

ELECTION COMMISSION OF PAKISTAN

PRESENT

MR. SHAH MUHAMMAD JATOI, MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

CASE No.F.7 (9)/2024-Law-III

Subject: PETITION REGARDING WITH HOLDING OF NOTIFICATION

Muhammad Shoib Shaheen, House No. 34-C, G-9/3, Islamabad

.....Petitioner(s)

VERSUS

The District Returning Officer, Islamabad
Returning Officer, NA-47, (ICT-II), Islamabad

.....Respondent(s)

For the petitioner : In person alongwith Faisal Fareed, ASC.

Date of hearing : 21-02-2024

ORDER

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Shah Muhammad Jatoi, Member- Brief facts of the matter is that petitioner namely Muhammad Shoib Shaheen contested the General Election 2024 for the seat of National Assembly from constituency NA-47, (ICT-II), Islamabad. As per Form-47, issued by the Returning Officer, petitioner obtained 86,794 votes while his opponent namely, Tariq Fazal Choudhry has obtained 101,397 votes in the constituency and declared as leading/ returned candidate. Petitioner being aggrieved with the result issued by the Returning Officer has filed instant petition.

2. Matter was fixed for hearing on 11-02-2024 in which after hearing the counsel for the petitioner directions were issued to the Returning Officer for submission of his report. Directions were issued to issue notice to the Returned Candidate as well.

3. Report from the Returning Officer has been received which is taken on record. Copy of the report is handed over to the learned counsel for the petitioner. Counsel for the Returned Candidate is also in attendance.



4. Petitioner appeared in person and argued that Form-47 issued by the Returning Officer is illegal, unlawful and contrary to the Elections Act and Election Rules, 2017. He further added that result may not be finalized on the basis of Form-47 as according to him the same is not in accordance with Form-45 received in original by his Polling Agents. He further contended that according to their Form-45 he has the lead of more than 53,000 votes. He further argued that directions issued by the Commission on the different applications submitted by him were not implemented. He also referred to page 3 of the petition wherein he has provided his reason of comparative summary of votes obtained by him and other candidates. While concluding his arguments he prayed for just decision in the matter and also requested to suspend the process of consolidation till the outcome of the petition.

5. The counsel for the returned candidate appeared on notice and made submissions that the copies of Form-45, submitted by petitioner, before the Commission which were also annexed thereto, the petition is in-admissible in evidence, being all un-attested copies which could not be relied upon well without exhibition of the same before competent forum during course of trial; that the concern Returning Officer have not violated any law or rules during course of preparation of provisional as well as final consolidation statement of results of count furnished by the respective Presiding Officers; that Forms-47 as per report of the concern Returning Officer has been compiled just and in accordance with Forms-45 submitted by respective polling officer's (P.O's); that the petitioner was well informed in respect of final consolidation result of counts and he was present there in the office of Returning Office alongwith more than 200 persons and instead of observing and participating in the process of consolidation in peaceful manner, he made chanting and chaos in order to create serious law and order situation; that none of the other contested candidate of the concern constituency has ever raised any objection over the performance of the Returning Officer or on the process of compilation of result of accounts even there is no any an IOTA affidavit submitted by any person legally authorized to participate in the consolidation process and no one was denied access thereto participate in the consolidating process; that the questions raised by the petitioner squarely falls within the ambit of



disputed question of fact which could not be resolved without adducing evidence in due course of law; that the Commission has already notified in term of Section 140 the Election Tribunals and relief prayed by the petitioner fall with the ambit of Tribunal; prayed that the petition being on meritless, be dismissed accordingly.

6. Arguments heard and record perused.

7. From the perusal of the record it is observed that the petitioner has filed the petition with the following prayer:-

“It is, therefore, requested that Notification of NA-47 issued may kindly be set aside. Judicial Officer may kindly be deputed to observe the process of consolidation which must be in the presence of the petitioner/agent and in accordance with Form-45”

