

BEFORE THE ELECTION COMMISSION OF PAKISTANPRESENT:

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(2)/2024-Law-III

In Ref: ELECTION PETITION UNDER SECTION 142 OF THE
ELECTION ACT, 2017 READ WITH ALL OTHER
ENABLING PROVISIONS OF LAW

APPLICATION FOR TRANSFER OF ELECTION
PETITION U/S 151 OF ELECTION ACT

Dr. Tariq Fazal Choudhry,

....Applicant

Versus

Muhammad Shoaib Shaheen & Other

.....Respondents

For the Petitioner : In person along with
Ghulam Murtaza Khan,
Advocate along with
Haseeb Advocate.

For the Respondent : In person along with
Zia Ullah Khan Advocate,

Date of Hearing : 07-06-2024

ORDER

Justice (R) Ikram Ullah Khan, Member, We intend to decide the above mentioned titled application preferred by the petitioner, Dr. Tariq Fazal Choudhry whereby, who has invoked the jurisdiction of the Commission in term of Section 151 of the Election Act, 2017 (herein after referred as "the Act") for transfer of Election Petition No. 73 of 2024 titled as Shoaib Shaheen Vs Dr. Tariq Fazal Choudhary and others subjudice before the Learned Election Tribunal (herein after referred as "the Tribunal") at Islamabad.

2. In fact respondent herein namely Mr. Muhammad Shoaib Shaheen has challenged the Elections thereto National Assembly seat NA-47 Islamabad, by filling Election Petition against the applicant on multiple grounds well mentioned therein the Election Petition. During course of trial of the election petition, applicant keeping in view the conduct of trial, feeling apprehensions and gaining perception of



some biasness, filed the instant application under Section 151 of the Act, 2017 for the transfer of the said election petition from Learned Election Tribunal, Islamabad to any other Learned Election Tribunal.

03. The learned counsel appeared on behalf of the applicant contended that the proceeding in the Election Petition No. 73 of 2024 titled as Shoaib Shaheen Vs Dr. Tariq Fazal Choudhary and others as conducted so far by the Learned Tribunal is against law and rules on the subject;

- i. *that the attending circumstances, prima facie give rise to a strong inference, that the Learned Tribunal is determined to decide the fate of the Election Petition, on the basis of affidavits, already filed by some of the respondents including the Election Commission of Pakistan under the direction of the Learned Tribunal which gave rise to and created apprehension in the mind of the applicant that Learned Tribunal is bent upon by adopting a novel procedure for disposal of and decision over the fate of the subjudice Election Petition, which is nowhere, prescribed there under any of the provision of the Act, 2017. thereby causing prejudice to the vested and legal rights accrued to the applicant by afflux of law;*
- ii. *that the Learned Tribunal has harassed the Returning Officer by imposing a fine of Rs. 15000/- on account of a single time non-appearance and also warned him of issuance of warrant of arrest;*
- iii. *that no doubt the Election Petition is still subjudice before the Learned Tribunal which require adjudication in accordance with law, but commencement of trial over an Election Petition is subject to fulfillment of prescribed conditions well mentioned under the provision of Section 142 to 144 of the Act, 2017 and Rules 140 of the Rules, 2017 but the Learned Tribunal without affording opportunity of hearing over the maintainability and competency of the Election Petition, admitted the said petition by by-passing the mandatory provision of the Act, 2017 which is hopelessly time barred, incompetent and non-maintainable. Such conduct of the trial has created an actual perception of biasness towards the Learned*



- 4 -

Election Tribunal. While adopting such procedure has prejudiced the legal rights of the Applicant.

- iv. *that Rule 140 of the Election Rule 2017 has already been amended by ECP vide SRO 452(1) 2023 on 07-04-2023, however, the Learned Tribunal exercised, power for affording 7 days to the election petitioner, for removing deficiencies occasioned therein the Election Petition which is no more available but even then Learned Tribunal exercised a power not vested in it, thereby afforded 7 days grace period to the present respondent for removing the patent legal infirmities and deficiencies occurred in the said petition, in order to make maintainable the same;*
- v. *that the Election Tribunal is deciding the election petition in haste without following the procedure laid down under the Elections Act, 2017 and Rules framed there under;*
- vi. *that application for rejection of the election petition was moved by the applicant which is still pending and not decided by the Election Tribunal;*
- vii. *That the election petition has been filed before a wrong forum as Registrar Islamabad High Court, Islamabad was not competent to entertain the election petitions without proper notification from the Election Commission of Pakistan;*
- viii. *that in the reported judgment of PLD 1973 SC 327 titled Muhammad Nawaz Vs. Ghulam Qadir and 3 others and referred that the Hon'ble Supreme Court of Pakistan has upheld that any irregularity or illegality during the filing of election petition is not curable and the same may be rejected summarily;*
- ix. *that the provisions of the limitation Act, 1908 shall not apply to election petitions as the petitions are dealt under the special law as specific time of 45 days has been mentioned in Section 142 of the Elections Act, 2017;*



