REPORT ON THE
GENERAL ELECTIONS
1990

VOLUME III

ELECTION COMMISSION OF PAKISTAN
ISLAMABAD

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TABLE OF CONTENTS

ANNEXURES

INTRODUCTION

The role of the Election Commission in holding the last general elections has been questioned by some political parties and organizations. The National Democratic Institute (NDI), while generally appreciating the process of the 1990 elections, has raised objections to some aspects of the electoral process. Similarly, the French Observers' Team has also expressed some doubts about the fairness of elections. Lately, the Peoples' Democratic Alliance (PDA) have also published a so-called white paper on the 1990 general elections on September 24, 1991.

2. Under the normal circumstances, the Election Commission would not have entered into any sort of political controversy, but since aspersions have been cast on the entire electoral process and an attempt has been made to undermine the role of the Election Commission, which is an august organ of the state, the Election Commission of Pakistan considers it its duty to deal with all such allegations and place the relevant facts in their true perspective before the nation and leave it to the nation to judge for itself the veracity or otherwise of the said allegations. With this end in view, the factual position is being clarified in this part of the Report on General Elections, 1990. The Election Commission will, however, confine its comments only to the allegations made against the electoral process and the Election Commission.

3. The general elections 1990 were held in a spate of rumours, speculations and polarization. Before the elections, the main thrust of propaganda was that elections will not be held at all. The Election Commission was spared till then. After the commencement of the process of election and till the date of the poll, the daily "Musawat" Lahore, which is considered to be the spokesman of the Peoples Democratic Alliance, offered the following comments on the performance of the Election Commission, from time to time:—

(a) "So far as the Election Commission is concerned, its performance is above board and it is working day and night to hold fair election...." — Editorial note dated 10-9-1990 (Urdu text at Annex-1).

(b) "So far as the Election Commission is concerned, its hard work round the clock and impartiality is beyond all doubts...." — Editorial note dated 8-10-1990 (Urdu text at Annex-2).

(c) "In the entire process, the impartiality of the Election Commission is an admitted fact and beyond all suspicion....." — Editorial note dated 21-10-1990 (Urdu text at Annex-3).

The PDA's advertisement published in the daily "Nawa-e-Waqt" and "Jang" on 23-10-1990 also expressed satisfaction, in the following words, over the arrangements made by the Election Commission:—

> "The Election Commission has in this behalf made effective arrangements but the candidates and polling agents of PDA should keep in mind, the following instructions....." (Photostat of the advertisement at Annex-4).

4. Immediately after the poll, the stance changed and the Election Commission, its functionaries and the electoral process were subjected to criticism. In rebuttal to the allegations made from time to time by the PDA leadership in their press statements, the Election Commission published a booklet titled "Facts and Figures relating to the General Elections 1990" in January 1991 and distributed copies thereof to all concerned including the national press. The perusal of a number of safeguards against multiple voting and other irregularities listed in that publication should have left no doubt in any one's mind that the electoral process was made foolproof and that chances of any malpractices were duly minimized.

5. The Peoples' Democratic Alliance released to the press a summary of main findings of the so-called "White Paper" on June 12, 1991. Factual position with regard to the points raised in the summary was explained by the Chief Election Commissioner in his press statement on June 18, 1991 as at Annex-5.

6. In a press conference held at Islamabad on September 24, 1991, the PDA leaders made public, after eleven months, another publication titled "White Paper on Election 1990". The Chief Election Commissioner again offered his comments on the main allegations in his press statement issued on September 27, 1991 (Annex-6).

7. It may be recalled that the nation had cried "foul" within a couple of hours of the beginning of the announcement of result of the National Assembly election on March 7, 1977. On the contrary, the nation has accepted the result of 1990 elections without any reservation and, in consequence, a democratic order has been established in the country since November last. Instead of strengthening the democratic process, the fairness of this election is now being questioned after the lapse of eleven months. The analysis of the contents of White Paper in the succeeding chapters will show the baselessness of allegations.

OBSERVATIONS MADE IN THE "PREFACE" AND "FOREWORD" OF THE PDA's WHITE PAPER

The following observation has been recorded in the "Preface" to the White Paper :—

> "It is a matter of concern to us that the Election Commission has announced its decision to destroy the records of elections 1988. We have urged the Election Commission not to destroy such records as they are of tremendous relevance for posterity. We hope that the Election Commission will respond positively to the request."

The question of destruction or further preservation of the polling record has been discussed in detail in the booklet titled "Facts and Figures relating to the General Elections 1990" published by the Election Commission. However, the relevant facts are briefly explained in the succeeding paragraphs.

2. Sub-section(3) of section 44 of the Representation of the People Act, 1976 provides that the Election Commission shall retain the polling documents for a period of one year and thereafter shall, unless otherwise directed by a Tribunal, cause them to be destroyed. The polling documents as specified under sub-section(1) of that provision, consist of the used and unused ballot papers, counterfoils of the used ballot papers, marked copies of the electoral rolls, ballot papers account, packets containing the tendered ballot papers, the challenged ballot papers, the tendered votes lists and the challenged votes lists. The polling record of each polling station is sealed in a bag and the bags of all polling stations of a constituency are preserved in safe custody in the local treasury.

3. As required by law, the Election Commission considered the question of further preservation or destruction of the polling record relating to the 1985 general elections and the 1988 general elections in August, 1989 and decided as under :—

(a) The polling record of 189 constituencies of the 1985 general elections, where legal proceedings were pending before the Election Tribunals, High Courts or the Supreme Court,

shall continue to be preserved in accordance with the provisions of section 44 of the Representation of the People Act, 1976 in the local treasuries until further orders.

