

## BEFORE THE HON'BLE ELECTION COMMISSION OF PAKISTAN.

## PRESENT:

Mr. Justice Sardar Muhammad Raza, Chairman  
 Mr. Justice (R) Muhammad Roshan Essani, Member  
 Mr. Justice (R) Riaz Kayani, Member  
 Mr. Justice (R) Shahzad Akbar Khan, Member  
 Mr. Justice (R) Fazal-ur-Rehman, Member

Case NO.27(11)/2015-Law

In re: SUO MOTO CASE --- REPORTS OF MEDIA AND GENERAL PUBLIC  
 THAT FEMALE VOTERS HAVE BEEN DEPRIVED FROM EXERCISE  
 THEIR RIGHTS OF FRANCHISE IN THE BYE-ELECTION OF  
 CONSTITUENCY NO. PK-95 LOWER DIR-II.

## ON NOTICE

Chief Secretary, (Government of KPK)	In person
Returning Officer/REC	In person
Izaz-ul-Mulk, Returned Candidate	Mr. Amir Javed, Advocate
Haji Bahadur Khan	Mr. Sangeen Khan, Advocate
Ms. Shabina Ayaz	Mr. Mohsan Akhtar, Advocate
Ms. Shad Begum	Mr. Ashfaq Khan, Advocate
Mr. Saaid Anwar Khan	In person
Mr. Obaidullah Sajid	In person
Liaqat Ali Khan	In person
Maulana Zia-ul-Haq Haidri	In person
Sikandar Zaman	In person
Mir Zada	In person
Ms. Bushra Gohar	In person
Ms. Ayesha Sayed (MNA)	In person
Ms. Tahira Abdullaha	In person

## Date of Hearings

14-05-2015  
 18-05-2015  
 21-05-2015  
 26-05-2015  
 29-05-2015  
 02-06-2015

## JUDGMENT

Mr. Justice Sardar Muhammad Raza - Chairman. Bye-election on Constituency No. PK-95 Lower Dir-II, KPK was conducted on 7<sup>th</sup> May, 2015.

Soon after the poll, various reports started appearing on electronic media and subsequently on print media as well, that female voters in the entire Constituency failed to exercise their right of vote. It is a matter of grave concern that a large segment of society got deprived of their fundamental as well as Constitutional right.

2. Immediately, on the very following day, the Election Commission of Pakistan, under Article 218(3), Section 103AA of Representation of the People Act, 1976 and all other powers enabling it in that behalf, took Sou Moto cognizance of the matter. Notices were issued to the Chief Secretary, KPK, District Returning Officer, PK-95 Lower Dir-II and all the contesting candidates to explain the circumstances under which the disenfranchisement of female voters had occurred in the Constituency,

3. Meanwhile, on 11.5.2015 a delegation of Civil Society Organizations gathered in front of the Election Commission of Pakistan Secretariat to protest against such incident. The Secretary of the Commission dispersed them assuring them of all necessary action and also that cognizance of the matter had already been taken. During pendency complaints from other Organizations/ NGOs were received and placed on file.

4. According to District Returning Officer/Regional Election Commission, Mardan, all arrangements were made but no female voter came out for casting vote and that no complaint was received by him on behalf of any party or individual.

Similar was the report of Additional Secretary, (Law and Order) which said that no woman voter turned up to cast vote in any of the 85 polling stations. The Senate of Pakistan, on 18th May, 2015 passed a resolution strongly condemning the barring of women from casting their votes and declaring it to be a blatant violation of the Constitution and basic human rights. Copy of such resolution forwarded to the Commission is on file.

5. Numerous Affidavits were filed but the witnesses examined by the Commission were Ms. Farzana Sari (CW-1), Ms. Shad Begum, a social worker (CW-2), Ms. Shabina Ayaz, from Aurat Foundation (CW-3), Ms. Khawar Mumtaz, Chairperson of the National Commission on the Status of Women (CW-4), Ms. Ayesha Saeed, MNA (CW-5), Mr. Sikandar Zman, Regional Head of South Asia Partnership of Pakistan (CW-6), Ms. Tahira Abdullah (CW-7) and Ms. Sushra Gohar, Central Vice President of Awami National Party (CW-8). All the aforesaid witnesses alleged and condemned the disenfranchisement of 53,817 female voters except CW-5 whose gist of statement was that the females abstained of their own free will and that none could be forced to cast his or her vote.

6. As it was a simple probe into the matter, as the proceedings were not adversarial and as the notices were issued to all and sundry including the contesting candidates, just to apprise the Commission of any fact related to the instant matter, yet the returned candidate Mr. Izaz-ul-Mulk, filed a written reply and also was represented by learned counsel Mr. Amir Javed. His simple stance taken in the reply was that the returned candidate had never restrained the female voters from exercising their right. Almost similar was the narration of Ms. Ayesha Saeed, MNA whose stance was that the female voters abstained from casting the vote of their own free-will. Mr. Sangeen Khan, Advocate represented the Awami National Party.

7. Learned counsel for the returned candidate and also the learned counsel for ANP opted not to adduce evidence. Arguments of the learned counsel and also of others who wanted to express themselves, were heard. Mr. Amir Javed came out with the objection that all the witnesses examined and referred to above had given a hearsay version and none of them was present in the constituency on the day of poll. The Commission agrees with the stance so taken. Any evidence under the law is adduced to prove some fact in positive but the criteria of the nature of evidence loses its significance when the fact alleged to be proved is admitted. In the instant case everybody admits and specially the learned counsel for the returned candidate that female voters were deprived of the right to cast their vote. The learned counsel himself gave the figure from

record that the total number of votes were 140743 out of which the total number of female votes was 53817 and that not a single female vote was cast in all the 85 female polling stations of the 'constituency. Thus we observe that when fact in question is admitted, it is immaterial whether the evidence is primary or hear- say.