x. *that the Learned Tribunal could not exercise the jurisdiction to put to trial an Election Petition presented beyond 45 days, well prescribed thereunder the provision of section 142 of the Election Act, 2017 whereas such hopelessly time barred Election Petition shall be summarily rejected in term of the sub-section 1 of section 145 of Election Act, 2017 but the Learned Tribunal, issued notices for appearance of respondents therein, and also directed respondents therein to file the original Forms-45 and 46 alongwith affidavits which is a clear deviation therefrom the prescribed law and rules and such kind of illegalities which otherwise, are not curable, give an inference that Learned Tribunal is going to decide the said Election Petition in favor of the present respondent, irrespective of merit of the case. such conduct of pre-trial of an Election Petition has raised serious apprehension of bias and partiality of the Learned Election Tribunal on account of which the applicant has lost his confidence in Learned Tribunal, that applicant would not be treated in accordance with law and in term of Article 10-A of the Constitution of Pakistan, therefore, under such attending facts and circumstances of the case, the applicant is constrained to invoke the jurisdiction of the Commission conferred upon it in term of section 151 of the Election Act, 2017 for transfer of the Election Petition No. . 73 of 2024 titled as Shoaib Shaheen Vs Dr. Tariq Fazal Choudhary and others from the Election Tribunal where, the election petition is pending adjudication, to any other already established Election Tribunal anywhere, within the Pakistan or to any Election Tribunal which it may be constituted, in term of amended provisions of law.*

05. On the other hand, learned counsel representing the respondent and respondent in-person were heard at length who argued and raised objection over the bench that as the Commission is itself party therein, the Election Petition being arrayed as respondent No; 1, therefore, this Commission could not exercise, the jurisdiction conferred upon the Election Commission of Pakistan in terms of Section 151 of the Election Act, 2017 as no person shall be a judge for his own cause, learned counsel in support of his plea relied upon an un-reported judgment of the Learned Single Judge of Lahore High Court rendered in case of Salman Akram Raja decided on 29.05.2024.



- i. *that the objections raised by applicant are un-founded and baseless;*
- ii. *that it is the mandate of law that trial in an Election Petition shall be concluded as soon as possible within 180 days and keeping in view the mandate of law the proceeding conducted by the learned tribunal, is in accordance with law;*
- iii. *that the applicant, was avoiding his appearance before the Learned Tribunal in order to cause wilfull delay in the disposal of the petition and even failed to file its written statements despite clear directions of the Learned Tribunal and when last opportunity was provided to applicant, for filling his written statement on 29-05-2024, the petitioner, to frustrate the law and trial, filed the instant petition and on requisition of the record the trial in the election petition is delayed, which is clear malafide on part of the applicant;*
- iv. *that mere apprehension or perception of biasness in regard to a legally constituted forum, may not be a good ground for invoking the jurisdiction of this Commission however, there shall be solid and tangible evidence of biasness. In this regard learned counsel placed his reliance on the case of Pervaiz Musharraf reported PLD 2014 SC 585;*
- v. *that there are two forms of biasness mentioned in the judgment of Mr. General Pervaiz Musharraf Vs. Nadeem reported in PLD 2014 SC 585. The first form is actual bias and the second form is reasonable perception of bias;*
- vi. *that mere perception is not enough to transfer an election petition from one Tribunal to the other;*
- vii. *that the arguments of the applicant regarding trial in hasty manner is not sustainable as Section 148(5) of the Elections Act, 2017 provides that the petition shall be decided within 180 days. In support of this arguments the judgments reported in 2015 YLR 544, 2022 YLR note*



93, 2015 PCRLJ 81 and 2000 YLR 1067 were referred by the counsel for the respondent;

