

# ELECTION COMMISSION OF PAKISTAN

## PRESENT:

Mr. Sikandar Sultan Raja,	Chairman
Mr. Nisar Ahmed Durrani,	Member
Mr. Shah Mohammad Jatoi,	Member
Mr. Babar Hassan Bharwana,	Member
Mr. Justice (R) Ikram Ullah Khan,	Member

Case No. 3(5)/2022-LGE-S

In Ref: INCIDENTS OF ELECTORAL VIOLENCE AND STOPPAGE OF POLL IN UC-119, TMC SHAH LATIFABAD, DISTRICT HYDERABAD.

## On Commission's Notice

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|---|--|
| 1. Amjad Ahmed Sheikh SSP-Hyderabad.                                    | 2. Qaim Akbar Nimai, Returning Officer UC-119.                                 |
| 3. Muhammad Yousuf Majeed DEC/DRO                                       | 4. Abdul Jabbar Pr. Officer PS 5 UC-119 Latifabad Fatima Zehran Health Center. |
| 5. Muhammad Junaid Presiding Officer PS-1                               | 6. Saeed-ud-Din candidate for chairman   |
| 7. Islamil Leghari Presiding Officer PS-6 Shah Latif abad NO. 10 UC-119 |  |

## Present.

Qaim Akbar Nimai,	:	Returning Officer UC-119.
Zafar Iqbal Hussain	:	Special Secretary ECP.

Date of hearing	:	<u>13.06.2023</u>
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## ORDER

**Sikandar Sultan Raja, Chairman.**— The brief background of the case is that the matter before us was brought into the notice of the Commission by the District Returning Officer-Hyderabad (DRO-Hyderabad) through a detailed report dated 7<sup>th</sup> May, 2023, on which day, bye-election to UC-119, TMC Shah Latifabad, among other constituencies, was held. It was reported by the DRO that he was on visit on different polling stations of the district and when he



reached at polling stations of UC-58 Ward No. 4 of TMC Tando Jam, he got the news about some miscreants regarding ascertaining law and order situation in UC-119 TMC-Shah Latifabad by information through telephone from ARO. He immediately moved to the polling station GBPS Shaheed Millat Latifabad No. 10 (Female) and recorded the statements of Presiding Officer, where he added that the RO/ADC-II, Hyderabad arrived at the Polling Station after few minutes. The Presiding Officer of the polling station informed him about the situation and also produced some evidences i.e damaged ballot boxes, furniture, electoral rolls etc. The female staff was also asked about the happenings and they complained about the violence created by the miscreants which was in the shape of mob and also informed that the police was unable to control them either intentionally or unintentionally as according to them neither mob was lathi charged nor the tear gas was fired in order to control the situation. The Presiding Officers also nominated the main culprit Mr. Saeed-ud-Din contesting candidate for Chairman. The DRO highlighted the fact that Ballot Papers were snatched by the culprits and were taken outside the Polling Station. The DRO also mentioned in the report that he also contacted the Deputy Commissioner and Commissioner Hyderabad, who reached the Polling Station and also witnessed the incident. He also pointed out that after completing the legal formalities he along with the Returning Officer went to the Polling Station NO. 6, GBPS Shah Latifabad NO. 10 (Male) where the Presiding Officer stated the incident and also gave his statement in writing. After that he visited Polling Station NO. 5, Government Fatima Zehra Health center Latifabad NO. 10 (Male) and recorded the statement of Presiding Officer who has nominated Mr. Saeed-ud-Din a contesting candidate of chairman. The said Presiding Officer also provided the mobile recording of his cell phone as a proof of incident. The DRO also added that ballot papers, stamps and other polling material were snatched from above mentioned Polling Stations. He also added that they approached the Police Station B-Section, Latifabad for lodging FIR, however the concerned SHO was not present in the Polling Station and after contacting him he was reluctant to lodge the FIR for which the DRO contacted Provincial Election Commissioner-Sind (PEC-



Sindh) and DIG-Hyderabad who ordered the SHO to lodge the FIR. He also added that the behavior of Police was not co-operative and after issuing the directions from SSP-Hyderabad, an FIR was drafted lacking the legal points and by concealing the two statements of Presiding Officers of the two polling stations who identified and nominated the culprit (Saeed-ud-Din). FIR was lodged on the statements of other Presiding Officers who could not identify the culprit (Saeed-ud-Din). He added that the behavior of the Police shows some linkage of it with the culprit and incidents occurred on three Polling Stations. He also submitted that the Police could not take preventive measures in time. He prayed for necessary action and guidance in the matter.

