

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-3901 of 2022

Date	Order with signature of Judge
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For orders as to maintainability of instant Petition.

20.09.2022.

Mr. Sajjad A. Bapar, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. - The Petitioner was apparently an unsuccessful candidate in the bye-election held on 16.06.2022 for the seat of N.A 240, District Korangi-II, Karachi, with the Respondent No.5 having been shown to have prevailed by securing the highest number of votes and notified as the Returned Candidate.

The Petitioner alleges that the Respondent No.5 had engineered the result by engaging in corrupt practices and caused violence and rioting during the poll so as to pave the way for bogus votes to be cast, hence ought to be disqualified and his Notification as the Returned Candidate be set aside.

In this backdrop, it has inter alia been prayed that this Court be pleased to declare the bye-election to be null and void and to direct the Election Commission of Pakistan to conduct the exercise afresh, with it also being sought that the Respondent No.5 be permanently disqualified.

On the first date of hearing, upon the matter being put up in Court, learned counsel for the Petitioner had been put on notice to satisfy the Court as to how the instant Petition could be entertained under Article 199 of the Constitution, as the remedy lay before the

Election Tribunal under the Election Act, 2017. Confronted on that score today, learned counsel for the Petitioner sought to argue at length on the merits, despite it having been pointed out that the factual controversies sought to be raised could even otherwise not be determined under the Constitutional Jurisdiction of this Court. Furthermore, it is manifest from Article 225 of the Constitution and the Election Act, 2017 that the election could only be called into question before an Election Tribunal. Be that as it may, learned counsel for the Petitioner nonetheless sought to press the Petition, and rely on a Judgment of the Honourable Supreme Court of Pakistan in the case reported as Imran Khan v. Election Commission of Pakistan PLD 2013 SC 120, which upon examination is however quite distinguishable from the matter in hand.

Under the given circumstances, we are of the view that the instant Petition is not maintainable in the presence of the alternate remedy available in the matter. The Petition accordingly stands dismissed with cost of Rs.20,000/- to be deposited towards the Prime Minister's Flood Relief Fund 2022, with receipt to be submitted in the Office within seven days from the date of this Order.

JUDGE

CHIEF JUSTICE

MUBASHIR