

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**  
Justice Qazi Faez Isa, CJ  
Justice Naeem Akhtar Afghan  
Justice Aqeel Ahmed Abbasi

**Civil Petitions No. 1573, 1673, 1729, 1767 and 2433 of 2024**  
*[Against the judgments dated 05.03.2024, 16.04.2024, 24.04.2024 and 15.05.2024 of the Lahore High Court, Lahore and Lahore High Court, Bahawalpur Bench passed in Writ Petitions No. 1333, 16416, 19091 and 23249/24 and ICA No. 29/24 respectively]*

*Abdul Rehman Khan Kanju.*  
*In CPs No.1573 and 1673/24*

*Azhar Qayyum Nahra.*  
*In CP No.1729/24*

*Zulfiqar Ahmed.*  
*In CP No.1767/24*

*Rana Muhammad Arshad.*  
*In CP No.2433/24*

... *Petitioners*

*Versus*

*Election Commission of Pakistan through its  
Secretary, Islamabad and others.*  
*In CP Nos. 1573, 1673 and 1767/24*

*Ch. Bilal Ejaz and others.*  
*In CP No.1729/24*

*Muhammad Atif and others.*  
*In CP No.2433/24*

... *Respondents*

**For the Petitioners:**  
*In CPs No.1573 and 1673/24*

Mr. M. Shahzad Shaukat, ASC,  
assisted by Raza-ur-Rehman, AHC.

*In CP No.1729/24*

Mr. M. Ahsan Bhoon, ASC and  
Mr. Waqas Ahmed Mir, ASC.

*In CP No.1767/24*

Mr. M. Umer Riaz, ASC.

*In CP No.2433/24*

Mr. Taimoor Aslam Khan, ASC and  
Syed Rifaqat Hussain Shah, AOR.

**For the Respondents:**  
*For respondent No. 3 in CP No.1573/24*

Mr. Hamid Khan, Sr. ASC and  
Mr. Ajmal Ghaffar Toor, ASC,  
assisted by Mr. Haider Bin Masud, Adv.

*For respondent No. 3 in CP No.1673/24*

Mr. Hamid Khan, Sr. ASC,  
Mian Abdul Rauf, ASC and  
Mr. Waqar Rana, ASC.

<i>For respondent No. 1 in CP No.1729/24</i>	Sh. Usman Karim-ud-Din, ASC and Mr. Arshad Nazir Mirza, ASC.
<i>For respondent No. 4 in CP No.1767/24</i>	Mr. M. Ahmed Pansota, ASC.
<i>For respondent No. 1 in CP No.2433/24</i>	Mr. M. Taufiq Asif, ASC.
For ECP: <i>In all cases</i>	Mr. M. Arshad, DG (Law), ECP and Mr. Falak Sher, Legal Consultant.
Dates of Hearing:	03.07.2024, 08.07.2024, 11.07.2024 and 12.07.2024.

### **ORDER**

**Qazi Faez Isa, CJ.** These Civil Petitions for Leave to Appeal (**‘CPLAs’** or **‘Cases’**) arise out of the general elections held throughout Pakistan on 8 February 2024. Four of these Cases are in respect of three different National Assembly constituencies (CPLAs No. 1573, 1673, 1729 and 1767 of 2024; the first two are in respect of the same constituency) and one is in respect of a Provincial Assembly constituency (CPLA No. 2433 of 2024).

2. Section 95(5) of the Elections Act, 2017 (**‘the Elections Act’**) stipulates that when the margin of victory between the returned candidate and the runner up candidate is less than five percent of the total votes polled in the constituency or eight thousand votes in the case of a National Assembly constituency and four thousand in the case of a Provincial Assembly constituency then, before the commencement of the consolidation proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request to challenge in writing is made to that effect by a contesting candidate or his election agent.

3. It is an admitted position that the difference in the margin of victory between the returned candidates and the runner up candidates in these Cases was less than the stipulated percentile/number. It is also admitted that in respect of three of the constituencies applications to recount the ballot papers were submitted on 9 February 2024 and in respect of one on 10 February 2024. However, the contesting respondents (the petitioners before the High Court) contend that the consolidation proceedings had already commenced, or had concluded, when the applications seeking recount of ballot papers were submitted.

4. The petitioners before the High Court (who are the contesting respondents herein) had invoked the constitutional jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**). They had challenged the recounting of the ballot papers which, pursuant to the petitioners' applications seeking recount, had been allowed. They had also challenged the notifications issued by the Election Commission of Pakistan (**'the Commission'**) pursuant to the recount. The learned Judges of the High Court allowed the writ petitions and held that the ballot papers could not be recounted.

5. It would be appropriate, for ease of reference, to reproduce the provisions of the Elections Act referred to in the impugned judgments and also referred to by the learned counsel, which respectively were sections 8, 9, 92, 95 and 98 of the Elections Act, as under:

**'8. Power of Commission to ensure fair election.** Save as otherwise provided, the Commission may-

- (a) stop the polls at one or more polling stations at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election;
- (b) review an order passed by an officer under this Act or the Rules, including rejection of a ballot paper; and
- (c) issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of this Act and the Rules.'

**'9. Power of the Commission to declare a poll void.** (1) Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such enquiry as it may deem necessary, the Commission is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as have materially affected the result of the poll at one or more polling stations or in the whole constituency including implementation of an agreement restraining women from casting their votes, it shall make a declaration accordingly and call upon the voters in the concerned polling station or stations or in the whole constituency as the case may be, to recast their votes in the manner provided for bye-elections.

Explanation. If the turnout of women voters is less than ten percent of the total votes polled in a constituency, the Commission may presume that the women voters have been restrained through an agreement from casting their votes and may declare, polling at one or more polling stations or election in the whole constituency, void.

(2) Notwithstanding the powers conferred on it by sub-section (1), the Commission may order filing of complaint under this Act before a court of competent jurisdiction against persons who entered into the agreement referred to in sub-section (1).

(3) Notwithstanding the publication of the name of a returned candidate under section 98, the Commission may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the Commission does not finally dispose of a case within the said period, the election of the returned candidate shall be deemed to have become final, subject to the decision of an Election Tribunal on an election petition, if any.

(4) While exercising the powers conferred on it by sub-section (1), the Commission shall be deemed to be an Election Tribunal to which an election petition has been presented and shall, notwithstanding anything contained in Chapter IX, regulate its own procedure.

(5) Any person aggrieved by a declaration of the Commission under this section may, within thirty days of the declaration, prefer an appeal to the Supreme Court.'

**'92. Announcement of provisional results.** On receipt of the Results of the Count from all Presiding Officers of a constituency, the Returning Officer shall forthwith prepare and announce provisional Consolidated Statement of Results of the Count of the constituency (excluding postal ballots) in the prescribed manner, in the presence of such contesting candidates, their election agents or authorized observers as may be present, affix a copy of the provisional Consolidated Statement of Results signed by him at a conspicuous place in his office and send a copy thereof to the Commission.'

**'95. Consolidation of results.** (1) Immediately after announcement of provisional results, the Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place fixed for the consolidation of the results, and, in the presence of such of the contesting candidates and election agents as may be present, consolidate in the prescribed manner the Results of the Count furnished by the Presiding Officers, including therein the postal ballots received by him before the time fixed for the consolidation of results.

Provided that presence of not more than one agent of each candidate shall be allowed.

(2) Before consolidating the Results of the Count, the Returning Officer shall examine the ballot papers excluded from the count by the Presiding Officer and, if he finds that any such ballot paper should not have been so excluded, count it as a ballot paper cast in favour of the contesting candidate for whom the vote has been cast.

(3) The Returning Officer shall also count the ballot papers received by him by post in such manner as may be prescribed and include the votes cast in favour of each contesting candidate in the Consolidated Statement except those which he may reject on any of the grounds mentioned in section 90.

(4) The ballot papers rejected by the Returning Officer under subsection (3) shall be mentioned separately in the consolidated statement.

(5) Before commencement of the proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made to that effect by a contesting candidate or his election agent and

- (a) the margin of victory between returned and runner up candidates is less than five percent of the total votes polled in the constituency or eight thousand votes in case of National Assembly constituency and four thousand votes in case of a Provincial Assembly constituency, as the case may be, whichever is less; or
- (b) the number of votes excluded from the count by the Presiding Officer are equal to or more than the margin of victory:

Provided that the Returning Officer shall recount only once.

(6) The Commission may, before conclusion of the consolidation proceedings, and after notice to the contesting candidates for reasons to be recorded, direct the Returning Officer to recount the ballot papers of one or more polling stations.

(7) If there is a difference between the Results of the Count received from the Presiding Officers and the results of the recount, the Returning Officer shall record the difference and details thereof:

Provided that where the Returning Officer has recounted the votes under sub-section (5) or sub-section (6), the consolidation proceedings shall be completed within-

(a) seven days after the polling day in the case of elections to the National Assembly;

(b) five days after the polling day in the case of elections to a Provincial Assembly.

(8) The Returning Officer shall, within twenty-four hours after the consolidation proceedings, send to the Commission signed copies of the Consolidated Statement of the Results of the Count and Final Consolidated Result together with Results of the Count and the Ballot Paper Account, as received from the Presiding Officers, and shall retain copies of these documents for record.

