

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

Election Petition No.S-19 of 2018

Petitioner: Muhammad Bux through Mr.Riazuddin Qureshi Advocate.

Respondent No.1: Shahid Thahim through Mr. Riazat Ali Sahar, Advocate.

Respondents No.2 to18: *Ex-parte* vide order dated 07.11.2018.

Respondent No.19 & 20. R.O & ECP through Mr. Zaheer Abbas, Law Officer.
Mr. Zulfiquar Ali Rajput, Assistant Attorney General for Pakistan.

Date of hearing: 21.05.2022.

Date of Judgment: 13.08.2022.

JUDGMENT

AMJAD ALI SAHITO, J: - This election petition, under section 139 read with section 142 of the Election Act, 2017 (which hereinafter is referred to as "the Act of 2017"), is directed against the declaration of respondent No.1 through notification bearing No.F.2(40)/2018-Cord. dated 07th August 2018 as the returned candidate after the General Elections-2018. Election to Constituency of Provincial Assembly PS-45, Sanghar-V, was held on 25.07.2018 (which hereinafter is referred to as "said Constituency"). Petitioner and respondents No.2 to 18 have contested the General Elections-2018 for said constituency. Petitioner was the candidate of the Pakistan Democratic Alliance (GDA) while respondent No.1 is the candidate of Pakistan People's Party Parliamentarian (PPPP). Petitioner obtained 31206 votes whereas respondent No.1 obtained 45818 votes with a difference of 14612 votes, as such, respondent No.1 has been declared as a 'Returned Candidate' in the General Elections-2018.

2. It is alleged by the petitioner in his election petition that the election functionaries have committed illegalities and irregularities during the election process. Some of the voters other than the said constituency cast their votes, therefore, the votes are

required to be verified through NADRA. Before the announcement of the election, the party of respondent No.1 was in government and influenced the interim government, District Police and District Management, Local Government representatives, Chairman District Council, Municipal Committee and others who were belonging to PPP. The polling staff was appointed mostly from Education Department as Presiding Officers, and Assistant Presiding Officers and those education employees were issued threats for stoppage of their salaries if failed to act as per instructions of the Taluka Education Officer Primary. An FIR was also lodged by the Mukhtiarkar. The agents of the petitioners were ousted from the polling stations and not allowed to participate in the counting process of results at polling stations. The polling agents of the petitioner detailed as below were not allowed to sit in the polling stations and look after the interest of the petitioner as well as smooth, honest and independent process of the polling.

SR. NO.	NAME OF POLLING AGENT	POLLING STATION NUMBER AND NAME
01	Muhammad Rakhil	66. Ghulam Haider Bagrani.
02.	Waqar Ahmed	87 GHS Ghulam Muhammad Leghari.
03	Noor Ahmed	87 GHS Ghulam Muhammad Leghari.
04	Shafi Muhammad	64 Allah Bachayo.
05	Waseem Usman	58 Khuda Dad Kapri.
06	Ali Ahmed	58 Khuda Dad Kapri.
07	Manzoor Hussain	84 Maldasi.
08	Muhammad Hassan	58 Khuda Dad Kapri.

It is further alleged by the petitioner that the Form-45 issued at some polling stations did not contain signatures of the polling officers or somewhere thumb impressions were missing. Even at some polling stations result was provided on white rough paper without showing the votes secured by all the candidates and the total number of ballot papers received from R.O. and showing the number of spoilt ballot papers. The petitioner in his petition has also alleged that several spoiled votes were wrongly counted in favour of the candidate of PPP. The polling agents agitated before the Presiding Officers for such an illegal and malafide act on their part and other polling staff but they were threatened either to get out from the premises of the polling station or to face consequences of arrest and detention at the hands of police and other agencies;

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however, forcibly they were removed from the polling station and were not provided Form-45 after counting process. The petitioner has alleged that the result of the count was prepared on Form-45 by the incompetent Presiding Officers with irregularities and illegalities. The Form-47 showed rejected votes, as such, the petitioner has reasons to believe that the votes have not been counted properly, therefore, he moved such application to the R.O. on 27.07.2018 for recounting of votes polled in the said Constituency; however, the said application was dismissed by the R.O. on 27.07.2018 without any specific direction for a recount of votes polled in the said Constituency and on the grounds vague in nature. The petitioner has further alleged that respondent No.1 / returned candidate has concealed his properties and assets, therefore, he is liable to be declared disqualified in terms of Article 63 of the Constitution of the Islamic Republic of Pakistan, 1973. The petitioner, therefore, filed an instant election petition with the following prayers:-