(b) A public notice be published in the newspapers inviting objections, within one month, from the public on the question of destruction of the polling record of the remaining 478 constituencies of the 1985 general elections, where no legal proceedings were involved. The press note was widely publicized through Radio, TV and leading dailies of the country on September 15, 1989, as may be seen from the daily 'Nawa-i-Waqt', 'Jang', 'Muslim', 'Dawn', 'Pakistan Times', etc. No objection whatsoever was filed by any person or party within the stipulated period or thereafter. The Commission accordingly reconsidered the matter in its meeting held on October 26, 1989 and ordered that the polling record of 478 constituencies, where no legal proceedings were pending, be destroyed by the Returning Officers in the manner prescribed for this purpose. The Returning Officers of the concerned constituencies have already implemented orders of the Commission.

(c) The polling record of all constituencies of the 1988 general elections was preserved in the treasuries for a statutory period of one year and it was decided that the question of its further preservation or destruction will be considered after the expiry of that period.

4. It will be pertinent to point out that publication of a notice inviting objections from the interested persons or the parties on the question of preservation or destruction of the polling record is not mandatory. The Commission has been authorised by law to cause destruction of such record after one year as is not required by an Election Tribunal. However, by way of abundant caution, the Commission adopted the safe course of inviting objections from the public before causing destruction of the record in question.

5. The only objection to the aforesaid Press Note was received from the PDA through their Secretary General, Mr. Khursheed Mahmood Kasuri, in his letter dated 13-1-1991 which contained the following reasons for preservation of the polling record :—

(i) That the PDA is collecting all the relevant data regarding 1990 general elections, and would need to examine the

record of 1985 and 1988 elections for comparison with the result of 1990 elections;

(ii) that destruction of record at this stage would deny the PDA its right to complete their exercise; and

(iii) that pending disposal of the election petitions by the Election Tribunals the record may be preserved.

6. A notice to the objector was issued for appearance before the Election Commission on 14-3-1991 but nobody appeared on that date. Mr. Kasuri was again asked to appear before the Commission on 10-4-1991. On that date, Mr. Saleem Zulfiqar Khan, Barrister-at-Law, appeared and made the following submissions :—

(i) That it is purely discretionary for the Election Commission to retain the polling record for a period it considers appropriate beyond minimum period of one year specified by section 44 of the Representation of the People Act, 1976;

(ii) that Pakistan being at its initial stage of democratic process, its election record need not be destroyed because once it is destroyed it would not be reconstituted;

(iii) that 1985 election results were controversial in relation to their turn-out and also because of allegations about 1985 and 1988 elections; and

(iv) that it would be in the interest of the Election Commission to preserve the record so that it could be shown as and when required.

The said counsel also requested for one week's time to submit written objections in this behalf. No such objections have been filed by him so far despite the lapse of six months.

7. It will be seen from the facts stated above that the Election Commission has not deviated in any manner from either any provision of law or the past practice in the matter of destruction of the polling records relating to the 1985 and 1988 general elections. It may further be added that necessary data has already been compiled and published by the Election Commission in the Reports on the General Elections held in 1985 and 1988 and, in view of this fact, the record in question has even otherwise lost its need or utility.

8. The Commission is still bound to preserve the record of 1985 and 1988 general elections concerning those constituencies in respect of which election petitions are pending. So far as the 1985 elections are concerned, only four petitions are pending. As regards the 1988 general elections, six petitions are still pending.

9. The polling record has been preserved in the Government treasuries at the sub-division and district level. Since 1986, there is an incessant demand from all the Provincial Governments to shift the old polling records as the treasuries are over-flooded with it and no space is available for other purposes. The Deputy Commissioners and other concerned agencies, including the Inspectors of Treasuries, have repeatedly drawn attention of the Election Commission to the compelling need for space in the treasuries. It was for this reason that the Commission considered the question of further retention or destruction of the polling records of 189 constituencies of the 1985 general elections and all constituencies of the 1988 general elections.

10. The following further allegation has been made in the "Foreword" of the White Paper :—

> "Then there is the case of a seat of Mr. Riaz Pirzada, NA-143 (Bahawalpur-III) where a copy of the FAX message declaring Mr. Pirzada successful and giving the actual ballot count was sent from the local elections authorities to the Election Commission. Mr. Pirzada was later declared a looser from this constituency. The copy of the FAX was received by the team while working on the white paper but this seat has not been included in the list of rigged seats due to inability to ascertain the authenticity of the FAX message."

11. According to the preliminary result of the count furnished by the Returning Officer concerned, Syed Tasneem Nawaz Gardezi polled 65,265 votes as against Mian Riaz Hussain Pirzada who polled 64,935 votes. This result was announced, after due verification, immediately on receipt by the Election Commission. According to the official result of the count consolidated by the Returning Officer after taking into account 211 postal ballot papers and examining the excluded ballot papers in the presence of the candidates and their election agents, Syed Tasneem Nawaz Gardezi secured 65,321 votes and Mian Riaz Hussain Pirzada secured 65,052 votes. Record of the preliminary as well as official result of the count has been preserved.

12. In the absence of the FAX message stated to have been sent from the local election authorities, it is difficult to offer comments on its authenticity or otherwise. This fax should have been placed on record for verification, if there really was such a fax message. An election petition is pending in this case and the Election Tribunal will verify veracity of the allegation, if presented before it, from the original record which has been preserved in the local treasury. Further comments are not desirable as the matter is *sub judice* before the court.

13. It has further been alleged as under :—

> "For example in spite of various attempts even the detail of votes polled in each polling station was not provided to us by the Election Commission".

In its letter dated 1-11-1990, the PDA made a request to the Election Commission to the following effect :—

(a) Election results of each polling station of each National and Provincial Constituency of Elections 1990.

(b) List of polling stations and number of male/female votes in each National and Provincial Constituency of 1988 and 1990 elections.

(c) Official Notification of result of National and Provincial Assemblies Elections 1990.

