

Stereo.HCJDA 38.
JUDGMENT SHEET.

LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT

W.P.No.195 of 2024

Riaz Ahmed Khan.

Versus.

Election Commission of Pakistan, etc.

JUDGMENT.

Date of hearing: **26.01.2024.**

Petitioner by: *Malik Inayat Ullah Awan.*

Respondents No.1 *Mr. Zulqarnain Hyder Gondal, Assistant Director (Law), Election Commission of Pakistan with*
and 2 by: *Kaleem Ullah, Assistant Returning Officer, PP-87.*

Ch. Sajid Mehmood, Assistant Attorney General for Pakistan.

Respondents No.3 *Mr. Fateh Khan Niazi, Advocate.*
and 4 by:

Mirza Viqas Rauf, J. This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as “Constitution”) stems from order dated 15th January, 2024, whereby District Returning Officer, Mianwali (respondent No.2) while proceeding on the application of respondents No.3 and 4 changed the polling station from Govt. Primary School, Allah Dad Khelan Wala to the newly established building of Veterinary Dispensary on Dabb Road, Mianwali.

2. Brief facts forming background of this constitutional petition are that the respondents No.3 and 4, being registered voters of Provincial Assembly, Constituency No.PP-87 Mianwali moved an application to respondent No.2 for change of polling station. On the application, a report was requisitioned from the Returning Officer and application was ultimately accepted through impugned order.

3. *Heard. Record perused.*
4. *Amongst others, Election Commission is also one of the creation of the "Constitution". Part-VIII of the "Constitution" deals with elections and its Chapter-1 is related to Chief Election Commissioner and Election Commission. Article 218 of the "Constitution" ordains that for the purpose of election to both House of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election of such other public offices as may be specified by law, there shall be a permanent Election Commission constituted in the manner provided therein. In the case of WORKERS' PARTY PAKISTAN through Athar Hussain, Advocate, General Secretary and 6 others v. FEDERATION OF PAKISTAN and 2 others (PLD 2012 Supreme Court 681), the Supreme Court of Pakistan, outlined the significance and scope of Article 218 of the "Constitution" in the following words: -*

"38. The Constitution provides a comprehensive mechanism to ensure minimal deviation from these dictates. It identifies and regulates one of the key aspects of democracy, the election process. In Article 218, the Constitution constitutes the Election Commission and empowers it to organize and oversee the election process and to ensure, inter alia, that it is conducted "honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against". Article 218(3) of the Constitution enumerates the broad and overarching responsibility of the Election Commission and declares that:--

"218. Election Commission.

- (1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election to such other public offices as may be specified by law, a permanent Election Commission shall be constituted in accordance with this Article.
- (2) The Election Commission shall consist of-
 - (a) The Commissioner who shall be the Chairman of the Commission; and
 - (b) four members, each of whom has been a Judge of a High Court from each Province, appointed by the President in the manner provided for appointment of the Commissioner in clauses (2A) and (2B) of Article 213.
- (3) It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against."

39. The phrase "the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against" as used in Article 218(3) of the Constitution informs the content and scope of powers conferred by it on the Election Commission. It may be advantageous to refer to the meanings of the terms "honestly", "justly" and "fairly" as given in various legal instruments, which read as under: -

"Honestly":

- (i) '*honest*' means full of honour: just: fair dealing: upright: the opposite of thievish: free from fraud: candid: truthful: ingenious: seemly: respectable: chaste: honourable; '*honestly*' means in an honest way: in truth; '*honesty*' is the state of being honest: integrity: candour. [Chambers, 20th Century Dictionary, New Edition 1983 at page 601]
- (ii) '*honesty*' - "according to the best lexicographers the words 'truth' 'veracity' and 'honesty' are almost synonymous, very nearly the same definitions being given to each of the words". [P. Ramanatha Aiyar's "Advanced Law Lexicon", 2005 Edition, Vol. 2, at page 2153]
- (iii) Honesty is a thing deemed to be done in good faith, where it is infact done honestly, whether it is done negligently or not. [*Fakhruddin v. A. Shah* (PLD 1982 Kar 790)]
- (vi) Honestly is state of mind which is psychological factor capable to prove or disprove only by a evidence or conduct. [Amjad Khan v. Marium (1993 CLC 175)]

"Justly"

