

IN THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

PRESENT:

JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE ALI BAQAR NAJAFI
JUSTICE ARSHAD HUSSAIN SHAH

C.P.L.A No.5327 of 2024

[against the impugned judgment dated 20th
December, 2024, passed by High Court of
Balochistan Khuzdar Bench, Quetta in C.P
No.(K) 64 of 2024]

Muhammad Saleh Bhotani

Petitioner

Versus

Chief Election Commission & others

Respondent(s)

For the Petitioner:

Khawaja Haris Ahmed, Sr. ASC
Mr. Amanullah Kanrani, ASC

For the E.C.P:

Mr. Muhammad Arshad, SS (Law)
Mr. Muhammad Jaffar, A.D (Law)
Mr. Asad Ali, Deputy Director.

For the Respondent No.4:

Mr. Farooq H. Naek, Sr. ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing:

29.01.2026

J U D G M E N T

ALI BAQAR NAJAFI, J.- This petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, [**Constitution**], since omitted by the Constitution (Twenty Seventh Amendment) Act, 2025 (32 of 2025)S.29 stood transferred under Article 175-F(2) of the Constitution, therefore, is being heard and decided through this judgment.

2. Muhammad Saleh Bhotani (*petitioner*) seeks leave to appeal against the judgment dated 20th December, 2024 [**Impugned Judgment**], passed by the High Court of Balochistan, Khuzdar Bench, Quetta, in C.P No.(K)64 of 2024, whereby, the Writ Petition filed by him was dismissed in limine. He has made the following prayer in the listed case:-

“It is, therefore, prayed most respectfully that this Hon’ble Court may very graciously allow the instant Civil Petition, grant Leave To Appeal against the impugned order dated 20.12.2024, passed by the Learned Division Bench of the Balochistan High Court in Constitution No (K) 64/2024, and by converting this petition into

Appeal, allow the prayer made by the Petitioner in Constitution Petition No.(K) 64/2024 against the order passed by the ECP on 19.12.2024.

Any other order that it deemed just and appropriate in view of the facts and circumstances of the case, may also be graciously passed in favour of the petitioner.”

CHRONOLOGICAL ORDER OF FACTS:

3. In the General Elections held on 08.02.2024, the petitioner and other 19 candidates including Mr. Ali Hassan Zehri (respondent No.4) contested the General Election for the seat of Provincial Assembly of Balochistan PB-21 Hub. Being apprehensive of suspicious counting, on 09.02.2024, Mr. Ali Hassan Zehri (respondent No.4) filed an application for recounting addressed to Provincial Election Commission [PEC], Balochistan. The Returning Officer [RO] observed that the request for recounting “*seems valid keeping in view considerable delay in retrieval of polling material*”, but sought advice of PEC because an application for recounting can only be entertained by the Returning Officer after declaration of provisional result. On the same day, RO forwarded this application to Provincial Election Commission, District Returning Officer, District Election Commissioner, Hub. On the same day, the Returning Officer of PB-21 Hub gave notice to all the candidates and their election agents for the Consolidation of Results to be held on 11.02.2024 at 10:00 am in his office situated at Deputy Commissioner Complex Hub.

4. On 09.02.2024, Form 47 was issued for provisional Consolidation Statement of results, according to which total votes polled in the constituency were recorded as 76,976, total valid votes polled were recorded as 73,328. The votes rejected and excluded from the count were 3,648. Petitioner having secured 30,910 votes were declared as Returned Candidate, whereas, Mr. Rajab Ali Rind was the runner up who secured 17,000 votes and Mr. Ali Hassan Zehri (respondent No.4) stood third securing only 14,120 votes. Thus 5% of the total votes polled in the constituency came out to be 3,848, while the difference between the votes of the petitioner and that of the runner up candidates was 13,910 votes, whereas, it was of 16,700 votes between the petitioner and Mr. Ali Hassan Zehri (respondent No.4). Rejected votes (3,648) were also far less than the difference votes between the winning candidate (petitioner) and the losing candidates.