14. The request was duly examined and it was genuinely felt that, it will not be practicable for the Commission to make out copies of the result of 33,734 polling stations at one place during the working days. The PDA was, therefore, advised as under *vide* this Commission's letter dated 7-11-1990 :—

> "A copy each of the Notifications containing the names of the returned candidates for election to the National Assembly and the Provincial Assemblies is sent herewith.
>
> The Information at para(a) and (b) of your applications referred to above are available with the Returning Officers concerned and may be obtained from them."

15. It will be appreciated that the staff of the Election Commission was then fully occupied with the post-election work and its digression at a very sensitive stage would have resulted in dislocation of the entire work causing administrative and legal complications.

CHAPTER – 1

Chapter-I of the White Paper generally deals with political background with which the Election Commission is not concerned. Reference to the 1990 elections has, however, been made in the following manner :—

(1) "Due partly to the bias of the President and the Caretakers, the PPP did not emerge with the absolute majority in the National Assembly elections of 1988."

(2) "The 1990 election was fundamentally a repeat of the 1988 election, however, in some ways it was also unique. This time the State, particularly the President, did not even put forward a pretense of neutrality but showed no inhibition in openly participating in the campaign against the PPP which had now become a political alliance of four parties known as the Pakistan Democratic Alliance (PDA)."

(3) "Third, the rigging was much more sophisticated and planned and executed with a finesse unmatched by any attempt at rigging before."

2. In plain language, the PDA have not only challenged the fairness of the 1990 general elections but have also questioned the propriety of the 1988 general elections. The only difference between the two elections, according to the PDA, is that the 1990 elections were rigged in a sophisticated manner than the previous elections.

3. It is part of the history now that the 1988 elections were declared free, fair and impartial by all the national and international agencies, such as, the American Senate, the NDI, SAARC Delegation, British MPs, the world media, the national leaders and the press. The PDA have now suddenly discovered after three years that these elections were also rigged. Doesn't it mean that only such elections would be fair in Pakistan as bring the PDA to power with *absolute majority* in the National Assembly or Provincial Assemblies? Have they ever got it?

4. As disclosed in the White Paper, the PDA engaged a team of "highly qualified and internationally recognized scholars", including

"scholars with Ph. Ds and Master Degrees from some of the major universities of Europe and United States", in addition to the local talent, who worked untiringly for eleven months to unearth the much — talked about sophisticated rigging plan. They had to have the help of foreign experts to find out "rigging" in the 1990 elections. Details of the actual "rigging plan" are still a mystery as all that the team of experts could produce is a paper based on conjectures, surmises and doubts. It is devoid of any proof of rigging during the polls much less rigging during the other phases of elections. The electoral process is multi-dimensional and comprises numerous phases, such as,—

(1) preparation of electoral rolls
(2) the delimitation of constituencies
(3) the polling scheme
(4) electoral machinery
(5) the poll.

The electoral rolls prepared in 1987 were used for the 1988 and 1990 elections. A total number of 5,87,290 fresh votes were registered during November, 1988 and September 5, 1990, in due course of law. Elections in 1988 and 1990 were held on the basis of constituencies published on 1st October, 1988, with minor adjustments in 1990 due to creation of four new districts. The polling schemes prepared for the 1988 elections was adopted, with a very few changes, for the 1990 elections. Almost the same set of judicial officers conducted the election in 1990 as had the experience of 1988 elections. The same polling procedure was followed for the 1988 and 1990 elections. In actual practice, the 1990 elections were repeat performance of the 1988 elections.

5. The authors of the White Paper have asserted that attempt at rigging the 1990 elections was "un-matched". The history of elections in Pakistan shows that whenever elections were rigged in the past, the people rejected the results spontaneously and outrightly. Conversely, the nation accepted the results of elections held in 1988 and 1990 and the democratic institutions emerged in the country with full participation of the elected representatives, irrespective of their party affiliations.

CHAPTER – 2

Chapter 2 of the White Paper has out-lined the "Basic Hypothesis" for rigging plan as under:—

(a) "An elaborate plan under the supervision of President Ghulam Ishaq Khan was prepared with the objective of eliminating the PPP from the electoral process and removing Mohtrama Benazir Bhutto from the leadership of the PPP."

(b) "The dissolution of assemblies was the first step in this plan."

(c) "Election would be rigged in such a way that the IJI would win an absolute majority in the National Assembly and capture all the Provincial Assemblies either by itself or in alliance with parties sympathetic to it."

(d) "The PPP would not be allowed to win enough seats even to form a provincial government in Sindh where it won handsomely in 1988. For this purpose the Sindh caretaker chief minister was given unlimited powers and absolute freedom to interfere with the electoral process and to deal with the PPP without interference from the central Government.

(e) "In combination with pre-poll rigging, the polls would be rigged on polling day in such a way that the magnitude of the rigging could not be detected by international monitoring teams."

2. The Election Commission is not aware of any plan of rigging to remove the PPP from the electoral process. Nor have the PDA been able to produce any evidence or proof in support of its assertions in the White Paper or otherwise. The plan, therefore, appears to be more imaginary than real.

3. As regards the dissolution of the Assemblies, the Lahore High Court and Sindh High Court had upheld the Presidential Order of dissolution of the National Assembly. No appeal was filed against the decision of Sindh High Court. Appeals filed against the decision of Lahore High Court have since been dismissed by the Supreme Court on November 4, 1991. Consequently, the Presidential Order of dissolution of the National Assembly has been upheld by the highest court of the country.