(9) After consolidation of results, the Returning Officer shall give to such contesting candidates and their election agents and accredited observers as are present during the consolidation proceedings a copy of the Consolidated Statement of the Results of the Count and the Final Consolidated Result sent to the Commission against proper receipt.

(10) On receipt of documents under sub-section (8), the Commission shall, within fourteen days from the date of the poll, publish the documents on its website.'

**'98. Declaration of results.** (1) On receipt of the Final Consolidated Result from the Returning Officer, the Commission shall, within fourteen days from the date of the poll, publish in the official Gazette the name of the contesting candidate who has received the highest number of votes and stands elected.

(2) The Commission shall also publish in the official Gazette the name of each contesting candidate and the total number of votes received by him as in the Final Consolidated Result.

(3) Every returned candidate shall, within ten days from the poll of an election, submit a return of election expenses under section 134 and the Commission shall not notify in the official Gazette the result of a returned candidate who fails to submit his return of election expenses.

(4) The Commission shall place the documents mentioned in sub-sections (1) and (2) on its website within two days from the date of the publication of the name of the returned candidate in the official Gazette.'

6. Reference was also made to Articles 218(3), 219(d) and (e) and 225 of the Constitution, which are reproduced hereunder:

**‘218.** (3) It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.’

**‘219.** The Commission shall be charged with the duty of

- (d) the holding of general elections to the National Assembly, Provincial Assemblies and the local governments; and
- (e) such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament).’

**‘225.** No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament).’

7. Both sides comprehensively argued on jurisdiction. The learned counsel representing the petitioners submitted that the writ petitions, filed under Article 199 of the Constitution, were not maintainable because the contesting respondents, who had filed them had ‘*other adequate remedy*’, which was to file election petitions before the Election Tribunals. Whereas the learned counsel representing the contesting respondents submitted that since they had won the elections it was for the petitioners to file election petitions before the Election Tribunals, which had been constituted. Both sides relied upon Article 225 of the Constitution in support of their respective contentions.

8. It would, therefore, be appropriate to first attend to the matter of jurisdiction and to examine the applicable constitutional and legal provisions and the referred to precedents. Some of the said precedents were decided under the old law, which was Representation of the People Act, 1976 (**‘ROPA’**). However, the provisions of the repealed ROPA, with regard to the matters herein, filing of election petitions and Election Tribunals, unless otherwise highlighted, were in *pari materia* with the Elections Act.

9. The legislature, however, had made a significant change (on 5 August 2023) in section 95(5) of the Elections Act, which was to take away the discretion vesting in the Returning Officer when considering an application seeking recount of the ballot papers. This was done by

removing the following words therefrom – ‘*the Returning Officer considers such request as not unreasonable*’ – appearing at the end of section 95(5). Excluding the proviso (which remains unchanged) section 95(5) both before and after the amendment is reproduced hereunder:

<u>Before Amendment</u>	<u>After Amendment</u>
95(5). Before commencement of the consolidation proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made by a contesting candidate or his election agent and the margin of victory is less than five percent of the total votes polled in the constituency or ten thousand votes, whichever is less, or the <b>Returning Officer considers such request as not unreasonable.</b> [emphasis added]	95(5). Before commencement of the proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made to that effect by a contesting candidate or his election agent and –  (a) the margin of victory between returned and runner up candidates is less than five percent of the total votes polled in the constituency or eight thousand votes in case of National Assembly constituency and four thousand votes in case of a Provincial Assembly constituency, as the case may be, whichever is less; or  (b) the number of votes excluded from the count by the Presiding Officer are equal to or more than the margin of victory.

The above amendment made three significant changes. Firstly, it reduced the numerical differences in votes from ten thousand and set different limits for the National and Provincial Assembly constituencies, respectively eight and four thousand. Secondly, it created another category, which was of excluded votes which were equal to or more than the margin of victory. And, thirdly, the discretion vesting in the Returning Officer, that the request for recount was not unreasonable, was removed. When the writ petitions were filed before the High Court the amended section 95(5) was in place. However, the significance of the changes made in section 95(5) were not considered, let alone appreciated, by the learned Judges of the High Court.

10. The precedents cited by the learned counsel are considered in chronological order. The earliest case in respect of determining jurisdiction



was that of the *Election Commission of Pakistan v Javaid Hashmi*,<sup>1</sup> which was decided by a four member Bench of the Supreme Court. The following extracts therefrom are from the majority judgment (of three to one):

‘Thus in its wide sense the word "election" has been appropriately used in the Article with reference to the entire process consisting of several steps taken for its completion which have a bearing on the result of the process.’<sup>2</sup>

‘Now the next important matter is as to what meaning should be given to the words "No election shall be called in question".’<sup>3</sup>

‘In enacting Article 225 in the Constitution the purpose of Legislature is obvious that it did not contemplate two attacks on matters connected with the election proceedings; one while the election process is on and has not reached the stage of its completion by recourse to an extraordinary remedy provided by Article 199, and another when the election has reached the stage of completion by means of an election petition. It is also of utmost consideration that in the case of two attacks on a matter connected with the election proceedings there is likelihood of there being two inconsistent decisions; one given by the High Court and the other by the Election Tribunal which is also an independent Tribunal and this could not be the intention of the Legislature. Again the words "except by an election petition" in Article 225 of the Constitution do not refer to the period when it can be called in question but point to the manner and the mode in which it can be called in question. It is, therefore, that the constitutional provision is expressed in the negative form to give exclusive jurisdiction to the Tribunals appointed by the Election Commissioner and thus to exclude or oust the jurisdiction of all Courts in regard to election matters and to prescribe only one mode of challenge. The purpose is not far to seek as in all democratic Constitutions such as is ours the Legislatures have an important role to play, and, therefore, it is of utmost importance that the election should be held as scheduled without being unduly delayed or prolonged by challenging matters at an intermediate stage.’<sup>4</sup>

‘The scheme of the electoral laws and conduct of election accordingly appears to be that any matter which has the effect of vitiating the election process should be brought up

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<sup>1</sup> PLD 1989 Supreme Court 396.

<sup>2</sup> *Ibid.*, p. 416B.

<sup>3</sup> *Ibid.*, p. 416.

<sup>4</sup> *Ibid.*, p. 416C.

only at the appropriate stage in an appropriate manner before the Election Tribunal and should not be brought up at an intermediate stage before any Court as otherwise Article 225 of the Constitution would be deprived of its meaning and content.’<sup>5</sup>

‘Article 225 creates a right to challenge the election and lays down the method for its enforcement through an Act which is a constitutional mandate as by use of the word "No" a negative imperative. The Act also creates a right to challenge the election and also prescribes special remedies for enforcing the right. It is well-settled that in such a case it is the remedy provided by the Act alone which should be availed of not only because of the constitutional mandate but also because of the settled rule.’<sup>6</sup>

‘The above discussion leads me to conclude that there can only be a challenge to the election by one mode, that is, by an election petition and that too after the process of the election is completed.’<sup>7</sup>

This Court also compared the jurisdiction of the High Court, under Article 199, with that of the Election Tribunal, under Article 225, of the Constitution, by stating that:

‘Here I may point out that the exercise of power under Article 199 cannot be placed on any higher footing than that emanating from Article 225 of the Constitution; and that while the power under Article 199 exercisable by the High Court is "subject to the Constitution" whereas there is no such limitation in Article 225. This Article by its language creates an independent jurisdiction for the decision of election disputes under the law and its contents, therefore, should be given the fullest meaning irrespective of anything contained in any other Article. More particularly so as it is an essential part of parliamentary jurisdiction which under the law entrusts election disputes for decisions to the Election Tribunal and in appeal to the Supreme Court whose decision is final both on questions of law and fact.’<sup>8</sup>

‘Accordingly what is intended to be achieved by the exercise of the power under Article 199 is achieved by the exercise of the appellate power by the Supreme Court in an appeal against the decision of the Tribunal not at an intermediate stage but only after the election is over. There is, therefore, no scope of any interference by the High

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<sup>5</sup> *Ibid.*, p. 417F.

<sup>6</sup> *Ibid.*, p. 418H.

<sup>7</sup> *Ibid.*, p. 418I.

<sup>8</sup> *Ibid.*, p. 422K.

Court under Article 199 of the Constitution to interfere with the process of election at an intermediate stage... .<sup>9</sup>

11. The next case was that of *Ghulam Mastafa Jatoi v Additional District and Sessions Judge*<sup>10</sup> which was decided by a five member Bench. This Court did not differ from the decision in the case of *Election Commission of Pakistan v Javaid Hashmi*, however, it clarified that if ‘no legal remedy is available’ against ‘a patently illegal/without jurisdiction’ order recourse may be had to the High Court by invoking its jurisdiction under Article 199 of the Constitution, as under:

‘26. The upshot of the above discussion is that generally in an election process the High Court cannot interfere with by invoking its Constitutional jurisdiction in view of Article 225 of the Constitution. However, this is subject to an exception that where no legal remedy is available to an aggrieved party during the process of election or after its completion, against an order of an election functionary which is patently illegal/without jurisdiction and the effect to defranchise a candidate, he can press into service Constitutional jurisdiction of the High Court. The majority view in the case of *Election Commission of Pakistan v. Javaid Hashmi* (supra) is not applicable. We may clarify that we do not intend to overrule the above majority view in the above case [*Election Commission of Pakistan v Javaid Hashmi*]. The above case in fact is distinguishable from the instant case for the reasons already discussed hereinabove.’<sup>11</sup>

12. The case of *Bartha Ram v Mehar Lal Bheel*<sup>12</sup> pertained to the elections to the reserved seat of Hindus and Scheduled Castes. The respondent No. 1 was declared elected and the notification of his election was also published in the official Gazette. Two weeks thereafter, the appellant filed a petition before the Commission which issued notices, which was challenged by filing a writ petition before the High Court. The High Court held that the election could now only be challenged before the Election Tribunal. The High Court’s decision was sustained by the Supreme Court.

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<sup>9</sup> *Ibid.*, p. 4230.

<sup>10</sup> 1994 SCMR 1299.

<sup>11</sup> *Ibid.*, p. 1321.

<sup>12</sup> 1995 SCMR 684.

13. In the case of *Nayyar Hussain Bukhari v District Returning Officer*<sup>13</sup> the petitioner questioned the orders of the Returning Officer and of the Commission, which had rejected his application for recounting of ballot papers. This Court held, that:

‘10. ... advertent to the question relating to the recounting of ballot papers by the Returning Officer under section 39 of the Representation of the People Act, 1976, and under section 103-AA of the *ibid* Act by the Election Commission of Pakistan, we find that the application of the petitioner in this behalf was not considered in proper exercise of jurisdiction and similarly the High Court dismissed the writ petition in a perfunctory manner, therefore, the petitioner may either approach the Election Commission of Pakistan afresh under section 103-AA of Representation of the People Act, 1976, or avail the remedy of election petition under section 52 of the *ibid* Act. In view of the above, notwithstanding the judgment of the High Court and the order passed by Returning Officer as well as Election Commission of Pakistan, we direct that subject to all just exceptions, the concerned forum to be chosen by the petitioner, shall decide the matter quite independently on its own merits without being influenced by the orders assailed before us or by this order and also at the first instance, will decide the matter relating to the recounting of the ballot papers as preliminary issue within the possible short time.

11. This petition with the above observations, stands disposed of.’<sup>14</sup>

14. *Muhammad Hussain Babar v Election Commission of Pakistan*<sup>15</sup> was a case in which recounting of the rejected votes was sought. This Court held that the same be considered by the Election Tribunal ‘*at the first instance*’, as under:

‘9. The grievance of the petitioner, notwithstanding the question of jurisdiction of the election authorities and the High Court, was confined only to the extent of consolidation of result and the recount of the rejected votes, therefore, we without commenting upon the merits of the case either way, dispose of this petition with direction that if the petitioner avails the remedy of election petition under section 52 of the Representation of the People Act, 1976, before the Election Tribunal established in terms of Article 225 of the Constitution, the Tribunal at the first instance will consider the question relating to the recount or count of rejected votes, as the case may be as preliminary issue and without decision of the same in

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<sup>13</sup> PLD 2008 Supreme Court 487.

<sup>14</sup> *Ibid.*, pp. 494-5.

<sup>15</sup> PLD 2008 Supreme Court 495.

possible short time, will not proceed on merits. With the above observation, this petition stands disposed of.<sup>16</sup>

15. A five Member Bench of this Court in *Aftab Shahban Mirani v Muhammad Ibrahim*<sup>17</sup> approved the abovementioned majority judgment of the *Election Commission of Pakistan v Javaid Hashmi*, and held that the conduct of elections was the ‘exclusive function of Election Commission of Pakistan, a Constitutional forum ... under Articles 218 and 219 of the Constitution.’ Therefore, ‘the High Court in the election process or election disputes’ should not interfere:

‘The conduct of elections is exclusive function of Election Commission of Pakistan, a constitutional forum and this function is performed by the Commission as its constitutional duty under Articles 218 and 219 of the Constitution read with sections 103 and 103-AA of the Representation of the People Act, 1976, therefore, the High Court in exercise of its power of judicial review under Article 199 of the Constitution, is not justified to interfere in the orders passed by the Election Commission in the process to ensure fair and transparent election and substitute its own opinion for the opinion of Commission about the matter. This Court in the case of *Election Commission of Pakistan v. Javed Hashmi* PLD 1989 SC 396 having considered the scope of Article 199 with respect to the election matters has held that interference of the High Court in the election process or election disputes may not be justified.’<sup>18</sup>

It was further held that it is only in very exceptional cases that the High Court may invoke its jurisdiction under Article 199 of the Constitution, and these would be ‘in respect [of] the orders which are *coram non judice*, without jurisdiction or *mala fide*’, as under:

‘In consequence to the above discussion, we hold that the scope of interference of the High Court in its jurisdiction under Article 199 of the Constitution in election cases is limited only to the extent of matters which do not exclusively fall within the ambit of jurisdiction of Election Tribunals or Election Commission of Pakistan or in respect of the orders which are *coram non judice*, without jurisdiction or *mala fide*. The interference of the High Court in the orders passed by Election Commission of Pakistan in discharge of its duty in terms of Articles 218 and 219 of the Constitution read with sections 103 and 103-AA of Act, 1976, in the normal circumstances, is not justified.’<sup>19</sup>

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<sup>16</sup> *Ibid.*, pp. 502-3.

<sup>17</sup> PLD 2008 Supreme Court 779.

<sup>18</sup> *Ibid.*, p. 810B.

<sup>19</sup> *Ibid.*, p. 813C.

This Court also stipulated that the Commission should not be prevented nor interfered with from performing its constitutional duty. This Court went on to hold that the Commission, when circumstances so warrant, could declare the elections in a constituency void within 60 days of the publication of the name of the returned candidate, as under:

‘The careful examination of above referred two provisions in the light of Articles 218 and 219 of the Constitution would make it clear that the Commission with the view to discharge its constitutional duty to conduct the election honestly, fairly and justly in a transparent manner and in accordance with law has been empowered to declare the elections in the constituency as a whole void or at one or more polling stations if the circumstances so warrant. This power is exercisable by the Commission within 60 days from the date of publication of the name of returned candidate in the official notification whereas the limitation for filing election petition under section 52 of the *ibid* Act is 45 days from the date of publication of the notification of result, therefore, there is no conflict between the two provisions. The Commission under section 103 *ibid* can pass an appropriate order to ensure fair, just and transparent elections during the process of election and under section 103-AA *ibid* if the Election Commission, after holding a summary inquiry is satisfied that a grave illegality has been committed in the election which would be a source of impairing the result, may declare the election of the constituency as a whole void or of the specified polling stations as the case may be.’<sup>20</sup>

16. In the case of *Aurangzeb Khan v Election Commissioner of Pakistan*,<sup>21</sup> this Court once again held that election disputes should be determined by the Election Tribunals constituted under Article 225, and not by the High Court under Article 199, of the Constitution:

‘5. If we look into the terminology used by the legislature while enacting Article 225 of the Constitution, we find it quite emphatic, clear and unambiguous; not capable of any two interpretations. The very language thereof starts with negative phraseology which most commonly is interpreted for ousting any possibility other than one given in the Article itself. That is how any law starting with negative phraseology is interpreted.’<sup>22</sup>

‘6. There is another phrase in the Article which gives double effect to the already negative phrase with which Article starts. It goes like “except by an election petition”.

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<sup>20</sup> *Ibid.*, p. 815F.

<sup>21</sup> PLD 2010 Supreme Court 34.

<sup>22</sup> *Ibid.*, pp. 5-6B.

The overall effect given in the Article is that no election, like one in hand, shall be called in question otherwise than in the manner provided by law and before a forum provided by the Article. So it cannot be challenged except by an election petition presented to such Tribunal, and in such manner, as may be determined by the law (Act of Parliament).<sup>23</sup>

This Court went on to state, that:

‘Viewed in this background, Article 225 of the Constitution, double phrased with negative phraseology and in unambiguous terms, ousts the jurisdiction of any forum other than the Election Tribunal, which too, can be so resorted to only in the manner prescribed by the law.’<sup>24</sup>

17. The aforesaid determination was again reiterated by this Court in the case of *Workers’ Party Pakistan v Federation of Pakistan*.<sup>25</sup> It was held that it is the duty of the Commission to organize and conduct elections, as stipulated in Article 218(3) of the Constitution, which includes ‘*all stages involved in the election process*’.

‘40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to ‘organize’ and ‘conduct the election’. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in *Election Commission of Pakistan v. Javaid Hashmi and others* (PLD 1989 SC 396), observed that “*generally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of elections*”. It interpreted that the phrase ‘conduct the election’ as having “*wide import*” and including all stages *involved in the election process*. These observations subject all election related activities that take place between commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election

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<sup>23</sup> *Ibid.*, p. 6C.

<sup>24</sup> *Ibid.*, p. 6D.

<sup>25</sup> PLD 2012 Supreme Court 681.

Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein.<sup>26</sup>

18. In a recent two member Bench judgment of this Court, in the case of *Ameer Haider Sangha v Sumaira Malik*,<sup>27</sup> the constitutional status of the Commission was noted, as under:

‘14. The Election Commission is a constitutional body and unless it is shown that the jurisdiction and discretion exercised by it is manifestly illegal, arbitrary or mala fide, its workings should not be interfered with.’<sup>28</sup>

It was further held, that:

‘The view taken by the learned Judge and advocated by the learned counsel for the contesting respondents, is that the dispute in question could only be agitated in an election petition, however, overlooking the fact that the Election Commission had intervened before it had issued the requisite notification of the returned candidates, that is before the conclusion of the elections.’<sup>29</sup>

19. In the case of *Mujib-ur-Rehman Muhammad Hassani v Returning Officer*<sup>30</sup> there was a difference of opinion amongst the Judges of this Court<sup>31</sup> with regard to the interpretation and scope of section 95(5) of the Elections Act. The majority held, that:

‘21. We therefore hold that the provisions of section 95(5) can only be triggered after all the pre-conditions therein have been met and the contents of the request itself lend credence to the need for a recount. To ensure this, the Returning Officer must exercise his discretion and ascertain the reasonableness of the request and decide whether recounting is to take place in “one or more” polling stations, or not at all. A reasonable request, therefore, must at least contain a narrative of the events that gave rise to the request in the first place, the details along with credible material/information regarding events that may have caused the contesting candidate to demand the recount together with the names and details of any individuals alleged to be involved, and the specific polling stations at which the recount is being requested. Once all the aforementioned conditions have been met, then the

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<sup>26</sup> *Ibid.*, p. 726.

<sup>27</sup> 2018 SCMR 1166

<sup>28</sup> *Ibid.*, p. 1175.

<sup>29</sup> *Ibid.*, p. 1175.

<sup>30</sup> PLD 2020 SC 718.

<sup>31</sup> The majority decision of Ijaz ul Ahsan, J. was concurred by Umar Ata Bandial, J and the minority opinion was of Munib Akhtar, J.



Returning Officer must apply his mind to the facts and circumstances of the individual case and decide if, and in how many polling stations, a recount is warranted.<sup>32</sup>

However, the learned Judge who was in the minority drew attention to the notable and material change that had been made to section 39 of the ROPA by section 95(5) of the Elections Act, and that ROPA had vested discretion in, *‘the Returning Officer [who] may recount the ballot papers’* but the Elections Act had removed such discretion. The law now provided that, *‘the Returning Officer shall recount the ballot papers’*, as under:

‘Thus, there is no discretion at all with the Returning Officer. Insofar as the second condition is concerned, there is an element of discretion: the Returning Officer must be satisfied that the request is not unreasonable. Only then is the condition applicable. In my view, with respect, to yoke these conditions together is to misread, and hence misapply, the legislative intent.’<sup>33</sup>

His lordship further held, that:

‘Under the 1976 Act, the onus lay on the applicant to show that his request was reasonable. Furthermore, even if, in law, it was, the use of the word “may” meant that the Returning Officer still retained discretion to nonetheless refuse a recount. Under the present law, the applicant must obviously, if he seeks recourse to the second condition, set out the reasons for seeking a recount. An application in terms of the second condition without any reasons would be liable to dismissed out of hand. However, if reasons are given then the onus lies on the Returning Officer (or the other contesting candidates) to first show that the request is unreasonable. It is here that the Returning Officer has discretion. If he concludes that the request is unreasonable, then the onus would shift on the applicant to show that this is not so. And if, in law, the applicant is correct, then the Returning Officer would have no further discretion; the word “shall” ensures that the recount must be ordered.’<sup>34</sup>

The aforesaid opinion was rendered by the learned single Judge before the abovementioned amendment was made to section 95(5) (reproduced above in paragraph 9). The said amendment took away all discretion from the Returning Officer.

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<sup>32</sup> *Ibid.*, p. 730F.

<sup>33</sup> *Ibid.*, p. 734I.

<sup>34</sup> *Ibid.*, pp. 734-735J.

20. The case of *Zulfiqar Ali Bhatti v Election Commission of Pakistan*<sup>35</sup> was not in respect of the recount of the ballot paper but with regard to re-poll ordered by Returning Officer, whose order was upheld by the Commission. This Court at the outset of its judgment formulated the question which was to be considered. The question was whether the Commission could order re-poll in one or more polling stations or in the whole constituency after consolidation of the final result and publication of the name of the returned candidate in the official Gazette. The High Court dismissed the writ petition since an appeal against the order of the Commission had also been filed in the Supreme Court. This Court referred to the cases of *Election Commission of Pakistan v Javaid Hashmi* and *Worker's Party v Federation of Pakistan* and concluded that the '*High Court rightly dismissed the writ petition of the appellant, on the ground of the availability of the adequate statutory remedy of appeal before this Court.*'<sup>36</sup> And, '*in the exercise of its appellate jurisdiction under section 9(5) of the Elections Act*',<sup>37</sup> this Court set aside the order of re-poll. Though this case has been referred to in a number of the impugned judgments it is not relevant since the present controversy is with regard to allowing or not allowing recount of the ballot papers under section 95(5) of the Elections Act.

21. Having set out the legal and constitutional provisions and the precedents of this Court, we now proceed to examine these Cases. However, before doing so it needs stating that the following factual matters were raised before us: (1) Whether the applications to recount were submitted before the consolidation of results, (2) whether the recount was prevented and (3) whether a '*notice in writing of the day, time and place fixed for the consolidation of the result*' (as required by subsection (1) of section 95) was given by the Returning Officer. The contesting parties controvert each other on these matters. In respect of disputed facts as a general rule the High Courts do not exercise writ jurisdiction under Article 199 of the Constitution.

22. The Returning Officer of one constituency of the National Assembly (subject matter of CPLAs No. 1573 and 1673 of 2024) noted on the application on 10 February 2024 that, '*The application regarding recount the votes is not maintainable section 95 ss 5/6 of the Elections Act 2017,*'

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<sup>35</sup> 2024 SCMR 997.

<sup>36</sup> *Ibid.*, p. 1021.

<sup>37</sup> *Ibid.*, p. 1020.

but without stating the reason why it was not maintainable. The petitioner challenged the Returning Officer's order by filing a petition on 11 February 2024 before the Commission. The Commission sought a report from the Returning Officer, who in his report dated 16 February 2024, stated that *'the application for recount was received at my office before consolidation,'* but the Returning Officer could not recount the ballot papers *'because of law and order situation created by the returned candidate.'*

23. In respect of another National Assembly constituency (subject matter of CPLA No. 1729 of 2024) the Returning Officer's order dated 10 February 2024 stated that he had *'perused his record and evidences put forth by the applicant. However, the applicant has failed to substantiate his claim.'* In the Returning Officer's report dated 2 March 2024, which was sought by the Commission, pursuant to its order dated 22 February 2024, the Returning Officer acknowledged receipt of the application to recount on 9 February 2024, but stated he could not undertake a recount because *'a huge number of political workers gathered outside the office of the undersigned and climbed the walls of the premises. They raised slogans, and used abusive language. In this situation the law and order situation worsened badly. (Picture of Mob/Law and law and order situation at that night is annexed as Annexure-II).'* Therefore, he *'was unable to entertain the said application and dismissed the application'* which had sought a recount of the ballot papers.

24. The Returning Officer of the third National Assembly constituency (subject matter of CPLA No. 1767 of 2024) acknowledged the receipt by him of the application seeking recount on 10 February 2024, but through his order also dated 10 February 2024 dismissed it by stating that he had *'perused his record and evidences put forth by the applicant. However, the applicant has failed to substantiate his claim.'* The petitioner challenged the Returning Officer's order before the Commission on 14 February 2024. The Returning Officer in his report dated 2 March 2024 submitted to the Commission, pursuant to its order dated 22 February 2024, stated that because of the *'huge number of political workers of various parties & candidates gathered outside the office of the undersigned and Law & Order situation'* he could not undertake the recounting.

25. In respect of the Provincial Assembly constituency (subject matter of CPLA No. 2433 of 2024) application dated 9 February 2024 had sought the recount of the ballot papers and had also pointed out certain irregularities, including that over 3,300 votes were declared invalid. On the application the Returning Officer wrote on 9 February 2024 that: *‘No complaint from candidate or any of his election agent regarding such ambiguities during the poll day. Moreover, the candidate has not mentioned any specific polling stations regarding such irregularity. Therefore, the application in hand is hereby rejected ... .’* The petitioner submitted an application to the Commission against the order of the Returning Officer and sought recount of the ballot papers. Notices dated 12 February 2024 were issued by the Commission to which the Returning Officer responded on 13 February 2024 stating that he had rejected the petitioner’s application because *‘the difference between the returned candidate and the applicant is 3557.’*

26. The Returning Officer did not in any of the abovementioned Cases state that the consolidation of results had already taken place and, therefore, the application seeking recount of the ballot papers could not take place. The application seeking recount in respect of one constituency (subject of CPLAs No. 1573 and 1673 of 2024) was dismissed holding that it was *not maintainable* without giving any reason for its non-maintainability. In respect of another constituency (subject of CPLA No. 1729 of 2024) it was stated that the applicant had failed *to substantiate his claim*, but it was not stated what he was required to substantiate and later the Returning Officer stated that recounting could not take place because a mob had gathered which had prevented him to recount the ballot papers. In respect of another constituency (subject of CPLA No. 1767 of 2024) the Returning Officer rejected the recount application stating that *the applicant had failed to establish his claim* and that a mob had gathered which had prevented him to recount the ballot papers. In respect of the Provincial Assembly constituency (subject of CPLA No. 2433 of 2024) superfluous reasons were given by the Returning Officer in rejecting the application seeking recounting of the ballot papers.

