

**BEFORE THE ELECTION TRIBUNAL, HIGH
COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Election Petition No.S-10 of 2018

Petitioner:	Ghulam Murtaza through Mr.Muhammad Zainuddin Baloch, Advocate.
Respondent No.1:	Zulfiqar Ali Behan through Mr.Muhammad Hashim Laghari, Advocate.
Respondents No.2to13:	Not contested the matter.
Respondents No.14 to 17:	Mr. Fazal Qadir Memon, Assistant Attorney General for Pakistan represented Federation of Pakistan.
Date of hearing:	05.06.2021.
Date of judgment:	21.08.2021.

JUDGMENT

AMJAD ALI SAHITO, J: -The petitioner Ghulam Murtaza Jatoi, a contesting candidate of General Election of National Assembly of the Pakistan N.A.212 Naushahro Feroze-II (which hereinafter is referred to as "said Constituency"), through this Election Petition filed under Section 142 of the Elections Act, 2017 (which hereinafter is referred to as "the Act of 2017"), held on 25.07.2018, challenged the Notification No. F.2(38)/2018-Cord.- dated 07.08.2018, whereby respondent No.1, was declared as a returned candidate. In the petition, the petitioner has prayed for the following reliefs:-

It is respectfully prayed that this Honourable Tribunal may kindly be pleased to recall the Notification dated 07.08.2018 in respect constituency NA-212 Naushahro Feroze-II, of returned candidate Zulfiqar Ali Behan as result is illegal, unconstitutional, void, abinio and in violation of the mandatory requirements of Election law, and further be pleased to declare the petitioner as returned candidate of NA-212 Naushahro Feroze-II instead of respondent No.1 for in alternative the Election on NA-212 Naushahro Feroze-II

may be declared whole as void and may be ordered for the fresh poll in the entire constituency.

It is respectfully prayed that this Honourable Tribunal may kindly be pleased to order for recounting votes of entire constituency NA-212 Naushahro Feroze-II, in presence of an Honest Officer of Honourable High Court of Sindh, as result is illegal, unconstitutional, void, abinio and in violation of the mandatory requirements of Election law.

It is respectfully prayed that this Honourable Tribunal may kindly be pleased to get verify the 26 polling stations mentioned in Form shape as rigging was committed by Presiding Officers with the collusion of respondents No.1, 16 and 17.

It is respectfully prayed that this Honourable Tribunal may kindly be pleased to get verify the thump impressions of 70 polling stations votes available on ballot papers of constituency NA-212 Naushahro Feroze-II, through Forensic Audit with direction to submit such report before this Honourable Tribunal.

It is respectfully prayed that this Honourable Tribunal may kindly be pleased to take legal action against the Presiding officers who committed illegal and corrupt practices, and illegalities in the entire process of Election under Section 174 & 175 of Election Act, 2017.

Any other relief which this Honourable Tribunal deem fit and proper in the circumstances of the election petition.

2. Brief facts of the case are that the petitioner and Zulfiqar Ali Behan, respondent No.1, along with respondents Nos.2 to 13 contested the general election from the said constituency, which was held on 25th July 2018. According to Final Consolidated Result (Form-49), prepared by the Returning Officer (which hereinafter is referred to as "R.O.") of the said Constituency, Zulfiqar Ali Behan, respondent No.1 obtained 90663 votes, while the petitioner namely Ghulam Murtaza Jatoi secured 85416 votes with a difference of 5247 votes, resultantly, the respondent No.1 was declared as