5. On 10.02.2024, second application was moved by Mr. Ali Hassan Zehri (respondent No.4) that his polling agents were kicked out of the polling stations numbers No.1 to 25 of Durregi, and PS. 48, 49, 50, 51,

57, 58, 61, 62, 63, 64, 65, 66, 67, 68, 81 and 82. (i.e. 41 polling stations). On the same day, another application/request for recounting of votes at the specified polling stations was made by Mr. Ali Hassan Zehri (respondent No.4) to the Regional Election Commission, Province of Balochistan on the ground that his polling agents were kidnapped and ballot papers were stamped in favour of opponents and that an application for recounting had already been moved to RO who had forwarded it to Provincial Election Commission on 09.02.2024. However, this application pertains to 39 polling stations (polling stations 63 & 64 being dropped). It stated that serious law-and-order situation is apprehended, and FIR had been lodged at Police Station Hub City pertaining an urgent attention and cognizance of the situation.

6. Meanwhile, an application was moved by another contesting candidate, Mr. Rajab Ali Rind who, was runner up with 17,000 votes. He did not mention any specific reason, rather simply stated that he has doubts that the result of the election had been rigged and demanded recounting of Dureji Hub. RO noted in this letter dated 09.02.2024 that application of recounting from Mr. Ali Hassan Zehri (respondent No.4) and the runner up candidate are to be turned down in view of the Section 95(5) of the Election Act, 2017, i.e. considering the wide margin of difference in votes polled in favour of Petitioner and the two runner up candidates. However, he went on to say, *“keeping in view the law-and-order situation...you are requested to seek the advice of Hon’ble Election Commission of Pakistan in this regard”*.

7. On 10.02.2024, through a letter from DRO to Secretary ECP advice was sought regarding recounting of votes of PB-21 Hub Secretary, who forward it to ECP, Islamabad by conveying that National Highway (RCD) road was blocked at different points by the protestors since morning who are demanding the recount of votes PB-21 Hub which is turning into a law-and-order situation, and *“advice is sought in the instant matter to deal with the situation”*. A copy of DRO’s aforementioned letter along with its enclosure was sent to Secretary, ECP, Islamabad *“for information and further necessary orders as deemed appropriate”*.

8. On 11.02.2024, the full bench of the Election Commission of Pakistan noted that an application by Mr. Ali Hassan Zehri (respondent No.4), addressed to the Chief Election Commissioner of Pakistan has been received through Provincial election Commission Balochistan (PEC) and that PEC Balochistan has also forwarded copy of a complaint

addressed to him by the said candidate, as well as letter dated 10.02.2024 of DRO and RO (PB-21) of even date was sent. Be that as it may, in exercise of its powers under S. 95(6) of the Election Act, 2017 and Article 218(3) of the Constitution ECP ordered recounting of the votes in the polling stations in the polling stations as specified by the Mr. Ali Hassan Zehri (respondent No.4) in his application, and directed the RO to issue notices as to the time, date, and venue of the recounting. It is however, alleged that no notice was received by the petitioner before the hearing. Letter was sent for the purpose of provision of “fool proof” security to RO/DROm etc. during recounting of Ballot Papers as directed by the ECP. A letter stated inter alia that due to an incident of firing, the RO had to change the timings of recounting afresh, and so it be made sure that no such security lapse occurs on the next timing set by the RO.

