

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

Case No. 6(35)/2023-Law-III

In Ref: **APPLICATION UNDER CHAPTER VII RULE 60 OF SINDH LOCAL GOVERNMENT COUNCILS (ELECTIONS) RULES, 2015 R/W SECTION 44 AND 46 OF SINDH LOCAL GOVERNMENT ACT, 2013 R/W RULE 40 OF SINDH LOCAL COUNCILS (ELECTIONS) RULES, 2015**

Munawar Ali Soomro s/o Qalandar Bux Soomro r/o Bhatti Mohallah Mehar, District Dadu

...Petitioner (s)

VERSUS

Returning Officer, Municipal Committee, Taluka Mehar, SEPCO, Mehar, Dadu and 5 others

...Respondent (s)

For the Petitioner : Mr. Imtiaz Ali Panwar, Advocate
Mr. Amjad Hussain, Advocate
For the Respondent : Mr. Sajid Ali Gohar, Advocate
Date of Hearing : 06.03.2023

ORDER

Mr. Nisar Ahmed Durrani, Member.— Instant matter is the outcome of local bodies election (2nd phase) held in Sindh Province. Petitioner contested the said election for the seat of General Councilor, from Ward No. 9, Municipal Committee, Mehar, District Dadu. Feeling dissatisfied with the result so announced, petitioner has filed instant petition.

2. Matter was fixed for hearing to hear the stance of parties. Learned counsel for the petitioner appeared and contended that Presiding Officers of male and female polling station did not provide Form-11. He contended that his polling agents were not



allowed to observe the process of counting of votes. He alleged that fake and bogus votes were counted in favour of his opponent candidate. He emphasized that an application was made to Returning Officer for recounting of votes which was allowed by him and as such notice was issued as well as security arrangements were also made for recounting on the request of RO but quite surprisingly, on 18.01.2023, RO left the office without recounting the votes and rejected the application of petitioner vide order dated 19.01.2023. It is contended that RO after passing the order of recounting was not authorized under section 24-A of General Clauses Act to re-call his own order. He prayed it is a fit case of recounting to determine that votes cast to whom are also rightly counted in favour of that candidate.

3. Learned counsel for respondent while opposing the arguments of learned counsel for petitioner contended that election was held in a transparent manner. That application for recounting was not based on merits and it was rightly rejected by RO. Learned counsel for respondent has also filed preliminary legal objections on maintainability of instant petition.

4. Returning Officer appeared on last date of hearing and furnished his report. He was asked whether application for recounting was made petitioner before consolidation. He in all fairness replied that application was submitted before consolidation. Further stated that notices were also issued for recounting but due to law and order situation he could not count the votes and consolidated the result.

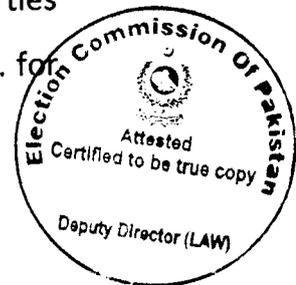
5. We have heard the submission in the light of available record. We have also perused the report of RO. First of all we take



up the matter of maintainability as raised by the learned counsel for respondent. There is no cavil with regard to enormity of powers enshrined in Article 218 (3) of the Constitution of Islamic Republic of Pakistan. Under section 9 (3) of the Election Act, Election Commission may exercise its powers to decide the matter before the expiration of sixty days. Since the election was conducted on 15.01.2023 and time of sixty days given in section 9 (3) of the Act is likely to expire on 15.03.2023. Thus the Commission has ample powers to hear and decide the matter under subsection 3 of section 9 of the Elections Act, 2017 read with Article 218 (3) of the Constitution of Islamic republic of Pakistan. Hence the question of jurisdiction and maintainability does not attract when the challenge is made in such like matters where illegality or malafide is floating on the face of record which shall be discussed in later part.

6. Now coming to the merits of the case, it reveal from record that Returning Officer allowed the application of petitioner which was made for recounting. It further reveals that Returning Officer wrote a letter bearing No. 48 dated 17.01.2023 to Senior Superintendent of Police (SSP) requesting therein for provision of security for the process of recounting which is scheduled to be conducted on 18.01.2023. One the same date he wrote another letter bearing No. 49 to SSP regarding postponement of schedule of recounting due to illness of his wife. It further reveals that he once again made a request to SSP vide letter bearing No. 51 dated 18.01.2023 for provision of security for recounting process. The Returning Officer also issued notices on 18.01.2023 to the parties to appear in Deputy Commissioner's office Dadu at 3: 00 p.m. for

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recounting of votes. It is striking feature of the case that Returning Officer on one hand is asking for security for recounting of votes on 18.01.2023 and on other hand he has passed an order dated 18.01.2023 wherein he has refused to recount the votes. The relevant para of order is reproduced as under:

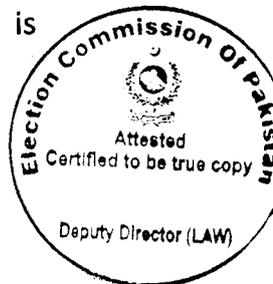
"5. The word 'may' is used in Rule 40 (4) Sindh Local Councils (Election) Rules, 2015, meant that the Returning Officer still retained discretion to nonetheless refuse a recount. Since, the application of recounting must contain reasonable grounds for recounting, which is lacking in the present matter. Consequently, the instant applicant is hereby rejected.