8. On the previous date of hearing directions were issued to the Returning Officer to submit his report. The report has been received and the Returning Officer has denied the allegations leveled by the petitioner and stated that the provisional consolidated result was prepared and announced strictly in accordance with the requirement of Section 92 of the Elections Act, 2017 and Rule 84 of the Election Rules, 2017. He further stated that he has prepared Form-47 after receiving all Form-45 from the Presiding Officers. He also mentioned that he has consolidated the result strictly in accordance with the provisions of Section 95 of the Elections Act, 2017 read with Rule 85 of the Election Rules, 2017. He pointed out that he has issued notices to all the Contesting Candidates for final consolidation proceedings and Form-48 and Form-49 has been issued accordingly. He also mentioned that the petitioner first visited the office of the Returning Officer at about 11:00 pm when the Presiding Officers were submitting Form-45 and election material for compilation of result. He mentioned that the petitioner was given a round of the hall where Form-45 were being received and entries were being made by the Data Entry Operators and the petitioner left the office of the Returning Officer without raising any objection to the process. He further mentioned that the petitioner again visited the office of the Returning Officer at 01:00 am and he was acting aggressively and in a belligerent manner with the Returning Officer and other personnel at the office and harassed and intimidated the Data Entry Operators. He further stated that the petitioner repeatedly interrupted the data entry process in the hall, however, the screen was



placed outside the office of the Returning Officer on which result was being displayed which was switched off much later in the day on 09.02.2024 due to visible day light. It was also mentioned by the Returning Officer that on 11.02.2024 the petitioner and several hundred people gathered at office of the Returning Officer and started chanting slogans and confronted with the Police Personnel on duty, therefore, mob was stopped at the gate and the petitioner and one nominee were allowed to enter into the office. He also highlighted that the Returning Officer and staff were threatened by the petitioner with the demand to stop the process of consolidation without any order of the Commission. The Returning Officer stated that by the time the petitioners verbally conveyed the conditional injunctive order of the Commission dated 11.02.2024 he had already completed the consolidation process in accordance with Section 92 and 95 of the Elections Act, 2017.

9. It is also mentioned here that the petitioner simultaneously invoked the jurisdiction of Hon'ble Islamabad High Court under Article 199 of the Constitution through filling of writ petition No.499 of 2024 titled as "Muhammad Shoaib Shaheen Vs The DRO Islamabad & Others". The Hon'ble Islamabad High Court decided the writ petition vide order dated 14.02.2024 in following terms:-

"It would be inappropriate for this Court to dilate upon as to the merit of the matter regarding challenge made to the consolidation process inasmuch as the matter is pending before Election Commission of Pakistan, however, the petitioners seeks recalling of impugned notification, whereas learned counsel for Election Commission of Pakistan submits that in case applicants under sections 8 & 9 succeed, the law shall take its course. In the referred background. It is appropriate that Election Commission of Pakistan decides the applications filed by the petitioners under sections 8 & 9 of Election Act, 2017 and in case, said applications succeed, the law shall take its course and impugned notification ought to be withdrawn. It is trite law that under section 21 of General Clauses Act, the authority, which has passed an order, also can withdraw the same, therefore, Election Commission of Pakistan is expected to decide the applications of the petitioners expeditiously before the session of the Parliament is summoned or early as possible. It is reiterated that in case, the applications/petitions filed by the petitioners succeed, the impugned notifications shall be withdrawn.



The instant petitions are disposed of accordingly.

10. The above mentioned order passed by the Hon'ble Islamabad High Court was challenged by the petitioner through ICA No.47/2024 before division bench of Hon'ble Islamabad High Court. The Hon'ble Islamabad High Court initially granted relief to the petitioner while passing the following order:-

"At this stage we are not inclined to suspend the proceedings before ECP which shall be taken to their logical conclusion and if need be a notification of the returned candidate be issued after the issuance of Form-48 and Form-49 in accordance with the law. However, until this process is completed, the operation of the notification dated.11.02.2024 which was impugned in writ petition No.499/2024 is suspended"

"After the order dated.19.02.2024 was dictated in open Court, the office informed the undersigned as to the issuance of the notification dated 17.02.2024 by the ECP regarding the constitution of the Election Tribunal for the Islamabad Capital Territory. Since the order was dictated in open Court, we deem it appropriate to hear the parties before amending the same. In the order dated 19.02.2024, we had fixed Thursday i.e. 22.02.2024 as the next date of hearing. However, we now deem it appropriate to direct the office to fix the appeal for hearing day after tomorrow i.e. 21.02.2024"

11. The Hon'ble Islamabad High Court after hearing the parties in detail disposed of the ICA on 21.02.2024 in following terms:-

"7. Be that as it may, even if it is assumed that the injunctive orders passed this Court are not in the field, the notifications issued in favour of the returned candidates, whose names are mentioned therein as returned candidates, shall be subject to final outcome of decision of ECP. This is our view, puts the controversy before us at rest. Given the fact that an Election Tribunal for the Islamabad Capital Territory has already been constituted through notification dated.17.02.2024 issued by ECP, it would not be appropriate to proceed further in the matter.