9. On 12.02.2024, letter No.F.2(1)/2-23-Elec:DEC(Hub) from the District Election Commissioner Hub to The Provincial Election Commissioner through The Regional Election Commissioner Kalat Division at Khuzdar. It stated that the District Election Commissioner Hub had received a voice message on WhatsApp at 4:58 am from RO that “five men have been arrested in strong room situated at Civic Centre Hub attempting stamping bogus votes.” Letter dated 12.02.2024 refers to visit of RO with SP&AC Hub to RO/DRO office pursuant to “complaint last night”, arrest of five unknown persons found in the premises of Civic Centre who were handed over to the police and whose names are mentioned in the letter, also mentions seizure of 3 shoppers containing election material which too were handed over to the police, and inform the DC/DRO that SP Hub was directed to provide fool proof security “till the completion of election process.” On 13.02.2024, by the order of ECP, Mr. Ali Raza Khoso, Deputy Commissioner General, Hub was substituted as RO (PB21) for previous RO (PB-21), viz. Mr. Nisar Ahmed, Assistant Commissioner, Dureji on 13.02.2024.

10. On 14.02.2024, Constitution Petition No.153/2024 was filed before the High Court of Balochistan by the petitioner alleging that the impugned order dated 11.02.2024 for recounting was passed without any notice issued to the petitioner and other contesting candidates. On 27.02.2024, petitioner also made an application to the Chief Election Commissioner for Review of the order dated 11.02.2024 by stating, inter alia, that during recounting serious violence/firing had occurred in the constituency resulting in casualties and registration of the different

FIRs, and that SHO of the vicinity has also recovered bogus votes/ballot papers, rubber stamps etc. during recount from the RO of the constituency which were planned to be used against the petitioner/applicant in order to rig the election. It was further stated that the Mr. Ali Hassan Zehri (respondent No. 4) was creating a law-and-order situation to open the way for a repoll, and that he has a criminal history also of a land grabber, and has been declared a proclaimed offender. The prayer sought by way of this review application included, inter alia, recalling of the order dated 11.02.2024, dismissal of the application of Mr. Ali Hassan Zehri (respondent No. 4) for recounting, and direction to the RO for issuance of Forms 48, 49 in accordance with Form 47, already issued. However, on 01.03.2024, Mr. Ali Hassan Zehri (respondent No. 4) made an application to the ECP under Article 218(3) of the Constitution and S. 95(6) of the Election Act 2017, seeking direction to continue the recounting and for compliance of the Commission's order dated 11.02.2024 by stating inter alia that stoppage of recounting is causing grave concern in the area leading to further apprehensions regarding the fairness of the election process. The notices were issued on review application and parties were heard. On 05.03.2024, the ECP's two members bench allowed the application of the petitioner and recalled its earlier order dated 11.02.2024 by stating inter alia that result of the recounting of 9 polling stations remained unchanged, and that three persons were killed during the recounting on 12.02.2024. It directed the RO to stop the recounting process and issue the Forms 48 & 49 in accordance with Form 47, already issued. The Returning Officer requested to deploy proper security at the Civic Centre for implementation of the ECP's order dated 05.03.2024, keeping in view incident that took place "*at the midnight of 12th of February 2024 in which three casualties took place and several injured.*" A copy was sent to The Provincial Election Commissioner, Balochistan, The District Returning Officer/Deputy Commissioner Hub and The District Election Commissioner, Hub. The SP District Hub stated/recommended inter alia that due to the acute shortage of strength of District Hub Police and in addition to serious threat alerts, the implementation of ECP's order may be halted till the arrival of additional forces for ensuring fool proof security to avoid any untoward incidence. It further stated that vide office letter No. 5438-41 dated 06.03.2024 a request has been made to DIGP Kalat range for provision of additional manpower and logistics at the earliest.

11. On 06.03.2024, Mr. Ali Hassan Zehri's (respondent No. 4) moved an application before the ECP for review/recall of order dated 05.03.2024. The application stated inter alia that the initial order/the original order dated 11.02.2024 was issued by the full bench of the Commission, the two member bench has no jurisdiction to overturn an order of full bench (*five member bench*) of the Commission; the recount shows rejection of hundreds of ballot papers showing tempering on a large scale, there is grave error of law and fact in the order dated 05.03.2024 and that same grounds (i.e., law-and-order situation having been created to undermine the counting process, kidnapping of the polling agents of Mr. Ali Hassan Zehri (respondent No. 4) for which FIR was lodged) were the reasons for recount order dated 11.02.2024 as well as for continuation of recounting process, and not to stop it or withdraw order dated 11.02.2024.