Contrary to above order, it reveals that Returning Officer has written a letter to Deputy Commissioner/ District Returning Officer dated 18.01.2023 wherein he taken the following stance for not recounting of votes:

"That , due to under-process recounting of votes, I am continuously receiving serious threats and my life and liberty is in danger and similarly, I am unable to proceed with the recounting of votes. However, it is essential to state here that I have also issued notices to the parties but one party remained absent and in the absence of one party, it is unjustified for me to carry on the proceedings of recounting. Hence, this letter is being issued for your kind information and necessary action in accordance with law."

Deputy Commissioner/ District Returning Officer however, written a letter to the Provincial Election Commissioner stating therein the detail for not recounting of votes by RO. The said letter is reproduced as under:

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"No. DC/LGE/Gen/38
Office of the
Deputy Commissioner/Collector Dadu &
District Returning officer
Dated: 19.01.2023

To

The Provincial Election Commissioner, Sindh
Karachi,

Through The Regional Election Commissioner,
Hyderabad

Subject: **RECOUNTING OF VOTES.**

It is submitted that the Returning Officer for MC Meharh, TC Radhan & TC Thariri Mohbat, Syed Shah Hussain Shah (Ex SEPCO Mehar) for LGE 2022 District Dadu issued a public notice for scheduled recounting of votes in ward No. 5, ward 9 and ward 14 of UC Mehrah (Copy attached) dated 17.01.2023 and a letter No. RO/01/MHR/RDN/THRI/MOHBT /48 dated 17.01.2023 for provision of security during the recounting, but then the schedule was postponed after few hours No. RO/01/MHR/RDN/THRI/MOHBT/50 dated 17.01.2023. Subsequently another notice was issued vide letter No. RO/ 01/ MHR/ RDN/ THRI/ MOHBT/51 dated 18.01.2023 along with a separate letter for providing security for the process of recounting.

In this regard when the arrangements were ensured and the candidate appeared for recounting, the Returning Officer left the premises without any information and intimation and is still untraceable with his mobile phones switched off this has resulted in a critical law and order situation and a massive mismanagement on his part.

This is for your information and further guidance.

Sd/-

Syed Murtaza Ali Shah
Deputy Commissioner & District
Returning Officer, Dadu"



- Sd/-

From above discussion we are of the considered view that recalling of order by RO qua recounting and that too after issuance of the notice is illogical and also bears no legal footing. It also reveals that there is a contradiction in the statements of Returning Officer for not counting the votes as discussed above, however, from above referred letter of District Returning Officer as well as keeping in mind the circumstances of case, it can safely be gathered that Returning Officer had malafide intention behind rejecting the application of petitioner after passing the order of recounting and also afterthought.

7. The Commission under Article 218(3) of the Constitution as well as in compliance of directions of the august Supreme Court in "Workers Party" case has to ensure free, fair and transparent election. The august Supreme Court in a landmark judgment of Workers Party Pakistan reported as PLD 2012 SC 681 defined and elaborated the duties of the Election Commission and has set the standards of free, fair and transparent elections which are required to be implemented by the Election Commission in letter and spirit. For ease of reference, the relevant segment of the judgment are reproduced as under:-

"40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the

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Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in *Election Commission of Pakistan v. Javaid Hashmi and others* (PLD 1989 SC 396), observed that "(g)enerally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including all stages involved in the election process. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein.

41. The Election Commission may also exercise its powers in anticipation of an ill that may have the effect of rendering the election unfair. In the case titled as *In Re: Petition filed by Syed Qaim Ali Shah Jellani* (PLD 1991 Jour. 41) the Elections Commission exercised its powers under Article 218(3) pre-emptively, by making all necessary arrangements to ensure that a certain class of

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people would be allowed to vote. This case implies that where a violation of the standards mentioned in Article 218(3) has not as yet taken place, the Election Commission is legally empowered under Article 218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Furthermore, Mst. Qamar Sultana v. Public at Large (1989 MLD 360) and In Re: Complaint of Malpractices in Constituency No. NA-57, Sargodha-V (supra) both reinforce the argument that the Election Commission is fully empowered by Article 218(3) to make 'such orders as may in its opinion be necessary for ensuring that the election is fair, honest etc'. These decisions recognize that the Election Commission enjoys broad powers not only to take pre-emptive action but also to pass any and all orders necessary to ensure that the standards of 'honesty, justness and fairness' mentioned in Article 218(3) are met."

Certainly, Election Commission is duty bound under Article 218 (3) of the Constitution of Islamic Republic of Pakistan to maintain and ensure the highest standards of transparency as elaborated in the above judgment.

8. For what has been discussed above, we, while exercising powers under rule 40 (4) (b) of Sindh Local Councils Elections (Rules) 2015 read with Article 218 (3) of the Constitution of Islamic Republic of Pakistan, direct the Returning Officer concerned to recount the votes under the law. We also direct that recount shall be done in the presence of DRO and if any question arises there, that should be dealt in a summary manner. The RO shall complete the process of recounting within three days and thereafter consolidate the result afresh and as such he shall submit his report

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to this office immediately. The SSP shall be responsible to provide fool proof security on request of RO.

9. Office to take follow up action and the precedence.



(Nisar Ahmed Durrani)
Member



(Justice (R) Ikram Ullah Khan)
Member

Islamabad
The 6th March, 2023

