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ELECTION COMMISSION OF PAKISTAN

MR. SIKANDAR SULTAN RAJA,
JUSTICE (R) IKRAMULLAH KHAN,

CHAIRMAN
MEMBER

CASE No.F.10 (4)/2024-Electoral-Rolls

Subject: CONSTITUTION PETITION NO. 368/2024 TITLED AS BEHRAM MENGAL VS. ELECTION COMMISSION OF PAKISTAN AND OTHERS BEFORE THE HON'BLE HIGH COURT OF BALOCHISTAN, QUETTA,

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Subject: APPLICATION UNDER SECTION 40 READ WITH 39 OF THE ELECTIONS ACT, 2017.

For the Petitioner : Khalid Mehmood authorized person on behalf of
Petitioner along with Syed Arslan Sabir Bukhari, AHC.

.....Petitioner

VERSUS

.....Respondent

For the Commission : Muhammad Arshad Director General-Law, Shahid Iqbal
ADG-F/Rolls, Mr. Imran Ahmed Khan Director MIS.

Date of hearing : 09-04-2024

ORDER

- Sep -

Sikandar Sultan Raja, Chairman- Briefly stated the facts forming background of the subject issue are as such that the Election Commission issued Notification of Election Program on 13.03.2024 for Bye-Election in various Constituencies. The Petitioner Mr. Behram Mengal filed nomination papers from Constituency PB-20, Khuzdar-III for bye-election. His nomination papers were rejected by the Returning Officer on the ground that Petitioner was not registered voter in the Province of Balochistan. The Petitioner approached the Appellate Tribunal, Balochistan. The appeal was also dismissed. Thereafter, the Petitioner submitted an application in the Commission seeking transfer of his vote from Karachi to Khuzdar. The application was processed and placed before the Commission. The Commission advised the Petitioner to submit Form-21 (transfer of vote) to the District Election Commissioner/ Registration Officer Khuzdar District for transfer of the vote from District Karachi to District Khuzdar after the Bye-Election of PB-20, Khuzdar-III. The order of the Commission was communicated to the Petitioner on 05.04.2024. On the same date the subject writ petition was fixed before the Hon'ble High Court of Balochistan, Quetta. The Assistant Director-



appeared before the Hon'ble Court, however, he was not aware of the disposal of the application of the Petitioner and he did not object to the proposal of the counsel for the Petitioner that he will not press his petition subject to issuance of directions to the Commission to dispose of the application of the Petitioner by the Commission.

02. The order of the Hon'ble High Court was placed before the Commission and the Commission directed to issue notice to the Petitioner for hearing. Notice was issued for 09.04.2024.

03. Arguments of the learned counsel for the Petitioner and departmental representatives heard and record perused.

04. Learned counsel for the Petitioner contended that the Petitioner is permanent resident of District Khuzdar and his vote was registered on his permanent address but the same was transferred without his knowledge to Karachi on his temporary address. He argued that the Petitioner is entitled to contest election as it is his fundamental right and Article 62 read with Article 113 of the Constitution, 1973 does not prohibit a voter to contest election from any Constituency in the country. He argued that there is no bar on the transfer of vote of the Petitioner to District Khuzdar as the same was transferred to Karachi without his consent. He referred to Section 40 of the Elections Act, 2017 and argued that the Commission has ample power to modify the Electoral Rolls.

05. The departmental representatives informed the Commission that the Election Program was issued on 13.03.2024 and the election symbols have already been allocated on 30.03.2024. They further apprised the Commission that the pictorial Electoral Rolls of the Constituency and ballot papers have been printed and the request of the Petitioner is not entertain-able in view of the bar contained in Section 39 of the Elections Act, 2017. The representative informed the Commission that voter history obtained from record shows that the vote of the Petitioner was transferred to Karachi on his temporary address in 2019. The Commission was further informed that the Petitioner may approach the District Registration Officer for transfer of his vote after the bye-election if he so desires. The ADG-Electoral/Rolls informed that the Commission had given vast publicity through electronic and print media for the registration/ transfer of votes. The Commission was further informed that per available record comprising voter history of the Petitioner, he was verified on his temporary address at Karachi during door to door verification of voters held in the year 2021-22.

06. The record available before the Commission reveals that the election program was issued on 13.03.2024 and the date for filing of nomination paper was from 16.03.2024 to 18.03.2024. The Petitioner was aware of transfer of his vote when he decided to contest the election but he did not approach the relevant forum at the appropriate time for the transfer of his vote. Section 39 of the Elections Act, 2017 bars revision, correction and transfer after



Constituency is called upon to elect. The learned counsel for the Petitioner has referred to Article 62 & 113 of the Constitution, 1973, however, a person contesting election from Constituency of a Provincial Assembly shall be an voter of that Province. A Candidate contesting elections for National Assembly may be an voter from anywhere in Pakistan. The arguments of the learned counsel are misconceived. The pictorial Electoral Rolls and the ballot papers have already been printed as intimated by the departmental representatives. The Section 39 of the Act, 2017 also bars transfer of votes after the constituency is called upon to elect. Section 40 of the Act referred to by the learned counsel for the Petitioner is also subject to Section 39 of the Act and is not attracted to the subject case.

07. In view of the above, the request of the Petitioner for transfer of votes at this stage is not possible as the process for bye-election comprising of different important stages is already completed. The application is devoid of force and is rejected.

Sikandar Sultan Raja
Chairman

Justice (r) Ikram Ullah Khan
Member

Announced on 09.04.2024