12. On 07.03.2024, the Constitution Petition No. 237/2024 was filed before the High Court of Balochistan by Mr. Ali Hassan Zehri (Candidate PB-21 Hub). The Petition prayed for inter alia setting aside of the order dated 05.03.2024 passed by the two members bench of the ECP and that order dated 11.02.2024 passed by the full (five members) bench be upheld. Petitioner gave the undertaking to provide certified copy of the impugned order on next date. To be fixed after two weeks.

13. On 13.03.2024, upon the application (*Second Review Application*) of Ali Hasan Zehri and in view of "*Law-and-order situation, order of recounting of the Hon'ble Commission dated 11.02.2024,*" the ECP issued notices to Ali Hasan Zehri, the Petitioner and RCO (PB-21) to appear in person or through counsel, and the matter was fixed for hearing on 26.03.2024 at 10:00 am. On 08.04.2024, a Five Members Bench of the ECP with 3:2 in exercise of the powers under Article 218(3) of the Constitution read with Sections 4, 8 (b) & (c) and 95(6) of the Elections Act, 2017 recalled the order dated 05.03.2024 and upheld the order dated 11.02.2024 and directed the RO to recount the votes polled in the constituency PB-21 including the rejected votes within two days and prepare Form 49 accordingly. It was stated inter alia that:

- i. An order passed by the full bench (five members bench) reviewed/recalled by the two members bench. Cannot
- ii. The ECP is the Constitutional body constituted under Article 218(3) of the Constitution charged with the duty to organise and conduct the elections honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against.

- iii. The Commission under Section 4 of the 2017 Act is empowered to pass orders which are necessary for doing complete justice in the matters pending before it.
- iv. The Commission under Section 8 have the powers to review the orders passed by any officer under the Act or the rules and to issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that elections are conducted honestly, justly, fairly and in accordance with provisions of the Act and Rules.
- v. Section 95(6) of the Election Act 2017 is an independent provision and there is no specific criteria provided under that provision as given under Section 95(5) of the 2017 Act. Section 95(6) is an independent provision.

The dissenting two Members of the ECB Bench allowed the application of the petitioner and directed the RO to issue Forms 48 and 49 fully in consonance with already prepared Form 47 within three days positively and to submit report regarding this to the Commission. The Returning Officer issued notices to all contesting candidates for recounting scheduled for 08.04.2024 at 9:00 pm in his office at Civic Centre Hub.

14. On 09.04.2024, Form 47 of Provisional Consolidated Statement of Result of the Count was issued after recounting total votes polled in the constituency were initially recorded as 76,976, but in typed copy these increased to 87483. The Total valid votes polled were recorded as 70,328 and votes rejected/excluded from the count were 17,155. Mr. Ali Hassan Zehri (respondent No. 4) was shown to have secured 23,974 votes and was declared a Returned Candidate. Mr. Rajab Ali Rind was shown the runner up and secured 17,441 votes. Petitioner was declared third securing only 17,403 votes. According to the petitioner, a very simple formula applied to reduce Petitioner's votes from 30,910 to 17,403 by enhancing the rejected ballot papers from 3,648 (as in Form 47) to 17,155, i.e. by increasing rejected ballot papers almost 5-folds by 13,507 ballot papers, and then to deduct exactly this number of ballot papers (votes) cast in favour of Petitioner from his originally counted votes of 30,910 (thus 30,910 minus 13,507 equals 17,403). As to increase of votes polled inter alia in favour of Respondent No. 4, same was done by representing that a large number of ballot papers (10,517 of them, of which those cast in favour of Respondent No. 4 were shown to be 9,854) were found lying in various packets inside the polling bags received from various polling stations "which were cast in favour of various candidates but were not counted by the respective Presiding Officers..." thus was not the valid counting. After recounting and issuance of Form 47, this Form

49 was issued showing result as in previous column in favour of respondent No.4.

