

## ELECTION COMMISSION OF PAKISTAN

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MR. SIKANDAR SULTAN RAJA, CHAIRMAN  
MR. NISAR AHMED DURRANI, MEMBER  
MR. BABAR HASSAN BHARWANA, MEMBER

### CASE No.F.6 (1)/2025-LAW-III

Subject: PETITION UNDER SECTION 7,8& 9 AND OTHER  
ENABLING LAWS OF THE ELECTIONS ACT, 2017

Mir Muhammad Usman Pirkani Son of Gul Muhammad Khan Pirkani, contesting candidate  
in the General Elections 2024 from PB-45, Quetta-VIII, Balochitan

.....Petitioner(s)

Versus

1. Ali Madad, Returned Candidate, PB-45, Quetta-VIII Balochistan, R/o Jattak Stop,  
Eastern Bypass, Quetta
2. Afsarullah
3. Amanullah
4. Begul Khan
5. Haji Arz Muhammad Barech.
6. Daro Khan
7. Sardar Abdul Razzaq Satoryani
8. Sailab Khan
9. Shams-Ur-Rehman
10. Zia-Ud-Din
11. Zia-Ur-Rehman
12. Tahir Saleem
13. Abdul Baseer
14. Abdul Hameed
15. Abdul Majeed Khan
16. Ubaidullah
17. Ghulam Rasool Mengal
18. Fazal Muhammad
19. Gul Shah
20. Lashkar Khan
21. Liaquat
22. Muhammad Idrees Shahwani
23. Muhammad Ishaque
24. Muhammad Ayub
25. Muhammad Haleem
26. Musa Khan
27. Mir Tanveer Ahmed
28. Mir Muhammad Qasim Pirkani
29. Nadeem Ahmed



30. Nazar Ali  
 31. Nasrullah Barech  
 32. Nazar Muhammad  
 33. Hamayun Aziz Kurd  
 All contesting candidates from PB-45, Quetta-VIII  
 34. The Returning Officer, PB-45, Quetta-VIII  
 35. The District Returning Officer, PB-45 Quetta-VIII

## .....Respondent(s)

For the Petitioner	:	IN person alongwith Mr. Kamran Murtaza, Sr. ASC
For the respondent No.1	:	In person alongwith, Ch. Hassan Murtaza Mann, AHC
For the respondent No.4	:	In person
For the respondent No.17	:	In person
For the respondent No.22	:	In person
For the respondent No.23	:	In person
For the respondent No.2, 3, 5, 6,7,8,9,10,11,12,13,14,15,16, 18,19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34& 35	:	Nemo
Date of hearing	:	<u>22-01-2025</u>

**ORDER**

*Sd/-*

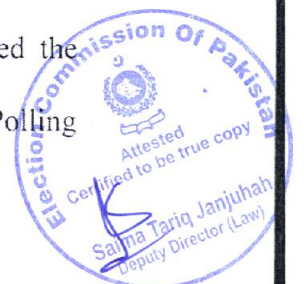
**Sikandar Sultan Raja, Chairman-** Brief background of the case is that the election was held in the Constituency PB-45 Quetta-VIII on 08.02.2024 and the said election was challenged before the Election Commission of Pakistan by the Petitioner namely Mir Muhammad Usman Pirkani by filing a petition which was dismissed by the Commission on 26.02.2024 with the directions to approach the Tribunal for re-dressal of grievances. The Petitioner filed an election petition No. 15 of 2024 before the Election Tribunal Baluchistan. The Election Tribunal while passing the judgment dated 16.09.2024 directed for re-poll on 15 polling stations of the Constituency. The judgment passed by the Election Tribunal was challenged by Ali Madad Runner-up candidate before the august Supreme Court of Pakistan in Civil Petition No. 1349/2024 which was dismissed by the august Court through order dated 20.11.2024. Thereafter, the Commission issued schedule for conduct of re-poll at 15 Polling Stations of the Constituency and appointed DRO and RO. The date for re-poll was fixed as



05.01.2025 and on the said date re-poll was held on 15 Polling Stations, after the re-poll Form-47 was issued by the RO whereby Respondent No. 1 (Ali Madad) has been declared as Returned Candidate and the Petitioner secured 3,731/- votes by obtaining 3<sup>rd</sup> position. Thereafter, on 09<sup>th</sup> January, 2025 Mir Muhammad Usman Pirkani filed the subject petition under Section 7, 8 & 9 of the Elections Act, 2017 with the prayer to set aside the result i.e Form-47, 48 & 49 and notification dated 08.01.2025 whereby Respondent No. 1 is declared as Returned Candidate.