- (i) '*just*' means "conforming to or consonant with, what is legal or lawful, legally right, lawful"; ... "The words 'just' and 'justly' do not always mean 'just' and 'justly' in a moral sense, but they not unfrequently, in their connection with other words in a sentence, where a very different signification. It is evident, however, that the word 'just' in the statute [requiring an affidavit for an attachment to State that plaintiff's claim is just] means 'just' in a moral sense; and from its isolation, being made a separate sub-division of the section, it is intended to mean 'morally just' in the most emphatic terms. The claim must be morally just as well as the legally just in order to entitle a party to an attachment." *Robinson v. Burton* (5 Kan. 300.) [Black's Law Dictionary, Revised 4th Edition of 1968, at page 1001]
- (ii) '*just*' means righteous: fair: impartial: according to justice: due: in accordance with facts: well-grounded: accurately true: exact: normal: close-fitting: precisely: exactly: so much and no more: barely: only: merely: quite; '*justly*' means in a just manner: equitably: accurately: by right; '*justness*' means equity: fittingness: exactness. [Chambers, 20th Century Dictionary, New Edition 1983 at page 686]
- (iii) '*just*'. As an adjective, fair; adequate; reasonable; probable; right in

W.P.No.195 of 2024

accordance with law and justice right in law or ethics; rightful; legitimate, well founded; conformable to laws; conforming to the requirements of right or positive law; conformed to rules or principle of justice. 2 Bom LR 845. As an adverb of time the word 'just' is equivalent to ""at this moment," of the least possible time since" (Ame. Cyc.).

The word 'just' is derived from the Latin 'justus' which is from the Latin 'jus' which means a right, and more technically a legal right-- a law. The word "just" is defined by the Century Dictionary as conforming to the requirements of right or of positive law, and in Anderson's Law Dictionary as probable, reasonable. Kinney's Law Dictionary defines "just" as fair, adequate, reasonable, probable, and *justa causa* as a just case, a lawful ground. Being in conformity with justice [S.191, Expln.2, ill. (a) IPC (45 of 1860) and Art. 42, Const]; fair.

An allegation is an indictment that an offence has "just" come to the knowledge of an officer having authority to prosecute is, by implication, a sufficient allegation that the offence had not previously come to the knowledge of any other public officer having authority to prosecute.

"JUST" as sued in Laws providing that an affidavit for attachment shall show the nature of the plaintiffs claim, and that it is just, etc., should be construed to mean just in a moral sense. The claim must be morally just, as well as legally just in order to entitle a party to an attachment. "Shall have the power, if he shall think just, to order a new trial." in the County Courts Act, 1888 (51 & 52 Vict. c. 43), S.93. These words do not give a County court judge an absolute power of granting new trials. His power under the section is subject to the rules and limitations as to the granting of new trials which are binding upon the High Court, the Court of Appeal, and the House of Lords. Murtagh v. Barry (1890) 44 Ch D 632 (LORD COLERIDGE, C.J.). The crucial word in the phrase is ""just" which imparts a judicial, and not an absolute power. (Craies St. Law).

The term "just" is derived from the Latin word "justus". The word, "just" connotes reasonableness and something conforming to rectitude and justice something requirable and fair. M.A. Rahim and another v. Sayari Bai, AIR 1973 Mad 83,87. The word 'just' denotes equitability, fairness and reasonableness having a large peripheral field. Helen C. Rebollar v. Maharashtra S.R.T.C., (1999) 1 SCC 90, para 28: AIR 1998 SC 3191. The word 'just' occurring in Section 168 of the Act means that the compensation must be just and it cannot be a bonanza; not a source of profit but same should not be a pittance. The expression 'just' denotes equitability, fairness and reasonableness and non-arbitrariness. Divisional Controller KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197, para 15. [Motor Vehicles Act (59 of 1988), S. 168].

Reasonableness may be 'good cause' but it is not necessarily 'just cause'. If a person voluntarily retires on pension, he is getting a substantial financial benefit for himself, and it is not fair or just to the unemployment fund that he should also get unemployment

benefit for the six weeks under the act. Crewe v. Social Security Commissioner, (1982) 2 All ER 745, 749. [Social Security Act, 1975, S.20(1)(a)].

The words 'just cause' in S.263 are exhaustive and not merely illustrative. Merely the failure to fill an inventory or the account within the specified time is not sufficient. It must be established that the person to whom the grant has been made wilfully and without reasonable cause omitted to exhibit them. In Re. T. Arumuga Mudaliar, AIR 1955 Mad 622. [Indian Succession Act (39 of 1925), S.263]. [P. Ramanatha Aiyar's "Advanced Law Lexicon", 2005 Edition, Vol. 3, at pages 2539 and 2540:]

- (iv) 'just' means according to law. [Utility Stores Corporation of Pakistan Ltd v. Punjab Labour Appellate Tribunal (PLD 1987 SC 447) and Shahi Bottlers (Pvt) Ltd v. Punjab Appellate Tribunal (1993 SCMR 1370)]