8. The appeals stand disposed of in the above terms"

12. The instant subject petition has been filed by the petitioner with the prayer that Judicial Officer may be deputed to observe the process of consolidation which must be in presence of petitioner, agents and in accordance with Form-45 and in meanwhile the notification of NA-47 may be set aside. The petitioner has raised various points in respect of



issues allegedly faced by him and also claimed certain procedural irregularities and illegalities during the process of compilation of provisional result on Form-47 and discrepancies in Form-45 claimed to be available with the petitioner provided by the presiding officers. The Returning Officer has consolidated the final result of the Constituency in shape of Form-49. The Commission can decide matters under Section 8 (b) of the Elections Act, 2017 through summary inquiry and cannot record evidence. The allegations leveled by the petitioner require recording of pro and contra evidence. Furthermore, the petition is generic and no illegality and irregularities are specified in the petition upon which the Commission can inquire into the matter. For this purpose Election Tribunals are appointed under Section 140 of the Elections Act, 2017. Article 225 of the Constitution provides that no election can be challenged before any court except by way of Election Petition before Election Tribunal. The petitioner may approach the Election Tribunal under Section 139 by filing an Election Petition. Furthermore, it is also observed that the petitioner has filed number of complaints before the Commission, the Hon'ble High Courts and Supreme Court regarding filling of Nomination papers, level playing field etc, however, no complaint in respect of any issue regarding Form-45 and Form-47 was received to the Commission. Complaint cell was established and monitoring teams were active in the field for redressal of grievances of the petitioner. Moreover, Returning Officer is the appropriate forum under Section 95 of the Elections Act, 2017 before consolidation.

13. Though, the petitioner has not prayed for recounting of votes in his petition, however, during the course of arguments, he has raised few points in this respect. Section 95(5) of the Elections Act, 2017 is clear that the Returning Officer shall recount the votes if the margin of the victory is less than 5% of the total votes polled in the constituency or 8000 votes in case of National Assembly and 4000 votes in case of Provincial Assembly. In the present case the margin of victory between the returned and runner up candidate is 16,106 votes. The instant matter does not fall under the ambit of Section 95(5) of the Elections Act, 2017. Moreover, as the process of consolidation has been completed by the concerned Returning Officer therefore provisions of Section 95(6) also do not attract in this case. 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, however it is required and mandatory under section 95 of the Elections Act, 2017 which has been done by the returning Officer. The matter cannot be reviewed under Section 8 of the Elections Act, 2017 without authentication and provision of evidence. The petitioner has not attached any evidence in support of his petition except a tabulated form of result prepared by the petitioner which is not admissible as evidence.

14. From the attending facts and circumstances of the matter in issue reveals that the petitioner had attended the office of Returning Officer just after closed of polls of respective polling stations of the concern constituency which is also admitted by the petitioner however with a difference stance, however the question as to whether he was allegedly expelled from the office of Returning Officer at the occasion of consolidation of final result or he himself as a protest left the office un-attending, is a question of fact, which could only be resolved thereafter proper adducing of evidence during course of proper trial.

15. Keeping in view the above mentioned reasons the allegations raised by the petitioner could only be resolved in due course of law from the forum already constituted under section 140 of the Election Act, 2017, in order to record prove and contra evidence on the disputed question of facts. Therefore, the instant petition is dismissed accordingly.

16. As the Hon'ble Islamabad High Court vide order dated.19.02.2024 in ICA No.47/2024 has passed the injunctive order regarding suspension of operation of notification of returned candidate dated.11.02.2024 which has been finally disposed of vide order dated.21.02.2024 which is expressly subject to the final decision of the Commission on the petition. Now on dismissal of the instant petition for the reasons mentioned hereinabove, the notification dated.11.02.2024 under Section 98(1) of the Elections Act, 2017 stands restored/ revived.

17. Office to take follow up action accordingly.



Shah Muhammad Jafai
Member

Islamabad the 21st February, 2024

Justice (R) Ikram Ullah Khan,
Member