- (a) Declare that the election of respondent No.1/returned candidate is void, ab-initio and the petitioner has been duly elected by securing a higher number of votes than respondent No.01.
- (b) That the Notification dated 07.08.2018 of the respondents No.01 as returned candidate is illegal, unlawful, void, ab-initio, unconstitutional and tainted with illegal and corrupt practice and liable to be set-aside.
- (c) To suspend the operation of a notification dated 07.08.2018 whereby respondent No.01 has been declared as returned candidate from the Constituency of PS-45, Sanghar-V, till the final disposal of the petition.
- (d) That the notification declaring respondent No.01 as returned candidate for the election 2018 held on 25.07.2018 of PS-45 Sanghar-V be set-aside and respondent No.01 be declared as disqualified under Article 63 of the Constitution of Islamic Republic of Pakistan.
- (e) To call the entire record of General Election 2018 pertaining to PS-45 Sanghar-V including the ballot papers Form-45, Form-46, Form-48, rejected votes, un-used Ballot papers and all the other relevant record material and conduct an immediate recount under the supervision of this Honourable Tribunal or the Registrar High Court.
- (f) That without prejudice with the above recount may pleased be ordered for all polling station of the constituency which held in the absence of the polling agents with providing the Form-45.

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- (g) That National Database and Registration Authority (NADRA) may be directed to verify the thumb impressions of the voters of the polling stations.
- (h) That any other relief be granted by the Hon'ble Tribunal being fit and proper in the circumstances of the case.

3. In response to notices issued by this Tribunal to the respondents through all possible modes for effecting service upon them, only respondent No.1 being returned candidate has chosen to contest the petition and submitted his written statements while the rest of the respondents failed to contest the instant petition, as such, the respondents No.2 to 18 were declared *ex-parte* by this Tribunal while official respondents No.19 and 20 were debarred from the filing of their written replies vide order dated 07.11.2018.

4. Respondent No.1 while denying the allegations of the petitioner in his written statement has submitted that he filed the nomination paper as per requirements in the Nomination Form and also submitted his wealth statement of FBR duly reconciled of last three preceding years. The petitioner only filed the objections upon the nomination of respondent No.1 at the time of scrutiny before the R.O.; however, after hearing the parties the learned R.O. accepted the nomination of respondent No.1 and the petitioner did not file any appeal against acceptance of his nomination before the appellate forum. He further submitted that none of the voters of the said constituency filed any objection to the nomination of respondent No.1. It is further submitted that at the instance of the petitioner, one Muhammad Hassan Chhuto being a voter preferred Appeal bearing No.88 of 2018 before Election Appellate Tribunal, Sukkur against the acceptance of nomination of the respondent No.1, however, it was dismissed. Again said Muhammad Hassan Chhuto filed C.P No.D-2333 of 2018 in the Hon'ble High Court of Sindh, Circuit Court at Hyderabad against the dismissal order of Election Tribunal, PS-45, Sukkur, which was also dismissed after hearing the parties. He added that the election was conducted under the supervision of one of the honest Judge of Judiciary as well as Army personnel; and as per the petitioner, if any illegality or irregularity was being committed at the police station, he did not record such complaint before any of the Presiding Officers or R.O. or any of the election authorities. As far as the allegation that the

voters other than the said constituency cast their votes is concerned, respondent No.1 has submitted that the electoral list of all the constituencies was supplied by the Election Commission of Pakistan on cost and the same were prepared and published by the NADRA. The FIR as stated lodged by Mukhtiar Kar was disposed of under 'C' class by the learned Judicial Magistrate-I, Shahdadpur on the report of Investigating Officer / SHO PS Shahdadpur but this fact has been concealed by the petitioner knowingly and deliberately. The election process was conducted under the supervision of R.O. as well as army personnel fairly, honestly, smoothly, impartially and independently; during the poll, no complaint was made by the petitioner to the R.O. or any authority. In response to the allegation of the petitioner that as many as eight polling agents were not allowed to sit in the polling stations and look after the interest of the petitioner as well as the smooth, honest and independent process of the polling, respondent No.1 stated that the petitioner has failed to examine all these polling agents but out of them, he has filed affidavits of two. He further stated in his written reply that a free and fair election was held, therefore, notification was issued by the Election Commission of Pakistan. He submitted that petition is not maintainable; it is bad for misjoinder and non-joinder of the parties. He pointed out that the Election for NA-217 Sanghar-III as well as PS-45 Sanghar-V was carried out by the same Presiding Officers and their polling staff at all the 136 polling stations. The petitioner was a candidate for the said constituency and one Mahi Khan Wassan was the candidate from NA-217 Sanghar-III from the same political party i.e. GDA but said candidate Mahi Khan did not level any allegation regarding corrupt practice or illegal practice against the Presiding Officers and their staff; hence, it shows the free, fair and impartially conducts of an election. All the Forms-45 of 136 polling stations of the said constituency and all other constituencies were available on the website of ECP including Forms-46, 47 & 48. Respondent No.1 has stated that the petitioner secured 31206 votes while he secured 45818 votes with the lead of 14612 more votes from the petitioner, and the total invalid votes of all the candidates are 3878 votes; however, the petitioner or any other candidate did not challenge even a single vote during the poll, which manifestly demonstrates that the election was carried out fairly, impartially, honestly and

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independently; and that since there is no tender vote, therefore, the question of re-checking does not arise. He stated that all the allegations of the petitioner are based on fabrication. Therefore, respondent No.1/returned candidate prayed for dismissal with special costs.