returned candidate vide Notification No.F.2 (38)/2018-Cord. dated 07.08.2018 by the Election Commission of Pakistan. Per petitioner the said notification has aggrieved him, thus, he has filed the present election petition asserting that there were 332 polling stations in the entire constituency the inefficient presiding officers were appointed, as such, on their manipulation with the collusion of the returned candidate and other contesting candidates a corrupt and illegal practice had occurred during the election process. According to the petitioner, his agents were not permitted to sit in the polling stations despite the request made to the Presiding Officers. He alleged corrupt and illegal practice occurred in as many as 36 polling stations as well difference in Form-45 provided by Presiding Officers and certified copies of the same supplied by R.O. The petitioner has also alleged that the signatures of polling agents at various polling stations are missing on the resulting form. According to the petitioner, he and his agents requested the Presiding Officers to provide Forms-45 of each polling station, but they failed to provide the same of various polling stations. He has alleged that signatures of polling staff do not tally on Forms-45 and Forms-47 even forms-48 issued by R.O do not tally with Forms-45 and 46, which is a clear violation of Election Rules and such act is based on malafide. The petitioner has also alleged that though he requested for recounting of the votes to R.O.the request was turned down by R.O. despite fact that the ratio of difference is less than 10,000/- votes which come 5%. The petitioner alleging the discrepancies/difference figures in comparison of Forms-45 issued by presiding officers and Election Commission stated that such act invalidates the election process, as such, result of respondent No.1/returned candidate has been procured by corrupt and illegal practices. Consequently, the petitioner prayed for the reliefs as quoted above.

3. Upon notices issued to the respondents through all possible modes for effecting service upon them, only respondent No.1 being returned candidate chose to contest the

petition and submitted his written statement, questioning the maintainability of this petition sought its dismissal, for the reason that mere general allegations of committing corrupt and illegal practices have been levelled by the petitioner; based on such allegations without any justification have neither any value nor can be considered in the eyes of law and on such mere assertions, the election of the respondent No.1 cannot be declared as void nor fresh poll can be ordered. Respondent No.1 in his written statement has pointed out that the agents of the petitioner participated in all the proceedings on poll day, as such, it cannot be said that no fair, free and transparent manner election was made. Respondent No.1 has stated that no particulars are provided by the petitioner to substantiate his claim, even if there is any minor discrepancy on the part of Election staff, based on which the entire election process cannot be wrapped. Respondent No.1 has stated that he was declared as a returned candidate after a free, fair and transparent manner election, as such, merely based on false and fabricated allegations, the Notification in respect of the returned candidate cannot be declared as null and void. He, therefore, prayed for the dismissal of the instant petition. Since no one had come forward on behalf of the remaining respondents to contest the petition, as such, they have proceeded against the ex-parte. From the pleadings of parties, the following issues were framed:-

1. Whether the petition is not maintainable under the law?
2. Whether the persons appointed to perform functions in connection with an election for the constituency N.A-212, Naushahro Feroze-II, in the General Elections, 2018, are guilty of the violation of their official duties?
3. Whether the election and result of the returned candidate/respondent No.1 Zulfiqar Ali Behan for constituency N.A-212, Naushahro Feroze-II, in the General Elections, 2018, has been procured by corrupt and illegal practices?
4. Whether the declaration of respondent No.1 as the returned candidate may be declared null and void?

5. What should the decision be?

4. In support of his claim, the petitioner Ghulam Murtaza Jatoi examined his attorney namely Muhammad Yaseen Jatoi, duly authorized through General Power of attorney, who has produced a memo of the petition and the affidavit-in-evidence, special power of attorney and other numerous documents. However, after examination of the attorney of the petitioner learned counsel did not examine the remaining witnesses but closed the side of the petitioner. On the other hand, learned counsel for respondent No.1 Zulfiqar Ali Behan made the statement before Tribunal on 17.04.2021 that he does not want to examine the respondents-witnesses, and is ready to argue the case. Consequently, the matter was fixed for arguments of the parties.

