



RCBHC



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE SHOUKAT ALI RAKHSHANI
SUBJECT: ELECTION LAW
DATE: 18TH AUGUST 2025
BY: MR. IZHAR AHMED LANGOVE RESEARCH OFFICER

Query (1)

Whether the Balochistan High Court has jurisdiction to entertain a writ petition challenging an order of the Election Commission of Pakistan, whereby a case has been transferred from one Election Tribunal to another within the Province of Balochistan; or whether such jurisdiction lies exclusively with the Islamabad High Court, where the order was passed

Response:

Article 199 of the Constitution vests the High Courts with power to issue writs against persons or authorities or functionaries within their territorial limits or whose acts operates or produce legal effect within such territorial limits. Jurisdiction, therefore, may arise either from the **situs of the authority** or from the **situs of the impact** of its order. This phenomenon is recognized as **concurrent jurisdiction**. In a federal system, situations inevitably occur where more than one High Court may validly claim jurisdiction. Where a federal body functions from Islamabad, the Islamabad High Court has jurisdiction because the order emanates from within its territorial sphere. Yet if the order directly affects rights, proceedings, or constituencies within a Province, the High Court of that Province also acquires jurisdiction.

Turning to the present case, the Election Commission of Pakistan is a federal constitutional body with its principal seat at Islamabad. When it passes an order transferring a case from one Election Tribunal to another, such order is made within the territorial jurisdiction of the Islamabad High Court, and thus amenable to its writ jurisdiction. At the same time, because the order concerns Election Tribunals functioning within a Province and directly impacts electoral disputes arising in constituencies situated therein, the Provincial High Court for instance, the Balochistan High Court, equally has jurisdiction.

This dual jurisdiction, however, is not without restraint. Judicial propriety requires that once a party has invoked the jurisdiction of one competent High Court in relation to a cause of action, subsequent proceedings springing from the same matter should, as a matter of discipline, be confined to that forum. This rule prevents conflicting judgments and guards against forum shopping.

Guidance on this issue is available in **let. -gen. (r) Salahuddin Tirmizi---Petitioner Versus Election Commission of Pakistan---Respondent** cited as **PLD 2008 735**. Relevant part of the judgment is reproduced as under;

*“27. In the light of the nature of proposition, we deem it proper to decide the question of jurisdiction of Islamabad High Court at the first instance. The principle is that question of jurisdiction which is always a fundamental question must be decided at the initial stage of proceedings as it is the right of court to proceed with the litigation and this right must be determined at the first instance. The power of court to adjudicate upon the matter is linked with the territorial jurisdiction otherwise the judgment is treated to have been rendered illegally, without lawful authority due to lack of jurisdiction. The court possesses jurisdiction which is directly or indirectly, expressly or impliedly conferred upon it by the law and the Constitution but jurisdiction of the court vested under the Constitution cannot be abridged or enlarged through an ordinary legislation. The jurisdiction conferred on High Court under Article 199 of the Constitution may be territorial as well as inherent which cannot be construed in a manner to curtail the concept of jurisdiction only to the territorial boundaries. This is settled principle that jurisdiction cannot be conferred by consent or waiver if the court otherwise lacked jurisdiction to adjudicate and render judgment in a matter and at the same time it is also settled law that if the objection relating to the jurisdiction which was required to be taken at initial stage, was not raised at appropriate stage, there may be waiver or estoppel to the question of jurisdiction of the court at a later stage. This Court in *Flying Kraft Paper Mills (Pvt.) Ltd. Charsadda v. Central Board of Revenue, Islamabad* (1997 SCMR 1874) in which, order was passed by Collector of Customs an Central Excise Peshawar, was under challenge, overruled the objection that Rawalpindi Bench of Lahore High Court was not competent to entertain constitutional petition and exercise the jurisdiction under Article 199 of the Constitution. It was observed that not only the order passed by the Collector of Customs and Central Excise, Peshawar was under challenge but the relief was also claimed against Central Board of Revenue which functions at Islamabad, therefore, High Court at Peshawar and Rawalpindi Bench of Lahore High Court had concurrent jurisdiction. There is no departure to the principle that in the Federal System, Federating Units are independent in their affairs and similarly the public functionaries and authorities as well as Courts or Tribunals of exclusive jurisdiction conferred on them and powers vested in them by law and can exercise such powers and jurisdiction within their respective territory. Islamabad Capital territory is not a Province but has independent status in the Constitution and in Article 175 of the Constitution, the words "Islamabad Capital Territory" have been inserted by virtue of a recent amendment made in the Constitution. The Islamabad High Court has been established with status equal to that of the High Courts of Provinces under (Establishment) Order, 2008 (P.O. No.5 of 2008) wherein its territorial limits have been described as Islamabad Capital Territory, therefore, this Court has territorial as well as inherent jurisdiction in all matters within the area of capital territory (Islamabad District) and the authorities functioning at Islamabad in connection with the affairs of Federation are subject to the jurisdiction of Islamabad High Court. The principal seat of Election Commission of Pakistan is at Islamabad with its Branches at Provincial Headquarters and the function of Election Commission of Pakistan is to manage and regulate the elections of Parliament (National Assembly and Senate), prepare electoral rolls for such elections with all other duties relating to election, therefore, in the light of principle laid down in *Flying Kraft Paper Mills (Pvt.) Ltd. Charsadda v. Central Board of Revenue, Islamabad* 1997 SCMR 1874, the order passed by Election Commission of Pakistan in respect of constituency situated in a Province can conveniently be challenged before the Islamabad High Court. The expression "discharges function with in the territorial jurisdiction" would sufficiently indicate that an order passed by an authority which exercises jurisdiction within the boundaries of Capital Territory, is subject to the jurisdiction of Islamabad High Court. In the present case, Election commission of Pakistan while discharging functions in connection with the affairs. of Federation within the territorial*