15. On 09.04.2024, petitioner filed another Const. P.400/24 before the High Court of Balochistan praying inter alia for setting aside of the order passed by the three members bench of the Commission dated 08.04.2024 as well as for setting aside the Notice for recounting dated 08.04.2024 issued by the RO PB-21. The Constitution Petition No.400/2024 further sought inter alia the direction to the CEC, PEC, and RO as contained in the dissenting order passed by the two members bench of the Commission. The operation of impugned orders dated 11.02.2024, 05.03.2024 and 08.04.2024 passed by the ECP were suspended by the Court on 09.04.2024 and parties were directed to maintain status quo till next date of hearing i.e., 24.04.2024. However, on 29.04.2024, the Court was informed that Forms 47, 48 and 49 had been issued as proceedings were already completed before the issuance of interim order on 09.04.2024. It was informed that the necessary notification for declaration of returned candidate was although stopped. The Court, therefore, directed that PEC, DRO, RO, ARO, the petitioner and respondent No. 4 may file affidavits as to the effect of date and time of knowledge regarding order dated 09.04.2024. Likewise, High Court officer who conveyed the order was also asked to submit an affidavit. CMA was moved by the respondent No. 4 wherein he stated inter alia that no certified copies of the order made by the Hon'ble HC of Balochistan were received by the RO on 09.04.2024 when Forms 47 and 49 were issued but only WhatsApp messages were received and those too after issuance of Form 49, and, as such, the Constitution Petition has become infructuous and liable to be dismissed. On 07.05.2024, actually, none appeared for the respondent No. 4 on this date, while ECP's representative placed on record order passed by 3 Members of ECP pursuant to hearing (*of Respondent No. 4's Review Application*) on 26.03.2024 [*whereby the order dated 05.03.2024 was recalled and order dated 11.02.2024 was upheld,*] and in view of this order, the Constitution Petition was dismissed as it had become infructuous. ECP was asked by the Court to provide complete report prepared at the time of first round of recounting on 12.02.2024 when the recounting was stopped due to law-and-order situation and upon five people having been arrested from Civic Centre. ECP was asked to submit a complete report of recounting conducted on 09.04.2024. The RO was directed to appear in person along with complete record of recounting. The DEC and RO directed to file a

comprehensive written reply duly supported by affidavit. The ARO and other polling staff also directed to file the statements duly supported by affidavits. AAG directed to inform SP Hub to submit a comprehensive report regarding criminal cases regarding law-and-order situation on 11 & 12 Feb, 2024 and against five persons arrested with election material in the strong room of Civic Centre. To come up on 30.05.2024. The respondent No.3 (Returning Officer, PB-21 Hub) in Constitution Petition No.400/2024 filed the para wise comments controverting the allegations made by the Petitioner. The DEC in Const. Petition No. 400/2024 filed the Written Reply stating that he was on casual leave, and he had gone to his village so he has no idea of whether the consolidation process was completed by RO before or the HC suspension order dated 09.04.2024 was received by him first. He has also referred to the fact that first application for recounting filed by Respondent No. 4 related to (only) 18 polling stations and that too on the ground that results from these 18 polling stations had been received with delay (albeit for security reasons).

16. On 29.06.2024, A Division Bench of the Balochistan High Court in this case held vide judgment that on the basis of the tampered and manipulated record, no final result had been compiled yet and therefore proceeded to declare the recounting held at 39 polling stations as null and void. The Division Bench further went on to direct the ECP to conduct re-poll at these 39 polling stations within a period of three weeks.

