

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

BEFORE:-

*Mr. Justice Sardar Muhammad Shamim Khan, Chief Judge.
(In Chamber)*

Election Petition No.01 of 2023

Fatah Ullah Khan

Petitioner

Versus

Jamil Ahmed etc

Respondents

Present:-

N/s Muhammad Ramzan Ch. and Hafiz Ehsan Ahmed Khokhar , Senior Advocates for petitioner.

M/s Malik Shafqat Wali & Amjad Hussain Senior Advocates for respondent (Jamil Ahmed)

Raja Inam-ur-Rehman and Yasir Akhter, Advocates/Legal Advisors for Election Commission G.B.

Mr. Khursheed Ahmed Deputy Election Commissioner, G.B in person.

Date of hearing: 23.10.2023.

Date of announcement : 27.10.2023

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge:-Through instant Election Appeal filed under section 155 of the Elections Act, 2017, the petitioner namely Fateh Ullah Khan has challenged the validity of impugned judgment dated 18.08.2023 passed by learned Election Tribunal in Election Petition No.01 of 2021 filed by respondent No.1 namely Jamil Ahmed, whereby the aforesaid Election Petition was accepted and respondent No.1 namely Jamil Ahmed was declared as Returned Candidate for remaining term of the Assembly in the constituency of GBLA-II Gilgit-II and Election Commission G.B was directed to notify the respondent No.1 as Returned Candidate for the remaining half period of the G.B Assembly.

2. Brief facts necessary for disposal of instant Election Appeal are that Fateh Ullah Khan petitioner and respondent No.1 namely Jamil Ahmed alongwith respondents No.2 to 24 contested the General Elections 2020 on the seat of Gilgit Baltistan Assembly from the constituency of GBA-2 Gilgit-II. On the basis of consolidated result prepared by the Returning Officer of constituency GBA-2 Gilgit-II, the petitioner namely Fateh Ullah Khan was declared as returned candidate from the constituency GBA-2 Gilgit-II by the Election Commission G.B vide Notification No. ELC-I (10/2020) dated 24. 11.2020. Being aggrieved by the said notification, the respondent No.1 namely Jamil Ahmed filed an Election Petition No.01 of 2021 before learned Election Tribunal G.B. The petitioner contested the said Election Petition by filing written statement/reply wherein he raised certain legal as well as factual objections. Out of divergent pleadings of the parties 27-issues were framed by learned Election Tribunal and thereafter the parties produced their respective oral as well as documentary evidence before the Election Tribunal. After hearing the arguments of the parties, the learned Election Tribunal vide judgment dated 18.08.2023 accepted the aforesaid Election Petition and respondent No.1 namely Jamil Ahmed was declared as Returned Candidate for remaining tenure of the G.B Assembly in the constituency of GBLA-II Gilgit-II. The validity and authenticity of abovementioned judgment dated 18.08.2023 passed by learned Election Tribunal G.B has been called in question through instant Election Appeal.

3. Learned counsel for the petitioner contended that the election was conducted in a peaceful manner and the polling process in all polling stations of constituency GBLA-II Gilgit II remained transparent peaceful and fair and no untoward incident took place at any polling station throughout the election day and this fact was acknowledged by the learned Election Tribunal while passing the impugned judgment; that the election petition filed by respondent No.1 before learned Election Tribunal contained only general and vague allegations and did not conform to the requirements of law as contemplated under section 159 of the Elections Act, 2017; that as per Form 47 issued by the R.O the petitioner obtained 6696 votes whereas the respondent No.1 secured 6694 votes in General Elections 2020 of G.B Assembly and R.O prepared a provisional consolidated statement of result of count of the said constituency (excluding the postal ballot papers); that

