

## ORDER SHEET

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

C.P. No.D-927 OF 2013.

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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PRESENT.

Mr. Justice Aqeel Ahmed Abbasi.

Mr. Justice Habib-ur-Rahman Shaikh.

FOR KATCHA PESHI

Date of Hearing: 09.05.2013.Date of order: 09.05.2013.

Mr. Imdad Ali M. Unar, Advocate for the Petitioner.

Mr. Ch. Bashir Ahmed, Asstt. A.G. Sindh.

Mr. Shakeel Ahmed Zai, Advocate for Applicant/Intervenor.

**ORDER**

**AQEEL AHMED ABBASI, J.**- Through instant petition the petitioner Jam Khan contesting candidate of PS-47 Hyderabad, has sought relief against Respondent No.1 i.e. District Returning Officer Hyderabad and Respondent No.2. i.e. Returning Officer for PS-47 & PS-50 Hyderabad, with the prayer to direct the Respondents to restore the original Polling Station from Emergency OPD District Government Hospital Hyderabad to Government Degree College Kali Mori Hyderabad, in respect of PS-102 (Male) and 103 (Female) of PS-47 Hyderabad.

2. Brief facts as stated in the instant petition are that the Petitioner is the contesting candidate of PS-47 Hyderabad for the General Election 2013, as well as voter of the same constituency. It has been stated by the Petitioner that in the previous General Elections of 2002, 2008 as well as in the Local Bodies Elections of 2001 and 2005, the polling station for the village Laloo

Lashari Punjabi Colony, Laloo Lashari Shah Latif Colony, Mustafa Colony Noorani Basti and near Gohar House Noorani Masjid two Polling Stations for such area i.e. PS-102 (Male) and 103 (Female) were established in Government College Kali Mori, whereas, in the General Election 2013, similar list of Polling Stations was proposed by the Election Commission of Pakistan. However, it has been stated by the Petitioner, that the Returning Officer for PS-47 on the verbal direction of District Returning Officer, Hyderabad, has changed the above Polling Station and shifted the same from Government Degree College Kali Mori, to Emergency OPD Government District Hospital Hyderabad, without inviting any objections or issuing any Notice to the Petitioner or other contesting candidates.

3. Learned counsel for the Petitioner has submitted that such change of the Polling Station from Government Degree College Kali Mori to Emergency OPD District Government Hospital Hyderabad, by the learned Returning Officer for Polling Station-47 in respect of Polling Station 102 (Male) and 103 (Female), has been made in violation of Section 8 of the Representation of People Act 1976, as well as by violating the principles of natural justice as no objections were invited from the voters of the area nor any Notice was issued by the Returning Officer to the contesting candidates before changing the aforesaid Polling Station. It has been stated that the new Polling Station does not fall within the territorial jurisdiction of PS-47 Hyderabad, which may cause serious inconvenience to the voters. Learned counsel further argued that there was no need to change the aforesaid Polling Station particularly on the verbal directions of the District Returning Officer, whereas, convenience of the voters of the locality has not been taken into consideration. It has been stated that such change of the Polling Station would adversely affect the Petitioner who himself is the contesting candidate for PS-47 Hyderabad,

in the forthcoming General Election 2013. Per learned counsel the Petitioner has no other remedy, except to file instant constitution petition before this Court, the Respondents have neither acceded to the request of the Petitioner nor they have passed any orders in this regard. In support of his contention learned counsel for the Petitioner has referred to the list of proposed Polling Stations in constituency of PS-47 Hyderabad, issued by the Election Commission of Pakistan and the list of Polling Stations prepared by the Returning Officer for the Election 2013 as well as some undated representation made by the Petitioner to the Provincial Election Commissioner Sindh Karachi objecting to aforesaid change of Polling Station.

