

IN THE SUPREME COURT OF PAKISTAN  
( Appellate Jurisdiction )

**PRESENT:**  
Mr. Justice Amin-ud-Din Khan  
Mr. Justice Naeem Akhtar Afghan

**Civil Petition No.2477 of 2024**  
(On appeal against the order dated 22.05.2024 of the Lahore High Court, Lahore passed in W.P. No. 24978 of 2024)

Ali Gohar Khan		<b>Petitioner</b>
<b><u>Versus</u></b>		
Election Commission of Pakistan, Islamabad & others		<b>Respondents</b>
For the petitioner:	Mr. Hassan Raza Pasha, ASC	
For the ECP:	Mr. Muhammad Arshad, D.G. Law. Mr. Falak Sher, Legal Consultant	
Respondent No.4:	Mr. Muhammad Latif Khan Khosa, Sr. ASC Syed Ibqal Hussain Shah, AOR	
Date of hearing :	21.08.2024	

**O R D E R**

**NAEEM AKHTAR AFGHAN, J.** After hearing learned counsel for the petitioner, learned counsel for respondent No.1 and learned counsel for respondent No.4 at length, we have perused the available record. The issue relates to recounting of the votes of NA-97 Faisalabad-III wherefrom respondent No.4 was declared as Returned Candidate by securing 72,846 votes while the petitioner had secured 70,532 votes (having difference of 2,314 votes). The rejected votes were 9,198.

2. It is the case of the petitioner that he had submitted an application to the Returning Officer (**RO**) on 9 February 2024 for recounting of the votes but recounting was not made by the RO due to which he approached the Lahore High Court by filing Writ Petition No.9241-2024 which was withdrawn by him on 13 February 2024 for availing remedy in accordance with law before the Election Commission of Pakistan (**ECP**)/respondent No.1.

3. The representation of the petitioner was accepted by respondent No.1 *vide* order dated 22 February 2024 in exercise of powers under Article 218 (3) of the Constitution of the Islamic Republic of Pakistan, 1973 and all other enabling powers with directions to the RO to carry out the recounting of the votes of the above constituency in presence of all the parties in accordance with law.

4. In compliance of the above order passed by the respondent No.1, as a result of recounting, the petitioner secured 68,255 votes while responding No.4 secured 65,110 votes.

5. Feeling aggrieved of the order passed by respondent No.1 for recounting of the votes, respondent No.4 approached the Lahore High Court by filing Writ Petition No.24978/2024 which has been accepted *vide* impugned order dated 22 May 2024.

6. Section 95 of the Elections Act, 2017 (**the Elections Act**) being relevant, is reproduced hereinbelow: -

*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 1 [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 3 [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."*

7. According to sub-section 5 of section 95 of the Elections Act, before commencement of the proceedings for consolidating the results of the count, the RO "*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.

8. According to learned counsel for the petitioner, in compliance of sub-section 5 of section 95 of the Elections Act, the petitioner had submitted application in writing to the RO on 9 February 2024 for recounting of the votes before commencement of the proceedings for consolidating the results of the count but the RO did not recount the votes.

9. Though in para-v of the memo of Writ Petition No.9241/2024 filed by the petitioner in the Lahore High Court and in para-v of the memo of his representation submitted to respondent No.1, the petitioner has mentioned that he had given the application for recounting of the votes to the RO in the morning of 9 February 2024 but the computer typed application for recounting of votes, relied upon by learned counsel for the petitioner (annexed at page 91 and 92 of the petition) does not bear any

date and signature/thumb impression of the petitioner and in this regard no cogent reason/explanation is available on record.

10. On query by the Court, learned counsel for respondent No.1 stated that the relevant record does not confirm receipt of the above application in the office of the RO before initiating the proceedings for consolidating the results of the count.

11. In his written report/para-wise comments submitted before respondent No.1, the RO has categorically denied submission of application by the petitioner for recounting of the votes prior to commencement of the proceedings for consolidating the results of the count with the statement that the same is an afterthought.

12. Admittedly all the concerned were issued notices for commencement of the proceedings of consolidating the results of the count by the RO in the evening of 9 February 2024. Record reveals that the proceedings for consolidating the results of the count were started in the evening of 9 February 2024 and same was not concluded on the said date. With consent of all the concerned, including the authorized election agent of the petitioner (Mr. Zahoor Ahmed Qadri), the proceedings for consolidating the results of the count were concluded on the next day i.e. 10 February 2024.

13. The petitioner has failed to prove that he had submitted application for recount of the votes on 9 February 2024 prior to the commencement of the proceedings for consolidating the results of the count. Hence, one of the pre-requisite for recounting the ballot papers under section 95 (5) of the Elections Act, i.e. submitting application for recounting before commencement of the proceedings of consolidating the results of the count, was not fulfilled by the petitioner.

14. In view of the above, there was no occasion for respondent No.1 to accept the representation of the petitioner *vide* order dated 22 February 2024 and to issue directions to the RO for recounting the votes after consolidation of the results of the count on 10 February 2024.

15. The majority decision dated 12 August 2024 passed by this Court in Civil Petition Nos. 1573, 1673, 1729, 1767 and 2433/2024 in the cases of *Abdul Rehman Khan Kanju and others*, relied upon by learned counsel for petitioner, is distinguishable and same is not attracted to the facts and circumstances of the instant case as in all those cases decided by this Court *vide* majority decision dated 12 August 2024, admittedly the contesting candidates had submitted applications for recounting of the

votes prior to commencement of the proceedings for consolidating the results of the count.

16. In the facts and circumstances of the instant case, the impugned order passed by the Lahore High Court is held in accordance with law with the observation that while passing the impugned order, the Single Judge of the Lahore High Court has misinterpreted the judgment reported as **“Zulfiqar Ali Bhatti v Election Commission of Pakistan”**<sup>1</sup> and in this regard observations have already been made by this Court in para 33 of the majority decision dated 12 August 2024 passed in Civil Petition Nos. 1573, 1673, 1729, 1767 and 2433/2024 which reads as follows :

*"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."*

For the above reasons, while refusing leave to appeal, the petition is dismissed.

Judge

Judge

**Islamabad**  
21.08.2024  
Atif \*  
**APPROVED FOR REPORTING**

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<sup>1</sup> 2024 SCMR 997