

## **JUDGMENT SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**W.P. No. 2377/2019.**

**Mir Akbar Askani**

***Versus***

**Election Commission of Pakistan, etc.**

**Petitioner by:** Mr. Wasim Sajjad, Mr. Muhammad Javed Iqbal Kasi, Barrister Muhammad Hassan Alam and Mr. Idrees Ashraf, Advocates.

**Respondent No.1 by:** Mr. Sana Ullah Zahid, Advocate.

**Respondent No.3 by:** Mr. Muhammad Riaz Ahmed, Advocate.

**Date of Decision:** 19.08.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this Writ Petition, the petitioner has assailed the order dated 20.06.2019, passed by Election Commission of Pakistan, whereby application for transfer of Election Petition No.33/2018, U/S 139 of Election Act, 2017 has been turned down.

2. Learned counsel for the petitioner contends that Election Tribunal seized with the matter at Baluchistan Quetta has recused himself from hearing the Election Petition No.33/2018 titled Muhammad Asghar Vs. Mir Akbar Askani, etc. but despite the said order of the Election Tribunal, the Election Commission is not ready to transfer the election petition to any other tribunal for hearing which itself is violation of principle of fair trial.

3. Conversely, learned counsel for respondent No.3/contesting rival party has put appearance and submits affidavit and conceded the proposition raised before this Court with request that instant matter may be remanded to ECP who shall pass speaking order for transfer of the election petition to some other tribunal in Baluchistan within 15 days.

4. Learned counsel for respondent No.1/ECP put appearance and contends that instant writ petition is not maintainable in terms of Section 236 of the Election Act, 2017; that order assailed before this Court in constitutional jurisdiction does not qualify the requirement of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

5. Arguments heard, record perused.

6. Perusal of record reveals that election dispute of PB-45 Kech-4 regarding general election has been raised in Election Petition No.33/2018 titled Muhammad Asghar Vs. Mir Akbar Askani, etc. and same was under adjudication before Election Tribunal Baluchistan Quetta, however, during the course of proceedings Election Tribunal made a reference for transfer of election petition to some other Tribunal U/S 139 of the Election Act, 2017, however, Election Commission of Pakistan vide its order dated 20.06.2019 has turned down the request and directed the Election Tribunal seized with the matter to continue the hearing and pass the final order.

7. Learned counsel for the petitioner contends that when any Hon'ble Judge recuse himself or refuse to hear the case, the matter shall not be placed before the same Court, Judge or Tribunal which will cause a technical defect for the said Bench, Tribunal, Court or Judge and such order of the ECP to compel the Election Tribunal to decide the case against his personal wishes or choice amounts to negation of the principle of fair trial. All the Courts and Tribunals are independently exercising their powers and cannot be compelled to decide any such question or proceedings against their personal choice.

8. The contesting rival party has already conceded the request of the petitioner and submitted no objection, subject to condition that election dispute is an old matter which requires an early adjudication, therefore, objection raised by ECP does not succeeded on merit as propriety demands that when one party lost their faith upon some tribunal or Court or Presiding Officer, Judge or Court

recuse himself, the matter shall not be placed before the said tribunal or the Court, therefore, the instant writ petition is allowed, matter shall be placed before the ECP to pass appropriate direction for transfer of Election Petition No.33/2018 titled Muhammad Asghar Vs. Mir Akbar Askani, etc. within 15 days.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid