

Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

W.P. No. 218242-2018

Sahibzada Muhammad Hussain Raza

Vs.

Provincial Election Commission etc..

Sr. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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08.06.2018, Ch. Shah Nawaz Dhillon, advocate for the petitioner.
Mr. Amjad Ali Chattha, Additional Advocate General Punjab
with Ali Abdullah Khalid District Election Commissioner-I
Faisalabad.

Through this constitutional petition, a direction is sought to the respondents to incorporate the name of the petitioner in voter list with a further prayer to direct the respondents to issue the nomination papers enabling him to contest the forthcoming elections as a candidate for the seat of MPA in his Constituency No.PP-113, Faisalabad.

2. Brief facts giving rise to the filing of this petition are that petitioner is the resident of Mohallah Nishtarabad, Tehsil and District Faisalabad, and was issued a renewed CNIC with No.33100-8655201-9. He belongs to a strong political family as his father, namely, Haji Muhammad Fazal Karim Hamid remained former Minister and his brother, namely, Sahibzada Muhammad Hamid Raza is the leader of Sunni Ittehad Council. He is a twin brother of said Sahibzada Muhammad Hamid Raza, therefore, he had been facing some problems and one such problem is that his name could not be included in the voter list of the constituency. However, after realizing his national responsibility to cast vote in the forthcoming election and also to contest the election, he contacted respondent No.2 on 26.04.2018 and was informed that he has the vote in the voter list. He did not bother much until recently when he was shown the voter list in which the name of the petitioner was not included

perhaps due to some typographical mistake or with bonafide act of the respondent whereas the votes of his brother and other family members were mentioned in the said list. He immediately filed an application on 05.06.2018 before the Provincial Election Commissioner/respondent No.1 requesting him to incorporate his vote on the basis of his CNIC, domicile certificate and family registration certificate which application has not been decided, hence this writ petition.

3. Learned counsel for the petitioner contends that it is the primarily responsibility of the respondents to incorporate the name of the petitioner in the voter list as admittedly, his other family members were already enrolled voters in the said constituency. Submits that the petitioner and his brother Sahibzada Muhammad Hamid Raza are twin brothers and due to this reason his vote could not be enrolled though he was informed that he had an enlisted vote, therefore, under section 49 of the Elections Act, 2017, this is an exceptional circumstance in which the Election Commission can include the name of the petitioner so as to amend the electoral roll. He also submits that under section 25 of the said Act (ibid), the National Database and Registration Authority was required to transmit the data to the election commission so as to make necessary correction in accordance with such procedure already prescribed. Also submits that under section 40, the Election Commission is empowered to modify the electoral roll to include the name of any person entitled to be enrolled in such electoral roll, therefore, prays that the writ petition be allowed.

4. Conversely, learned law officer assisted by District Election Commissioner-I submits that under section 39 of the Elections Act, 2017, the petitioner was required to inform the election commission to be enrolled as a voter within the stipulated time but he failed to perform his national duty. Adds that at this stage, when the election process has already started, the inclusion of his name in the voter list will surely create inconvenience and put extra burden upon the election commission as the list will have to revive and the ballot

papers modified accordingly. He also submits that under section 25 and 40 of the Elections Act, 2017, the electoral rolls can be modified but a voter cannot be included.

5. Arguments heard. Record perused.

6. After hearing the learned counsel for the parties, perusing the file and the relevant record, it is not denied by the respondent that petitioner is a permanent resident of constituency PP-113 Faisalabad having CNIC No.33100-8655201-9 renewed on 05.07.2017 after the expiry of the earlier CNIC. It is also admitted by the respondent that other family members of the petitioner are already enrolled voters in the constituency. It is also fairly admitted by the respondent side that had the petitioner applied for enrollment of his vote in the list within time, the respondent No.2 would have no objection to enroll his vote. However, he submits that the required procedure had to be followed and if the petitioner had failed to take the benefit of the offer publically made by the election commission to check the enrolled votes, the respondent commission is not responsible.