2. The Provincial Election Commissioner-Sindh forwarded the report of DRO along with one pager report of the Returning Officer namely Qaim Akber Nimai/Additional Deputy Commissioner dated 7<sup>th</sup> May, 2023, Statements of three Presiding Officers i.e. Ismail Laghari, (PS-6), Abdul Jabbar (PS-5) and Muhammad Junaid, (PS-1) of UC-119, pertaining to the incidents happened. A copy of FIR bearing number 57/2023, lodged at PS Latifabad in respect of incident happened at PS-6 was also part of the report.

3. The matter was fixed for hearing on 16.05.2023 alongwith notices to the respective DRO, RO, Presiding Officers, Mr. Amjad Ahmed Sheikh SSP-Hyderabad and all the contesting candidates. It is also mentioned here that the material snatched from the Polling Stations could not be retrieved due to which polling process was stopped. It was also brought into the attention of the Commission by the DRO that the incident took place at three polling stations and the FIR was registered without naming the real culprit i.e Mr. Saeed-ud-Din despite the fact that two presiding officers Mr. Abdul Jabbar and Mr. Muhammad Junaid are witnesses and their statements can be verified from the record of the CCTV footages of the polling stations wherein he can be seen entering the polling station and snatching the polling material.

4. After hearing the parties and perusal of statements of DRO, RO, SSP Hyderabad, Presiding Officers and the contesting candidates, Commission



constituted a special committee to inquire into the case of electoral violence in UC-119, TMC Shah Latifabad District Hyderabad and the committee submitted its detailed report on 24<sup>th</sup> May, 2023. The findings of the committee along with its conclusion are reproduced as under: -

### **FINDINGS OF THE INQUIRY COMMITTEE**

1. *After having gone through the written statements and cross examination, the committee has drawn the following findings regarding incident of violence at three polling station of UC-119, TMC-Shah-Latifabad District Hyderabad during conduct of Bye-Election of Local Government (2<sup>nd</sup> Phase) elections in Province held on 07.05.2023.*
2. *The security plan which was prepared keeping in view the aspects of threat perceptions and risk assessment was not implemented in letter and spirit.*
3. *Security deployed at polling stations was not in accordance with the security plan and all the three presiding officers have informed that there were 4 to 5 security personnel deployed at the respective polling stations whereas the number of police personal mentioned in security plan are seven per polling station. Since all the three polling stations were declared highly sensitive no additional police force was available even as QRF mode, had some additional police force been available they would have come to the rescue and situation would have been controlled.*
4. *During the course of cross examination, it has been observed that the presiding officers were either lacking the knowledge of legal procedure laid down in the law to deal with such an unexpected law and order situation or they were not willing to get involved in the legal matters and take decisions at their own since they waited for the Returning Officer and District Returning Officer to come to the polling stations and take decision.*
5. *The security plan also envisaged deployment of police security personnel at the polling station as well as in QRF mode, wherein it was clearly mentioned that all the NGO's (non gazette officers) on polling stations will carry their service pistols/ revolvers with them and half of the HC's/PC's deployed at the polling station will be armed with SMG (with sufficient ammunition) and half HC's/PC's will be issued batons.*
6. *However, after perusal of record and statement of the polling staff and concerned police personnel, it was established that security plan could not be implemented in the letter and spirit. The following deficiencies were noted in this regard.*





7. The police personnel were not deployed as per deployment plan contained in security plan rather against requirement of 07 at polling station building only 04 to 05 police men were deployed. Details in this regard are given in the table below;