27. Returning Officers cannot surrender their powers to mob rule nor can forego their statutory duty to recount. If this is accepted it would create a very dangerous precedent and render the law regarding

recounting meaningless by those resorting to lawlessness. This would also deprive the candidate seeking recount of the ballot papers of this statutory right/remedy. The rights and remedies which the law grants cannot be negated.

28. As regards the contesting respondents' contention that the consolidation of results had already taken place, no proof was tendered to show that this was done pursuant to the law. Section 95(1) of the Elections Act requires the Returning Officer to give to all contesting candidates and to their election agents '*a notice in writing of the day, time and place fixed for the consolidation of the results*'. The contesting respondents, who had filed the petitions in the High Court, did not produce the requisite notices given by the Returning Officer, nor did they produce them before this Court. When the petitioners' allege that the notices were not issued it cannot be assumed that the requisite notices regarding consolidation had been given, as stated by the contesting respondents.

29. There is yet another aspect to these Cases. The counting and the recounting of ballot papers is not a judicial or even a quasi-judicial act. It is an administrative-ministerial act. The only prerequisite to undertake it is for the Returning Officer to simply determine the percentile/numerical difference between the first two candidates, upon receipt of an application requesting recount. In these Cases it is admitted that applications seeking recount were submitted in respect of all four constituencies and that the difference in the margin of victory between the first two candidates was well within the stipulated percentile/number as prescribed in section 95(5) of the Elections Act.

30. The High Court's jurisdiction under Article 199 of the Constitution can only be invoked if a petitioner is an '*aggrieved*' person. It is not understandable how anyone can be stated to be *aggrieved* if the ballot papers are recounted. Grievance against the administrative-ministerial act of recounting of ballot papers is also not envisaged in Article 199. If a Returning Officer does not do an honest recount or does not do the recount in accordance with the law, then the affected party has available remedies. Depending upon the particular facts of the case this could be by approaching the Commission or filing an election petition before the

Election Tribunal, constituted under Article 225 of the Constitution. Thereafter, the jurisdiction of this Court can also be invoked.

31. The Constitution is divided into twelve parts of which Part VIII deals entirely with 'Elections'. Its Article 218(3) mandates that it is the duty of the Commission to organize and conduct elections, and to conduct them honestly, justly, fairly and in accordance with the law. The *law* is the Elections Act and its section 95(5) stipulates that the Returning Officer *shall* recount the ballot papers provided an application seeking recount is submitted and the difference in the margin of victory between the first two candidates is less than five percent or the stipulated number of votes. In these cases the difference in the margin of victory was well within the stipulated percentile/number. Nonetheless, the contesting respondents challenged the order of the recount and/or challenged the result of the recount by filing writ petitions in the High Court under Article 199 of the Constitution. The learned Judges overlooked the constitutional preconditions before exercising jurisdiction under Article 199 of the Constitution, which were that the petitioner must be *aggrieved* and must not have *other adequate remedy*; on both these counts the writ petitions were not maintainable. They also failed to observe that Article 199 commences with the words – '*Subject to the Constitution*' and that this limitation was absent from Article 225 of the Constitution, whereunder election petitions are filed before the Election Tribunals.

32. The learned Judges of the High Court also allowed the writ petitions without considering the law, which had been interpreted and explained in the cited precedents of this Court, particularly of the larger four and five member Benches, respectively in the cases of *Javaid Hashmi*, *Ghulam Mustafa Jatoi* and *Aftab Shahban Mirani* (above). In these precedents of this Court it was stated that the jurisdiction of the High Court (under Article 199 of the Constitution) can only be invoked when '*no legal remedy is available to an aggrieved party*' '*or in respect of the orders which are coram non judice, without jurisdiction or mala fide.*' The contesting respondents who had invoked the jurisdiction of the High Court could not be considered to be *aggrieved* by the administrative-ministerial act of recounting. Moreover, they had *other adequate remedy*. Therefore, the two prerequisites (*aggrieved person* and *absence of adequate remedy*) necessary to invoke Article 199 were not met. The Commission was also

not *coram non judice* nor lacked jurisdiction in ordering recount. The Constitution has bestowed on the Commission (and not on the High Courts) *the duty to conduct elections in accordance with law*. And it cannot be contended that, when the circumstances envisaged in section 95(5) of the Elections Act were met the seeking of and the ordering of recount of the ballot papers was *mala fide*. Instead of filing writ petitions the contesting respondents could have filed election petitions before the Election Tribunals. And, any person aggrieved by the decision of the Election Tribunal could then have filed an appeal to the Supreme Court, under section 155 of the Elections Act.

33. The judgment of the learned Judges of the Divisional Bench (impugned in CPLA No. 1673 of 2024) referred to the case of *Zulfiqar Ali Bhatti* (above) and the same judgment of this Court was also relied upon in the judgments of the learned Single Judges (impugned in CPLA No. 1573 and 1729 of 2024) but, with respect, they did so without appreciating its facts or the *ratio*, which was that the '*High Court rightly dismissed the writ petition of the appellant, on the ground of the availability of the adequate statutory remedy of appeal.*' And, the learned Single Judge (whose judgment is impugned in CPLA No. 1573 of 2024) quoted two portions from the decisions of this Court in the cases of *Ghulam Mustafa Jatoi* and *Nayyar Hussain Bokhari* (above), which respectively stated that the High Court '*should not interfere in the election disputes in its constitutional jurisdiction*' and that '*generally in an election process the High Court cannot interfere by invoking its constitutional jurisdiction in view of Article 225 of the Constitution*', yet in disregard thereof the High Court invoked its constitutional jurisdiction, and allowed the writ petitions. Needless to say every learned Judge of the High Court must abide by the decision of this Court which '*decides a question of law or is based upon or enunciates a principle of law*' as stipulated in Article 189 of the Constitution, however, the cited decisions of this Court were either misinterpreted or not considered.

34. We have considered these Cases from a number of different perspectives, and from all of them, the impugned judgments of the High Court cannot be sustained. Therefore, for the aforesaid reasons these petitions are converted into appeals and allowed by setting aside the

impugned judgments and dismissing the writ petitions filed before the High Court, but with no order as to costs.

35. Before parting we would like to emphasize that the Election Commission is a constitutional body and its Chairman and Members are entitled to respect. Unfortunately, at places some learned Judges of the High Court lost sight of this and passed derisive remarks. Every constitutional body and constitutional office holder, in fact everyone, is deserving of courtesy and respect. Institutions gain in stature when they act respectfully.

36. In conclusion we would like to complement all the learned counsel for their preparedness and competence in arguing these Cases.

Chief Justice

Judge

I have read the order authored by Hon'ble the Chief Justice Qazi Faez Isa, with the concurrence of Mr. Justice Naeem Akhtar Afghan. However, with all the humility at my command I am not in agreement with the conclusion drawn therein, hence my dissent note is appended separately.

Judge

Approved for reporting  
(M. Tauseef)

Announced in open Court on 12 August 2024 at Islamabad.

Chief Justice



**ORDER OF THE COURT**

By a majority of 2 to 1 (Justice Aqeel Ahmed Abbasi dissenting), these petitions are converted into appeals and allowed by setting aside the impugned judgments.

