ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.56 of 2021
Muhammad Azhar Ul Islam Zafar
Versus
Pakistan Engineering Council and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.11.2021	**Mr. Jameel Hussain Qureshi, Advocate for the petitioner.**

Through the instant civil revision petition, the petitioner, Muhammad Azhar Ul Islam Zafar, impugns the judgment dated 29.10.2021 passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the order dated 21.10.2021 passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order dated 21.10.2021, the learned Civil Court dismissed the application for interim injunction filed by the petitioner along with his suit for declaration, permanent and mandatory injunction.

2. As per the election schedule issued by the Pakistan Engineering Council ("P.E.C.") for the election of the P.E.C. Governing Body for the term 2021-24, forty members of the Governing Body were to be elected in the elections scheduled to be held on 08.08.2021. The counting of votes at each polling station were required to be completed on the day of polling, and the election results were to be compiled between 09.08.2021 and 11.08.2021, and declared on 12.08.2021.

3. Three seats on the Governing Body were to be filled by engineers in the discipline of Environmental / Urban / Geo Informatics / Ocean / Architectural Engineering from the province of Punjab. The petitioner as well as respondent No.3

UNCERTIFIED COPY

contested the election for the said three seats of the Governing Body. As per the initial result of the elections, respondent No.3 secured 3789 votes and was placed at 4th position whereas the petitioner secured 3802 votes and was placed at 3rd position.

4. A public notice in terms of Bye-law 31(3) of the P.E.C. Bye-laws, 1976 was issued for the elections of the P.E.C. Governing Body (2021-24) showing the petitioner as one of the elected candidates from the Province of Punjab. Since there was a difference of 13 votes between the petitioner and respondent No.3, the latter, on 16.08.2021, submitted an application to the Election Committee constituted pursuant to Bye-law 25(1) of the P.E.C. Bye-laws 1976 for the recount of votes. The Registrar of the P.E.C. issued notice to the petitioner as well as respondent No.3 to appear before the Election Committee on 31.08.2021. The Election Committee, in its meeting held on 31.08.2021, decided unanimously to hold a physical recount of votes of all the 148 polling stations in presence of the petitioner and respondent No.3. It was also decided that until this process was completed, the petitioner's membership of the Governing Body *"shall remain withheld."*

5. Under Bye-law 25(3) of the P.E.C. Bye-laws 1976, the Election Committee is constituted for a period of 90 days after the declaration of the elected candidates through a public notice. The tenure of the Election Committee is due to expire on 13.11.2021, and till date recount of the ballot papers has not taken place.

6. On 06.10.2021, respondent No.3 filed writ petition No.3610/2021 before this Court seeking

UNCERTIFIED COPY

inter alia a direction to the P.E.C. to complete the process for the recount of votes. Vide order dated 08.10.2021, this Court issued notice to the respondents in the said petition, including the petitioner. Furthermore, the Registrar, P.E.C. was directed to tender appearance before this Court and explain as to why a final decision on respondent No.3's application for recount of votes had not been taken.

7. On 15.10.2021, a representative from the P.E.C. tendered appearance, and submitted that although the process for the recount of votes had been initiated but the same was stopped due to an injunctive order issued by the learned Civil Court in a suit instituted by the petitioner. He further submitted that respondent No.3 had not been impleaded as a party in the said suit. In the order dated 15.10.2021, this Court recorded its expectation that the learned Civil Court would decide the application for interim injunction expeditiously and preferably within a period of one week.

8. Vide order dated 21.10.2021, the learned Civil Court dismissed the petitioner's application for interim injunction, and vide judgment dated 29.10.2021, the Court of the learned Additional District Judge, Islamabad, dismissed the petitioner's appeal against the said order dated 21.10.2021. The said concurrent orders have been assailed by the petitioner in the instant civil revision petition.

