

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Writ Petition No. 6729-P/2025.

Date of hearing: **14.10.2025.**

Barrister M. Yaseen Raza Khan, advocate for the petitioners.

Mr. Muhammad Inam Yousafzai, Addl. AG, along with Sadeeq Anjum, Director Anti-Corruption, Farrukh Sair AD, SIW, Anti-Corruption & Sajad Khan, AD, Legal, Anti-Corruption.

Mr. Mohsin Kamran Siddique, advocate, along with M. Arshad, Special Secretary Law, Khurram Shehzad, Addl. DG Law, Syed Nadeem Haider, Addl. DG Election & Samran Jehangir, AD Law.

Mr. Ali Gohar Durrani, advocate for the added respondent.

JUDGMENT

SAHIBZADA ASADULLAH, J.- By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners seek issuance of the writ, with the following prayers: -

It is, therefore, most humbly prayed that on acceptance of this writ petition, this Court may graciously be pleased to;

- i. **Declare that the impugned inquiry and the impugned notice dated 29.08.2025 are illegal, arbitrary, unreasonable, unlawful, without jurisdiction, and void ab initio, as they violate the petitioners' fundamental rights under the Constitution.**
- ii. **Set aside and quash the impugned inquiry and the impugned notices dated 29.08.2025, as being illegal, arbitrary, unreasonable, unlawful, without jurisdiction, and void ab initio.**
- iii. **Direct the respondents No.1 and 2 to immediately cease and desist from any inquiry against the petitioners pertaining to the process of the election.**

2. The factual matrix leading to the filing of the instant writ petition is that the added respondent, namely Mr. Taimur Saleem Khan Jhagra, submitted a complaint to the Director, Anti-Corruption Establishment, Government of Khyber Pakhtunkhwa, Peshawar, alleging corrupt practices committed by certain officials of the Government of Khyber Pakhtunkhwa during the

General Elections, 2024, in respect of nine (09) constituencies of District Peshawar. Upon receipt of the said complaint, the Director, Anti-Corruption Establishment, took cognizance of the matter and initiated Preliminary Inquiry No. 8709, dated 16.07.2025/SIW-IIo. In pursuance of the said inquiry, notices under Section 160 of the Code of Criminal Procedure, 1898, were issued to the petitioners, requiring their attendance for the purpose of recording their statements and obtaining their version in connection with the inquiry proceedings. Feeling aggrieved by the initiation of the inquiry and the issuance of the said notices, the petitioners have invoked the constitutional jurisdiction of this Court through the instant writ petition, seeking the desired relief.

3. The respondents were put on notice to file para-wise comments to the writ petition, which they filed, and opposed the issuance of the desired writ.

4. Arguments heard and the available record perused.

5. The learned counsel for the petitioner, with considerable emphasis, contended that the respondent lacks the requisite locus standi to lodge a complaint before the Anti-Corruption Establishment in respect of acts allegedly performed by the petitioners during the electoral process. It was argued that the Elections Act, 2017, constitutes a complete and self-contained statutory framework governing all matters pertaining to elections, and any deviation therefrom would amount to a departure from the legislative intent and scheme of the statute. It was further submitted that the officials appointed under the Elections Act are deemed to be election officials and that any allegation of misconduct, bribery, or corrupt practice attributed to such officials during the conduct of elections falls exclusively within the jurisdictional domain of the Election Commission of Pakistan. Learned counsel invited the attention of this Court to the role and competence of the

Election Tribunals, asserting that the only lawful forum for adjudicating such disputes is the Election Tribunal, whose findings, if any, are then placed before the Election Commission for taking the matter to its logical conclusion in accordance with law. Reliance was placed on the statutory framework of the Elections Act, 2017, wherein, upon a finding of corrupt practice by the Election Tribunal, it is only the Election Commission of Pakistan that may, in its discretion, direct the initiation of criminal proceedings before the competent court. Hence, in the absence of such authorization, no independent agency, including the Anti-Corruption Establishment, is vested with jurisdiction to assume cognizance or conduct an inquiry. Learned counsel thus maintained that the complaint filed by the respondent is without lawful authority, particularly when the election petition related to the matter is still pending adjudication. Therefore, the entire proceedings initiated pursuant to such complaint are premature, without jurisdiction, and void in the eyes of the law.