4. Elections were conducted under the supervision of high ranking judicial officers, such as, District and Sessions Judges, Additional District and Sessions Judges and Senior Civil Judges, as District Returning Officers and Returning Officers and by a large number of public servants with active participation of the masses, and all of them are, by now, fully aware of the mechanics of the process. In addition, the candidates and their supporters, with divergent interests, also remain vigilant and keep a watchful eye on the entire proceedings from beginning to end. The system itself provides in-built checks to prevent the electoral abuses. Then how it is practically possible for a handful of persons to swing the result of election in favour of a party or candidate in such a large number of constituencies in the presence of the candidates, their agents, voters and above all the international monitors? Could none of them see or detect the massive rigging being done with materliness in front of their own eyes? Merely calling it "invisible" or "scientific" rigging is nothing but political propaganda.

5. (i) Defeat of Nawabzada Nasrullah Khan in election has also been attributed to the plan of rigging in the following manner:—

> "Mr. Ghulam Mustafa Jatoi, former caretaker prime minister and a prominent IJI leader, charged that Nawabzada Nasrullah Khan was defeated under a well-thought-out plan in the October 1990 elections adding that some other prominent figures might have met the same fate. When asked how this took place while he was caretaker prime minister, Mr. Jatoi explained that the then government was not involved since it was a political plan."

(ii) Authors of the White Paper have relied upon a statement of Mr. Ghulam Mustafa Jatoi which he categorically contradicted as per following news item appearing in the daily "Nation" Lahore on 7th January, 1991:—

> "Former Prime Minister and a prominent IJI leader Ghulam Mustafa Jatoi, has categorically contradicted a news item, published in the Press attributing to him of having said that Nawabzada Nasrullah Khan's defeat in the October 1990 elections was the result of planned — rigging and that despite having its knowledge, he could not do anything in his capacity as caretaker Prime Minister.

Addressing a Press conference here on Saturday evening he said the elections held in October this year were cent per cent free, fair and impartial and the Chief Election Commissioner, Justice Naimuddin, deserved all credit for it."

(iii) In a recent statement commenting on the White Paper of the PDA, the former Prime Minister, Mr. Ghulam Mustafa Jatoi termed the October 1990 general elections as "absolutely free, fair and impartial". His statement has appeared in the daily 'Jang', 'Nawa-i-Waqt', 'Pakistan', 'Amn', 'Jasarat', 'Dawn', 'Frontier Post', 'The News' and 'Nation' dated the 28th September, 1991.

(iv) On the contrary, Nawabzada Nasrullah Khan, a leader of Pakistan Democratic Party, has "regret-fully stated that no election has been held justly and fairly in Pakistan since 1947". He was elected as member of the National Assembly in 1988 elections and lost election in 1990. His statement appeared in the press on 31st December, 1990.

6. While addressing the members of Karachi Bar Association, Nawabzada Nasrullah Khan again said that "there have never been impartial elections in our country since last 40 years.....". His statement has been reported by the daily "Dawn" Karachi on 11th September, 1991.

7. The purpose of the so-called "Plan for rigging" has been disclosed as under :—

> "The elections of 1990 were managed in a way that "desirable" candidates won and "undesirable" candidates were defeated. As part of this plan the political arena was structured in a way that there was hardly any chance for the PDA to win. This was the first stage of rigging — the prepoll rigging."
>
> "Rigging on the day of polling and before the announcement of the election results was part of the original plan. It was assumed that if pre-poll rigging failed to produce the desired results then the plan for polling day rigging would be put into operation."

8. In the first place, the purpose of the so-called plan for rigging has been stated to remove Ms. Benazir Bhutto from the leadership of

the PPP and then it has further been stated that the "elections were managed in a way that 'desirable' candidates won and 'undesirable' candidates were defeated". If the entire plan beginning from dissolution of the Assemblies and ending at the rigging of election was directed against the Co-chairperson of the PPP, then how is it that she was elected as member of the National Assembly with 94,462 votes against 718 votes polled by her nearest rival "despite all efforts to prevent her entry in the political arena". Not only the Co-chairperson of the PPP but also other such persons who could, in the words of the White Paper, be termed as "undesirable candidates", won the election and are now taking part in the deliberations of the National Assembly and the Provincial Assemblies. Success of the Chairperson, the Co-chairperson of the PPP, her husband Mr. Asif Zardari, Mr. Aftab Shaban Mirani, Mr. Zafar Ali Shah, Sardar Farooq Ahmad Khan, Ch. Aitzaz Ahsan and other stalwarts of the PDA in elections belies the existence of a plan for rigging the election.

9. It has been stated in the White Paper that the number of votes polled by the PDA and IJI in 1990 elections was almost the same but the difference in seats was large and that this difference was not just due to chance nor due to the special electoral strategy of the IJI, but substantially due to the pre-poll and polling day rigging. It is being admitted that under the "first past the poll system", a party wins a seat just by the margin of one vote and, at the same time, the difference of seats is being attributed to "rigging". The conclusion drawn by the authors of White Paper is, therefore, self-contradictory. The question has further been raised in the White Paper in chapter 10. Detailed analysis of the result of 1990 elections appearing in chapter 10 of the report will provide complete and irrefutable answer to this question.

10. The question as to why the defeated candidates failed to react against the rigging has been dealt with in the following manner in the White Paper :—

> "Another argument often heard is that "if rigging had, in fact, taken place the individuals who were the victims of the fraud should have "raised hell." This type of arguments does not take into account the consequences of "raising hell" in the circumstances in which the elections were rigged. As has been argued above, the rigging of 1990 election was done by state institutions to liquidate a political party."

