

**BEFORE THE ELECTION COMMISSION OF PAKISTAN****PRESENT:**

MR. SIKANDAR SULTAN RAJA  
MR. SHAH MUHAMMAD JATOI  
MR. JUSTICE (R) IKRAM ULLAH KHAN

CHAIRMAN  
MEMBER  
MEMBER

**Case No. 7 (166)/2024-LAW-III (GE)**

In Ref: **APPLICATION FOR RECOUNTING OF VOTES**

Aliya Hamza Malik, contesting candidate, NA-118 Lahore

**Petitioner**

**VERSUS**

- 1) The Returning Officer NA-118 Lahore
- 2) Muhammad Hamza Shehbaz Sharif, Returned candidate, NA-118 Lahore

**Respondents**

For the Petitioner : Raja Aamir Abbas, ASC  
a/w petitioner in person

For the Respondent No.2 : Syed Ali Raza Shah, Advocate  
a/w Syed Imran Arshad Gillani, Advocate

**Date of Hearing : 07.03.2024**

**ORDER**

**Shah Muhammad Jatoi, Member.**— Petitioner namely Aliya Hamza Malik contested the General Election held on 08.02.2024 for the seat of National Assembly from constituency NA-118 Lahore. As per Form-47 petitioner secured 100,803 votes where as his rival candidate namely Muhammad Hamza Shehbaz Sharif got 105,960 votes. There is a difference of 5,157 votes between winning and runner up candidates and 5,324 votes were rejected. By way of instant petition, petitioner has prayed for recounting of votes.



2. While arguing the case, learned counsel for the petitioner has contended that at the time of counting, from most of the polling stations, the polling agents of the petitioner were thrown out by the local police. That at the time of consolidation of result, the petitioner was not called by the Returning Officer rather only Form-49 was issued to the petitioner. That as per Form-49 petitioner obtained 100984 votes and the winning candidate namely Muhammad Hamza Shehbaz Sharif obtained 105,948 and the rejected votes are mentioned as 5,327. That the whole plan was managed by the Returning Officer and petitioner was not even given the complete Form-45 from all the polling stations. That petitioner moved an application for recounting of votes but no heard the lawful request of the petitioner. That against the biased conduct of the Returning Officer, the petitioner has no other adequate and efficacious remedy except to invoke the jurisdiction of this forum. Petitioner has submitted Civil Miscellaneous Application for placing on record additional documents pertaining to NA-118 Lahore wherein petition had sought recounting of the ballot papers / invalid votes under Section 95(6) of the Elections Act, 2017 and had sought for setting aside the consolidation proceedings conducting by the Returning Officer being ultra vires to the statutory provisions provided under Section 95(5) of the Elections Act, 2017 and Article 218(3) of the Constitution of the Islamic Republic of Pakistan 1973. Learned counsel for the petitioner has enclosed copies of Form-45 in the CM issued to the Petitioner's polling agents in support of his arguments. Learned counsel has referred/showed certain discrepancies carried out by the Respondent No.1 in Form-48 wherein on certain polling stations votes of respondent No.2 increased and petitioner's votes decreased as per Petitioner's Forms-45. He has also enclosed certain tweets of social media regarding detaining of polling agents of petitioner, rigging in General Elections 2024 against Aliya Hamza Malik, etc. Learned counsel has prayed that:-

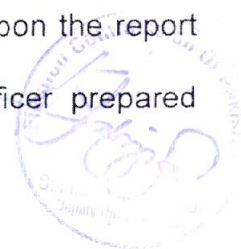




"In all above mentioned circumstances, it is prayed that the petition in hand may kindly be accepted and an appropriate order of recounting of the ballot papers / invalid votes under Section 95(6) of the Elections Act, 2017 may be passed upto the extent of NA-118 Lahore and setting aside the consolidation proceedings conducted by the Returning Officer being ultra vires to the statutory provisions provided under Section 95(5) of the Elections Act, 2017 and Article 218(3) of the Constitution of the Islamic Republic of Pakistan 1973."