17. On 06.07.2024, CPLA No.3201/2024 & CPLA No.3202/2024 filed against the judgment dated 29.06.2024 passed by the High Court of Balochistan, Quetta in Const.P. 400/24 by respondent No.4 and petitioner, respectively were decided on 20.11.2024. The Supreme Court in this order held as follows:

"2. During the hearing of these cases, the learned counsel representing both the parties came to an agreement and jointly requested that all the proceedings related to the aforementioned application - leading to the impugned judgment of the High Court - be annulled. They have urged that the matter be referred back to the ECP for a fresh examination of the application with a direction to decide on it in accordance with law, after affording opportunity of hearing to all concerned, and through a well-reasoned speaking order as expeditiously as possible, preferably within a period of one month.

3. The request made is reasonable and is allowed."

18. On 16.12.2024, an order was passed by ECP wherein respondent No.4's application for recounting was accepted by 5 Members Bench of

the ECP with majority as three members of the ECP held that the Returning Officer had already submitted the final consolidation result after the recount conducted by him and proceeded to accept the Form-47 and 49 and directed the office to issue the notification in this regard, whereas one member i.e. Chairman ECP through his Additional Note ordered the Returning Officer to recount the votes and another member through his Dissenting Note ordered for re-poll in 39 polling stations. Consequently, on 19.12.2024, a notification was issued pursuant to ECP's aforementioned order declaring Respondent No.4 as the returned candidate from PB-21 Hub Balochistan. Constitution Petition No.64(K)/2024 filed by the petitioner against the order passed by the ECP and the issuance of notification dated 19.12.2024 on the ground that the said order is prima facie violative of the order passed by this hon'ble Court on 20.11.2024 in CPLA Nos. 3201/2024 and 3202/2024 but learned Division Bench of the Balochistan High Court dismissed the Petition in limine while holding that the remedy of the Petitioner lie by way of appeal before this Court by virtue of the provisions of Section 9(5) of the Elections Act, 2017. Hence, this petition.

19. Learned counsel for the petitioner contends that

- a. no appeal lies before this Court against an order passed by the ECP for re-counting of votes, since no Declaration of the nature envisaged by the provisions of Section 9(1) of the Elections Act, 2017 is issued in the impugned order of the Election Commission of Pakistan [ECP], therefore, Section 9(5) of the Act ibid providing a right of Appeal before this Court are not attracted to the instant case.
- b. that that the Division Bench of the Balochistan High Court in the impugned judgment erred at law while holding that the Constitution Petition filed by the petitioner against the respondent No.1 was not maintainable.
- c. that the ECP's Order impugned before the High Court is the order passed and subscribed to by the three members of the Bench, (and not the Dissenting Note of one Member out of the five-Member Commission, whereby, he directed re-poll in 39 polling stations) deemed to be a legally operative order of ECP is for re-counting of votes (in 39 polling stations) which falls under Section 95(6) of the Elections Act, 2017.
- d. that the learned High Court has failed to exercise jurisdiction by not taking into account the fact that ECP's Order dated

19.12.2024 is, on the face of it, violative of the Order dated 20.11.2024 passed by THE Supreme Court in C.P.L.A No.3201/2024 and C.P.L.A 3202/2024 with reference to the respondent No.2's application for re-counting of votes in thirty nine polling stations.

- e. that the Supreme Court, vide Order dated 20.11.2024, on the respective parties' request/consent, had annulled "*all the proceedings related to the aforementioned application leading to the impugned judgment of the High Court*", but the ECP has, vide its Order dated 19.12.2024, resuscitated the process and result of previous re-counting that had constituted part of the "proceedings' annulled by the Supreme Court, thereby not only exceeding the jurisdiction vested in ECP by law, but also simultaneously defying the Order of this Hon'ble Court, thereby paving the way for prompt issuance of Notification of respondent No.4 as returned candidate from PB-21, Hub, Balochistan.
- f. that the learned High Court had failed to consider in the impugned judgment that none of the reasons relied upon and cited/summarized in para 26 of the ECP's Order dated 19.12.2024, are supported by any material on the record, or otherwise relevant, rather these are based on gross misreading of the record as much as the reliance on FIR No.23/2024 is misplaced, which relates to Polling Station No.71, not in the 39 polling stations in which re-counting was applied for by respondent No.4 in any of his three applications,
- g. that the delay in receipt of result from certain polling stations (18 in numbers) is fully explained by the District Election Commission, Hub, "due to security issues", and initially respondent No.4 had, on 09.02.2024, shown his reservation to the results only in relation to those 18 polling stations from where results had arrived late due to security reasons and no allegation of any wrongdoing relating to re-counting or otherwise was alleged in the said application, either in relation to these 18 polling stations, or in respect of any other polling station, conclusively establish that allegations made by respondent No.4 in subsequent applications were undoubtedly concocted, being an afterthought,
- h. that the D.R.O.s letter dated 10.02.2024 simply says "National Highway (RCD) road is blocked in different points by the protestors since morning and demanding re-count of votes PB-21 Hub which is turning into law and order situation",

