

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. SIKANDAR SULTAN RAJA	CHAIRMAN
MR. NISAR AHMED DURRANI	MEMBER
MR. SHAH MUHAMMAD JATOI	MEMBER
JUSTICE (R) IKRAM ULLAH KHAN	MEMBER

Case No. F. 8(1)/2024-Law-III

In Ref: APPLICATION UNDER SECTION 151 OF THE ELECTIONS ACT, 2017 READ WITH ARTICLE 219 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 ALONG WITH ALL OTHER ENABLING PROVISIONS OF LAW, FOR THE TRANSFER OF THE ELECTION PETITION NO. 74/ 2024 TITLED AS AAMER MASOOD VS ANJUM AQEEL KHAN AND OTHERS FROM THE WORTHY ELECTION TRIBUNAL ICT ISLAMABAD TO ANY OTHER ELECTION TRIBUNAL.

Anjum Aqeel Khan

....Petitioner

Versus

Amer Masood

.....Respondent

For the Petitioner : In person along with
Najam Hanif Sheikh, ASC

For the Respondent : In person along with Faisal Fareed ASC,

Date of Hearing : 07-06-2024

ORDER

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JUSTICE (R) IKRAM ULLAH KHAN Through the instant order, we propose to decide, the application bearing No.8(1)/2024-Law-III filed by applicant namely Anjum Aqeel Khan under the provisions of section 151 of the Elections Act, 2017 (herein after referred as "the Act, 2017").

02. The brief facts necessary for adjudication of the subject application is, that respondent herein, namely Aamer Masood and the applicant contested the elections for National Assembly (NA-46 ICT-I). Applicant was declared as Returned Candidate by the ECP on



11.02.2024. The respondent felt aggrieved from the notification of Returned Candidate, challenged the said elections before the Learned Election Tribunal, Islamabad (herein after referred as "the Tribunal") notified under section 140 of the Act, 2017 by the ECP.

03. The Tribunal, on assumption of charge and presentation of the election petition, issued notices to all the respondents in the petition.

04. The Tribunal, while issuing notices to the respondents also asked for complete documentary evidence in shape of forms 45 and 46 and subsequently on 30.05.2024 made directions to the respondent to implead not only Election Commission of Pakistan but also Returning Officer (R.O) and Assistant Returning Officer (A.R.O) in the panel of respondents and simultaneously, made directions to all the respondents to submit their respective written statements. The Tribunal in order to dispose of the subject election petition as soon as possible summoned the original record of Form 45 and 46 not only from ECP but also from the RO and all contesting candidates who were made party thereto the petition.

05. Applicant being aggrieved and dissatisfied from the conduct of the pre-trial approached this Commission by filing the subject application.

06. The Learned counsel for applicant vehemently contended that the Tribunal is not conducting the trial of the election petition in accordance with the provisions of law and rules, prescribed there under the Act, 2017 and the Rules, 2017;

- i. *that the procedure of trial, admission of an election petition, adducing of evidence in an election trial, is special procedure, which shall be strictly followed, but the Tribunal keeping in view the un-necessary summarily procedure adopted therein, seems to be disposing of the petition by bypassing the fundamental rights, enshrined in Article 4 and 10-A of the Constitution (herein after referred as "the Constitution") vested in applicant;*
- ii. *that a hopelessly time barred, non-maintainable and in-competent petition has been put to trial, without compliance thereto Rule 140 of the Rules, 2017 and provisions of Sections 145 of the Act, 2017;*
- iii. *That the Election Petition has been admitted for regular hearing without adopting the procedure laid down under Section 143 of the Act, 2017;*