3. Abdul Salam Arif, Returning Officer, NA-118 Lahore has sent his Report, which is placed on record. He has stated that the polls were conducted in the jurisdiction of 467 polling stations of constituency NA-118 Lahore-II on 08.02.2024 in a peaceful atmosphere and no complaint received from general public or any contesting candidate. That on receipt of results on prescribed Form-45 from all Presiding Officers, he has compiled the results on Form-47 and announced un-official result on 09.02.2024 whereby Muhammad Hamza Shahbaz Sharif was declared successful candidate on Form-47. That on compilation of record and taking in account of postal ballot papers, the consolidated result was prepared, announced and issued in the presence of petitioner on prescribed Forms-48 & 49. That the representative on behalf of petitioner Aliya Hamza Malik had also received and acknowledged the same. That all the process was carried out as per law in transparent way and no injustice was committed. He has prayed that petition is against the law, facts and circumstances of the case and all process was carried out in a transparent way.

4. Learned counsel for Respondent No.2 appeared and has relied upon the report submitted by the Returning Officer. He has stated that Returning Officer prepared

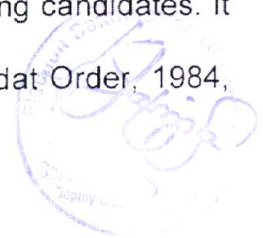


Form-47 on the basis of statement of count in Form-45 provided by the Presiding Officers. Returning Officer prepared Form-49 wherein respondent was declared as returned candidate and sent the results to the Commission for official Notification. That the alleged photocopies of Form-45, are inadmissible in evidence, and such copies could only be brought under consideration when compared with the authentic official record, saved and kept with Election Commission of Pakistan in sealed bags. That the general election, held on 08-02-2024 in NA-118 Lahore was highly transparent, impartial, just and honest and no complaint has been filed by the contesting candidates on polling day. That as per law Notification of the Respondent No.2 stands issued. That Election Tribunals have been constituted, therefore, any dispute requiring pro and contra evidence is to be resolved by way of availment of appropriate remedy before the Election Tribunal. Learned counsel for the Respondent has prayed that petition may be dismissed with costs in the interest of justice.

5. The Commission may presume that official acts have been regularly performed, keeping in view the clear report of the concern Returning Officer. Nobody was denied access thereto the proceeding of consolidation of result which carries presumption of truth unless and until rebutted by the petitioner in due course of inquiry/trial. While on other hand, no official acts be invalidated on ground of absence of a candidate at the occasion of performance of that particular act, in term of Section 235 at the Election Act, 2017 which reads as:-

*"35. **Absence of candidates not to invalidate acts.**—Where any act or thing is required or authorized by this Act to be done in the presence of the candidate, an election agent or a polling agent, the failure of such person to attend at the time and place fixed for the purpose shall not invalidate any act or thing otherwise validly done".*

6. Copies of notices, are issued by Returning Officer to all contesting candidates. It is settled principle of law in term of Article 119 of the Qanun-e-Shahadat Order, 1984,



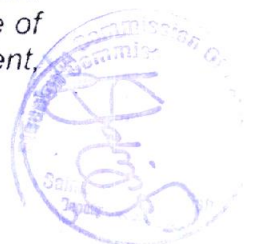


that Burdon of proof as to any particular fact lies on that person who wishes to believe in its existence unless it is provided by any law that proof of that fact shall lie on any particular person.

7. Herein, the petitioner has raised the question, that he was not allowed to participate in consolidation process while on other hand, Returning Officer; has denied this assertion, therefore, this disputed question of fact, could not be resolved by this Commission without permitting both the contesting parties to enter into the witness box to adduce their respective evidence in support of their assertions while this Commission could not legally authorize, to conduct full pledge trial, however, if any grave illegality is floating on surface of the record then may conduct a summary inquiry in term of Section 9 of the Elections Act, 2017 which in present case, is not ascertainable without full pledge trial, which is the exclusive jurisdiction of the Election Tribunal already constituted by this Commission in term of the provisions of Section 140 of the Elections Act, 2017.

