

ELECTION COMMISSION OF PAKISTAN

PRESENT

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

CASE No.F.7(8)/2024-Law-III (GE)

Subject: PETITION UNDER SECTION 8, 9, OF ELECTIONS ACT 2017 READ WITH ALL OTHER ENABLING PROVISIONS OF THE ELECTION LAWS

1. Syed Muhammad Ali Bokhari contesting candidate NA-48 Islamabad

.....Petitioner

CASE No.F.7(33)/2024-Law-III (GE)

Subject: PETITION UNDER SECTION 8, 9, 92, 95, 125 OF THE ELECTIONS ACT, 2017 READ WITH RULE 84 AND 85 OF THE ELECTION RULES, 2017 ALONGWITH ENABLING PROVISIONS OF LAW

2. Mustafa Nawaz Khokhar contesting candidate NA-48 Islamabad.

.....Petitioner

CASE No.F.7(31)/2024-Law-III (GE)

Subject: PETITION UNDER SECTION 8 OF THE ELECTIONS ACT, 2017 READ WITH ALL OTHER ENABLING PROVISIONS OF LAWS

3. Ch. Azhar Mehmood, Contesting Candidate NA-48 Islamabad

.....Petitioner

VERSUS

Returning Officer, NA-48, (ICT-III), Islamabad & Others

.....Respondent(s)

For the petitioner No.1 : In person alongwith Faisal Fareed, ASC
For the petitioner No.2 : Sohaib Ilyas, ASC
For the petitioner No.3 : Sohaib Shaheen, ASC.

For respondent :Bariister jahanzeb Awan
Uzair Shafie & Umer Abbasi, Advocate

Date of hearing : 21-02-2024

ORDER

Shah Muhammad Jatoy, Member- Brief facts of the matter are that petitioner namely petitioner No.1 Syed Muhammad Ali Bokhari, petitioner No.2 Mustafa Nawaz Khokhar, petitioner No. 3 Ch. Azhar Mehmood



contested the General Election 2024 for the seat of National Assembly from constituency NA-48-Islamabad. As per Form-47 uploaded on the website of the Commission, the petitioner No. 1 has obtained 59851/- votes, petitioner No.2 has obtained 18572 votes, petitioner No. 3 has obtained 13200 votes and the returned candidate has obtained 69699. Petitioners being aggrieved with the result issued by the Returning Officer concerned have filed the subject petitions. The petitioner No.2 & 3 on 12.02.2024 appeared before the Commission and requested to club their petitions with the petition filed by the Syed Muhammad Ali Bokhari contesting candidate from NA-48 Islamabad. The request was allowed and matters were clubbed with. All the three petitions are being decided through this single order.

2. Today the matter is fixed for submission of report by the Returning Officer and for appearance of the respondent. The report of the Returning Officer has been received which is taken on record and copy is provided to all the above mentioned petitioners.

3. The petitioner No.1 Syed Muhammad Ali Bokhari appeared and requested for submission of amended petition with additional prayer in respect of Form-48, Form-49 and issuance of Notification. His request is allowed and the application for amendment is placed on record, and being made part of record. Petitioner also filed his replied thereto the report of Returning Officer and respondent reply.

4. The Petitioner No.1 argued that as per Form-45 issued by the Presiding Officers of 257 out of 261 polling stations, petitioner has obtained 74,425 votes whereas Raja Khurram Shahzad Nawaz obtained 30,345 votes. Learned counsel submitted that as per Form-45 obtained by their Polling Agents from the offices of Presiding Officers, he is the winning candidate of the constituency. In support of his arguments he relieve upon already submitted photocopies of all alleged Form-45 which were claimed to be provided to his agents by respective presiding officers. He argued that an application on the same day was given to the Returning Officer for correction of result. He submitted that the recount may be ordered in the constituency NA-48 Islamabad. Through the amended application filed by the petitioner he submitted that restraining order was passed by the Commission on 11.02.2024 which was not



complied with by the Returning Officer. He further added that the Returning Officer has prepared Form-48 and Form-49 in violation of the restraining order passed by the Commission, therefore, he requested that Form-48 and Form-49 as well as notification of returned candidate may be declared illegal, unlawful, void ab-initio and violative of restraining order dated.11.02.2024.

5. The Petitioner No.2 submitted that he contested election from NA-48 Islamabad as independent candidate and adopted the arguments advanced by the learned counsel for the petitioner No.1. He in addition to the arguments submitted that Mr. Syed Muhammad Ali Bokhari was winning by securing approximately 75,000/- votes and Mr. Raja Khurram Nawaz on the second position. He further submitted that Returning Officer has violated his duty and fabricated Form-47 in violation of provisions of Elections Act, 2017. He prayed that Form-47 may be set aside and directions may be issued to prepare it afresh in light of Form-45 available with the candidates.

