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Before Muhammad Qasim Khan, Muhammad Ameer Bhatti and Shahid Waheed, JJ

BILAL AKBAR BHATTI---Petitioner

Versus

ELECTION TRIBUNAL, MULTAN and 15 others---Respondents

Writ Petition No.11155 of 2013, decided on 28th February, 2014.

(a) Representation of the People Act (LXXXV of 1976)---

----Ss. 55 & 63---Constitution of Pakistan, Art.199---Constitutional petition---Dismissal of election petition during trial---Scope and principles---Partial/complete-failure to comply with provisions of S.55 of Representation of the People Act, 1976---Effect---Section 63 of the Representation of the People Act, 1976 did not contain any direction that (election) petition shall be dismissed, even if there was a partial failure to comply with the provisions of S.55 of the said Act---Section 63 of the Representation of the People Act, 1976 was seemingly designed to cover a case where the (election) petition as a whole made allegations of vague and indefinite character without being supported by full particulars of the corrupt or illegal practices---If the election petition taken as a whole failed to comply with the provisions of S.55 of the Representation of the People Act, 1976, it shall be dismissed as revealing no cause of action for the reason that policy of said Act was to discourage an election petition, even during trial, if genuine grounds for challenging an election did not exist.

S.M. Ayub v. Syed Yusaf Shah and others PLD 1967 SC 486 rel.

(b) Representation of the People Act (LXXXV of 1976)---

----S. 55(3)---Constitution of Pakistan, Art.199---Constitutional petition---Election petition, contents of---"Schedule or annexure" attached to an election petition---Meaning---Words "schedule or annex" mentioned in S.55(3) of the Representation of the People Act, 1976, meant such a schedule or annexure which either made additional allegations of a substantive character against the opposite party, or at least furnished better particulars of the allegations made in the election petition, so as to give them the status of substantive grounds of the petition itself. [p. 280] C

S.M. Ayub v. Syed Yusaf Shah and others PLD 1967 SC 486 rel.

(c) Representation of the People Act (LXXXV of 1976)---

----S. 55(3)---Election petition, contents of--- Pleadings, verification of---Principles Following are the principles in relation to verification of pleadings contained in an election petition:--

Pleadings were to be verified on oath and the oath was to be administered by a person who was duly authorized in such behalf. Non-verification or non-attestation of oath by an authorized person was fatal.

Oath was to be practically administered.

There was no material difference between verification on oath and of verification through affidavit. An affidavit was sworn statement, while the verification was confirmation in law by oath in order to establish the truth, accuracy and reality of a statement of facts. Thus, there was practically no difference whatsoever between verifying a statement on oath and verifying the same statement on affidavit. Such difference also lost significance when such affidavit on oath was attested by the authority competent to administer oath.

Failure to give reference to the paragraphs of the pleadings as to what petitioner happened to verify according to his own knowledge and what he happened to believe upon information received and believed to be true, was immaterial.

Amendment to remove defects in verification of Election petition and its annexures on oath or solemn affirmation before a person authorized to administer oath could be allowed by the Election Tribunal during the period of limitation prescribed for filing of Election Petition.

Non-verification of pleadings on oath or solemn affirmation before a person not authorized to administer oath would be deemed not duly verified on oath.

Public documents did not require any verification.

> Engr. Iqbal Zafar Jhagra and others v. Khalilur Rehman and 4 others 2000 SCMR 250; Moulvi Abdul Qadir and others v. Moulvi Abdul Wassay and others 2010 SCMR 1877; Malik Umar Aslam v. Sumera Malik PLD 2007 SC 362; Saeed Ahmad Qureshi v. Haji Ehsan ud Din Qureshi C.A. No.963 of 2013; Malik Umar Aslam v. Sumera Malik PLD 2007 SC 362 and Bashir Ahmed Bhanbhan and another v. Shaukat Ali Rajpur and others PLD 2004 SC 570 rel.

(d) Representation of the People Act (LXXXV of 1976)---

----S. 55(3)---Constitution of Pakistan, Arts.213 & 199---Constitutional petition---Election petition, contents of---Schedules, annexures and pleadings, verification of---Whether requirement of verification under S.55 of the Representation of the People Act, 1976 was complied with--- Such question would be gone into by the Election Tribunal itself and not by the Chief Election Commissioner---Objection regarding requirement of verification could validly be raised before the Election Tribunal alone.

> Sardarzada Zafar Abbas and others v. Syed Hassan Murtza and others PLD 2005 SC 600 rel.

(e) Representation of the People Act (LXXXV of 1976)---

---- Ss. 62 & 63--- Sections 62 & 63 of the Representation of the People Act, 1976 were independent of each other.

Malik Umar Aslam v. Sumera Malik PLD 2007 SC 362 rel.

(f) Representation of the People Act (LXXXV of 1976)---

----Ss. 76A & 55(3)---Constitution of Pakistan, Art.199---Constitutional petition---Election petition, contents of---Allegations made against returned candidate within the ambit of S.76-A of Representation of the People Act, 1976---Whether such allegations had to be verified on oath---Held, where there were allegations that the returned candidate was a defaulter of loan, taxes, government dues or utility charges, or had submitted a false or incorrect declaration regarding payment of loans, taxes, government dues or utility charges, or had submitted a false or incorrect statement of assets and liabilities of his own, his spouse or his dependents, then such allegations were not required to be verified on oath.

(g) Representation of the People Act (LXXXV of 1976)---

----S. 52---Constitution of Pakistan, Arts. 225 & 199---Post-election disputes---Exclusive jurisdiction of the Election Tribunal---High Court barred from exercising jurisdiction under Art.199 of the Constitution in relation to post-election disputes---Article 225 of the Constitution provided a special procedure for challenging the elections through an Election petition presented under the Representation of the People Act, 1976---Article 225 of the Constitution read with Representation of the People Act, 1976 in very clear and unambiguous language state that once the election process had been completed, then it was exclusive jurisdiction of the Election Tribunal to process Election petitions with regard to election disputes---In view of the bar contained in Art. 225 of the Constitution, the High Court could not exercise jurisdiction under Art.199 of the Constitution with regard to post-election disputes.

(h) Representation of the People Act (LXXXV of 1976)---

----S. 67(1A)---Constitution of Pakistan, Art. 199---Constitutional petition---Election petition---Proceedings---Day to day basis---Speedy trial---Under S.67(1A) of the Representation of the People Act, 1976, Election Tribunal shall proceed with the Election petitions on day to day basis and decision thereof shall be taken within four months from its receipt---Speedy trial of an Election petition with regard to election disputes, was essential.

(i) Interpretation of statutes---

----Purposive approach---Interpretation of statute required advancing the purpose of legislation and any interpretation which would defeat the object and purpose of the statute, had to be avoided so that smooth working of scheme of legislation provided by the statute could be facilitated.

(j) Representation of the People Act (LXXXV of 1976)---

----S. 67(3)--- Constitution of Pakistan, Art. 199---Constitutional petition---Election Tribunal---Interlocutory order---Appeal or revision against---No right of appeal or revision was provided against an interlocutory order passed by an Election Tribunal---Person aggrieved should wait for the final decision of Election Tribunal and such decision could then be assailed, if so required by any of the party, before the Supreme Court.

