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ELECTION COMMISSION OF PAKISTAN

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**PRESENT**

MR. SIKANDAR SULTAN RAJA, CHAIRMAN  
MR. NISAR AHMED DURRANI, MEMBER-I  
MR. SHAH MUHAMMAD Jatoi, MEMBER-II

**CASE No. F. 8(9)/2022-CONFIDENTIAL-Vol-II**

Subject: **SUBMISSION OF RETURN OF ELECTION EXPENSES ON FORM-C  
BYE-ELECTION IN CONSTITUENCY NO.s NA-22 MARDAN-II, NA-24  
CHARSADA-II, NA-31 PESHAWAR-V, NA-108 FAISALABAD-VIII, NA-  
118 NANKANA SAHIB-II, NA-239 KORANGI KARACHI-I & NA-45  
KURRAM-I**

For the respondent:

Counsel Barrister Gohar (ASC) on behalf of  
Respondent Mr. Imran Ahmed Khan Niazi  
along with Mr. Shaukat Ali, Mr. Ijaz Ahmed  
Shah and Mr. Arshad Zaman Bangash  
(Authorized agents of the respondent)

For the Office:

Mr. Zafar Iqbal Hussain, Special Secretary  
and Mr. Khurram Shahzad ADG (Law)

Date of hearing:

**20-12-2022**

**ORDER**

**Sikandar Sultan Raja, Chairman:-** Brief facts of the case are that the bye elections in the Constituencies of NA-22 Mardan-II, NA-24 Charsada-II, NA-31 Peshawar-V, NA-108 Faisalabad-VIII, NA-118 Nankana Sahib-II & NA-239 Korangi Karachi-I were held on 16th October, 2022 and in NA-45 Kurram-I on 30<sup>th</sup> October, 2022. As per consolidated result, Mr. Imran Ahmed Khan Niazi was declared as a returned candidate. Under Section 98(3) of the Elections Act, 2017, It is mandatory for every returned candidate to submit his election expenses within ten (10) days from the date of poll. However, Respondent has not submitted his return of election expenses within the period of ten days as provided under the law in all the above mentioned constituencies. Amongst seven constituencies, initially respondent submitted his election expenses for the Constituency No. NA-24 Charsadda-II on 28<sup>th</sup> October 2022. The Returning Officers of



remaining six constituencies issued notices to the respondent in terms of Section 136(4) of the Elections Act, 2017, for non-submission of returns of election expenses. Detail of the submission of the return of election expenses by the respondent is as under:

Sr. No	Name of Constituency	Poll Date	Due Date of Submission of Form-C	Notice Issued by R.O to the Respondent	Date of Submission of Form-C
1.	NA-24 Charsadda-II	16-10-2022	26-10-2022	Not issued	28-10-2022
2.	NA-31 Peshawar-V			10-11-2022	11-11-2022
3.	NA-108-Faisalabad-VIII			14-11-2022	14-11-2022
4.	NA-118 Nankana Sahib-II			14-11-2022	17-11-2022
5.	NA-22- Mardan-II			10-11-2022	13-12-2022
6.	NA-239 Korangi Karachi-I	30-10-2022	09-11-2022	08-11-2022	25-11-2022
7.	Na-45 Kurram-I			10-11-2022	16-11-2022

2. From three constituencies the applications for condonation of delay have been filed by Mr. Shaukat Ali from NA-31 Peshawar-V, Mr. Ijaz Ahmad from NA-118 Nankana Sahib-II and Mr. Arshad Zaman from NA-45 Kurram-I. Mr. Shaukat Ali in his application dated 14-11-2022 submitted that return of election expenses could not be filed by respondent on or before 28-10-2022 because the respondent was in Lahore in relation to the party affairs including long march. On 03-11-2022 he got injured in an attack at Wazirabad and was hospitalized for several days and he is still confined to bed rest therefore, return of election expenses for NA-31 Peshawar-V are being filed on behalf of Respondent Mr. Imran Khan Niazi.

3. An application was received from Mr. Ali Gohar Baloch MNA through its Counsel wherein it was stated that the Commission vide order dated 21<sup>st</sup> October, 2022 declared Mr. Imran Khan Niazi guilty of corrupt practices on the basis of mis-statement and mis-declaration while filing the returns in terms of Section 137 of the Elections Act, 2017 and the Commission has also initiated criminal Complaint against him under section 190 of the Elections Act, 2017. He further wrote that a Disqualified person contested bye-elections on multiple vacant seats and is declared as returned candidate by the Returning Officers. He prayed that the Notification of Mr. Imran Khan as returned candidate may not be issued.



The Office has also raised objection regarding delay in submission of election expenses by the Respondent in terms of Section 98(3) of the Elections Act, 2017.

4. Matters were fixed for hearing with notices to the parties for 15-11-2022. On 15-11-2022, junior Counsel appeared on Behalf of Mr. Khalid Mehmood Khan Advocate and requested for adjournment which was allowed in the interest of justice and matter was adjourned to 23-11-2022. Request for adjournment was again made by the junior Counsel for the applicant which was again allowed with final opportunity to present the case and adjourned to 13-12-2022. Due to Law and order situation in Islamabad Capital territory and blockage of roads, matters were delisted and fixed for 20-12-2022.

5. Counsel(s) for the Parties present. Junior Counsel for the Applicant Mr. Gohar Baloch appeared and filed an application for the withdrawal of the application.