5. 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 PS-45, Sanghar-V, in the General Elections, 2018 are guilty of violations of their official duties?
3. Whether the election and result of the returned candidate / respondent No.1 Shahid Thahim for constituency PS-45 Sanghar-V in the General Elections, 2018 has been procured by corrupt and illegal practices?
4. Whether the declaration of respondent No.1 as returned candidate may be declared as null and void?
5. What should the decision be?

6. After framing of issues, the petitioner examined Muhammad Bux examined himself and produced a memo of an election petition and his affidavit-in-evidence including numerous documents. He also examined his witnesses being polling agents namely Manzoor Hussain and Muhammad Hassan. Witness Manzoor Hussain produced his affidavit-in-evidence. Thereafter learned counsel closed side of petitioner's evidence through the statement. The contesting respondent No.1/returned candidate Shahid Thahim examined himself and produced his affidavit-in-evidence as well other documents which include Form-48, notification of ECP, Forms-45 etc. and then his counsel closed the side of evidence.

7. Learned counsel for the petitioner while reiterating the contents of the petition mainly contended that the petition is maintainable as all the requisite provisions of the Act of 2017 have complied. He contended that the petitioner has fully established his case that the returned candidate in connivance of the polling staff

has secured the election result in his favour. He contended that a number of votes of the petitioner were wrongly rejected/spoiled and counted in favour of the returned candidate though the same pertained to the petitioner. He further contended that the petitioner has raised his voice against the undue favour given to the returned candidate by the polling staff belonging to the ruling party i.e. party of the petitioner, but none listen to the petitioner even R.O. failed to take action against them. The valid votes of the petitioner were not counted and thrown out by corrupt and illegal practice to favour the returned candidate under influence of functionaries. Learned counsel has contended that the petitioner was deprived of the recount of votes inspite of requests before the consolidation of results in terms of section 95 (5) of the Act of 2017. It is further contended that the agents of the petitioner were not allowed to enter polling stations by the staff and the police. He further contended that if all the votes without spoiling could have been included in the count, the petitioner must have won the election with a clear margin but dishonestly he was deprived. He further contended that respondent No.1 belongs to the ruling party and on the day of polling used the entire government machinery in his favour. He, therefore, prayed that the election of respondent No.1 be declared as void and consequently, an entire fresh poll be conducted.

8. Conversely, learned counsel appearing on behalf of respondent No.1 while rebutting the arguments of learned counsel for the petitioner has contended that no illegality or irregularity was made during the process of the poll and in the presence of law enforcement agencies deployed on all the polling stations, the entire poll was conducted peacefully. He contended that the petitioner has taken the plea that respondent No.1 belongs to the ruling party, therefore, he overpowered on the election process is totally false and contended that after the announcement of the election and before the poll an interim setup was made, the entire process of election was supervised by the Election Commission of Pakistan and R.O., thus, no question for rigging or procuring results through corrupt and illegal practices can be made. He further contended that the whole polling staff was appointed by the Returning Officer and all the members of the polling staff were government employees; therefore, they being impartial acted in accordance with Election Act and Rules 2017; that if there was any calamity on their part of

polling staff, the petitioner had failed to complain in writing before Returning Officer or any forum; that the petitioner failed to prove and place on record such convincing material before R.O. while praying for a recount of the votes; even the margin for the victory of respondent No.1 is/was more than 5 % and more than 10,000 votes, hence, the recount of the votes was not mandatory to be made by the R.O., the Returning Officer has rightly dismissed the application for recounting of the votes. The request so made by the petitioner for a recount of votes was also not within the parameters of the case reported as *"JAM MADAD ALI v. ASGHAR ALI JUNEJO and others"* (2016 SCMR 251) wherein the criterion settled in the case of *"BHABHI v. SHEO GOVIND and others"* (AIR 1975 SC 2117) has been referred by the Hon'ble Supreme Court of Pakistan. He also contended that the petitioner has referred registration of FIR lodged by Mukhtiarkar concerned during an election, but he has concealed the real facts as the said FIR was disposed of under 'C' class by the learned Judicial Magistrate-I, Shahdadpur on the report of Investigating Officer. The petitioner has leveled allegations against the polling staff but he has also failed to examine any of the Presiding Officers, Assistant Presiding Officers or Polling Officers to validate his allegations. Learned counsel has further contended that there was no violation on the part of the polling staff in the smooth process of election; therefore, the petitioner has not examined any of the members of the polling staff and without their examination, the election of the respondent No.1 cannot be disturbed. He contended that though as per the allegation of the petitioner, eight polling agents (mentioned in para No.15 of the memo of petition) were not allowed to sit in the polling stations to look after the interest of the petitioner and smooth, honest and independent process of the polling, the petitioner has failed to examine all the polling agents, however, only examined two polling agents namely Manzoor Hussain and Muhammad Hassan, whose evidence is also not of such potential to accept such bogus entreaty. Both these witnesses have not produced their agentnamas to show that they were polling agents of the petitioner. Even they have admitted in their cross-examination that they have not filed any complaint with their affidavit-in-evidence or election petition but only made verbal requests. Learned counsel contended that Form-45 and 46 were provided to all the agents of the petitioner and other candidates and there was no complaint made at the relevant time