- viii. that the Election Tribunal is required to decide the election petition subject to Act and Rules and in accordance with the procedure laid down under CPC "as nearly as possible", the judgment reported in 2016 SCMR 1 provides that the Election Tribunal can devise its own procedure;
- ix. that the election petition is based on documentary evidence and it excludes oral evidence. The Tribunal has extended its jurisdiction to give relief to the Commission while reviewing its order to submit attested copies of Form 45 and 46 instead of original record;
- x. that the objection of learned counsel for applicant that Learned Tribunal is bent upon to dispose of the election petition in a very expeditious mode and manner without adhering thereto the provisions of order 14 of CPC being out of context and not sustainable in eye of law for the sole reason that the provision of Election Act, 2017 shall prevail over the CPC in term of Section 148 of the Elections Act, 2017, which conferred exclusive jurisdiction over the Tribunal to prove or disprove of any fact on affidavit or for the purpose of expeditious disposal as the circumstances of the case may warrant adopt any procedure.
- xi. that in so far as the question of maintainability is concerned such issues are still subjudice before the Learned Tribunal whereas the Learned Tribunal has put on notice the present respondent for hearing over, the objections preferred by the applicant in this regard;
- xii. that the respondent himself argued the matter and referred the judgment reported in 2019 SCMR 1875, PLD 2014 SC 650, PLD 2014 SC 585, PLD 2009 SC 284, PLD 1989 SC 689 and PLD 1971 SC 585. He argued that the grounds mentioned by the applicant for the transfer of the petition are baseless and requires detailed evidence to establish the biasness of the judge;



xiii. *that as there is no other established Election Tribunal at Islamabad, while the instant Election Petition could not be transferred outside Islamabad on mere whims and wishes of the applicant without any valid and legal reasons, therefore, the petition in hand being infructuous, baseless, filed with mala fide intention is liable to be dismissed with cost.*

08. We heard the learned counsel for the parties and have perused the available record.

09 As per facts ascertainable from the record that the notification of name of Returned Candidate was published in the official gazette on 13.02.2024 and the election petition was duly submitted before the Learned Tribunal by the respondent on 26.03.2024 with diary No. 263224. The last date for filing of election petition after the issuance of name of Returned Candidate was 29.02.2024.

10. The election petition was returned with certain objections. Objection list has been provided by the applicant which reveals that the Assistant Registrar Hon'ble Islamabad High Court, Islamabad returned the said Election Petition in order to remove specified deficiencies occasioned in the Election Petition and to re-file the same within 7 days, the respondent re-filed the election petition on 16-04-2024 after lapse of 16 days. The petition filed by the applicant is hopelessly time barred.

11. The Learned Tribunal, fixed the petition on 02-05-2024.

12. The Learned Tribunal on the same day, after hearing learned counsel of respondent (herein) admitted the Election Petition in term of sub-section 2 of section 145 of the Election Act, 2017 whereby notices to the present applicant and others were duly ordered to be issued through registered AD; Courier, TCS as well as special messenger at the expense of the respondent herein.

13. The Learned Tribunal on the same day, also made explicit directions to all the persons arrayed as respondents therein the election petition to file their respective written statements, replies and para-wise comments as the case may be as well as made directions for filling of Forms-45 and Forms-46 issued to the respondents by the Election Commission of Pakistan. In the meantime on the same



date the Learned Tribunal also directed the Election Commission of Pakistan to file original Forms-45 alongwith Forms-46, in accordance with law and the hearing was adjourned for 20-05-2024.

14. The Learned Tribunal thereafter, adjournment of the hearing also issued notices in CM; No 01/2024, CM; No 02/2024 and also allowed exemption sought by the respondent herein, by allowing CM; No. 03/2024.

15. On 20-05-2024 the Learned Tribunal granted 3 days time for removing office objections, raised by the office over objection Case No. 9956/2024 and also issued notice in CM; No. 753 of 2024 filed by the Election Commission of Pakistan.

16. The Learned Tribunal on the same date once again made directions to respondents therein, who had made their appearance before the Learned Tribunal, to file their respective written statement alongwith "Original" Forms-45 and 46 within a period of one week.

17. The Learned Tribunal provided last and final opportunity to the Returning Officer concerned (Respondent No. 2) either to appear in person or through his counsel, however R.O; was warned that in case of non-compliance, warrants of arrest will be issued.