7. With this background, it will be important here to read and understand the related provisions of the Constitution. Under Article 4 of the Constitution, the petitioner enjoys the protection of law and to be treated in accordance with law as his inalienable right being the citizen of this country. Under Article 219-(a) of the Constitution, the election commission is duty bound to prepare electoral roll for election to the National Assembly, Provincial Assemblies and revise such rolls periodically to keep them up-to-date under 22nd Amendment by the Act dated 10.06.2016. Article 219 is reproduced as under:-

“219(a)....preparing electoral rolls for election to the National Assembly, Provincial Assemblies and local governments, and revising such rolls periodically to keep them up-to-date.”

8. Under Section 25 of the Elections Act, 2017, the National Database and Registration Authority is duty bound to transmit relevant data of every fresh CNIC issued by it to the election commission for registration of the card holder as a voter in the

electoral area in which his permanent and temporary address is located. Likewise, the authority shall also transmit to the election commission the relevant data of every modified CNIC and such other details as required by the Commission. After transmission of such data, the election commission shall take steps for enrollment/correction in the relevant electoral roll in accordance with the procedure. In the explanation of the section, it has also been laid down that a fresh CNIC includes any card that has not been earlier made part of the electoral roll data base due to any reason whatsoever. The authority is bound to transmit the data of any CNIC which has been renewed if the holder of which was not enrolled as a voter. This section clearly emphasis that a citizen of this country must not be disenfranchised in any circumstance. Section 25 of the Elections Act, 2017 is reproduced as under for ready reference:-

“25. National Database and Registration Authority to transmit data.
— (1) *In such manner as may be prescribed, the National Database and Registration Authority shall transmit relevant data of every fresh National Identity Card issued by it to the Commission for registration of the card-holder as a voter in the electoral roll of the electoral area in which his permanent or temporary address is located, in accordance with the option indicated by him in the application for issuance of the National Identity Card.*

(2) *The Authority shall also transmit to the Commission relevant data of every cancelled or modified National Identity Card, information regarding deceased voters and such other details as may be required by the Commission for the purposes of this Act.*

(3) *The Commission shall forward the data referred to in sub-sections (1) and (2) to the Registration Officer concerned who shall take steps for enrolment or, as the case may be, correction in the relevant electoral roll in accordance with such procedure as may be prescribed.”*

9. Under Section 39 of the Elections Act, 2017, 30 days time is provided before expiry of the term of the assembly during which such inclusion of voter is possible. This information was required to be made publically by the election commission. Under Section 40, the election commission is empowered to modify the electoral roll at any time by inclusion in the electoral roll the name of any person entitled to be enrolled through a valid order of course after hearing the person concerned. Section 39 & 40 of the Elections Act, 2017 are reproduced as under for ready reference:-

“39. No revision, correction or transfer after constituency called upon to elect.— (1) *No revision of or correction in an electoral roll of an electoral area or inclusion or transfer of a vote from the electoral roll of*

an electoral area to the electoral roll of another electoral area shall be made nor shall any order under section 38 be made in respect of any electoral roll during the period beginning thirty days before the day on which the term of an Assembly or a local government is due to expire (hereinafter referred to as 'the cut-off date') till announcement of the results of the general election to the Assembly or the local government but it shall not apply to an election to fill a casual vacancy in an Assembly or a local government.

(2) In case of an election to fill a casual vacancy to an Assembly or a local government, no revision of or correction in an electoral roll of an electoral area or inclusion or transfer of a vote from the electoral roll of an electoral area to the electoral roll of another electoral area shall be made nor shall any order under section 38 be made in respect of any electoral roll at any time after the constituency of which such electoral area forms part has been called upon to elect its representative and before such representative has been elected.

(3) The Commission shall, through press release and its website, inform the general public about the cut-off date for revision of or correction in an electoral roll of an electoral area or inclusion or transfer of a vote from the electoral roll of an electoral area to the electoral roll of another electoral area."