5. Conversely, the learned Additional Advocate General, assisted by the learned counsel for the respondent, controverted the above submissions and maintained that the petitioners, once reverted to their parent departments are no more election officials but public servants, and therefore amenable to the jurisdiction of the Anti-Corruption Establishment in respect of any allegation of bribery, corruption, or abuse of official position. It was urged that Section 55 of the Act clearly circumscribes the temporal control of the Election Commission over such officials, which extends only until the publication of the election results in the official gazette. Once that period expires and the officer reverts to his parent department, the supervisory and disciplinary jurisdiction of the Commission ceases, and thereafter, the ordinary law relating to public servants, including the provisions governing the Anti-Corruption Establishment, becomes applicable. It was further submitted that the proceedings presently pending before the Anti-Corruption Establishment are at an exploratory

stage, where no final determination has been made, and therefore, the petitioners' approach to this Court is both premature and misconceived. It was thus prayed that, as neither the petitioner possesses *locus standi* at this stage nor this Court has jurisdiction to interfere in an ongoing inquiry, the instant petition merits dismissal in limine.

6. For the just and proper adjudication of the matter in hand, we deem it expedient, at the very outset, to determine the question of jurisdiction as to which forum is legally competent to take cognizance of allegations pertaining to corruption and corrupt practices committed during the course of elections, and whether any such forum has been expressly or impliedly provided under the statute to probe into such allegations and to fix liability thereupon. Admittedly, the petitioners were performing duties as election officials under the supervision of the Election Commission of Pakistan. The foremost question, therefore, is whether, at the relevant time, he was functioning as a public servant or an officer within

the contemplation of law. Upon a careful examination of the scheme of the Election Act, 2017, it is manifest that the said enactment itself prescribes the procedure and provides for penalties in respect of acts constituting corruption and corrupt practices, not only by the contesting candidates but also by officers and officials engaged in the conduct of elections. When the statute has thus created a complete and self-contained mechanism for inquiry, trial, and punishment, the jurisdiction of all other fora, by necessary implication, stands excluded. The contention that the Anti-Corruption Establishment is vested with jurisdiction on the premise that the petitioners were public servants is misconceived. Once it is established that the alleged acts were committed in connection with the conduct of elections and in discharge of duties assigned under the Election Act, 2017, the only competent authorities to deal with such matters would be the Election Commission of Pakistan and, thereafter, the Election Tribunal constituted thereunder. After the determination of liability in accordance with

law, the matter, if required, may be referred to the District and Sessions Judge for final adjudication, as envisaged under the statutory framework.

7. At the very outset, the learned counsel for the respondent raised preliminary objections regarding the *locus standi* of the petitioners and the competence of this Court to adjudicate upon the legality of the inquiry initiated against them. It was contended that under no circumstances this Court, while exercising jurisdiction under Article 199 of the Constitution, is empowered to set at naught an inquiry lawfully commenced by the competent authority. In order to appreciate the objection so raised, and to determine whether this Court possesses jurisdiction in the matter or whether the inquiry proceedings could, at this stage, be interfered with, we deem it appropriate to first examine the submissions of the learned counsel for the respondents vis-à-vis the locus standi of the petitioners and their recourse to this Court at the present juncture. It is, however, not in dispute that no alternate or efficacious forum has been

