

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

**PRESENT:**

**MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE MUNIB AKHTAR  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI**

**Civil Appeal No.3090 of 2022**

(On appeal against order dated 22.08.2022  
passed by the Election Commission of  
Pakistan in Case No.F-23(284)/2022-Law.)

**And**

**Civil Misc. Application No.7920 of 2022**

(Permission to file Civil Appeal.)

**In**

**Civil Appeal No.Nill of 2022**

Naseer Ahmed and others	...	<b>Appellants</b> (in CA 3090-2022)
Imdad Ali and another	...	<b>Applicants</b> (in CMA 7920/2022)

VS

Returning Officer U/c 31 Khuda Dan, Mirpur Khas & others	...	<b>Respondents</b>
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For the Appellants	:	Syed Qalb-i-Hassan, ASC (in CA No.3090/2022)
For the Applicants	:	Mr. Agha Muhammad Ali, ASC (in CMA No.7920/2022)
For Respondents No.2-4	:	Mr. Muhammad Ikram Ch., Sr. ASC Syed B.H. Shah, AOR
Date of Hearing	:	01.11.2022

**JUDGMENT**

**Munib Akhtar, J.:** This matter arises out of the ongoing process of local government elections in Sindh, which are being held in phases. The present appeal relates to elections held in the first phase on 26.06.2022 in respect of the district council for UC No. 31, Khuda Dad, Tehsil Kot Ghulam Muhammad, Mirpurkhas. The appellants and the respondent Nos. 2 to 4 ("contesting respondents") contested the elections. The appellants obtained the largest number of votes but on an application moved by the contesting respondents the Election Commission of Pakistan ("ECP"), in circumstances shortly to

be stated, by the impugned order dated 22.08.2022, declared the election to be void and directed that there be re-polling. The appellants filed this appeal under s. 9(5) of the Elections Act, 2017 ("2017 Act").

2. The case put forward by the contesting respondents was that for the election they were allotted the symbol of "hand pump" by the Returning Officer in accordance with applicable rules and procedure. (The appellants were allotted the symbol of "arrow".) The contesting respondents conducted their election campaign by having posters, placards, leaflets, handouts, banners etc printed with the symbol allotted to them. Their election rallies and meetings prominently displayed the said symbol. Thus, according to their case, the said symbol became associated in the minds of the voters with them. The importance of this lay in the fact that, as claimed by the contesting respondents, the vast majority of the voters were non-literate. On election day, when they went into the polling booth, the voters would cast their vote by marking the symbol of the candidate(s) whom they wished to vote for. Thus, if the voter wished to vote for the contesting respondents, he would search out the symbol allotted to them on the ballot paper and mark it accordingly.

3. According to the contesting respondents what actually happened, and became apparent only on election day, was that there was a printing error in respect of the ballot papers. Against their names, the ECP had erroneously printed another symbol (of a bibcock or tap) instead of a hand pump. This caused massive confusion among the voters. The contesting respondents claimed that as soon as the error became known they brought it to the attention of the Returning Officer and election officials, and requested for polling to be stopped. However, no heed was paid and the voting proceeded apace. In the event, the appellants (whose symbol was printed as allotted) succeeded in polling the largest number of votes, with the contesting respondents in second place. The contesting respondents claimed that had the printing error not been made they would have won the elections.

4. It was in these circumstances that the contesting respondents filed a petition before the ECP, citing various provisions of law and prayed for a re-poll. The present appellants were joined as respondents. After hearing the parties and considering the record

the ECP allowed the petition and made the order as noted above. It is against that order that the present appeal was filed. We may note that along with the present appeal there was also before us a miscellaneous application filed by some of the other candidates who contested the election and who also sought to appeal against the impugned order of the ECP. The stance taken by these applicants was the same as that taken by the present appellants. We also heard learned counsel appearing for them who, in the event, (and in our view quite properly) adopted the submissions made by learned counsel for the appellants.