02. Upon receipt of the said petition the matter was fixed for preliminary hearing with notice to the Petitioner on 10.01.2025 before the Commission on 10.01.2025, after hearing the arguments of the Petitioner notices were issued to the Respondent and the Notification dated 08.01.2025 under Section 98 of the Act *ibid* was suspended. Reports were also sought from the DRO & RO and they were also directed to produce the original Form-45 of 15 Polling Stations before the Commission. Thereafter, the matter was fixed on 16.01.2025. On 16.01.2025 the matter was delisted due to non-availability of the bench and it was re-fixed for hearing on 21.01.2025. On 21.01.2025 the matter was fixed for submission of reply and reports by the contesting candidates. The RO and DRO submitted their reports and also brought original Form-45, the copies of which were retained and original was returned to them. Furthermore, Respondents No. 4, 17, 22 and 23 also submitted their reply. Respondent No. 1 also submitted his reply and advanced certain arguments. The copies of all the replies and reports of DRO and RO were handed over to the parties present before the Commission and the matter was adjourned to 22.01.2025 at 1:30 P.M for submission of reply from remaining Respondents and arguments from the parties. The matter was heard <sup>at</sup> on 22.01.2025 at length and reserved for orders.

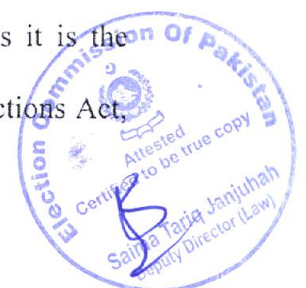
03. The counsel for the Petitioner appeared and at the very outset briefed the background and history of the elections in the Constituency and election at 15 Polling



Stations in the Constituency. He referred to the table given at page-25 and 26 of the petition whereby the names of 15 Polling Stations and difference in the votes were mentioned by the Election Tribunal. He also referred to page No. 33 & 34 whereby the Tribunal has given the conclusion and ordered for re-poll at 15 Polling Stations. He also referred to the order passed by the august Supreme Court of Pakistan. He while arguing the matter stated that no contesting candidate has objection regarding the process of polling during the polling hours, however, they have serious objections on the conduct of RO and DRO who according to them have manipulated the result. He also mentioned that Form-47 was issued in absence of the contesting candidates and DRO was not available in his office. He referred to Section 92 of the Elections Act, 2017 read with Rule 84 of the Election Rules, 2017 and stated that the Returning Officer did not follow the procedure laid down under the above mentioned law. He further argued that the Commission has the power under Section 4 and 8 of the Elections Act, 2017 read with Article 218(3) of the Constitution, 1973 to issue directions and review the order passed by the RO and DRO. He alleged that corrupt and illegal practices have been committed by the Respondent No. 1 and prayed to take notice of the situation and to set-aside the election result of 15 Polling Stations held on 15.01.2025 and notified on 08.01.2025.

04. The Respondent No. 4, 17, 22 & 23 were present in-person and adopted the arguments advanced by the Counsel for the Petitioner.

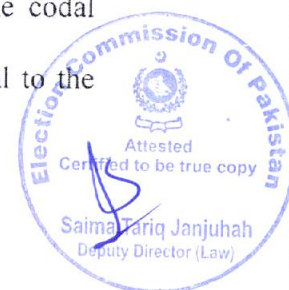
05. The Counsel for the Respondent No. 1 has already submitted his reply. He started his arguments and stated that the petition is not maintainable as the relief claimed by the Petitioner is against the law and facts of the case and out of the ambit of cited Sections. He further argued that the petition do not meet the corresponding evidential criteria required under the Elections Act, 2017. He further stated that the Petitioner failed to point out grave illegalities and irregularities which have materially affected the result of poll as it is the prerequisite for exercise of powers by the Commission under Section 9 of the Elections Act,