- i. that the runner-up candidate who earlier applied for re-counting on 10.02.2024 had given no reason/ground whatsoever for recounting of votes rather he had simply stated that “*mujhe khadshaat hai keh mera natija mein dhandli hui hai aur hum say chupaya jaa raha hai*”?
- j. that the petitioner had been objecting to the recounting throughout and in this respect, had not only filed two Constitutional Petitions before the Balochistan High Court, he had also filed an application for recall of the order of recount which was accepted by two learned Members of the ECP vide order dated 05.03.2024, and had further contested by Respondent’s Application for review of the order dated 05.03.2024 right up to 26.03.2024 (whereafter he had filed his second Constitution Petition No.400/2024, again challenging the order of re-count directed by the ECP for the second time pursuant to hearing on 26.03.2024).
- k. that similarly the learned High Court failed to address the fact that while passing the impugned order the ECP has further misread the record while holding that “the inquiry committee also recorded statements of the contesting candidate including the runner-up.
- l. that the Inquiry Committee was constituted only to probe the facts relating to intruders who had entered the premises where the election material was lying while re-counting of votes pursuant to Order dated 11.02.2024 was in progress.
- m. that the observation made by the ECP regarding completion of process of count of ballot papers in 25 polling stations and late arrival of Presiding Officers of these polling stations is also not supported by any material on the record, and, as such, in so far as these wrongly assumed facts,
- n. finally submitted that the very order for re-counting passed by the ECP being void an initio, as it has been passed not only in derogation of this august Court’s order dated 20.11.2024, it is also based on gross misreading and non-reading of material placed on the record, the further proceedings taken on the basis of the said order, including the Notification of Respondent No.2, are also illegal and a nullity in the eye of law, and the learned High Court, in ignoring this aspect of the case, passed an order which is unwarranted by law.

19. Learned counsel for the respondent contends that although the proceedings were annulled but the process was not and that the writ petition was not competent against the order of re-counting of votes

which is an administrative order. Also contends that the election of Provincial Constituency of Hub was the of center of many controversies since it had created law-and-order situation which has resulted some causalities of supporters, so much so a criminal case was also registered. The development of events were reported the moment, they occurred showing promptness and vigilance of the respondent exposing the rigging. Submits that the order dated 20.11.2024 passed by the Supreme Court was followed with letter and spirit to the maximum, hence prays for dismissal of the petition.

20. Arguments heard. File perused.

21. The purpose of giving detailed facts/factual background of the events developing in a short span of time immediately after the elections, is to emphasize upon the order passed by the Supreme Court of Pakistan wherein, with the consent of the parties certain observations were made and directions were passed which were required to be followed. The promptness of the parties to challenge the election results and to request for the recounting of votes whether on valid grounds or infatuated premises were not relevant here for the purpose of this order. Likewise, the question whether the difference of votes between the returned and the runner up candidates were more than five percent given under section 95(5)(a) of the Elections Act, 2017 was also not pressed by the petitioner before the Supreme Court of Pakistan and therefore left open. The fact that recounting was made on the application on the basis of a formula for rejection or inclusion of the casted votes of the petitioner which may be for consideration before the Election Commission of Pakistan at the time of deciding the application for recounting. We may here mention that recounting is always allowed on the basis of some material establishing illegality and irregularity in the count and the powers to recount should be allowed sparingly after satisfaction of the material/evidence that there is every inclusion/exclusion of the ballot paper in the count. Sanctity of the ballot in sacrosanct and therefore should not be allowed to be violated on frivolous/vague and indefinite allegations not supported by adequate statements of detailed material facts. It should only be allowed to do full justice between the parties without a roving inquiry with a view to fish material to declare the election as void¹.

