

ORDER SHEET
BEFORE THE ELECTION TRIBUNAL
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Election Petition No. S – 04 of 2024

Date of hearing	Order with signature of Judge
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Hearing of case

1. For orders on office objections at Flag-A
2. For hearing of main case
3. For orders on CMA No.446/2025 [U/R 139(7) of Election Rules 2017]

29.05.2025

Mr. Muhammad Farooq Ali Jatoi, Advocate for petitioner.
Mr. Zeeshan Haider Qureshi, Assistant Director (Law), Election Commission of Pakistan.
Mr. Asadullah Rajper, Assistant Attorney General.
Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh.

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This Court, vide order dated 10.04.2025, posed two questions to the Assistant Director (Law), Election Commission of Pakistan (“**ECP**”) i.e. as to (i) whether an employee of Sukkur Electric Power Company (“**SEPCO**”), which is a limited liability company, can be appointed as a Returning Officer under Section 51 of the Elections Act, 2017 (“**the Act**”); and (ii) why the procedure prescribed under Section 84(2) of the Act, for the verification of the identity of voters through biometric verification system or other technology, was not employed during the election process.

With respect to the first question, learned Law Officer submits that SEPCO is being regulated by National Electric Power Regulatory Authority (“**NEPRA**”), and since NEPRA is a Government-controlled body, the employees of SEPCO could be deemed eligible for appointment as Returning Officers / Assistant Returning Officers under the Act. In support, he has presented the full text of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997. However, he is unable to point out any specific provision within the said statute which establishes that SEPCO employees are to be treated as Government servants within the meaning of Section 51 of the Act. Full text of the said provision of the Act is reproduced hereunder:-

51. Appointment of Returning Officer and Assistant Returning Officers. (1) The Commission shall, in the prescribed manner, appoint, from amongst its own officers or officers of any Government or corporations, autonomous or semi-autonomous bodies controlled by any Government, or from the subordinate judiciary in consultation with the Chief Justice of the concerned High Court, a Returning Officer for each constituency.

(2) A person shall not be appointed as Returning Officer for more than one constituency, save in exceptional circumstances, for reasons to be recorded.

(3) The Commission may, in the prescribed manner, appoint, from amongst its own officers or officers of any Government, or corporations, autonomous or semi-autonomous bodies controlled by any Government, as many Assistant Returning Officers as may be necessary.

This Court is of the tentative view that while NEPRA is indeed a regulatory authority established under law to oversee electricity generation, transmission and distribution throughout Pakistan, its control over SEPCO does not, in itself, necessarily convert SEPCO into a Government department nor does it ipso facto classify SEPCO employees as public servants. The issue, therefore, remains unresolved at this stage, and the learned Law Officer is directed to place on record any specific statutory provision or authoritative interpretation which could substantiate the said proposition on the next date of hearing.

As regards the second question under Section 84(2) of the Act, the learned Law Officer relies upon Section 103 of the Act, which empowers the ECP to undertake pilot projects using electronic voting machines and biometric verification systems during bye-elections. However, this Court finds such reliance misplaced. Section 84(2) specifically authorizes the ECP to employ any other appropriate technology, including biometric verification, for the identification of voters. The said provision is not merely discretionary in nature but imposes a responsibility upon the Commission to ensure transparency, credibility and sanctity of the voting process to eliminate any concerns of false voting.

Full text of Section 84(2) is reproduced hereunder:-

84. Voting procedure. (1)

(2) For the purpose of verification of the identity of a voter, the Commission may adopt such other technology as in its opinion may prove effective, including bio-metric verification system, in addition to the National Identity Card mentioned in sub-section (1).

As to readiness of the technology, it is not disputed that biometric verification systems are already being used extensively across the country by NADRA, Banking institutions and Cellular companies. In this technological context, the absence of biometric voter authentication during elections raises significant concerns about electoral transparency and accountability. This Court is of the considered view that the implementation of biometric verification under Section 84(2) is a necessary obligation of the ECP and must be planned, resourced and operationalized accordingly as in electoral jurisprudence, the principle of *salus populi suprema lex esto*—“let the welfare of the people be the supreme law”—serves as the foundation of any credible democratic process. Ensuring the sanctity of the vote, *sine fraude* (without fraud), is not merely a procedural requirement but a necessity. Biometric verification of voters emerges not only as a technological advancement but as a legal safeguard to uphold the integrity of electoral processes.