Si. No.	Polling Station No.	Name of Polling Station	Deployment as per security Plan	Actual Deployment
01	01	Shah Abdul Latif Government Boys Primary School Unit NO. 10 Latifabad Hyderabad.	08	05
02	05	Government Fatima Zehra Health Centre, Latifabad NO. 10 (Male)	08	05
03	06	Government Fatima Zehra Health Center, Latifabad NO. 10 (Male)	08	04

8. Due to non-availability of proper weapons and thin deployment of police men at the buildings of affected polling stations, the threat perceptions remained relating to disturbing the electoral process by creating law and order situation and forceful entry into the police stations by gangs backed by political parties to harass polling staff and voters.
9. The SSP concerned did not appear before the Committee as he had relinquished the charge of SSP Hyderabad in the morning of 20<sup>th</sup> May, 2023 due to his transfer from Hyderabad to Shikarpur, however the enquiry committee would like to mention that the other police officials from DSP to junior level were fully cooperative during the course of inquiry and provided all necessary information in transparent manner as and when required which is an appreciable act on their part.
10. It has come to fore that Mr. Saeed-ud-Din was the main miscreant/culprit who carried out planned attacks on all the three Polling Stations along with his supporters. He first intentionally created the issue of difference in Electoral Rolls (as he himself was holding the older version of Electoral Roll whereas the polling staff was having the updated copy of Electoral Rolls which he himself did not obtain from the DEC Officer). He then carried out planned attacks on polling stations NO 1, 5 and 6 and snatched ballot papers and other election material including official code mark destroyed Electoral Rolls and ballot boxes and harassed the polling staff at all the above three polling stations.
11. The role of returning officer has been found satisfactory as he soon after getting the information of attack on polling station reached at the venue and after ascertaining the facts accompanied the DRO and Presiding Officers to the Police Station for lodging the FIR. During the course of Inquiry, has assured that in case the attackers were there on the polling station, when he reached there, he would have definitely used all powers provided to him under law to control the situation and get the culprits



apprehended then and there, but when he reached there, the mob had already got disbursed so it was left to the Presiding Officers to lodge the FIR being an FCM and also being the incharge of Polling Stations and as the incident had happened in front of them. His timely retrieval of CCTV footage and keeping it in his safe custody also showed that he acted promptly. The inquiry committee has not observed any reluctance or complacency on his part in handling the situation and in implicating the people responsible for this vandalism at the polling stations.

12. The role of Police Department as a whole raises eyebrows right from the moment of attacks till the filling of FIR. The committee put many questions to SHO Police Station-B section Muhammad Ali Dhamrah to drive his negligence in the incident. He informed that he reached late to the police station for registering the FIR because he was trying to control the law and order situation on the remaining four polling stations so that the polling could continue without any disturbance and in order to avoid any similar attack on the remaining polling stations. The SHO further informed that soon after the attack, he was directed by his superiors to enhance the security of remaining polling stations, so he left police stations and went to ensure fool proof security on the remaining polling stations for completion of poll in a smooth manner. But the fact is that the police force miserably failed to control the mob from entering the polling stations. The strength deployed at these three polling stations which were declare highly sensitive was quite thin almost 4 to 5 personnel as compared to the scale mentioned in the security plan which was 8 per polling station. The additional police force deployed as QRF even did not reach the crime scene in time and only came after the mob had left these polling stations. This also indicates a communication gap between the security incharge of the polling stations and the QRF squad. Keeping in view the above facts the responsibility mainly falls on the police higher authorities such as SSP and DIG who were overall responsible to keep the law and order situation under control on the poll day.

13. Mr. Ismail Laghari who first lodged the FIR informed that he at first did not recognize him before, therefore, he mentioned the same in the FIR that although he did not know the names of the attacker but if they are presented before him he could recognize the main attackers who were leading the mob. Later after having seen Mr. Saeed-ud-Din in CCTV footage he recognized him as the main attacker and informed the police authorities accordingly. Keeping in view this, the inquiry committee does not implicate him in any suspicious behavior during the course of the incident.