Badarul Haque Khan v. The Election Tribunal Dacca and others PLD 1963 SC 704; Mian Jamal Shah v. The Member Election Commission Government of Pakistan, Lahore and others PLD 1966 SC 1 and Muhammad Baran and others v. Member (Settlement and Rehabilitation) and others PLD 1991 SC 691 rel.

(k) Representation of the People Act (LXXXV of 1976)---

----S. 67(3)---Constitution of Pakistan, Art. 199---Constitutional petition---Election Tribunal--- Interlocutory order--- Assailing of--- Forum--- Constitutional jurisdiction of the High Court--- Scope--- Even if the Election Tribunal made a wrong decision either of facts or law at an intermediate stage, it could not be corrected in constitutional jurisdiction of the High Court under Art. 199 of the Constitution by exercising the power of appellate authority--- High Court could not sit in appeal over the decision/order of the Election Tribunal or statutory authorities and substitute their decision with its own--- Where there was effective alternate remedy under the statute, High Court would not exercise its (Constitutional) jurisdiction and decline to interfere in elections matters, especially at the intermediate stage---If the High Court exercised jurisdiction under Art. 199 of the Constitution to interfere with the interlocutory order of the Election Tribunal, then it would be encroaching upon the rights of aggrieved person to approach the Supreme Court through a direct appeal---Representation of the People Act, 1976, which excluded a right of appeal from the interim orders of the Election Tribunal, could not be bypassed by bringing under attack such interim orders in Constitutional jurisdiction of the High Court---Party affected had to wait till a final decision of the Election Tribunal and then it could challenge the same in the proper exclusive forum, that is, the Supreme Court.

Badarul Haque Khan v. The Election Tribunal Dacca and others PLD 1963 SC 704; Mian Jamal Shah v. The Member Election Commission Government of Pakistan, Lahore and others PLD 1966 SC 1 and Muhammad Baran and others v. Member (Settlement and Rehabilitation) and others PLD 1991 SC 691 rel.

(l) Representation of the People Act (LXXXV of 1976)---

----S. 67(3)---Constitution of Pakistan, Art. 199---Constitutional petition---Election Tribunal---Decision---Assailing of---Decision of Election Tribunal to be assailed directly before the Supreme Court---General rule---Assailing decision of Election Tribunal before the High Court under Art. 199 of the Constitution---Only exceptional---Challenging decision of an Election Tribunal before the High Court under Art. 199 of the Constitution would make S.67(3) of the Representation of the People Act, 1976 redundant to some extent as the parties in such situation would have to file petition for leave to appeal instead of direct appeal before the Supreme Court, which was not the intention of the legislature---When a mechanism had been provided for the decision of

disputes arising out of elections, it could not be permitted to be bypassed through constitutional jurisdiction of the High Court---High Court could only exercise jurisdiction under Art. 199 of the Constitution (exceptionally) when the order of Election Tribunal was illegal and aggrieved person became remediless and the candidate had been disqualified and disfranchised---Only in extraordinary circumstances would the High Court deviate from the general sanctified rule.

(m) Constitution of Pakistan---

----Art. 10A---Fair trial---Basic ingredients.

Following are the basic ingredients for a fair trial:--

(i) The Court/Tribunal shall be independent, impartial and established under the law;

(ii) All persons shall be equal before the Courts and Tribunal in the determination of their rights and obligations;

(iii) Every one shall be entitled to a fair hearing within reasonable time;

(iv) Every one shall have a right of counsel;

(v) One shall have a right of public hearing if not prohibited by law;

(vi) Procedure of trial as provided by the statute shall be followed; and

(vii) The statute must provide a remedy of appeal.

(n) Administration of justice---

----When a thing was required to be done in a particular manner, it should be done in that manner alone as doing otherwise would make the whole proceedings void.

Muhammad Khalid Ashraf Khan and Mehmood Ashraf Khan for Petitioners (in Writ Petition No.11155/2013).

Mian Abbas Ahmad, M. A. Hayat Haraj and Mian Muhammad Shahid Riaz for Petitioners in W.P.No.11666/2013 and W.P. No.1078/2014).

Sheikh Jamshaid Hayat for Petitioners (in W.P.No.12725/2013).

Syed Muzamil Hassan Bokhari for Petitioners (in W.P.No.11960/2013).

Rana Muhammad Asif Saeed for Petitioners (in Writ Petition No.13668/2013 in W.P.No.1594/2014).

Malik Mushtaq Ahmad Ghumb for Petitioners (in W.P.No.1430/2014).

Tipu Sultan Makhdoom and Saeed Ahmad Cheema for Petitioners (in W.P.No.1512/2014).

Syed Muhammad Ali Gillani for Respondents (in Writ Petition No.11155/2013).

Ch. Abdul Sattar Goraya, Muhammad Masud Bilal, Mehr Imtiaz Hussain Mirali and Rana Muhamamd Imran for Respondents (in W.P.No.11666/2013 and W.P.No.1078/2014).

Ch. Sagheer Ahmad for Respondents (in Writ Petition No. 12725/2013).

Syed Riaz ul Hassan Gillani for Respondents (in Writ Petition No. 11960/2013).

Mughees Aslam Malik for Respondents (in Writ Petition No.13668/2013 and W.P.No.1594/2014).

Mahr Irshad Ahmad Arain for Respondents (in W.P.No.1430/2014).

Irshad Arain for Respondents (in W.P.No.1512/2014).
Muhammad Naveed Rana, Standing Counsel for the Federation.
Zafarullah Khan Khakwani, Assistant Advocate General.
Sardar Riaz Karim and Sardar Sarfraz Dogar, Advocates as amicus curiae.
Dates of hearing: 10th, 11th, 12th, 13th, 14th, 17th, 18th and 19th February, 2014.

JUDGMENT

MUHAMMAD QASIM KHAN, J.---Four constitution petitions i.e. (i) Writ Petition No.11155/2013 "Bilal Akbar Bhatti v. Election Tribunal and others", (ii) Writ Petition No.11666/2013 "Muhammad Raza Hayat Hiraj v. Election Commission of Pakistan and others", (iii) Writ Petition No.12725/2013 "Mehdi Abbas v. Election Tribunal and others" and (iv) Writ Petition No.11960/2013 "Makhdoom Javed Hussain Hashmi v. The Election Commission of Pakistan and others", were heard by a learned Division Bench of this Court comprising our learned brothers Ibad-ur-Rehan Lodhi and Mahmood Ahmad Bhatti. JJ. There being difference in opinion as to the decision of writ petitions, matters were placed before the Hon'ble Chief Justice of the Lahore High Court, Lahore and it was ordered that the matter be heard by one of us (Muhammad Qasim Khan, J.) as a Referee Judge. Similarly, two other writ petitions i.e. Writ Petition No.1078/2014 "Muhammad Raza Hayat Haraj v. Election Commission and others" and Writ Petition No.1430/2014 "Saeed Ahmad Khan v. Election Commission of Pakistan and others" were filed and as in all the writ petitions similar questions of law were involved, therefore, one of us (Muhammad Qasim Khan, J.) as a Referee Judge directed the office to club and place these matters before the Hon'ble Chief Justice, with a request for constitution of a larger Bench and the Hon'ble Chief Justice vide order dated 8-2-2014 constituted this Bench as a Referee Bench for decision of all these matters. During proceedings of this Bench, some other petitions (Writ Petition No. 13668/2013 "Muhammad Arshad Malik v. The Election Tribunal and others, Writ Petition No. 1078/2014 "Muhammad Raza Hayat Haraj v. Election Commission of Pakistan, and others Writ Petition No.1430/2014 "Saeed Ahmad Khan Nanais v. Election Commission of Pakistan, and others, Writ Petition No.1512/2014 "Syed Hussain Jahanian Gardezi, and others v. Punjab Election Tribunal and others" and Writ Petition No.1594/2014 "Ch. Muhammad Hanif Jatt v. Election Tribunal and others), were also placed before us.

