

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT

MR. SHAH MUHAMMAD JATOI, MEMBER
MR. BABAR HASSAN BHARWANA, MEMBER

Case No. F.6(63)/2023-Law-III

In ref: **ELECTION PETITION UNDER ELECTION ACT, 2017, SINDH LOCAL GOVERNMENT ACT 2013 AND THE SINDH LOCAL COUNCILS (ELECTIONS) RULES 2015, ALONG WITH ALL THE ENABLING PROVISIONS OF LAW.**

Essa Khan S/o Alibat Khan R/o House C-45, Intelligence Colony Sultanabad Keamari Karachi

...Petitioner

VERSUS

- 1) Returning Officer UC-07 Sultanabad, TMC Mauripur, Keamari Karachi
- 2) Ehsan ud Din, Candidate for Chairman UC-07, Sultanabad, TMC Mauripur R/o House E-374 Sultanabad Keamari, Karachi
- 3) Record Keeper, Election Commission, Keamari, Karachi

... Respondents

For the Petitioner	:	Mr. Hassan Javed, Advocate a/w petitioner in person
For the Returning Officer	:	Abdul Ghaffar Sheikh, RO
For the Presiding Officers	:	Muhammad Shoban, PO, PS # 3 Abdul Rasheed, PO, PS # 11
For the Returned Candidate	:	Mian Tassaduq Nadeem, Advocate
Date of Hearing	:	08.03.2023

ORDER

Shah Muhammad Jatoy, Member.— Instant matter before us is the outcome of Sindh Local Government Election (2nd Phase) held on 15.01.2023. Petitioner contested the election for the seat of Chairman from UC-07, TMC Mauripur, Keamari, Karachi. According to Form-XIV Petitioner secured 1890 votes whereas Respondent No.2 got 2808 votes. There is a difference of 918 votes between the winning and

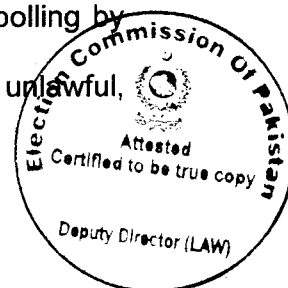


runner up candidates and 120 votes were rejected. Petitioner could not earn victory and being dissatisfied has filed instant petition.

2. Learned counsel for the petitioner contended that as per Forms XI issued by the Presiding Officers, petitioner attained 1900 votes while his rival candidates attained 1546. However after conclusion of counting proceedings by the Presiding Officers, the results were dramatically changed / tempered by the Returning Officer office and the number of votes secured by the petitioner were reduced to 1789 in Appendix-A and 1890 in Form-XIV. That the votes of respondent No.2 were increased to 2645 in Appendix-A and 2808 in Forms XIII and XIV. That the Returning Officer on the basis of malafide intentions and to favour the blue eyed candidate / respondent No.2 increased 1300 votes by changing / tempering the results of different polling stations. That according to comparison at PS # 3 (Habib Public School) votes of respondent No.2 were increased from 91 to 291, similarly at PS No.4 from 51 to 151, PS # 6 from 49 to 99, PS # 7 from 134 to 184, PS # 8 from 37 to 137, PS # 11 from 78 to 278, PS # 13 (Female) from 37 to 137, PS # 14 from 32 to 132 PS # 15 from 75 to 175 and Form-XI were tempered by the Returning Officer. That according to Form-XIII issued by the RO, the votes of petitioner were reduced and his clear victory was transformed into defeat. To examine the record by the Commission, he has suggested for verification of discrepancies in Form-XI only three Presiding Officers may be called in person. The detail of polling stations is as under:

- i) Polling Station No. 3, Habib Public School;
- ii) Polling Station No. 11, GGSS Intelligence Colony; and
- iii) Polling Station No. 14 Salt Lake Public School

3. Learned counsel has prayed that change of results at the close of polling by the Returning Officer in Appendix-A, Form-XIII and Form-XIV be declared unlawful,

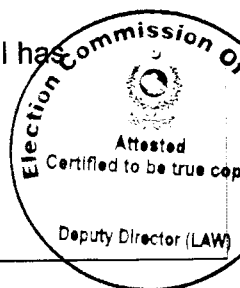


illegal, null and void ab initio. He has further prayed that petitioner may be declared as returned candidate as per the results issued by the Presiding Officers on Form-XI. He has further prayed that a direction for verification of the total, casted, rejected and obtained votes as per counter files, Form-XI, XII, XIII and XIV, Appendix-A may be issued. He has further prayed that proceedings on account of illegal / corrupt practices may be initiated against the Returning Officer and other responsible officials. He has prayed that official Notification of the returned candidate may not be issued till the final disposal of the petition.