Chief Justice

Judge

Judge

Islamabad:  
12.08.2024  
(M. Tauseef)

**AQEEL AHMED ABBASI, J.-** The instant Civil Petitions for leave to appeal have been filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”) to challenge the five different impugned judgments passed by different Benches of the Lahore High Court in Writ Petition No.1333 of 2024, vide judgment dated 05.03.2024, in the case of Rana Muhammad Faraz Noon Vs. Election Commission of Pakistan etc. (C.P. No.1573/2024), alongwith the judgment dated 16.04.2024 passed by the Division Bench of Lahore High Court in ICA No.29 of 2024 in respect of the same case titled Abdul Rehman Khan Kanju Vs. Election Commission of Pakistan and others (C.P. No.1673/2024), as well as the judgment dated 16.04.2024, passed in Writ Petition No.16416 of 2024, in the case of Ch. Bilal Ejaz vs. Election Commission of Pakistan and others (C.P. No.1729/2024), the judgment dated 24.04.2024, passed in Writ Petition No.19091 of 2024, in the case of Ihsan Ullah Virk Vs. Election Commission of Pakistan and others (C.P. No.1767/2024) and the judgment dated 15.05.2024 passed in Writ Petition No.23249 of 2024 in the case of Muhammad Atif vs. Election Commission of Pakistan and others (C.P. No.2433/2024) mainly on the following, amongst other, grounds:-

- i) That while passing the impugned judgment(s) the learned Judges of the Lahore High Court have erred in law while entertaining the constitutional petitions under Article 199 of the Constitution against order(s) passed by the Election Commission of Pakistan (the “**Commission**”) while exercising authority and inherent powers in terms

of Sections 8, 9 and 95(5) of the Election Act, 2017 read with Article 218(3) of the Constitution;

ii) That the learned Judges of the Lahore High Court have erred in law while entertaining the election dispute under Article 199 of the Constitution in spite of specific bar under Article 225 of the Constitution, particularly, when remedy is provided against an order passed by the Commission by filing Election Petitions under Section 139 of the Election Act, 2017 (the “**Election Act**”) before the Election Tribunal constituted for such purpose;

iii) That the learned Judges of the Lahore High Court have erred in law while misinterpreting the provisions of Sections 95(5) and (6) of the Election Act which provide that:-

“[(5) before commencement of proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made to that effect by a contesting candidate or his election agent and –

- (a) the margin of victory between returned and runner up candidates is less than five percent of the total votes polled in the constituency or eight thousand votes in case of National Assembly constituency and four thousand votes in case of a Provincial Assembly constituency, as the case may be, whichever is less; or
- (b) The number of votes excluded from the count by the Presiding Officer are equal to or more than the margin of victory.

Provided that the Returning Officer shall recount only once.]

Provided that the recount shall be made by the Returning Officer only once.

(6) The Commission may, before conclusion of the consolidation proceedings, [and after notice to the contesting candidates] for reasons to be recorded, direct

the Returning Officer to recount the ballot papers of one or more polling stations.”

2. Since the facts of all the aforesaid petitions for the purposes of subject controversy are similar, and there seems no dispute with regard to chronology of the events in relation to consolidation of results, issuance of Notification of returned candidates by the Commission and, thereafter, rejection of application(s) filed for recounting by the petitioners under Section 95(5) of the Election Act, the orders passed by the Commission on the applications/petitions filed by the petitioners under Section 95(5) of the Election Act read with Article 218(3) of the Constitution, therefore, the facts of each case may not be detailed upon separately. However, in order to decide the common legal controversy agitated through instant petitions, we may take into consideration the relevant facts as recorded by the learned Judge of the Lahore High Court, Lahore in Writ Petition No.16416 of 2024 (Ch. Bilal Ejaz. vs. Election Commission of Pakistan and others) in the following terms:-

*“2. These proceedings before the Commission arose out of an appeal filed by respondent No.3 to challenge the order dated 10.02.2024 passed by the Returning Officer of NA-81 in respect of General Elections held on 08.02.2024. Respondent No.3 had filed an application for recount of the ballot papers of certain polling stations which was dismissed by the Returning Officer on 10.02.2024 in the following terms:*

*“Whereas, Mr. Azhar Qayyum Nahra candidate NA 81 Gujranwala-V has submitted an application wherein he has submitted that polling staff has illegally declared his votes in connivance with his rival candidate. Due to this illegal act he*

*has lost his seat. He has requested to order recounting of his votes as per law.*

*And whereas, the undersigned has perused his record and the evidence put forth by the applicant. However, the applicant has failed to substantiate his claim.*

*Now, therefore 1 Muhammad Naveed Haider, Returning Officer NA-81, Gujranwala-V hereby dismissed his application being devoid of facts.”*

3. *As explicated, respondent No.3 filed an appeal against the said order passed by the Returning Officer. It is common ground that an appeal is not competent before ECP but that aspect of the matter should not detain us any further as ECP treated the petition one under Section 8 of the Election Act, 2017 (“the 2017 Act”). While doing so, the provisions of Articles 218 and 222 of the Constitution of Islamic Republic of Pakistan, 1973 (“the Constitution”) and section 4 of 2017 Act were also stated to be engaged in the order passed by ECP.*

4. *The facts are refreshingly simple and may be stated briefly. The petitioner and respondent No.3 were candidates in the general elections for the seat of National Assembly from NA-81 Gujranwala-V held on 08.02.2024. The petitioner participated as an independent candidate and was declared as a returned candidate. He won the elections with a majority of 117,717 votes in the provisional consolidated result undertaken by the Returning Officer. The final consolidation proceedings were held and a notification regarding the petitioner as a returned candidate to the National Assembly of Pakistan was issued on 16.02.2024 by ECP. As stated above, respondent No.3 had filed an application on 09.02.2024. A further petition to ECP was brought and decided by the impugned order passed on 11.03.2024. By that time not only the notification in respect of the petitioner as a successful candidate had been issued on 16<sup>th</sup> February, 2024, the Election Tribunals had also been notified vide notification dated 20.02.2024 for determination of post-election disputes under Article 225 of the Constitution. Pursuant to the orders passed by ECP on 11.03.2024, a*

*recount was held and respondent No.3 was declared as the successful candidate. Consequently, revised Forms 47, 48 and 49 were issued by respondent No.2 and a notification dated 18.03.2024 was also issued by ECP.*

5. *Primarily, the petitioner contended before ECP that since a notification under Section 98 had already been issued and the petitioner had taken oath of membership of the National Assembly, the petition filed by the respondent No.3 had become infructuous and ECP was denuded of its powers to proceed to determine the issues raised in that petition. In short, the submission was that the necessary jurisdictional facts did not exist for ECP to exercise its powers under any of the provisions of the 2017 Act.”*

3. *Learned counsel for the parties before us have mainly disputed the assumption of jurisdiction by the Lahore High Court under Article 199 of the Constitution against the orders passed by the Commission while placing reliance on the provisions of Articles 218(3) and 225 of the Constitution whereby according to the learned counsel for the petitioners “it shall be the duty of the Election Commission of Pakistan, to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against,” and further, “no election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of [Majlis-e-Shoora (Parliament)]”.*

4. *In addition to the aforesaid constitutional provisions the learned counsel for the petitioners have also placed reliance on the provisions of Sections 8, 9 and 95(5) of the Election Act,*

2017 whereby, according to the learned counsel for the petitioners, the Commission is vested with the authority and inherent powers to ensure the conduct of the election justly, fairly and in accordance with law, and also to review an order passed by an Officer under this Act or the Rules, whereas according to learned counsel, the Commission has the powers to even declare a poll as void even after publication of the name of returned candidate under Section 98 of the Election Act.

5. In order to examine the scope of the aforesaid provisions of the Election Act and the Constitution, it will be advantageous to reproduce the relevant provisions of Sections 8, 9, 92, 95, 98 (of the Election Act, 2017) and Articles 218(3), 219 & 225 (of the Constitution) as attracted under the facts and circumstances of the above petitions:-

### **Election Act, 2017**

**“8. Power of Commission to ensure fair election.** Save as otherwise provided, the Commission may—

- (a) stop the polls at one or more polling stations at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election;
- (b) review an order passed by an officer under this Act or the Rules, including rejection of a ballot paper; and
- (c) issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of this Act and the Rules.

**9. Power of the Commission to declare a poll void.**

(1) Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such enquiry as it may deem necessary, the Commission is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as have materially affected the result of the poll at one or more polling stations or in the whole constituency including implementation of an agreement restraining women from casting their votes, it shall make a declaration accordingly and call upon the voters in the concerned polling station or stations or in the whole constituency as the case may be, to recast their votes in the manner provided for bye-elections.

Explanation.— If the turnout of women voters is less than ten percent of the total votes polled in a constituency, the Commission may presume that the women voters have been restrained through an agreement from casting their votes and may declare, polling at one or more polling stations or election in the whole constituency, void.

(2) Notwithstanding the powers conferred on it by sub-section (1), the Commission may order filing of complaint under this Act before a court of competent jurisdiction against persons who entered into the agreement referred to in sub-section (1).

(3) Notwithstanding the publication of the name of a returned candidate under section 98, the Commission may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the Commission does not finally dispose of a case within the said period, the election of the returned candidate shall be deemed to have become final, subject to the decision of an Election Tribunal on an election petition, if any.

(4) While exercising the powers conferred on it by sub-section (1), the Commission shall be deemed to be an Election Tribunal to which an election petition has been



presented and shall, notwithstanding anything contained in Chapter IX, regulate its own procedure.

(5) Any person aggrieved by a declaration of the Commission under this section may, within thirty days of the declaration, prefer an appeal to the Supreme Court.

**92. Announcement of provisional results.**—On receipt of the Results of the Count from all Presiding Officers of a constituency, the Returning Officer shall forthwith prepare and announce provisional Consolidated Statement of Results of the Count of the constituency (excluding postal ballots) in the prescribed manner, in the presence of such contesting candidates, their election agents or authorized observers as may be present, affix a copy of the provisional Consolidated Statement of Results signed by him at a conspicuous place in his office and send a copy thereof to the Commission.

**95. Consolidation of results.**—(1) Immediately after announcement of provisional results, the Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place fixed for the consolidation of the results, and, in the presence of such of the contesting candidates and election agents as may be present, consolidate in the prescribed manner the Results of the Count furnished by the Presiding Officers, including therein the postal ballots received by him before the time fixed for the consolidation of results:

Provided that presence of not more than one agent of each candidate shall be allowed.