8. The next question that falls for determination is, as to whether they were restrained by the contesting candidates. This may be cleared to all that the Commission, for the moment, is more interested in the disenfranchisement of female voters rather than who specifically is the person having used undue influence. There are only two possibilities before us. Either the female voters abstained from casting their votes of their own free will or they were influenced by external forces, who so ever they might have been.

9. The total number of female votes are 53817 (say about 54000 in round figure). Not a single vote is cast out of the huge figure which amounts to 38/39% of the entire electoral strength.

10. A question would arise in the mind of any person, having the smallest of prudence, as to why about 54000 of females of backward area with complete lack of communication could think alike across the area extending over 50x30 K.Ms. It is impossible for us to believe that 54000 ladies in Lower Dir think alike. Coincidences do not occur so frequently and those that occur in such frequency, are not coincidences. There is no devine instruction, we believe. There were no specific instructions from the Commission or from the government that ladies would not cast their vote. The strong and irrefutable presumption is that the male population had agreed to deprive the female population. It becomes immaterial for the present proceedings as to who did it. If we had had such specific evidence, we would have launched criminal proceedings against the culprits involved.

11. Telepathy is a recognized state of mind. But it is also a hard fact that it cannot be created among 54000 adult persons who certainly think differently. If ten female voters of a polling station abstained, claiming such abstention as of free will, it might be accepted to be true by a person of ordinary prudence but no person having the slightest of logic and judicial approach towards the matters would accept that 54000 ladies unanimously thought of abstention, without any external-force. We take strong judicial notice of the fact that females were deprived by the males

12. We take judicial notice of the fact that in the local government polls of 30.5.2015 in the same constituency as many as 382 female voters polled their votes out of the number already mentioned. How it happened, it can be attributed either to the bounty of male chauvinism or to the emboldenment of females thorough our taking cognizance of the matter.

13. We would now refer to some relevant case law produced by the learned counsel. In "*Nasir Iqbal vs. Federation of Pakistan*": PLD 2014 SC 72 and 78, the Hon'ble Supreme Court has observed that the political good governance depends on the participation of masses in the electoral process. It referred to the role of each and every individual, inclusive of all the females, but in the instant case 38/39% of individuals have not participated in the election. Hon'ble Supreme Court in case of *Muhammad Nawaz Sharif Vs. President of Pakistan* (PLD 1993 SC 473) observed that whenever a group or a class or even an individual is deprived of a right or privilege, it is the violation of the principle of political justice. In case of *Workers party Pakistan Vs. Federation of Pakistan* (PLD 2012 SC 681, the Hon'ble Supreme Court has gone to the extent of holding that Election Commission was under a direct constitutional obligation to exercise all powers vested in it in order to check any impediment, however small, in the way of the conduct of free, fair, independent and transparent election. No election on earth can be so attributed if 38/39% of voters, all female coincidentally, are deprived of their fundamental and constitutional right. To the same effect is the view of another bench of the Hon'ble Supreme Court in case "*Aftab Shahban Mirani Vs. Muhammad Ibrahim*" (PLD 2008 SC 779), where the powers of Commission were highlighted under Article 218(3) of the Constitution and Section 103AA of the Representation of the People Act, 1976, observing further that the Commission can declare the election void even after holding summary inquiry.

14. Mr. Amir Javed placed reliance on PLD 1976 SC 6 that the satisfaction of this Commission should be based on legal requirements, apart from being subjective. We may clarify here that this act of deprivation is strongly condemned by all and sundry, all electronic and print media and above all, by the highest relevant forum like the Senate of Pakistan. In the Circumstances the Commission is honestly, morally, judiciously and objectively convinced in its mind, repelling any doubt or Oscillation, that in PK-95 the females were deprived of casting their vote by the males in all.

15. 2000 MLD 46 is a judgment of Election Tribunal where re-poll was ordered because female voters were deprived due to the Returning Officer having failed to appoint female staff.

16. We would not be wasting time over authorities which were produced on the points of hear-say evidence and also on the points relevant to the question of adversarial proceedings because we have already held that the hearsay is not relevant and adversarial proceedings, the instant one are not. PLD 1985 Journal 316, a judgment of Election Tribunal is not relevant because we are not interested that some elected representatives or the contested candidate have used undue influence. In the instant case It Is the Influence of the entire male society which can be strongly deduced from the facts already discussed.

17. In PLD 1966 Karachi 312, it was observed that agreement between all the contesting candidates that lady voters shall not cast vote, does not amount to undue influence. With due deference we do not endorse this view because the casting of vote by females is a right of females and males cannot enter into a one-side agreement, having influence over the females. This is certainly an undue influence. We do not subscribe, in principle, to any agreement by males regarding exercise of right of vote by the females. This refers to the observations relied upon.

18. Consequent upon what has been discussed above, the Commission holds that the entire female voter population has been deprived of casting their votes. The bye-election of Constituency No. PK-95 Lower Dir-II held on 7.5.2015 is hereby declared void for the reason of disenfranchisement of female voters.

Notification of the returned candidate is accordingly not issued. New election schedule shall be announced in due course in accordance with law.

Announced  
02.06.2015

Mr. Justice  
Sardar Muhammad-Raza  
Chairman

Justice Muhammad Roshan Essani  
Member

Justice (R) Riaz Kayani  
Member

Justice (R) Shahzad Akbar Khan  
Member

Justice (R) Fazal –ur-Rehman  
Member

Islamabad, the  
2nd June, 2015