5. Learned counsel for the petitioner mainly contended that the petitioner applied section 95(5) of Election Act, 2017 for recounting of ballot papers before R.O. on 27.07.2018 but the same was rejected on 28.07.2018; that the petitioner also approached the Election Commission of Pakistan on 29.07.2018 with the same request but the petitioner was directed to approach before the appropriate forum. He has contended that though the petitioner adopted proper procedure and appropriate forum but his request was not considered by the Election Commission of Pakistan. He has also submitted that the petitioner secured 85416 votes while respondent No.1 secured 90663 votes, as such, the difference of less than 10%. Learned counsel while reiterating the contents of the memo of the petition, pointed out the difference between votes and the forms-45 and 48 the votes obtained by him, respondent No.1 and another candidate respondent Gul Muhammad Channa, which show that rigging was made during the election. He has submitted that the results submitted by the presiding officer, returning officers and the Election Commission of Pakistan are different from each other, even Forms-45 at various polling stations do not bear signatures of presiding officers or other polling staff. During arguments, learned counsel contended that

signatures, names, thumb impressions and designations of presiding officers or senior presiding officers are not mentioned at various polling stations. Learned counsel has contended that the results of more than 100 polling stations were not handed over to the agents of the petitioner due to which the petitioner remained unaware of the results, which is a clear violation of Election Laws, such unfair practice of the presiding officers has concealed the genuine results. Learned counsel for the petitioner by pointing out that respondent No.1 neither has examined himself, his attorney or witnesses to disprove the allegations of rigging of votes, as such, by this act the respondent No.1 has admitted the claim of the petitioner. According to him, a written reply by respondent No.1 without bringing any proof/documentary evidence on record has no value in the eyes of Law. He, therefore, prayed that the election of respondent No.1 be declared as void and consequently, a fresh poll be conducted in the entire constituency.

6. Conversely, learned counsel appearing on behalf of respondent No.1 while rebutting the arguments as advanced by learned counsel for the petitioner has contended that the petitioner rather comes in the witness box for his examination, he has examined his attorney on his behalf, who was neither chief agent nor agent at any polling station as admitted by him, therefore, his evidence has no value to be taken into consideration. Learned counsel has contended that the petitioner has levelled wild, fictitious and bald allegations without any proof or substance; he has also failed to provide full particulars of any corrupt practices, which is essential for an election petition to succeed. He has pointed out that result of every polling station was provided to the agents of the petitioner; the signatures and thumb impressions of presiding officers are apparent at the final results of polling stations, therefore, no illegality was made. If any mishap concerning denial for providing requisite forms is presumed to have been made, the petitioner has failed to make any complaint before any forum. He has contended that the petitioner has failed to

provide full particulars or sufficient proof for any illegality allegedly occurred at any polling station, therefore, mere giving the number of 26 polling stations in the shape of table/chart is not sufficient. In support of this contention, he has relied upon the cases reported in 1999 CLC 2039, 1995 CLC 820, 1995 CLC 1465, 1998 CLC 945, 1986 CLC 2463, 2005 CLC 1521, 2010 CLC 518, 2011 CLC 1271, 2011 CLC 1649, 1996 SCMR 1455 and 2017 SCMR 292. He has further contended that the standard of proof in the election petition is higher than criminal case if the charge of illegal and corrupt practices is made the same is to be proved beyond the shadow of a doubt as in criminal trial and if such charge is alleged, the same must be proved through the material record, failure thereof, the benefit of which will go in favour of the person charged with. In this regard, learned counsel has also relied upon the cases reported in 2004 MLD 36, 1999 CLC 1026, 1986 CLC 985 [Sindh Election Tribunal], 1996 SCMR 605 S.C, 2005 YLR 937, 1999 CLC 2039, 2000 MLD 1282, 1987 CLC 535, 1996 MLD 1619, 1999 MLD 3052 and 2012 CLC 469. Learned counsel for respondent No.1 has contended that the petitioner has failed to prove his case through any documentary evidence, as well as, evidence of any member of polling staff even only the attorney examined by him who in his cross-examination has made admissions extinguishing the case of the petitioner from its very roots. He has contended that without any proof the entire election process cannot be disturbed merely on presumptions and assumptions; the entire election process was conducted peacefully in presence of Law Enforcement Agencies covered with CCTV footages and following law, therefore, in such circumstances, the instant petition may be dismissed with special costs.