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from any of the agents of the petitioner or petitioner himself, therefore, taking such plea in the election petition has no bearing. He pointed out that if any unintentional error is made during the process of election, which cannot be made a basis for depriving respondent No.1 of his being elected as a returned candidate. So far as the charge of illegal and corrupt practice is concerned, learned counsel argued that it is well-settled law that such a charge is to be proved like a criminal charge; allegations of corrupt practice are required to be established by settling faultless evidence by giving a date and time at the specific place i.e. polling station but in this petition, no such evidence is brought by the petitioner, therefore, mere allegations of corrupt practice without material cannot be proved only on suspicion and failure thereof always goes in favour of the party against whom such allegations are leveled. Learned counsel further pointed out that the petitioner himself has admitted during cross-examination in his evidence by deposing that he has not specifically mentioned the names of presiding officers that on what date, time and place they have allegedly not performed their duties in accordance with law; that petitioner has also admitted in his cross-examination that he has not disclosed the name of that government officer who has influenced the government servants to cast the votes in favour of the respondent No.1; even the petitioner has failed to mention in his election petition the names of delinquent officers/officials/polling staff, who have made illegal or corrupt practice at what date, time and place. According to learned counsel, the petitioner in his evidence has produced photostat copies of Forms-45/46 which are not admissible under the law and while rebutting the plea of the petitioner that he has moved an application through his counsel for certified true copies to R.O. but he refused, but the petitioner has not submitted such proof. That the petitioner has only raised objection against the nomination of respondent No.1 but after acceptance of the nomination of respondent No.1, he did not challenge the same; and, none of the voters filed an objection on the nomination of respondent No.1 before the learned Returning Officer; however, after acceptance of nomination of the respondent No.1, a voter namely Muhammad Hassan Chhutto in league with the petitioner preferred Appeal before the Election Appellate Tribunal, Sukkur, which was dismissed. Again said voter filed a Constitutional Petition bearing No.D-2333 of 2018 before the Hon'ble High Court of Sindh, which was also dismissed. Therefore, the

plea taken by the petitioner subsequently in respect of wealth of the respondent No.1 has nothing but only an aerial ground in the election petition without any force or corroboration by any valid document. That the electoral lists of entire constituencies were provided by the Election Commission of Pakistan, the same was prepared and published by the NADRA categorically for the voters of their respective jurisdictions; therefore, the plea of the petitioner for casting votes by the voters beyond the jurisdiction of his constituency is forged and false as each and every voter is being identified/verified by the polling staff in presence of polling agents of the candidates; if the position was so; then there is no complaint in this regard available to have been moved before the Presiding Officers or Returning Officer. That the petitioner has unnecessarily prayed in his prayer clause (g) for verification of thumb impressions of the voters of all the polling stations through NADRA without any justification or cogent reasons. Learned counsel has further contended that a free and fair as well as impartially and independently election was held under the supervision of Returning Officer and Army and no complaint was made by the petitioner to the Returning Officer or any other authority in respect of any illegality or irregularity on the part of polling staff. The petition is not maintainable. He has pointed out that the Election for NA-217 Sanghar-III as well as PS-45 Sanghar-V was carried out by the same Presiding Officers and their polling staff at all the 136 polling stations. The petitioner was a candidate for the said constituency and one Mahi Khan Wassan was the candidate from NA-217 Sanghar-III from the same political party i.e. GDA but said candidate Mahi Khan did not level any allegation regarding corrupt practice or illegal practice against the Presiding Officers and their staff; hence, it shows the free, fair and impartially conducts of an election. All the Forms-45 of 136 polling stations of the said constituency and all other constituencies were available on the website of ECP including Forms-46, 47 & 48. Learned counsel contended that the petitioner secured 31206 votes while respondent No.1 secured 45818 votes with the lead of 14612 more votes from the petitioner, and the total invalid votes of all the candidates are 3878 votes; however, the petitioner or any other candidate did not challenge even a single vote during the poll, which manifestly demonstrates that the election was carried out in free, fair, impartial and transparent manner; and that since there is no tender vote, therefore, the question of re-checking does not arise. He stated

that all the allegations of the petitioner are based on fabrication. Lastly, learned counsel has prayed for the dismissal of the instant petition with special costs.

9. The learned Assistant Attorney General for Pakistan and Law Officer of the Election Commission of Pakistan have contended that the election was conducted peacefully and no illegal practices or procurement of results with the connivance of officials or in contravention of mandatory provisions of the Act of 2017 was made.