"Fairly"

- (i) 'fairly' means "equitably, honestly, impartially.... Justly, rightly, with substantial correctness, reasonably...". [Black's Law Dictionary, Revised 4th Edition of 1968, at page 719]
- (ii) 'fairly' means beautifully: neatly: justly: reasonably: plainly: gently: fully: quite: tolerably. [Chambers, 20th Century Dictionary, New Edition 1983 at page 452]
- (iii) 'fair' --"the word conveys some idea of justice or equity in partial free from suspicion or bias; equitable; reasonable; honest; upright; and as applied to the weather, a fair weather is one free from clouds; not obscure"-FAIR, HONEST, EQUITABLE, REASONABLE - 'fairness" enters into every minute circumstance connected with the interest of the parties, and weights them alike for both; honestly is contended with a literal conformity to the law, it consults the interest of one party. An estimate is fair in which profit and loss, merit and demerit with every collateral circumstance is duly weighed; a judgment is equitable which decides suitably and advantageously for both parties; a price is reasonable which does not exceed the limits of reason or propriety. A decision may be either fair or equitable; but the former is said mostly in regard to trifling matters, and the latter in regard to the important rights of mankind. It is the business of the umpire to decide fairly between the combatants, it is the business of the Judge to decide equitably between men whose property is at issue." [P. Ramanatha Aiyar's "Advanced Law Lexicon", 2005 Edition, Vol. 2, at page 1761 and 1762]

A perusal of the above shows that the words "justly", "fairly" and "honestly" have similar shades of meaning. As has been rightly submitted by Mr. Farogh Naseem, these words imply that the Election Commission is under a direct constitutional obligation to exercise all powers invested in it in a bona fide manner, meeting the highest of standards and norms. As a natural corollary, therefore, all discretionary power is also to be exercised and tested against these standards.

W.P.No.195 of 2024

40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in *Election Commission of Pakistan v. Javaid Hashmi and others* (PLD 1989 SC 396), observed that "*(g)enerally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election*". It interpreted that the phrase 'conduct the election' as having "*wide import*" and including all stages *involved in the election process*. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein.

41. The Election Commission may also exercise its powers in anticipation of an ill that may have the effect of rendering the election unfair. In the case titled as *In Re: Petition filed by Syed Qaim Ali Shah Jellani* (PLD 1991 Jour. 41) the Elections Commission exercised its powers under Article 218(3) pre-emptively, by making all necessary arrangements to ensure that a certain class of people would be allowed to vote. This case implies that where a violation of the standards mentioned in Article 218(3) has not as yet taken place, the Election Commission is legally empowered under Article 218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Furthermore, *Mst. Qamar Sultana v. Public at Large* (1989 MLD 360) and *In Re: Complaint of Malpractices in Constituency No. NA-57, Sargodha-V* (supra) both reinforce the argument that the Election Commission is fully empowered by Article 218(3) to make '*such orders as may in its opinion be necessary for ensuring that the election is fair, honest etc*'. These decisions recognize that the Election Commission enjoys broad powers not only to take pre-emptive action but also to pass any and all orders necessary to ensure that the standards of 'honesty, justness and fairness' mentioned in Article 218(3) are met."

5. *Moving further, it is noticed that Article 219 of the "Constitution" prescribes the duties of Election Commission, which reads as under: -*

219. Duties of Commission. The Commission shall be charged with the duty of –

- (a) *preparing electoral rolls for election to the National Assembly, Provincial Assemblies and local governments, and revising such rolls periodically to keep them up-to-date;*

W.P.No.195 of 2024

- (b) organizing and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly;
- (c) appoint Election Tribunals;
- (d) The holding of general elections to the National Assembly, Provincial Assemblies and the local Governments; and
- (e) Such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament);

Provided that till such time as the members of the Commission are first appointed in accordance with the provisions of paragraph (b) of clause (2) of Article 218 pursuant to the constitution (Eighteenth Amendment) Act, 2010, and enter upon their office, the Commissioner shall remain charged with the duties enumerated in paragraphs (a), (b) and (c) of this Article.”

In addition, Chapter-2 Part-VIII deals with Electoral Laws and Conduct of Elections. Prime duty of the Election Commission is thus to ensure free, fair and transparent elections.

