

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**W.P. No.4508-P/2024 with IR**

**Akram Khan Durrani**

Vs.

**Malik Adnan Khan and others**

**Date of hearing** 19.09.2024  
**For Petitioner(s):** Mr. Anwar-ul-Haq, Advocate.  
**For Respondent(s):** Mr. Shumail Ahmad Butt,  
Advocate.

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**JUDGMENT**

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**IJAZ ANWAR, J.** Through this single judgment, we intend to decide the instant writ petition and Writ Petition **No.4381-P/2024** titled, **“Adnan Khan Vs. Shah Muhammad Khan and others”**, since in both these cases, the petitioners have called in question the orders dated 27.05.2024 and 03.06.2024 passed by the Hon’ble Peshawar High Court, Bannu Bench, whereby, CMs No.37-B/2024 and No.36-B/2024 filed for rejection/dismissal of the election petitions filed by the respondents were dismissed.

2. In the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has prayed for the following relief:-

**“So, in waking the above facts and legal position, the petitioner seeks the indulgence of this Hon’ble Court on inter alia grounds that the Election Petition filed by respondent No.2 on behalf of respondent No.1 is barred by**

Order-II Rule ii CPC, Section 11 of CPC, Article 114 of Qanoon-e-Shahadat, the doctrine of Election, as well as Section 95(5) of the Elections Act, Section 139(I), 142(2)(ii), 142(3), 143 and 144 of the Elections Act and with the prayer to declare the impugned judgment/order of Election Tribunal dated 27/05/2024 as illegal against the very spirit of above mentioned laws and rules and to order for the dismissal of Election Petition being barred by law and rules, neither maintainable nor entertainable and is against the very right of the petitioner.

Any other relief which this Hon'ble Court deems fit and appropriate may also be awarded with costs".

3. When learned counsel representing the petitioner came to the rostrum to argue the case, learned counsel representing the respondents stood up and raised preliminary objection regarding the maintainability of this and the connected petition on the ground that these petitions are not maintainable, according to him, the mere fact that the Elections Act, 2017 (hereinafter to be referred as "the Act") has not provided any right of appeal against any interlocutory order would not mean that any such order can be questioned in writ jurisdiction of the High Court. He further contended that the aim and object of not providing any right of appeal against interlocutory order is that such election dispute be decided expeditiously. He placed reliance on the cases titled "Muhammad Raza Hayat Hiraj and others Vs. The Election Commission of Pakistan and others (2015 SCMR 233), Shella B. Charles Vs. Election Tribunal and another (1997

SCMR 941), Rashida Yaqoob Vs. Election Tribunal and others (2017 CLC Note 17), Muhammad Ijaz Ahmad Chaudhry Vs. Election Tribunal and others (2014 CLC 542)” and on the philosophy of not providing any right of appeal in the Elections Laws, he placed reliance on the cases titled “Habib Bank Limited Vs. Judge, Banking Court and others (2015 CLD 1875), Ali Adnan Dar through Attorney Vs. Judge, Family Court and others (PLD 2016 Lahore 73) and Mian Aurangzeb Noor Vs. Rent Controller, Lahore and others (2012 CLC 1729)”.

4. Learned counsel representing the petitioner, however, contended that the wording of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is very clear and writ jurisdiction of this Court can be invoked where no adequate remedy is provided under the law. He contended that since no right of appeal is provided in “the Act”, as such, this Court can entertain writ petition to stop abuse of the process of the Court and to shunt out frivolous litigations at its inception. He placed reliance on the cases titled “Muhammad Abdullah Yousaf and others Vs. Miss Nida Ayub and others (PLD 2005 SC 252), Shaikh All-Ud-Din Vs. Election Tribunal, Lahore High Court, Lahore and others (2009 YLR 1930), Ch. Muhammad Arif Hussain Vs. Rao Sikandar Iqbal and others (PLD 2008 SC 429)”.

5. Arguments heard and record perused.

6. Perusal of the record reveals that respondent No.1 has questioned the election of the petitioner as returning candidate for the General Seat of Khyber Pakhtunkhwa Provincial Assembly Constituency PK 102-IV Bannu on multiple grounds in the election petition.

7. "The Act" was mainly promulgated to amend, consolidate and unify laws relating to the conduct of elections and matters connected therewith or ancillary thereto. "The Act" has provided a forum for the resolution of the election disputes. Election Tribunals are established before and after the General Elections as well as elections to the Local Governments. Disputing election of a returned candidate to the general seat(s) can be questioned through an election petition to be filed under Section 142 of "the Act". Section 143 of "the Act" provides for necessary parties to the election petition, while Section 144 of "the Act" provides for the necessary ingredients that an election petition shall contain; similarly, under Section 145 of "the Act", the Election Tribunal has been empowered to summarily reject the election petition, if any of the provisions of Sections 142, 143 or 144 of "the Act" have not been complied with. After the conclusion of the trial of the election petition, under Section 154 of "the Act", the Election Tribunal is empowered to pronounce the order on the conclusion of the trial while under Section 155 of "the Act", "any person aggrieved by the final decision of the Election Tribunal in respect of an election petition challenging election to an Assembly or Senate may within thirty days of the

date of the decision, appeal to the Supreme Court". Similarly, under Section 155(2) of "the Act", appeal lies to the High Court against the final decision of the Election Tribunal, in cases, where challenge is thrown to election of a local government.

