

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4075 of 2022
Ghulam Yaseen and another
Versus
Election Commission of Pakistan and others

Dates of Hearing:	29.03.2023 & 30.03.2023
Petitioners by:	Mr. Umer Ijaz Gillani, Advocate.
Respondents by:	M/s Mehfooz Ahmed Awan and Shafqat Ghafar Khan Joyia, Advocates for respondents No.6 & 7. Mr. Zaigham Anees Awan, Law Officer, E.C.P. Mr. Zain-ul-Abideen Shah, Deputy Director (LGE-Sindh), E.C.P.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners impugn the order dated 22.08.2022 passed by the Election Commission of Pakistan (“E.C.P.”) disposing of their applications dated 13.07.2022 filed under Section 172 of the Elections Act, 2017 (“the 2017 Act”) read with Sections 66 and 71 of the Sindh Local Government Act, 2013 (“Sindh LG Act”). Through the said application(s), the petitioners had sought a declaration to the effect that they were the successful candidates in the elections for the seat of Chairman and Vice Chairman, Union Council No.10, Jeay Shah (TMC-II), Sukkur in accordance with the provisional result issued by the Returning Officer. The petitioners have also sought a declaration to the effect that the recounting process conducted by the Returning Officer on the application of respondent No.6, Shafique Ahmad, was void.

2. Learned counsel for the petitioners submitted that the elections of the Chairman and Vice Chairman for Union Council No.10 were held on 26.06.2022; that as per the provisional result issued by the Returning Officer, the petitioners emerged as successful candidates; that thereafter, an application for recount of votes was filed by respondent No.6; that the Returning Officer allowed the said application and conducted recount of the votes which resulted in a change in the number of votes that had been cast in the petitioners’ favour; that the petitioners filed an application before the E.C.P.

challenging the recount of the votes and the change in the election result; that the said application was decided through the impugned order dated 22.08.2022 according to which although the recount of the votes conducted by the Returning Officer has been declared as void but directions have been issued for carrying out re-poll at Polling Station No.1 (GBHS New Pind of Ward No.1) and Polling Station No.2 (Sir Syed Elementary School, Pathan Colony of Ward No.2); that the Presiding Officer for Polling Station No.2 took a position before the E.C.P. that he had been pressurized to put his signature on a statement that he had made a wrong calculation; that his signature on the statement that he had made a wrong calculation was obtained through coercion; and that this statement was enough to annul the recount process. Learned counsel for the petitioners prayed for the instant writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondents No.6 and 7 submitted that on account of gross violation of the law carried out on the polling-day i.e. 26.06.2022, respondents No.6 and 7 submitted an application to the Returning Officer on 26.06.2022 seeking the recount of the votes; that the said application was allowed vide order dated 27.06.2022 passed by the Returning Officer; that the Returning Officer issued notices dated 28.06.2022 to all candidates requiring them to attend his office for the process of recount to be conducted at 10:00 a.m. on 29.06.2022; that the petitioners participated in the recount process without any demur, protest or reservation; that the petitioners are estopped from challenging the recount process after voluntarily participating in the same; that after the recount process, notification was issued by the Returning Officer under Section 34(1) of the Sindh LG Act declaring respondents No.6 and 7 as the returned candidates for the seats of Chairman and Vice Chairman respectively of Union Council No.10, Jeay Shah (TMC-II), Sukkur; that the recount process was conducted strictly in accordance with the law and the notification issued by the Presiding Officer in favour of respondents No.6 and 7 does not suffer from any legal infirmity. Learned counsel for respondents No.6 and 7 prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that elections to the seats of Chairman and Vice Chairman, Union Council No.10, Jeay Shah (TMC-II), Sukkur were held on 26.06.2022. As per the provisional result issued by the Returning Officer after the close of polling and count of votes, the petitioners having affiliation with Pakistan Tehreek-i-Insaf had secured 1,221 votes whereas respondents No.6 and 7 having affiliation with Pakistan Peoples Party Parliamentarians had secured 1,149 votes. On 26.06.2022, respondents No.6 and 7 submitted an application to the Returning Officer seeking the recount of the votes. In the said application, it was pleaded that massive rigging had been carried out by all the Presiding Officers in the male and female polling stations at the behest of the said respondents' rival candidates. It was also pleaded that all the Presiding Officers of all the polling stations had dragged out respondents No.6 and 7's polling agents from the polling stations after closing of poll and had counted the votes in the absence of their polling agents. The allegations in the said application are of a generalized nature and lack specificity.

6. Be that as it may, the Returning Officer through an unreasoned order dated 27.06.2022 allowed the said application for the recount of votes. On 28.06.2022, notices were issued by the Returning Officer to all the candidates to participate in the process for the recount of ballot papers to be conducted at 10:00 a.m. on 29.06.2022. It is not disputed that the petitioners participated in the recount process. There is nothing on the record to show that they had objected to the Returning Officer's decision to hold a recount of the votes.