4. For determination of controversy, Returning Officer and Presiding Officer were directed to appear in person along with their record for verification of the Form-XI.

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5. Mr. Abdul Ghafar Sheikh, Returning Officer, UC-07, TMC Mauripur, Keamari, Karachi appeared and submitted his reply, which is placed on record. He has denied all the allegations leveled by the petitioner being completely false and baseless. . That no recounting application from any side was received and no recounting has been done by him. That petitioner secured 1890 votes whereas respondent No.2 obtained 2808 votes as per Form-XIII and XIV. He has prayed that petition may be dismissed have not substance.

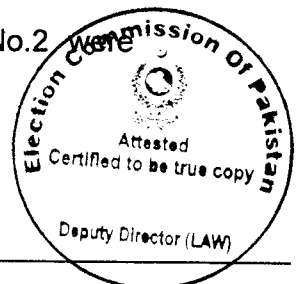
6. Learned counsel for the Respondent No.2 appeared and submitted his reply, which is placed on record. He has stated that the averments made in the instant petition and grounds relied upon by the petitioner along with annexure are vehemently denied. That the petition is not maintainable as the same is only entertained by the Election Tribunal at Karachi, which has been constituted vide Notification No.F.3(1)/2022-LGE. That the said petition is filed along with an affidavit of the petitioner for which evidence needs to be recorded and opportunity to cross the parties/witnesses should be given to the Respondent No.2. Learned counsel has



prayed that instant petition is liable to be dismissed or to be transferred to the relevant Election Tribunal at Karachi.

6. Muhammad Shoban, Presiding Officer Polling Station No.3 and Abdul Rasheed, Presiding Officer, Polling Station No.11 appeared and have submitted applications for cancellation of their non-bailable warrants as issued by the Commission vide order, dated 28.02.2023 after dismissal of their exemption applications. That applicants are Government Servants working at the operational site of KPT on port and there was no other replacement present hence they were not able to appear before this Commission without proper permission and alternative arrangements. That applicants now have appeared and surrendered before this Commission. That applicants are ready to submit any surety if so directed by this Commission for its satisfaction with the assurance to appear as and when directed in future. Applicants have prayed that non-bailable warrants issued against them may be cancelled in the interest of justice. Presiding Officers have submitted their verified copies of Form-XI, which are placed on record. Noor-us-Sabah, Presiding Officer Polling Station No.14 was exempted vide Order, dated 28.02.2023 by the Commission, however, she has sent her verified copy of Form-XI, which is placed on record. Both the Presiding Officers have confirmed that the copies of Form-XI attached with the petition are true and the copies attached by the Returning Officer with his reply are tampered.

7. We have physically compared/checked the Form-XI supplied by Returning Officer, Petitioner and Presiding Officers and found that on the Form-XI supplied by the Returning Officer at Polling Station No. 3 votes of respondent No.2 were

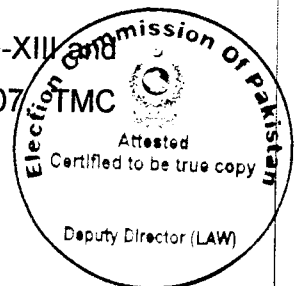


increased from 91 to 291 (2 added before 91), similarly at Polling Station No.11 votes were increased from 78 to 278 and (2 added before 78) at Polling Station No.14 votes were increased from 25 to 125 (1 added before 25) by tempering the Form-XI by the Returning Officer.