(2) Before consolidating the Results of the Count, the Returning Officer shall examine the ballot papers excluded from the count by the Presiding Officer and, if he finds that any such ballot paper should not have been so excluded, count it as a ballot paper cast in favour of the contesting candidate for whom the vote has been cast.

(3) The Returning Officer shall also count the ballot papers received by him by post in such manner as may be prescribed and include the votes cast in favour of each contesting

candidate in the Consolidated Statement except those which he may reject on any of the grounds mentioned in section 90.

(4) The ballot papers rejected by the Returning Officer under subsection (3) shall be mentioned separately in the consolidated statement.

(5) Before commencement of the proceedings, the Returning Officer shall recount the ballot papers of one or more polling stations if a request or challenge in writing is made to that effect by a contesting candidate or his election agent and— (a) the margin of victory between returned and runner up candidates is less than five percent of the total votes polled in the constituency or eight thousand votes in case of National Assembly constituency and four thousand votes in case of a Provincial Assembly constituency, as the case may be, whichever is less; or

(b) the number of votes excluded from the count by the Presiding Officer are equal to or more than the margin of victory:

Provided that the Returning Officer shall recount only once.

(6) The Commission may, before conclusion of the consolidation proceedings <sup>1</sup> [and after notice to the contesting candidates], for reasons to be recorded, direct the Returning Officer to recount the ballot papers of one or more polling stations.

(7) If there is a difference between the Results of the Count received from the Presiding Officers and the results of the recount, the Returning Officer shall record the difference and details thereof:

Provided that where the Returning Officer has recounted the votes under sub-section (5) or sub-section (6), the consolidation proceedings shall be completed [within— (a) seven days after the polling day in the case of elections to the National Assembly; and (b) five days after the polling day in the case of elections to a Provincial Assembly.]

(8) The Returning Officer shall, within twenty four hours after the consolidation proceedings, send to the Commission signed copies of the Consolidated Statement of the Results of the Count and Final Consolidated Result together with Results of the Count and the Ballot Paper Account, as received from the Presiding Officers, and shall retain copies of these documents for record.

(9) After consolidation of results, the Returning Officer shall give to such contesting candidates and their election agents [and accredit observers] as are present during the consolidation proceedings a copy of the Consolidated Statement of the Results of the Count and the Final Consolidated Result sent to the Commission against proper receipt.

(10) On receipt of documents under sub-section (8), the Commission shall, within fourteen days from the date of the poll, publish the documents on its website.

**98. Declaration of results.**—(1) On receipt of the Final Consolidated Result from the Returning Officer, the Commission shall, within fourteen days from the date of the poll, publish in the official Gazette the name of the contesting candidate who has received the highest number of votes and stands elected.

(2) The Commission shall also publish in the official Gazette the name of each contesting candidate and the total number of votes received by him as in the Final Consolidated Result.

(3) Every returned candidate shall, within ten days from the poll of an election, submit a return of election expenses under section 134 and the Commission shall not notify in the official Gazette the result of a returned candidate who fails to submit his return of election expenses.

(4) The Commission shall place the documents mentioned in subsections (1) and (2) on its website within two days from the date of the publication of the name of the returned candidate in the official Gazette.”

**Constitution of Islamic Republic of Pakistan, 1973**

**“218. ...**

(3) It shall be the duty of the Election Commission of Pakistan to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

**219.** The Commission shall be charged with the duty of—

...

- (d) the holding of general elections to the National Assembly, Provincial Assemblies and the local governments; and
- (e) such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament).’

**225.** No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament).”

6. The scope of the powers of the Commission under Article 218(3) of the Constitution and Section 8 of the Election Act has been examined in detail in the recent judgment of this Court in the case of Zulfiqar Ali Bhatti v. Election Commission of Pakistan (2024 SCMR 997) in the following terms:-

*“8. Article 218(3) of the Constitution entrusts the Election Commission with the duty "to organize and conduct the election", and empowers it, in general terms, "to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against". The power so conferred is restricted to the fulfillment of the duty specified, that is, "to organize and conduct the election". Therefore, in order to understand*

*the amplitude of this power, we need to find out the meaning of the term "election" as used in Article 218(3) and to ascertain when the duty of the Election Commission to "conduct the election", as entrusted to it under this Article, starts and when it stands completed. Secondly, it also requires determination whether the duty of the Election Commission to conduct the election and the power to make the necessary arrangements therefor can be regulated by a law enacted by the Parliament, if so, what would be the status of the general power of the Election Commission under Article 218(3) of the Constitution vis-à-vis such law.*

9. *So far as the first question is concerned, the meaning of the term "election" and of the expression "conduct the election" as used in Articles 218 and 225 of the Constitution has already been expounded by a four-member Bench of this Court in Javaid Hashmi case. The words "election" and "conduct the election", as expounded in that case as well as in the other cases approvingly cited therein, have been used in Articles 218 and 225 of the Constitution in a wide sense to connote the entire election process consisting of several steps starting with the A issuance of the election programme and culminating with the declaration of the returned candidate, which include filing of the nomination papers, scrutiny of the nomination papers, withdrawal of the candidates, holding the poll, counting of the votes, consolidation of the result and declaration of the returned candidates, etc. In this wide sense, the process of conducting the election starts with the issuance of the election programme and stands completed on the publication of the names of the returned candidates in the official gazette."*

7. In all the aforesaid petitions, admittedly, the process of conducting the election was completed as the final results were consolidated and the names of the returned candidates were published in the official gazette, therefore, any dispute relating to the election, thereafter, including recount of votes

under Section 95(5) of the Election Act could not have been referred or taken cognizance by the Commission under the purported exercise under Article 218(3) of the Constitution read with Section 8 of the Election Act and, instead, it could have been agitated by filing election petition(s) under Section 139 before the Election Tribunal already constituted in terms of Section 140 of the Election Act. In the afore cited judgment, the facts giving rise to filing the petition before the Supreme Court were that one Mr. Zulfiqar Ali Bhatti ("appellant") and Mr. Amir Sultan Cheema ("respondent"), along with several other candidates, contested the general election of 2018 for the membership of the National Assembly of Pakistan from the constituency of NA 91 Sargodha-IV. In the poll held on 25-07-2018, the appellant secured 1,10,654 votes and the respondent 1,10,567 votes. The respondent made an application, on 27.07.2018, to the Returning Officer for recounting the votes, under Section 95(5) of the Elections Act 2017 ("Elections Act"). The Returning Officer dismissed the, application on 29.07.2018 and consolidated the final result of the poll on that day. On 30.07.2018, the respondent filed a petition before the Election Commission of Pakistan ("Election Commission") for setting aside the order of the Returning Officer and accepting his application for recounting the votes. The Election Commission, by its order dated 31.07.2018, disposed of the respondent's petition while directing him to approach the appropriate forum (Election Tribunal) through an election petition, for the redressal of his grievance. The respondent, however, challenged the orders of the Returning Officer and the Election Commission in the Lahore

High Court' through a writ petition. The High Court allowed the writ petition on 03.08.2018, set aside the order of the Returning Officer and directed the Returning Officer to undertake the recount of the votes in the polling stations to be indicated by the respondent. The appellant challenged the order of the High Court in this Court through a petition for leave to appeal. This Court, vide its order dated 10.08.2018, granted the leave, suspended the operation of the impugned order and directed the Election Commission to issue the notification of the appellant as a returned candidate, which was issued on the same day.

8. In the afore cited judgment while further elaborating the scope of the general power of the Commission under Section 218(3) of the Constitution, it has been held as under:-

*“18. Thus, we can safely conclude on the question of the status of the general power of the Election Commission under Article 218(3) of the Constitution vis-à-vis a law enacted by the Parliament, that this power operates in the area uncovered by such law. Alike is the scope and applicability of the powers of the Election Commission under Section 8(c) of the Elections Act, which is also evident from the opening words of Section 8, "Save as otherwise provided". These words indicate I that if something otherwise is provided in the Elections Act, then this Section will not apply. Further, the amplitude of the power of the Election Commission under this Section, like its general power under Article 218(3), is extended to the performance of its executive duty to "conduct the election" and thus it can be exercised only at any stage of the election process, not after the completion thereof.*

*19. In other words, we can say, the general power under Article 218(3) of the Constitution and Section 8(c) of the Elections Act can be exercised by the Election Commission*

*within two parameters: (i) during the election process, which starts with the issuance of the election programme and culminates with the publication of the name of the returned candidates in the official gazette, and (ii) when there is express provision in the law enacted by the Parliament to deal with the matter or issue that arises during the performance of constitutional duty of conducting the elections honestly, justly, fairly and in accordance with law”.*

9. Since in the above petitions the Commission has not passed any order in terms of Section 9 of the Election Act by declaring a poll as void, therefore, we do not deem it necessary to dilate upon the scope and applicability of Section 9 of the Election Act in these petitions, however, we may observe that in the case of Zulfiqar Ali Bhatti (*supra*), it has also been held that the Commission had no power to order a re-poll in the twenty polling stations, under Article 218(3) of the Constitution read with Section 8(c) or Section 9(1) of Election Act, on the ground of tempering made with the election record, after consolidation of the final result of the poll by the Returning Officer under Section 95 of the Election Act.

