

From No: HCJD/C-121
ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.458 of 2022

Mr. Shah Muhammad Khan, etc
Versus
Election Commission of Pakistan, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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11-02-2022 M/s Muhammad Ahsan Bhoon, Muhammad Ramzan Chaudhry, Chaudhry Muhammad Ashraf Gujjar, Tajammal Hussain Lathi and Barrister Abdullah Babar Awan, Advocates for the petitioners.
Mr. Saad Hassan, Advocate for respondent no.2.
Mr. Zafar Iqbal, Special Secretary, Election Commission of Pakistan.
Mr M. Arshad, D.G, Law, Election Commission of Pakistan.
Mr. Khurram Shahzad, Additional Director General, Election Commission of Pakistan.
Mr Abdul Hafeez, Director (LGE).
Barrister Adil Khalon, Legal Consultant, ECP.
Mr. Zaigham Anees, L.O, ECP.
Ms. Bushra Rasheed, L.O, ECP.

ATHAR MINALLAH, C.J.- Through this petition, Shah Muhammad Khan, son of Moueen Ullah (hereinafter referred to as the "***Petitioner no.1***") and Mamoon-ur-Rasheed son of Shah Muhammad Khan (hereinafter referred to as the "***Petitioner no.2***") (collectively they shall be referred to as the "***Petitioners***"), have invoked the jurisdiction of the Court assailing order, dated 01.02.2022, passed by the Election Commission of Pakistan (hereinafter referred to as the "***Commission***").

2. Petitioner no.1 was declared as the returned candidate from the constituency of PK-89 Bannu-III and, pursuant thereto, he was notified as a member of the Provincial Assembly of Khyber Pakhtunkhwa. He is affiliated with the political party Pakistan Tehreek-e-Insaf (hereinafter referred to as "**PTI**"). After PTI had formed the government in the province of Khyber Pakhtunkhwa, Petitioner no.1 was inducted as a member of the provincial cabinet. He was holding the portfolio of Minister of Transport when proceedings were initiated by the Commission and, pursuant thereto, the impugned order was passed.

3. Petitioner no.2 is Petitioner no.1's son and he was one of the candidates contesting the elections for the office of Chairman, Tehsil Baka Khel. The Commission had notified the election schedule and polling was to take place on 19.12.2021. However, a night before a joint report was sent by some of the Returning Officers to the District Returning Officer. It was reported that grave acts of violation of the election code were committed by the Petitioners. It was reported that polling material was forcibly taken away and officials had also been abducted. Reports were sent by the District Returning Officer and the District Police Officer. The latter, in his report dated 21.12.2021, had described the detestable conduct of the Petitioner no. 1 who was holding the public office of Minister of Transport.

4. After conducting a preliminary enquiry, the Commission postponed the polling and ordered re-polling on 13.02.2022. Complaints were also received by the Commission and thus proceedings were initiated under the Election Act 2017 (hereinafter referred to as the "**Act of 2017**") read with the enabling provisions of the Constitution.

5. It is obvious from the impugned order that the Commission had sought reports from the relevant officials, who were also heard during the proceedings. Criminal cases were registered. The Incharge Police Station (SHO) Baka Khel had recovered some of the ballot boxes and other polling material which had been forcibly taken from the polling stations. It is alarming that one of the members of the cabinet affiliated with the political party in power was involved in the commission of grave acts, including threatening and intimidating the officials who were performing their duties. The relevant portion of the impugned order is reproduced below:-

"11. During hearing, DPO, Bannu submitted his 3rd detailed investigation report in the matter before the Commission, which was placed on record. In his detailed report, DPO, inter alia, mentioned that during course of investigation and raids to apprehend the accused, Mr. Khursheed Khan, SHO, Police Station Baka Khel received phone calls on his mobile number from Shah Muhammad Wazir and his brother Gul Baz Khan

who threatened him of dire consequences and directed him not to arrest any of his relative or supporter, on which, a proper report has been entered in Daily Dairy number 14 dated 20.12.2021 in Police Station Baka Khel. The call voice recording clips along with video shared by Mohabat Khan on social media were sent to Forensic Science Laboratory (FSL), report of which has been received and placed on record. The report opined that no tampering/editing was found in the said video files. Mr. Shah Muhammad Khan has been charged in case FIR No.481 dated 19.12.2021, on account of threatening the SHO, Baka Khel and on trying to influence the investigation of case by adding additional sections i.e. 384-506-411 of Pakistan Penal Code and section 25 of the Telegraph Act, to the FIR.”

6. The Commission had also constituted an inquiry committee, and its report was placed on record. The summary proceedings were conducted by the Commission in a fair, transparent and procedurally correct manner. During the summary proceedings sufficient material was brought on record to establish the unbecoming conduct of a member of the cabinet and his close relatives in order to manipulate and influence the election process through corrupt practices. Their involvement in violating the provisions of the Act of 2017 and the prescribed code of conduct is obvious from the impugned

order. The latter had threatened and intimidated officials who were performing their duties. There is no force in the argument of the learned counsel for the Petitioners that the Commission could not have disqualified Petitioner no. 2 on the basis of summary proceedings.