5. We have heard the submission in the light of available record. We have also perused the report of Returning Officer. We observed that copies of Form-XI & XII supplied by the Returning Officer were tempered. The Presiding Officers have also confirmed this fact that copies of Form-XI & XII supplied by the Returning Officer are tempered. We are of the considered view that Returning Officer is involved in illegal/corrupt practice by tempering in Form-XI & XII. From perusal of the record, *prima facie* case has been made out for the intervention of this Commission. Returning Officer committed grave illegalities by gross violation of the provision of the Act and the rules. Attention is invited to Article 218 (3) of the Constitution of Islamic Republic of Pakistan, 1973 which is further elaborated by the august Supreme Court of Pakistan in number of cases. Reference is made to case PLD 2012 SC 681 (Workers Party Pakistan Vs. Federation of Pakistan etc). Now the foremost and expressive question arises for determination is that which Forms XI & XII are correct/true and which are incorrect/bogus. Admittedly during the course of arguments it was *prima facie* found that result has been changed/manipulated by increasing votes of Respondent No.2 as discussed above. We accept the apology of the Presiding Officers and withdraw non-bailable arrest warrant with the directions to be careful in future and shall appear as and when directed by the Commission.

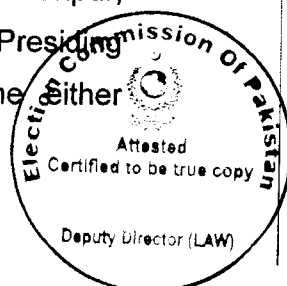
11. In view of above said facts, circumstances and in the interest of justice, we are unanimous passed the following orders:

- i) Result prepared by the Returning Officer on Appendix-A, Form-XIII and Form-XIV for the seat of Chairman / Vice Chairman UC-07



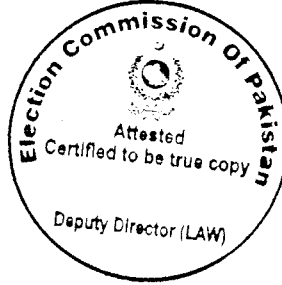
Mauripur, Keamari, Karachi is declared unlawful, illegal, null and void ab initio;

- ii) Since the conduct of Abdul Ghaffar Sheikh, Returning Officer for the seat of Chairman/Vice Chairman, UC-07, TMC Mauripur, Keamari, Karachi has become dubious in the matter hence he be suspended under section 55 (3) of the Elections Act, 2017;
- iii) Notification of Abdul Ghaffar Sheikh as Returning Officer to the extent of election for the seat of Chairman/Vice Chairman UC-07, TMC Mauripur, Keamari, Karachi is withdrawn forthwith;
- iv) Inquiry Committee (comprising PEC, Sindh and REC, Karachi Division (Field) be constituted under section 55(4) of the Elections Act, 2017 against Mr. Abdul Ghaffar Sheikh, Returning Officer to conduct fact finding inquiry regarding tempering Form-XI & XII and submit report to the Commission within shortest possible time but not later than 30. The Committee shall highlight the role of accused involved in the corrupt practice including manipulation/ fabrication of Form (s) XI & XII as well as recommendations for initiating disciplinary or criminal proceedings or both against accused;
- v) Regional Election Commissioner, Karachi Division (field) is appointed as Returning Officer to the extent of Chairman/Vice Chairman UC-07, TMC Mauripur, Keamari, Karachi under section 55(8) of the Elections Act, 2017;
- vi) Office is directed to send a copy of the petition along with replies of Returning Officer and returned candidate to the Regional Election Commission/Returning Officer and District Returning Officer;
- vii) Regional Election Commissioner/Returning Officer and District Returning Officer are directed to fix a suitable time, date & venue and call all the contesting candidates and Presiding Officers along with their records for the seat of Chairman/Vice Chairman UC-07, TMC Mauripur, Keamari, Karachi and obtain written statements from the Presiding Officers regarding which Form-XI & Form-XII are genuine either



supplied by the Returning Officer or by the Petitioner and prepare afresh Appendix-A, Form-XIII and Form-XIV and send the results within seven days after receipt of this Order to the Commission for notifying in the official gazette.

Islamabad
the 8th March, 2023



[Signature]
(Shah Muhammad Jatoi)
Member

[Signature]
(Babar Hassan Bharwana)
Member