7. Learned Assistant Attorney General for Pakistan has contended that the entire process of election was made in a peaceful manner and nothing was made concerning illegal practices or procurement of results with the connivance of officials and by contravention of election laws.

8. Heard and perused the material available on record with the able assistance of counsel appearing on behalf of respective parties.

9. **Issue No.1** relates to the maintainability of instant petition questioned by respondent No.1, however, from careful scrutiny of the petition coupled with annexure, it transpires that mandatory provisions of sections 142, 143 and 144 of the Act, 2017 have been complied with besides all the contesting candidates were joined in the petition. The requisite security amount has also been deposited and such receipt is also available in the file of this Tribunal. Consequently, the petition is maintainable and this issue is answered in favour of the petitioner.

10. **Issue No.2** is whether the persons appointed to perform functions in connection with an election for the constituency N.A-212, Naushahro Feroze-II, in the General Elections, 2018, are guilty of the violation of their official duties. In this regard, it would be relevant to discuss here that the persons appointed to perform any function in connection with an election are guilty of the violation of official duty, if they willfully or negligently tamper with papers, influence a voter, fail to discharge any duty entrusted to them under the Election Act or Rules or any other law; or such person is guilty of breach of official duty, if he, in the conduct or management of an election or maintenance of order at a polling station persuades any person to give his vote; deters any person from giving his vote, influences in any manner the voting of any person; or does any other act calculated to influence the result of the election. However, the attorney of the petitioner namely Muhammad Yaseen in his deposition has failed to name any official charging him with such allegations. During cross-examination, he has deposed as under:-

“It is correct to suggest that in the election neither I was a Polling Agent nor Chief Agent of the petitioner Ghulam Murtaza Jatoi. It is correct to suggest that since I was not Chief Polling Agent of

the petitioner therefore, I was not entitled to enter into the Polling Stations. It is correct to suggest that I was not authorized to collect Form-45. It is correct to suggest that specifically in para No.6, I have not disclosed that rigging was held in the Polling Stations nor I have given any number of the Polling Station. It is correct to suggest that in Form-45 of Polling Station-14 there is overwriting in the Form-45. It is correct to suggest that overwriting is in the Form-45 for the petitioner Ghulam Murtaza. It is correct to suggest that overwriting shows that his votes were increased from 251 to 254. It is correct to suggest that I have produced the photo copy of election results from website. It is correct to suggest that I have not specifically mentioned that as to how and which Polling Station the result of Form-45 does not tally with the result of the website and there is a difference between website and Form-45. It is correct to suggest that in my plaint, I have not disclosed that the name of Polling Agent of Polling Station Elementary College Moro. It is correct to suggest that I have not moved/filed any application for comparison of the signature of Presiding Officer whereas I have claimed in my plaint that all the signatures were same on Form-45. It is incorrect to suggest that I have received the Form-45 of one hundred Polling Stations however, I have not disclosed the numbers of those Polling Stations of the Constituency. It is correct to suggest that I have not specifically disclosed in my affidavit-in-evidence that in para-19 that Forms 45, 46 and 48 the results does not tally whereas I have not given specifically the numbers of the Polling Stations where the Form-45, 46 & 48 does not tally. It is correct to suggest that in my affidavit in evidence I have not specifically disclosed the names of the Agents to whom they have been thrown out from the Polling Station nor I have given the numbers of the Polling Station where the Form-

45 was not supplied. It is incorrect to suggest that I have not gone through the contents of the affidavit in evidence. It is correct to suggest that in the affidavit in evidence I have disclosed 26 Polling Stations where rigging was held. It is incorrect to suggest that in half of those Polling Stations the petitioner has won the polling. It is incorrect to suggest that on the day of Polling I was present at Karachi. It is correct to suggest that witness No.2 has not signed the Power of Attorney and his column is blank.”

