

ORDER SHEET

HIGH COURT OF SINDH, KARACHI

C.P.NO.D-2194/2013

Date

Order with signature of Judge

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1. For katcha peshi.
2. For hg.of M.A No.11348/13

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24.05.2013

Mr.Agha Faisal, advocate for petitioner.

Mr. Khalid Javed Khan, Advocate.

Mr. Abdullah Hinjrah, Law Officer, Election Commission.

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The petitioner is a candidate from PS-22 Naushero Feroz-V and his rival candidate is Respondent No.3. The case of the petitioner is that on 12.5.2013 after consolidation of vote

count, the Returning Officer handed over a result sheet wherein the petitioner was shown to have bagged 30111 votes which were highest; whereas Respondent No.3 was runner up bagging 29919 votes and on account of such result the petitioner was declared successful. It is also the case of the petitioner that subsequently on 15.5.2013 the Returning Officer came up with another result of vote count showing the petitioner to have bagged 31067 votes and Respondent No.3 30124 votes. It is further the case of the petitioner that once he was declared successful respondent No.3 himself moved an application seeking recounting of the votes and then without any order of re-counting how respondent No.3 was declared successful. After reversal of the result the Respondent No.3 withdrew his earlier application dated 12.05.2013 for re-count.

Counsel for the respondent, without denying the fact that Respondent No.3 had himself applied for vote count on 12.05.2013, submitted that in fact it was the petitioner who sought recounting of votes by moving an application in this regard. From all this it is evident that on 12.5.2013 the petitioner was first declared successful which was in the knowledge of Respondent No.3 and for such reason Respondent No.3 filed an application on 12.05.2013 for recounting of votes and it is also an admitted position that application for recounting was withdrawn by respondent No.3 when the result was reversed on 15.5.2013. It was in this background that the petitioner moved an application for re-count on 15.05.2013. Thus Respondent No.3 has been declared successful without re-counting of votes and the petitioner has filed an application under Rule 103AA of the Representation of Peoples Act 1976 before the Election Commission seeking recounting of votes but apprehends that Respondent No.3 would be notified which would cause grave injustice to the petitioner who was initially declared successful.

We are conscious of the fact that the scope of Election petition is limited under Article 225 of the Constitution but here the error is so glaring. The Returning Officer has himself declared two separate results. First the petitioner was declared successful and the application moved by Respondent No.3 for re-count itself suggests that Respondent No.3 was initially not declared successful. Apparently the decision amounts to disenfranchising the petitioner and

hence call for interference under Article 199 of the Constitution. Therefore, this petition is allowed in the above terms.

Let the Election Commission conduct recount of all votes of the constituency and complete such process by 28.5.2013 and thereafter whosoever bags more votes would be notified as successful candidate. In case any of the candidates is aggrieved by the result of recount, he shall be free to seek remedy that is provided under the Election Law.

JUDGE

JUDGE