14. The committee during the visit of three polling stations minutely checked the exit and entrance points, outer walls and inner corridors and found that there were congested buildings surrounded by narrow streets which helped the culprits who taking advantage of the area, ran away easily and



*disappeared in the adjacent narrow streets after snatching the ballot papers and damaging the election material.*

### **CONCLUSION OF THE INQUIRY COMMITTEE**

1. It is submitted that it was over all a security lapse at the first instance and secondly police authorities tried to save the main culprit by causing delay in lodging the FIR but when pressure was exerted by the ECP/PEC officer and upon intervention of police higher authorities, FIR was lodged.
  2. It is imperative to mention here that as all three polling stations where incident occurred fall under the jurisdiction of police stations-B section and as per security plan for police station-B section, there were 43 police personnel including 08 Jawans of Elite force who were deputed as QRF mode which were supposed to respond to any law and order situation at any of the polling station within their area quickly but no QRF reached at any of these polling stations which were attacked by the mob headed by Mr. Saeed-ud-din. The police force reached there only after the mob had left the polling stations. This shows high level of slackness on part of the District police authorities of Hyderabad.
  3. In addition to above, the inquiry committee was informed by the SHO that the police after carrying out inquiry have added relevant sections of Sind Local Government Act, in the FIR and have included the names of main accused i.e Mr. Saeed-ud\_din and other identified persons in the FIR. He also informed that they have also arrested Mr. Saeed-ud-din along with 6 other peoples who were identified with the help of CCTV footage during attack on the polling stations NO. 1, 5 and 6 in the UC-119, Latifabad Hyderabad.
5. Upon receipt of the report, office was directed to issue notices to all the concerned persons specially the candidate for Chairman Mr. Saeed-ud-Din for appearance and filing of their comments/ objections on it, if any, on the 13.06.2023.
6. On 13-06-2023, despite the service of notice no one appeared except Qaim Akbar Nimai Returning Officer UC-119 before the Commission and the candidate for Chairman Mr. Saeed-Ud-Din refused to accept the notice. Application for exemption from appearance was received from Mr. Muhammad Yousuf Majeed DEC/DRO on the ground that he is busy in conduct of Bye-Elections and performing his duty as DRO. Request for exemption was also received from Amjad Ahmed Sheikh SSP-Hyderabad, Mr. Islamil Leghari Presiding Officer PS-6 Shah Latifabad NO. 10 UC-119, Abdul Jabbar Presiding Officer PS 5 UC-119 Latifabad. Special Secretary, Mr. Zafar Iqbal Hussain appeared in the

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matter and submitted that the inquiry committee constituted by the Commission nominated Mr. Saeed-ud-Din Candidate for Chairman as the real culprit and the Commission should take action against him in accordance with law. Similarly he pointed out that the committee has also given the findings that in-efficiency has remained on the part of SHO and Police Officials and they should also be dealt strictly under the relevant law.

7. We have heard the arguments and perused the record available including the report of the inquiry committee.

8. Under Article 140(A)(2) & 219(d) of the Constitution of Islamic Republic of Pakistan and section 219(4) of the Elections Act, 2017, it is the fundamental duty of the Election Commission to conduct the election to the local governments institutions within one hundred and twenty days of the expiry of the term of the local governments of a Province. Under Article 218(3) of the Constitution it is also duty of the Election Commission 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. The Chapter-X of the Elections Act, 2017, prescribes certain punishments for the offences of corrupt practices. The relevant provisions from Chapter-X attracting, in the instant case are reproduced as under:-

**Section 167 of the Elections Act, 2017.**

**167. Corrupt practice.** – A person is guilty of the offence of corrupt practice if he -

- (a) is guilty of bribery, personation, exercising undue influence, capturing of polling station or polling booth, tampering with papers, and making or publishing a false statement or declaration;
- (b) calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, bradari, sect or tribe;
- (c) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting; or
- (d) contravenes the provisions of section 132.