2017. He also highlighted that the subject petition cannot be disposed of in a summary manner as the allegations require examination of witnesses which cannot be done under Section 4, 7, 8 & 9 of the Elections Act, 2017. He further argued that when law prescribes a thing to be done in a particular manner that has to be done in the same manner or not at all. He alleged that Form-45 attached with the petition by the Petitioner are fake, forged and fabricated therefore, cannot be relied upon to grant relief claimed in the petition. He also objected that the Petitioner did not avail the remedy of recounting provided under Section 95 of the Elections Act, 2017 as the margin of victory is less than 4000 votes for the Provincial Assembly which is a requirement of the law. Therefore, while concluding his arguments he placed reliance on certain orders passed by the Commission after the conduct of General Elections 2024 under Section 8, 9 of the Elections Act, 2017 and prayed that the petition may be dismissed being non-maintainable under the Elections Act, 2017.

06. In rebuttal the counsel for the Petitioner stated that the application for recounting was not submitted to the RO due to his non availability and no notice was issued to the contesting candidates for the process of consolidation.

07. The RO and DRO submitted their reports and denied the allegations leveled by the Petitioner in his petition. They stated that the poll started on due time i.e 08:00 A.M at all the 15 Polling Stations of the Constituency and continued peacefully till 05:00 P.M. They stated that no complaint was lodged by any of the contesting candidate with them and the entire process took place in free, fair and transparent manner. They also stated in their reports that no complaint regarding any mis-management/ malpractices was received and they were available either in the camp office or in the control room to supervise and monitor the poll related activities to avoid any untoward incident. They further stated that Forms-45 and 46 were prepared by the presiding officers in accordance with law after fulfilling the codal formalities on the Polling Stations and they handed over the Forms and the material to the



Returning Officer. They further stated that Form-47 was prepared on the same day on the basis of Form-45 received from all the presiding officers of 15 Polling Stations. They both denied the allegations of restraining the Candidates or their agents to enter into the office of RO while preparing Form-47 and notices were also issued to all the contesting candidates and their election agents for consolidation of results accordingly. They further stated that Forms-48 and 49 have also been prepared in accordance with law in the presence of contesting candidates and that the allegations leveled by the Petitioner are baseless.

08. Arguments heard and record perused.

09. From the perusal of the record it reveals that the Petitioner has filed the subject Petition under Section 7, 8 & 9 and other enabling laws of the Elections Act, 2017. The prayer of the Petitioner is as under:-

*"It is therefore, respectfully prayed that this Hon'ble Commission may kindly be pleased to take note of the situation, as such, summon the whole election material including the presiding officers as such, on holding the summary inquiry, this Commission may be pleased to set-aside the election result i.e Form-47, 48, 49 & the notification dated 08.01.2025 and the Petitioner may be declared to be Returned Candidate from the first Constituency in question with any other relief in the interest of justice while as interim relief the operation of notification dated 08.01.2025 may also be suspended in the interest of justice."*

10. It is observed that Section 7 of the Elections Act, 2017 is not relevant Section for the subject case as it pertains to "**Power to requisition property**". There is no grievance of the Petitioner in respect of the property of the Commission or requisition of the property by the Commission. Secondly, Section 9 of the Elections Act, 2017 provides that the Commission can declare a poll void by reason of grave illegalities or irregularities which have materially affected the result of the poll at one or more Polling Stations or in the whole Constituency including implementation of an agreement restraining women from casting their votes. There are 3 basic requirements provided under the said Section for declaring the poll