11. The Constitution and law provide adequate remedy to the aggrieved candidate if the election of his rival candidate has been procured by illegal or corrupt practices. Article 225 of the Constitution provides that no election to a House and a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Parliament. The manner of filing election petitions has been specified under chapter-VII of the Representation of the People Act, 1976. There was no impediment in the way of the PDA candidates to give vent to the grievances, if any, by seeking redress thereof in a legal manner. If we believe in rule of law, our actions should conform to our belief. In case of election to the National Assembly, in all 35 election petitions have been filed by the PDA candidates despite the fact that they were advised, through a news item appearing in daily "Musawat" Lahore dated 12-12-1990, to contact Kh. Tariq Rahim in his office at Lahore for necessary assistance required by them for the preparation of election petitions, alongwith documentary evidence in support thereof. The translation of the news item published in the "Musawat" is given below :—

> "Islamabad 11 Dec.— (Bureau report) The parliamentary spokesman of the PDA has advised all PDA candidates for October election to contact Barrister Kh. Ahmad Tariq Rahim, Dinga Singh Building, Shahra-e-Quaid-i-Azam, Lahore, alongwith documentary evidence of rigging in election in their respective constituencies. The spokesman asked the PDA candidates from Sind, Baluchistan and NWFP to contact the Provincial President of their parties within two days. The spokesman said that for the preparation of election petitions, the candidates should approach the aforesaid office-bearer of the PDA with authentic evidence and other proof."

12. It appears that this offer was availed of by a small number of candidates as only 35 election petitions were filed and the result of election in the remaining constituencies was accepted by them.

13. Since the PDA candidates did not adopt the legal course of filing the election petitions according to law, it can safely be concluded that they had, in fact, no grievance and that they were satisfied with the result of election.

14. For the sake of comparison, the number of election petitions filed during the last three general elections is given below :—

	1970	1977	1985	1988	1990
National Assembly	22	22*	76	42	67
Provincial Assemblies	59	34	143	61	78
Total :—	81	56	219	103	145

[*The number of petitions in 1977 is low due to the boycott of the Provincial Assembly elections and the PNA agitation]

The number of election petitions filed during the 1990 elections show that there is nothing wrong about these elections.

15. As regards the allegation of rigging by "State institution", the term is vague and general. The elections in 1990 were organized and conducted by the Election Commission with the assistance of almost the same senior and experienced officers drawn from the judiciary as had conducted the 1988 general elections. No other "State institution" was involved in this exercise nor could such an institution interfere with the electoral process in any manner.

16. One of the sources of information for compilation of the White Paper has been stated to be as under :—

> "Election petitions received from PDA candidates"

It has further been stated that—

> "A large number of petitions have been submitted by PDA candidates for the national and provincial assemblies who maintained that they had lost the election due to rigging."

17. The assertion in the White Paper with regard to filing of a "large number of election petitions" by the PDA is as baseless and unfounded as are other allegations contained therein and is belied by its own showing. Out of a total number of 207 and 460 seats in the National Assembly and the four Provincial Assemblies respectively, rigging has been complained of in only 70 seats in respect of National

Assembly but surprisingly, only 35 election petitions were filed by the PDA candidates. This meagre number cannot be described as "large" by any count. In this regard, it may be stated that one of the cardinal principles to which a man of ordinary prudence adheres to is the verification of the contents of his compilation. The election petitions are based on mere allegations to be proved before Election Tribunals headed by High Court Judges in accordance with legal norms and proceedings. Unless it is done, such allegations can hardly be made a basis for accusation of rigging.

18. With regard to the disposal of complaints filed with the Election Commission, the following observation has been made:—

> "However, a large number of complaints were filed with the Election Commission before the polling day which were never dealt with. This obvious indifference by the Election Commission to gross violations of election rules prior to polling did not induce confidence among candidates to file petitions *vis-a-vis* rigging on the polling day. There was a lack of confidence in the Election Commission which added to the candidates reluctance to bear the heavy cost of filing election petitions."

19. It has further been stated that—

> "Moreover, the traditionally slow pace of disposal of petitions by the Election Commission did not give hope for an early redress."

20. In the first paragraph of the White Paper within quotation-marks, reproduced above, a vain attempt has been made to justify refrain from filing election petitions. It is a matter of record that each and every complaint was duly considered, enquired into and disposed of on merit and according to law by the Election Commission. As many as 103 such complaints filed under sections 27, 39(6)(b), 103 and 103AA of the Representation of the People Act, 1976, were given patient judicial hearing by the Election Commission and appropriate relief was granted thereon, regardless of the party affiliation of the

complainants. Disposal of complaints filed under specific provisions of law is summarized in the following table :—

Section	Accepted	Dismissed	Total
1. 103 (Commission to ensure fair election etc.)	1	8	9
2. 103AA (Power of Commission to declare a poll void)	4	37	41
3. 39(6)(b) (Recount on Commission's directions)	4	29	33
4. 27(2) (Commission's power to Order fresh poll at certain polling stations)	4	8	12
5. Miscellaneous (Cases falling under other provisions)	—	8	8
Total :—	13	90	103

Orders passed by the Election Commission in respect of 13 accepted cases are appended at Annex — 7 to Annex — 19.

21. It is not possible to give details of all the complaints disposed of by the Election Commission. However, for the sake of brevity, details of some of the cases heard and decided by the Commission in due course of law are summarized below :—

Case of Constituency No. NA-22 Swat-II

(i) Haji Fazal-e-Raziq (IJI) and Mr. Abdul Mateen Khan (Independent) were main contestants of the constituency. Haji Fazal-e-Raziq filed a petition praying therein that fresh poll be ordered on polling stations No. 77 and 166 on the grounds that the polling could not be conducted on the said polling stations due to disturbance created by the PPP candidate. It was alleged that the voters of the said polling stations were not allowed to cast their votes by the supporters of the rival candidate. The District Returning Officer was ordered to conduct the inquiry and submit his report. According to the report of District Returning Officer no illegalities/irregularities were committed during the election. The Commission was of the view that a detailed enquiry was required to determine whether the voters were prevented by any of the candidates and the allegations could not be decided in summary proceedings. The Commission, therefore, dismissed the petition *vide* its order dated 6-11-90 at Annex-20.