17. The Learned Tribunal however, ordered that in case, other respondents failed to make their attendance, before the Learned Tribunal, they will be placed as ex-parte.

18. On 29-05-2024, on third hearing of the petition, the Learned Tribunal issued notices over CM; No 818/2024 filed by Election Commission of Pakistan with prayer for making amendments in previous order dated 20-04-2024 rendered by Learned Tribunal.

19. The Learned Tribunal also issued notices, in CM; No. 819 of 2024 filed by the present applicant, in term of sub-section 1 of section 145 of the Election Act, 2017 and accepted certified copies of Form-45, 46 and 47, filed by Election Commission of Pakistan, in sealed envelope in pursuance of directions of Learned Tribunal given on 20-05-2024.



20. The Learned Tribunal placed respondents Nos; 6 to 8, 11 to 15, 16, 18 to 20, 22, 24, 26 to 32 and 35 as ex-parte, on account of their non prosecution of the Election Petition despite proper service of the notices, issued to them.

21. The Learned Tribunal, in hearing of the Election Petition on the same date imposed fine of Rs. 15,000/- upon the Returning Officer, for his non-appearance on 20-05-2024. Last opportunity was also afforded to present applicant, to file his written statements alongwith affidavit and original Forms-45, 46 and 47 and hearing was adjourned for 05-06-2024.

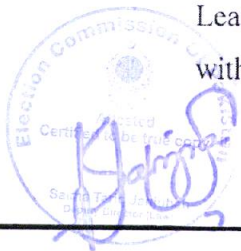
22. On 03-06-2024 the applicant herein filed the instant application in term of the provisions of Section 151 of the Election Act, 2017, with the following prayers;

That the instant application may kindly be allowed and the Election Petition No.73 of 2024 titled as "Shoaib Shaheen vs. Dr Tariq Fazal Choudhary & others", may graciously be transferred from the Worthy Election Tribunal (ICT) Islamabad to any other Election Tribunal for its disposal.

that till final disposal of the instant transfer application, the proceedings before the Worthy Election Tribunal (ICT) Islamabad, may also be stayed for safe administration of justice.

Any other relief, which the Honourable Election Commission of Pakistan deems just & appropriate in peculiar circumstances of the matter may also be granted.

23. To cater to the rights of the citizen, in matters falling within the ambit of election disputes, Article 225 of the Constitution (herein after referred as "the Constitution") may be referred, which provides that election dispute relating to either House of Parliament or a Provincial Assembly can only be questioned by an Election Petition, presented to such Learned Tribunal in such a manner as may be determined by the Act of the Parliament. Meaning thereby that adjudication of disputes with regard to the validity of election is taken away from the jurisdiction of the ordinary courts and a special procedure has been prescribed for adjudication of an election petition, by Elections Act, 2017 and Rules, 2017. An election petition has to be presented to such a Tribunal and in such a manner as may be prescribed by an Act of the Parliament. It is not a mere formality, to file an election petition before Learned Election Tribunal but the same shall be presented strictly in accordance with the provision prescribed under law and it is a legal requirement that petitioner



shall file its petition within 45 days in term of Section 142 of the Elections Act, 2017.

24. Article 222 of the Constitution has also mandated the parliament to make laws for conduct of election petition, which reads as;

222. Subject to the Constitution [Majlis-e-Shoora (Parliament)] may by law provided for-

- a)
- b)
- c)
- d) *the conduct of elections and election petitions the decision of doubts and disputes arising in connection with election;*
- e)
- f)

but not such law shall have the effect of taking away or abridging any of the powers of the Commissioner of⁴[the] Election Commission under this part.

25. In the like manner there is a duty casted on every judicial Tribunal/Election Tribunal to apply its mind properly to all aspects of the dispute which come before it. Any lapse in this respect may create serious doubts, in minds of parties before it, which in turn creates serious misgiving in dispensation of justice.

26. Every such Tribunal, entrusted with sacred responsibility of rights of citizen, may be conscious, and to avoid all such actions which, otherwise raise questions in mind of parties shall be redressed. Any deviation or contravention of law and rules shall be rectified in the first instance in order to remove any suspicion, arising in mind of parties. There shall be no space at any cost to sacrifice the principles of natural justice. Any patent illegality or error apparent on the face of the record, which otherwise give an inference of destruction of jurisdiction shall be cured before commencement of a trial, to meet the ends of justice.

