

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D- 2205 of 2013

Abdul Razzak

Versus

The Election Commission of Pakistan & others

BEFORE:

**Mr. Justice Faisal Arab**  
**Mr. Justice Muhammad Shafi Siddiqui**

Date of Hearing: 24.05.2013

Petitioner: Through Mr. Abid S. Zuberi Advocate.

Respondents: Through M/s. Shabbir Shah and Rana Ikramullah  
Advocates

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- The Petitioner has sought declaration that the petitioner is the elected/returned/successful candidate of PS-93, Karachi-5 in the elections held on 11.5.2013 and further that on the basis of facts it be declared that the polls in some of the polling stations are void and sought fresh polls under the security of armed personnel.

2. Brief facts are that petitioner was a candidate for PS-93, Karach-5 from one of the political parties namely Jamat-e-Islami and respondent No.2 was also a candidate of PS-93 for Pakistan Tahreek-e-Insaf.

3. It is the case of the petitioner that the respondent was involved in grave violation of Representation of the People Act, 1976 its rules, regulations and the Constitution of Islamic Republic of Pakistan and that respondent No.2 was indulged in massive rigging and illegal and corrupt practices. It is urged that in most of the polling stations in the said constituency the miscreants from the rival parties trespassed and evicted the petitioner's polling staff by force. It is urged that in the subject polling station the votes tally reflected in the statement of count issued by the Presiding Officer was different from the actual votes tally and that the petitioner's votes were reduced in the consolidated vote sheets from many polling stations whereas the respondent No.2's votes were increased in the consolidated result sheets as compared to the votes tally issued by the Presiding Officer from the concerned polling stations and hence the results of the Presiding Officer and Returning Officer are at variance. It is contended that the Returning Officer did not issue any notification under section 39 of the Representation of the People Act, 1976 at the time of preparation of consolidated result sheets. Accordingly the petitioner has filed complaint under section 103AA of the Representation of the People Act,

1976 before the Election Commission of Pakistan against the respondent No.2, District Returning Officer and the Returning Officer of the said constituency which has been assigned Complaint No.327/2013. He submitted that the decision on the complaint under section 103AA of the Representation of the People Act, 1976 is still pending and issuance of notification/declaration with regard to respondent No.2's success during such pendency shall cause prejudice. He submitted that since the complaint is pending and it is not likely to be heard prior to the issuance of the notification, therefore, this petition has been filed which is an efficacious remedy as provided under the law. Learned Counsel has relied upon a number of result count sheets allegedly issued by the Presiding Officers which are not reflected in the consolidated result sheet issued by the Returning Officer. He has placed reliance on the result count sheets of polling stations Nos. 4, 24, 32, 65, 68, 71, 77 and 85 where the votes of petitioner were reduced in the consolidated result sheets by Returning Officer and similarly he has relied upon result count sheets of polling stations 2, 4, 18, 23, 29, 50, 55, 67 and 68 where number of votes as counted in the result count sheet for respondent No.2 were increased in the consolidated result issued by the Returning Officer and hence the consolidated result does not reflect correct tally of the votes.

4. Learned counsel for respondent No.2 submitted that this petition is not maintainable under the law and is barred under Article 225 of the Constitution of Islamic Republic of Pakistan. Learned Counsel submitted that Article 199 of the Constitution of Islamic Republic of Pakistan in terms whereof this petition has been filed starts as 'subject to the Constitution' and Article 225 of the Constitution is also an Article of this constitution, therefore, Article 199 of the Constitution should always be read subject to Article 225 of the Constitution. He submitted that the dispute in the shape of election petition can only be presented to such Tribunal and in such

manner as may be determined by the Act of Parliament which is said to be Representation of the People Act, 1976 which provides a mechanism to raise grievance and disputes with relation to election. Learned Counsel for the respondent No.2 submitted that in temrs of sections 39(3), 42(4) and 103AA of Representation of the People Act, 1976 which is an Act of Parliament, this petition does not lie. Learned Counsel in support of his contention has relied upon the case of (i) Auorangzeb Khan v. Election Commission of Pakistan (PLD 2010 SC 34), (ii) Ayatullah Imran Liaquat Hussain vs. Election Commission of Pakistan (PLD 2005 SC 52), (iii) Maulana Ata-ur-Rahman v. Al-Haj Sardar Umer Farooq (PLD 2008 SC 663), (iv) Lt. Gen. (R) Sanaullah Tirmizi v. Election Commission of Pakistan (PLD 2008 SC 735) and lastly the case of (v) Muhammad Tariq Chaduhry v. Syed Masroor Ahsan (PLD 1991 Lahore 200).