2. For clarity of issue, briefly the facts are that after issuance of notification of the returned candidates of their respective National and Provincial Assemblies, the opposing contesting candidates filed Election Petitions before the Election Commission as provided under section 52 of the Representation of Peoples Act, 1976 (hereinafter to be called as ROPA), and they were referred to the Election Tribunal for trial under section 56(2). During trial the petitioners filed application under Section 63 of the ROPA for dismissal of Election Petition on the ground that the same did not conform to the mandatory provisions of section 54 or 55 of the ROPA. The Election Tribunal dismissed the above said application. The interim order dismissing applications under section 63 of the ROPA filed by the writ petitioners has been assailed through the instant petitions. In one case interim order allowing an application

under section 151, C.P.C. filed by one respondent/ election petitioner for amendment in verification, has been questioned.

3. Perusal of ROPA and survey of the judgments cited by the learned counsel for the parties, evinces that under section 54 of the ROPA, the petitioner of Election Petition shall join as respondents to his Election Petition, all the contesting candidates and any other candidate against whom any allegation of corruption or illegal practice (that is corrupt practice or an illegal practice within the meaning of Chapter-VIII of ROPA) is made and serve personally or by registered post a copy of the petition; and that the contents of Election Petition and even "schedule" or "annexures" to that Petition shall be signed by him and verified in the manner laid down in Civil Procedure Code, 1908 (Act of 1908) for the verification of pleadings. The survey of the ROPA and the judgments pronounced by the apex Court from time to time in this regard vouchsafe following principles:-

(i) that section 63 of the ROPA does not contain any direction that petition shall be dismissed, even if there be a partial failure to comply with the provisions of section 55, ex-facie section 63 of the ROPA would seem to be designed to cover the case where the petition as a whole made allegations of vague and indefinite character without being supported by full particulars of the corrupt or illegal practice. "S. M. Ayub v. Syed Yusaf Shah and others" (PLD 1967 Supreme Court 486).

(ii) that section 62(3) of the ROPA evinces the anxiety of the legislature to provide for the adjudication of substantial disputes between the parties insofar as it amounts to amendment of a petition to bring out the real points at issue; "S. M. Ayub v. Syed Yusaf Shah and others " (PLD 1967 Supreme Court 486).

(iii) that if the petition taken as a whole fails to comply with the provisions of section 55 of ROPA, it shall be dismissed as revealing no cause of action for the reason that policy of ROPA is to discourage Election Petition, even during trial, if genuine grounds for challenging an election does not exist.

(iv) that by "schedule or annex" mentioned in section 55(3) of the ROPA is apparently meant such a schedule and annexures as either makes additional allegations of a substantive character against the opposite party, or at least furnishes better particulars of the allegations made in the petition, so as to give them the status of substantive grounds of the petition itself. "S. M. Ayub v. Syed Yusaf Shah and others" (PLD 1967 Supreme Court 486).

(v) that pleadings are to be verified on oath and the oath is to be administered by a person who is duly authorized in that behalf. Non-verification or non-attestation of oath by an authorized person is fatal. "Engr. Iqbal Zafar Jhagra and others v. Khalilur Rehman and 4 others" (2000 SCMR 250).

(vi) that Public documents do not require any verification. "Bashir Ahmed Bhanbhan and another v. Shaukat Ali Rajpur and others" (PLD 2004 SC 570).

(vii) that Oath is to be practically administered.

(viii) that requirement of Section 55 of the ROPA would be gone into by the Tribunal itself and not by the Chief Election Commissioner. Such objection can validly be raised before the Tribunal and Tribunal alone. "Sardarzada Zafar Abbas and others v. Syed Hassan, Murtaza and others" (PLD 2005 Supreme Court 600).

(ix) that there is no material difference between verification on oath and of verification through affidavit. An affidavit is sworn statement while the verification is confirmation in law by oath in order to establish the truth, accuracy and reality of a statement of facts. Thus, there is practically no difference whatsoever by verifying a statement on oath and by verifying the same statement on affidavit. It also loses significance when such affidavit on oath is attested by the authority competent to administer oath;

(x) that failure to give reference to the paragraphs of the pleadings as to what he happened to verify according to his own knowledge and what he happened to believe upon information received and believed to be true, is immaterial. "Moulvi Abdul Qadir and others v. Moulvi Abdul Wassay and others" (2010 SCMR 1877).

(xi) that amendment to remove the defects in verification of Election Petition and its annexures on Oath or solemn affirmation before a person authorized to administer Oath can be allowed by the tribunal during the period of limitation prescribed for filing of Election Petition. PLD 2007 SC 362 (Malik Umar Aslam v. Sumera Malik). C.A. No.963 of 2013 decided on 26-09-2013 (Saeed Ahmad Qureshi v.. Haji Ehsan ud Din Qureshi).

(xii) that non-verification of pleadings on Oath or solemn affirmation before a person not authorized to administer Oath would be deemed not duly verified on Oath. "Malik Umar Aslam v. Sumera Malik" (PLD 2007 SC 362).

(xiii) that sections 62 and 63 of ROPA are independent of each other. "Malik Umar Aslam v. Sumera Malik" (PLD 2007 SC 362).

(xiv) that if there are allegations that the returned candidate is a defaulter of loan, taxes, government dues or utility charges, or has submitted a false or incorrect declaration regarding payment of loans, taxes, government dues or utility charges, or has submitted a false or incorrect statement of assets and liabilities of his own, his spouse or his dependents under section 12, then such allegations are not required to be verified on Oath.

(Section 76-A of the Representation of the People Act, 1967)

4. Learned counsel for the petitioners, after relying upon the above cited decisions of the Hon'ble Supreme Court of Pakistan whereby the above quoted principles were established, submit that the order passed by the learned Election Tribunal by

dismissing the application of the petitioners filed under section 63 of ROPA is illegal; that this Court has ample jurisdiction to correct the illegality committed by the Election Tribunal; and that under Article 199(5) of the Constitution of the Islamic Republic of Pakistan, 1973, Tribunal falls within the definition of "Person" and thus this Court has jurisdiction to strike down the impugned order by issuing writ of certiorari as otherwise the petitioners would become remediless against the orders impugned in these petitions. On the other hand the learned counsel appearing on behalf of respondents vehemently opposed these petitions and submitted that instant petitions assailing the interim order of the Election Tribunal are not maintainable due to lack of jurisdiction and thus liable to be dismissed.