8. Article 225 of the Constitution of Islamic Republic of Pakistan, 1973 restricts the jurisdiction of other forums and is couched with negative language that "no election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament)". The Superior Courts are consistent on the point that where no right of appeal or revision is provided under a particular Statute, main intention of the legislature is expeditious disposal of these matters. The apex Court held that "the intent of the Legislature to keep out interlocutory/interim orders from the scope of appeal is not difficult to understand. It is meant to curtail delays, piecemeal and fractured litigation at various fora at the same time. In our view, such orders cannot be challenged under the guise of invoking the constitutional jurisdiction of the High Court because the same would tantamount to negating the provisions of the Statute itself and rendering the bar imposed by the Legislature in the interest of expeditious disposal of rent matters totally redundant<sup>1</sup>".

<sup>1</sup> The President, All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260)

9. Much has been stressed upon by learned counsels for both the parties about the maintainability or otherwise of the constitutional petitions against the interlocutory orders passed by the Election Tribunal. The Hon'ble Supreme Court of Pakistan has taken up this matter recently and has discussed different judgments of different Hon'ble High Courts of this country and also of the superior Courts and concluded that interim orders passed by the tribunals are not open to be questioned in constitutional jurisdiction. It was held by the apex Court that **“the interlocutory orders passed by the Election Tribunal impugned before the High Court were not liable to be set aside in its Constitutional jurisdiction as the petitioners before the Court had a remedy available to them by way of appeal under section 67 of the Act after disposal of the election petitions<sup>2</sup>”**. Similarly, the Hon'ble Supreme Court of Pakistan also held that **“petitions under Article 199 of the Constitution against interlocutory orders of the election tribunal constituted under the Representation of the People Act, 1976 are not maintainable, therefore, after admitting the abovementioned petitions to regular hearing, the same are dismissed on the ground of non-maintainability with no order as to costs<sup>3</sup>”**. Likewise, the apex Court also held that

<sup>2</sup> Muhammad Raza Hayat Hiraj and others Vs. The Election Commission of Pakistan and others (2015 SCMR 233)

<sup>3</sup> Dur Muhammad Khan Nasar and others Vs. Muhammad Shafiq Tareen and others (PLD 2014 Baluchistan 152)

“the matter stands authoritatively and finally clinched by the honorable Supreme Court of Pakistan in its recent judgment reported as Muhammad Raza Hayat Hiraj v. The Election Commission of Pakistan and others (2015 SCMR 233) in which while upholding the judgments of the Full Bench of this Court as well as that of the Hon'ble Sindh High Court ibid, it has been held that interlocutory orders passed by the Election Tribunals were not liable to be interfered with by this Court in exercise of its constitutional jurisdiction. Aggrieved parties before the Election Tribunal have a remedy available to them by way of appeal under section 67 of the Representation of the People Act, 1976 upon the election petition being finally decided<sup>4</sup>”. Similarly, it was held by Hon'ble Lahore High Court that “no right of appeal or revision against interlocutory orders has been provided in ROPA for the reason that the people should wait for the final decision of Election Tribunal and final decision be assailed, if so required by any of the party after conclusion of the trial before the Hon'ble Supreme Court. Mere wrong decision does not render the decision without jurisdiction. When Legislature has entrusted the Tribunal with jurisdiction to finally determine the dispute, this jurisdiction also includes to determine some preliminary issues and even if the Tribunal makes a wrong decision

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<sup>4</sup> Rashida Yaqoob Vs. Election Tribunal and others (2017 CLC Note 17 Lahore)

either of facts or law at an intermediate stage, it cannot be corrected in writ jurisdiction under Article 199 of the Constitution by exercising the power of appellate authority. The plea canvassed by the learned counsel for the petitioners regarding maintainability of this petition against interlocutory/interim order of the Tribunal cannot be acceded to for the simple reason that by doing this we would deprive the person of his substantive right of appeal provided under section 67(3) of ROPA to the Hon'ble Supreme Court of Pakistan<sup>5</sup>”.

10. The judgments relied upon by learned counsel representing the petitioner are distinguishable and in the presence of the judgments of the Hon'ble Supreme Court of Pakistan directly on the point, the judgment of the Single Bench of Hon'ble Lahore High Court cannot be pressed into service.

11. Thus, for the reasons stated above, we are of the view that the legislature, in its wisdom, has purposely not provided for a forum to challenge interlocutory orders of the Election Tribunals in “the Act”; similarly, Article 225 of the Constitution of Islamic Republic of Pakistan, 1973 clearly bars the jurisdiction of this Court when election dispute is proceeded in the Election Tribunal. The Hon'ble Supreme Court of Pakistan has, in somewhat similar matter, held that “the appellant will be entitled to raise all pleas available to him

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<sup>5</sup> Bilal Akbar Bhatti Vs. Election Tribunal, Multan and others (PLD 2015 Lahore 272)



**including any preliminary objection regarding maintainability of the petition which has been overruled by the election tribunal in the appellate forum<sup>6</sup>**.

12. In view of the above, this and the connected writ petition, being not maintainable, stand dismissed in *limine*.

**Announced**  
**Dt:19.09.2024**

**Senior /  
Puisne Judge**

**Judge**

(DB) **Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah**

\*Muhammadullah\*

<sup>6</sup> Muhammad Asim Kurd alias GAILOO Vs. Nawabzada Mir Lashkari Khan Raisani and others (1999 SCMR 689)