**Section 171 of the Elections Act, 2017.**

**171. Capturing a polling station or polling booth.** – A person is guilty of capturing a polling station or polling booth if he –

- (a) seizes a polling station or a polling booth or a place fixed for the poll or makes polling authorities surrender the ballot papers or ballot box or both and does any other act which affects the orderly conduct of elections;
- (b) takes possession of a polling station or a polling booth or a place fixed for the poll and allows his supporters to exercise their right to vote while preventing others from free exercise of their right to vote;
- (c) coerces, intimidates or threatens, directly or indirectly, any voter and prevents him from going to the polling station or a place fixed for the poll to cast his vote; or
- (d) being in the service of any government or corporation or institution controlled by the Government, commits all or any of the aforesaid activities or aids or connives in, any such activity in furtherance of the prospects of the election of a candidate.

**Section 174 of the Elections Act, 2017**

“Penalty for corrupt practice. – A person guilty of the offence of corrupt practice shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one hundred thousand rupees or with both.”

**Section 175 of the Elections Act, 2017**

**175. Illegal Practice.** – A person is guilty of the offence of illegal practice if he –

- (a) is guilty of disorderly conduct near a polling station, canvassing in or near a polling station, interferes with the secrecy of voting, or adversely affects the interest of a candidate;
- (b) ....
- (c) ....
- (d) ....
- (e) ....
- (f) removes a ballot paper from a polling station during the poll;
- (g) ....
- (h) ....
- (i) ....



- (j) ....  
 (k) ....  
 (l) resorts to violence in any form or manner against an election official or any other person officially deputed to work at a polling station.

Explanation. – The word – weapon used in clause (j) includes a danda, lathi, knife, axe or any other thing which can be used as a weapon to inflict injury to a person.”

9. The relevant provisions of Sindh Local Government Act, 2013 are given as under:

**59. Illegal practice.-** A person is guilty of illegal practice punishable with fine which may extend to one hundred thousand rupees, if he –

- a) .....  
 b) .....  
 c) .....  
 d) removes a ballot paper or a ballot box from a polling station or destroys, damages or tampers with the ballot box used at a polling station;

**62. Tempering with papers.-** A person is guilty of an offence punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred thousand rupees or with both, if he –

- a) .....  
 b) fraudulently takes out of the polling station any ballot paper or puts into any ballot box any ballot paper other than the ballot paper he is authorized under the rules to put in;  
 c) without due authority –  
 (i) .....  
 (ii) destroys, takes, opens or otherwise interferes with any ballot box or packet or ballot papers in use for the purpose of election;

or

- (iii) breaks any seal affixed in accordance with the provisions of the rules;

or

- (iv) causes any delay or interruption in the beginning, conduct or completion of the procedure required to be immediately carried out on the close of the poll;

or

- (v) fraudulently or without due authority attempts to do any of the aforesaid acts.

**34. Election Commission to conduct elections.-**

- (1) .....  
 (2) .....



- (3) Upon announcement of the date or dates of elections of the Councils under sub-section(2), the Election Commission of Pakistan shall organize and conduct the elections and to make necessary arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and the corrupt practices are guarded against.

**38. Executive authority to assist the election.-**

It shall be the duty of all executive authorities in the Province to assist the Election Commission of Pakistan in the discharge of its functions.

10. From the plain reading of the above provisions of law, it is clear that Commission has ample powers to stop the polls at one or more polling stations at any stage of the election if it is <sup>m</sup>in accordance with law due to large scale malpractices, including coercions, intimidation and pressures, prevailing at the election.

11. Clause (3) of Article 218 of the Constitution of Pakistan mandates the Election Commission to hold the elections and to make arrangements for free, fair and transparent elections in the following term:-

**"It shall be the duty of the Election Commission 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."**

12. Further, sections 3,4, 8(c) and 15 of the Elections Act, 2017, empower the Election Commission to regulate its own procedure and issue such orders as are necessary for assurance of free, fair and transparent elections, these sections are reproduced hereunder:-

**"3. Procedure of the Commission.** – (1) In the performance of its functions, and duties and exercise of its powers, the Commission shall regulate its own procedure.

