

**BEFORE THE HON'BLE ELECTION COMMISSION OF PAKISTAN**

**PRESENT:**

MR. SHAH MUHAMMAD JATOI	MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN	MEMBER

**Case No. F.7(139)/2024-Law-III (GE)**

In re: **PETITION UNDER ARTICLE 218(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ WITH SECTION 4 & 8 OF THE ELECTIONS ACT, 2017.**

Sardarzada Mir Saeed Ahmed, Contesting Candidate from PB-36 Kalat.

**Petitioner**

**Versus**

The Returning Officer Kalat, PB-36 Kalat

**Respondent**

For the Petitioner	:	Abdul Malik Baloch Advocate a/w Nadir Khan Langove, Advocate
For the Returned Candidate (Mir Zia Ullah)	:	Taimoor Aslam Khan, Advocate
<b>Date of hearing</b>	:	<b>19-02-2024</b>

**ORDER**

**Justice (R) Ikram Ullah Khan, Member.**— Instant matter before us is the outcome of General Elections 2024 held on 08.02.2024. Petitioner contested the election for the seat of Member, Provincial Assembly of Balochistan from the constituency PB-36 Kalat. By way of instant petition, petitioner has called in question the Form-47, dated 11.02.2024 issued by the Returning Officer.

2. While arguing the case learned counsel for the petitioner has contended that as per Form-47, dated 09.02.2024 petitioner declared as returned candidate and secured 10,654 votes whereas his opponent candidate (Mir Zia Ullah) got 8,461



votes. Later-on another Form-47, dated 11.02.2024 was issued by the Returning Officer wherein the petitioner's votes were shown as 10,824 whereas his opponent candidate Mir Zia Ullah got 14,670 votes and declared as returned candidate. Learned counsel for the petitioner has further stated that unknown muffled person seated in tinted vehicles, wearing the uniform of security force, came to the area of Johan, they entered into seven polling stations No.86 to 92 and taken away with them the election material, included the casted and un-casted ballot papers. That since the polling was not conducted in the above mentioned polling stations, therefore, the petitioner along with other contesting candidates approached the office of Returning Officer, reported the matter by means of written application, besides that the Presiding Officers of the respective polling stations also reported the said incident. That the petitioner and other candidates further reported the matter to the District Returning Officer as well as the Provincial Election Commissioner Quetta. That polling was not interrupted in the other polling stations and at the close of poll the Presiding Officers issued Form-45 to the petitioner and Returning Officer declared the petitioner as returned candidate as per Form-47 issued on 09.02.2024. That on 11.02.2024 the Returning Officer issued another Form-47 wherein result was changed by increasing the votes of contesting candidate namely Mir Zia Ullah and declared him to be returned candidate. Learned counsel has attached the copy of the Report, dated 08.02.2024 addressed to the DRO and PEC Balochistan wherein Returning Officer has recommended repolling on the above said seven polling stations. Learned counsel for the petitioner prayed that whole record may be called and same may be kept in safe custody till final disposal of the matter and on examining the same. He has further prayed that Form-47, dated 11.02.2024 issued by the Returning Officer may be declared as void and Form-47 earlier issued in



favour of petitioner on 09.02.2024 may be upheld. He has further prayed that re-poll may be held on the above said seven polling stations.

3. On 13.02.2024 we have heard the preliminary arguments of the learned counsel for the petitioner and perused the record and directed the office to send a copy of the petition to the Returning Officer and Mir Zia Ullah, contesting candidate. Returning Officer was directed to submit his comprehensive report / para-wise comments on the petition before the next date of hearing. Mir Zia Ullah, contesting candidate was directed to submit his reply on the next date of hearing. In the meanwhile, final result/official Notification of the returned candidate of the constituency PB-36 Kalat may not be issued. Case was adjourned for 19.02.2024.

4. In response to this Commission's Order, dated 13.02.2024, Mr. Shah Muhammad, Returning Officer, PB-36 Kalat has sent his report, dated 16.02.2024, which is placed on record. In the report, Returning Officer has vehemently denied all the allegations leveled by the petitioner. He has stated that the electoral process was executed by the assigned staff in the challenging and sensitive security situation. That from certain candidates, a complaint was filed regarding the 07 polling stations of Johan and Gazak PB-36, which was forwarded in writing on 08.02.2024 to the office of Provincial Election Commissioner for guidance because Presiding Officers of the said 07 polling stations did not separately/independently submit any report regarding the alleged incident as was complained by petitioner. That Presiding Officers of the above said 07 polling stations submitted Form-45 which were complete in all formalities along with the polling material. That no report of non-polling in any of the polling stations was submitted by any of the Presiding Officer. That instructions were received vide letter dated 10.02.2024 from the office of the PEC,



Balochistan and he was advised to proceed further in the matter under Section 92 of the Elections Act, 2017 and Rule 84 of the Election Rules, 2017. That first Form-47 was prepared excluding the 07 polling stations (due to complaint on which he sought advice) strictly in accordance with Section 92 and Rule 84. On receipt of advice from the office of PEC Balochistan the result of the 07 polling stations was also included amongst the earlier Form-47 and after complete tabulation the second Form-47 of all polling stations was issued on 11.02.2024 and thereafter Form-48 and Form-49 were issued.

