

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitutional Petition No.D-698 of 2022.

Before:

Mr. Justice Adnan-ul-Karim Memon,
Mr. Justice Abdul Mobeen Lakho,

Petitioners : Abdul Majid Channa and 6 others.

Respondents : Manzoor Ahmed Noonari & others.

Mr. Habibullah G. Ghouri, advocate for the petitioners.

Mr. Ashfaq Hussain Abro, advocate for respondents No.4, 5, and 6.

Mr. Mohammad Imran Abbasi, Asst. Attorney General, assisted by Zeeshan Hyder Qureshi, Law Officer, Election Commission of Pakistan and Zahid Hussain Bhutto, District Election Commissioner, Jacobabad.

Date of hearing : 28.07.2022.

Date of order : 28.07.2022.

ORDER

ADNAN-UL-KARIM MEMON, J.- The petitioners, who were the contesting candidates of the political party JUI in the Local Bodies Elections (Phase-1) for the various seats in UC Kareemabad-29, Taluka Thul, District Jacobabad, have filed instant petition seeking directions for re-election in UC Kareemabad-29, Taluka Thul, District Jacobabad, inter-alia on the ground that on 26.6.2022 i.e. the day of the election, petitioner No.2 Dilbar Ali was arrested, maltreated and put under wrongful confinement by the police officials, who along with some unknown persons also took away the ballot boxes and other election material; hence, FIRs No.86 and 87 of 2022 were lodged by the Returning Officer at P.S A/C Section, Thul on 27.6.2022 with the allegation that the election material was embezzled by the Presiding Officers of Polling Station No.403 Govt. Boys Primary School Sadiq Ali Jafferri and Polling Station No.405 Govt. Primary School Abdul Kareem Khoso, UC Kareemabad-29.

2. Mr. Habibullah G. Ghouri Learned Counsel for the petitioners contended that because of the FIRs lodged by the Returning Officer against the Presiding Officers, it would be unfair if the results of such rigged elections at UC Kareemabad-29 are allowed to be announced. He, therefore, submitted that the lapses pointed out do constitute illegal practices as contemplated by the provisions of election law, and the election of the entire UC Kareemabad-29, Taluka Thul is liable to be re-pollled. He also pointed out that the direction for re-elections at UC Kareemabad-29, Taluka Thul, has

already been issued by the order passed by the Election Commission of Pakistan on 8.7.2022.

3. Mr. Ashfaq Hussain Abro advocate has filed power as well as comments/objections on behalf of respondents No.4, 5, and 6 and has recorded his no objection if the re-election is ordered at Polling Station No.403 Govt. Boys Primary School Sadiq Ali Jafferi and Polling Station No.405 Govt. Primary School Abdul Kareem Khoso only and not the entire UC Kareemabad-29, in view of lodgment of FIRs against the Presiding Officers of said polling stations by the Returning Officer.

4. The learned Asst. Attorney General assisted by Zeeshan Hyder Qureshi, Law Officer, Election Commission of Pakistan and Zahid Hussain Bhutto, District Election Commissioner, Jacobabad, as well as the learned Asst. A.G. Sindh have also recorded no objection for re-election at the above-mentioned two polling stations of UC Kareemabad-29, in terms of the order passed by the Election Commission of Pakistan vide 8.7.2022.

5. We have heard learned Counsel for the parties and have perused the available record.

6. A free and fair election based on a universal adult franchise is the basic concept of democracy as visualized by the Constitution presupposes the representation of the people in Parliament and state legislatures by the method of election. Principally, the super-authority in Election Matters is the Election Commission of Pakistan under the Constitution; and, the principal is the returning officer, whereas, the followers are the presiding officers in the polling stations and the electoral work conforms to the elaborate legislative provisions.

7. The short question before us, is as to whether the order dated 1.7.2022, for re-poll of the subject constituency, by the Election Commission of Pakistan, needs to be implemented through this petition or let it be done by the Election Commission of Pakistan all alone in terms of letter No.F.3 (1)/2022-LGE-Sindh, dated 1.7.2022, the answer is obvious that it is the function of the Election Commission of Pakistan. At this stage, we asked the learned law officers, why such an incident, as narrated by the parties, took place, during the election process; and, what steps they have taken for conducting a free and fair election whilst maintaining law and order to provide a conducive environment for facilitating the electoral process. We have been informed that learned Division Bench of this Court at Sukkur in Constitutional Petition No. D-857 of 2022 has made a certain observation based on a statement by the Law Officer of the Election Commission of Pakistan that the personnel of law enforcement agencies would be deployed for purpose of maintaining law and order and security during the election. Under the given circumstances and in wake of the aforementioned order already made in the earlier Petition, we expect that law enforcement agencies,

including SSP of the concerned District, would ensure maintaining law and order situation on the day of re-poll as per direction of the Election Commission of Pakistan.

8. This petition stands disposed of in terms of order of re-poll of the subject constituency, passed by the Election Commission of Pakistan. However, that exercise shall be undertaken within a reasonable time under the law.

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