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**4. Power to issue directions.** – (1) The Commission shall have the power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order for doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.



(2) Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.

(3) Anything required to be done for carrying out the purpose of this Act, for which no provision or no sufficient provisions exists, shall be done by such authority and in such manner as the Commission may direct.

**8. Power of Commission to ensure fair election.** – Save as otherwise provided, the Commission may –

(a) .....,

(b) .....,

(c) issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly, and in accordance with the provisions of this Act and the Rules.

**15. Complaints.**—(1) Any person aggrieved by any decision or action taken or direction issued by an authority subordinate to the Commission or any action of a political party or a candidate in violation of the Code of Conduct may, within fifteen days of such decision or action, submit a complaint to the Commission pertaining to matters other than relating to election disputes falling under Article 225.

(2) The Commission may refer the complaint received under sub-section (1) to such authority as it may deem appropriate for enquiry and report.

(3) The Commission may, on receipt of enquiry report or after hearing the complainant and any other person relevant to the proceedings itself and holding a summary enquiry, pass such orders as it may deem fit within thirty days from the date of receipt of the complaint.

(4) The Commission may also act under this section on its own accord.

(5) The Commission shall publish the order passed under sub-section (3) on its website.

13. The August Supreme Court in a land mark judgment reported as **PLD 2012 Supreme Court 681 "Worker's Party Pakistan Vs. Federation of Pakistan and 2 others"**, defined the duties of the Election Commission in the following terms:-

40. *A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'.*





*The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in Election Commission of Pakistan v. Javaid Hashmi and others (PLD 1989 SC 396), observed that "(g)enerally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including all stages involved in the election process. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein.*

41. *The Election Commission may also exercise its powers in anticipation of an ill that may have the effect of rendering the election unfair. In the case titled as In Re: Petition filed by Syed Qaim Ali Shah Jellani (PLD 1991 Jour. 41) the Elections Commission exercised its powers under Article 218(3) pre-emptively, by making all necessary arrangements to ensure that a certain class of people would be allowed to vote. This case implies that where a violation of the standards mentioned in Article 218(3) has not as yet taken place, the Election Commission is legally empowered under Article 218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Furthermore, Mst. Qamar Sultana v. Public at Large (1989 MLD 360) and In Re: Complaint of Malpractices in Constituency No. NA-57, Sargodha-V (supra) both reinforce the argument that the Election Commission is fully empowered by Article 218(3) to make 'such orders as may in its opinion be necessary for ensuring that the election is fair, honest etc'. These decisions recognize that the Election Commission enjoys broad powers not only to take pre-emptive action but also to pass any and all orders necessary to ensure that the standards of 'honesty, justness and fairness' mentioned in Article 218(3) are met.*

42. *The Parliament has framed different laws to effectuate the above constitutional provision and to regulate elections to the National and Provincial Assemblies. ROPA reiterates and further vests the Election Commission with the responsibilities and powers to, inter alia, regulate and check intra-party affairs and actions taken by candidates and parties in anticipation of and on Election Day, resolve all election disputes, declare the*



*election void and to award punishments for violating relevant election laws. In appreciation of the arduousness of its task, section 5(2) of ROPA further empowers the Election Commission to "require any person or authority to perform such functions or render such assistance for the purposes of this Act as...it may direct". The Election Commission may, under section 103(c) of ROPA also "issue such instructions and exercise such powers, and make such consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provisions of this Act and the rules". Article 220 of the Constitution also directs the Federal and Provincial machinery to assist the Election Commission in fulfilling its constitutional responsibilities. The law, therefore, entrusts the Election Commission with exclusive, broad and extensive powers to attend to all issues related directly and ancillary to the election process.*

