JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2099 of 2022

Mehran Ilyas

Versus.

Election Commission of Pakistan, etc.

For Petitioner	:	M/s Muhammad Farooq Malik ASC & Tariq Mehmood Khan Marwar, Advocate:
For Respondent No.1	:	Mr. Muhammad Arshad, DG (Law), Mr. Khurram Shahzad ADG (Law) Ms. Saima Tariq Janjuhah DD (Law) and Mr. Zaigham Anees (LO):
For Respondent No.2	:	M/s Muhammad Nisar Khattak & Mujahid Islam Advocates:
Date of Hearing	:	20th June, 2022:

ARBAB MUHAMMAD TAHIR, J: This single Judgment shall dispose of captioned writ petition as well as Writ-Petition No. 1281 of 2022 titled "*Shaukat-Ullah Khan v. ECP*" as both emanate from orders of even date i.e. 30.03.2022, passed by the Election Commission of Pakistan (‘***respondent No.1’***) in Case No. 23(26)/2022-Law and 23(59)/2022-Law, whereby on various petitions of contesting candidates for the seat of ‘*General Councilor*’, VC Siraj Khel, Teshil Takhat Nasrati, District Karak, for recounting of votes and rectification of results on the ground of fabrication/manipulation of Form-XVII by the Returning Officer 192 (*petitioner in WP 2099-2022*), the respondent No.1 constituted an Inquiry Committee comprising Mr. Muhammad Raziq, Provincial Election Commissioner, Khyber Pakhtunkhwa, Mr. Khushal Zada, Director (Elections) Peshawar, KPK and Mr. Adnan Bashir, Regional Election, Kohat, under section 55 (4) read with Rule 12 (4) of Khyber Pakhtunkhwa Local Government (Conduct of Elections) Rules, 2021 to conduct fact finding inquiry in the matter under the law with the direction to submit their report within

shortest possible time but not later than 30 days after the receipt of the Order. It was further directed that the Committee shall highlight the role of accused involved in the corrupt practice including manipulation/fabrication of Form(s) XVII as well as recommendations for initiating disciplinary or criminal proceedings or both against accused. In-addition, the respondent No.1 directed as under:-

> i) **Since the conduct of Mehran Ilyas, Returning Officer has become dubious in the matter hence he be suspended as Additional Assistant Commissioner (wherever he is posted now) under section 55, sub-section 3 of the Elections Act, 2017 read with Rule 12, sub-section 3 of Khyber Pakhtunkhwa Local Government (Conduct of Elections) Rules, 2021**till further orders of the Commission and under intimation to this Commission;
> ii) Notification of Mehran Ilyas as Returning Officer be also withdrawn forthwith under intimation to this Commission;
> iii) District Election Commissioner, Karak be appointed as Returning Officer under section 55, sub-section 8 of the Elections Act, 2017 read with Rule 12, sub-section of of Khyber Pakhtunkhwa Local Government (Conduct of Elections) Rules, 2021; &
> iv) In the meanwhile, **result of constituency in question shall remain withheld**."
> [Emphasis supplied]

2. The captioned writ petition was filed by Mehran Ilyas, Returning Officer, since placed under suspension pursuant to order ibid ('*hereinafter to be referred as '**petitioner No.1**'*) whereas Writ Petition No. 1281 of 2022 was filed by Shaukat-Ullah Khan ('*hereinafter to be referred as '**petitioner No.2**'*) who as per Form-XIX, "*Provisional Consolidated Statement of Results of the Count*" had obtained highest valid votes i.e. 748.

3. The petitioner No.1 being dissatisfied with the recommendations ibid came up with the stance that he was appointed as the Returning Officer, Tehsil Takht Nasrati, District Karak, RO-192, for the local bodies elections, held on 19.12.2021 and also conducted re-poll, scheduled and announced by the respondent No.1 in the same constituency on 13.02.2022 due to

law and order situation; that after close of the elections, he prepared consolidated result in accordance with due procedure and transmitted it to the respondent No.1 for notification of the returned candidates in the official gazette; that aggrieved by the said decision, the unsuccessful candidates filed various petitions before the respondent No.1 wherein he was directed to file a detailed report; that grievances of the candidates was restricted to five VCs i.e. Takht Nasrati, Takht Nasrati Payan, Bagora, Siraj Khel and Ganderi Khatta; that in-addition, respondent No.1 vide order dated 28.02.2022 also directed the District Election Commission Officer Karak to record statements of all the Presiding Officers and submit the same to respondent No.1 and that vide order dated 30.03.3022, also suspended the petitioner, in terms noted in Para-01 above which constrained him to file the captioned writ-petition.

4. Both the petitioners pray for setting aside of the impugned orders and proceedings conducted there-under till date while petitioner No. 2 on the strength of Form-XIX, "Provisional Consolidated Statement of Results of the Count" further prays for a direction to the respondent No.1 to notify him as *'returned candidate'* in the official gazette.