6. The Petitioner No.3 stated that his election agents were not allowed to enter into the office of the Returning Officer. He further contended that he himself visited the office of the Returning Officer, but he was stopped outside the office of the Returning Officer. He further argued that the Returning Officer illegally, unlawfully and purposely rigged and tampered with result in violation with Sections 92 and 95 of the Elections Act, 2017. He pointed out that the returned candidate has never obtained 69699 votes rather he has received less than thirty thousand votes. He requested the Commission that the provisional result dated 09.02.2024 prepared by the Returning Officer may be reviewed and set aside. He further requested that directions may be issued to the Returning Officer for preparation of fresh Form-47 in the light of Form-45 available with him.

7. Learned Counsel for the respondent/returned candidate contended that the allegation leveled by the petitioner are factual in nature which, could not be decided without pro and contra evidence in a proper forum and due course of law; that the concern Returning Officer has not violated any rules or Law on the subject and has properly consolidated not only the provisional statement of result of account but also final consolidation result strictly in accordance with law and form-45 submitted



to him by all the respective polling officers of the concern constituency. The photostate copies provided by the petitioner could not be relied upon without comparing it with the official record duly submitted to concern Returning Officer, Election Commission of Pakistan by respective polling officer and such comparison could only be possible in a due course of law; that the petitioner was well inform in respect of the consolidation process of time and place and he approached office of the Returning Officer but along with hundreds of people instead of peacefully participating in the consolidation process. He and his supporter made chanting, and chaos whereby savored the whole situation and was not allowing the concern presiding officer to peacefully conduct the consolidation process. Even though the concern RO keeping his obligation properly performed his legal obligation and made the final as well as provisional consolidation in accordance with the prescribed legal manner and mode, that in term of section 95(1) of the Election Act only one agent of each contesting candidate is allowed to participate, however in sheer violation of the law the petitioner accompany with dozen of his supporters just for the purpose to create serious law and order situation, in order to pressurize the concern RO to get a favourable result but invain, prayed that as the Election Commission of Pakistan has already notified election tribunal in term of section 140 of the Election Act, therefore Election Commission in matter in hand which require a detail investigation, cease of jurisdiction and this petition may be dismissed accordingly.

8. Arguments heard and record perused.

9. From the perusal of the record it is observed that the petitioner No.1 has filed the main petition and application for addition of prayer through amendment. The prayers are given below:-

"It is therefore, respectfully prayed that provisional order dated.09.02.2024 in shape of Form-47 prepared by the Returning Officer may kindly be set aside and direction may kindly be issued to the Returning Officer for preparing From-47 afresh on the basis of results of all polling stations (261) issued by the Presiding Officers in shape of Form-45 (according to which the petitioner is winning candidate), in the best interest of justice, equity and fair-play.

It is further prayed that a stern action may also be taken against the Returning Officer who proceeded against the law and record.



Any other order which this Hon'ble Court deems appropriate to the facts and circumstances of present case may also be passed for the dispensation of justice and fair-play.

And

It is further prayed that Form-48 and Form-49 as well Notification dated.11.02.2024 may kindly be treated illegal, unlawful, void ab-initio, violative of restraining order dated.11.02.2024 and set aside the same in the interest of justice.

10. The prayers of the petitioner No.2 & 3 are almost similar in respect of setting aside Form-47 prepared by the Returning Officer and issuance of directions for fresh preparation of Form-47 in the light of Form-45 available with the candidates and action against the Returning Officer for involving in corrupt practices.

11. The Returning Officer in his report while denying the allegations of the petitioner No.1 stated that the allegations are false, concocted and baseless without any evidence. He further stated that the provisions of Section 92 & 95 of the Elections Act, 2017 read with Rule 84 & 85 of the Election Rules, 2017 have been strictly complied with by him. He further added that the screen was displayed outside the office of the Returning Officer for displaying the result. He further contended that no objection on any result or proceedings has been raised by the candidates or their agents. The Returning Officer further stated that notice for consolidation of the results was issued to the contesting candidates for 11.02.2024. He also highlighted in his report that at the time of consolidation of results, the petitioner or his authorized agent did not attend the process. He further informed that Form-48 & 49 were prepared and shared with the candidates and ECP. He also mentioned that before the communication of order of the Commission, the process of consolidation was already completed by the Returning Officer.