43. *Article 218(3) also empowers the Election Commission to ensure that the election process does not suffer from any corrupt and/or illegal practices. Sections 78, 79, 80, 80-A, 81 and 83 of ROPA comprehensively define the terms "corrupt practices" and "illegal practices". ROPA in sections 82, 99 and 100 further elaborates the consequences of such practices and enunciate that the same form a sufficient basis for the Election Commission to, inter alia, imprison, fine and disqualify those who violate them. These provisions, therefore, subsume all those impugned activities as cognizable by the Election Commission. Similarly, Section 103(a) of ROPA instructs the Election Commission to ensure a "fair election". In doing so it implies that "large scale malpractices including coercion, intimidation and pressures, prevailing at the election" would negate the 'fairness' elections are to embody. While sections 78, 79, 80, 80-A, 81 and 83 specify activities that the Election Commission can regulate and check under Article 218(3), section 103(a), substantially enhances this defined spectrum of cognizable activities and reinforces the obligation to check them. In section 103(c) section it empowers the Election Commission to issue instructions, exercise its powers and make orders to effectuate the said standard."*

14. A similar incident of corrupt practice had happened during conduct of local government election for the seat of Chairman Tehsil Baka Khel, Bannu scheduled for 19.12.2021. This Commission took cognizance of the matter and after through enquiry and proceedings, *inter alia*, disqualified a sitting member of Provincial Assembly, KPK and disqualified his brother (a contesting candidate) from contesting any future election. This decision of the Commission was attacked before the Hon'ble Islamabad High Court through Writ Petition No. 458/2022. This Writ Petition was disposed of by the Hon'ble High Court vide judgment dated 11.02.2022, in the following terms:-



*"11. for reasons to be recorded later, the petition is partially allowed to the extent of setting aside paragraph 25(a) of the impugned judgment, dated 01.02.2022, whereby Mr. Shah Muhammad Khan was disqualified from holding the public office of Member of the Provincial Assembly of KPK. In so far as the impugned judgment, dated 01.02.2022, to the extent of paragraphs 25(b), (c) and (e) is concerned, no legal infirmity has been found requiring interference by the Court while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned judgment to the extent of sub paragraphs (b), (c), (d) and (e) of paragraph 25 is upheld and, therefore, to this extent the petition stands dismissed."*

The Hon'ble Court was pleased to uphold the decision of this Commission to the extent of disqualifying a contesting candidate from election.

15. Moreover, the august Supreme Court in a case reported as "PLD 2021 SC 825 "Reference No. 01 of 2020" was pleased to elaborate the powers and duties of the Election Commission in respect of conduct of free, fair and transparent elections, in paragraph 80 of the opinion, in the following terms:-

*" (ii) It is the duty of the Election Commission of Pakistan in terms of Article 218(3) of the Constitution, to ensure that the election is conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against on which this Court has given successive judgments and the most exhaustive being Workers' Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others v. Federation of Pakistan and 2 others (PLD 2012 SC 681);*

*(iii) The Election Commission of Pakistan is required by the Constitution to take all necessary steps in order to fulfil the above mandate/duty in terms of Article 222 of the Constitution, which empowers the Parliament, subject to the Constitution to legislate, inter alia, on the conduct of elections and matters relating to corrupt practices and other offences in connection with elections but categorically provides that, "no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or the Election Commission" under Part VIII, Chapter 1 of the Constitution;*

*(iv) Further in terms of Article 220 of the Constitution, all the executive authorities in the Federation and Provinces are obliged to assist the Commissioner and the Election Commission of Pakistan in discharge of his or their functions, as provided for in Article 218(3) of the Constitution;*

*(v).....";*

*(vi) Furthermore, in order to achieve the mandate of the Election Commission in terms of Article 218(3) read with Article 220 and other enabling provisions of the Constitution and the law, the Election Commission is required to take all available measures including*

*Sd/-*





*utilizing technologies to fulfill the solemn constitutional duty to ensure that the election is "conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against"*

