

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MOHAMMAD JATOI, MEMBER
MR. BABAR HASSAN BHARWANA, MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

CASE No.6(31)/2024-Law (III)

Subject: **PETITION/ APPLICATION UNDER SECTION 151 OF THE ELECTIONS ACT, 2017 READ WITH ALL ENABLING PROVISIONS OF LAW FOR THE TRANSFER OF THE ELECTION PETITION NO.2 OF 2024 TITLED "KHURRAM SHER ZAMAN VS. MIRZA IKHTIAR BAIG AND OTHERS"**

Mirza Ikhtiar Baig

.....Applicant(s)

VERSUS

Khurram Sher Zaman & Others

.....Respondent(s)

For the Applicant : Mr. Sajeel Sheheryar Swati, ASC
For the Respondent : Mr. Haroon B. Sharif, Advocate
Date of hearing : 10-12-2024

ORDER

Mr. Nisar Ahmed Durrani, Member- Applicant namely
Mirza Ikhtiar Baig has filed the instant transfer application under
section 151 of the Elections Act, 2017 for transfer of Election
Petition bearing No.02/2024 from Hon'ble Mr. Justice Adnan Iqbal
Chaudhry, learned Election Tribunal to any other learned Election
Tribunal.



2. Learned counsel for the applicant appeared and vehemently contended that learned Presiding Officer has distinctively disclosed his mind that learned counsel for the applicant namely Chaudhary Atif Rafique before the Election Tribunal was "not before" the learned Presiding Officer of the Election Tribunal. Contended that policy of "not before" is aimed to avoid embarrassing situation for the judges. He emphasized that after such clear disclosure of mind, the matter pending adjudication before the learned Presiding Officer was not qualifying that he may hear it. Carrying forward his arguments, he contended that he raised well reasoned objections about the maintainability of Election Petition at preliminary stage as Election Petition was filed without fulfilling the mandatory requirements of section 140 to 144 of the Elections Act, 2017. That procedure before the Election Tribunal is very much clear that if any provision of section 142, 143 or 144 is not complied with, the Election Petition shall summarily be rejected. He urged that his valid and well reasoned objections in this regard have been turned down. He while drawing the attention towards orders sheets of learned Election Tribunal emphasized that no adjournment has been granted less than two weeks time. That Ch. Atif Rafiq, learned counsel for the applicant (respondent before Election Tribunal) withdrawn his Vakalatnama due to which petitioner (before ECP) made a request for adjournment for change of counsel but initially time of only 4 days was granted. That in the meanwhile CMA was taken up which was filed for disqualification of applicant (before ECP) under Article 63 (1) (c) of the Constitution of Islamic Republic of Pakistan, 1973 on the ground of dual membership and after hearing the petitioner side, matter has



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been reserved without recording of any evidence/ inquiry and even without giving an opportunity of hearing. That after withdrawal of Vakalatnama by Ch. Atif Rafiqe, some time was required for change of counsel and to go through the memo of Election Petition by him as well as annexures attached therewith comprising of about 2000 pages but no such time has been granted. That matter has been reserved without affording of an opportunity of hearing on the point of disqualification. He prayed that Election Petition may be transferred to any other Election Tribunal in the interest of justice.

3. On the other hand learned counsel for the respondent opposed the transfer application and contended that Election Petition has been reserved by the Learned Election Tribunal on the ground of dual citizenship, therefore, it would not be appropriate to transfer the Election Petition at this stage. He further contended that there is statutory provision that Election Petition shall be decided within one hundred and eighty days, which has already been elapsed. That Election Petition was filed in accordance with relevant provisions of law and objections were rightly rejected by the learned Election Tribunal. That sufficient time for engaging of counsel was granted but applicant failed to engage his counsel. That no element of biasness has been established or extending of any undue favour to any party, therefore, transfer application may be rejected and let the Election Petition may be decided by the Election Tribunal.

4. We have heard the arguments and perused the record. Under section 151 of the Elections Act, 2017, Election Commission of Pakistan is fully empowered to transfer the Election Petition on



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its own motion or on an application made by the party and not any other forum. Certainly, it is a matter of record that learned Presiding Officer has observed "not before" with regard to learned counsel for the applicant. Record reveals that matter with regard to term "not before" was referred to the Hon'ble Chief Justice, Sindh High Court Sindh. The said matter was returned with the observation that the NOT BEFORE policy in the special assignment of Election Petitions pertaining to General Elections-2024, may not apply.

5. Apart from above, it is also a matter of record that learned counsel had withdrawn his Vakalatnama which was discarded on 20th November, 2024 while matter of disqualification under Article 63 of the Constitution has been reserved on 3rd December, 2024, just after 13 days. In such view of the matter, we are not satisfied that sufficient time has been granted for engaging of counsel as claimed by learned counsel for the respondent. Moreover, applicant himself came forward and contended that he placed all the relevant documents before the learned Election Tribunal with regard to renouncement of citizenship much before the filing of his nomination papers, but same were not taken into consideration. On the other hand, learned counsel for the respondent remained tacit and did not rebut the stance of applicant. In such state of affair, the assertion of learned counsel for the applicant that matter of disqualification has been reserved without recording of evidence or without conducting of inquiry, bears weight. Moreso, the applicant has adopted due process of law, therefore, he should have right of access to fair trial.



Moreover, it is well known dictum that justice is not only done but it seems to be done.

5. Consequently, for what has been discussed above, titled application is allowed. Hence we while exercising powers under section 151 of the Elections Act, 2017 hereby transfer the election petition titled "Khurram Sher Zaman vs Mirza Ikhtiar Baig and others". The same is entrusted to learned Election Tribunal, Hon'ble Mr. Justice Muhammad Karim Khan Agha.


(Nisar Ahmed Durrani)
Member


(Shah Mohammad Jatoi)
Member


(Babar Hassan Bharwana)
Member


(Justice (R) Ikram Ullah Khan)
Member

Islamabad
The 10th December, 2024