provided to the petitioners for the redressal of their grievance. In such circumstances, their grievance can lawfully be examined by this Court while exercising its constitutional jurisdiction. Accordingly, we are of the considered view that this Court is vested with the jurisdiction to entertain and adjudicate upon the instant petition. This Court is fully conscious of the fact that the petitioners were performing their official duties under the control and supervision of the Election Commission of Pakistan, and that the relevant provisions of the Election Act, 2017, clearly delineate the procedure and forum for addressing allegations of misconduct or corrupt practices arising in connection with the conduct of elections. In this backdrop, it becomes imperative to determine whether the respondent department, the Anti-Corruption Establishment, could, in law, proceed with the inquiry, and if so permitted, what consequence or legal effect such proceedings would have upon the position of the petitioners as an accused, as well as upon the election petition

presently pending adjudication before the Election Tribunal.

8. It is of paramount importance for this Court to examine the nature of the allegations levelled by the respondents against the petitioners, not only before the Election Tribunal in the pending election petition but also in the complaint submitted before the Anti-Corruption Establishment. Upon scrutiny of the record, it becomes evident that the allegations raised before both forums are identical in substance and character. Before the Election Tribunal, the respondent seeks to establish, through evidence, that the petitioners engaged in acts of corruption and corrupt practices with the object of having his election declared null and void. Simultaneously, before the Anti-Corruption Establishment, the respondent seeks to substantiate the very same allegations of corruption and corrupt practices, albeit through a different procedural mechanism, with the ultimate aim of using such findings to challenge the validity of the petitioners' election.

This Court finds it rather perplexing that parallel proceedings are being pursued on identical allegations before two different forums. If the Anti-Corruption Establishment is permitted to proceed further, leading to the registration of an FIR and subsequent prosecution of the petitioners, the question naturally arises as to what bearing such proceedings would have on the pending election petition. Would not a conviction or acquittal of the petitioners at the hands of the Anti-Corruption Establishment amount to a prior determination of liability, one that could directly influence, or even prejudice, the proceedings before the Election Tribunal? Allowing such a course of action would, in our considered view, undermine the statutory scheme of the Election Act, 2017, wherein the Election Tribunal has been vested with exclusive jurisdiction to adjudicate upon allegations of corruption and corrupt practices in connection with elections. Permitting the Anti-Corruption Establishment to simultaneously investigate and prosecute the same allegations would not only render the proceedings

before the Election Tribunal redundant but would also erode its efficacy and sanctity, an outcome which could never have been the intention of the legislature.

9. This Court is not inclined to deliver an early knockout to either of the parties through any pronouncement made herein. The object of this adjudication is rather to facilitate the parties in pursuing their respective claims before the forum competent in law, in a manner consistent with the statutory scheme, so that both sides may achieve their legitimate legal objectives through due process. If this Court were to permit either forum to proceed further without first determining the inclusion or exclusion of jurisdiction of the Anti-Corruption Establishment, it would not only create uncertainty in the present case but would also set an undesirable precedent in all similar matters. Such a course would inevitably encourage multiplicity of litigation, lead to conflicting findings by parallel forums, and frustrate the coherent application of the statutory mechanism,

consequences that were neither intended by the legislature nor sanctioned by the relevant statutory provisions governing the field. The doctrine of election is not a novel proposition in law. It is a time-honored principle firmly rooted in the jurisprudence of English Common Law, deriving its force from the established maxims of equity, estoppel, and judicial propriety. Historically, courts of equity discouraged litigants from indulging in **forum shopping**, that is, seeking multiple adjudicatory forums sequentially in the hope of securing a favourable verdict. The development of this doctrine, therefore, was intended to curb abuse of process, avoid conflicting adjudications, and preserve the dignity and sanctity of judicial institutions. This principle has long been encapsulated in the Latin maxim “*qui approbat non reprobatur*”—he who accepts cannot later reject. The doctrine, thus conceived, continues to hold authoritative recognition in contemporary judicial discourse, permeating constitutional, civil, and procedural jurisprudence alike. In the present matter, the record reflects that