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

11. **Issue No.1.**

(Whether the petition is not maintainable under the law?).

This issue relates to the maintainability of the instant petition. Nothing has been brought on record by the respondents to show that the petitioner has failed to file instant election petition beyond the prescribed provision under the Act of 2017 and Rules thereto. The petitioner has filed a list of witnesses; affidavit-in-evidence of petitioner; affidavit of service; original receipt of challan and courier receipts. There is also absence of any convincing or cogent reason supported by any provision of law showing that the petition is not maintainable and there is no rebuttal against the petitioner to the extent of this issue; even the petitioner has replied to the suggestive question put by the counsel for respondent No.1 that petition is not maintainable under the law in negative. In the circumstances, I am of the view that the petition is maintainable; as such, this issue is answered in favour of the petitioner.

12. **Issue No.2.**

(Whether the persons appointed to perform functions in connection with an election for constituency of PS-45, Sanghar-V, in the General Elections, 2018 are guilty of violation of their official duties?)

Issue No.3.

(Whether the election and result of the returned candidate / respondent No.1 Shahid Thahim for constituency PS-45, Sanghar-V, in the General

Elections, 2018 has been procured by corrupt and illegal practices?

Both these issues No.2 and 3 are interconnected, as such, I would like to dispose of the same together. In respect of these issues, the evidence of the petitioner is material. In his evidence, he got exhibited various documents including his affidavit-in-evidence and memo of petition etc. However, during cross-examination the petitioner deposed that;

"It is correct to suggest that I have not specifically mentioned the names of the presiding officers, who have caused harassment to me as well as they have not performed their duties in accordance with law. It is correct to suggest that in para No.6 of my affidavit-in-evidence, I have also not specifically mentioned the names of polling agents at which polling stations, who were not allowed to join the election process and to sit at the polling stations. It is correct to suggest that in my petition, I have also not specifically mentioned that what kind of alleged illegal and corrupt practices were committed by the presiding officers. Voluntarily says, however, all the government servants were called by the District Education Officer and directed them to favour the returned candidate Shahid Thaheem. It is correct to suggest that it is not specifically mentioned the names of presiding officers that on what date time and place, they have allegedly not performed their duties in accordance with law. Voluntarily says that District Education Officer was arrested by the police and case was registered against him and he remained for fourteen days in jail; since the votes were casted in favour of government, he was released. It is correct to suggest that I have not disclosed the name of that government officer, who has influenced the government servants to cast the votes in favour of returned candidate, as arrested by the police and subsequently was released. It is correct to suggest that in para No.8 of my petition as well as affidavit-in-evidence, I have not disclosed the name of any officer of District Management. Voluntarily says that we have video evidence that Deputy Commissioner, Sanghar says that actually the election was not conducted in accordance with law. It is correct to suggest that I have not produced in my evidence as well as mentioned in my affidavit-in-evidence such video. It is correct to suggest that I have annexed photo copies of Forms-45 and 46 from pages No.115 to 1017 and 1018 to 1084 respectively. Voluntarily says, I have moved application through my counsel for certified true copies of Forms-45 and 46 to R.O. but he refused to issue the certified true copies. It is correct to suggest that I have not disclosed in my affidavit-in-evidence and petition the names of person of petition and its number, who has

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filed petition against the illegal and corrupt practices. Voluntarily says, I have only disclosed the facts in the petition. It is incorrect to suggest that the petition is vague and managed along with false allegations. It is incorrect to suggest that the documents which I have produced as photo stat copies are not admissible under the law. It is incorrect to suggest that petition is not maintainable under the law. It is incorrect to suggest that I am deposing falsely."

Petitioner also examined his witness namely Manzoor Hussain, who got exhibited his affidavit; and during cross-examination, the witness deposed that;

"It is correct to suggest that I have not produced agentnama, which show that I was appointed by the petitioner to visit the polling stations. It is correct to suggest that it is not written in my affidavit the names of polling stations, presiding officers, the date and time showing that and the polling agents including me were allegedly harassed by the presiding officers on certain place and time. The contentions of petition were read over to me by the petitioner. We have made verbal requests to the R.O. however, I have not filed any complaint in my affidavit or election petition. It is correct to suggest that in the memo of petition, no names of presiding officers or the manners, date and time is mentioned that I and the polling agents of the petitioner were allegedly harassed by the polling officers at the time of polling. It is incorrect to suggest that I am depositing falsely at the behest of petitioner."

Petitioner also examined another witness namely Muhammad Hassan, who in his deposition stated that Form-45 was not given by the presiding officer of polling station Khudadad Kapri; however, he does not remember the number of polling station. During cross-examination, he deposed that;

"It is correct to suggest that I have not produced my agentnama to believe that I was agent at polling station Khudadad Kapri. It is correct to suggest that in my evidence, I have not stated the name of polling officer who refused to provide Form-45. It is correct to suggest that I have not produced any proof which shows that I have moved application to Returning Officer that the presiding officer thrown out from the polling station and did not provide me Form-45. It is incorrect to suggest that I am depositing falsely. It is incorrect to suggest that I was not polling agent and I am managed one."

