

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

CIVIL APPEAL NO.166 OF 2021

Ali Asjad Malhi

...Appellant(s)

Versus

Ms. Syeda Nosheen Iftikhar and others

...Respondent(s)

For the Appellant(s):	Mr. M. Shahzad Shoukat, ASC Mian Abbas Ahmed, ASC Mr. M. Sharif Janjua, AOR
For Respondent No.1:	In person.
For Respondent No.7:	Mr. Ghulam Mustafa Kandwal, ASC
For the E.C.P.:	Mian Abdul Rauf, ASC Mr. M. Arshad D.G. E.C.P.
Date of hearing:	16.03.2021.

ORDER

The impugned judgment of the Election Commission of Pakistan ("**ECP**") dated 08.03.2021, which was preceded by a short order dated 25.02.2021, has been read to the Court. The relevant facts of the present lis are that on 20.02.2021, a day after the polling in the bye-election of NA-75, Sialkot-IV had concluded, respondent No. 1 (a contesting candidate) complained

to the Returning Officer and the ECP about irregularities committed at twenty polling stations. Thereafter, on completion of his preliminary inquiry, the Returning Officer vide report dated 21.02.2021 accepted the claim of respondent No. 1 only to the extent of fourteen polling stations. However, after hearing the parties, ECP in its impugned short order dated 25.02.2021 declared the whole election of NA-75, Sialkot-IV null and void.

2. It is accepted by all sides appearing in the matter that two persons were killed at one polling station, roughly forty polling stations were affected by aerial firing and Presiding Officers of twenty polling stations went missing because of which they could not hand over the results to the Returning Officer in time. More importantly, the underlying tenor of the impugned judgment is that the police were silent spectators who did not intervene to check the acts of intimidation, harassment and violence that took place outside the polling stations on election day. In fact, the impugned judgment has observed that neither the Inspector General of Police, Punjab nor the Chief Secretary, Punjab responded to the ECP's request on polling day for controlling the law and order situation in Daska. Instead, only the Federal Government reacted by providing protection through Rangers for the polling staff, polling stations and polling material.

3. There is no cavil with the proposition that ECP is empowered under Article 218(3) of the Constitution read with Section 9 of the Elections Act, 2017 ("**Act**") to ensure that elections are conducted honestly, justly, fairly and lawfully in such a manner that coercion, intimidation and pressure tactics

are stymied. However, the question before us is: what standard of proof, quantum of evidence, scale and severity of violations of law will warrant a re-poll in the entire constituency. As it presently stands, Section 9 *ibid* operates in a very limited span of sixty days following the publication of the result of an election. The jurisdiction of ECP under the said provision partakes of executive and quasi-judicial powers that may be exercised promptly to cure any irregularity in the conduct of an election. Therefore, the benchmarks laid down by the law for the Election Tribunal to annul an election and order a re-poll may not strictly apply to the ECP under the said Section without suitable modification. In such circumstances we would like to examine whether the impugned action of the ECP, namely, its allegedly excessive response to the prevailing situation in Daska was within its jurisdictional parameters. The learned counsel for the parties have so far not analyzed the extensive material on record to relate the same to the powers and jurisdiction of the ECP under the Constitution and the Act. In particular, the following questions have not been addressed:

- a. What transgressions on the polling day could constitute grave illegalities or violations calling for a fresh rather than a partial re-poll?
- b. In what situations would non-pervasiveness of the illegalities or violations committed on polling day still attract the same result?

4. To assist the Court in answering these questions, we would appreciate if ECP could present a map of the constituency labelling the polling stations where specified wrongs were

committed along with a chart explaining the said labels. To come up for arguments on the foregoing points on **19.03.2021**.

Judge

Judge

Judge

Islamabad, the
16th March, 2021
Azmat/- Meher