- iv. *That the Election Tribunal could not direct the Election Commission for production of record as the Returning Officer is the custodian of the record;*
- v. *That Section 142 of the Act, 2017 provides the mechanism for presentation of election petition and the same is not processed by the Tribunal in accordance with law.*
- vi. *That the petition was not presented before the Election Tribunal rather it was dealt by the Registrar Islamabad High Court, Islamabad;*
- vii. *That the respondent did not file the subject election petition within prescribed period of 45 days before the Election Tribunal;*
- viii. *That although the election petition was not signed by the election petitioner which is incurable legal defect even then the Registrar returned the election petition in order to remove the legal defects occasioned therein having no such jurisdiction;*
- ix. *That the entire proceedings of the Election Tribunal were carried out in the absence of the applicant and requisitioning of original record by the Election Tribunal at the first date of hearing before commencement of stage of evidence, is against the procedure laid down under the Elections Act, 2017;*
- x. *That no party shall be impleaded in the panel of respondents thereafter lapse of the statutory period of 45 days provided thereunder Section 142 of the Elections Act, 2017;*
- xi. *That the conduct of trial, in the mode and manner as adopted by the Tribunal, has created a sense of partiality, biasness in mind of applicant towards the Tribunal and as such has lost his confidence in the Tribunal therefore, justice demands that applicant be afforded opportunity to be treated in accordance with law to safeguard his fundamental rights. Therefore, the election petition pending adjudication before the Tribunal, Islamabad may be transferred to any other election tribunal.*

07. On the other hand, the Learned counsel for the respondent controverted the contentions raised on behalf of the learned court for applicant by contending that this Commission has got no jurisdiction to exercise the power thereunder section 151 of the Act, 2017 being itself respondent in the election petition.

- i. *that procedural unintentional flaws during the course of a trial, could not be termed and equated with substance of biasness or the partiality towards a legally constituted forum;*



- ii. *that all questions raised herein, by the learned counsel for applicant are curable as the trial in the election petition is still under process and applicant is at liberty to agitate all such objections before the Tribunal by filing an application of the kind;*
- iii. *that it is settled principle of law, that mere apprehensions or perceptions of biasness are not enough to hold that a judge is biased, however such a perception required tangible evidence;*
- iv. *that respondent has presented his petition before a legally appointed Tribunal, thereafter, fulfilling all the pre-requisite legal requirements within the period prescribed by law;*
- v. *that it is also settled proposition of law that no one be condemned for an omission or an act of a court/tribunal;*
- vi. *that the applicant is himself delaying the proceedings before the Election Tribunal and failed to file written statement as well as other documents as directed by the Election Tribunal;*
- vii. *that all the objections raised by the applicant before the Commission were not raised before the Election Tribunal;*
- viii. *that all the points raised by the applicant herein are the arguments to be taken at the appellate stage. The Commission is neither an appellate forum nor a revisional authority in this respect;*
- ix. *that the applicant did not pray for the transfer of election petition to a newly constituted Election Tribunal and the powers of the Commission to appoint Election Tribunals are time bound;*

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- x. *that the Commission cannot order upon the legal and technical defects of the election petition as the scope of Section 151 of the Act, 2017 is limited;*
- xi. *that in the case reported in 2018 CLC 1040 the powers of the Commission have been discussed which are limited to some extent;*
- xii. *that no other Tribunal exists in Islamabad and the Commission vide notification dated 17.02.2024 has conferred the jurisdiction of the Tribunal to the existing Election Tribunal at Islamabad;*
- xiii. *that the Election Commission has no jurisdiction to transfer the election petition to any other Tribunal in the province;*
- xiv. *that applicant has not come to this Commission with clean hands but has approached the Commission to malign a judge and delay the trial of petition, therefore, prayed for dismissal of the application with imposition of heavy cost;*

sd. 08. We heard the learned counsel and perused the available record.

09. Before we dilate upon merit of the application in hand, it would be not out of context, to give reference to the settled principle of law that all the legal defects apparent on the face of record shall be decided before further proceedings. The election petition has to be presented under a special law of elections and wherein an election petition is suffering from any legal defect/ deficiency or lack of maintainability and mandatory requirements of law, such petition shall be summarily rejected in term of Section 145 of the Act of 2017.

10. Rule 140 of the Rules, 2017 has made it mandatory, that an election petition presented before the office of the Tribunal, lacking any legal requirement provided in Sections 142 to 144 of the Act of 2017 shall be placed before the Tribunal for summarily rejection of the same in term of sub Section-1 of Section 145 of the Act of 2017;



11. The record further reveals, that the security cost of the petition has been deposited on 02.04.2024, much after the lapse of statutory period of 45 days prescribed under section 142 of the Act, 2017.

12. The record also reveals that on 02.05.2024 on the very first hearing, the Tribunal directed the ECP to submit original Forms 45 and 46 respectively although ECP was not impleaded by the present respondent as party in the panel of respondents.

