

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No. D- 2732 of 2022

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Asif Anwer

Petitioner

VERSUS

Election Commission of Pakistan
& others

Respondents

Date of hearing: 11.08.2022

Date of decision: 11.08.2022

Mr. Ayatullah Khowaja, Advocate for Petitioner

Mr. Zulfiqar Ahmed Rajput, Asst. Attorney General

Naveed Ali Deputy Director Private School Hyderabad Region & Wali
Muhammad Baloch, DC / DRO Tando Allahyar.

ORDER

ADNAN-UL-KARIM MEMON, J.- Through instant petition, the petitioner has called in question the vires of the order dated 20.7.2022 passed by District Returning Officer Tando-Allahyar, whereby he has shifted the Government Primary School polling station Sultanabad-2 to some other location inconvenient to the voters of the area, inter-alia on the ground that the Polling Station GGPS, Sultanabad-2 Taluka and District Tando-Allahyar had already been located at the present place and all the Local Bodies, as well as General elections, have been held at the same Polling Station, thus there was/is no occasion for the District Returning Officer to dislocate the said polling station to polling station No.5-Community Based Private School Shiv Colony. It is alleged by the petitioner that in case the polling station of GGPS, Sultanabad-2 is not restored, there is apprehension of law and order situation; besides, the newly established polling station No.5-Community Based Private School Shiv Colony, which is a private OTAQ of some feudal lord of the ruling party; and is inconvenient for the voters of the area, therefore the petitioner has hurriedly approached the respondents No.2 for restoration of earlier polling station, but he declined on the premise that the subject polling station has been shifted in the best interest of public, on the application of inhabitants of the area, which is not the factum.

2. We have heard learned counsel for the parties and perused the record with their assistance.

3. Generally in an election process the High Court cannot interfere by invoking its Constitutional jurisdiction because of Article 225 of the Constitution. However, this is subject to an exception where no legal remedy is available to an aggrieved party during the process of elections, against an order of an election functionary which is patently illegal / without jurisdiction and the effect of which is to de-franchise a candidate and / or cause inconvenience to the voters, he can press into service Constitutional jurisdiction of the High Court.

4. Since the petitioner had no legal remedy available and the impugned order was/ is patently illegal as no opportunity of hearing had been given to the petitioner and / or voters of the concerned area while changing the subject polling station; and, the whole effect was to indirectly cause some disturbance to the voters of the area, as such the impugned order is liable to be set at naught for the simple reason that the Returning Officer had no occasion to dislocate the said polling station, however, District Returning Officer intervened at the request of some residents of the area and ordered shifting of Polling Station Government Primary School, Sultanabad-2 to some other location as discussed supra. Additionally, it has been agitated that for decades the previous polling station has been used for election purposes; and now all of sudden the said polling station / building has been shifted which is inconvenient to the area people; besides there are other serious allegations against the District Returning officer, who should be careful while conducting the subject election; and, ensure no malpractice shall take place, even the Education Officer present in Court has submitted that the Community Based Private School is not a registered school with the Education and Literacy Department Government of Sindh, this factum is sufficient to discard the view point of District Returning Officer, considering the aforesaid position of the case, prima-facie, the District Returning Officer has no reasonable justification to pass order dated 20.7.2022 to that effect.

5. In the above circumstances, the original polling station viz. Government Primary School polling station Sultanabad-2 is hereby restored with directions to the respondents to publish / notify forthwith in the gazette in terms of Section 41(2) of The Sindh Local Government Act, 2013 accordingly.

6. This petition stands allowed in the above terms with no order as to costs.

JUDGE

JUDGE