6. *In order to amend, consolidate and unify laws relating to the conduct of elections and matters connected therewith or ancillary thereto, the Elections Act (XXXIII of 2017) (hereinafter referred to as “Act, 2017”) was enacted. Chapter V of the “Act, 2017” lays down the procedure for the conduct of elections to the Assemblies. Section 59 is directly related to the matter in issue as it deals with the establishment of Polling Stations for the purpose of election. For ready reference and convenience, same is reproduced below: -*

59. Polling stations.—(1) *Within one week after appointment of Returning Officers, the Commission shall provide, in the prescribed format, a list of proposed polling stations for each constituency to the Returning Officer of that constituency indicating the electoral areas assigned to each polling station and publish the list on its website.*

(2) *The Commission shall, as far as practicable, retain the polling stations established for the preceding election but it may add to or alter the list as may be required to reduce the distance preferably to one kilometer between a polling station and the voters assigned to it.*

(3) *As far as practicable, not more than twelve hundred voters shall be assigned to a polling station and not more than three*

W.P.No.195 of 2024

hundred voters shall be assigned to a polling booth, and reasons for any deviation shall be recorded in writing.

(4) Within fifteen days of the receipt of the list of polling stations, the Returning Officer--

- (a) shall personally verify the proposed polling stations;
- (b) may add to or alter the list as he may deem necessary; and
- (c) shall publish outside his office the preliminary list of polling stations, inviting objections and suggestions, if any, to be filed within twenty-one days of its publication.

(5) Objections and suggestions may be filed with the District Returning Officer--

- (a) by a candidate, with regard to any polling station in his constituency; and
- (b) by a voter, with regard only to the polling station to which he has been assigned.

(6) The District Returning Officer may, after hearing the objections or considering the suggestions, if any filed with him and making such summary enquiry as he may deem necessary, make alterations in the list of polling stations as may be required and shall, at least thirty days before the polling day, publish in the official Gazette and on the website of the Commission the final list of polling stations of each constituency in the district.

(7) The Commission shall determine the date or dates required for completion of the actions mentioned in this section.

(8) The District Returning Officer shall not make any change in the final list of polling stations published in the official Gazette, save in very exceptional circumstances, for reasons to be recorded, with the prior approval of the Commission not later than five days before polling and a copy of such change shall be transmitted to the candidates immediately without loss of any time and after notice to the candidates.

(9) The Returning Officer shall establish in each constituency polling stations according to the final list published under sub-section (6).

(10) A polling station shall be situated in any Government building in the constituency and, where no Government building is available, a polling station may be established in a building owned by a private educational institution registered with the concerned education authorities or an improvised polling station shall be set up on a public property.

(11) A polling station shall not be located in any premises which belongs to or is under the direct or indirect control of a candidate or a political party.

(12) While finalizing the list of polling stations of a constituency, if the District Returning Officer declares a polling station as highly sensitive, the Commission may, in addition to appropriate security measures as may be taken, install or direct any Government to install a surveillance camera in each polling booth of such polling station to record poll proceedings, counting of vote process and preparation of results by the Presiding Officer.

(Underlining supplied for emphasis)

It clearly manifests from the bare reading of the above referred provision that while notifying polling station, the Election Commission, in ordinary circumstances, shall retain the polling stations established for the preceding election. Sub-section (5), however, postulates that a candidate can file objections and suggestions with regard to any polling station in his constituency and a voter with respect to a polling station to which he has been assigned. In terms thereof, respondents No.3 and 4, being voters filed application for change of polling station from Govt. Primary School Allah Dad Khelan Wala to newly established Veterinary Dispensary on Dabb Road, Mianwali on the following grounds-

"---جہاں پر یہ پونگ سٹیشن واقع ہے وہ بلکل دور دراز ایک کونہ ہے اور وہاں آس پاس کے لوگ منصفانہ ووٹنگ میں بھیشہ رکاوٹ ڈالتے ہیں

آس پاس کے لوگوں سے انکی خاندانی دشمنیاں چلی آرہی ہیں جو کسی صورت وہاں اپنا ووٹ کا حق استعمال نہیں کر سکتے اس طرح یہ پونگ سٹیشن بالکل ہی مناسب نہ ہے۔ ہماری گزارش ہے کہ ڈب والا پنچتہ روڈ کے اوپر نیا جانوروں کا ہسپتال بنتا ہے جہاں تمام سہولیات پانی، بجلی چار دیواری وغیرہ موجود ہے یہ عمارت تمام اہمیان علاقہ کے لیے جانا آسان ہے اور سیکورٹی کے حوالے سے بھی بہترین ہے اسی لیے ہمارا پونگ سٹیشن تبدیل کر کے شفاخانہ حیوانات ڈب روڈ نزدیک بیوگ خیلانوالہ بنایا جائے۔"