Muhammad Hassan

13. Respondent No.1/returned candidate Shahid Thahim also examined himself during his evidence has produced his affidavit-in-evidence and other documents. Respondent No.1 was cross-examined by the counsel for the petitioner, during which he deposed that;

".....It is correct to suggest that some of the Form-45 have overwriting.....It is incorrect to suggest that Presiding Officers and Assistant Presiding Officers were working under the influence of Pakistan Peoples' Party. It is incorrect to suggest that polling agents of the opposite party who were appointed at polling stations were not allowed to sit at different polling station even when they tried to sit in polling stations they were thrown out from there. It is correct to suggest that Army Personnel were deployed inside the polling stations. It is incorrect to suggest that polling agents of the petitioner were thrown out and in their absence counting of the votes was made and the rejected votes were counted in my favour. It is incorrect to suggest that Presiding Officers prepared false election Form-45 and also made overwriting thereon in my favour. It is correct to suggest that Form-45 available from Ex.05/1 onwards are not signed by the Election Commissioner. It is incorrect to suggest that some of the results have been provided by the Presiding Officers on plain/white paper and not on Form-45....It is correct to suggest that voter list was verified from the NADRA. I cannot say that if any result was flashed on television in which less margin was shown between me and petitioner. It is incorrect to suggest that there was 50 to 60% turnout in my election. It is incorrect to suggest that entire Government machinery was involved to support me as such I won this election. It is incorrect to suggest that I am deposing falsely."

14. Before any discussion is made, I would like to elucidate very important and material things that the consequences are very serious for committing a corrupt and illegal practice, in case, such illegal or corrupt practice is proved, the delinquents shall be prosecuted through the ordinary criminal courts. As such, based on the disparate and opaque evidence, the result of an elected person having the most lawful votes cannot be annulled by unseating him and ordering a new election. Only this tribunal can annul the election resulting in the elected candidate being unseated and a new election being called when an election can be invalidated on a breach of the Act of 2017 and Rules thereto during the conduct of the election which

was either (i) fundamental, or (ii) materially affected the result of the election or corrupt or illegal practices were committed at the election either (i) by the winning candidate personally or through that candidate's agents, or (ii) by anyone else, to the benefit of the winning candidate, where such practices were so widespread that they could be reasonably supposed to have affected the result; and the winning candidate was at the time of the election disqualified from office. In the instant petition, on perusal of the entire evidence and documents placed on record, nothing appears to have been brought on record which demonstrates that the conduct of the election had materially affected the result of the election or that corrupt or illegal practices had been committed at the election either (i) by the winning candidate personally or through that candidate's agents, or (ii) by anyone else, to the benefit of the winning candidate.

15. The petitioner neither has brought on record any document showing such illegal practice nor evidence which supports him. The most important contention of the petitioner is that form-45 and 46 were not provided to them but no such written complaint was made at the relevant time nor has been brought on record. The petitioner has also failed to establish that the result of the returned candidate/respondent No.1 had been procured with the support of the presiding officers or other polling staff in any illegal manner through direct or circumstantial evidence. It is necessary for the petitioner that he should completely bring on record convincing evidence; however, the evidence brought on record by the petitioner is neither of such standards, based on which the election of the entire or at some polling stations of the constituency could be declared as void. The personnel of enforcing agencies were deployed to the polling stations. Further, full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed such corrupt or illegal practice or illegal act and the date and place of commission of such practice or act are mandatory requirements to be established but it is lacking in the instant petition. Even though, if any lapse is committed by the polling staff due to a lack of proper skill and adequate knowledge or expertise, such lapse on part of the polling staff cannot be termed as 'illegal practice'. The petitioner's witnesses have not produced his Agentnamasshowing that they were appointed for the petitioner to show their names, father's names and addresses who are examined in the instant

petition to strengthen his claim that the presiding officers did not allow them to sit and see election proceedings. Even the petitioner has claimed that the polling agents were ousted from eight polling stations but he examined only two witnesses, who too did not support the version of the petitioner; and admittedly, no written complaint was moved before the R.O. in this respect.

16. Suffice to say that the allegations of corrupt practices are required to be proved by leading evidence that the result of the returned candidate had been obtained through the assistance of polling personnel. However, it does not appear from the evidence that the petitioner has disclosed specifically corrupt or illegal practices allegedly committed by the polling staff; more particularly 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 concrete or substantial evidence. The stance taken by the petitioner in the election petition also 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 are 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 guess 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. It is also well-settled law that the charge of corrupt practice is to be proved like a criminal charge and the standard of proof as required in a criminal case, is to be applied in testing of evidence of corrupt practice in the election petition. The allegations of corrupt practice are required to be established by clinching unimpeachable evidence. Unless there is cogent evidence to take the case beyond a reasonable doubt, the election of a returned candidate cannot be set aside. There are mere allegations of corrupt practice without substance, which may only create doubt, but the charge of corrupt practice cannot be proved only on suspicion or doubt without giving a date and time at a specific place/polling station as it is lacking in the instant petition. The requirement of proof of corrupt practice is higher and is confined to strict legal evidence. A penalty has been provided to a person being guilty of offences of corrupt and illegal practices under sections 174 and 183 of the Act, 2017, therefore, such charge must be proved with strong and convincing evidence.

