and managed, no voters exist in the specified constituency but their names are showed as voter fake electoral rolls. He pointed out that the electoral rolls of PP-140 Sheikhpura, final electoral rolls, dated 20.5.2022 was after the announcement of election schedule which is violation of the election law. He further argued that the number of votes on 20.5.2022 were 2,239



whereas it increased on 22.9.2020 to 2,875. He submitted that the number further increased to 5,573 on 20.5.2022. He contended that this sudden increase is creating doubts on the transparency of bye-elections. He further contended that the officials of administration or acting on the instructions of the sitting government and are taking in the election campaign for example Deputy Commissioner, Rajanpur who is actively participating in the election campaign of PML (N) candidate which is the violation of Code of Conduct and provisions of section 187 of the Act. He further argued that the District Police Officer, Jhang Dr. Ghias Gill has been posted for pre-poll rigging. He contended that Sahibzada Muhammad Mehboob Sultan and Sahibzada Amir Sultan, MNAs belonging to PTI presented a privilege motion against the said District Police Officer and he holds grudge against the PTI. He also added that the PML (N) candidate Raja Sagheer Ahmed is offering bribes to the voters of the constituency which is violation of the Elections Act.

6. While concluding his arguments, he requested that as the law does not prohibit nomination of polling agents from outside the constituency, therefore, the oral instructions of the Returning Officers may be set aside and the candidates and election agents may be allowed to nominate polling agents from outside the constituency.

7. The arguments heard on behalf of the petitioner.

8. The Election Commission is a constitutional body constituted under Article 218 (2) of the Constitution of Islamic Republic of Pakistan "the Constitution". The Election Commission "the Commission" is charged with the duty 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 as envisaged in Article 218(3) of the Constitution. It is settled principle of interpretation of statutes that the statutes shall be read as a whole and no provision shall be read in isolation to place correct construction on any provision of the statute. Therefore, section 77 of the Act shall not be read in isolation. The section 77 is reproduced for ease of reference:

"77. Polling agent.—(1) The contesting candidate or his election agent may, before the commencement of or during the poll, appoint for each polling station as many polling agents as may be prescribed and shall give notice in writing to the Presiding Officer communicating the appointment.

(2) The appointment of a polling agent under sub-section (1) may at any time be revoked by the candidate or his election agent and, when it is so revoked or if the polling agent dies, another person may be appointed by the candidate.



or his election agent as a polling agent and a notice of such appointment shall be given to the Presiding Officer."

In order to understand the intention of the legislature, section 77 is required to be read with section 76 of the Act. According to section 76 of the Act, a candidate may appoint a voter in the constituency as his election agent and shall send to the Returning Officer a notice in writing of the appointment containing the name, father's name and address of the election agent. The section 76 is reproduced for herein under:

"76. Election agent.—(1) *A candidate may appoint a voter in the constituency as his election agent and shall send to the Returning Officer a notice in writing of the appointment containing the name, father's name and address of the election agent.*

(2) *The appointment of an election agent may, at any time be revoked in writing by the candidate and, when it is so revoked or if the election agent dies, the candidate may appoint another person as his election agent.*

(3) *Where a candidate has not appointed an election agent, the candidate shall be deemed to be his own election agent and shall, so far as the circumstances permit, be subject to the provisions of this Act both as a candidate and as an election agent."*

The rationale behind the appointment of polling agent is to identify the voters at the polling stations, check their particulars in the electoral rolls, safeguard against personation and to ensure the smooth conduct of poll. It is the right of the polling agent to object the identity of an voter and challenge it in terms of section 86 of the Act. In case, the nomination of polling agents is allowed from outside the constituency, the political parties, contesting candidates, election agents may bring polling agents from other constituencies, districts and provinces creating a number of complications. The nomination of polling agents from outside the constituency may create issues qua the identification of voters, challenging of voters on any ground including personation. It is the fundamental duty of the Commission to ensure free, fair and transparent election in terms of Article 218(3) of the Constitution. The section 8 of Elections Act also empowers the Commission to ensure fair election. Section 8 is reproduced for the sake of facility as under:

"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."

The august Supreme Court in the case of "Workers Party through Akhtar Hussain vs. Federation of Pakistan and two others" reported in PLD 2012 SC 681 while interpreting the connotations, honestly, justly and fairly has held that the 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. It has further been held in the same judgment that the Election Commission is fully empowered and is independent to do all that is necessary to fulfill its constitutional mandate and instruct that it do so. The section 77 requires that a polling agent may be appointed by the contesting candidate or his election agent. The election agent is required to be an voter in the constituency. The polling agent himself would be an voter in a constituency as envisaged in section 76 and he can appoint someone as polling agent from outside the constituency is not the spirit of section 77 and it appears to be a statutory void. The principles of interpretation require that when there is conflict between two provisions of law, it shall be reconciled in the first instance and if reconciliation is not possible, then the principles of harmonious and purposive interpretation shall be followed. Allowing nomination of polling agents from outside the constituency may have adverse effect on the standards of elections provided in Article 218(3) of the Constitution and interpreted by the august Supreme Court in the judgment *supra*. It is pertinent to note that the petitioners are neither candidates nor an election agents of any of the contesting candidates.

3d 8. With respect to the announcement of development schemes, the petitioner has not pointed out any particular development scheme. The Commission has already issued strict instructions which is part of the Code of Conduct that no developmental scheme shall be announced by any government functionary, elected representative including local government and the Commission has been taking action as and when such schemes are brought in to the notice of the Commission. The petitioner may pin point any developmental scheme and the Commission will pass the appropriate order in accordance with law.

9.

The Commission has already issued directions regarding ban on posting and transfers to the provincial government, however, if any violation of the



15-7-2024

directions is committed by the provincial government it shall be immediately reversed back.

10. The counsel for the petitioner has also pointed out the discrepancies regarding electoral roll / voter list issued by this Commission. Director (MIS) appeared before the Commission and submitted that according to section 25 of the Act, the process of updation of the electoral roll is carried out by the Registration Officer of upon the transmission of relevant data of every fresh identity card issued by NADRA to the Commission as a voter in electoral roll of the electoral area. No revision, correction or transfer of votes is permissible after the constituency is called upon to elect as envisaged in section 39 of the Act. The Director (MIS) further apprised the Commission that after the announcement of election schedule the electoral rolls were frozen and no alteration, addition, deletion or transfer can be made in it. In view of the statement of Director (MIS), the contention of the petitioner is devoid of force and the electoral rolls dated 20.5.2022 shall be used for the purpose ensuing bye-elections in the province of Punjab.

The upshot of the above discussion leads us to the conclusion that the Commission is competent to issue such instructions, exercise such powers and make such consequential orders as may in its opinion be necessary to meet the standards of honesty, justness and fairness as envisaged in Article 218(3) of the Constitution. Therefore, the Commission in exercise of powers under Article 218(3) of the Constitution read with section 8(c) of the Act and deriving wisdom from the judgment reported in PLD 2012 SC 681 "Workers Party vs. Federation of Pakistan and others" instructs all the Returning and Presiding Officers to ensure that the polling agents shall be an voter in the constituency concerned. The applications are disposed of in the above terms.

Sd
(Shah Muhammad Durrani)
Member

Sd
(Shah Muhammad Durrani)
Member

Sd
(Babar Hassan Bharwana)
Member

Sd
(Justice (R) Ikramullah Khan)
Member

Islamabad
the 15th July, 2022