5. In addition learned counsel denied the contents and the authenticity of the documents attached with the memo of petition and has field certified copy of Form-XIV submitted by the Presiding Officer of PS-93 Karachi-5. Learned Counsel has also field the certified copies of the statement of count issued under Form-XIV for the polling stations which are disputed by the petitioner. Learned Counsel for the respondent No.2 submitted that the petitioner who was contesting elections as a candidate of Jamat-e-Islami which political party has already boycotted the election. He submitted that the alleged Form-XIV and other documents which are relied upon by the petitioners are forged, concocted and engineered documents and are without thumb impression and issued on plain and unauthorized papers in direct contravention of section 24 of the Representation of the People Act, 1976. Learned Counsel submitted that they have obtained the certified copy of the original statement of count dated 11.5.2013 duly signed and issued by the concerned Presiding Officers with thumb impression on Form-XIV and are placed on record for the assistance.

6. In reply as to the maintainability of this petition, learned Counsel for the petitioner Mr. Abid S. Zuberi submitted that case of *Aurangzeb Khan* reported PLD 2010 SC 34 is per incurium as the earlier judgment passed by the Hon'ble Supreme Court reported as *Aftab Shaban Mirani v. President of Pakistan* (1998 SCMR 1863) was not cited. Learned Counsel has also relied upon the case of *Dr. Sohrab Sarki v. Meer Hassan Khoso* (2011 SCMR 1084). Learned Counsel has also relied upon the cases of *Ghulam Mustafa Jatoin* (1994 SCMR 1299) and *Kanwar Khalid Younus* (PLD 2003 Karachi 209).

7. We have heard the learned Counsel and perused the record. Since the respondent has objected to the maintainability of this petition, therefore, we would like to decide question of maintainability before we could proceed further. The petitioner's main thrust is related to the discrepancies in Form XIV which he claims to be issued by the Presiding Officer at different polling stations and the consolidated result which does not reflect the said picture. Apparently these documents are without any sign or thumb impression and that some of these Form-XIV were issued even on some plain papers as compared to the certified copies of Form-XIV filed by the respondent No.2.

8. Article 225 of the Constitution of Islamic Republic of Pakistan provides as under:-

*“Election dispute. No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament).”*

9. The Act which this article emphasized is the Representation of the People Act, 1976 which regulates and governs election mechanism and in terms of Article 225 of the Constitution, the question relating to election to a House or a Provincial Assembly shall be called in question only

by way of Election Petition to such Tribunal as determined under the Act *ibid*. The case of Aftab Shaban Mirani *ibid*, which is heavily relied upon by the learned Counsel for the petitioner involves disenfranchising of a candidate and it was held that, had the High Court did not allow the petitioner to participate in the election for the office of President of Pakistan he would have no remedy available, in fact he would have been ousted from the arena of election of the above office. The Hon'ble Supreme Court while relying on the judgment reported as 1994 SCMR 1299, has provided a mechanism to the aggrieved person that where no legal remedy is available to a party/person during process of election or after its competition who is disenfranchised by any Act, can pursue his remedy under constitutional jurisdiction of the High Court. Similarly the case of Ghulam Ghulam Mustafa Jatoi also expresses the same view that in the election process the High Court cannot interfere by way of constitutional petition in view of Article 225 of the Constitution. However, it is subject to exception that where no remedy is available to the aggrieved party during the process of election or after its competition which disenfranchises a candidate, can press into constitutional jurisdiction of the High Court.