4. Notices were issued pursuant to which parawise comments on behalf of Respondent No.1, 2 and 5 were filed by the learned A.A.G. alongwith annexures whereas Respondents No.1 and 2 have also shown their appearance in Court and denied the adverse allegations as contained in the petition. Learned District Returning Officer as well as Returning Officer for PS-47 Hyderabad, have vehemently opposed the maintainability of instant petition and submitted that neither the Petitioner nor any of the voters of the aforesaid constituency has ever approached the Returning Officer or the District Returning Officer by raising any objection with regard to establishment of Polling Station 102 (Male) and 103 (Female) for PS-47 Hyderabad, at Emergency OPD District Government Hospital Hyderabad, within prescribed period as provided in terms of Section 8 of the Representation of People Act 1976. It has been stated that on the contrary, such change of the aforesaid Polling Station was made on the applications filed by the voters residing within the constituency of PS-47 Hyderabad, under relevant Law, Rules and within prescribed Statutory period. Thereafter, on physical verification of the Constituency and keeping in view the

convenience of the voters of the area while maintaining reasonable distance of the Polling Station from the residence of the voters and also keeping in view the directives of the Election Commission of Pakistan and the Judgment dated 8.6.2012 passed by Hon'ble Supreme Court of Pakistan in C.P. No.87 of 2011 (Workers Party Pakistan & others v. The Federation of Pakistan and 2 others), new Polling Station has been established at District Govt Hospital, Pareetabad, Hyderabad. Reference in this regard has been made to various letters of the Director General Election Commission of Pakistan and Director Head Quarter Sindh Karachi, issued to the Returning Officer with regard to preparation of Polling Scheme for General Election 2013. It has been stated that final list of all the Polling Stations of PS-47, Hyderabad has been prepared strictly in accordance with the provisions of the Representation of People Act, 1976 and the directives issued by the Election Commission of Pakistan. Both Respondents No.1 & 2 present in Court have stated that the entire election process and establishment of Polling Stations in PS-47 Hyderabad is being undertaken strictly in accordance with law by observing all the legal requirements and by following the directives of the Election Commission of Pakistan as well as by respectfully obeying the Judgment of the Hon'ble Supreme Court as referred to hereinabove. It has been submitted that final list was made available to all the candidates before 15 days from the date of Elections, whereafter the meeting of all the candidates, including the Petitioner, was called in the office of District Returning Officer however, no objection whatsoever was filed by any one with regard to establishment of Polling Station 102 (Male) and 103 (Female) in District Govt Hospital Pareetabad Hyderabad.

5. Learned District Returning Officer present in court has submitted that the petitioner, instead of approaching the Returning Officer of the Constituency, filed a belated representation before Provincial Election

Commission of Pakistan dated 1.5.2013, on which comments were called whereafter, on physical verification of the Constituency and after taking into consideration the report furnished by the concerned Mukhtiarkar (Revenue) which was duly supported by Map, Sensors statement, Tappedar of the Beat, Inspector Revenue/City Surveyor, Hyderabad and S.H.O. Police Station Pinyari Hyderabad, it has come on record that the District Government Hospital Paretabad, Hyderabad falls within the jurisdiction of PS-47 and not in the jurisdiction of PS-45 as alleged by the Petitioner. It has been further stated that no malafide on the part of Respondents No.1 and 2 can be attributed as on the request of the Petitioner several Polling Stations have been shifted from one place to another by the Returning Officer, however, no objection whatsoever has been filed by any one, whereas, the Petitioner has expressed his grievance in respect of Polling Station 102 (Male) and 103 (Female) with malafide intention. It has been prayed that petition having no substance, may be dismissed in limine.

6. During the course of hearing, an application under Order 1 Rule 10 CPC has been filed on behalf of Abdul Rasheed s/o Jamaluddin and Muhammad Shahid Ilyas s/o Muhammad Ilyas Qureshi, the residents of Mustafa Colony Paretabad, Hyderabad, and Fareed Nabi Housing Scheme, Noorani Basti, Hyderabad, who are also the voters of PS-47, with a request to implead them as necessary party as according to the Applicants the aforesaid change of the Polling Station was made on their written applications to the concerned Election Commissioner Hyderabad and to the concerned Returning Officer, Hyderabad for PS-47. Such request was not opposed by the learned counsel for the Petitioner, accordingly such application was granted and proposed intervenors were impleaded as party, who were duly represented by Mr. Shakeel Ahmed Zai. Learned counsel for the intervenors vehemently opposed the maintainability of the instant petition and submitted that instant petition has been filed with malafide intention, to thwart the Election Process and to unnecessarily malign the Returning Officer and the learned District Returning Officer who have not committed any