jurisdiction of Islamabad High Court passed an order in respect of NA-20, Mansehra-I, a constituency of Province of N.-W.F.P., therefore, the objection relating to the jurisdiction and maintainability of writ petition before the Islamabad High Court, would be of no significance. It may be pointed out that in the light of principle laid down by this Court regarding the exercise of jurisdiction in such situation, the order passed by the Election Commission of Pakistan which functions at Islamabad in respect of the constituency of Province of N.-W.F.P., would be challengeable both before the Islamabad High Court and Peshawar High Court. This concurrent jurisdiction is, however, subject to the rule of propriety according to which a High Court having jurisdiction in a matter if has exercised such jurisdiction, the other High Court which has also jurisdiction in the matter may restrain from exercising its jurisdiction. In view thereof, in the present case, the propriety demanded that subsequent order passed by Election Commission of Pakistan should have been challenged before the Islamabad High Court and the jurisdiction of Peshawar High Court should have not been invoked and said High Court also should not, without determining the question of propriety exercise the jurisdiction. Be that as it may, initially the respondent invoked the jurisdiction of Islamabad High Court against the order of Election Commission of Pakistan and subsequently, the order passed by Election Commission of Pakistan in post remand proceedings was challenged by the petitioner before the Peshawar High Court and question of jurisdiction was neither raised before Islamabad High Court nor before Peshawar High Court and since both the Courts have concurrent jurisdiction, therefore, the orders of Islamabad High Court as well as Peshawar High Court have been passed in exercise of lawful authority and objection in this behalf may have no significance.

Accordingly, it can be held without any cavil that both the Islamabad High Court and the Balochistan High Court possess concurrent jurisdiction to entertain a writ petition against the transfer order of the Election Commission of Pakistan. The petitioner may approach either forum, but propriety demands that the choice, once exercised, should be consistently adhered to.

Query (2)

Whether any administrative, executive, or quasi-judicial function exercised by the Election Commission of Pakistan is amenable to the writ jurisdiction of the High Court under Article 199 of the Constitution?

The Election Commission of Pakistan (ECP), being a constitutional body established under Article 218 of the Constitution, exercises administrative, executive, and quasi-judicial powers derived from both the Constitution and the Elections Act, 2017. These include functions such as conducting elections, appointing election tribunals, preparing electoral rolls, and performing allied duties as prescribed by law. Any act of the ECP, whether administrative, executive, or quasi-judicial, is amenable to the writ jurisdiction of the High Court under Article 199 where it is shown to have been taken ***without lawful authority, in excess of jurisdiction, coram non judice, mala fide, or in violation of constitutional or statutory provisions***. Judicial review is warranted where the ECP departs materially from the procedure prescribed by law in a manner that adversely affects rights, where the action is illegal in that the ECP was not competent to take it, where a necessary order has been omitted, or where facts or conditions that must be determined objectively have not been so determined. While the threshold for interference is high, particularly in matters falling within the exclusive domain of election tribunals under Article

225, this does not preclude the High Court from setting aside an ECP order where the defect goes to the root of the matter.