5. The learned Division Bench which had differed in opinion did not formulate any question to be resolved by the Referee Bench, thus, we, after examining the judgments of both the learned Members of the Division Bench, framed following questions of law to be resolved:--

> (i) Whether Article 225 of the Constitution of the Islamic Republic of Pakistan, 1973 ousts the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with regard to post election disputes?
>
> (ii) Whether jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 may be exercised against interlocutory orders passed by the Election Tribunal during the process of trial?

6. In order to provide the peg on which the above referred questions are to be hung, it is necessary to survey the case-law on the subject.

(i) "Badar ul Haque Khan v. The Election Tribunal, Dacca and others" (PLD 1963 SC 704). In this case against the order of the Election Tribunal a writ petition was filed and a Division Bench in constitutional jurisdiction set-aside the order of the Election Tribunal resulting in leave to appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court converted the same into Civil Appeal and held as under: -

> "The order of the Tribunal was attacked as without lawful authority also on the ground that it misinterpreted the provisions of the Representation of the People Act and held the simple appearance of the respondent's name on the contractors' list to be a sufficient disqualification. It is urged that this was a clear error of law and such an error would make the decision "without lawful authority". The proposition is indisputable that when there is jurisdiction to decide a particular matter then there is jurisdiction to decide it rightly or wrongly and the fact that the decision is incorrect does not render the decision without jurisdiction. I do not see any difference in a case where the question of law decided is a matter on which two opinions can easily be held and a case where the decision on a question of law appears to be clearly erroneous. It would not make difference that on logical reasoning the interpretation of law by the Tribunal could not be supported. Unless a case of mala fides or a mere colourable exercise of jurisdiction could be made out the decision would not be without lawful authority. If an order can be without legal authority because of a clearly wrong determination of a question of law, it should be without legal

authority even in case of a clearly wrong determination of a question of fact. There is no reason for any distinction in this connection between a decision on a question of law and a decision on a question of fact. So if we were to accept the proposition that clearly erroneous decisions are without lawful authority the Court acting under Article 98 would constitute itself a Court of appeal for matters of fact as well as matters of law.

ORDER OF THE COURT

We allow this appeal and direct that the writ issued by the High Court to quash the decision of the Election Tribunal should be recalled. We leave the parties to bear their own costs."

(ii) In the landmark judgment handed down in the case of "Mian Jamal Shah v. The Member Election Commission, Government of Pakistan, Lahore and others" (PLD 1966 SC 1), the question of jurisdiction conferred upon the High Court by Article 98 of the Constitution of 1962 (corresponding Article 199 of the Constitution of Islamic Republic of Pakistan, 1973) in relation to the election disputes, for which the provision was made by Article 171 (Corresponding Article 225 of the Constitution of 1973) and the law made in compliance there with, was considered at length, and it was held as under:--

"The position has throughout been that election disputes had been totally excluded from the jurisdiction of the High Courts. The whole law relating to the conduct of elections and in particular to balloting, ie discrimination between valid and invalid votes, as well as in relation to corrupt practices and other illegalities such as could vitiate an election or entail the loss of franchise by individuals has remained throughout sealed territory qua the jurisdiction of the High Court.

Further, it was held that:-

I say this, not with reference to anything arising in this case directly, but for the reason that where the Parliamentary and judicial traditions are not indigenous, nor of any long standing but where the Constitution expressly provides for differentiation of functions between the three great organs of the State, it is a major consideration of great weight that its provisions should not be interpreted in a manner which enables one of those organs to interfere directly with matters which the Constitution has placed exclusively within the authority of another organ for "final determination". In direct contrast to the provision now obtaining in England that election disputes are referred to the High Court for determination under the special provisions referred to above, in our Constitution, Article 171 requires that such matters should go before specified authorities and Tribunals for "final determination." These authorities and Tribunals exercise in the relevant respect jurisdiction which does not and never did belong to the High Court, but is an essential part of Parliamentary jurisdiction, that has been by law entrusted to specified, authorities to operate.

The apex Court also observed:--

Anything in the nature of the exercise of a full scale appellate jurisdiction must, be rigorously avoided by the High Court, for that would be to override the requirement of

the Constitution that the power under Article 98 should be exercised so as to give full effect to the terms of such a provision, as that contained in Article 171.

(iii) "Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others" (PLD 1973 SC 236). In this case, it has been held as under:--

"Finality given by Legislature to decision of certain Tribunal which also has jurisdiction to decide finally facts upon which its own jurisdiction founded-Decision, in such case, cannot be called into question in any collateral proceeding by another tribunal or body of limited jurisdiction.

It is no doubt true that there is a clear distinction between an act wholly without jurisdiction and an act done in the improper exercise of that jurisdiction. Where there is jurisdiction to decide, then as it has often been said there is jurisdiction to decider either rightly or wrongly, and merely a wrong decision doer not render the decision without jurisdiction. To amount to a nullity, an act must be non-existent in the eye of law; that is to say, it must be wholly without jurisdiction or performed in such a way that the law regards it as a mere colourable exercise of jurisdiction or unlawful usurpation of jurisdiction."

(iv) "Muhammad Azam Faruqui v. Moulana Muhammad Shafi Okarvi and others" (1974 SCMR 471). In this case an order of the Election Tribunal refusing to dismiss election petition under section 60 of the National and Provincial Assemblies (Elections) Ordinance XIII of 1970, was challenged before the Division Bench, and ultimately in the cited case the apex Court held as under:--

In these facts and circumstances we agree with the learned Judges of the High Court that under section 64(3) of the Ordinance no appeal lay from the order of a Tribunal which was not an order passed under section 63(1) of the Ordinance upon the conclusion of the trial of an election petition. We may add that the said Ordinance does not contemplate piecemeal trial of an election petition. The objection of the petitioners under section 60 of the Ordinance could and should have been considered at the trial of the petition.

It may be noted here that under section 59 of the Ordinance, the election petition is triable as nearly as may be in accordance with the procedure for the trial of suit under the Code of Civil Procedure and that the Tribunal is authorised at any time upon such terms and on payment of such fees as it may direct, to allow a petition to be amended in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial and for determining the real questions at issue, so however that no new ground of challenge to the election is permitted to be raised. In the present case it appears that the Election Tribunal was satisfied that prima facie the provisions of section 52 of the Ordinance had been complied with. Nevertheless, issues have already been framed on the allegations of corrupt and illegal practices and the petitioner is not precluded from challenging at trial that the sail allegations are vague or that they have not been proved.

(v) "Mian Zahid Sarfraz v. Raja Nadir Per Vaiz Khan and others" (1987 SCMR 1107). In this case Election Tribunal turned down preliminary objection, this order was assailed under section 67(3) of the ROPA by way of an appeal. Preliminary objections were raised by learned counsel for respondents with regard to its competence as under section 67(3) of the ROPA, an appeal could

be filed against the final order. The Hon'ble Supreme Court discussed general principles from Corpus Juris Secundum to the following effect:-

"The general principle has been expressed in the following words in Volume 4 of Corpus Juris Secundum at pages 89, 238 and 244:-

"As a general rule, a writ of error lies only from a final judgment or decree or an award in the nature of a final judgment. Such rule represents a policy of the law which is quite uniformly adhered to; but the rule is not inflexible, since it is held to be not jurisdictional with the reviewing ,Court, and the writ may be extended by statutes not only to final judgments but also to orders granting a new trial, or to a refusal to enter judgment for want of a sufficient affidavit of defense. It is the general rule, therefore, that an appeal, writ of error, exceptions, or other proceeding for review will not lie from or to an interlocutory or intermediate decision unless it is expressly permitted by statutes, rule, or constitutional provision. The policy behind, or the ground for, the statutes, rules of Court, and decisions embodying this principle is that litigation should not proceed piece-meal, that intermediate appeals would unduly delay the final disposition of litigation, and that a complete disposition of the matter in the trial Court may make an appeal moot."