illegality while changing aforesaid Polling Stations. It has been contended by the learned counsel that the request for establishment and setting up a new Polling Station for PS-47 was made through written applications by the Applicants as prescribed in law, within the prescribed period, upon which, the learned Returning Officer, after physical verification of the Constituency and after obtaining reports from relevant quarters by assigning cogent reasons, for such change, acceded to the request of the large number of inhabitants of the area, whereas no objection whatsoever were filed by the Petitioner, who according to learned counsel, was very much in the knowledge of the entire process. It has been further stated by the learned counsel that in terms of Section 8 of the Representation of People Act, 1976 in case of any objections to such change of Polling Stations, representation was required to be made by the aggrieved person(s) to the learned Returning Officer or to the District Returning Officer as the case may be, which remedy was not availed by the Petitioner within the prescribed period allowed for such purpose, however, the Petitioner has now filed instant petition with malafide intention to frustrate the entire Election Process. Per learned counsel there is hardly any time left for any further scrutiny or appraisal of the disputed facts as narrated in the instant petition, whereas, Elections are scheduled to be held on 11.5.2013. Learned counsel for the Applicant has also readout the reasons which were assigned by the learned Returning Officer while establishing the aforesaid Polling Station(s) and submitted that the reasons assigned by the Returning Officer are based on relevant Law & Rules, Directives issued by the Election Commission of Pakistan as well as the Judgment of the Honourable Supreme Court as referred to hereinabove, hence the same does not require any interference by this Court in its Constitutional jurisdiction. It has been submitted that the instant petition has

no merits which may be dismissed in limine by imposing cost upon the Petitioner.

7. We have heard the learned Counsel for the parties and perused the record. Petitioner through instant petition has challenged the validity of changing of the Polling Stations No.102 (Male) and 103 (Female) from Government Degree College Kali Mori to District Government Hospital Pretabad, Hyderabad, by the Returning Officer of P.S-47 Hyderabad mainly on the ground that the said orders have been passed in violation of Section 8 of the Representation of the People Act, 1976, which according to the Petitioner provides for calling objections and issuance of Notice to the Candidates and inhabitants of the area, before changing the venue of the Polling Stations from one place to another.

8 Before we may refer to the relevant facts of the instant case, it will be advantageous to examine the provisions of Section 8 of the Representation of the People Act, 1976, which reads as follows:-

8. **Polling stations.**\_\_\_(1) *The Returning Officer shall, before such time as the Commission may fix, submit to the [District Returning Officer] a list of polling stations he proposes to provide in a constituency for the purpose of election of a member for that constituency.*

*[(2) Subject to the direction of the Commission, the District Returning Officer may make such alterations in the list of polling stations submitted under sub-section (1) as he deems necessary and shall, at least fifteen days before the polling day, publish in the official Gazette the final list of polling stations specifying the electoral area the electors whereof will be entitled to vote at each polling station]*

*(3) The Returning Officer shall establish in each constituency polling stations according to the final list published under sub-section (2).*

*[(4) A polling station shall be situated in a Government building for the constituency and, where no Government building is available for the purpose, an improvised polling station shall be set up on a public property.*

*Provided that no polling station shall be located in any premises which belong to, or are under the direct or indirect control of, any candidate.]*

9. From perusal of the provisions of Section 8 of the Representation of the People Act, 1976, it is seen that the Returning Officer appointed by the Election Commission of Pakistan U/S 7 of the Act 1976, is authorized to submit to the concerned District Returning Officer a list of Polling Stations, which he may propose to provide in a Constituency for the purposes of elections. Whereas, subject to the directions of the Commission, if any, the concerned District Returning Officer has the authority to make alteration in the list of Polling Stations submitted under sub-section (1), as he deems necessary, whereafter at least fifteen days before polling day, the District Returning Officer is required to publish the final list of Polling Stations specifying the Electoral Area, in the official gazette. Once such final list is prepared, concerned Returning Officer is required to establish in each Constituency Polling Stations according to such final list. While establishing such Polling Stations in different areas of a constituency the Returning Officer is required to ensure that the Polling Stations are situated in a Government building for the constituency and, where no Government building is available for the purpose, an improvised Polling Station is to be established on a public property. Law further provides that no Polling Station shall be located in any premises which belong to, or are under direct or indirect control of, any candidate.