12. 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.498/2024. 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.

13. 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”



14. 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"

15. From the perusal of record and Form-47 it is revealed that the petitioner No.1 has obtained 59851 votes whereas, the returned candidate obtained 69699 votes. The margin of victory between the returned and the runner up candidate is 9,848. The petitioner No.1 has requested for declaring Form-47 against the law and requested for declaring it illegal and unlawful. The petitioner No.1 has also provided the copies of Form-45 alongwith his petition. The subject petition is filed under section 8 & 9 of the Elections Act, 2017 but no prayer in this respect has been made by the petitioner No.1 in his petition or even during the course of arguments. The main contention raised by the petitioner No.1 was that the Returning Officer has tampered/changed the result of the constituency in violation of Act and Rules. However, no substantial and material evidence in support of the allegations have been provided to the Commission by the petitioner No.1. The only evidence which is provided by the petitioner No.1 is the paper book containing the copies of alleged Form-45 claimed to be obtained by him or his agents from the Presiding Officers.

16. We have gone through the paper book containing photocopies alleged Form-45 and found that the allegations raised by the petitioner No.1 regarding irregularities and illegalities in the election process and preparation Form-47 requires recording of evidence. The Commission can decide the matters through summary inquiry under Section 8 of the Elections Act, 2017 and cannot record evidence. For this purpose Election Tribunals are appointed under Section 140 of the



Elections Act, 2017 and petitions may be filed before the Tribunals under Section 139 of the Act *ibid*.

17. The petitioner No.1 has not prayed for recounting of votes in his petition, while during course of the arguments he requested for recounting of votes. Section 95 of the Elections Act, 2017 is clear that before commencement of proceedings of consolidations the Returning Officer shall recount the ballot papers of one or more Polling Station if a request or challenge in writing is made to that effect by the contesting candidate or his election agent. Furthermore, the contesting candidates may also point out any irregularity or illegality before the Returning Officer. Section 95(5) of the Elections Act, 2017 is reproduced below:-

“95. Consolidation of results.—(1) Immediately after announcement of provisional results, the Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place fixed for the consolidation of the results, and, in the presence of such of the contesting candidates and election agents as may be present, consolidate in the prescribed manner the Results of the Count furnished by the Presiding Officers, including therein the postal ballots received by him before the time fixed for the consolidation of results 1 [:

(5) Before commencement of the proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made to that effect by a contesting candidate or his election agent and—

(a) the margin of victory between returned and runner up candidates is less than five percent of the total votes polled in the constituency or eight thousand votes in case of National Assembly constituency and four thousand votes in case of a Provincial Assembly constituency, as the case may be, whichever is less; or

18. In the present case the margin of victory is higher than the number of votes mentioned in Section 95 of the Elections Act, 2017, therefore, the case does not fall under the ambit of Section 95 (5) of the Elections Act, 2017. The process of consolidation of has been completed by the Returning Officer and Form-49 has been prepared.

19. The petition filed by the petitioner No.1 is dismissed being devoid of merits which requires recording of pro and contra evidence in



due course of regular trial; however the petitioner No.1 may approach the Tribunal for re-dressal of his grievances if so advised.

20. It is also observed that the petitioners No.2 & 3 contested General Elections 2024. The petitioner No.2 was an independent candidate whereas the petitioner No.3 was affiliated with TLP. The petitioner No. 2 namely Mr. Mustafa Nawaz Khokhar has obtained 18572 votes, while, the petitioner No. 3 has obtained 13200 votes. All the above mentioned petitioners have no locus-standi to file the applications/petitions for re-verification or recounting of votes under Section 8, 9, 92 and 95 of the Elections Act, 2017. There are separate procedures provided under Elections Act, 2017 for preparation of provisional result and final consolidation of result. Any alleged irregularity or procedural defect cannot be ascertained by the Commission by conducting summary inquiry.

21. In the present cases of the petitioner Nos. 2 & 3 the margin of victory is very high and any irregularity pointed out by the petitioners in their petitions is not affecting the result of the petitioners. Therefore the petitions are dismissed being not maintainable.

22. As the Hon'ble Islamabad High Court vide order dated.19.02.2024 in ICA No.48/2024 has passed the 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 on dismissal of the instant petition on the above mentioned grounds, the notification dated.11.02.2024 under Section 98(1) of the Elections Act, 2017 stands restored/revived.

23. Office to take follow up action accordingly.

Shah Muhammad Jatoi
Member

Justice (R) Ikram Ullah Khan
Member

Islamabad the 21st February, 2024

