

ELECTION COMMISSION OF PAKISTAN

MR. SIKANDAR SULTAN RAJA, CHAIRMAN
MR. SHAH MUHAMMAD JATOI, MEMBER

CASE No.F.7 (25)/2024-Law-III

Subject: **PETITION UNDER SECTION 8(b) WITH ALL OTHER ENABLING PROVISIONS OF THE ELECTIONS ACT, 2017 READ WITH ARTICLE 218 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973 FOR REVIEW/ CORRECTION OF FORM-47 ISSUED BY THE RETURNING OFFICER OF NA-46 ON 09/02/2024.**

Aamer Masood Son of Meer Muhammad Akram Resident of Jhangi Syedan Peshawar Road Tehsil and District Islamabad.

.....Petitioner(s)

VERSUS

District Returning Officer Islamabad (NA-46) & Others

.....Respondent(s)

For the petitioner : Rao Muhammad Akram Khurram, AHC.

For the Respondents : Mr. Najam Hanif Shaikh, ASC alongwith Chaudhary Gulzar Mehdi, Hasham Suhail Khan & Ahmed Shaban Khan Advocates

gd Date of hearing : 20-02-2024

ORDER

Sikandar Sultan Raja, Chairman- Brief facts of the matter are that petitioner namely Aamer Masood contested the General Election 2024 for the seat of National Assembly from constituency NA-46, (ICT-I), Islamabad. As per Form-47, issued by the Returning Officer, petitioner obtained 44,317 votes while his opponent namely, Anjum Aqeel Khan has obtained 81,958 votes in the constituency and declared as leading/ returned candidate. Petitioner being aggrieved with the result issued by the Returning Officer has filed instant petition.

2. Matter was fixed for hearing on 11-02-2024 in which after hearing the counsel for the petitioner, directions were issued to the Returning Officer for submission of his report. Notice was also issued to the Returned candidate.

3. Report from the Returning Officer has been received which is taken on record. Copy of the report is handed over to the learned counsel for the petitioner. Counsel for the Returned Candidate is also in attendance.



4. The counsel for the petitioner appeared and submitted that applicant is the contesting candidate from NA-46-ICT-Islamabad and he was allotted the symbol of Brinjal. He submitted that total number of polling stations in the Constituency NA-46 were 342. He further added that result may not be finalized on the basis of Form-47 as according to him the same is not in accordance with Form-45 received in original by his Polling Agents. He further contended that according to their Form-45 he has a lead of more than 43,745 votes. He submitted that he has obtained 85,793 votes while the runner up candidate Anjum Aqeel Khan has obtained 42,048 votes. He submitted that his election agents were not given access during the process of preparation of Form-47. He requested the Commission for review/ correction of Form-47 in accordance with the Form-45 which he claimed had been issued by the presiding officers to his election agents. He further submitted that there are contradictions in the report submitted by the Returning Officer. He added that the Returning Officer in Para No.3 of the report has mentioned that two candidates alongwith two female election observers were present during the process of consolidation, however, he has attached the attendance sheet with his report in which six candidates appeared and attended the process of consolidation. He while concluding his arguments, requested the Commission that Form-47 be reviewed and result may be finalized on the basis of Form-45 which petitioner claims to have received by his election agents.

5. The counsel for the Returned Candidate appeared and submitted that factual controversy involved in the matter which cannot be resolved through summary manner. He further argued that Election Tribunals have been constituted and the process of consolidation has been completed. He further contended that Form-48 & 49 have been issued. The counsel has placed reliance upon the order passed by the Commission dated.15.02.2024 in case title "Saad Ali Vs Returning Officer PP-12 Rawalpindi" and argued that the application may be rejected on the same grounds. He further argued that the representatives of the petitioner were present in the office of the Returning Officer at the time of preparation of Form-47 and the petitioner has mis-stated the facts before the Commission. It is further contended by the learned counsel that no difference in the Form-45 have been specifically identified or provided by the petitioner till date, therefore, he prayed for rejection of the petition being devoid of merits and law.