the petitioner has already invoked the jurisdiction of the **Election Tribunal**, which is the legally designated forum competent to address the grievance asserted. It is also an admitted position that the said election petition remains sub judice. Having voluntarily elected to pursue a remedy for the same relief before the Tribunal, the petitioner's subsequent initiation of proceedings before the Anti-Corruption Establishment becomes highly questionable. It is a well-settled principle that where a matter is pending adjudication before a competent authority, a parallel remedy seeking **identical relief** cannot simultaneously be pursued before another forum. The peculiarity of the present case further lies in the fact that the petitioner has not merely chosen one forum over another, but now seeks to invoke a forum **not contemplated** under the Elections Act, 2017, thereby demonstrating conduct amounting to forum shopping, an approach consistently disapproved by the superior courts. Consequently, this Court finds no hesitation in holding that litigants cannot be permitted to oscillate between

multiple forums in the search for a favourable outcome. Such practice undermines the fairness of adjudication and the orderly administration of justice.

10. Even if, for the sake of argument, the petitioners are to be regarded as a public servant within the contemplation of law at the time when they were performing their duties as Presiding Officers, the question still arises whether, in such an eventuality, a complaint could competently be instituted before the Anti-Corruption Establishment, particularly when, for all intents and purposes, they were functioning under the direct control and supervision of the Election Commission of Pakistan. This Court is keen to ascertain whether the Election Act, 2017, explicitly delineates the extent of its jurisdiction and, by necessary implication, excludes the jurisdiction of other authorities and tribunals in matters concerning corruption and corrupt practices arising during the conduct of elections. To properly appreciate this pivotal aspect of the case, we deem

it essential to revisit the relevant provisions of the Act, from which the intent of the legislature can be gathered, particularly those sections prescribing penalties, laying down the procedure for inquiry and trial, and specifying the competent authorities for adjudication of such offences. We are to trace the genesis of the confusion that arose within the Anti-Corruption Establishment (ACE) concerning its jurisdiction over matters involving public servants who, while performing election duties, are alleged to have committed acts of misconduct. The confusion primarily centers on whether such public servants, though temporarily deputed to the Election Commission of Pakistan (ECP), remain answerable to the Anti-Corruption Establishment for any alleged misconduct committed during the conduct of elections, or whether the Election Commission alone retains exclusive jurisdiction over them during that period. It is pertinent to mention that the Election Commission of Pakistan is a statutory creation, vested with constitutional and statutory competence to regulate its business, particularly the conduct of elections. In the

discharge of this mandate, it possesses the authority to appoint and control election officials, including Returning Officers and Presiding Officers. The legislative intent behind such empowerment was to ensure the Commission's autonomy and to safeguard the integrity of the electoral process. In furtherance of this intent, the legislature enacted Section 55 of the Elections Act, 2017, which explicitly delineates the powers of the Election Commission to deal with misconduct or illegal acts committed by election officials during the election process. This statutory provision was designed to strengthen the Commission's independent control and to create a self-contained mechanism for the regulation and accountability of officials performing election duties.

11. However, this very provision i.e., Section 55, became the source of confusion for the Anti-Corruption Establishment. The ACE proceeded on the assumption that once the election process concludes and the officials revert to their parent departments, it could exercise jurisdiction

over any alleged misconduct committed during the election. This assumption, however, is misconceived. Had such a wide interpretation been intended, there would have been no necessity for the legislature to enact specific provisions within the Elections Act addressing misconduct and creating an alternative forum for inquiry and redressal. The deliberate legislative inclusion of these provisions signifies that the Election Commission alone retains jurisdiction to address such matters in the first instance. Thus, the confusion that enveloped the Anti-Corruption Establishment is self-created, stemming from a misreading of the statutory framework.