10. Such view was formed as disenfranchising a person encroaches upon the rights of a citizen which is to be construed strictly in accordance with law. The case of Dr. Sohrab Ahmed Khan Sarki which is also relied upon by petitioner's counsel involves an issue of re-polling on disputed polling stations which order was passed by the Election Commission of Pakistan. It was held by the Hon'ble Supreme Court that the order passed by the Election Commission of Pakistan was arbitrary and a result of patent misreading of record and hence could not have been challenged before the Election Commission of Pakistan under section 52 of the Representation of the People Act, 1976. It was further observed that the exercise of jurisdiction by the Election Commission of Pakistan in such cases in an arbitrary manner was uncalled for, beyond the limit and scope of

summary inquiry, as envisaged under section 103AA of the Representation of the People Act, 1976, irrational, unjustified and illegal and hence in view of such facts and circumstances the order of the dismissal of the petition by the High Court was set aside which is not the case here.

11. On the other hand the reliance that was placed by learned counsel for the respondent No.2 which touches the maintainability of the petition are as follows:

12. Case of *Ayatullah Dr. Imran Liaquat Hussain v. Election Commission of Pakistan* (PLD 2005 SC 52) deals with the application of Article 225 of the Constitution and the exclusive jurisdiction of the Election Commission/Tribunal. Para 8 and some portion of Para 9 of the judgment is reproduced as under:-

*“8. A careful scrutiny of the entire record would reveal that Mr. Ayatullah Dr. Imran Liaquat Hussain has ignored the provisions as contained in Article 225 of the Constitution which have been discussed on various occasions in different cases and the judicial consensus seems to be “that Article 225 is expressed in the negative form to give exclusive jurisdiction in election cases to the Tribunals appointed by the Election Commission thus to exclude or oust the jurisdiction of all Courts in regard to election matters and to prescribe only one mode of challenge. If the election dispute is about the conduct or validity of election, it could only be challenged through election petition, a statutory remedy provided under the law. The Constitution itself prohibits the disputes relating to corrupt or illegal practices, being called in question by any other mode or manner except by way of election petition under the provisions of the Representation of the People Act, 1976. Therefore, writ jurisdiction was barred as other adequate remedy was available. However, the bar created by Article 225 does not apply where the matter has once been finally decided by the Tribunal created for the purpose and it is only such disposal which is being questioned in the writ proceedings. Hence, there is no bar to an application to the High Court under article 199 of the Constitution against the decision of an Election Tribunal and the High Courts may issue appropriate writs of mandamus or certiorari of such cases.”. Election Commission of Pakistan v. Javed Hashmi and others (PLD 1989 SC 396), Muhammad Tariq Chaudhry v. Syed Masroor Ahsan, (PLD 1991 Lah. 200), Niaz Ahmed Khan, Advocate v. Province of Sindh (PLD 1977 Kar. 604), Muhammad Sadique v. Muhammad Hussain (1983 CLC 2734), Qazi Ghulam Ahmed, v. G.F. Elahi Election Tribunal Chakwal (PLD 1962 Lah. 786), Shankar v. Returning Officer, Kolaba (AIR 1952 Bom. 277).*

9. ....*The blanket cover is, therefore, provided to all litigable challenges in respect of every kind of order passed in the course of election process because the provisions of Article 199 were subject to Constitution including Article 225 and exercise of power under Article 199 could not be placed on higher footing than that contained under Article 225 of the Constitution. As filing of nomination form containing false information, would be a step in the conduct of election and could only be assailed through election petition, a statutory remedy provided under the law with mandate under Article 225 of the Constitution.*” *Fazl-I-Mehmood v. Ch. Muhammad Hussain Chatha (PLD 1964 Lah. 74).*”

13. Case of *Muhammad Tariq Chaudhry v. Masroor Ahsan* (PLD 1991 Lahore 200) is cited to emphasize that opening clause of Article 199 of the Constitution provides “subject to the Constitution” and hence Article 199 is subject to Article 225 of the Constitution.

14. Lastly in the case of *Aurangzeb Khan v. Election Commission of Pakistan* (PLD 2010 SC 34) the Hon’ble Supreme Court has expressed the intention of the legislature while interpreting the terminology used in Article 225 of the Constitution which is said to be clear, unambiguous and quite emphatic and not capable of any two interpretations. The judgment of the Hon’ble Supreme Court cannot be expressed in the better words than to reproduce the relevant portion itself which are as under:-

*“5. If we look into the terminology used by the legislature while enacting Article 225 of the Constitution, we find it quite emphatic, clear and unambiguous; not capable of any two interpretations. The very language thereof starts with negative phraseology which most commonly is interpreted for ousting any possibility other than one given in the Article itself. That is how any law starting with negative phraseology is interpreted.*