10. The ratio of the judgment in the case of Zulfiqar Ali Bhatti (*supra*) is fully attracted to the facts of the instant case, as admittedly, in these petitions, after consolidation of the results in terms of Section 95 and on receipt of the final consolidation results from the Returning Officer, the declaration of results by the Commission in terms of Section 98 of the Election Act i.e. after completion of the election process, any dispute relating to elections could not have been agitated before or taking cognizance by the Commission which became ***functus officio***,



therefore, orders passed by it for recount of polls after completion of election process were **coram non judice** and **without jurisdiction**, whereas, an alternate remedy was available to the petitioners for filing election petition before the Election Tribunal duly constituted for such purpose under the law. Since the authority and the jurisdiction of the Commission to entertain such application/petition was challenged before the different Benches of the Lahore High Court by filing Writ Petitions under Article 199 of the Constitution, therefore, the Lahore High Court was fully justified to examine the jurisdiction and illegality as to whether, the orders passed by the Commission after consolidation of results and issuance of Notification by the Commission, under the purported exercise of Sections, 8, 9 and 95 of the Election Act read with Article 218(3) of the Constitution were without jurisdiction and lawful authority or otherwise. Reliance in this regard can be made to the case of Aftab Shahban Mirani and others Vs. Muhammad Ibrahim and others (PLD 2008 SC 779), wherein, it has been held as under:-

“In consequence to the above discussion, we hold that the scope of interference of the High Court in its jurisdiction under Article 199 of the Constitution in election cases is limited only to the extent of matters which do not exclusively fall within the ambit of jurisdiction of Election Tribunals or Election Commission of Pakistan or in respect of the orders which are coram non judice, without jurisdiction or mala fide.”

Further reliance can be placed on the cases of Ghulam Mustafa Jatoi v. Additional District and Sessions Judge and others (1994 SCMR 1299) and Election Commission of Pakistan vs. Javaid

Hashmi and others (PLD 1989 SC 396) wherein it has been held that where no legal remedy is available to an aggrieved party during the process of election or after its completion, against such order of the election functionaries which is patently illegal/without jurisdiction and the effect is to de-franchise a candidate, he can press into service constitutional jurisdiction of the High Court.

11. It is pertinent to mention that while passing the impugned judgments/orders in the Writ Petitions, the learned Judges of the Lahore High Court, have neither entertained nor decided any election petition or dispute as contemplated under the Election Act, on the contrary, have decided a fundamental question posed for determination relating to the scope and extent of the jurisdiction vested in the Commission, after final consolidation of the results and issuance of Notification of the returned candidate under Section 98 of the Election Act, and also the forum, wherein, the remedy could have been sought in respect of dispute relating to recount of the ballot papers under Section 95 of the Election Act, therefore, any objection with regard to maintainability of the constitutional petition before the Lahore High Court, while referring to provision of Article 225 of the Constitution, is misconceived. It may be observed that Article 199 of the Constitution not only gives the authority but makes it obligatory upon the High Court to exercise constitutional jurisdiction in appropriate cases under the circumstances, as detailed in Article 199 (1)(a)(b) and (c) as well as Article 199(2) to rectify any jurisdictional defect or illegality while “*declaring that*

*any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect*”, and also to pass appropriate orders to ensure the enforcement of any of the fundamental rights conferred by Chapter 1 of Part II of the Constitution.

12. I may now dilate upon the scope of the provisions of Sections 95(5) and (6) of the Election Act as the learned counsel for the petitioners have attempted to argue that in view of the amendment in Section 95(5), whereby, while omitting the words “Returning Officer considers such request as not unreasonable” the discretion vested in the Returning Officer for the recount of the ballot papers has been taken away, and, therefore, under the amended provisions, the Returning Officer has no discretion to refuse the recount of poll if the requirements as mentioned under Section 95(5), (a) and (b) are met. The petitioners have misinterpreted Section 95(5) of the Election Act as it stood post Amendment 2023. As an effect of the Amendment brought about in August, 2023, the Returning Officer’s discretion to outrightly refuse any application on the basis of it being “unreasonable” was taken away by the legislature, however, it still enjoys the powers to entertain an application and either to accept or reject the same on the basis of the record as well as the merits of each case at hand. Even though it is an admitted fact that the Petitioner’s case for recounting fulfils all of its conditions set out in Section 95(5) of the Election Act, but the Returning Officer was

well within its jurisdiction and powers to reject the application of the petitioner on its merits. The words of Section 95(7) of the Election Act employ the words “provided where the Returning Officer recounts” clearly show that the Returning Officer has discretion as to whether he will accept or reject the application from a contesting candidate regarding recount of votes. Rule 139(7) of the Election Rules, 2017 state that the Election Tribunal may refuse to issue order for recount if the petitioner had failed to seek recount of votes before consolidation of result(s) or “where it is not likely to have an impact on the result of the election”. This rule also clearly shows that the legislature envisages the refusal of recount if sought by the contesting candidates. It cannot be the intention of the legislature to treat the office of a Returning Officer as a post office, where, on mere receipt of application(s) for the recount of polls, even without disclosing any valid reasons or instances of malpractice etc., he shall allow the same in a mechanical manner, without any application of mind, whereas, such order is appealable before the Election Tribunal through election petition. If no discretion is left with the Returning Officer, then it will render the whole election process in respect of all the constituencies at thousands of polling stations subject to recount on merely filing application(s) to this effect, and would thus bring the entire election process under serious dispute. Reliance in this regard can be placed on the case of Mir Mujib-ur-Rehman Muhammad Hassani Vs. Returning Officer, etc. (PLD 2020 SC 718) wherein it has been held as under:-

21. We therefore hold that the provisions of section 95(5) can only be triggered after all the pre-conditions therein have been met and the contents of the request itself lend credence to the need for a recount. To ensure this, the Returning Officer must exercise his discretion and ascertain the reasonableness of the request and decide whether recounting is to take place in "one or more" polling stations, or not at all. A reasonable request, therefore, must at least contain a narrative of the events that gave rise to the request in the first place, the details along with credible material/ information regarding events that may have caused the contesting candidate to demand the recount together with the names and details of any individuals alleged to be involved, and the specific polling stations at which the recount is being requested. Once all the aforementioned conditions have been met, then the Returning Officer must apply his mind to the facts and circumstances of the individual case and decide if, and in how many polling stations, a recount is warranted.

13. In all the aforesaid petitions, admittedly, after consolidation of final results in terms of Section 95 by the Returning Officer such applications for recount were filed by the petitioners which were dismissed by the Returning Officer(s), whereafter, Notifications were issued in respect of returned candidates in terms of Section 98 of the Election Act, whereas, instead of challenging such orders before the Election Tribunal through election petition(s), the petitioners chose to approach the Commission challenging the order(s) of the Returning Officer, which was denuded with such authority and had become *functus officio* for the reasons discussed hereinabove.

14. Similarly, perusal of the provisions of Section 95(6) reflects that the Commission, for reasons to be recorded, can direct the Returning Officer to recount the ballot paper of one or more polling stations, however, before conclusion of consolidation proceedings and not thereafter, as has been done in the aforesaid petitions, therefore, it acted without jurisdiction and lawful authority. It is also pertinent to mention that the learned Judge of the Lahore High Court while deciding Writ Petition No.16416 of 2024 has referred to various orders passed by the Commission, including the Members who have passed the orders in the above petitions, whereby, under similar facts and circumstances the Commission declined to entertain applications/petitions for recount of ballot papers under Sections 8 read with Sections 95(5) and (6) while holding that since process of consolidation had been completed, therefore, provisions of Section 8, 95(5) and (6) were not attracted. Nothing has been argued by the learned counsel for the petitioners or the learned counsel for the Commission to dispute such findings as recorded by the learned Judge of the Lahore High Court, regarding the contradictory view taken by the Commission in the above petitions, which fact alone, was sufficient to disregard the credibility of the orders passed by the Commission, in violation of constitutional guarantee of due process and equality before law in terms of Articles 4 and 25 of the Constitution, as well as rule of consistency and the law. As it has already been observed that neither the learned Benches of the Lahore High Court through impugned judgments have entertained or decided any election dispute, nor we are hearing the appeals under Section 155 of the

Election Act, against any decision of the Election Tribunal, therefore, any decision on the merits or legality of the orders passed by the Returning Officer on applications seeking recount of poll in terms of Section 95(5) of the Election Act is not required in these petitions for leave to appeal under Article 185(3) of the Constitution, as the same could have been assailed by the petitioners while agitating the grounds as argued in these petitions before the Election Tribunal by filing election petition in terms of Election Act.

15. In view of the above facts and circumstances and the legal position as emerged in the instant petitions, I am of the opinion that the impugned judgments/orders passed by the Lahore High Court in the aforesaid Writ Petitions do not suffer from any factual error or legal infirmity, therefore, do not require any interference by this Court, under Article 185(3) of the Constitution. Accordingly, the above civil petitions are dismissed and leave to appeal refused.

**Judge**

“Approved for Reporting”