27. There are high expectations of parties towards a legally constituted, Tribunal that every party therein be treated equally in so far as the application of laws are concerned and without any favour and fear.

28. Equal treatment and protection of law, is not only the legal right of a party but constitutional rights also, enshrined under Article 4 and particularly under Article 10-A of the Constitution, 1973 which stipulated as:-



10-A For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

29. The rights conferred upon a citizen, litigating for civil rights or enforcing of obligation or facing criminal charges, are not only legal but fundamental rights, falling under chapter-I of the Constitution.

30. In *Mrs. Anisa Rahman vs. PIA and other (1994 SCMR 2232)* it is held that “audi alteram partem” would be applicable to judicial as well as to non-judicial proceedings and it will be read into every statute as its part, if right of hearing has not been expressly provided therein.

31. It is a settled principle of law that wherever, there is violation of provisions of Law, the principle of fair trial become questionable while fundamental rights, in no circumstances, should be compromised.

32. It is also well settled that rules have the status of subordinate and delegated legislation deriving authority and legal cover from the provisions of the delegated legislation deriving authority and legal cover from the provisions of the statute under they are framed. It is also well settled that rules have the same force as the provisions of the statute under which they are framed. Reliance may be placed in this regard on case of *Khuwaja ahmed hussain vs. government of Punjab and other (2005 SCMR 186)*.

33. However, in case a judge has unconsciously followed an incorrect view of the law, he has by conscious application of mind, the freedom to adopt the correct view of the law subsequently, in order to remove, any apprehension in the mind of parties pertaining to biasness etc.

34. It is mandatory provision of Rule 140 of the Election Rules, 2017 (herein after referred as “the Rules”) which prescribe the manner that how an election petition be processed which on re-production would be read 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.

35. There is no option available to a Tribunal to exercise undue discretion with the remaining deficiencies 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. However, in so far as the question of limitation prescribed under Section 142 of the Act, 2017 is concerned, the same defect could not be remedied, in slip shod manner, subsequently without application of mind to take away legal rights of other party accrued by implications of law without following due course of law. Reference in this respect is given to case of Hina Manzoor reported in PLD 2015 SC 396.

36. It is express provision of law envisaged thereunder, Section 148 of the Elections Act, 2017 that provision of civil procedure code, 1908 shall apply as nearly as possible, to trial of an election petition subject to Elections Act or Rules, 2017 as well as the provisions of the Qanun-e-Shahadat Order 1984.

37. Non observance of either law or rules, during the course of trial of an election petition or adopting a procedure, before commencement of the trial, not prescribed under the Act, 2017 would create in mind of parties concerned doubts that they are not treated in accordance with law, which gives rise to sense of prejudice.

38. A right legally accrued to a person, could not be taken away, except within due process of law.

39. The Commission at this stage may not arrogate to itself the role of an appellate forum to answer all the grounds agitated by the applicant. However, we mentioned the law and the rules, for the purpose of disposal of the subject application. The applicant has alleged that the Hon'ble Tribunal, was determined to decide the Election Petition without following and adhering to the prescribed procedure of law, which has created serious doubts in petitioner's mind thus compromising the fair trial of the petition. This has resultantly created a perception of biasness but once a party to litigation raises serious objections over conduct of trial with regard to the mode and manner and conduct of proceedings in violation of provisions of law, then justice demands, that such doubts shall be vindicated in the first instance for ensuring confidence over the judicial system of the country.

40. We have utmost respect and regard for the presiding officer of the Tribunal under consideration. However, to fulfill the ends of justice, and to remove all kinds of apprehensions borne in the mind of the applicant and, some apparent illegalities and irregularities, occasioned therein, during the process of presentation of the petition whereas, the office of the Learned Tribunal has extended the period for presentation of the petition beyond the stated period and exercised a jurisdiction



not legally vested in it, which apparently is a clear violation of Rule 140 of the Rules, 2017, thereby causing prejudice to the applicant.

