

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-803 of 2024

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI
CHIEF JUSTICE**

MR. JUSTICE ABDUL MOBEEN LAKHO

*Shah Nawaz Jadoon.....v/s.....Federation of Pakistan
& others*

Date of Hearing 20-02-2024.

M/s.Abdul Wahab Balouch, Amir Nawaz Warrich, Tassaduq Nadeem
and Ms.Shahida Adnan, Advocates for the Petitioner

Mr.Qazi Bashir, Addl.A.G. Mr.Rafique Rajori, Addl.A.G. Mr.Saifullah,
A.A.G.

and Mr.Sharafuddin Jamali, A.A.G.

Mr.Khaleeq Ahmed, D.A.G.

M/s.Ghulam Shabbir Shah, Irtafa-ur-Rehman, Agha Shahzaib and
Mukesh Kumar Talreja, Advocates for the Respondent No.5.

Mr.Riaz Ahmed, Director (Law) E.C.P. and Mr.Sarmad Sarwar,
Assistant Director (Law), E.C.P. are present in person.

Mr.Shafiq-ur-Rehman, Asstt. Returning Officer PS-115 is present in
person.

ORDER

Abdul Mobeen Lakho, J. Through instant petition the Petitioner has
prayed for following relief:-

“It is, therefore, most respectfully prayed that this Hon'ble
Court may be pleased to issue injunctions to the respondent No.1 to 3
to forbid them from tempering or issuing fake results of the polls and
suspend such recounting application filed by the Respondent No.5 in
which the petitioner is unheard and not informed furthermore set aside
the same notification as null and void, which is in clear violation of
fundamental rights as the facts and process of the law is concealed and
right to fair opportunity is not given.”

2. Brief facts as narrated in the memo of petition are that the petitioner is a political person, belonged to Pakistan Tahreek Insaf had contested the General Elections in the year 2018 and won the same and now in the General Elections held on 8th February, 2024 participated as an independent candidate with election symbol of "TABLE". According to the petitioner, he was supported by the then PTI led Party, hence, he was threatened many a times to withdraw from his candidature, but he continued with his campaign in democratic way, he was dragged into false and fabricated FIR bearing No.31/2024, under Section 7-ATA at Police Station Ferrer Karachi, in which he got his bail from the concerned Court of law. It is further stated that in the General Elections held on 8th of February, 2024 the petitioner achieved highest number of votes i.e. 21990 (twenty one thousand nine hundred ninety votes) in comparison to other candidates according to Form-45, which was issued by the Presiding officers of the Polling Stations, whereas, the Respondent No.5, who was the candidate of Pakistan Peoples Party, secured total votes around 14000 (fourteen thousand approximately), but after the delay of one day the petitioner was issued Form-47, 49 by the Respondent No.4, in which the ratio of the votes of petitioner was decreased by 20820 (twenty thousand eight hundred twenty) besides he was declared winning candidate and having highest margin of votes than the rest of candidates, however the Respondent No.05 secured the total votes according to Form 45 were 19104, (nineteen thousand one hundred four), whereas, rest of the candidates got less votes than that of petitioner and Respondent No.5. According to the petitioner, all of sudden on 14-02-2024 at about 3:00 p.m the petitioner received a phone call through PTCL NO.021-99334015, and was informed that the recounting application against the polls filed by the

respondent No.5 which was to be held at about 5:00 PM and the petitioner was directed to reach the GCT college as the counting was to be started. It is further stated that the petitioner was never informed nor he officially received any notice or summon regarding recounting of the votes, however, the petitioner informed them on the call that he was not feeling well and in the sudden moment it was impossible for him to reach the said place for the recounting purpose, but they did not pay heed and started recounting against the consent of the petitioner resulting which petitioner's votes have got tempered as the ballot boxes were opened in absence of the petitioner without having any such urgency especially when the seven days' time was given for recounting.

3. On the first date of hearing i.e. on 16.02.2024, after hearing the learned counsel for the petitioner, while issuing notices to the respondents it was directed that no final order on the recounting, if carried out, shall be passed till next date of hearing.