In **Syed Muhammad Ali Bokhari v. Federation of Pakistan** (PLD 2025 Islamabad 48), the Islamabad High Court reaffirmed that although the ECP is neither purely executive nor judicial in character, its orders, whether administrative or quasi-judicial, remain subject to judicial review under Article 199 where jurisdictional error, violation of due process under Article 10A, or patent illegality is established. The Court struck down the transfer of an election petition effected by the ECP on the ground that the parties were not afforded adequate opportunity of hearing, holding such failure to be violative of constitutional guarantees and rendering the order unsustainable in law. The relevant paragraph of the judgment is reproduced as under:-

“20. The central question before the Court with respect to the maintainability of the present petitions is, whether any administrative/ executive or quasi-judicial function exercised by ECP, is amenable to writ jurisdiction of this Court; the simple response to this query is in affirmative. The duties and functions performed by ECP are amenable to writ jurisdiction of this Court. In holding so, I am fortified by various judgments on the issue, however, let me cite some key judgments highlighting the election process and also regarding forum for resolution of the election disputes. In case reported as Election Commission of Pakistan and others v. Javaid Hashmi and others (PLD 1989 Supreme Court 396), the Supreme Court of Pakistan interpreted and affirmed the constitutional provision that any dispute, arising out of elections, is to be filed before ECP and is not challengeable before any other forum. The Supreme Court went on to observe by making a comparison of Articles 225 and 199 of the Constitution by observing that exercise of powers under Article 199 ibid cannot be placed on any higher footing than that emanating from Article 225 of the Constitution and while the power under Article 199 exercise-able by the High Court, is 'Subject to the Constitution.; there is no such limitation in Article 225. This Article by its language creates an independent jurisdiction for the decision of election disputes under the law and its contents, therefore, should be given due sanctity regardless of whatever is stated in other Articles. It was also observed that Article 225 is not controlled by Article 199 and creates an independent jurisdiction. Likewise, in case reported as Workers Party Pakistan and others v. Federation of Pakistan and others (PLD 2012 Supreme Court 681), the Supreme Court of Pakistan spelt out the functions and duties of ECP. In case reported as Aftab Shahban Mirani and others v. Muhammad Ibrahim and others (PLD 2008 Supreme Court 779), the core question before the Supreme Court was, whether a petition under Article 199 of the Constitution, is maintainable, even after Election Tribunal has been constituted and the opinion was in 'affirmative'. It was observed that High Court, no doubt can set aside the orders passed by Election Commission, if it comes to the conclusion that order was illegal but care must be taken by using the language for such exercise of power. Similar proposition was before the Supreme Court in case reported as Let. Gen. Salahuddin Tirmizi v. Election Commission of Pakistan and others (PLD 2008 Supreme Court 735) and it was opined that the scope of judicial review by a High Court in presence of Article 225 is that where election authority acts without lawful authority or it is coram non judice or mala fide, interference is warranted, however, jurisdiction of the High Court cannot be enlarged to cases relating to factual inquiry or in case, in which, other view of the matter was also possible and if such view would have been taken it would not be illegal or unconstitutional. It was added that High Court is also not supposed to substitute its opinion on the question of fact with the opinion formed by election authority or a Tribunal of competent jurisdiction. The matter was again examined in case reported as Ali Asjad Malhi v. Syed Nosheen Iftikhar (PLD 2023 Supreme Court 01) and upshot of discussion was that a petition under Article 199 of the Constitution is maintainable against a decision/action by ECP in certain circumstances. Reference is also made to cases reported as Aurangzeb Khan v. Election Commission of Pakistan and others (PLD 2010 SC 34) and Ghulam Mustafa Jatoi v. Additional Sessions Judge (1994 SCMR 1299).”

Query: (3)

Whether, under Section 151 of the Elections Act, 2017, it is necessary to obtain permission from the Chief Justice of the concerned High Court for the transfer of a case from one election tribunal to another?

The scheme of law and the constitutional framework make it clear that no such requirement exists. Election Tribunals are not “courts” in terms of Article 175(3) of the Constitution; rather, they are specifically recognized as “tribunals” under Article 225 for adjudication of election disputes. Their creation, functioning, and control fall within the mandate of the Election Commission of Pakistan (ECP), which is an autonomous constitutional body. While the appointment of a sitting Judge as Presiding Officer of a Tribunal is done in consultation with the Chief Justice of the concerned High Court, the power of transfer conferred by Section 151 does not hinge upon fresh consultation. Under Section 151 of the Elections Act, 2017, the Election Commission of Pakistan (ECP) has the authority to transfer an election petition from one Tribunal to another. The provision empowers the Commission itself, acting as a constitutional body, to regulate the assignment of petitions between Tribunals. The text of Section 151 does not make the exercise of this power subject to prior approval or permission from the Chief Justice of the concerned High Court. Instead, the scheme of the Constitution and the Act indicates that Tribunals are appointed by the ECP, and their functioning—including reassignment of cases—remains under the supervisory domain of the Commission rather than the High Court administration. This position was also affirmed in Syed Muhammad Ali Bokhari (supra), ***where it was held that an election tribunal, even when presided over by a sitting Judge, is a persona designata and not the High Court itself, and that the ECP’s power of transfer under Section 151 is supervisory and administrative in nature, not dependent upon judicial concurrence.***