And ultimately, the Hon'ble Supreme Court upheld the preliminary objections with regard to competence of the appeal.

(vi) "Mian Ghulam Dastigir Bari v. Rai Salah ud Din and 3 others" (PLD 1987 LAHORE 39). This is a case wherein, against an interim order passed by the Election Tribunal, writ petition was dismissed by this Court, with the following observations:

"Election petition---Error in interlocutory orders---Assailing of such order---Calling in question of election is prohibited except through determination of Election Tribunal---Provision of right of appeal under S. 67(3), Act LXXXV of 1976, held, was manifestation of intention of law-maker that proceedings before Election Tribunal be continued uninterrupted---Error in interlocutory orders of Election Tribunal could be assailed in appeal against final order.

Constitutional jurisdiction, exercise of---Prohibition contained in Art. 225 of Constitution that validity of elections could not be called in question except through the manner prescribed thereby is absolute Constitutional jurisdiction under Art. 199 being subject to other provisions of Constitution could not be exercised in derogation, of Art. 225 of Constitution of Pakistan (1973) -- Merely because interlocutory order is not appealable, would be no ground to render same to constitutional jurisdiction."

(vi) "Bhagwandas v. The Returning Officer and others" (1990 SCMR 1228). In this case, the Hon'ble Supreme Court of Pakistan, held as under:-

"It is to be noticed that the election petition is still pending before the learned Election Tribunal and has not yet been finally disposed of. In the case of Zahid Sarfraz v. Nadir Pervez Khan 1987 SCMR 1107, this Court examined the types of orders from which appeals can be preferred under section 67(3), Representation of the People Act. The view taken was that only such types of orders as were enumerated in section 67(1) of the Act were appealable before

this Court. Clearly, the order from which the appellant has preferred these two appeals, is not the type of order which can by any means be treated as one falling under the said enumeration. These appeals are, therefore, incompetent and are hereby dismissed in limine. "

(vii) (Muhammad Baran and others v. Member (Settlement and Rehabilitation), and others" PLD 1991 SC 691. This is a case wherein, number of writ petitions were filed after decision of the Single Bench, matter was assailed before the Hon'ble Supreme Court of Pakistan and it was observed:-
"An order in the nature of certiorari or mandamus is a discretionary order. Its object is to foster justice and right a wrong. Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it causes a manifest illegality, then the extraordinary jurisdiction ought not to be allowed to be invoked.

(viii) "Muhammad Tariq Chaudhry, Member Senate of Pakistan Islamabad and Syed Masroor Ahsan and 3 others" (PLD 1991 Lahore 200). In this case the election of Member of Senate was assailed and this Court held as under:--
"The opening clause of Article 199 of the Constitution provides "Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law" indicates that the provisions containing in this Article are controlled by other provisions of the Constitution.

One of the main allegations against the successful candidate was that he filled in the nomination form and concealed having been indicted and convicted in criminal cases thereby earned disqualification to be member of the Senate, for his misconduct in the process of election---Filling up nomination paper for filing thereof being a step in the process of election, was only assailable by means of election petition as envisaged under Art.225 of the Constitution read with Ss.31 and 34, Senate (Election) Act, 1975---- Article 225, Constitution of Pakistan by its mandate had created am independent jurisdiction for resolution of the election disputes by the Election Tribunal after the election process was completed, jurisdiction of High Court under Art. 199 of the Constitution was not available because said jurisdiction was subject to provisions of the Constitution including Article 225.

(ix) "Pir Sabir Shah v. Election Commission of Pakistan and others" (PLD 1994 Lahore 516). In this case a Reference with regard to disqualification of two members was sent by the Speaker to the Chief Election Commission and the learned Chief Election Commissioner commenced proceedings on the reference and an interim order was passed by Election Commissioner, which was assailed before the High Court in writ jurisdiction, wherein, it was held as under:--
"Under section 8-B (3) of Political Parties Act, 1962, the final order/judgment to be passed by the Election Commission is appealable to the learned Supreme Court. This being so, the grievance of the- petitioner, if any, against the impugned order may be agitated by him in full in appeal against the final order/judgment before the learned Supreme Court. It is well settled that in a case-like this, the decision should always be given in a consolidated form rather than to be fragmentary so as to avoid the multiplicity of the litigation."

(x) In the case "Ghulam Mustafa Jatoi v. Additional District and Sessions Judge/Returning Officer, N.A.158, Naushero Feroze and others" (1994 SCMR 1299), the Hon'ble Supreme Court held that:-

"The upshot of the above discussion is that generally in an election process the High Court cannot interfere with by invoking its Constitutional jurisdiction in view of Article 225 of the Constitution. However, this is subject to an exception that where no legal remedy is available to an aggrieved party during the process of election or after its completion, against an order of an election functionary which is patently illegal/without jurisdiction and the effect of which is to defranchise a candidate, he can press into service Constitutional jurisdiction of the High Court. The majority view in the case of Election Commission of Pakistan v. Javaid Hashmi (supra) is not applicable. We may clarify that we do not intend to overrule the above majority view in the above case. The above case in fact is distinguishable from the instant case for the reasons already discussed hereinabove."

(xi) "Dr. Sheela B. Charles v. Election Tribunal and another" (1996 CLC 344). The facts of this case are that two contesting candidates filed Election Petition before the Election Tribunal against Dr. Sheela B. Charles. During pendency of the Election Petition Dr. Sheela B. Charles filed preliminary objections before filing written statement and this petition was dismissed. Interim order was assailed through writ petition and this Court, held as under:-

"As observed above, the order dated 9-8-1994 is interlocutory one and with jurisdiction and the learned Election Tribunal has yet to pass final orders in the election petitions. The final order which includes any interlocutory order like the impugned order dated 9-8-1994, is subject to incidence of appeal under section 67 of the Representation of People Act, 1976 before the Hon'ble Supreme Court. Therefore, on this ground alone, we think that the writ petitions are not maintainable against the impugned order dated 9-8-1994. "

This judgment was upheld by the Hon'ble Supreme Court and the judgment of Hon'ble Supreme Court is reported as "Sheela B. Charles v. Election Tribunal and another" (1997 SCMR 941). The relevant extract of above judgment is as follows:--

" .that the Election Laws provide hierarchy for impugning the election and the orders passed by the Election Tribunal. If the above orders of the Election Tribunal are illegal, the same can be challenged by the petitioner if eventually the election petition is decided against her but the proceedings of an election petition cannot be stayed at this stage."