7. After the process of the recount, the Returning Officer issued Form-XIV on 01.07.2022 according to which the petitioners had obtained 1,116 votes whereas respondents No.6 and 7 had obtained 1,151 votes. The number of rejected votes was raised from 192 to 293.

8. The Returning Officer issued a notification under Section 34(1) of the Sindh LG Act showing respondents No.6 and 7 as the returned candidates for the seats of Chairman and Vice Chairman respectively. The petitioners filed an application under Section 172 of the 2017 Act read with Sections 66 and 71 of the Sindh LG Act seeking a declaration that the petitioners were the successful candidates for the seats of Chairman and Vice Chairman by setting aside the result declared by the Returning Officer on 01.07.2022. The petitioners had also sought a

declaration to the effect that the recounting process was illegal and *void ab-initio*. The proceedings pursuant to the said application culminated in the order dated 22.08.2022 passed by the E.C.P. whereby the process for the recount of votes conducted by the Returning Officer was declared as void, and it was directed that re-poll be carried out in Polling Station No.1 namely GBHS New Pind of Ward No.1 and Polling Station No.2 namely Sir Syed Elementary School, Pathan Colony, Ward No.2. Furthermore, it was directed that the elections result be withheld until the re-poll is conducted and the final result is announced. The said order dated 22.08.2022 to the extent of ordering re-poll at two polling stations has been assailed by the petitioners in the instant writ petition.

9. There is no reason for this Court to delve into the question whether or not the Returning Officer's order for the recount of votes was valid since neither the petitioners nor respondents No.6 and 7 have challenged the decision of the E.C.P. to the extent of declaring that the process of recount of votes conducted by the Returning Officer is void. The legal and natural consequence of such a declaration would be that the result of the election prior to the recount of the votes would prevail. However, the E.C.P. deemed it appropriate not to declare the petitioners as the returned candidates for the seats of Chairman and Vice Chairman of Union Council No.10, Jeay Shah (TMC-II), Sukkur but to direct that re-poll be conducted in the above mentioned two polling stations.

10. There is no provision in the Sindh LG Act providing for a re-poll to be conducted. However, Section 71 of the said Act makes the provision of the 2017 Act applicable to the elections and the electoral process under the Sindh LG Act. Section 9 of the 2017 Act deals with the power of the E.C.P. to declare a poll void and to order re-polling at certain polling stations or in the whole constituency. Section 9(1) of the 2017 Act is reproduced herein below:-

“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 grave illegalities or 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 including implementation of an agreement restraining women from casting their votes, 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.”

(Emphasis added)

11. Under Section 9(1) of the 2017 Act, the E.C.P. can direct voters in a certain polling station or stations or in the whole constituency to recast their votes after it gives a declaration that it is satisfied that by reason of *inter alia* grave illegalities or such violations of the provisions of the 2017 Act or the Rules made thereunder as had materially affected the result of the poll at one or more polling stations or in the whole constituency.

12. I have gone through the impugned order dated 22.08.2022 passed by the E.C.P. and have not been able to find in the operative part of the said order the reasons which caused the E.C.P. to issue directions for re-poll to be conducted in two polling stations. Paragraphs 3 to 4 of the said order are the contentions of the contesting parties whereas paragraphs 5 and 6 set out the statements of the Presiding Officers of the two polling stations. The operative part of the E.C.P.'s order starts at paragraph 7 and concludes at paragraph 9. These paragraphs do not show how the E.C.P. became satisfied that grave illegalities or violations of the provisions of the 2017 Act or the Rules made thereunder had materially affected the result of the poll at the two polling stations in question. In other words, the said order does not contain a declaration in terms of Section 9(1) of the 2017 Act which is a mandatory pre-requisite for ordering a re-poll at a polling station or stations in the whole constituency. It may well be that the E.C.P. was actuated to order a re-poll at the two polling stations based on the statements of the Presiding Officers of the two polling stations, but this Court cannot read a declaration in the order of the E.C.P. which is conspicuously absent therefrom. Therefore, it is my view that the impugned order dated 22.08.2022 to the extent of ordering a re-poll at the two polling stations is not sustainable. Consequently, the instant petition is partly allowed; the impugned order dated 22.08.2022 passed by the E.C.P. to the extent of directing re-poll to be conducted at the two polling stations i.e. Polling Station No.1 (GBHS New Pind of Ward No.1) and Polling Station No.2 (Sir Syed Elementary School, Pathan Colony of Ward No.2) is set-aside; and the matter is remanded

to the E.C.P. for a decision afresh bearing the mandate in Section 9(1) of the 2017 Act. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 07.04.2023.

JUDGE

*Sultan**

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