Case of Constituency No. NA-25 Dir-I

(ii) A petition under section 103AA of the Representation of the People Act, 1976 was filed by Sahibzada Fateh Ullah (IJI), a contesting candidate praying for re-poll in all the polling stations of Tehsil Lal Qila and till then, the result of the election of the said constituency may not be notified. The case of the petitioner was that in almost all the polling stations of Tehsil Lal Qila, voters were not allowed to cast their votes. It was contended that a 'Shariat Mahaz' appealed to the voters not to cast their votes unless the present system is replaced by a system based on Islamic Sharia. It was held that there was no *prima-facie* evidence that respondent or his election agents even gave their consent to 'Shariat Mahaz' appealing to the voters not to cast their votes, as such the election of the returned candidate could not be declared void. The order dated 15-12-1990 passed by the Commission, dismissing the said petition is at Annex-21.

Case of Constituency No. NA-31 Tribal Area-IV

(iii) A petition under section 103AA of the Representation of the People Act, 1976 was filed by Mr. Ghias-ud-Din (Ind), a defeated candidate from the constituency wherein it was alleged that the returned candidate spent thirty million of rupees for his election campaign and to purchase the voters and that the voters were threatened and also were deprived to exercise their right of franchise. It was prayed that a fair and impartial enquiry be conducted and the poll be declared as void. The Commission held that the allegations could not be gone into in a summary proceedings as these required recording of evidence of witnesses. Hence the petition was dismissed *vide* order dated 24-12-1990 at Annex-22.

Case of Constituency No. NA-70 Jhang-V

(iv) Mr. Akhtar Abbas Bharwana (IJI), a contesting candidate from the constituency requested for repoll on polling station No. 32 by filing a petition before the Commission. It was alleged that the Presiding Officer of the said polling station with the connivance of the rival candidate did not give the

count of votes to the polling agent of the petitioner and also did not reach the Returning Officer till the next day. The Commission was of the view that the entire allegations required detailed enquiry *i.e.* examination of polling agents, polling staff and other witnesses which could best be adjudicated by an Election Tribunal. The petition was, therefore, rejected *vide* order at Annex-23.

Case of Constituency No. NA-94 Lahore-III

(v) An application was submitted by Mr. Salman Taseer (PDA), a candidate for the constituency, demanding recount on 164 polling stations of the constituency. No reasons or grounds were stated in the application. The Commission rejected the application and ordered that the name of the returned candidate, as per official count of the Returning Officer, may be notified in the official Gazette. The order of the Commission is at Annex-24.

Case of Constituency No. NA-174 Tharparkar-I

(vi) Syed Qurban Ali Shah (PDA), a defeated candidate filed an application under section 39(6) of the Representation of the People Act, 1976 for recount of ballot papers of 9 polling stations. The petitioner alleged that the Returning Officer concerned ordered recounting of votes of the said 9 polling stations *vide* order dated 29-10-1990 upon an application of the petitioner. But later on, the said order was reviewed by the Returning Officer *vide* his another order dated 30-10-1990 which was illegal as the Returning Officer had no power to review his own order passed under section 39(6) of the Act. It was, therefore, prayed that the notification under section 42 of the Act declaring Mr. Anees Ahmed Khan (HPG) as returned candidate be set aside in exercise of power under section 103 of the Act. After hearing the parties, the Commission was of the view that the power under section 103 and under section 39(6) of the Act can not be exercised after the issuance of notification under section 42 of the Act. The application was, therefore, rejected *vide* order dated 20-11-1990 at Annex-25.

Case of Constituency No. PP-85 Gujranwala-IX

(vii) The Returning Officer of the constituency reported that at some polling stations the poll was stopped due to indiscriminate firing and assassination of 6 persons. Three candidates boycotted the election. The contesting candidates and the Returning Officer concerned were summoned and heard. The Returning Officer in his supplementary report submitted during the hearing that polling was stopped for about 2 hours and thereafter resumed and continued till the closing hours. Ch. Muhammad Iqbal (IJI) and Rana Abdul Ghaffar (IND) candidates contended that grave illegilities were committed on about 23 polling stations due to which they boycotted the election. No proof whatsoever was, however, produced to support these averments. The Commission was of the view that the assertions of the parties required examination of witnesses and adducing proof as such the election of the constituency cannot be declared as void under section 103AA. It was held that the result as per statement of the count may be declared. The contesting candidates will be, however, at liberty to challenge the election by filing an election petition under section 52 of the Representation of the People Act, 1976. The order of the Commission is at Annex-26.

Case of Constituency No. PP-86 Gujranwala-X

(viii) Mr. Muhammad Azam Cheema (IJI) and Mr. Imtiaz Safdar Warraich (PDA) were the main contestants in the constituency. The Returning Officer of the constituency did not furnish the result of polling station No. 9 and 40 due to kidnapping of the Presiding Officers and stoppage of poll on the said two polling stations. The Commission considered the report of the Returning Officer and it was held that the result of the election stands determined by the polling already taken place at 77 polling stations. The Commission ordered that the candidate having secured highest number of votes may be declared elected provisionally. The order of the Commission is at Annex-27.

Case of Constituency No. PP-154 Okara-II

(ix) Ch. Ikramul Haq (IJI) and Rana Ikram Rabani (PDA) were main contestants of the constituency. Ch. Ikramul Haq filed a petition for re-counting of votes on the grounds that Rana Ikram Rabani (PDA) had a simple lead of 303 votes and as such re-counting was necessary. The Commission rejected the petition and held that the reasons advanced before the Commission were insufficient. The order of the Commission is at Annex-28.

Case of Constituency No. PP-190 Pakpattan-I.