16. In view of the above it is quite clear that the Election Commission is empowered to take any action and can issue all necessary directions for the conduct of free, fair and transparent elections and the provisions of Sindh Local Government Act are also very clear in respect of action taken against the corrupt and illegal practices. Furthermore, in the instant matter the Returning Officer being the main authority who had to ensure free, fair and transparent elections and has to take immediate action under the law when such incidents happen. The Returning Officer also possesses the powers of magistrate of 1<sup>st</sup> class and can take legal course of action against the culprits at the spot in a summary manner. However, in the instant matter the returning officer reached at the polling station, informed the DRO and other authorities but has not taken the requisite action and also has not exercised his authority as RO. Moreover, the CCTV footages were displayed in the court room whereby it is clearly shown that a person is entering in the polling station and destroying the polling material who has been recognized by the two presiding officers despite that the SHO concerned namely Muhammad Ali Dharma was reluctant to take any action. The matter was brought in to his notice by the concerned election officers/officials and his higher authorities. The female APO's and presiding officer were efficiently and bravely trying to save the polling material and upon their efforts and performance of their duties diligently and efficiently appreciation letters have been issued to them. Similarly, the Commission by taking initial actions, suspended the SHO concerned and RO. The matter was also taken up with the Chief Secretary Sindh and IGP Sindh for action at their part in the matter. The report submitted by the inquiry committee is very alarming and while giving the findings by the inquiry committee it has been pointed out that the security plan at polling station no. 1, 5 and 6 was not implemented and the requisite number of security personnel were not deployed at the polling station even despite that the polling stations were declared as highly sensitive. No additional force was available even as QRF mode to handle the situation. It is also highlighted that the non-availability of weapons





and deployment of police personnel remained the cause of forceful entry into the polling station by the culprits and to harass the polling staff and voters. The report also clarifies and identifies the main culprit Mr. Saeed-ud-Din who actually planned the attack at the three polling stations along with his supporters by creating the issue of difference in electoral rolls. He attacked at the polling station no. 1, 5 and 6, snatched the ballot papers and other election materials including official code mark, destroyed the electoral rolls and ballot boxes and harassed the polling staff. The role of the culprit has been identified from the statements of witnesses/presiding officer, CCTV footages etc.

17. In view of all above arguments, statements and reports submitted by the DRO, statement given by the presiding officers, record of the CCTV footages and reports submitted by the inquiry committee, we observed that Mr. Saeed-ud-Din candidate for Chairman along with other accused, was involved in the above mentioned incident of attacking the polling station, snatching of election material, harassing and threatening to the polling staff which acts are falling in the definition of corrupt practice attracting penal consequences. Therefore, in exercise of powers under Article 218(3) of the Constitution read with sections 3, 4, 8©, 15 and section 229(1) of the Elections Act, 2017, and deriving strength from the judgment of the apex courts *supra*, we hold and direct as under:-

- a. Mr. Saeed-ud-Din who was a contesting candidate from the subject constituency is disqualified and is barred from contesting local government election on account of involvement in the corrupt practices.
- b. The Provincial Election Commissioner, Sindh is directed to file Complaint of corrupt practices against Mr. Saeed-ud-Din under the relevant provisions of the Elections Act, 2017, and the Pakistan Penal Code;
- c. We direct the Chief Secretary Sindh and IG Sindh to initiate disciplinary proceedings against SHO namely Muhammad Ali Dharma on account of inaction on his part and for not performing his duties in accordance with law which he by virtue of Article 220 of the Constitution read with section 5(2) of the Elections Act, 2017 was required to do;



- d. The RO concerned namely Qaim Akbar Nimai is warned to be careful in future. It is also directed that he shall not be assigned any election duty in future. However, his suspension order are withdrawn and he is reinstated in service.
- e. The Police is directed to investigate the case by all angles and arrest the remaining accused persons and make ~~out~~ <sup>out</sup> all efforts for better and effective criminal prosecution of the cases/FIRs registered in this matter to punish the accused involved in these crimes.
18. Office to take follow up actions, accordingly.

  
**(Sikandar Sultan Raja)**  
 Chairman

  
**(Nisar Ahmed Durrani)**  
 Member

  
**(Shah Muhammad Jatoi)**  
 Member

  
**(BABAR HASSAN BHARWANA)**  
 Member

  
**(JUSTICE (R) IKRAM ULLAH KHAN)**  
 Member

Date of announcement; **20.06.2023**

