

Form No: HCJD/C-121  
ORDER SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No.819/2022

Muhammad Tufail

Versus

Election Commission of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	31-03-2022	Mr Atta Ullah Kundi, Advocate for petitioner. Mr Muhammad Farooq, Mirza Waqas Qayyum, Mr M. Nisar Khattak, Advocates for respondents. Ms Bushra Raheel, Law Officer, ECP.

Athar Minallah, C.J.- The petitioner has invoked the constitutional jurisdiction of the Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, assailing order, dated 02-03-2022, whereby recount has been ordered ~~on~~ polling station no.71.

2. The learned counsel for the petitioner, on the last date of hearing, had drawn the attention of the Court to sub-section (6) of section 95 of the Elections Act, 2017 (*hereinafter referred to as the 'Act of 2017'*), in support of his contention that after the consolidation proceedings have been

concluded, the learned Election Commission of Pakistan (*hereinafter referred to as the 'Commission'*) is no more vested with power and jurisdiction to order a recount. Section 95(6) is reproduced as follows.-

*"The Commission may, before conclusion of the consolidation proceedings, for reasons to be recorded, direct the Returning Officer to recount the ballot papers of one or more polling stations."*

In the case in hand, it is an admitted position that consolidation proceedings were concluded before the learned Commission had passed the impugned order.

3. The learned counsels for the respondents have argued that sections 4, 8, 9 and 142 of the Act of 2017 are to be read together so as to interpret sub-section (6) of section 95. This argument is misconceived because the language of sub-section (6) of section 95 of the Act of 2017 is unambiguous and if the argument of the learned counsels is accepted, then it would amount to

declaring the provision as redundant. It is settled law that redundancy cannot be attributed to the legislature. Reliance is placed on "*Messrs Master Foram Pvt. Ltd. and 07 others versus GOP through Secretary, M/O Finance and 02 others*" [PLD 2005 SC 373], "*Shahid Nabi Malik and another versus Chief Election Commissioner Islamabad and 07 others*" [PLD 1997 SC 32], "*Messrs Karachi Steam Navigation Company etc versus Messrs Abdul Rahman-Abdul Gani*" [PLD 1962 SC 90], "*Dr. Raja Aamer Zaman versus Omar Ayub Khan and others*" [2015 SCMR 1303], "*District Bar Association, Rawalpindi and others versus FOP and others*" [PLD 2015 SC 401] and "*Collector of Sales Tax and Central Excise (Enforcement) and another versus Messrs Mega Tech Pvt. Ltd.*" [2005 SCMR 1166]

4. In response to a query of the Court, the learned counsels for the parties have informed that tribunals have been duly notified so as to adjudicate upon election disputes. The above reproduced provision is unambiguous and, therefore, the learned Commission was not empowered to order a recount once the consolidation proceedings have been concluded.

5. For the above reasons, the petition is allowed and the impugned order, dated 02-03-2022, is hereby set aside. However, the parties would be at liberty to avail remedies in accordance with law, inter alia, by filing their grievances before the notified tribunals.

(CHIEF JUSTICE)

Luqman Khan/\*