(x) Mian Ghulam Farid Chishti (IJI) filed a petition under section 103 read with section 27A of the Representation of the People Act, 1976, praying for repoll at 9 polling stations of the constituency. The grounds urged, *inter alia*, were that Mr. Gohar Farid Ahmed Khan, rival candidate, in the company of other persons created law and order situation and caused harassment and insulted the voters of the petitioner. A number of illegalities/irregularities committed by the said respondent were also listed in the petition. After hearing the parties, the Commission held that section 27A is no more on the Statute and the provisions of section 103 are not attracted at belated stage. Further all the allegations required recording of evidence and can not be decided in a summary way. Moreover, the alleged irregularities were not patent on the face of the record. The petition was, therefore, rejected by the Commission *vide* its order dated 13-12-1990 placed at Annex-29.

Case of Constituency No. PS-63 Dadu-VI.

(xi) Haji Zafar Ali Leghari (PDA), a candidate filed a petition under section 103 and 103AA of the Representation of the People Act, 1976 for declaring the poll of the constituency void on the following grounds :—

(i) Bogus votes were cast;

(ii) Polling Agents were arrested by the Police under the order of the Deputy Commissioner and Superintendent of Police;

(iii) Polling was stopped at various polling stations and after forcibly removing the polling agents of rival candidates, supporters of the respondent stamped the ballot papers un-authorisedly and put these bogus votes in the ballot boxes; and

(iv) Statements of the Count were not provided by the Presiding Officers of the 30 polling stations to the polling agents of the petitioner.

The petition was rejected by the Commission *vide* order dated 13-12-1990 at Annex-30. It was held that the allegations of the petitioner could not be accepted or acted upon without formal proof. The complaints of the Presiding Officer and the report of the Returning Officer could not be treated as substantive evidence in the facts and circumstances of the case.

Case of Constituency No. PS-97 Karachi (East-VII)

(xii) Mr. Muhammad Arif Khan (HPG) and Mr. Muhammad Taj (IJI) contesting candidates of the constituency filed 2 petitions separately under section 103AA requesting therein that the election of the constituency may be declared void and re-poll be ordered. The Returning Officer concerned also proposed that repoll at polling stations No. 12, 13, 24, 26, 17 and 18 be ordered due to law and order situation and indiscriminate firing. The Commission was of the view that the polling at other polling stations had determined the result of the election. However, the other allegations of the petitioners required detailed enquiry and examination of witnesses and could not be decided in the summary proceedings. The Commission, therefore, directed the Returning Officer to consolidate the result and the candidate having secured highest number of votes be declared as returned candidate. The order of the Commission dated 19-11-1990 is at Annex-31.

Case of Constituency No. PF-43 Mansehra-II

(xiii) Mian Wali-ur-Rehman (IJI), a candidate from the constituency lodged various complaints against Mr. Qasim

Shah, his rival candidate, containing allegations that at about 14 polling stations bogus voting was resorted to, polling agents were ousted and the voters were not allowed to cast their votes. Thereafter, it was brought to the notice of the Commission that ballot papers while being brought from Bala Kot to Mansehra have been burnt. It was contended by the petitioner that due to burning of the election material, the result of the election had been materially affected as such repoll should be ordered under section 27A of the Act. The Commission was of the view that the provisions of section 27A were not relevant in this case as well as it was not applicable to the election in question. As regards other allegations it was held that the allegations required to be proved by producing witnesses and other evidence. The petition was, therefore, rejected by the Commission *vide* order dated 30-11-1990 at Annex-32.

22. The fact that the Commission duly considered all complaints clearly belies the allegation of non-confidence against the Election Commission. Even otherwise this imaginary idea does not hold water, as the election petitions are triable by the Election Tribunals, comprising sitting Judges of the High Courts and not by the Election Commission or any functionary thereof. No allegation of partiality against the Election Tribunals has been made in the White Paper. The only irresistable conclusion that flows from the absence of election petitions in respect of an overwhelming majority of constituencies is that no rigging took place in these constituencies and the elections were held in a free, fair and impartial manner.

23. Likewise, the complaint with regard to slow disposal of the election petitions by the Election Tribunals is far from being substantial. It is a matter of common knowledge that the procedure for trial thereof is basically the same as laid down in the Code of Civil Procedure, 1908 for trial of suits, which includes summoning of the parties, striking of issues, recording of evidence of the parties, hearing of arguments and delivering of judgements. In view of this long-drawn process, it is too much to expect from the learned Election Tribunals to dispose of election petitions in the way the PDA is desirous of, especially when they have their usually heavy work-load of judicial cases in hand. It will not be out of place to mention that the same procedure was in vogue for disposal of election petitions filed after the 1988 general elections but no attempt was made by the PPP

Government to change the same by amending law. Moreover, the parties, who know that they have no case and would fail, generally attempt to delay the conclusion of the proceedings and make all possible attempts to get adjournments which are normally granted with consent of the parties. If one party is vigilant then the hearing of election petition can not be delayed un-necessarily. However, uptil now fifteen election petitions, both for the National Assembly and Provincial Assemblies, have been heard by Election Tribunals and all of them have been dismissed.

24. (i) Another source of information of the White Paper has been stated as under:—

> "Written statements of presiding officers and returning officers."

(ii) Action was taken on the complaint of the Returning Officer for constituency No. PP-84 Gujranwala-VIII appearing at Annex 27 of the White Paper. After hearing the parties, the Election Commission passed the following order on 2-11-1990:—

> "All the contesting candidates were notified to appear in view of the report dated 28-10-1990 of the Returning Officer. He has clarified in his report dated 1-11-1990 submitted during the hearing that the report is based on the complaints received by him orally or in writing and that the polling at the polling stations mentioned in the report, after interruption, was resumed. The contesting candidates except Mr. Mehboob Elahi of PDA had given in writing that polling continued peacefully at the polling stations mentioned in their respective writings. Mr. Mehboob Elahi Cheema had given in writing that he did not pursue his complaint and would like to file election petition."