5. The circumference of arguments advanced by learned counsel for the petitioners had been to the effect that despite lapse of more than two and a half months, neither the Inquiry Committee summoned the petitioner nor initiated any proceedings till date which is violation of Section 55 of the Elections Act, 2017 (**'Act of 2017'**) besides Rule 12 of the Local Government (Conduct of Elections) Rules, 2021 (**'Rules 2021'**) where-under disciplinary proceedings against election official on the allegation of misconduct is to be completed within one month; that the tenure of posting of any official under the respondent No.1, placed on deputation, is restricted till publication of names of returned candidates in the official gazette and that period commensurate from the date of appointment of said official, as stipulated in sub-rule 1 of Rule 12 of the Rules 2021 and sub-section 1 of Section 55 of the Act of 2017.

6. According to the learned counsel, the names of the returned candidates have been notified in the official gazette while timeframe of one month had already elapsed without initiation of any inquiry pursuant to impugned directions. Further argued that at the same time, the Election Tribunals have also been constituted and notified by the respondent No.1, therefore, the latter has become *functus officio* and further proceedings by it would be *coram non judice* in terms of Rule 9(3) of the Rules 2021. The learned counsel in support of their submissions placed reliance upon case law reported as PLD 2009 Islamabad 19 and order dated 31.03.2022, passed by this Court in W.P. 819 of 2022.

7. On the other hand, learned counsel for respondents and officers of respondent No. 1 objected upon maintainability of the writ petitions as no violation of any rule or law has been alleged; that petitioner No.1, neither initiated nor recommended any action against the Presiding Officers as per his own report and that no candidate has yet been notified as returned candidate in the official gazette. Learned counsel placed reliance upon case laws reported as PLD 2012 SC 681, 2021 MLD 1616 and the findings of the Inquiry Committee dated 21.04.2022.

8. Besides giving due consideration to the submissions advanced by both the sides, relevant provisions of the Act of 2017 and Rules 2021 have also been gone through.

9. At the inception, it is important to mention that Notification of the returned candidate for the subject constituency has not been published in the official gazette rather withheld as reveals through Notification dated 04.03.2022 issued by the respondent No.1.

10. The petitioner No.1 questioned the disciplinary proceedings, being in contravention of Section 55(1) of the Act of 2017 and Rule 12(5) of the Rules 2021. The plain reading of Rule 55(1) guides to observe that an election official appointed on deputation shall be deemed to be under the control, superintendence and discipline of

the Commission for the period commencing on and from the date of appointment on deputation till publication of the name of the returned candidate in the official gazette which event, as reveals through Notification dated 04.03.2022 has not yet taken place.

11. The enquiry, as argued, had to be completed within thirty days in terms of Section 12(5) of the Rules 2021. It was so happened as impugned direction was issued on 30.03.3022 while report was submitted on 21.04.2022 i.e. within the stipulated period of thirty days.

12. Likewise, it is not the case of recounting ordered by the respondent No.1 in terms of Section 95(6) of the Act of 2017 as no such direction was issued by the said respondent after conclusion of the consolidation proceedings.

13. The objection upon the jurisdiction of respondent No.1 after the establishment of Election Tribunals in terms of Rule 9(3) of the Rules 2021, is devoid of force as under the said proviso, the Commission is to decide the complaint before the expiration of 60 days after publication of the name of a returned candidate in the official gazette unlike the present situation as the Notification of the returned candidate had been withheld. This aspect of the matter ousts the jurisdiction of the Election Tribunal as only after the publication of the name of the returned candidate in the official gazette, the remedy of filing of an election petition before the Election Tribunal can be availed. Reliance is placed upon case of '*Syed Fakhar Imam v. Chief Election Commission of Pakistan and others'* (**PLD 2008 Supreme Court 730**).

14. The power of the Commission to declare a poll void is stipulated in section 9(1) of the Act of 2017 pursuant to which the Commission if satisfied that by reason of grave illegalities or violations of the provisions of the Act of 2017 or Rules 2021 have materially affected the result of the poll, it shall make the declaration accordingly and order recast of the votes in the manner provided for the by-elections. A remedy against the said declaration

is also available to an aggrieved person in terms of section 9(5) of the Act 2017 in the form of appeal before the Hon'ble apex Court, therefore, in presence of alternate efficacious remedy, direct recourse in terms of Article 199 of the Constitution would not be available to an aggrieved person.

15. Having examined the case from every angle in the light of submissions advanced by learned counsel for the parties, impugned orders and proceedings conducted pursuant thereto appear to be in accordance with the provisions of the Act of 2017 and the Rules 2021, referred above. The ground that after publication of the names of the returned candidates in the official gazette, the respondent No.1 has become *functus officio* is misconceived as notification of the subject constituency has since been withheld and this aspect of the matter ousts the jurisdiction of the Election Tribunal in terms of Section 142(1) of the Act of 2017 and Rule 54(2) of the Rules 2021 wherein it is stipulated that an election petition shall be presented to the Election Tribunal appointed by the Commission **within forty-five (45) days of the publication in the official Gazette of the names of the returned candidates, unlike the case-at-hand.**

15. In view of above, the petitioners have not been able to make out a case warranting interference in the impugned orders. Consequently, both the petitions fail and are accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in Open Court On____07.2022

JUDGE

//Kamran//

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1281 of 2022

Shaukat Ullah Khan

Versus

Election Commission of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.

20.06.2022

In view of the detailed reasons recorded in judgment of even dated passed in **W.P. No. 2099 of 2022 titled Mehran Ilyas v. Election Commission of Pakistan, etc.** the instant writ petition is also dismissed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on ___07.2022

JUDGE

//Kamran//