7. It would not be out of place to mention here that a cross application was also moved by the petitioner, being voter of the constituency resisting the change of polling station. On receipt of objections/suggestions from rival applicants, respondents No.2 requisitioned a report from the Returning Officer of the constituency. It evinces from the record that instead of submitting his report, the Returning Officer sent his recommendation that as there are rival objectors, so matter may be disposed off as per the decision of District Returning Officer i.e. respondent No.2. It would also not be out of

W.P.No.195 of 2024

context to mention here that on receipt of application, a report was also submitted by Assistant Education Officer, Mianwali recommending the retaining of polling station, at Govt. Primary School, Allah Dad Khelan Wala. The respondent No.2, however, proceeded to accede the application of respondents No.3 and 4 through impugned order. The relevant extract from the same is reproduced below: -

“2. The undersigned visited the locations of both Polling Stations. Later on, the applicants others were called for hearing on 15-01-2024 and heard in the presence of concerned RO. The applicants appeared before the undersigned and explained their issues for which they want to change the Polling Station building. The present polling station Govt. Primary School Allah Dad Khelan wala is located in the area where people have tribal conflicts and due to such reasons that vote cast ration is very low. However, the building for which applicants have filed application is located in a neutral area and easy to reachable for all the residents. They have also submitted copy of FIRs as a proof of enmity/conflicts. As both applications are same matter therefore, these will be disposed of with single order. The arguments from both side applicants have been heard in length.

3. In pursuance of directions of Election Commission of Pakistan issued vide No.F.2(1)/2023-Cord-Vol-IX, dated 16.12.2023 in para 2(5), the District Returning Officer can decide such objections after inquiry and due to notice to the objectors, therefore, keeping in view the vote casting ratio, arguments advanced by the parties and the fact that some FIRs of “Murder” and “attempt of murder” were registered against some persons living near GPS Allah Dad Khelan Wala, I am of the considered view that all voters cannot cast their vote without fear of life at the present polling station. Therefore, in order to avoid any untoward incident on polling day, the application of Hakim Khan etc is hereby accepted and the building of the Polling Station Govt. Primary School Allah Dad Khela Wala is hereby swapped to the newly established building of Veterinary Dispensary on Dabb road for the conduct of free and peaceful elections.”

(Underline supplied for emphasis)

It is, thus, apparent from the tenor of the impugned order that the respondent No.2 was mainly influenced with the vote casting ratio and registration of F.I.R’s of murder and attempt of murder against some persons living near Govt. Primary School Allah Dad, Khelan Wala.

8. In order to defend the impugned order, a report is also submitted by respondent No.2 in response to this constitutional petition. In para-4 of parawise comments, three F.I.R’s are mentioned, which relate to the years

W.P.No.195 of 2024

2006, 2018 and 2020 respectively. Needless to observe that if criteria for the establishment or change of polling station is made dependent upon the number of F.I.R's registered in the police station of that area, no polling station can be allowed to subsist. If such a trend is allowed to prevail, then there will be no constituency where a polling station can be established. Registration of only three cases in fourteen years starting from 2006 to 2020 would speak loudly that this part of the world is more peaceful as compared to any other territory.

9. So far second limb of reasons which prevailed upon the respondent No.2 for swapping the notified polling station that there is less vote casting ratio; suffice to observe that respondent No.2 while forming this view was surely oblivious of turn over of the voters in the preceding election where vote casting ratio at the Govt. Boys Primary School, Allah Dad Khelan Wala was more than 50%.

10. There is no cavil to the proposition that conducting of elections and establishment of polling stations is primarily a subject falling within the domain of Election Commission. Needless to mention that establishment of a polling station at a suitable place is one of the steps to ensure fair and transparent voting process. Where once it evinces from the record that there is some grave violation of law in the said process, this Court is vested with the jurisdiction to redress and cure such patent illegalities in exercise of its powers under judicial review.

11. From the naked eyes, it can be observed that respondent No.2 while swapping the polling station Govt. Boys Primary School, Allah Dad Khelan Wala proceeded in a mechanical manner and showing scorn to section 59 of the "Act, 2017" accepted the application of respondents No.3 and 4 through impugned order, which is clearly tainted with illegalities.

12. For the foregoing reasons, this petition is allowed, as a result order dated 15th January, 2024 passed by respondent No.2 is set aside being illegal and unlawful. As a sequel, respondent No.2 is directed to restore the

W.P.No.195 of 2024

polling station at Govt. Boys Primary School, Allah Dad Khelan wala. No order as to costs.

13. *The above are the detailed reasons for short order dated 26.01.2024, which reads as under: -*

“For the reasons to be recorded later, this petition is allowed as prayed for.”

**(MIRZA VIQAS RAUF)
JUDGE**

Approved for reporting.

JUDGE

Zeeshan