From the perusal of the evidence of the attorney of the petitioner, it appears that neither he was a polling agent nor a chief agent of the petitioner, as such, he was not entitled to enter any polling station as admitted by him. He was also not authorized to collect Forms-45 and admittedly he has not disclosed specifically about rigging allegedly held in the polling stations nor was able to give any number of the polling station. Further, nothing has come on record as to whether any calamity occurred during the process of voting as nothing in this regard was reported on the day of the poll; and, the petitioner failed to nominate any of the polling staff in league with the returned candidate or produced any documentary evidence strengthening his version with any solid or tangible evidence. In this regard, it is also noted that the stance taken by the petitioner in the election petition appears to be non-specific, unclear and common in nature as it is significant to state that the rules of proof for the grounds alleging the persons appointed for the polling process being guilty of the violation of their official duties are quite strict and stern and the claim must be extremely proved through corroborative evidence without accepting any supposition and if there is any doubt, the benefit must go in favour of a person against whom the allegation of corrupt or illegal practices are levelled. The petitioner failed to prove the burden on such allegations during the trial of the case. Issue No.2 is, therefore, answered in negative.

11. Issue No.3. As far as this issue is concerned, it is alleged by the petitioner that respondent No.1/returned candidate Zulfiqar Ali Behan has procured the result by corrupt and illegal practices. In this regard, the petitioner has examined his attorney namely Muhammad Yaseen only who, however, did not depose a single word during his evidence as to whether the result of the election has been procured by corrupt and illegal practices, but during cross-examination, as already stated, he has admitted that neither he was polling agent nor a chief agent of the petitioner, as such, he was not entitled to enter any polling station as admitted by him. Even, he was also not authorized to collect Forms-45. Nothing has been brought on record connecting the returned candidate to have procured by corrupt and illegal practices. Even, the petitioner has failed to produce evidence proving corrupt or illegal practice committed by or with the consent or connivance of returned candidate or his agent despite fact that such burden to prove allegations heavily lies on the petitioner notwithstanding mere words is not sufficient to prove allegations against the petitioner. It was mandatory for the petitioner to state particulars of alleged corrupt practices coupled with names of parties charged with the commission of such practices along with the date and place of commission of the same. Though the respondent No.1/returned candidate did not examine any witness the burden to prove such allegation always lies upon the allexer/petitioner, however, he has failed to prove it through direct or circumstantial evidence. As such, this issue is also answered in negative.

12. Issue No.4. Since no direct or circumstantial evidence has come on record which establishes that the respondent No.1/returned candidate with the support of the presiding officers or other polling staff procured his election result in any illegal manner or the persons appointed to perform functions in connection with an election are found guilty of the violation of their official duties and there is no convincing evidence with the principles of the appreciation as

applicable to the criminal cases and charge of corrupt practices is like a criminal charge, which must be proved beyond any shadow of a doubt. However, the evidence brought on record by the petitioner is neither of such values, on the basis of which, the election of the entire or part of constituency could be declared as void or respondent No.1/returned candidate could be set with such responsibility as no forceful evidence has been adduced which may convince that the respondent No.1/returned candidate has committed illegal and corrupt practices directly, through his polling agents or any of the Polling Staff, involved in the rigging in any manner to procure the election results in favour of respondent No.1/returned candidate, as such, on mere presumptions and assumptions, the election results cannot be declared as void. Consequently, this issue is also answered in negative.

13. It would be essential to note here that though the petitioner has prayed in his prayers for recounting of votes of the entire constituency on perusal of the record, the petitioner has failed to meet with criteria for permitting a recount in an election matter as laid down in the case of 'Bhabhi v. Sheo Govind and others' [AIR 1975 SC 2117], which was discussed by the Honourable Supreme Court of Pakistan in the case of 'JAM MADAD ALI v. ASGHAR ALI JUNEJO and others' [**2016 SCMR 251**]. As a result of the above discussion, the petitioner has failed to prove the burden which was upon him, consequently, the instant Election Petition is **dismissed** with no order as to costs.

JUDGE