after the announcement of provisional results the R.O conducted the process of consolidation of results including the postal ballot papers in presence of all contesting candidates and prepared the final consolidated Result (Form 49) and same was transmitted to Election Commission G.B as per mandate of section 95 of Elections Act 2017; that as per Form 49/ Final Consolidated Result, the petitioner obtained 6860-votes whereas the respondent No.1 secured 6764-votes; that thereafter the respondent No.1 filed an application before Chief Election Commissioner G.B for recounting of all the ballot papers including the postal ballot papers and forensic verification of postal ballot papers which was turned down by the Election Commission G.B ; that in the light of final consolidated result, the petitioner was declared the winner/Returned Candidate and a Notification was issued by the Election Commission G.B in this regard; that lateron the respondent No.1 approached the learned Election Tribunal G.B by filing Election Petition under section 139 of the Elections Act 2017 ; that during the pendency of said election petition, the petitioner filed civil Misc. application under section 145(I) of Elections Act 2017 for summarily rejection of the main election petition which was accepted by learned Election Tribunal vide order dated 31.01.2022 ; that being aggrieved by the said order, the respondent No.1 filed Election Appeal No.01 of 2022 which was accepted by this Court vide order dated 29.08.2022 and the case was remanded to the learned Election Tribunal with the direction to decide the matter afresh strictly on merits; that in the light of decision of this Court , the parties approached the learned Election Tribunal; that in the said Election Petition the learned Election Tribunal framed 27- issues and thereafter the parties produced their respective oral as well as documentary evidence before the learned Election Tribunal ; that the learned Election Tribunal while passing the impugned judgment failed to give reasoned findings upon each and every issue and did not decide even a single issue as per mandate of Order XX Rule 5 of CPC; that it was incumbent upon the learned Election Tribunal to decide all the material issues as per spirit of Order XX Rule 5 CPC. It has further been contended by learned counsel for the petitioner that the concerned Returning Officer issued letter dated 21.11.2020 Exh. D-I wherein the detail of issuing of postal ballot papers as well as receiving the said postal ballot papers has been mentioned and that it was categorically mentioned in the said letter that at the time of consolidation of results as per requirement of section 95 of the

Elections Act 2017, 1708 postal ballot papers were received and same were counted in presence of all the contesting candidates but the learned Judge Election Tribunal while passing the impugned judgment neither relied upon the said letter (Exh.D-1) nor gave finding on the said material document particularly when the issues were framed in this regard ; that the learned Election Tribunal while deciding the fate of the Election Petition only relied upon the documentary evidence of the respondent No.1 and excluded the postal ballot papers from the count without recording the evidence of concerned R.O and summoning the original record of postal papers for rechecking and re-counting which act of the learned Election Tribunal was totally illegal; that the learned Election Tribunal while passing the impugned judgment did not observe that any contesting candidate committed illegal acts or corrupt practices or violated the provisions of the Elections Act/ Rules but learned Election Tribunal while deciding the fate of Election Petition excluded all the postal ballot papers from the final count which is against the spirit of section 93 of Elections Act, 2017; that the relief which has been extended to respondent No.1 by learned Election Tribunal was not in the prayer of Election Petition. While relying on the cases reported as Pakistan Refinery Ltd Karachi vs Barrett Hodgson Pakistan (Pvt) Ltd and others (2019 SCMR 1726), Sardar Abdul Rehman vs Abdul Kareem Khetran and others (2021 SCMR 82) , Haji Muhammad Hassan Sherani vs Sardar Babar Khan and 13-others (2019 CLC 670) and Col (R) Muhammad Shabir Awan vs Raja Saghir Ahmed and 4-others (PLD 2023 Lahore 458) learned counsel for the petitioner contends that impugned judgment is the result of misapplication and misinterpretation of law, hence the same is not sustainable in the eyes of law. Thus, it is submitted that by accepting instant Election Appeal, impugned judgment passed by learned Election Tribunal is liable to be set aside.

4. On the other hand, learned counsel for respondent No.1 has vehemently opposed the instant Election Appeal by contending that from the evidence available on record, it has been established that the Returning Officer while issuing and receiving the postal ballots did not comply with the provisions of section 93 & 95 of the Elections Act 2017; that the Returning Officer through letter dated 20.11.2020 (Exh. P-6) transmitted to Chief Election Commissioner, G.B accepted the illegalities and unfair means committed by the candidates and

inadmissibility of the postal ballot papers, therefore, learned Judge Election Tribunal while deciding the election petition rightly excluded all the postal ballot papers from the count keeping in view the requirement of section 93 of the Elections Act 2017; It has further been contended by learned counsel for the respondent that as per letter dated 15.11.2020 (Exh.P-7) issued by Returning Officer GBA-II Gilgit, 1680 postal ballot papers were issued to the eligible voters and 1382 envelopes were received in the office of R.O but R.O included 1708 postal ballot papers in the count and in this regard the respondent No.1 moved an application to Election Commission G.B for forensic verification of all the postal ballot papers through NADRA but the Election Commission did not pay any heed to it; It has further been contended by learned counsel for the respondent No.1 that three major contesting candidates including the petitioner and respondent no.1 moved a joint application Exh. P.4 before Returning Officer for forensic verification of postal ballot papers through NADRA and on the basis of said joint application, the Returning Officer in his letter dated 20.11.2020, forwarded to Election Commission G.B, categorically mentioned that number of unfair means/illegalities were committed by the candidates/parties for getting postal ballot papers casted in their favour and forensic verification can be a viable option to trace their legality and proceed against the violator in accordance with law but the Election Commission G.B failed to redress the lawful grievance /joint request of the leading candidates and issued the impugned Notification in a hasty and unlawful manner and declared the petitioner as Returned Candidate under section 98 of the Elections Act 2017 without exercising its powers vested on it under section 9 of the Elections Act, 2017; It has further been contended by learned counsel for the respondent No.1 that in Exh. D-1, the Returning Officer admitted that he had issued 1680 postal ballot papers to the eligible voters through post and by hand before the day of Election poll and thereafter he (R.O) issued further 102 postal ballot papers by hand to the staff on duty; that as per spirit of section 93, it was incumbent upon the R.O to issue all postal ballot papers through post and not by hand therefore, whole mandate of section 93 of the Elections Act was violated and in this way the whole process of issuing and receipt of postal ballot papers were highly doubtful, thus the learned Judge Election Tribunal while passing the impugned judgment rightly excluded all the postal ballot papers from the final count; that after excluding all the postal ballot papers from the final