41. In case of Chairman NAB reported as PLD 2018 SC 28 the apex court has held as:-

"In our considered view, the learned Division Bench of the Peshawar High Court through the impugned judgment has certainly overstepped its jurisdiction vested in it under Article 199, probably due to lack of proper assistance at the bar, however, one cannot ignore the fundamental principle relating to administration of justice that law is written on the sleeves of the Judges and it is the primary duty of a Judge to apply the correct law to a case before it and even the party is not bound to engage a counsel for telling the Court how a particular law is to be applied and how the jurisdiction is to be exercised thus, the impugned judgment being not sustainable in law, is set at naught."

42. In Khyber Tractor (Pvt. Limited.) reported as PLD 2005 SC 842 the apex court has held as:-

21. The brief facts noted in the above judgments show that the principle i.e. "act of the Court shall prejudice no one" was followed, keeping in view the facts of each case but at the same time we have to keep in mind that the Courts are required to do justice between the parties in accordance with the provision of law, as the litigant, who approaches the Court for the relief is bound to substantiate that the procedure has been adopted by him in accordance with law because it is elementary principle of law that if a particular thing is required to be done in a manner it must be done as prescribed by the law, otherwise, it should not be done at all, as held in the case of Atta Muhammad Qureshi v. Settlement Commissioner (PLD 1971 SC 61) and Mir Dost Muhammad v. Government of Balochistan (PLD 1980 Quetta 1).

43. In the case of Wali Muhammad reported as PLD 2019 Balochistan 68 the High Court has held as:-

"11. The provisions of Section 145 of the Act has made it clear that if any provision of Sections 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition. Admittedly, the petition in hand is hit by the above referred provisions of law. Neither the petitioner could explain the reasons for filing a time barred petition nor he was in a position to explain the reasons for non-verification of petition along with its annexures on oath and have also could not satisfy this Tribunal for not dispatching the copies of



petition and its annexures to the contesting respondents. The legal defects are apparent on the face of record, thus further trial in the matter would be nothing, but a futile exercise and wastage of precious time of this Tribunal. According to consistent view of the Hon'ble Supreme Court and has also held in the above referred case of Zia ur Rehman, that if the law requires a particular thing to be done in a particular manner it has to be done accordingly, otherwise it would not be in compliance with the legislative intent."

44. Irrespective of the gravities of the legal objections raised by the applicant, this Commission could not legally rendered findings over such objections in term of section 151 of the Act, 2017 but such objections raised by the applicant, otherwise being worth consideration could not be brushed aside.

45. Before parting with this order we would like to redress the objection of the Learned counsel for present respondent raised over the jurisdiction of this Commission in term of section 151 of the Act, 2017 on the ground that as Commission is impleaded as respondent there in the election petition, the objection raised is neither legal nor sustainable in the eye of law. The ECP is the creation of the Constitution and has no personal interest in the outcome of election petitions filed by any party before the Learned Election Tribunal. The provisions contained in section 143 of the Act, 2017 prescribed parties to the petition which if reproduced would be read as:-

"143. Parties to the petition.—(1) The petitioner shall join as respondents to his election petition all other contesting candidates. (2) The Election Tribunal may direct the petitioner to join any other person as respondent against whom any specific allegation of contravention of this Act has been made. (3) The petitioner shall serve a copy of the election petition with all annexures on each respondent, personally or by registered post or courier service, before or at the time of filing the election petition."

the election petition filed by the present respondent before the Learned Election Tribunal reveals that neither specific allegation of contravention of the Election Act, 2017 has been made nor any relief has been asked against the Commission. The connotation "person" has been defined under Article 199 read with Article 260 of the Constitution, 1973 which read as:-



Article 199 of the Constitution, 1973

“199. (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—

199. (2)....

199. (3)....

199. (4)....

199. (5).... In this Article, unless the context otherwise requires,— “person” includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan ; and “prescribed law officer” means— (a) in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the AttorneyGeneral, and (b) in any other case, the Advocate-General for the Province in which the application is made.”

Article 260 of the Constitution, 1973

“260. (1) In the Constitution, (1).....

(2)....

(3).....

(4).....


(5) In this Article, unless the context otherwise requires,— “person” includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan ; and

46. 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 or to transfer 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 during the trial of the election petitions on one or the other grounds.




47. 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.

48. 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.


(Sikandar Sultan Raja)
Chairman


(Nisar Ahmed Durrani)
Member


(Shah Muhammad Jatoi)
Member


(Justice (R) Ikram ullah Khan)
Member

Date of Announcement 10th of June 2024.