It therefore follows that requiring the Chief Justice’s permission would amount to importing an additional condition into the statute, which is neither expressed in the law nor consistent with the design of election adjudication. Where the ECP exercises its transfer powers arbitrarily, in violation of law, or mala fide, the High Court may intervene through judicial review. However, the routine administrative act of transferring a case under Section 151 does not hinge on prior judicial approval, as the constitutional and statutory framework entrusts that discretion exclusively to the ECP.

Query (4)

Whether Section 151 of the Elections Act, 2017, which empowers the Election Commission of Pakistan to transfer an election petition from one tribunal to another, is ultra vires the Constitution of the Islamic Republic of Pakistan, 1973?

The challenge to the vires of Section 151 of the Elections Act, 2017 rests on the contention that the conferment of transfer powers on the Election Commission of Pakistan (ECP) undermines judicial independence and violates the constitutional scheme. However, a careful reading of the Constitution reveals otherwise. Article 218 establishes the ECP as an autonomous constitutional body mandated not only to conduct elections but also to resolve matters connected therewith. Article 225 further provides that election disputes shall be determined by tribunals created by law. The establishment of such tribunals,

their appointment, and the regulation of their functioning—including the power to transfer cases between them fall squarely within the constitutional and legislative framework

The power conferred by Section 151 is supervisory and administrative in character, designed to ensure fairness, efficiency, and expeditious adjudication of election disputes. It does not intrude upon judicial independence, as the tribunals themselves continue to exercise judicial functions within their statutory mandate. The requirement that the ECP must record reasons for transfer further acts as a safeguard against arbitrariness, ensuring transparency and enabling judicial review under Article 199 of the Constitution. Therefore, Section 151 cannot be said to be ultra vires the Constitution.

This view finds support in *Syed Muhammad Ali Bokhari* (supra), where the Islamabad High Court held that Section 151 of the Elections Act, 2017 is intra vires, reaffirming that the power of transfer vested in the ECP is administrative in nature, and while it must be exercised with reasons and subject to due process, it does not offend the constitutional framework.

Query (5)

Whether the Election Commission of Pakistan can transfer an election petition from one Tribunal to another under Section 151 of the Elections Act, 2017, without assigning reasons for such transfer.

The Election Commission does not possess an unfettered authority to transfer a case from one Election Tribunal to another without justification. While Section 151 of the Elections Act, 2017 grants the Commission the power to pass such transfer orders, the exercise of this discretion must be accompanied by reasons. The requirement of providing reasons ensures transparency, prevents arbitrariness, and allows affected parties to understand the basis of the decision. More importantly, it creates a record capable of judicial scrutiny. If the Commission were to issue a transfer order without assigning reasons, such an order could be challenged before a High Court under Article 199 of the Constitution. Judicial review would then examine whether the Commission had acted in excess of its jurisdiction, mala fide, or without lawful authority. The Court has stressed that even in matters where the Commission enjoys discretion, its decisions must reflect rationality and fairness. This principle was reiterated in *Syed Muhammad Ali Bokhari* (supra), wherein the Islamabad High Court set aside a transfer order passed by the ECP for failure to provide an adequate opportunity of hearing and for not assigning proper reasons, holding that such omission violated Article 10A of the Constitution and rendered the order unsustainable. The relevant paragraph states as under:

Query: (6)

Whether the Election Commission of Pakistan, in exercise of its powers under Section 151 of the Elections Act, 2017, can transfer a case from one Election Tribunal to another on the basis of allegations of bias leveled by a party against the Presiding Officer of the Tribunal?