6. Arguments heard and record perused.

7. From the perusal of the record it is observed that the petitioner has filed the petition with the following prayer:-



“It is therefore, most respectfully, prayed that the Honorable Commission may very graciously be pleased to accept the petition and review/ correct Form 47 in accordance with Form 45 issued to the election agents of the applicant, as per the spirit of the Section 8(b) read with all other enabling provisions of the Election Act, 2017 read with Article 218 of the Constitution of Pakistan, 1973.

Furthermore, the so-called consolidation of results may please be declared void ab-initio, and in the meanwhile no notification regarding the success of any candidate may be notified till the final disposal of the subject application.

Any other relief that the Honorable Commission deems fit and just may also be granted.”

8. On previous date of hearing directions were issued to the Returning Officer to submit his report. The report has been received and the Returning Officer has denied the allegations leveled by the petitioner. He stated that he has already completed the consolidation of result and compiled Form-49 on 11-02-2024 before receiving of order of the Commission dated 11-02-2024. He also mentioned that he has prepared Form-47 in accordance with law after receiving all Form-45 from the Presiding Officers and the same were entered into the EMS by the Data Entry Operators he also submitted that he has completed the process of entries of all Form-45 without any delay. He also mentioned that after preparation and announcement of provisional result through Form-47 two applications for recounting of ballot papers were received by him one from Mr. Aamer Masood (applicant) and second from Mian Muhammad Aslam candidate for Jamat-e-Islami. The Returning Officer submitted that both the applications were decided and orders were passed. He pointed out that he has issued notice on 10.02.2024 to all the Contesting Candidates for consolidation proceedings on 11.02.2024 at 11:00 A.M. He mentioned that only two contesting candidates came and witnessed the proceedings for consolidation including two female election observers (one Pakistani and one Foreigner). He submitted that the process of consolidation was completed around 12:45 P.M and Form-49 was duly prepared.

9. It is also mentioned here that the petitioner simultaneously invoked the jurisdiction of Hon'ble Islamabad High Court under Article 199 of the Constitution through filling of writ petition No.497 of 2024. The Hon'ble Islamabad High Court decided the writ petition vide order dated.14.02.2024 in following terms:-

“It would be inappropriate for this Court to dilate upon as to the merit of the matter regarding challenge made to the consolidation process inasmuch as the matter is pending before Election Commission of Pakistan, however, the petitioners seeks recalling of impugned



notification, whereas learned counsel for Election Commission of Pakistan submits that in case applicants under sections 8 & 9 succeed, the law shall take its course. In the referred background, It is appropriate that Election Commission of Pakistan decides the applications filed by the petitioners under sections 8 & 9 of Election Act, 2017 and in case, said applications succeed, the law shall take its course and impugned notification ought to be withdrawn. It is trite law that under section 21 of General Clauses Act, the authority, which has passed an order, also can withdraw the same, therefore, Election Commission of Pakistan is expected to decide the applications of the petitioners expeditiously before the session of the Parliament is summoned or early as possible. It is reiterated that in case, the applications/petitions filed by the petitioners succeed, the impugned notifications shall be withdrawn.

The instant petitions are disposed of accordingly.

10. The above mentioned order passed by the Hon'ble Islamabad High Court was challenged by the petitioner through ICA before division bench of Hon'ble Islamabad High Court. The Hon'ble Islamabad High Court initially granted relief to the petitioner while passing the order dated.19.02.2024 which is reproduced below:-

“At this stage we are not inclined to suspend the proceedings before ECP which shall be taken to their logical conclusion and if need be a notification of the returned candidate be issued after the issuance of Form-48 and Form-49 in accordance with the law. However, until this process is completed, the operation of the notification dated.11.02.2024 which was impugned in writ petition No.499/2024 is suspended”