17. The commission of corrupt practice by the returned candidate or his agent can be a ground for setting aside the election, in case any corrupt practice is committed by the returned candidate or his election agent, the election is void without any further condition being fulfilled. If corrupt practice is committed by any other person other than the candidate or his election agent, it must be shown that it was committed by him with the consent of the candidate or his election agent. If the corrupt practice is committed in the interest of the returned candidate by an agent, other than his election agent, it is further to be proved that the result of the election in so far as the returned candidate is concerned, has been materially affected. The charge of corrupt practice is quasi-criminal in nature. The allegations relating to the commission of corrupt practice should sufficiently be clear and be stated precisely to afford the person charged a full opportunity of meeting out the same. The charges when put to the issue should be proved by clear, cogent and credible evidence. There would a presumption of innocence be available to the person charged as the charge has to be proved to the standard of proof being the same as in a criminal trial. The allegations of corrupt practice in the election petition are serious and consequences flowing from the proof of corrupt practice at the election are serious as the burden of establishing the commission of corrupt practice lies upon the persons who allege the same. The burden of proof cannot be discharged merely on the preponderance of probabilities but the standard of proof is required to be proved like a criminal or quasi-criminal charge, for which credible and reliable evidence is required to prove the charge beyond any reasonable doubt. In the election dispute, it is settled that the burden to prove illegal and corrupt practices lies heavily on the petitioner and that these allegations must be proved with such standard as is required for proving a charge in the criminal trial. It is further settled that in case of doubt arising out of the material placed before the Election Tribunal, its benefits must go to the returned candidate. In the case of **Muhammad Saeed v. Election Tribunal, West Pakistan (PLD 1957 SC 91)**, Hon'ble Supreme Court has held that;

"A charge of a corrupt practice is a quasi-criminal charge, and, as the Tribunal has stated in its report, the great volume of authority in the corpus of election laws is be treated, for the propose of evidence, on the principle to the trial of criminal charges. One

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such principle is that in case of doubt raised upon the evidence, the benefit of such doubt must go to the accused person....”

In the case of *Hafeezuddin v. Abdul Razzaq* (PLD 2016 SC 79), Hon'ble Supreme Court has held that;

“Before we embark upon an analysis of the evidence and a determination about the correctness or otherwise of the findings of the learned Tribunal, it is pertinent to mention that the rules of proof for the grounds challenging the election which are founded on corrupt and illegal practices are quite strict and stringent and the allegations in this regard must be absolutely proved through positive evidence without accepting any inferences and if there is any doubt, the benefit must go to the person against whom corrupt or illegal practices are being alleged.”

In the case of *Muhammad Siddique Baloch v. Jehangir Khan Tareen* (2016 SC 97), Hon'ble Supreme Court has held that;

“15.... In view of the severe consequences following the proof of corrupt and illegal practices in particular by a returned candidate, different pronouncements by this Court adopt a cautious stance towards a defending incumbent of elected office. The earliest case on the subject is Muhammad Saeed v. Election Petitions Tribunal, West Pakistan, etc. (PLD 1957 SC 91) which holds that each ingredient of the misdemeanor of corrupt or illegal practices must be affirmatively proved by direct or circumstantial evidence is to be believed if all responsible hypothesis which are consistent with the non-commission of corrupt or illegal practices have been excluded...”

In the case of *Usman Dar v. Khawaja Muhamamd Asif* (2017 SCMR 292), Hon'ble Supreme Court has held that;

“24. .. It is settled law that the election petition who alleges the use of illegal or corrupt practices or rigging has to establish his case on the same standard of proof as a criminal case i.e. beyond reasonable doubt...”

In the case of *Kaliq Shah v. Abdul Raheem Ziaratwal* (PLD 2017 SC684), Hon'ble Supreme Court has held that;

“10. The onus to prove allegations of rigging and the use of corrupt and illegal practices is on the person alleging such practices. The quality of evidence and standard of proof must meet the benchmarks set by this Court by production of positive evidence...”

In another case of *Nawab Ali Wassan v. Ghous Ali Shah* (2018 SCMR 87), Hon'ble Supreme Court has held that;

"10. .. It may be noted here that in order to successfully challenge an election on the ground that the same was induced through corrupt practices, the petitioner should be conscious of the fact that the charge of corrupt practices is in the nature of a criminal charge and has to be proved beyond any shadow of doubt. The standard of proof required for establishing such charge is the same as it applies to a criminal charge. ..."