6. Counsel for the Respondent Barrister Ali Gohar Khan appeared and submitted that the Respondent has submitted the returns of election expenses from all the 7 constituencies and submitted the details along with detailed vouchers. He also argued that the delay in filing of return of Election expenses was not intentional as Respondent was busy in party affairs and also due to firing incident and got injured during long march in Lahore and is still bed ridden. He while concluding his arguments prayed for condonation of delay for filing of return of election expenses and issuance of Notification of returned Candidate in favor of Respondent.

7. Special Secretary, ECP appeared and stated that the respondent has not submitted his return of election expenses within the stipulated time without any sufficient cause. He also elaborated Section 98 of the Elections Act, 2017, under which the returned candidate is bound to submit his return of election expenses within 10 days of poll date. He further stated that there is no reason for delay in submission of return of election expenses and he objected that the applications for condonation of delay have not been submitted by the respondent himself, therefore the notification as a returned candidate may not be issued till the final disposal of the case and a complaint under Section 137 of the Elections Act, 2017 may be filed against the respondent.

8. Additional Director General (Law), ECP appeared and stated that the Commission has the power to disqualify a candidate under Section 232 of the Elections Act, 2017, if he violates Section 137 of the Act *ibid*.



9. Mr. Shaukat Ali, Mr. Ijaz Ahmed Shah and Mr. Arshad Zaman Bangash appeared in person on behalf of the respondent and submitted that the respondent was not able to submit return of his election expenses within time due to injuries and he is still on bed rest therefore any delay may be condoned keeping in view the medical situation of the respondent.

10. We have heard the arguments and perused the record.

11. Before going to the details of the case relevant provisions of the Constitution and law are reproduced below.

#### Article 223 of the Constitution

##### Bar against double membership

223. (1) .....

(2) Nothing in clause (1) shall prevent a person from being a candidate for two or more seats at the same time, whether in the same body or in different bodies, but if he is elected to more than one seat he shall, within a period of thirty days after the declaration of the result for the last such seat, resign all but one of his seats, and if he does not so resign, all the seats to which he has been elected shall become vacant at the expiration of the said period of thirty days except the seat to which he has been elected last or, if he has been elected to more than one seat on the same day, the seat for election to which his nomination was filed last.

Explanation.—In this clause, "body" means either House or a Provincial Assembly.

(3) A person to whom clause (2) applies shall not take a seat in either House or the Provincial Assembly to which he has been elected until he has resigned all but one of his seats.

(4) Subject to clause (2) if a member of either House or of a Provincial Assembly becomes a candidate for a second seat which, in accordance with clause (1), he may not hold concurrently with his first seat, then his first seat shall become vacant as soon as he is elected to the second seat.

#### Section 98 of the Elections Act, 2017

98(1) .....

(2) .....



(3) Every returned candidate shall, within ten days from the poll of an election submit a return of election expenses under section 134 and the Commission shall not notify in the official Gazette the result of a returned candidate who fails to submit his return of election expenses.

**136. Action relating to election expenses. —**

(1).....

(2).....

(3) .....

(4) Where a contesting candidate fails to file requisite returns within the specified period, the Returning Officer shall cause a notice to be issued to such candidate calling upon him to show cause why proceedings may not be initiated against him for failure to file requisite returns and if despite service of notice, he does not comply with the provisions of section 134, the Returning Officer shall report the matter to the Commission.

(5) On receipt of report under sub-section (4), the Commission shall issue notice calling upon the candidate to show cause as to why a complaint may not be filed against him for failure to file requisite returns.

(6) The candidate may file an application for condonation of delay in filing the returns along with the return and the Commission may condone the delay, if it is satisfied that such failure was made in good faith due to circumstances beyond the control of the candidate, and accept the return.

(7) In case of rejection of application for condonation of delay under sub-section (6), the Commission shall direct an authorized officer to file a complaint against such candidate for committing the offence of illegal practice.

12. Mr. Imran Khan Niazi has been declared as returned candidate from seven (7) National Assembly constituencies as a result of bye-election held on 16.10.2022 and 30.10.2022. Under the above Constitutional provisions, he is required to resign within a period of thirty days of the declaration of result of last seat and if he does not so resign all the seats to which he has been elected shall become vacant at the expiration of the period of thirty days except the seat to which he has been elected last or, if he has been elected to more than one seats on the same day, the seat for election to which his nomination was filed last. In the present case. Mr. Imran Khan submitted nomination papers for NA-45, Kurram and result thereof has not been declared nor result of all other six constituencies has been declared.




13. Section 98(3) categorically states that "the Commission shall not notify in the official Gazette the result of a returned candidate who fails to submit his return of election expenses" which Mr. Imran Khan/candidate has failed to submit in respect to all seats he has won within stipulated time. However the returned candidate has submitted the Return of election expenses with an application for condonation of delay and has explained the causes of delay for non submission of the election expenses within stipulated period.

14. Right to Contest election is a fundamental right in terms of Article 17(2) of the Constitution of Islamic Republic Of Pakistan and Judgment of Supreme Court reported in 2014SC72 and PLD 2012 Sc 681.

Therefore the Commission by taking lenient view accepts the applications for condonation coupled with the verbal request of the Counsel of the respondent candidate and the grounds mentioned in the written reply, condones the delay and direct that notification of the returned candidate may be issued from all the constituencies from which he has emerged as returned candidate as he has submitted the return of election expenses from all the constituencies and the application filed by Mr. Ali Gohar Baloch is hereby dismissed as withdrawn.

  
Sikandar Sultan Raja  
Chairman

  
Nisar Ahmed Durrani  
Member

  
Shah Muhammad Latif  
Member

Announced on 19-01-2023

