

ELECTION COMMISSION OF PAKISTAN**ORDER**
23-01-2024

Subject: **WRIT PETITION NUMBER 4537/2024 TITLED AS MST. NISAR ASLAM KHAN VERSUS ELECTION COMMISSION OF PAKISTAN AND OTHERS.**

WHEREAS, the Election Commission of Pakistan is a Constitutional body constituted under Article 218(2) of the Constitution of Pakistan, 1973 (hereinafter referred as the "Constitution").

AND WHEREAS, the Election Commission of Pakistan is mandated under Article 218(3) of the Constitution to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

AND WHEREAS, Election Commission of Pakistan announced the Programme for the Conduct of General Election, 2024 on 15-12-2023 wherein the date for withdrawal of candidature was 12-01-2024

AND WHEREAS, the Writ Petitioner Mst Nisar Aslam Khan submitted her nomination papers from NA-87 Khushab-I which were initially rejected by the concerned Returning Officer, however she got relief from the appellate tribunal and her nomination papers were accepted on 11-01-2024 and Form-32 was issued accordingly.

AND WHEREAS, an application dated 12-01-2024 was received to the Returning officer through her counsel namely Malik Muhammad Ahsan Qadir awan for withdrawal of her Nomination Papers which was allowed by the Returning officer on the same date and her name was excluded from the Form -32.

AND WHEREAS, Mrs Nisar Aslam Khan challenged the withdrawal of her Nomination Papers by invoking writ jurisdiction of Honorable Lahore High Court through the Writ Petition mentioned in the subject. It was contended by her that she did not move any application for withdrawal of her candidature.

AND WHEREAS, Honorable Lahore High Court Lahore while deciding the Writ Petition No.4537/2024 referred the matter back to the Provincial Election Commissioner Punjab with following directions;

"4. Be that as it may, office to transmit a copy of this petition alongwith all the annexures to the Provincial Election Commissioner, Punjab Lahore who shall treat it as representation and he will decided the same already in accordance with law, without wasting any further time. The petition titled "Syed Wajahat Husain Shah Vs. Election Commission of Pakistan and 6 others (Writ Petition No. 3113 of 2024), has already been decided by this Court. The learned commissioner while concluding the



matter, shall keep in view the decision in the said petition, to the extent of applicability to the facts of this case.

5. Petition to appear in the office of the provincial Election Commissioner, Punjab directly or through authorized representative at 05:00 P.M on 22-01-2024. Office to inform the concerned."

AND WHEREAS, Provincial Election Commissioner, Punjab heard the stance of Writ Petitioner in length, sought report from the Returning Officer and referred the matter to the Commission for appropriate orders.

AND WHEREAS, meeting of the Commission is convened and all the available record, report of Returning Officer and Provincial Election Commissioner and details of the Writ Petition have been perused.

AND WHEREAS, Section 65 of the Elections Act, 2017 provides that a validly nominated candidate may, by notice in writing signed by him and delivered to the Returning Officer on or before the withdrawal date either by the candidate himself or by an advocate authorized in writing by the candidate, withdraw his candidature.

AND WHEREAS, explanation of Section 65 provides that;

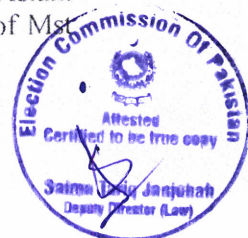
"65. Withdrawal.—(1) A validly nominated candidate may, by notice in writing signed by him and delivered to the Returning Officer on or before the withdrawal date either by the candidate himself or by an advocate authorized in writing by the candidate, withdraw his candidature."

AND WHEREAS, in the subject case the alleged authorization is not attested by a notary public, oath Commissioner or a Government Servant in BPS 17 or above. Furthermore the application submitted to the Returning Officer on 12-01-2024 for withdrawal of candidature is not signed by the Contesting Candidate herself.

AND WHEREAS, the Honorable Lahore High Court has already decided the similar issue in the Writ Petition No 3113/2024 titled Syed Wajahat Husain Shah versus ECP and 6 others on 16-01-2024 whereby the Writ Petition was accepted on the ground that the authority letter was not in accordance with Law. Operative part of the judgment is reproduced under;

"9. Hardly any fact has remained disputed, which require any enquiry. The facts and circumstance of the case lead to irresistible conclusion that the authority letter is not in accordance with the law and factual stance taken by the respondents as to withdrawal of nomination paper, on the face of it, is incorrect. Therefore, the present petition is accepted and the order of withdrawal of candidature of the petition is set-aside. The respondent/Election Commission of Pakistan to ensure deleting the name of the petitioner from the list of those candidates who have withdrawn their candidature and to issue appropriate list forthwith. The Returning Officer to proceed in accordance with law."

AND WHEREAS, the Returning Officer admittedly stated in his report that no formal authorization letter is provided by the counsel for the Contesting Candidate Mst Nisar Aslam Khan. The only justification given by him is that the Counsel used to appear on behalf of Mst



Nisar Aslam Khan therefore, he entertained the application for withdrawal which is not admissible under Law.

NOW THEREFORE, the Commission by taking into consideration the facts available on the record and in light of the judgment dated 16-01-2024 handed down in WP.3113/2024 “Syed Wajahat Hussain Khan Versus ECP”, has come to the conclusion that there is no valid authorization in terms of Section 65 of the Elections Act, 2017 as the application is neither signed by the Contesting Candidate nor attested by the notary public, oath Commissioner or Government Servant in BPS 17. The Commission in exercise of its powers under Article 218(3) read with Sections 4, 8(b) and 8(c) of the Elections Act, 2017 and all other enabling provision in this behalf review the order of the Returning Officer and the order of the Returning Officer for withdrawal of candidature and the same is set-aside. Office and Returning Officer are directed to take action accordingly.

SIKANDAR SULTAN RAJA
Chairman

SHAH MUHAMMAD JATOI
Member

NISAR AHMED DURRANI
Member

BABAR HASSAN BHARWANA
Member

JUSTICE (R) IKRAMULLAH KHAN
Member