5. Learned counsel for the Respondent (Mir Zia Ullah, returned candidate) appeared and submitted his reply, dated 19.02.2024, which is placed on record. He has stated that petitioner has leveled frivolous and unfounded allegations in the petition. That polling process was not interrupted in any of the 92 polling stations and no incident caused any material effect to the final result. That earlier Form-47 was issued by excluding the 07 polling stations, despite the fact that respondent registered his strong protest against such an action and in fact preferred a written application, to the Returning Officer, dated 09.02.2024 for inclusion of the same prior announcement of the Provisional result, however, the Returning Officer was informed that since the complaint filed by the petitioner has been forwarded to the higher ups, therefore, till intimation is received therefrom, the said polling stations cannot be incorporated. That the primary difference between the Form-47 issued on 09.02.2024 and 11.02.2024 is the former exclusion and later inclusion of the results of the said 07 polling stations. That inclusion was only natural, since the results from the same 07 polling stations were included for the National Assembly seat having been won by the party affiliate of the petitioner. Petitioner has leveled allegations with respect to 07 polling stations, i.e. 87-92 with respect to PB-36 Kalat, yet, the same petitioner



belonging to the same political party, i.e. Jamiat-e-Ulema Islam Pakistan has failed to illustrate that the said 07 polling stations are in fact common with the constituency of NA-261, wherein, one namely Moulana Abdul Ghafoor Hyderi has been notified as Returned Candidate, bearing the same party affiliation, with majority of the votes cast in his favour from the very same 07 polling stations. That if the allegations of the petitioner are taken at their face value then the plea of the petitioner is that no polling took place in the said Polling Stations then begging the question as to how the said votes being polled in favour of another candidate from a political party of his affiliations, were not only included, rather became the basis in a major way of him being declared as Returned Candidate in NA-261 Sohrab-cum-Kalat-cum-Mustang. That petitioner alleged and asserted various unfounded allegations relating to pre-poll process, however, astoundingly has failed to produce a single document or complaint having been made to the Commission or DRO / RO. He has stated that petitioner has not made any challenge to the consolidation proceedings and has not even pray for setting aside the final consolidated result issued in the shape of Form-49, pursuant to consolidated statement of result prepared in Form-48. That petitioner throughout was at liberty to join all causes of actions and prayers, yet petitioner deliberately failed to assail the consolidation of proceedings and the final consolidated results. That provisional result in the shape of Form-47, dated 11.02.2024 was announced upon the advice of the office of the Provincial Election Commissioner, therefore the petitioner cannot assert that the Returning Officer committed any illegality in complying with the directives of the Officers of the Provincial Election Commissioner. Learned counsel for the respondent has prayed that petition may be dismissed in the interest of justice and respondent may be notified as a returned candidate, pursuant to Section 98(1) of the Elections Act, 2017.



6. From the record and perusal of Form-47, dated 11.02.2024 it is revealed that the Petitioner secured 10,824 votes whereas Returned Candidate (Mir Zia Ullah) got 14,670 votes. There is difference of 3,846 votes between winning and runner up candidates. It is a fact that 07 polling stations i.e. 87 to 92 are common with the constituency of NA-261 Sohrab-cum-Kalat-cum-Mustang and Form-45 received from the same polling stations were included in Form-47 for the National Assembly seat having been won by the party affiliate of the petitioner i.e. Jamiat-e-Ulema Islam Pakistan namely Moulana Abdul Ghafoor Hyderi . The prayer of the petitioner has become in-fructuous as the Commission has obtained report from the Returning Officer in respect of illegalities mentioned by the petitioner in his petition. The process of consolidation in the subject constituency has been completed by the Returning Officer and Form-49 has been prepared accordingly. The matter cannot be reviewed under Section 8 of the Elections Act, 2017 without authentication and provision of evidence and also that the prayer of the petitioner has become in-fructuous.

7. We have heard the arguments of both parties, gone through the report submitted by the concerned Returning Officer and perused the record. We have also quite minutely examined all the allegations mentioned in the memo of petition. We are of the view that allegations raised and argued before us are disputed questions of fact and cannot be resolved except by recording of pro and contra evidence wherein numerous witnesses need to be examined and cross examined. For this purposed Election Tribunals are constituted/appointed under Section 140 of the Elections Act, 2017 for trial and disposal of Election Petitions pertaining to the National / Provincial Assembly Constituencies for General Elections, 2024 and subsequent bye-elections. The petitioner may, if so desire, approach the Election Tribunal under Section 139 of



the Act *ibid* by filing an Election Petition for the redressal of his grievances  
Accordingly, the petition filed by the petitioner is hereby dismissed.

8. The earlier interim order, dated 13.02.2024 passed by this Court is recalled.

(Shah Muhammad Jatoi)  
Member

(Justice (R) Ikram Ullah Khan)  
Member

Islamabad  
the 19<sup>th</sup> February, 2024.