12. We are still anxious to ascertain the legal foundation upon which the Anti-Corruption Establishment assumed jurisdiction to proceed against public servants for offences whose determination has already been assigned to specific forums under the Elections Act, 2017. In order to address this question and to resolve the controversy, particularly regarding the intention of

the Anti-Corruption Establishment and its perceived competence to assume jurisdiction in such matters, we have carefully examined the relevant provisions of the Act. The most pertinent provisions that aid in resolving this controversy are Sections 190, 191, and 193 of the Act. Section 190 is general in nature and encompasses nearly all election-related offences, laying down the procedural mechanism for their cognizance and trial. Section 191, on the other hand, is a special provision that specifically pertains to officials performing duties in connection with an election under the supervisory control of the Election Commission of Pakistan. It defines the scope of offences committed by such officials and delineates the competent forum to deal with them. Thereafter comes Section 193, which expands the procedural mechanism by introducing the concept of “any other authorized person” to whom the Election Commission may delegate powers for initiating or conducting proceedings in certain matters.

13. In order to appreciate the essential aspects of the present controversy, it is imperative to reproduce Section 191 of the Act, so as to examine its true scope, particularly, to determine what offences are covered, what forum is competent to adjudicate them, and what category of offenders falls within its ambit.

Section 191. Prosecution of offences by public officers... (1) No Court shall take cognizance of the offence punishable under section 188, 189 or 195, except upon a complaint in writing, made by order of or under the authority of the Commission.

(2) The Commission shall, if it has reason to believe that any offence specified in sub-section (1) has been committed, cause an enquiry to be made or prosecution to be instituted against the accused person, as it may think fit.

(3) An offence specified in sub-section (1) shall be exclusively triable by the Court of Sessions within the jurisdiction of which the offence is committed.

(4) In respect of an offence specified in sub-section (1), provisions of section 494 of the Code shall have effect as if, after the word and comma “may”, therein, the words “if so directed by the Commission and” were inserted.

14. Subsequently, a comparative reading of Sections 190 and 191 highlights the essential distinction drawn by the legislature and the deliberate restrictions imposed upon particular classes of persons to be tried under each. Finally, Section 193 is to be considered to comprehend the legislative intent behind authorizing other persons to act under the supervision of the Election Commission. Section 191 provides the procedural mechanism governing the manner in which public officers are to be tried for offences committed during the conduct of elections. It is under this section that election officials performing duties under the supervision of the Election Commission can also be proceeded against, particularly when they commit an offence falling within the ambit of Section 188 of the Act. Section 188 makes a direct reference to Section 184, and more specifically to sub-section (c) thereof. Section 184(1)(c), being general in nature, extends its applicability to the election officials when they commit acts constituting electoral offences. Consequently, the same procedural framework impliedly covers cases

involving the petitioners and others similarly placed.

15. In this backdrop, this Court is confident in holding that where offences are committed under the relevant chapter of the Act, whether by public officials or members of the general public, the legislature has provided a comprehensive mechanism and procedure for their prosecution; for general election offences, the applicable provision is Section 190; for offences committed by public officers or election officials, the mechanism is specifically provided under Section 191. Thus, when the Act itself provides distinct and complete procedural mechanisms for both categories of offenders, the assumption of jurisdiction by the Anti-Corruption Establishment becomes untenable. The legislative intent is clear: matters arising out of misconduct or offences committed during the election process are to be dealt with exclusively within the statutory framework of the Elections Act, 2017, under the supervision and control of the Election

