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Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT
Writ Petition No.3097/2016
(Malik Shafqat Hussain Vs. Chief Election Commissioner etc.)
J U D G M E N T

Date of Hearing	29.11.2016
Petitioner by:	Malik Jawwad Khalid, Advocate.
Respondent-Election Commission by:	Mr. Fazal ur Rehman, Advocate. Abdul Qayyum Qasuri, Returning Officer.

Atir Mahmood, J. Brief facts of the case are that the petitioner and respondent No.6 filed their nomination papers for the seat of “Peasant”, Union Council-108, Takhat Parri, Tehsil and District Rawalpindi; that the election was held on 19.11.2016; that both the candidates obtained equal votes whereafter on the basis of toss held on 21.11.2016, respondent No.6 was declared a returned candidate; that on 21.11.2016, the petitioner filed objection that one ‘rejected vote’ has also been counted in order to favour respondent No.6 illegally which application was dismissed vide order dated 21.11.2016. Hence this writ petition has been filed.

2. Arguments heard. Record perused.

3. The only contention of learned counsel for the petitioner before this Court is that there were 8 votes out of which the petitioner obtained four votes and respondent No.3 obtained 3 votes whereas one vote was rejected but that ‘rejected vote’ was counted in favour of respondent No.6 to give him undue favour, therefore, the Returning Officer was under legal obligation after objection by the petitioner to order for recounting. In this regard, he has referred Rule 36 (5) of the Punjab Local Government (Conduct of Elections) Rules, 2013 and relied upon judgment of this Court reported as “**Karamat Hussain**

Bare reading of above provision of law reveals that the Returning Officer is authorized to recount the ballot papers on the request/challenge by a contesting candidate provided the Returning Officer is satisfied that such request/challenge is reasonable. Meaning thereby it is not mandatory for the Returning Officer to recount the ballot papers on each and every request/challenge but for the same, either he himself is satisfied or he is satisfied by the person who makes such request or challenge validity of the votes. Perusal of impugned order reveals that the Returning Officer has seen the record produced before him by the petitioner as well as the Presiding Officer and found application of the petitioner without merit. In this view of the matter, it may be concluded that the Returning Officer was dissatisfied with the averments made by the petitioner in his application, therefore, he did not accede to request of the petitioner. I have also gone through the application of the petitioner submitted before the Returning Officer. It merely alleges that one rejected vote was also counted in favour of respondent No.6 in order to give him undue favour but it does not state the story asserted before this Court today that the stamp on the vote was in between lines of the names of both the candidates. Since the petitioner has failed to justify the recounting of votes, the Returning Officer was competent to decline application of the petitioner and the said act of the Returning Officer was within his jurisdiction.

6. Regarding validity or otherwise of the vote impugned by the petitioner, he, if so advised, may approach the Election Tribunal as this matter, being a factual controversy, cannot be resolved by this Court in its constitutional jurisdiction. The case law relied upon by learned counsel for the petitioner being distinguishable on facts is not helpful to the petitioner. In the circumstances, I see no illegality in the impugned order.

7. In view of what has been discussed above, this writ petition fails which is accordingly **dismissed**.

(ATIR MAHMOOD)
Judge

*Akram**