The Election Commission does possess the authority under Section 151 of the Elections Act, 2017 to transfer an election petition from one tribunal to another. However, this authority is not to be exercised arbitrarily or merely on the basis of unsubstantiated allegations of bias raised by a litigant against the presiding officer. The integrity of the judicial process demands that a mere

perception of bias, unless supported by credible material, cannot serve as a valid ground for transfer. Otherwise, any party dissatisfied with the progress or outcome of proceedings could frustrate the process simply by raising accusations against the tribunal, thereby undermining its independence. Reliance can be placed on **Muhammad Azam Khan Swati---Petitioner Versus The State and another---Respondents** cited as **2023 P Cr. L J 350**

The relevant part of the judgment is reproduced as under;

“.... It would not be out of place to mention here that the law on the subject of transfer of cases before Judges of Superior Courts is settled. In the words of the Hon'ble Supreme Court of Pakistan in case titled Asif Ali Zardari v. The State (PLD 2001 SC 568) the principle is that a Judge of the Superior Court is a keeper of his own conscience and it is for him to decide to hear or not to hear a matter before him. Similar observations have been made in quite a number of cases. In Ms. Benazir Bhutto v. The President of Pakistan (1992 SCMR 140) the issue of transfer of case before the Judge on the basis of bias was explained and it was observed that there is a marked distinction in the approach on the question of bias between a case of a Judge of a Subordinate Court and a case pertaining to a Judge of a superior Court inasmuch as in the former case the superior Courts do grant transfer applications on the ground of Judge having personal, pecuniary or proprietary interest in the subject matter whereas in the latter case the Supreme Court does not grant transfer application on the above ground for want of power. In M. H. Khondkar v. The State (PLD 1966 Supreme Court 140) the Hon'ble Supreme Court of Pakistan held that an application for transfer does not lie at all against a Judge of the High Court. Similar observation was made by the apex Court in Islamic Republic of Pakistan through Secretary, Ministry of Interior and Kashmir Affairs, Islamabad v. Abdul Wali Khan and others (PLD 1976 Supreme Court 57). In light of the referred case law and many other judgments on the subject there is no principle of transfer of cases from one Bench to another and the matter is left to the discretion of the Judge. The menace of Bench/forum shopping has become rampant in almost every Court, hence the matter needs to be dealt with in light of the judgments of the Hon'ble Supreme Court of Pakistan...”

It has been held by the superior courts in numerous judgments that mere dissatisfaction or loss of confidence in the court is not sufficient for a transfer of the case. The party seeking the transfer must provide solid grounds and serious events that indicate that justice will not be served by the court.

Generally, parties seek transfer of cases from one court to another on the ground/allegation of bias of a judge. In such circumstances it is imperative to ascertain that what is meant by bias of a judge. In **PLD 2012 Supreme Court 1**, the August Supreme Court has elaborated on the concept of bias, categorizing it into three types: **subject-matter bias**, **pecuniary bias**, and **personal bias**. Subject-matter bias arises when a judge is directly connected to the litigation, creating a legal interest that disqualifies them to ensure impartiality. Pecuniary bias involves even minimal financial interest, which, irrespective of actual influence on the decision, is sufficient to invalidate proceedings. Personal bias stems from relationships, hostility, or prior events that could lead a reasonable person to apprehend unfair treatment. The Honorable Court has highlighted the test for bias, stating that it is not the judge's actual partiality but whether a reasonable person, aware of the facts, would perceive a likelihood of unfairness. Relevant Portions of the judgment are given as under;

Bias in a judge---

---Kinds of such bias enumerated.

Bias is said to be of three different kinds:--

(a) A Judge may have a bias in the subject-matter which means that he is himself a party or has direct connection with the litigation, so as to constitute a legal interest.

A 'legal interest' means that the Judge is 'in such a position that a bias must be assumed'.

(b) Pecuniary interest in the cause, however, slight, will disqualify the Judge, even though it is not proved that the decision has in fact been affected by reason of such interest. For this reason, where a person having such interest sits as one of the Judges the decision is vitiated.

(c) A Judge may have a personal bias towards a party owing to relationship and the like or he may be personally hostile to a party as a result of events happening either before or during the trial. Whenever there is any allegation of personal bias, the question which should be satisfied is - "Is there in the mind of the litigant a reasonable apprehension that he would not get a fair trial?" The test is whether there is a 'real likelihood of prejudice', but it does not require certainty.' 'Real likelihood' is the apprehension of a reasonable man apprised of the facts and not the suspicion of fools or 'capricious persons'.

In conclusion, while Section 151 of the Elections Act, 2017 vests the Election Commission with the authority to transfer election petitions from one tribunal to another, that authority is not unfettered. It must be exercised with circumspection, supported by cogent reasons, and only in circumstances where a real likelihood of prejudice is established. Mere dissatisfaction with the pace or outcome of proceedings, or unsubstantiated allegations of bias, cannot justify such a transfer. The integrity and independence of judicial proceedings demand that transfers remain an exceptional remedy, invoked sparingly to protect fairness and not to enable litigants to engage in forum shopping. The true safeguard lies in the principle that only credible and objective grounds, demonstrating a genuine risk of injustice, can warrant interference with the ordinary course of adjudication.

The End