(xii) In another case "Sh. Rashid Ahmad v. The Election Tribunal, and others" (PLD 1993 Lahore 791), Election Petition was filed against the returned candidate and during hearing of the Election Petition an interlocutory order was passed and certain witnesses were summoned by the Election Tribunal. This interlocutory order was assailed by Sh. Rashid Ahmad through Writ Petition decided by a Division Bench of this Court, with the following observations:-

"The writ petition has been filed against an interim order. As per provision of section 67 of the Representation of the People Act, 1976, any decision of the

Election Tribunal is appealable to the Supreme Court. The word 'decision' has been used in section 67 of the Representations of the People Act, 1976, and it does not always refer to a final order. It shall also include an interim order. The petitioner if aggrieved by the order could have, hence filed an appeal before the Supreme Court of Pakistan and at any rate in case the ultimate final order is passed against him, he shall be entitled to challenge the interim impugned order in that appeal, in view of the established legal position to the effect that while challenging final order, the interim orders are also challengeable. Hence, writ petition against the interim order cannot be entertained as it will tend to delay the disposal of main case which is an election petition and is to be decided within a specified period of time expeditiously. It has been held in cases of Ibrahim v. Muhammad Hussain PLD 1975 SC 457, Abdul Bari v. Government of Pakistan and 2 others PLD 1981, Karachi 290, Allah Yar Khan v. Mst. Sardar Bibi and others (1986 SCMR 1957) and Mushtaq Hussain Bokhari v. The State (1991 SCMR 2136), that interim orders are not amenable to the exercise of the writ jurisdiction of this Court inasmuch as entertainment of writ in such like cases delays the decision of main cases wherein the interim orders have been passed."

(xiii) "Muhammad Iftikhar Muhammad v. Javed Muhammad and 3 others" (1998 SCMR 328). In this case the petitioner moved a petition seeking leave to appeal against the judgment of Election Tribunal Peshawar, whereby the learned Tribunal overruled preliminary objections raised by the petitioner and when this matter was taken up to the apex Court, it was observed as under:--
"After hearing the learned counsel for the parties, we are of the view that as the main election petition is still pending before the learned Tribunal and an appeal is provided against the final decision of the Tribunal before this Court, the petitioner in the event of the final decision going against him, will be entitled to raise all the pleas available to him, in the appeal before this Court including the preliminary objection as to the maintainability of the petition which has been overruled by the learned Tribunal by the impugned judgment."

(xiv) "Muhammad Asim Kurd alias Gailoo v. Nawabzada Mir Lashkari Khan Raisani and 11 others" (1998 SCMR 1597). In this case, a petition for leave to appeal was filed against an order passed by the Division Bench of High Court of Balochistan, whereby Constitutional Petition was dismissed in limine, against the interlocutory order passed by the Election Tribunal Baluchistan, where direction for recounting of votes during pendency of the Election Petition was directed and the apex Court held as under:--
"The case of Mian Ejaz Shafi (supra), strongly relied upon by the learned counsel for the petitioner, does not advance his case, inasmuch as, paragraph 6 of the aforesaid judgment reveals that the appellant therein challenged the order of the Election Tribunal regarding recounting of votes before this Court through C.A. No.425 of 1994, which was dismissed on 7-6-1994, on the ground that the appeal against the interim order passed by the Election Tribunal, was not competent. In the instant case also, the final order is yet to be passed by the Tribunal seized of the Election Petition filed by respondent No.1 against the petitioner. Admittedly, appeal against the final order of the Tribunal lies before

this Court. The petitioner shall also be at liberty to file objections to the report of the Commission on recounting of votes. Clearly, if such objections are raised the same shall be considered by the Tribunal justly, fairly and in accordance with law, after providing an opportunity of being heard to the parties and allowing them to lead evidence in support of their respective contentions, if so desired, before final disposal of the Election Petition."

(xv) In "Sallahdino and another v. Ghulam Mustafa and 6 others" (2010 YLR 346), during pendency of Election Petition, an interim order was assailed before the Division Bench of Sindh High Court through a constitutional petition and it was dismissed with the following observations:-
"In the case in hand, the Election Tribunal has not passed final order and the contentions made by learned counsel for the petitioner are fully answered by the judgment of this Court in the case of Moula Bux v. Muhammad Rahim reported in 2003 CLC 319, where this court had held that the Election Tribunal can order recounting of votes without recording evidence. Additionally, we are clear in our mind that no writ lies against interlocutory order. The order is interlocutory in nature and cannot be impugned in the constitutional petition. We are further fortified by this judgment of the Honourable Supreme Court in the case of Muhammad Naeem Kasi v. Abdul Latif reported in 2005 SCMR 1699. "

7. Learned counsel for the petitioners also cited some case-law regarding pre-election dispute to highlight the constitutional jurisdiction of this Court. In this context landmark judgments referred and discussed at length by learned advocates are:-

(i) "Election Commission of Pakistan through its Secretary v. Javaid Hashmi and others" (PLD 1989 SC 396). In this case list of Presiding Officers and Polling Officers was prepared; complaints were received in the Election Commission of Pakistan against the appointment of polling personals belonging to the provincial government's departments and direction was issued to the District Returning Officer; under the direction the Returning Officer changed the list of personals from the earlier approved list. This order was assailed before the Lahore High Court in writ jurisdiction and the High Court allowed the writ petition; judgment passed by the High Court was assailed before the Hon'ble Supreme Court of Pakistan and the Supreme Court by its majority view upholding the judgment passed by the High Court observed as under:-
"In enacting Article 225 in the Constitution the purpose of Legislature is obvious that it did not contemplate two attacks on matters connected with the election proceedings; one while the election process is on and has not reached the stage of its completion by recourse to an extraordinary remedy provided by Article 199, and another when the election has reached the stage of completion by means of an election petition. It is also of utmost consideration that in the case of two attacks on a matter connected with the election proceedings there is likelihood of there being two inconsistent decisions; one given by the High Court and the other by the Election Tribunal which is also an independent Tribunal and this could not be the intention of the Legislature. Again the words

"except by an election petition" in Article 225 of the Constitution do not refer to the period when it can be called in question but point to the manner and the mode in which it can be called in question. It is, therefore, that the constitutional provision is expressed in the negative form to give exclusive jurisdiction to the Tribunals appointed by the Election Commissioner and thus to exclude or oust the jurisdiction of all Courts in regard to election matters and to prescribe only one mode of challenge. The purpose is not far to seek as in all democratic Constitutions such as is ours the Legislatures have an important role to play, and, therefore, it is of utmost importance that the election should be held as scheduled without being unduly delayed or prolonged by challenging matters at an intermediate stage.

The scheme of the electoral laws and conduct of election accordingly appears to be that any matter which has the effect of vitiating the election process should be brought up only at the appropriate stage in an appropriate manner before the Election Tribunal and should not be brought up at an intermediate stage before any Court as otherwise Article 225 of the Constitution would be deprived of its meaning and content....."

(ii) In "Ghulam Mustafa Jatoi v. Additional District and Sessions Judge/Returning Officer, NA. 158, Naushero Feroze and others" (1994 SCMR 1299) name of the candidate was dropped from publishing in the list of candidates on the ground that he was found to be a defaulter and clearance certificate had not been produced. Writ petition preferred against the said order was dismissed and civil appeal filed against the order of High Court was allowed; resulting the orders passed by the High Court and the Returning Officer were quashed on the ground that order was patently illegal and petition was dismissed. No remedy was available to the petitioner as action was taken after expiry of the period of appeal and petitioners stood disfranchised.