It would not be out of place to state that the right to free and fair elections is enshrined in numerous legal frameworks—*inter alia*, Article 21(3) of the Universal Declaration of Human Rights, and Article 25 of the International Covenant on Civil and Political Rights (ICCPR). The adoption of biometric verification mechanisms falls squarely within the doctrine of *ubi jus ibi remedium*—where there is a right, there must be a remedy—to address the persistent ailments of electoral fraud, impersonation, and disenfranchisement. As to developing and least developed countries experience with biometric verification of voters, the following experiences of are worth mentioning:-

Ghana

Ghana, under the authority of the Electoral Commission Act, 1993 (Act 451) and subsidiary legislation, mandated biometric voter registration and verification in its 2012 general elections where the introduction of biometric technology enabled the Commission to invalidate over two million duplicate entries, aligning with the principle of *fraus et dolus nemini patrocinari debent* (fraud and deceit should benefit no one). Subsequent rulings by the Supreme Court of Ghana (e.g., Election Petition 2012) affirmed the legal sufficiency of biometric data in establishing voter identity and eligibility.

Nigeria

Nigeria's Electoral Act (Amendment) 2015 explicitly incorporates the use of Permanent Voter Cards (PVCs) and Smart Card Readers for voter verification. The result being that the Independent National Electoral Commission (INEC) recorded the disqualification of approximately 4 million irregular registrations.

This initiative enabled Nigeria to facilitate a peaceful transition of power in 2015, satisfying the requirement of *fiat justitia ruat caelum*—let justice be done though the heavens fall.

Kenya

Pursuant to the Elections Act (Cap. 24A) and related regulations, Kenya implemented Biometric Voter Registration (BVR) and Electronic Voter Identification (EVID) in 2013. The result being the Independent Electoral and Boundaries Commission (IEBC) removed over 100,000 duplicate registrations and significantly curbed impersonation.

To this Court, the integrity of elections is the cornerstone of Constitutional democracy. In legal theory and practice, the adoption of biometric voter verification represents the convergence of technological

innovation and constitutionalism. In the words of Cicero, “*Lex est ratio summa, insita in natura, quae iubet ea quae facienda sunt, prohibetque contraria*”—“Law is the highest reason, implanted in nature, which commands what ought to be done and forbids the contrary,” hence biometric verification commands legal necessity, technological reliability, and democratic legitimacy.

In this regard, the learned Counsel also to study the following cases and references material:-

(a) Crawford v. Marion County Election Board, 553 U.S. 181 (2008)

In this landmark decision, the United States Supreme Court upheld Indiana’s law requiring voters to present government-issued photo identification at the polls. The Court recognized the state’s legitimate interest in preventing voter fraud and safeguarding public confidence in the electoral system. While the case addressed photo ID requirements, the principles articulated support the broader implementation of secure voter identification methods, including biometrics.

(b) R (on the application of Coughlan) v. Minister for the Cabinet Office, [2022] UKSC 11

The UK Supreme Court held that pilot schemes requiring voter identification were lawful under the Representation of the People Act 2000. The Court acknowledged the government’s objective to enhance electoral integrity and reduce the risk of impersonation at the polls. This case underscores judicial support for measures aimed at verifying voter identity to protect the electoral process.

(c) Civil Appeal 258 of 2017 – Kenya

Kenya’s Court of Appeal affirmed the legality of using biometric systems for voter identification. The court emphasized that biometric verification serves as a primary mode of identifying voters, thereby reducing instances of electoral fraud and ensuring the credibility of elections.

- (d) Effah, J., & Debrah, E. (2018). Biometric technology for voter identification: The experience in Ghana. The Information Society, 34(2), 104–113.**

This study analyzes Ghana's implementation of biometric voter registration and verification during the 2012 general elections. The authors found that while technical challenges existed, the biometric system significantly reduced instances of multiple registrations and voting, thereby enhancing the integrity of the electoral process.

- (e) Visvalingam, K., & Chandrasekaran, R. M. (2011). Secured Electronic Voting Protocol Using Biometric Authentication. Advances in Internet of Things, 1(2), 13 pages.**

The authors propose a secure e-voting protocol integrating biometric authentication to ensure voter identity verification. The study concludes that biometric systems can effectively prevent unauthorized voting and bolster the security of electronic voting systems.

Learned Law Officer has submitted that he needs further time to assist this Court in respect of both of the legal questions. Granted. Barrister Hidayatullah Mangrio, Advocate, has filed *vakalatnama* on behalf of respondent No.1, thereby superseding earlier counsel Mr. Sheeraz Fazal. He also seeks time to address the Court and assist on the above questions raised.

Both the sides to thus first answer these preliminary questions so that the matter could be heard and decided in its completeness.

Adjourned to a date to be fixed by the office.

J U D G E

Abdul Basit