count, both the petitioner and respondent No.1 had obtained equal number of votes, therefore, as per mandate of Section 159 of the Elections Act 2017, the Election Tribunal had rightly declared both the candidates as Returned Candidates and each one of them shall be entitled to represent his constituency in the assembly for half of its term of office. Lastly, learned counsel for the respondent No.1 while relying on the cases reported as Qadir Baksh (deceased) through L.Rs vs Allah Dewaya and another (2011 SCMR 1162) and Muhammad Amir through L.Rs vs Muhammad Sher and others (2006 SCMR 185) contended that non-recording of finding on each and every issue would not be fatal to the judgment on the strength of Order XX Rule 5, CPC. Thus, it is submitted instant Election Appeal is liable to be dismissed.

5. Arguments heard. Record perused.

6. Perusal of record reveals that respondent No.1 namely Jamil Ahmed filed the Election Petition under section 139 of the Elections Act 2017 against the petitioner and other contesting Candidates before the learned Judge Election Tribunal G.B wherein he (respondent No.1) raised the allegations of corrupt practices, grave illegalities and illegal acts committed by petitioner and Returning Officer during the process of final count of general votes as well as postal ballot papers. During the pendency of said election petition, the petitioner namely Fateh Ullah khan filed an application under section 145(1) of the Elections Act 2017 seeking summarily rejection of the main election petition which was accepted by learned Judge Election Tribunal G.B vide judgment dated 31.01.2022. Being aggrieved by the said judgment, the respondent No.1 namely Jamil Ahmed filed an Election Appeal No.01 of 2022 before this Court . Vide judgment dated 29.08.2022, this court while accepting the aforesaid Election Appeal remanded the case to the learned Judge Election Tribunal with the direction to decide the matter strictly within four corners of law and rule provided in the Election Laws. In pursuance of the said verdict of this Court, notice was issued to the contesting candidates/ parties by the learned Election Tribunal . The petitioner /Returned Candidate appeared before the learned Election Tribunal and contested the Election Petition by filing written reply wherein he raised certain legal as well as factual objections . Out of divergent pleadings of the parties, 27 issues were framed by learned Judge Election Tribunal G.B. Thereafter both the

parties produced their respective oral as well as documentary evidence before the learned Election Tribunal. It has been noticed that this Court while deciding the fate of the Election Appeal remanded back the case to learned Election Tribunal with the direction to decide the matter strictly within four corners of law and rule provided in the Election Laws. Perusal of record reveals that specific legal issues relating to corrupt practices, illegal rejection of valid votes, validity of postal ballot papers, violations of mandatory provisions of section 142, 143 & 144 of Elections Act 2017, Forensic verification of postal ballot papers as well as other material issues questioning the role of Election Commission and R.O were framed by the learned Election Tribunal. It is evident from the record that the learned Judge Election Tribunal while deciding the Election Petition failed to give reasoned findings upon each and every issue and did not decide even a single issue and also did not attend to these issues in a legal and proper manner which is against the mandate of Order XX Rule 5 CPC. The relevant provisions of Order XX Rule 5 of CPC is reproduced as under for the sake of ready reference:-

“Court to state its decision on each issue. In Suits in which issues have been framed the court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit”

The aforesaid provision of law clearly provides that the learned Judge Election Tribunal was bound to give reasons for his decision on each separate issue. It is evident from the record that the learned Judge Election Tribunal while deciding the election petition in para No.16 of the impugned judgment categorically held ***that” I do not deem it necessary to record the findings under each and every issue”***. This finding of the learned Judge Election Tribunal is contrary to the mandatory provisions of Order XX Rule 5 CPC. In the instant case the learned Election Tribunal failed to deliver a judgment as was required under the law. The requirement of aforesaid rule is that the court shall attend to the points raised, record its findings with reasons on all the questions raised before the Court/ election Tribunal and that the judgment shall reflect judicial application of mind to the material issues involved. Bare reading of the judgment passed by the learned Election Tribunal reflects that each and every material fact was not duly

considered and the objections were not repelled by recording cogent reasons and considering the entire evidence on record. The effect of not complying with order XX Rule 5 CPC has been discussed in a renowned judgment of the Hon'ble Supreme Court of Pakistan in "Pakistan Refinery Ltd vs Barrett Hodgson Pakistan (pvt) Ltd (2019 SCMR 1726)" wherein it has been held as under:-