*6. There is another phrase in the Article which gives double effect to the already negative phrase with which Article starts. It goes like “except by an election petition”. The overall effect given in the Article is that no election, like one in hand, shall be called in question otherwise than in the manner provided by law and before a forum provided by the Article. So it cannot be challenged except by an election petition presented to such Tribunal, and in such manner, as may be determined by the law (Act of Parliament).*



7. *It is a well-known matter of common knowledge that the election laws; being an Act of Parliament, already existed in the Country that contained provisions about the existence of Election Tribunal and, above all, the detailed provisions about the manner in which such petitions are to be filed. The manner and details thereof are quite different from and stringent than normal pleadings in a civil matter. Viewed in this background, Article 225 of the Constitution, double phrased with negative phraseology and in unambiguous terms, ousts the jurisdiction of any forum other than the Election Tribunal, which too, can be so resorted to only in the manner prescribed by the law.*

8. *In the above conclusion, we are fortified by a larger Bench authority of this Court in Election Commission of Pakistan v. Javed Hashmi (PLD 1989 SC 396), where it was held that once the election process is over, it can be challenged only before the Tribunal. This Court had also observed that the provisions of Article 199 of the Constitution can be invoked to challenge any irregularity that is committed during the process of election but once the election process is completed, it can only be challenged before the Election Tribunal which, in the instant case stood constituted on 1.3.2008, that is, only seven days after the completion of election process. Better would it have been if the petitioner by that day had withdrawn the writ petition and had filed an election petition before such Tribunal.*

9. *It is alleged by learned counsel for the petitioner that more than 200 votes cast in his favour were rejected by the Returning Officer simply because those did not bear the signatures of concerned officer. The examination of each and every vote, the examination of the relevant signatures, the examination in Court of the relevant Polling Officers, as well as the Presiding Officer becomes necessary to conclusively determine the question of fact. During the course of arguments, it also was alleged and counter alleged that the record was tampered by the interested candidate. That, irregularity occurred due to non-availability of electric supply in the polling station and that the counting was conducted in the light of a lantern. Whether the electric supply was available or not; whether the lantern was used or not; and whether the lantern used was sufficient in the ordinary course; are all questions of fact which could not be attended to by the Court exercising constitutional jurisdiction. The only remedy, after recording of evidence on disputed questions of fact, could have been provided by the Election Tribunal exclusively.*

10. *This is another important aspect due to which we are of the view that the learned Election Tribunal had the only jurisdiction to adjudicate upon the matter, more particularly when it was efficaciously available on 1.3.2008. The learned High Court was, therefore, perfectly justified in declining to exercise constitutional jurisdiction. The filing of writ petition being misconceived in the circumstances, this petition also carries no merit. The same is accordingly dismissed and leave to appeal refused.”*

15. The controversy which has been raised by learned counsel for the petitioner in the instant petition is somehow similar to the one referred in the cases cited by learned counsel for the respondent No.2. Such controversy does not constitute a dispute which could be apparent on the face of it to take the cognizance nor such allegation could be said to be disenfranchising the petitioner.

16. The documents in the shape of Form XIV filed by the petitioner itself does not provide any authenticity to blindly accept the same, more particularly when the respondent No.2 has filed certified copy of Form XIV issued by the concerned Additional Sessions Judge which document does not provide any discrepancy in statement of count under Form XIV and consolidated results. The petitioner's case is not the one which could come in the frame of disenfranchisement, which could have been an occasion to cause interference under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as he was allowed to participate and contest in the election, and the questions that he has raised now are not such which could be amenable to writ jurisdiction.

17. Apart from the above facts and circumstances we are also conscious of the fact that Jamat-e-Islami, under whose banner the petitioner has participated and contested the election, has boycotted the election and such fact via speech was covered by electronic media when the leaders of the said political party expressed their views. In the light of such boycott as the petitioner was contesting as a candidate for Jamat-e-Islami he cannot said to be an aggrieved person.

18. These are the reasons for dismissing the petition by a short order dated 24.05.2013 wherein we have also observed that petitioner may proceed with his complaint under section 103AA of

Representative of Peoples Act which shall be decided by Election Commission independently without being influenced by this order.

Dated:

**Judge**

**Judge**