(iii) In "Ch. Muhammad Arif Hussain v. Rao Sikandar Iqbal and 10 others" (PLD 2008 SC 429) during election process objection regarding qualification was raised before the Returning Officer; objection was sustained and nomination papers were rejected; the petitioner filed appeal before the Tribunal established under the ROPA; appeal was allowed resulting the petitioner was declared to be qualified to contest the election and against this decision writ petition was allowed, whereby the petitioner was declared to be not qualified to contest the election; matter was brought to the Hon'ble Supreme Court of Pakistan and it was declared that the petitioner had not requisite qualification to contest the election and the High Court has rightly exercised its jurisdiction.

(iv) In another case "Syed Nayyar Hussain Bukhari v. District Returning Officer, NA-49, ISLAMABAD and others" (PLD 2008 SC 487) Hon'ble Supreme Court of Pakistan observed that it is difficult to agree with the proposition that in all election matters at all stages, the jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan is barred. However, they observed that the petitioner may either approach the Election Commission of Pakistan under section 103-AA of ROPA or avail remedy before the Election Tribunal under section 52 of ROPA.

(v) In "Muhammad Hussain Babar v. Election Commission Of Pakistan, through Secretary and others" (PLD 2008 SC 495) shows that constitutional jurisdiction of the High Court can certainly be invoked in certain situations. The Hon'ble Supreme Court of Pakistan without commenting upon the merits of the case in either way disposed of the petition holding that the petitioner may avail remedy through petition under section 52 of ROPA.

(vi) In two cases i.e. "Lt.-Gen. (R) Salahuddin Tirmizi v. Election Commission of Pakistan" (PLD 2008 SC 735) and "Aftab Shahban Mirani and others v. Muhammad Ibrahim and others" (PLD 2008 SC 779) the law and facts were similar and the Hon'ble Supreme Court of Pakistan observed that Chapter X, sections 103 and 103-AA of ROPA are entirely independent to section 52 of ROPA and the Commission after issuance of notification may exercise jurisdiction and entertain a complaint on the grounds mentioned therein and also may continue for 20 days of the official announcement of election. It is further concluded that orders passed by the Election Commission of Pakistan did not suffer from any illegality or material irregularity as it would warrant correction by this Court and order passed by the Karachi High Court, setting aside the order passed by the Election Tribunal, was set aside and appeal of Aftab Shaban Mirani was allowed and decision of Peshawar High Court, not setting aside the order of Election Tribunal, was upheld. Resultantly, leave petition of Salah ud Din Tirmizi was dismissed.

(vii) In case of "Federation Of Pakistan and others v. Mian Muhammad Nawaz Sharif and others" (PLD 2009 SC 644) the petitioner filed nomination papers and two other contesting candidates namely Noor Elahi and Mian Ikhlaq Ahmad Guddu filed objection petition before Returning Officer questioning the candidature of Mian Muhammad Nawaz Sharif; objection petition was dismissed and appeal was filed before the Tribunal; said appeal was withdrawn and the other candidates filed application that he may be allowed to transpose as appellant but the said application was also dismissed. Latter on he filed time barred appeal. Meanwhile one Syed Khuram Shah filed application under section 14(5-A) of the ROPA and the High Court passed split judgment the matter was referred to the Chief Election Commissioner due to divergent opinions of the Judges. The Chief Election Commissioner held that since the appeals of the objections had not been disposed of within the period specified in the election schedule, the same were deemed to have been dismissed in view of section 14(6) of ROPA. Against the said order Writ Petition was filed, which was allowed holding that the petitioner is not qualified to contest election. This order was challenged by the Federation of Pakistan before the Hon'ble Supreme Court of Pakistan, which resulted into dismissal. A review petition was filed by Mian Muhammad Nawaz Sharif, which was allowed and it was held that Constitutional jurisdiction of High Court, after the order of the Chief Election Commissioner declaring the appeal as deemed to have been rejected in terms of S.14(6) of the Representation of the People Act, 1976, candidate and informer-objector having alternate remedy available under sections 52 and 76-A of the Act, could not invoke the constitutional jurisdiction of High Court which was limited in this respect.

8. Syed Riaz-ul-Hassan Gillani, Advocate also cited some case-law from Indian jurisdiction to explain the jurisdiction of this Court vis-a-vis election disputes. The Election Laws of India are not similar to ROPA, thus, there is no need to discuss them to resolve the questions involved in this Reference. The learned amicus curiae Sardar Muhammad Sarfraz Dogar, Advocate also assisted the court with reference to law applicable in different countries with regard to election disputes. Sardar Riaz Karim, Advocate assisted the Court with reference to certain similar provisions available in The Financial Institutions (Recovery of Finances) Ordinance, 2001. Their assistance is appreciated.

9. We have given our anxious consideration to the above referred case-law and all other cases referred by learned counsel in this regard before this Bench.

10. Article 222 of the Constitution provides that subject to the Constitution, Majlis-e-Shoora (Parliament) may by law provide for conduct of elections and election petitions for the decision of doubts and disputes arising in connection with elections; matters relating to corrupt practices and other offences in connection with elections; and all other matters necessary for the due constitution of the two Houses and the Provincial Assemblies. Article 225 of the Constitution deals with election disputes. It starts with negative phraseology "no election to the House or Provincial Assembly shall be called in question", and then another negative phrase in unambiguous terms "except by an Election Petition presented to such Tribunal and in such manner, as may be determined by the act of Majlis-e-Shoora" Article 225 provide a special procedure for challenging the elections through Election Petition presented in such a manner as determined by the Act of Parliament and in the cases in hand the relevant Act is ROPA. Article 225 read with ROPA in very clear and unambiguous language say that once the election process has been completed then it is exclusive jurisdiction of the Election Tribunal to process Election Petitions with regard to election disputes. Thus in view of the bar contained in Article 225 of the Constitution, the High Court cannot exercise the jurisdiction under Article 199 of the Constitution with regard to post-election disputes.

11. The ROPA has its own scheme for resolving election disputes after completion of election process through an independent Election Tribunal by way of filing Election Petitions under section 52 of ROPA. As per scheme of law, under section 67(1A) of the ROPA, Election Tribunal shall proceed with the Election Petitions on day to day basis and decision thereof shall be taken within four months from its receipt and where the delay in proceedings is occasioned by any act or omission of returned candidate or any person acting on his behalf, the Tribunal shall refer to the Commissioner that such candidate may be declared by the Commission to have ceased to perform the functions of his office either till the conclusion of the proceedings or for such period as the Commission may direct. This aspect shows that the law which is made by Majlis-e-Shoora and is guarded by the Constitution, requires for an early conclusion of election disputes because essence of the Constitution and the law is that the authority delegated by Allah Almighty to the chosen representative of the people be exercised by the persons having confidence of people of their constituency and qualify to be elected as member of the House or Provincial Assemblies. Divine authority cannot be given to a person who is not the real representative of the people of the constituency and has been

elected by violating the law because Majlis-e-Shoora is sacred trust of the people of Pakistan consisting of sagacious, righteous, honest and Ameen persons. To clear the shadow of doubt and to remove the clouds on the chosen representatives of the people, speedy trial of an Election Petition with regard to election disputes, is essential.