5. Learned counsel for the appellants submitted that the entire case put forward by the contesting respondents was based on surmises and conjectures. It was submitted that the voters in the constituency were not at all misled by the mistake made in the printing of the symbol. It was pointed out that in Urdu the same word is used for both devices (i.e., hand pump and tap), which word was also used throughout and thus the voters were well aware of the symbol that related to the contesting respondents. The latter strongly contested the election and raised no objections as claimed on election day. Rather, it was only when they realized, once counting proceeded, that they had lost that they belatedly raised the claim that there had been a printing error. Learned counsel submitted that the election was closely and fully contested, and took us to the relevant record which showed the number of votes cast. It was submitted that the ECP had erred in ordering a re-poll and learned counsel prayed that the appeal be allowed. Learned counsel for the contesting respondents, on the other hand, fully supported the impugned order and prayed that the appeal be dismissed.

6. After considering the relevant provisions and the record as produced before us, we ultimately concluded that the appeal (and the miscellaneous application) ought to be dismissed. As noted above, the present appeal was filed under s. 9(5) of the 2017 Act. This is not a standalone provision, which provides for a general right of appeal to this Court. Rather, it is particular to s. 9 alone: "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" (emphasis supplied). This meant that the appellants' case was that the impugned order had to have been

made under s. 9. Now, an examination of the impugned order showed that s. 9 is not referred to therein. It is however well settled that even if the correct statutory provision is not mentioned by the authority making the order under challenge, if the relevant power or jurisdiction has been conferred the Court will consider the matter in terms thereof. It is unfortunate that the ECP did not first identify the specific statutory provision under which it could make the order that it did. We agree with the appellants that the proper jurisdiction in the present matter was that conferred by s. 9. It is therefore to this section that we turn in order to examine the correctness or otherwise of the impugned order.

7. Subsection (1) of s. 9 provides in material part as follows (emphasis supplied):

**“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 ... *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 ... 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....”

The erroneous printing of the symbol allotted to the contesting respondents on the ballot paper is not denied. It clearly constituted a violation of the 2017 Act and/or the applicable rules. The question therefore was whether the result of the poll was materially affected either at one or more polling stations or in the whole of the constituency by reason of this violation. Inasmuch as that (obviously) the same ballot papers were used throughout the error affected the whole of the constituency. The only question therefore that remained to be considered was whether it “materially” affected the “result of the poll”.

8. Even if, as contended by learned counsel for the appellants, the same word in Urdu was wide enough to refer to both “hand pump” and “tap”, there can be no doubt that the two are different devices. More importantly, any graphic representation or visual and/or pictorial image or depiction of the two is easily differentiated and the difference is immediately discernable. It is not denied that the contesting respondents correctly portrayed the symbol allotted to

them during their electioneering or that at least some of the voters in the constituency would rely primarily on the graphic/pictorial representation of the device/thing/animal etc (i.e., the symbol itself) allotted and printed on the ballot paper in identifying the candidate they wished to vote for. As noted above, learned counsel for the appellants referred to the votes cast in their favor and compared that with the number cast for the contesting respondents to show that the election was fully, and hotly, contested. Indeed, the difference between the two was small. But that closeness itself indicates that some at least of the voters who intended to vote for the contesting respondents could have been misled or confused as to whom they were to vote for. Had the difference been great it could be plausibly argued that the error did not materially affect the outcome of the poll. The closeness in the result indicates otherwise and, with respect, points in a direction opposite to the one suggested by learned counsel for the appellants. The conclusion is inescapable. The result of the poll was materially affected and the ECP was well within its jurisdiction to order a re-poll for the whole of the constituency. The impugned order was in this sense unexceptionable.

9. For the foregoing reasons, it was announced at the conclusion of the hearing that both the appeal and the miscellaneous application listed along with it stood dismissed.

Judge

Judge

Judge

Islamabad, the  
1<sup>st</sup> November, 2022  
Naved/\*

Approved for reporting