10. Having examined the provisions of Section 8 of the Representation of the People Act, 1976, we may now refer to the relevant facts of the instant petition with the assistance of the material provided by the parties. It has come on record that some of the voters, who have been impleaded as party in the instant petition, residing within the Constituency of PS-47 approached the District Election Commissioner Hyderabad and the Returning Officer for PS-47 in writing on 10.04.2013 with the request to change the Polling Stations i.e 102 (Male) and 103 (Female) from Government Degree College Kali Mori to District Government Hospital Pretabad, Hyderabad, on the grounds that the distance of Government Degree College Kali Mori is far away from the residences of the voters, who reside within the constituency of PS-47, particularly for the electoral roll in respect of Block Code 358030701 to 358030706, whereas the new proposed Polling Stations i.e District Government Hospital Pretabad, Hyderabad is situated in the vicinity and the close surroundings of the residences of voters. The apprehension of ethnic clash while casting vote at the polling day was also expressed. Such application of the voters was referred by the District Election Commissioner, Hyderabad, to the learned Returning Officer for NA-221/PS-47 & 50 Hyderabad vide letter dated 11<sup>th</sup> April 2013 for appropriate action under the law. Whereafter, the Returning Officer and the District Returning Officer, as per their comments, which have not been denied by Petitioner, visited the Polling Stations in question, and after physical verification and by taking the input of the inhabitants of the area, decided to shift Polling Stations 102 (Male) and 103 (Female) from Government Degree College Kali Mori to District Government Hospital Pretabad, Hyderabad. Thereafter, a final list of Polling Stations within the Constituency PS-47 was duly prepared before fifteen days from the day of polling in terms of Section 8 of the

Representation of the People Act, 1976. It has also come on record that no objections whatsoever regarding establishment of aforesaid polling stations were filed by anyone, including the Petitioner, before the concerned Returning Officer and District Returning Officer. The District Returning Officer called a meeting of all the candidates in his office on 30.04.2013 to discuss all aspects relating to forthcoming General Elections and to ensure the smooth polling at all the Polling Stations, however, it appears that no objections whatsoever regarding change of the aforesaid Polling Stations was raised by anyone including the Petitioner, who admittedly attended the said meeting.

11. It will not be out of place to refer to the relevant provisions of the directives issued by the Election Commission of Pakistan vide their letter dated 12<sup>th</sup> March, 2013 relating to preparation of Polling Scheme for General Elections, 2013, which reads as follows:-

*1. On receipt of draft lists of polling stations from the District Election Commissioners, each Returning Officer will physically verify each and every polling station in the constituency or constituencies of his jurisdiction and may make such alterations in that list as he may deem necessary and publish the same within a period of fifteen days inviting objections from the voters of that constituency to be filed with the District Returning Officer within a period of ten days of the publication of draft list.*

*3. A final list of polling stations specifying the electoral area, the electors whereof will be entitled to vote shall be published in the official Gazette by the DRO at least fifteen days before the polling day after making necessary changes therein in the list of decision made by him on the objections.*

*7. The Polling Stations may cater for upto 2000 voters but they should not normally exceed 2500 voters.*

*11. While preparing list of Polling Stations, the convenience of voters and suitability of buildings may be kept in view. In any case it should be easily accessible to the voters.*

12. Keeping in view hereinabove facts and after examination of the provisions of Section 8 of the Representation of the People Act, 1976,

directives issued by the Election Commission of Pakistan vide their letter dated 12<sup>th</sup> March, 2013 and the material placed on record by Respondents No.1 & 2, we are of the view that the Petitioner has failed to point out any illegality or mala fide on the part of Respondents while changing the aforesaid Polling Stations i.e 102 (Male) and 103 (Female) from Government Degree College Kali Mori to District Government Hospital Pretabad, Hyderabad, which exercise, under the circumstances, appears to have been undertaken in accordance with law, and keeping in view the convenience of the voters at large, after physical examination of the Polling Stations and further to avoid any law and order situation, which was apprehended by the voters of the area in their written application(s). We may further observe that, even otherwise, the Petitioner has approached this Court, when there is hardly any time left to examine the disputed facts or to make scrutiny of the allegations, which do not otherwise find support from the record, as the General Elections are scheduled after one day of the hearing of the instant petition. We are of the view that any interference by this Court at this stage would amount to frustrate the election process and to de-franchise the voters of the constituency of PS-47 whose polling stations i.e 102 (Male) and 103 (Female) have already been shifted from Government Degree College Kali Mori to District Government Hospital Pretabad, Hyderabad, as per final list of Polling Stations published in the official gazette.

13. Accordingly, we do not find any merit in the instant petition, which was dismissed vide our short order dated 09.05.2013 and these are the reasons for such short order.

May 15, 2013.

JUDGE

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