“After the order dated.19.02.2024 was dictated in open Court, the office informed the undersigned as to the issuance of the notification dated 17.02.2024 by the ECP regarding the constitution of the Election Tribunal for the Islamabad Capital Territory. Since the order was dictated in open Court, we deem it appropriate to hear the parties before amending the same. In the order dated 19.02.2024, we had fixed Thursday i.e. 22.02.2024 as the next date of hearing. However, we now deem it appropriate to direct the office to fix the appeal for hearing day after tomorrow i.e. 21.02.2024”



11. The Hon'ble Islamabad High Court after hearing the parties in detail disposed of the ICA on 21.02.2024 in following terms:-

“7. Be that as it may, even if it is assumed that the injunctive orders passed this Court are not in the field, the notifications issued in favour of the returned candidates, whose names are mentioned therein as returned candidates, shall be subject to final outcome of decision of ECP. This is our view, puts the controversy before us at rest. Given the fact that an Election Tribunal for the Islamabad Capital Territory has already been constituted through notification dated.17.02.2024 issued by ECP, it would not be appropriate to proceed further in the matter.

8. The appeals stand disposed of in the above terms”

12. The instant petition has been filed under section 8(b) of the Elections Act, 2017 read with Article 218 of the Constitution for review and correction of Form-47 of NA-46. The petitioner has raised various points in respect of issues allegedly faced by him and also claimed certain procedural irregularities and illegalities during the process of compilation of provisional result on Form-47 and discrepancies in Form-45 available with the petitioner and the Returning Officer. The Returning Officer has consolidated the final result of the Constituency in shape of Form-49. The Commission can decide matters under Section 8(b) of the Elections Act, 2017 through summary inquiry but cannot record evidence. The allegations leveled by the petitioner, however, require recording of pro and contra evidence. For this purpose Election Tribunals are appointed under Section 140 of the Elections Act, 2017. Article 225 of the Constitution provides that no election can be challenged before any court except by way of election petition before election tribunal. Furthermore, it is also observed that no complaint in respect of any issue regarding Form-47 was received by the Commission as complaint cell was established and monitoring teams were active in the field for re-dressal of grievances of the petitioner. Moreover, Returning Officer is the appropriate forum under Section 95 of the Elections Act, 2017 before consolidation.

13. Moreover, Section 95(5) of the Elections Act, 2017 is clear that the Returning Officer shall recount the votes if the margin of the victory is less than 5% of the total votes polled in the constituency or 8000 votes in case of National Assembly and 4000 votes in case of Provincial Assembly. In the present case the margin of victory between the returned and runner up candidate is 37,641 votes. The instant matter does not fall under the ambit of Section 95(5) of the Elections Act, 2017. Moreover, as the process of consolidation has been completed by the concerned Returning Officer therefore



provisions of Section 95(6) also do not attract in this case. There is a slight difference between Section 92 and Section 95 of the Elections Act, 2017. Section 92 deals with the preparation of provisional result and Section 95 deals with the final consolidation of result. There is no requirement under section 92 while preparation of provisional result on Form-47 for issuance of notice to the candidates, however notice to the candidates is required and mandatory under section 95 of the Elections Act, 2017 which has been done by the Returning Officer. The matter cannot be reviewed under Section 8 (b) of the Elections Act, 2017 without authentication and provision of evidence. The petitioner has not attached any evidence in support of his petition.

14. The petition is dismissed with the observation that it requires recording of pro and contra evidence in detail therefore the petitioner may approach the Tribunal for re-dressal of grievances if so advised.

15. As the Hon'ble Islamabad High Court vide order dated.19.02.2024 in ICA No.49/2024 had passed an injunctive order regarding suspension of operation of notification of returned candidate dated.11.02.2024. The said ICA has been finally disposed of vide order dated.21.02.2024 which is expressly subject to the final decision of Commission on the petition/complaint. Now the Commission has disposed of the petition on the above mentioned grounds, therefore, the notification dated.11.02.2024 under Section 98(1) of the Elections Act, 2017 stands restored/revived.

16. Office to take follow up action accordingly.

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Sikandar Sultan Raja
Chairman

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Shah Muhammad Jatoi
Member