Commission of Pakistan. To further fortify the legislative intent, Section 193 of the Elections Act, 2017, introduces the concept of the “authorized person.” This provision empowers the Election Commission to authorize any officer or person to exercise powers and perform functions for the purpose of enforcing the provisions of the Act and dealing with offences thereunder. The inclusion of this section is not merely procedural but substantive in character, reflecting the legislature’s conscious intent to confer exclusive control upon the Election Commission over the initiation and conduct of proceedings arising out of election-related offences. Through this section, the Act ensures that the authority to take cognizance, investigate, or prosecute any election-related offence, whether by an ordinary citizen or a public official deputed for election duties, rests solely with the Election Commission or with a person duly authorized by it. When read conjointly, Sections 190, 191, and 193 create a complete and self-contained mechanism for the determination of all election-related offences. The framework leaves

no room for an external agency, including the Anti-Corruption Establishment, to assume jurisdiction in matters arising from acts or omissions committed by election officials during the conduct of elections. Had the legislature intended that such offences be dealt with under the general anti-corruption laws or by agencies functioning under separate statutory schemes, there would have been no necessity to enact these specific provisions within the Elections Act itself. The deliberate and detailed inclusion of these sections unmistakably demonstrates that jurisdiction over such matters is exclusive to the Election Commission of Pakistan and its duly authorized officers.

16. In our considered view, when the relevant provisions of the Election Act, 2017, are examined in their entirety, no ambiguity remains that the allegations brought against the petitioners pertain exclusively to their conduct and activities while performing duties under the supervision of the Election Commission. Consequently, for all

intents and purposes, the jurisdiction of the Anti-Corruption Establishment stands impliedly excluded. The principle of implied exclusion of jurisdiction was eloquently articulated by Maxwell on the Interpretation of Statutes, wherein it is stated that “where a statute creates a new right or liability and provides a special remedy or procedure for its enforcement, the jurisdiction of ordinary courts and other forums is impliedly excluded.” This principle has consistently been recognized and applied by superior courts in a catena of judgments, both within and outside this jurisdiction. For ease of reference, reliance may be placed upon Union of India v. T.R. Varma (AIR 1957 SC 882), wherein the Honourable Supreme Court of India held that “when a statute creates a right and provides a remedy for its enforcement, the remedy prescribed must be followed and no parallel forum can assume jurisdiction.” The same principle was reiterated in State of Punjab v. Devans Modern Breweries Ltd. (2004) 11 SCC 26, holding that “where a special statute provides a complete code for determination of rights and

liabilities, the jurisdiction of all other authorities is excluded by necessary implication.” (Case Law).

17. Accordingly, we are persuaded to hold that the Anti-Corruption Establishment lacked lawful authority to assume jurisdiction over the acts alleged to have been committed by election officials while performing duties under the supervision of the Election Commission. The proceedings so initiated are therefore without jurisdiction, coram non judice, and of no legal effect. The Election Commission of Pakistan, being the competent statutory forum, shall remain at liberty to proceed in accordance with the provisions of the Elections Act, 2017, if it deems appropriate, against any official or person found to have committed an offence or misconduct during the election process.

18. Accordingly, for the reasons discussed hereinabove, the instant petition stands allowed. Any inquiry, investigation, or proceedings initiated or pending before the Anti-Corruption Establishment in relation to the

petitioners shall stand abated, and the said authority is hereby restrained from undertaking or proceeding with any further action against the petitioners in respect of the subject matter of this petition.

Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court reported as 2024 SCMR 518, titled *Chief Executive Officer NPGCL, GENCO-III, TPS Muzaffargarh v. Khalid Umar Tariq Imran and others*, wherein it was held as under: -

11. It is a well-settled proposition of law that when an aggrieved person intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst the actions or remedies available under the law. The choice to initiate and pursue one out of the available concurrent or co-existent actions or remedy from a forum of competent jurisdiction vests with the aggrieved person. Once the choice is exercised and the election is made then the aggrieved person is prohibited from launching another proceeding to seek relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/ action and or remedy, which in legal parlance is recognized as doctrine of election, which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2), C.P.C.,

principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of res judicata as articulated in section 11, C.P.C. and its explanations.

JUDGE

JUDGE

**Announced.
14.10.2025**

Tariq Jan (DB) Mr. Justice Sahibzada Asadullah, H.J & Mr. Justice Dr. Khursheed Iqbal, H.J.