9. Learned counsel for the petitioner drew the attention of the Court to respondent No.3's application for the recount of votes, and submitted that the said application was vague and ambiguous; that the result of the election had

UNCERTIFIED COPY

been correctly declared and published on 12.08.2021; that the petitioner's name was amongst the list of the elected candidates; that vide letter dated 20.08.2021, the P.E.C. congratulated the petitioner on being elected as a member of the P.E.C. Governing Body for the term 2021-24; that thereafter, vide letter dated 27.08.2021, the P.E.C. informed the petitioner that respondent No.3, who had been declared as an unsuccessful candidate and had secured 4th position, had filed an application for the recount of votes, and that the petitioner was required to appear before the Election Committee on 31.08.2021; that on 31.08.2021, the petitioner filed a suit for declaration, permanent and mandatory injunction before the learned Civil Court, and on the same day, an ad-interim order was passed restraining the P.E.C. from acting upon its letter dated 27.08.2021; that strong vested rights had been created in the petitioner's favour with the declaration of the election result showing him as a returned candidate; that the Convener of the Election Committee had given incorrect information to the said committee in its meeting dated 31.08.2021; that the election result of the Skardu polling station could not be entered as it had been received two days later; that the said committee was also mislead by being informed that if the 23 votes received from the Skardu polling station were counted, respondent No.3 would win the election by 10 votes; that the votes from the Skardu polling station were already counted when the petitioner was declared as a returned candidate since the declaration of the election result was made on 12.08.2021 i.e., more than two days after the polling day; and that

UNCERTIFIED COPY

the concurrent judgments / orders passed by the learned Courts below suffer from jurisdictional infirmities and are therefore liable to be set-aside.

10. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

11. As mentioned above, the elections took place on 08.08.2021 and the election result was declared by the P.E.C. on 12.08.2021 showing the petitioner as one of the candidates successfully elected as a member of the P.E.C. Governing Body from the province of Punjab. Respondent No.3 had filed an application for the recount of votes. Vide letter dated 27.08.2021, the P.E.C. informed the petitioner about respondent No.3's application and required the petitioner to appear before the Election Committee on 31.08.2021.

12. The petitioner was well aware of the fact that respondent No.3 had filed an application for the recount of votes when the petitioner, on 31.08.2021, filed a civil suit and was able to obtain an ad-interim injunction restraining the P.E.C. from acting upon the said letter dated 27.08.2021. It may be emphasized that in the said letter dated 27.08.2021, it was explicitly mentioned that respondent No.3 had filed an application for the recount of votes. Despite knowing that a contesting candidate (i.e., respondent No.3) had filed the said application, the petitioner decided not to implead respondent No.3 as a defendant in the suit.

13. It was only after writ petition No.3610/2021 was taken up for hearing on 15.10.2021, the representative of the P.E.C. informed this Court that respondent No.3 had not been impleaded by the petitioner as a party in the civil suit and that

UNCERTIFIED COPY

the learned counsel for respondent No.3 submitted that he would be filing an application for the impleadment of respondent No.3 as a party in the said suit.

14. Learned counsel for the petitioner could not come up with any plausible justification for omitting to implead the most necessary party i.e., respondent No.3 as a defendant in the said suit. This inequitable conduct on the part of the petitioner is enough to dismiss the instant petition with a penalty.

15. Be that as it may, the petitioner contends that the 23 votes polled at the Skardu polling station had been counted before he was declared as a returned candidate whereas the position taken by the Convener of the 11th meeting of the Election Committee held on 31.08.2021, is to the contrary. The correct position can be ascertained on the recount of the votes. It is expected that the Election Committee would complete the recount process during its tenure.

16. In view of the above, I do not find any jurisdictional infirmity in the concurrent orders passed by the learned Courts below. Consequently, the instant civil revision petition is dismissed in *limine*. Given the fact that the petitioner had resorted to the inequitable conduct of not impleading respondent No.3 as a defendant in the suit, costs of Rs.20,000/- are imposed on him to be paid to the Edhi Foundation within a period of two weeks and the deposit receipt be brought on record.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**

UNCERTIFIED COPY