

ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER
SHAH MOHAMMAD JATOI, MEMBER
MR. BABAR HASSAN BHARWANA, MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

CASE No.7(262)/2024 LAW-III (GE)

CASE No.7(264)/2024 LAW-III (GE)

CASE No.7(265)/2024 LAW-III (GE)

In Ref: **REPRESENTATION UNDER SECTION 8,9 & 95 OF THE
ELECTIONS ACT, 2017 READ WITH ELECTION RULES
2017, READ WITH ARTICLE 218 OF THE CONSTITUTION
OF ISLAMIC REPUBLIC OF PAKISTAN 1973 READ WITH
ALL OTHER ENABLING PROVISIONS OF LAW**

1. Qazi Muhammad Asad, PK-46, Haripur, Khyber Pakhtunkhwa
In case No.7(262)/2024-LAW-III(GE)
2. Raja Faisal Zaman, PK-48, Haripur, Khyber Pakhtunkhwa
In case No.7(264)/2024-LAW-III(GE)
3. Gohar Nawaz Khan, PK-48, Hari Pur, Khyber Pakhtunkhwa
In case No.7(265)/2024-LAW-III(GE)

.....Petitioner(s)

VERSUS

1. Akbar Ayub, PK-46 & Others
In case No.7(262)/2024-LAW-III(GE)
2. Arshad Ayub & Others
In case No.7(264)/2024-LAW-III(GE)
3. Malik Adeel Iqbal and othes,
In case No.7(265)/2024-LAW-III(GE)

.....Respondent(s)

For the Petitioners : Mr. Zia-Ur-Rehman, Advocate
For the Respondents : Mr. Haq Nawaz, ASC
Date of hearing : 22-07-2025

ORDER

Mr. Nisar Ahmed Durrani- Through this single order, we shall decide afore-titled petitions, being identical in nature and on common grounds.

2. Brief facts giving rise to titled petitions are that petitioner, Qazi Muhammad Asad and 13 others contested the general



election held on 08.02.2023 from constituency PK-46, Haripur-I. According to Form-49, issued by the Returning Officer, petitioner obtained 28175 votes whereas returned candidate (Akbar Ayub) got 68725 votes in the contest.

3. Petitioner No. 2 namely Raja Faisal Zaman and 9 others contested the general election from constituency PK-47, Haripur-II. According to Form-49, petitioner obtained 34, 654 votes whereas returned candidate, Arshad Ayub Khan (respondent No. 2) got 73113 votes in the contest.

4. Similarly, petitioners No. 3 Gohar Nawaz Khan & 15 others contested the general election from constituency PK-48, Haripur-III. According to Form-49, Gohar Nawaz Khan obtained 21737 votes while returned candidate namely Malik Adeel Iqbal secured 41,777 votes in the election. Petitioners being aggrieved and dissatisfied with the result filed titled petitions. On receipt of titled petitions, notices were issued to parties to hear their stance. On 06.08.2024, the matter was adjourned to a date in office.

5. It reveals from the record that respondents, Akbar Ayub Khan and Arshad Ayub Khan assailed the aforementioned order of the Commission dated 6.08.2024 through 'W.Ps No. 2849 of 2024 & 2862 of 2024 respectively before the Hon'ble Islamabad High Court Islamabad. The Hon'ble High Court disposed of aforementioned petitions through a consolidated order dated 09-04-2025 with the following *inter alia* observations:

"11. For what has been discussed above, the captioned petitions are disposed of with the direction to the Commission to afford opportunity of



detailed hearing to the parties on the legal objections/ arguments raised by them prior to proceed further with the proceedings pending adjudication before it and decide the same in accordance with law. Upon receiving of certified copy of this order, the Commission shall issue notices to the parties as well as their counsel. Office is directed to send certified copy of this order to the Commission."

sd - 6. In compliance thereof, notices were issued to concerned parties. Learned counsel for petitioners vehemently contended that massive rigging took place in constituencies. He contended that Forms-45 of several polling stations were not provided to election agents of the petitioners. He further contended that no notice was issued by the Returning Officers for consolidation of result which has been carried out in absence of petitioners or their agents. He vehemently emphasized that higher and unnatural pattern of voting is evident to believe that bogus votes have been cast to rig the election. He further emphasized that petitioners tried their best to file their respective applications to the concerned ROs for recounting of votes prior to consolidation but they did not receive applications for reasons best known to them. He prayed that order for re-counting may be passed or order for re-poll may be passed in the interest of justice.

7. On the other hand, learned counsel for the respondents contended that in terms of sections 9 (3) and 95 (5) of the Elections Act, 2017, Election Commission of Pakistan has no jurisdiction to continue with the proceedings of the instant petitions after lapse of 60 days of publication of names of



returned candidates. He contended that election was conducted peacefully, free, fair and transparent manner and not a single instance of violence or rigging surfaced or reported from any polling station. Further contended that allegations are bald, vague and general without any supporting evidence. He added that no written applications were made to the concerned ROs for recounting of votes. He further contended that prayer for recounting of votes does not even fulfill the criteria given in section 95 (5) of the Elections Act, 2017, as margin of victory in all three constituencies is much higher. He prayed that petitions may be dismissed.