¹ Jam Madad Ali vesus Asghar Ali Junejo and others (2016 SCMR 251)

22. By virtue of the order passed by the Supreme Court of Pakistan on 20.11.2024 the proceedings before the Election Commission of Pakistan stood annulled and the matter was to be decided by it afresh on the pending applications which means that the applications for recounting was to be decided afresh without being influenced by the previous results since they no longer existed from the very date. The proceedings were vitiated by the parties themselves through an arrangement duly approved by the Supreme Court, therefore it does not provide an opportunity to the Election Commission of Pakistan to rely upon any recounting made before and during the said proceedings which have already been scraped of. It simply means that the petitioner was to be considered as returned candidate until the result of recounting is compiled and presented before the Election Commission of Pakistan.

23. The arguments addressed by the learned counsel for the respondent insofar as the distinction drawn between the proceedings and the process is concerned, we are of the considered view that the proceedings either judicial, quasi judicial or administrative, includes and not limited to the different adopted processes leading to the completion of the proceedings which ultimately culminate into a result/decision. Needless to observe that recounting is an administrative act with all its consequences with respect to the remedies available under the law. The word “proceedings” is a very comprehensive term and generally means a prescribed cause of action for enforcing a legal right. It includes every step taken towards further progress of a cause in Court or Tribunal from its commencement till its disposal for the purposes of relief, redressal of injuries or damages or for remedial objects. It comprehends all steps taken or measures adopted in prosecution or defense of an action². In legal terminology the word “proceeding” means the institution or carrying of an action of law³. The purpose of interpreting or construction of the word “proceedings” is to understand the true intention to be gathered by its clear meaning without committing any mistake to attach a meaning

² *THE STATE through Advocate-General N.W.F.P, Peshawar versus NAEEM ULLAH KHAN* (2001 SCMR 1461).

³ *MEMBER (S&R) CHIEF SETTLEMENT COMMISSIONER, BOARD OF REVENUE, PUNJAB, LAHORE and another versus Syed ASHFAQUE ALI and others*” (PLD 2003 SC 132).

other than the one carried in their ordinarily grammatical sense attached to the word⁴.

24. For what has been discussed above, we have reached to a irresistible conclusion that the impugned orders are not sustainable in the eyes of law particularly in view of the consent order passed by the Supreme Court of Pakistan. As a consequence whereof, leave to appeal is granted and this petition is converted into an appeal and is **allowed** and order of High Court of Balochistan dated 20.12.2024 as well as that of Election Commission of Pakistan dated 16.12.2024 are set aside with further direction to the Election Commission of Pakistan to comply with the order of the Supreme Court in letter and spirit and decide the applications for recounting of the votes in PB-21 Hub in 39 polling stations afresh either way. If the recounting applications are decided in affirmative, then recount of the votes in 39 polling stations will be carried out and if the applications are decided in negative, then it shall proceed further in accordance with law expeditiously and preferably within a period of two months. Until then the notification of returned candidate of respondent No.4 is suspended.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open court
on **04.02.2026**.
'Approved for reporting'

JUDGE

Islamabad,
the 4th of February, 2026
Adeel

⁴ CHIEF JUSTICE OF PAKISTAN IFTIKHAR MUHAMMAD CHAUDHRY versus PRESIDENT OF PAKISTAN through Secretary and others” (PLD 2010 Supreme Court 61).