

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2869/2019

Alam Dad Laleka

Versus

Election Commission of Pakistan

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|-------------------------------|----------------------------|---|
|-------------------------------|----------------------------|---|

06.08.2019

Raja Aleem Khan Abbasi, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Alam Dad Laleka, impugns the orders dated 10.06.2019 and 01.07.2019, passed by the Election Commission of Pakistan ("E.C.P.") in Case No.F.1(4)/2017-MW (Bahawalnagar).

2. The petitioner had contested the election to the National Assembly from constituency NA-167 (Bahawalnagar-II) and had won by securing 91,349 votes. The runner up, Mian Mumtaz Ahmed Matayana, is said to have secured 49,526 votes.

3. A few days prior to the elections, the Deputy Commissioner/District Monitoring Officer, Bahawalnagar passed an order dated 20.07.2018, whereby a fine of Rs.50,000/- was imposed on the petitioner after finding him guilty of violation of the Code of Conduct for General Elections-2018. The petitioner had been accused for soliciting the support and assistance of one Ramzan Joiya, Sub-Engineer, Public Health Engineering Department.

4. On the election day i.e. 25.07.2018, another order was passed by the Deputy Commissioner/District Monitoring Officer

Bahawalnagar, whereby the case against the petitioner was sent to the Regional Election Commissioner, Bhawalpur for necessary action under Section 234(4) of the Election Act, 2017. The petitioner had also been alleged to have violated clauses 53 and 54 of the Code of Conduct for the General Election-2018.

5. On the basis of the said reference, the E.C.P., on 08.03.2019, issued a show cause notice to the petitioner. The petitioner was called upon to show cause notice as to why proceedings for his disqualification as a Member of the National Assembly should not be initiated against him.

6. The above-mentioned order dated 20.07.2018 passed by the Deputy Commissioner/District Monitoring Officer, Bahawalnagar, and the show cause notice dated 08.03.2019 issued by the E.C.P. were assailed by the petitioner in Writ Petition No.2681/2019 filed before the Hon'ble Lahore High Court, Bahawalpur Bench. Vide interim order dated 05.04.2019, the Hon'ble Lahore High Court suspended the operation of the said order dated 20.07.2018. On 22.04.2019 and 27.05.2019, the operation of the said interim order was extended.

7. The proceedings before the E.C.P. pursuant to the show cause notice dated 08.03.2019 were adjourned on several occasions. However, on 09.05.2019, the E.C.P. passed the following order;

“Ms. Sadaf Sehar, learned counsel for the respondent present. Copy of the order of the High Court is produced. Needs consideration as to whether the Hon'ble High court can

invoke appellate powers under Article 199 of the Constitution. Case to come up for consideration and orders on 20.05.2019.”

8. Subsequently, vide order dated 10.06.2019, the E.C.P. turned down the petitioner's request to adjourn the proceedings *sine die* until the final disposal of Writ Petition No.2681/2019 before the Hon'ble Lahore High Court. Vide order dated 01.07.2019, the E.C.P. directed the petitioner to finalize the case from the Hon'ble Lahore High Court, otherwise E.C.P. would proceed in the light of the said order dated 09.05.2019. The said orders dated 10.06.2019 and 01.07.2019 had been assailed by the petitioner in the instant writ petition.

9. Learned counsel for the petitioner submitted that the petitioner had not been afforded an opportunity of hearing by Deputy Commissioner/District Monitoring Officer, Bahawalnagar before passing the order dated 20.07.2018 whereby a fine was imposed on the petitioner; that the E.C.P. was bound under Article 201 of the Constitution to pay due regard to the interim order passed by the Hon'ble Lahore High Court in Writ Petition No.2681/2019; that the E.C.P. could not proceed with the matter pursuant to the show cause notice dated 08.03.2019 despite an interim order passed by the Hon'ble Lahore High Court; and that the Hon'ble High Court, in exercise of the jurisdiction under Article 199 of the Constitution, can set-aside an order passed by the E.C.P.

10. Learned counsel further submitted that since the impugned orders dated 10.06.2019 and 01.07.2019 were passed within the jurisdiction of this Court, and since the E.C.P. has its headquarter in Islamabad, this Court has ample jurisdiction to entertain and decide the instant writ petition. Learned counsel for the petitioner prayed for the writ petition to be allowed.

11. I have heard the contentions of learned counsel for the petitioner and have perused the record with his able assistance.

12. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 8 above, and need not be recapitulated.

13. The vital question that needs to be determined is whether this Court ought to interfere in the impugned orders which have been passed by the E.C.P. pursuant to the show cause notice dated 08.03.2019, which has already been challenged by the petitioner in Writ Petition No.2681/2019 before the Hon'ble Lahore High Court. The thrust of the petitioner's argument was that since the Hon'ble Lahore High Court had passed an interim order in the said writ petition, the E.C.P. could not proceed with the case against the petitioner pursuant to the said show cause notice.

14. There is no doubt that the impugned orders dated 10.06.2019 and 01.07.2019 have been passed by the E.C.P. within the territorial jurisdiction of this Court, and that this Court has the jurisdiction to issue a writ of *certiorari* with respect to the orders

passed by the E.C.P in view of the law laid down by the Hon'ble Supreme Court in the case of “Salahuddin Tirmizi Vs. Election Commission of Pakistan” (PLD 2008 SC 735).

However, as regards the case at hand since the petitioner has challenged the orders passed by the E.C.P. in proceedings pursuant to show cause notice dated 08.03.2019, which notice has admittedly been assailed by the petitioner before the Hon'ble Lahore High Court in Writ Petition No.2681/2019, and since the petitioner is seeking an order to stay the proceedings before the E.C.P. on the strength of interim orders passed by the Hon'ble Lahore High Court in the said petition, propriety demands that this Court ought not to interfere in the proceedings before the E.C.P., especially when there is nothing preventing the petitioner from challenging E.C.P.'s orders dated 10.06.2019 and 01.07.2019 before the Hon'ble Lahore High Court which is already seized of the matter. A litigant who challenges a show cause notice before a High Court of one Province cannot be permitted to challenge orders passed in the proceedings pursuant to the show cause notice before in other High Court, even if both the High Courts have concurrent jurisdiction over the matter. The distinguishing feature between the case at hand and the case of “Salahuddin Tirmizi Vs. Election Commission of Pakistan” (Supra) was that in the latter case the orders passed by the E.C.P. with respect to an election in the erstwhile North-West Frontier Province

were challenged before this Court and no other High Court. It was in such circumstances that the Hon'ble Supreme Court held that this Court as well as the Hon'ble Peshawar High Court would have concurrent jurisdiction with respect to orders passed by the E.C.P. Furthermore, it was held that such concurrent jurisdiction was *“subject to the rule of propriety according to which a High Court having jurisdiction in a matter if has exercised such jurisdiction, the other High Court, which has also jurisdiction in the matter may restrain itself from exercising its jurisdiction.”*

15. In view of the above, I find the instant petition not to be maintainable, and therefore, the same is **dismissed in-limine.**

(MIANGUL HASSAN AURANGZEB)
JUDGE

M.A.Baig.

APPROVED FOR REPORTING