"40. Power of the Commission to modify electoral roll.— (1) Subject to section 39, the Commission may, at any time, order—

(a) the inclusion in an electoral roll of the name of any person entitled to be enrolled on such electoral roll, and such name shall, from the date of such order, form part of the electoral roll;

(b) the exclusion from an electoral roll of the name of any person who has died or has become disqualified to be a voter, and such name shall, from the date of such order, stand excluded from that roll; and

(c) the removal of the name of any person from an electoral roll where such removal becomes necessary due to the repetition of the name in the same electoral roll or in the electoral rolls of more than one electoral area.

(2) Before taking decision under clause (b) or clause (c) of sub-section (1), the Commission shall afford a reasonable opportunity of being heard to the person likely to be affected and shall record reasons for its decision."

10. Under Section 49 of the Act, the Election Commission may depart from the normal proceedings in exceptional circumstance, if it is satisfied that normal procedure cannot be followed for revision of electoral roll in respect of any electoral area. However, such exceptional circumstance be recorded by the commission. Section 49 of the Elections Act, 2017 is reproduced as under for ready reference:-

"49. Departure from normal procedure in exceptional circumstances.— (1) Where the Commission is satisfied that it is not possible to follow the procedure laid down for the preparation or revision of an electoral roll in respect of any electoral area, the Commission may, after recording the exceptional circumstances

necessitating deviation from the laid down procedure, direct that an electoral roll for such electoral area shall be prepared in such manner as it deems fit.

(2) The Commission shall immediately publish the direction issued under sub-section (1) on its website.”

11. Under clause 2(xli), a voter means a person who is enrolled as a voter on the electoral roll of any electoral area in a constituency and under section 2(xx) electoral roll means a roll prepared, revised or corrected under this Act. Under section 2(xvi), the electoral area in the urban area means, municipal ward or census block, or if there is no municipal ward or census block, the well-defined Mohallah or a street or well defined part. Otherwise, such other area which may be determined by the commission. Sections 2(xx) and section 2 (xli) are reproduced as under for ready reference:-

“2(xx) “electoral roll” means an electoral roll prepared, revised or corrected under this Act and includes the electoral rolls prepared under the Electoral Rolls Act 1974 (XXI of 1974), existing immediately before the commencement of this Act;

2(xli) “voter” means—

(a) in relation to an Assembly or a local government, a person who is enrolled as a voter on the electoral roll of any electoral area in a constituency; and 4

(b) in relation to the Senate, a person who—

I. for election to a seat from a Province, is a Member of the Provincial Assembly;

II. for election to seats from the Islamabad Capital Territory, is a Member of the National Assembly; and

III. for election to a seat from the Federally Administered Tribal Areas, is a Member of the National Assembly elected from the Federally Administered Tribal Areas.”

12. The above discussion clearly leads this court to an irresistible conclusion that the petitioner being citizen of the country having valid CNIC duly mentioned in the family registration certificate is entitled to vote and also contest election. The omission to enroll his vote is rectifiable since his failure to apply for enrollment as a voter, would not absolve the election commission to fulfill their responsibility to collect the data from Registration Authority in order to modify the voter list and make it compatible to the existing position.

13. Our country is passing through a very important phase of transfer of power to the new government through national election. This process must win the trust of all stake holders. The election laws are aimed at fair and free elections without any possibility of pre or post poll rigging. It is also intent of the Election Laws to provide equal level playing field for every person to vote for or become a possible representative having clean credentials.

14. For the foregoing reasons, I am of the considered view that omissions of including the name of the petitioner as a voter was not entirely due to the acts of the petitioner as it is the responsibility of the respondent as well as the National Database and Registration Authority to transmit the correct data to the Election Commission to enroll the petitioner as a voter in the constituency No.113 Faisalabad. This petition is therefore **allowed** and the respondents are directed to forthwith enroll the name of the petitioner as a voter in the said constituency and on the basis of it issue him the nomination forms for the MPA without wastage of any further time. Copy **Dasti** on payment of usual charges.

(ALI BAQAR NAJAFI)
JUDGE

*A.Qadoos**