4. Learned counsel for the petitioner argued that the order passed by the Election Commission of Pakistan directing the Returning Officer to recount the votes on 10 (ten) polling stations of PS-115 Keamari Karachi, after final consolidation of results and issuance of Forms 45, 47 and 49 and without providing any opportunity to the petitioner is illegal and unlawful as under the terms of Sub-Section (6) of Section 95 of the Elections Act, 2017 such exercise can only be undertaken before consolidation of final results. Learned counsel for the petitioner further argued that as per official results, petitioner has been declared as the winning candidate for having secured the highest votes, whereas, in case of any complaint with regard to recounting of votes in

such situation, the same could have been referred to the Election Tribunal constituted by the Election Commission of Pakistan in accordance with law and not by filing complaint before the E.C.P. According to learned counsel for the petitioner the impugned order passed by the Election Commission of Pakistan is without lawful authority, hence, liable to be set aside. In support of his arguments learned counsel for the petitioner has placed reliance on the cases reported as *PLD 2019 Sindh 163 (Zia-ul-Hassan Lanjar...v/s...Election Commission of Pakistan & others)* and *PLD 2023 Peshawar 99 (Zeeshan Afzal...v/s.....Qaiser Ali & others)*.

5. Learned counsel for the Respondent No.5 at the very outset argued that under Article 225 of the Constitution, 1973, instant petition for seeking an order under constitutional jurisdiction is not maintainable and liable to be dismissed, which is expressly barred and beyond the mandate of this Court. He further argued that the order passed by the E.C.P. is fair, just and lawful and within the four corners of the law. According to learned counsel for the Respondent No.5 in term of Article 218(3) of the Constitution, ECP is under a binding obligation to ensure that elections are held justly and fairly and in this respect it can pass appropriate order and in the present case the threshold of 5 percent as envisaged under Section 95(5) was met which warranted a recount. Per learned counsel for the Respondent No.5, under Section 8 of the Elections Act, 2017, the ECP can review or modify any order passed by an Election functionary, therefore, impugned order passed by ECP is just and lawful under Article 218(3) read with Section 8 and 95(6) of the Elections Act, 2017. Learned counsel for the respondent No.5 further argued that the impugned order was already acted upon well before the instant petition was even filed and the recount was fixed but the petitioner failed to attend the recount

proceedings, which was conducted by R.O. in front of the Respondent No.5 and other candidates. He further argued that under Section 235 of the Elections Act, 2017 absence of a candidate does not invalidate an act that is otherwise conducted validly, whereas, the petitioner intentionally and wilfully abstain from attending the recounting process. He finally argued that the petitioner has an alternate remedy in form of election petition to be filed before the Election Tribunal. In support of his arguments, he placed reliance on the following case law:-

- (1) **2014 CLC 776 (Ali Gohar Khan Mahar.....v/s.,...Election Commission of Pakistan & others).**
- (2) **1989 PLD S.C. 396 (Election Commission of Pakistan....v/s....Javaid Hashmi and others).**
- (3) **1994 SCMR 1299 (Ghulam Musatfa Jatoi....v/s....Additional District & Sessions Judge/Returning Officer, NA-158, Naushero Feroze & others).**
- (4) **2009 PLD S.C. 644 (Federation of Pakistan & others....v/s....Mian Muhammad Nawaz Sharif & others)**
- (5) **2015 SCMR 233 (Muhammad Raza Hayat Hiraj & others....v/s....The Election Commission of Pakistan & others)**

6. Learned D.A.G. as well as Director (Law) E.C.P. support the arguments advanced by learned counsel for the Respondent No.5 and further submits that instant petition is premature and misconceived as the proper remedy available to the petitioner under Elections Act, 2017 is to approach relevant forum including Election Tribunal constituted for such purposes.

7. After hearing learned counsel for the parties at length as well as examined the relevant case law and provisions of Elections Act, 2017, keeping in view the fact that alternate remedy is available to the petitioner under Section 8 and 9 along with other relevant provisions of Elections Act, 2017 read with Elections Rules, 2017 as well as Constitution of Pakistan,

1973, any interference with the Election Commission of Pakistan's operation would undoubtedly affect the electoral process, therefore, the petitioner is at liberty to seek remedy as available to him under the Elections Act, 2017 by approaching the relevant forum, including Tribunal, etc. constituted for such purposes in accordance with law.

8. In view of the above facts and circumstances, we vide our short order dated 20.02.2024 had dismissed instant petition along with pending application and above are the reasons thereof.

Judge

Chief Justice

Nasir