void, the first requirement is **grave illegalities**, secondly **violation of the provisions of this Act and Rules** and thirdly **materially affected the result or agreement to restraining the women** for casting their votes. It is also provided that the satisfaction of the Commission is required if it is apparent on the face of record or after inquiry as it may deem necessary the poll, at one or more Polling Stations can be declared void by the Commission. In the present case the Petitioner has raised certain allegations regarding manipulation of results by the RO and DRO at 15 Polling Stations, non-compliance of provisions of Section 92 of the Elections Act, 2017 and commission of corrupt practices by the Respondent. However, no material evidence has been provided by the Petitioner in support of his allegations leveled by him in the said petition. The only documents attached by the Petitioner along with his petition is the attested copy of the judgment passed by the Election Tribunal Quetta in E.P No. 15/2024 which is a past and closed transaction as the said judgment has been implemented by the Commission and re-poll has been held at 15 Polling Stations on 05.01.2025. Another document is the judgment passed by the Baluchistan High Court in C.P No. 1959/2024 which has also been implemented by the Commission, thereafter, the order passed by the Supreme Court of Pakistan in Civil Appeal No. 1349/2024 has been attached and copies of Form-45 have been given along with Form-47 and notification of the Returned Candidates. The Respondent No. 1 has raised serious concerns about the validity of copies of Form-45 attached by the Petitioner along with his petition and he has also raised the objection that the ID card numbers of the presiding officers on the said Form are also fabricated, furthermore, most of the Forms are not readable and are totally different from the original Forms brought by the Returning Officers upon the directions of the Commission. Verification and authentication of the Forms can only be determined after recording of pro and contra evidence of the witnesses, presiding officers and the parties. The Commission can decide the



matter in a summary manner and cannot record the evidence for verification and authentication of Forms without supporting evidence.

11. Section 140 of the Elections Act, 2017 empowers the Commission to appoint Election Tribunals for the trial and disposal of Election Petitions. The procedure for filing and trial of the Election Petitions is provided in Chapter-IX of the Elections Act, 2017 in form of "Election Disputes". Furthermore, Chapter-X deals with the offences of corrupt and illegal practices including tempering with papers and violation of official duty in connection with election. Section 190 of the said Chapter provides that the offences under this Chapter shall be tried by the Session Judge and any person aggrieved may within 30 days passing of the final order file an appeal against the order in High Court which shall be heard by the Divisional Bench of the High Court. It is further mentioned that the proceedings against a person for being involved in corrupt and illegal practices may be initiated on a complaint made **by a person or by the Commission**. In both the above mentioned provisions of the Act, 2017 both the forums i.e Election Tribunal and the Session Judge are required to decide the matter after recording of pro and contra evidences of the witnesses and the parties and a free perusal of documentary evidence provided by the parties. The Election Tribunal has been appointed by the Commission and the Petitioner was at the liberty to approach the Election Tribunal for re-dressal of his grievances. Furthermore, a complaint of the corrupt practices may also be filed before the Session Judge as mentioned under the Section 190 of the Elections Act, 2017. The counsel for the Respondent also objected that the remedy of the recounting was also available to the Petitioner which has not been availed by him. In the subject matter the Petitioner has obtained 3,731/- votes and declared as second Runner-up Candidate while the Respondent NO. 1 has obtained 6,883/- votes. Section 95 provides that the Returning Officer was bound to recount the ballot papers where the margin of victory is less than 4000 votes for Provincial Assembly Constituency or 5% of the total votes polled in







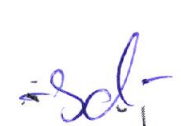
the said Constituency. Furthermore, it is also observed by the record and the reports submitted by the RO and DRO that a notice dated 05.01.2025 was issued to all the contesting candidates for consolidation of the results. The said notice has been attached by the RO along with his report, whereby, the receiving of the notice from the candidates is also mentioned on it.

12. In view of the above discussion it is observed that the process of consolidation has been completed and notification of the Returned Candidate has been issued on 08.01.2025. Factual controversies <sup>are</sup> involve in the matter regarding Forms and other issues which have been raised by the Petitioner in his petition. These controversies cannot be resolved without proper procedure of evidence provided under the Elections Act, 2017 which is the mandate of the Election Tribunals presently functional. Therefore, the subject petition is dismissed with the observations that the Petitioner may approach to the Election Tribunal for re-dressal of his grievances, if so desire.

13. The suspension of notification order dated 10.01.2025 is hereby vacated and the office is directed to take further necessary steps accordingly.

  
**Sikandar Sultan Raja**  
 Chairman

  
**Nisar Ahmed Durrani**  
 Member

  
**Babar Hassan Bharwana**  
 Member