12. All the rules of interpretation of the statute have been designed so as to promote the legislative intent behind the statute. Interpretation of statute requires to advance the purpose of legislation and any interpretation which would defeat the object and purpose of the statute, has to be avoided so that smooth working of scheme of legislation provided by the statute be facilitated. 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 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. In fact by exercising jurisdiction under Article 199, practically section 67(3) of ROPA (right of appeal) will become redundant to some extent as the parties in such situation will have to file petition for leave to appeal instead of direct appeal before the Supreme Court, which is not the intention of the legislature. The basic principle which has been laid down by the apex Court of the country is that this Court can only exercise jurisdiction when the order is illegal and aggrieved person becomes remediless and the candidate has been disqualified and disfranchised and it is only in extraordinary circumstances that the court would aberrant the sanctified rule. The learned counsel for the writ petitioner could not refer a single instance before this Court from the judgments of the Hon'ble Supreme Court when the matter was pending trial before the Election Tribunal and the Hon'ble Supreme Court interfered in any interlocutory decision of the Election Tribunal. When a mechanism has been provided for the decision of disputes arising out of elections, it could not be permitted to be bypassed through writ jurisdiction. Ordinarily, the remedy provided by the statute must be followed before the appropriate authority. It is settled principle that where there is effective alternate remedy under the statute, High Court will not exercise its jurisdiction as self imposed restriction and decline to interfere in the elections matters, especially at the intermediate stage.

13. We are fully aware and have also given due consideration to Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, regarding fair trial. The right of fair trial is essential right in all countries respecting the rule of law. Various rights associated with fair trial are explicitly proclaimed in Article 10 of the Universal Declaration of Human Rights, as well as numerous other declarations throughout the world, but there is no binding international law that defines what is or is not a fair trial,

for example the right to a jury trial and other important procedures vary from nation to nation. The basic ingredients for a fair trial are (i) the Court/Tribunal be independent, impartial and established under the law, (ii) all persons shall be equal before the courts and Tribunal in the determination of their right and obligations; (iii) Every one shall be entitled to a fair hearing within reasonable time; (iv) Every one shall have a right of counsel; (v) right of public hearing if not prohibited by law; (vi) the procedure of trial as provided by the statute to be followed and (vii) the statute must provide a remedy of appeal. The provisions of ROPA satisfy the above stated principles as it stands established that Election Tribunal is an independent body constituted under Section 57 of ROPA by the Election Commission whose independence has been protected and guarded by the Constitution; that a complete code of procedure for speedy trial has been provided to both the parties of the Election Petition; that each party to the Election Petition has been provided opportunities of fair hearing and, that right of appeal against final decision has been provided by ROPA before the Hon'ble Supreme Court.

14. On study of number of cases as referred above particularly from "Badarul Haque Khan v. The Election Tribunal, Dacca and others" (PLD 1963 SC 704), "Mian Jamal Shah v. The Member Election Commission, Government of Pakistan, Lahore and others" (PLD 1966 SC 1) and "Muhammad Baran and others v. Member (Settlement and Rehabilitation), and others" (PLD 1991 SC 691), it becomes quite obvious that the Hon'ble Supreme Court of Pakistan declined to interfere in the proceedings of the Election Tribunal at intermediate stage of trial because the Constitution has conferred exclusive authority on the Election Tribunal to determine election disputes speedily and without any interruption.

15. In view of above, we are inclined to answer the questions, under reference, in the negative and consequently dismiss the petitions. The raison deter of our answer is summarized as follows:--

(i) that post election disputes to a House or a Provincial Assembly cannot be questioned by invoking jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, as it is a sealed territory for this Court;

(ii) that when a thing is required to be done in a particular manner, it should be done in that way alone and otherwise whole proceedings would be void;

(iii) that the intention of Article 225 of the Constitution of the Islamic Republic of Pakistan, 1973 read with provisions of ROPA, is that election disputes should only be referred to the Election Tribunals through Election Petitions;

(iv) that High Court cannot sit in appeal over the decision/order of the Election Tribunal or statutory authorities and substitute their decision with its own;

(v) that appeal is a substantive right in which the whole dispute including an order on a preliminary objection of law and fact is reopened and re-examined. If by exercising jurisdiction under Article 199 of the Constitution of Islamic

Republic of Pakistan, 1973, this Court interfere with the interlocutory order of the Tribunal, then this Court would be encroaching upon the rights of aggrieved person to approach the Hon'ble Supreme Court of Pakistan through a direct appeal.

(vi) that the intention of the law is that election disputes should be resolved through uninterrupted expeditious trial. This intention of legislature cannot be negated by entertaining constitution petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against interlocutory/interim orders of the Election Tribunal.

(vii) that ROPA, which excludes a right of appeal from the interim orders of the Election Tribunal, cannot be bypassed by brining under attack such interim orders in constitutional jurisdiction of this Court. Party affected has to wait till it matures into a final decision and then to attack it in the proper exclusive forum, that is, the Supreme Court.

(viii) that the orders at the interlocutory stages should not be brought to the High Court to obtain fragmentary decisions, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law, even reducing the right of appeal.

(ix) that the Parliament and Provincial Assemblies of Pakistan open their doors to those persons who are sagacious, righteous, honest and Ameen and thus it is imperative to remove any shadow of doubt on the character of the representatives of the people at the earliest. To achieve this object a special law, that is, ROPA, has provided a speedy mechanism which cannot be allowed to be deflected by exercising jurisdiction under Article 199 against interlocutory/interim orders of Election Tribunal.

16. Before parting with this Judgment, we would like to express that the nature of the issue in these cases were somewhat more complicated than the ordinary lis, and the effort put in by the learned Advocates of this bar including the learned Law Officers Mr. Zafarullah Khan Khakwani, Assistant Advocate General, Mr. Muhammad Naveed Rana, Standing Counsel, made the issue more easily understandable. With their assistance we have been able to lay our hands on almost all case-law on the subject by the superior courts. Thus, we would like to bring on record a sense of appreciation and words of gratitude in respect of valuable assistance rendered to this Court by the renowned lawyers of this Bench including amicus curiae Sardar Riaz Karim and Sardar Muhammad Sarfraz Dogar, Advocate, in resolving the intricate question by putting in knowledgeable, tremendous labour and hardwork. Their professional skill has always been undoubted and more particularly in this case the patience the learned counsels showed in addressing the court precisely on the legal issue with the backing of relevant case law, is highly commendable. The group of lawyers who addressed the court in this case has in fact been the galaxy of this Bar and we have no doubt in our mind that their effort and research put in this case, shall prove to be a valuable guideline for the young lawyers entering this noble profession.

(Sd.) (Sd.)
(Muhammad Ameer Bhatti) (Muhammad Qasim Khan)
Judge Judge
(Sd..)

(Shahid Waheed)

Judge

The Hon'ble Chief Justice vide order dated 27-2-2014 has constituted this Bench for the purposes of announcement of judgment passed by the Referee Bench. Accordingly, we proceed to announce the judgment IN OPEN COURT today i.e. 28-2-2014.

(Sd.) (Sd.)
(Muhammad Ameer Bhatti) (Muhammad Qasim Khan)
Judge Judge

(Sd..)
(Shahid Waheed)
Judge

MWA/B-17/L Petition dismissed.

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