8. Section 95 of the Elections Act, 2017 is clear that before commencement of proceedings of consolidations the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made to that effect by the contesting candidate or his election agent. Furthermore, the contesting candidate may also point out any irregularity or illegality before the Returning Officer. Section 95(5) of the Elections Act, 2017 is reproduced below for facility of reference:-

*"95. Consolidation of results.—(1) Immediately after announcement of provisional results, the Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place fixed for the consolidation of the results, and, in the presence of such of the contesting candidates and election agents as may be present,*



*consolidate in the prescribed manner the Results of the Count furnished by the Presiding Officers, including therein the postal ballots received by him before the time fixed for the consolidation of results.*

*(5) Before commencement of the proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made to that effect by a contesting candidate or his election agent and—*

*(a) the margin of victory between returned and runner up candidates is less than five percent of the total votes polled in the constituency or eight thousand votes in case of National Assembly constituency and four thousand votes in case of a Provincial Assembly constituency, as the case may be, whichever is less; or*

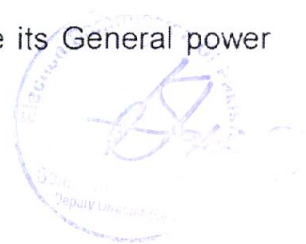
*(b) the number of votes excluded from the count by the Presiding Officer are equal to or more than the margin of victory;*

*[Provided that the Returning Officer shall recount only once.]*

*(6) The Commission may, before conclusion of the consolidation proceedings 1[and after notice to the contesting candidates], for reasons to be recorded, direct the Returning Officer to recount the ballot papers of one or more polling stations."*

9. As per report of the Returning Officer the petitioner did not file any application for recounting of votes. The application annexed with the petition for recounting of votes has no sign or stamp of the office of Returning Officer and petitioner has not produced any order of the Returning Officer for rejecting the recounting application.

10. No doubt in term of Article 218(3) of the constitution of Islamic Republic of Pakistan, this Commission has conferred with general power to adopt any mode for end of justice and similar power/jurisdiction also confer upon the Commission under the provision of Section 8 of the Elections Act, 2017, but both jurisdictions are restricted that Election Commission of Pakistan has to perform his function and exercise its power strictly in accordance with law and where a mode has specifically prescribed thereunder the enacted law of election, then the Commission may not exercise its General power

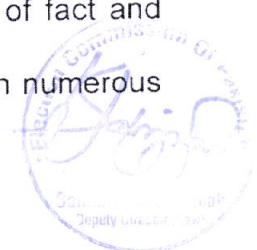




conferred upon it but is under legal obligations to take recourse to the prescribed law for the subject.

11. That the copies of forms-45 annexed hereto the petition are true copies of Forms-45 officially saved and received by the concern Returning Officer, from respective polling officer, while according to concern Returning Officer report, he has compiled and prepared Form-47 and subsequent Form-48 and 49, strictly therefrom Forms-45 received by him electronically and physically from the respective polling officers. As the process of consolidation in the subject constituency has been completed by the Returning Officer, therefore, this Commission has not any such jurisdiction in view of Section 95(6) to make any kind of such direction of re-counting, therefore, the prayer of petitioner in this regard is regretted. It is also mentioned that there is a slight difference between Section 92 and Section 95 of the Elections Act, 2017. Section 92 deals with the preparation of provisional result and section 95 deals with the final consolidation of result. There is no requirement under section 92 while preparation of provisional result on Form-47 for issuance of notice to the candidates or for their presence and the word "as may be present" is used however it is required and mandatory under section 95 of the Elections Act, 2017 which has been done by the Returning Officer.

12. We have heard the arguments of both parties, gone through the report submitted by the concerned Returning Officer and perused the record. We have also quite minutely examined all the allegations mentioned in the memo of petition. We are of the view that allegations raised and argued before us are disputed questions of fact and cannot be resolved except by recording of pro and contra evidence wherein numerous



witnesses need to be examined and cross examined. For this purposed Election Tribunals are constituted/appointed under Section 140 of the Elections Act, 2017 for trial and disposal of Election Petitions pertaining to the National / Provincial Assembly Constituencies for General Elections, 2024 and subsequent bye-elections. The petitioner may, if so desire, approach the Election Tribunal under Section 139 of the Act *ibid* by filing an Election Petition for the redressal of his grievances Accordingly, the petition filed by the petitioner is hereby dismissed.



**(Sikandar Sultan Raja)**

Chairman



**(Justice (R) Ikram Ullah Khan)**

Member

**(Shah Muhammad Jatoi)**  
Member

Islamabad  
the 7<sup>th</sup> March, 2024