18. It is also a settled proposition of law that the election results should not lightly be set aside and the will of voters should ordinarily be appreciated. Setting aside an election result is a serious matter and it should not be done lightly. The clearness of elections is the core of the democratic system. In case the election is set aside only on the basis of vague allegations of corrupt practices without proving based on evidence, it would be a wrong precedent. The appreciation of evidence for determining the commission of corrupt practice is to be made liberally. It is a mandatory requirement that the election petition is required to contain a concise statement of material facts relied upon by the petitioner by mentioning full particulars of any 'corrupt practice' alleged by the petitioner including the names of the parties alleged to have committed such practice by mentioning date and place of commission of such practice. In case it does not contain a concise statement of material facts and particulars and does not set forth full particulars relating to the alleged corrupt practice in the election petition, the election petition is liable to be dismissed in case it does not furnish the cause of action. The material facts should include the complete chain of material events and the foundation in support of the allegations. The material facts mean a composite bundle of facts, which are sufficient for giving the cause of action and must be specifically averred as to how the result of a petitioner has been materially affected. There should not be any vagueness in the allegations. In case the petitioner does not comply whereof, in such a situation there is a lacking of material facts and particulars election petition can be dismissed. The outcome of the above discussion is that I do not find any violation of has been committed by the polling staff in performance of their functions in connection with the elections-2018 or the alleged corrupt and illegal practices committed by the returned candidate or his election agent or by any other

person with the consent and connivance of the returned candidate. Accordingly, these issues No.2 and 3 are answered in negative.

19. Issue No.4.

(Whether the declaration of respondent N.1 as returned candidate may be declared as null and void?)

In view of the detailed discussion made hereinabove in the foregoing Issues, No.2 and 3 whereby the petitioner has not been able to establish that there was any violation committed by polling staff while performing their duties or any illegal or corrupt practices have been made by them to procure the result in favour of returned candidate/respondent; as such, the declaration of respondent No.1 as a returned candidate by the Election Commission of Pakistan cannot be declared as null and void, which is legal and lawful. Consequently, this issue is replied in negative.

20. Issue No.5.

(What should the decision be?)

In his petition, the petitioner has prayed for recounting of ballot papers and verification of thumb impressions of the voters of the polling stations. In this regard, it is worthwhile to note that the electoral lists of the voters were prepared after full exercise as enunciated under Chapter-IV Electoral Rolls of the Act of 2017; and at the time of casting votes, the identity of voters was being verified in consonance with NADARA electoral list by the polling staff in presence of polling agents of each and every candidate, therefore, the question as raised by the petitioner that the voters beyond the jurisdiction of the said constituency had cast their votes, does not arise at all. Thus, such assertion of the petitioner cannot be allowed in absence of any cogent or convincing material. As far as the recount of the votes is concerned, it is relevant to reproduce subsection 5 of section 95 of the Act of 2017, which reads as under:-

"Before commencement of the consolidation proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made by a contesting candidate or his election agent and the margin of victory is less than five percent of the total votes polled in the constituency or ten thousand votes, whichever is less, or the Returning Officer considers such request as not unreasonable:

Provided that the recount shall be made by the Returning Officer only once."

[Handwritten signature]

The margin of victory was more than five percent of the total votes polled in the constituency and more than ten thousand votes and the application was dismissed as being not maintainable, therefore, in such circumstances, the R.O. has rightly decided the plea in respect of recounting of votes. Form-49 available at Ex: 01/A-14 reveals that the total number of valid votes polled in the said constituency was 81749; the petitioner obtained 31206 votes while respondent No.1/returned candidate obtained 45818 votes whereas the total number of invalid votes was 3878. Now, if the assertion of the petitioner that the Presiding Officers rejected his votes which were not included in his favour, is believed; even then, after the inclusion of the entire 3878 invalid votes in favour of the petitioner, the total number of petitioner's votes would become 35084 votes i.e. less than then the votes secured by the respondent No.1 / returned candidate which are 45818, therefore, the recount of votes will also not make the petitioner as 'successful' and it will be a futile exercise for ordering a recount of the votes as this Tribunal is fully mindful while exercising its powers in this regard keeping in mind that recount may not exploit for a roving inquiry to fish out material for reversing the election or for declaring it void. As to pre-requisite requirements, the petitioner has failed to meet such requirements, which may convince this Tribunal to exercise powers for the recount in any manner as well in the light of '**JAM MADAD ALI v. ASGHAR ALI JUNEJO and others**' [2016 SCMR 251], wherein the Hon'ble Supreme Court of Pakistan has quoted the case of 'Bhabhi v. SheoGovind and others' [AIR 1975 SC 2117] which describes the criterion for permitting a recount in an election matter; and the allegations levelled by the petitioner appear to be frivolous, vague and indefinite without support by adequate statements of material facts regarding truth for a recount; as such, this prayer cannot be allowed in absence of pre-requisite requirements.

21. For what has been discussed above, the petitioner has failed to establish its case as prayed; consequently, the instant Election Petition is **dismissed** with no order as to costs.