7. In a recent opinion of the august Supreme Court, reported as **PLD 2021 SC 825**, titled "Reference No.01 of 2020", it has been observed that the Election Commission has all the powers to ensure that the elections were organized and conducted honestly, fairly, in accordance with law and to guard against corrupt practices. It has been further observed that it is the constitutional mandate of the Commission, under Article 218, and other enabling provisions of the Constitution to take all possible measures to fulfill its solemn duty. It has been held in the judgments reported as "Workers Party Pakistan through General Secretary vs. Federation of Pakistan" **PLD 2013 SC 406** and "Workers Party Pakistan through Akhtar Hussain Advocate, General Secretary vs. Federation of Pakistan" **PLD 2012 SC 681** that the Commission was responsible to arrange, organize and conduct elections honestly, fairly and to guard against corrupt practices. In the latter judgment, the apex Court has emphasized that the Commission was under a direct constitutional obligation to exercise all powers vested in it in a bonafide manner, meeting the highest standards and norms. Thus, as a corollary, all discretionary powers were also to be exercised and tested against such standards. It has been further emphasized that a constitutionally independent and

empowered Election Commission was a cornerstone of the parliamentary system of governance and the democratic set up. Notably, in the case titled "Ejaz Ahmed Sindhu vs. Election Commission of Pakistan through Chief Election Commissioner, Islamabad" **2018 SCMR 1367** it has been held and observed that the Election Commission is a Constitutional body and unless it is shown that the jurisdiction and discretion exercised by it is illegal, malafide, manifestly arbitrary or unjustified, its working and decisions should not be interfered with. It would also be relevant to refer to the observations made by the apex Court in the case titled "Syed Mehmood Akhtar Naqvi vs Federation of Pakistan" **2013 SCMR 1** that for fair elections, the Election Commission required such officers/officials whose service was fully protected so that they do not succumb to administrative and political pressures.

8. The impugned order, dated 01.02.2022, has been carefully perused in the light of the above principles and laws enunciated by the august Supreme Court. Except for paragraph 25 (a) of the impugned order, the Court is satisfied that the Commission has not exercised its powers and discretion in an illegal, malafide or manifestly arbitrary or unjustified manner. Petitioner no.1 was a returned candidate and, pursuant thereto, he was notified as a member of the Provincial Assembly. Despite his shockingly deplorable conduct established during the summary proceedings before the Commission, he could not have been disqualified from holding the public office as member of the Provincial Assembly. On the

other hand, Petitioner no.2 was a candidate and, to his extent, the Commission was empowered to disqualify him from contesting the elections. The Court is satisfied that the disqualification of Petitioner no.2 as a candidate to contest the election for the office of Chairman, Baka Khel was justified and in conformity with the obligation of the Commission to ensure a fair, transparent process of election and to guard against corrupt practices.

9. The Court acknowledges the Commission's efforts to fulfill its constitutional obligations by ensuring that the sanctity of the election process is not breached. The Court also recognizes the sense of duty displayed by the officials posted in Baka Khel, particularly the SHO. Their statements before the Commission, which had exposed the intolerable conduct of a public office holder i.e. a member of the cabinet, was unusual in the bureaucratic culture that has regrettably developed over the years. There was no reason whatsoever for them to have misstated the facts. The Commission was required to form an opinion on the touchstone of the test of balance of probabilities, rather than meeting the standards set out for proving guilt in criminal proceedings. As already noted, the Commission is a Constitutional body and its findings cannot be interfered with unless it can be demonstrably shown that the jurisdiction and discretion exercised by it was illegal, malafide, manifestly arbitrary or unjustified. Even otherwise, a High Court while exercising jurisdiction under Article 199 of the Constitution cannot substitute the findings of the Commission

arrived at after conducting summary proceedings in accordance with law. As already noted, the Petitioner no. 1 could not have been disqualified as a member of the Provincial Assembly otherwise as provided under the law. The Commission was not vested with jurisdiction to do so under the Act of 2017. The procedure for disqualification of a member of the Provincial Assembly has been prescribed under Article 113 read with Article 63(2) of the Constitution. Likewise a notified member may also be disqualified pursuant to the declaration of a competent court.

10. The conduct of Petitioner no. 1 was indeed not expected from a public office holder affiliated with a political party. It is an obligation of the political party i.e. PTI to probe into the conduct of Petitioner no. 1 and take appropriate action to set an example so that no one in future attempts to erode the sanctity of the election process and the ballot. The political parties have a crucial role in ensuring that elections are held in a fair, transparent and credible manner. The Commission is also not bereft of jurisdiction to initiate proceedings against a political party which appears to be complacent, directly or indirectly, in attempts to influence and manipulate the election process through grave acts of corrupt practices, as was the case in the matter in hand. The Commission shall ensure that the diligently dutiful officials who had made statements during the summary proceedings are protected from reprisals. Moreover, the Commission may also take appropriate measures to ensure that the investigations in the registered criminal

cases are concluded without interference or political influence. The conduct of the Petitioners was intolerable and they ought to be held accountable by the political party with which they are affiliated. The Commission may also bring the conduct of Petitioner no. 1 to the attention of the Chief Executive of the Province of Khyber Pakhtunkhwa for appropriate action in accordance with the law. It is noted that members of the cabinet are collectively responsible to the people. The purpose of their existence is solely to serve the people in their best interest. A person elected by the people as a law maker grossly undermines the rule of law when the latter opts to take the law into his/her own hands. The abduction of officials performing their duties or threatening and intimidating them by a person no less than a member of the cabinet is the worst form of undermining and challenging the writ of the State and it must not go unpunished.

11. The above are the reasons for the short order, dated 11.02.2022, which is reproduced as follows:-

"For reasons to be recorded later, the petition is partially allowed to the extent of setting aside paragraph 25(a) of the impugned judgment, dated 01-02-2022, whereby Mr Shah Muhammad Khan was disqualified from holding the public office of Member of the Provincial Assembly of Khyber Pakhtunkhwa. In so far as the impugned judgment, dated 01-02-2022, to the extent of paragraphs

25(b),(c),(d) and (e) is concerned, no legal infirmity has been found requiring interference by the Court while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned judgment to the extent of sub paragraphs (b),(c),(d) and (e) of paragraph 25 is upheld and, therefore, to this extent the petition stands dismissed."

(CHIEF JUSTICE)

*Asif Mughal/**

Approved for reporting.