A judgment delivered by the trial court would not be a judgment in the real sense of the word if it does not conform to the requirements of Rule 5 Order XX of the CPC. Similarly a judgment delivered by the first court of appeal and final court of fact would not be a judgment if it does not conform to the requirements of Rule 31 Order XLI of the CPC. The rationale or raison d'etre behind these provisions is that not only the party loosing the case but the next higher forum may also understand what weighed with the court in deciding the lis against it. Such exercise cannot be dispensed with even in the cases of affirmative judgments otherwise who would know that arguments addressed were accepted or rejected with due application of mind"

Perusal of record further reveals that respondent No.1 namely Jamil Ahmed in his election petition took a specific stance that the Returning Officer during the process of issuing and receipt of postal ballot papers and final count violated the provisions of section 93 & 94 of the Elections Act,2017 and in this regard material/legal issues were framed by learned Election Tribunal but surprisingly neither the said material witness (R.O) was produced and examined nor any request was made for calling him as Court witness in order to substantiate the allegations. It has further been noticed that three major contesting candidates including the petitioner and respondent No.1 moved a joint application Exh. P.4 before Returning Officer for forensic verification of postal ballot papers through NADRA and on the basis of said joint application, the Returning Officer in his letter dated 20.11.2020 forwarded to Election Commission G.B categorically mentioned that number of unfair means/illegalities were committed by the candidates/parties for getting postal ballot papers casted in their favour and forensic verification can be a viable option to trace their legality and proceed against the violator in accordance with law but the learned Election Tribunal while passing the impugned judgment did not attend to these points in a legal and proper manner rather simply held that in his opinion forensic verification will not serve the purpose of ascertainment of valid votes and excluded all the postal ballot papers from the final count without summoning the record of postal ballot papers

as well as without physically rechecking and recounting and disenfranchised all the voters who exercised their right of casting votes through postal ballot papers. Exclusion of all the postal papers from the count can be termed as injustice to all the contesting candidates. Whether or not all these postal ballot papers or some of them merited to be included in the count can be decided after their forensic verification through NADRA. Interest of justice demands that all the postal ballots be directed to be produced before the concerned Department for their forensic verification qua the thumb impression of voters over the postal ballot papers through NADRA. Keeping in view the facts and circumstance of the instant case, this Court has reason to believe that learned Election Tribunal while the deciding matter of postal ballot papers did not redress the genuine grievance /joint request of the parties for forensic verification of the postal ballot papers in a legal and proper manner.


7. In view of above facts and circumstances, it would be appropriate that the matter be remanded to the learned Judge Election Tribunal for decision afresh in view of findings made hereinabove. Thus, instant Ejection Appeal is accepted in terms of the short order of even date which is incorporated as part of this judgment and which reads as follows:-

For the reasons to be recorded later on, instant Election Appeal is partly accepted and the impugned judgment dated 18.08.2023 passed by the learned Judge Election Tribunal G.B as well as Notification dated 21.08.2023 issued by Election Commission G.B *whereby the respondent No.1 namely Jamil Ahmed was declared as Returned Candidate from GBA-2, Gilgit II for the remaining half period of Gilgit Baltistan Assembly*, are hereby set aside and the matter is remanded back to learned Judge Election Tribunal G.B for decision afresh with the following observations/directions.

1. **The Election Petition filed by the respondent No.1 namely Jamil Ahmed would be deemed to be pending before the learned Judge Election Tribunal G.B who shall decide the same strictly on merits, after issuing notice to the parties.**

2. The learned Judge Election Tribunal, G.B shall decide the election petition after giving findings on all the material/legal issues as per provisions of Order XX Rule 5 C.P.C.
3. The learned Judge Election Tribunal shall decide the question of authenticity of all the postal ballot papers after obtaining forensic verification report qua the thumb impression of voters over the postal ballot papers through NADRA.
4. The learned Judge Election Tribunal would be at liberty to summon/record the evidence of concerned Returning Officer, if necessary.

The Chief Election Commissioner G.B is directed to restore the earlier Notification No.ELC-i(10/2020) dated 24.11.2020 to extent of Fateh Ullah Khan petitioner whereby he was declared the winner/Returned Candidate from GBA-2, Gilgit II. There will be no order as to costs.


Justice Sardar Muhammad Shamim Khan
Chief Judge

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