8. In pursuance of our order dated 10.07.2024, the Returning Officers have furnished their respective reports. The Returning Officers have stated in their respective reports that they issued notices to all contesting candidates for consolidation of result mentioning therein time and place of consolidation. That applicants did not apply for recounting of votes and also they did not participate in consolidation process. That representatives of some of contesting candidates were present and process of consolidation was completed in their presence. That no any illegal activity has been reported from any polling station on polling day. That whole process of election was carried out purely on merit and as per Election act, 2017 and the Election Rules. That extraordinary care was taken to fulfill their responsibility on merit and as per law and rules.

9. We have heard ~~and~~ arguments and perused the record as well as reports furnished by the Returning Officers. First of all we intend to discuss the objection raised by the learned counsel qua



jurisdiction. The positive intention of the legislatures is more than evident from the provisions of sub section 4 of section 9 of the Elections Act, 2017, which runs as follows:

9. Power of the Commission to declare a poll void.— (1) Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such enquiry as it may deem necessary, the Commission is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as 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, it shall make a declaration accordingly and call upon the voters in the concerned polling station or stations or in the whole constituency as the case may be, to recast their votes in the manner provided for bye-elections.

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(4) While exercising the powers conferred on it by sub-section (1), the Commission shall be deemed to be an Election Tribunal to which an election petition has been presented and shall, notwithstanding anything contained in Chapter IX, regulate its own procedure.

Apart from above, it is a constitutional mandate of Election Commission of Pakistan under Article 218 (3) of the Constitution of Islamic Republic of Pakistan to ensure that election has been conducted honestly, justly, fairly, in accordance with law and that corrupt practices are guarded against. The august Supreme Court in the case of Workers Party vs Federation of Pakistan (PLD 2012 SC 681) has inter alia held that the Election Commission is empowered under Article 218 (3) of the Constitution to ensure



that election process does not suffer from any corrupt and/or illegal practices. The august Supreme Court of Pakistan has further held that the Commission is under constitutional obligation to regulate and check all the activities as are cognizable by it including malpractices, coercion, intimidation etc to issue instruction, exercise its powers and make orders to uphold the standards of honesty, justness and fairness enshrined in Article 218 (3) of the Constitution. Indeed, Election Commission under Article 218(3) of the Constitution as well as in compliance of directions of the august Supreme Court passed in aforementioned landmark judgment has to ensure standards of free, fair and transparent election.

10. In view of above, we are of the considered view, that Commission has vast powers to adjudicate upon the matter even after lapse of 60 days time from the date of issuance of notification of returned candidates.

10. Now adverting towards merits, in terms of section 8 of the Elections Act, 2017, the Commission may review the order passed by an officer under Election Act, 2017 or Rules made there under, where the Commission reach to a conclusion that the concerned officer has passed an order against the law. However, in the light of the reports of the Returning Officers, there is nothing to believe that Returning Officers have acted contrary to law or they have passed any such order in violation of relevant provisions of law and rules.

11. Through titled petitions, petitioner have also sought recounting of votes in the entire constituency. Section 95 (5) of the Elections Act, 2017, governing the matter in hand, with



utmost clarity provides that Returning Officer shall recount the votes on written request, if margin of victory is less than five percent of the total votes polled or in case of Provincial Assembly, margin of victory is less than 4000 or number of votes excluded from the count by the Presiding Officers are equal or more than the margin of victory.

12. It reveals from Form-47 of constituency PK-46 issued by the concerned RO that margin of victory between returned and runner up candidates is 40508 votes while rejected votes are 4014.

13. Similarly, Form-47 of PK-47 furnished by the RO reveals that margin of victory between returned and runner up candidates is 38,418 votes whereas rejected votes are 3,698.

14. It reveals from Form-47 of PK-48 that margin of victory between returned and runner up candidates is 20040 while votes excluded from the count are 3,805.

15. The aforementioned margin of victory between returned and runner up candidates leads to the conclusion that prayers of petitioners for recounting of votes in terms of section 95 (5) & (6) of the Act *ibid.* do not appear appropriate.

16. Apart from above, it is prerequisite for aggrieved person to bring on record some reliable and considerable evidence or violation of Elections Act or Rules which have materially affected the result of the constituency. However, nothing has been placed on record to believe *prima facie* that any violation or irregularity has been committed by the Returning Officers or other staff.

17. So far as the claim of learned counsel with regard to alleged denial of Returning Officer from receiving applications for



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re-counting is concerned, the Returning Officers have categorically stated in their respective reports that no written application has been made by the petitioners. We are of the view that stance taken by the learned counsel and strongly denied by the ROs give rise to disputed questions of facts, which cannot be settled except by recording of evidence pro and contra. The Commission while exercising general powers cannot enter into such exercise at this stage.

18. Resultantly, for what has been discussed above, titled petitions are hereby dismissed being devoid of force.

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(Nisar Ahmed Durrani)
Member

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(Shah Mohammad Jatoi)
Member

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(Babar Hassan Bharwana)
Member

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(Justice (R) Ikram Ullah Khan)
Member

Islamabad
The 8th August, 2025