13. It is also observed from the record requisitioned from the Election Tribunal that the Tribunal without framing of issues, summoned the original record from Election Commission of Pakistan although the Commission was not party in the petition.

14. Rule 140 of the Election Rules, 2017 prescribe the manner that how an election petition be processed which reads as under:-

*140. **Processing the Petition.**-Every petition shall be processed by the office of the Tribunal and in case the petition is not in accordance with the provisions of Sections 142, 143 or 144, it shall be laid before the Tribunal for orders under sub-Section (1) of Section 145.*

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15. There is no option available to a Tribunal to cure any legal defect occasioned therein the election petition, prescribed under Section 142 to 144 of the Elections Act, 2017 and in case, if any provision of Section 142, 143 or 144 of the Elections Act, 2017 is not complied with, such election petition shall be summarily rejected in terms of Section 145(1) of the Act, 2017. In case a petition is presented beyond the statutory period provided under Section 142 of the Act, 2017, such legal defect could not be remedied either by the office of the Tribunal or by the Learned Tribunal itself

16. Furthermore, the contention of the counsel for the respondent in respect of transfer of election petition to any other Tribunal is incorrect. Section 151 of the Elections Act, 2017 empowers the Commission to transfer the Election Petitions from one Election Tribunal to another Election Tribunal at any stage on its own motion or on an application of a party. It is the exclusive domain of the Commission for providing complete justice to the parties in the petition and for fair decision in the matter in accordance with the Law and Rules framed thereunder. The



Commission has the jurisdiction to appoint fresh Election Tribunal and to withdraw any Election Petition for swift disposal of the same. There are number of examples available with the Commission where fresh Election Tribunals have been appointed under Section 140(1) of the Elections Act, 2017 during the trial of the election petitions on one or the other grounds. Section 140(1) of the Elections Act, 2017 is reproduced here below;-

"140. Appointment of Election Tribunals.—(1) For the trial of election petitions under this Act, the Commission shall appoint as many Election Tribunals as may be necessary for swift disposal of election petitions."

17. An election petition is a statutory proceeding to which the rules made by the statute applies and it is a special jurisdiction which can be exercised in accordance with the statute for trial of election disputes. The judge of the Election Tribunal has to deal with the election Petitions strictly in accordance with the procedure laid down under Elections Act,2017.

18. It is also evident from the record that the notification of the Returned Candidate has been published in the official gazette on 13.02.2024. Respondent had presented election petition before the office of the Tribunal on 03.04.2024 with diary No. 6752 before the Assistant Registrar Islamabad High Court, Islamabad, however, the same was returned with certain objections. The respondent resubmitted the election petition on 15.04.2024 with diary No. 7444. The law provides that under Section 142 of the Act, 2017, it is mandatory to file the election petition before the Election Tribunal within 45 days of the notification of name of Returned Candidate in the official gazette. The last date for filing of the election petition after the notification of the name of Returned Candidate was 29.03.2024. the petition filed by the Respondent is hopelessly time barred.

19. The above mentioned facts, give rise to an un-rebuttable inference that the Tribunal has deviated from the prescribed procedure of law under the Act, 2017 and the Rules, 2017. By such exercise of jurisdictions, the apprehensions and perceptions borne by the applicant could not be straight away repelled. Once, for genuine reasons a party lost its confidence in a trial court, in such eventuality and to fulfill the ends of justice, the relief sought by the applicant is of worth consideration.



20. In view of the above mentioned reasons, we in the exercise of powers conferred under Section 151 of the Act, 2017 accept the application for transfer of the subject election petition in the interest of justice and to ensure a fair trial in terms of Article 10-A of the Constitution hereby transfer the subject election petition from the Learned Election Tribunal, Islamabad, appointed vide notification No. 23(8)/2024-O/o-DD-Law dated 17.02.2024 to the Election Tribunal, appointed vide Notification No. 23(8)/2024-O/o-DD-Law-I dated 07.06.2024. Office is directed to send the original record to the office of Election Tribunal.

-Sd-

(Sikandar Sultan Raja)
Chairman

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(Nisar Ahmed Durrani)
Member

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(Shah Muhammad Jatoi)
Member

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(Justice (R) Ikram Ullah Khan)
Member

Date of Announcement 10th of June 2024.