(iii) The Election Commission took congnizance of the report of the Returning Officer for constituency No. PP-82 Gujranwala-VI (appearing at pages 468-471 of the White Paper) and after hearing the parties, passed the following order directing repolling at 13 polling stations which was held on 17-11-1990:—

> "Perused the report of the Returning Officer which is based on the reports of the Presiding Officers of thirteen polling stations, namely, 5, 6, 7, 17, 18, 19, 24, 28, 29, 30, 49, 51 and 69.

We have heard the advocate Hafiz S.A. Rehman and Azam Cheema of the Candidate who has secured the highest number of votes and the candidate who has secured the next highest number of votes.

The facts narrated in the report could not be satisfactorily controverted. It has, therefore, been established that in these 13 polling stations the votes recovered from the ballot boxes failed to reflect the correct choice of the voters.

We would, therefore, declare the votes cast at aforesaid 13 polling stations void and further direct that re-poll will be held on these 13 polling stations on the date to be fixed by the Commission".

25. The statements of the count (appearing at Annex-23, pages 416—452) in respect of election in constituency No. PP-226 Bahawalnagar-II are forged and fabricated. Full details of the case have been explained in Chapter-VIII of this report.

26. In view of the position explained above, the "evidence of rigging" as produced in the White Paper is no evidence of rigging.

CHAPTER – 3

Chapter 3 of the White Paper mostly deals with political matters with which the Election Commission is not concerned.

2. Under the caption, "the Presidential Election Cell", the following allegations have, however, been made:—

> "Under the instructions of the President, an "election information cell" was set up in the President's Secretariat in Aiwan-e-Sadr 'in order to apprise the President with the latest position about election for National assembly and Provincial Assemblies' The setting up of such an election cell in the President's Secretariat, manned by senior military and civil officers, was unprecedented and inconsistent with the independent constitutional role of the President, as holding elections is the function and responsibility of the Election Commission".

3. Support has in this respect been drawn from a foreign press report which has been quoted as under:—

> "Speculation surrounds the establishment of a parallel political authority outside the Election Commission. This authority received progressive results on election night. In combination with loyal or intimated Presiding and Returning Officers, they were then able to direct the manufacture of sufficient votes to steal numerous seats particularly in the Punjab."

4. In order to lend further credibility to the allegation of existence of a cell, observation of a local press reporter has been quoted.

5. The Election Commission is not aware of any election cell having been set up in the President's Secretariat nor has any proof of such allegation been furnished in the White Paper. Foreign press report itself is based on "speculation". What is the worth of such a speculative statement? This question can be answered by any intelligent person and its legal value can be judged by any lawyer. Similarly, the press report of Abu Faisal appears to be a made up story on the face of it. He has not named the Deputy Secretary whom he met nor has he named

any other person or journalist who accompanied him or who was present to witness the process of receiving the result. As a matter of fact, the result receiving centres were continually visited by a large number of local and foreign journalists and observers throughout but none of them made such statement as has been made by this press reporter. Six centres were functioning in the Election Commission Secretariat to receive the result of election and each centre was manned by at least three officials. Immediately on receipt of the result of a constituency over the telephone, the receiving officer verified it, put the time of receipt and date, signed it and sent it to the Central Control Room for announcement. Exactly the same procedure for receipt and announcement of result was followed as was adopted for the 1985 and 1988 elections and no objection was then raised by any quarter to this arrangement.

6. However, election is a big national event and eagerness of the nation to know the result of election is but natural. On the election night, almost every home, hotel, shop, Information Department, Pakistan Broadcasting Corporation, Pakistan Television, office of the political parties, office of the newspapers, etc. etc. set up their own cells to monitor the results of election. Such cells do not interfere with the functions of the Election Commission or Returning Officer in any manner. The Election Commission has, on its part, denied on several occasions in the past and asserts again that the results of elections as received from the Returning Officers were announced by the Election Commission after due verification and that no result was routed through any other source or channel either by the Election Commission or by the Returning Officers or Presiding Officers. The allegation of communicating the result to the President's Secretariat before announcement is, therefore, entirely baseless and without any substance and documentary or legal proof.

CHAPTER – 4

In this chapter, the appointments of the Acting Chief Election Commissioner, the Secretary and the Additional Secretary, Election Commission, have been questioned as under:—

> "The responsibility for ensuring that elections are held in a free and impartial manner lies with the Election Commission. The importance of this role can hardly be overstated. According to the Constitution the appointment of the Chief Election Commissioner is at the discretion of the President. For appointing the other two Commissioners the President is required to consult the Chief Election Commissioner and the Chief Justices of the High Courts in which the candidates for Commissioner are Judges. The appointments of other officers of the Election Commission lies with the Chief Election Commissioner, after the approval of the President. Thus, as the approving authority, responsibility for these appointments lies with the President. If the staff of the Election Commission are found to be failing in performing their responsibilities fairly and impartially, or if they have been appointed when they are known to be corrupt or biased, the President is ultimately accountable for their actions.
>
> The various actions of the President with respect to the Election Commission raise serious doubts about whether the intention of the President was to hold free and fair elections. His failing to confirm the Chief Election Commissioner in his post, transferring Mr. H.M. Chohan, an officer of the Secretariat Group (BPS-22) with a reputation for integrity, and replacing him with Chaudhry Shaukat Ali, known to be involved in a corruption case, just a few days after the dissolution of assemblies are just some of his actions which make his impartiality suspect."

2. Let it be made clear from the very outset, in unequivocal terms, that no officer of the Election Commission failed in the performance of his national duty. They acted in a highly impartial manner in all matters. The Election Commission, its officers and staff had risen to the occasion and it was becuse of their untiring and sincere efforts that elections were organised efficiently and held on a short notice within a

span of 68 days. No proof or evidence of inefficiency, incompetency, dishonesty, partiality or bias has been produced against any officer of the Election Commission in the White Paper. It goes to the credit of most of these officers that they conducted four general elections, including the 1988 elections, in six years.

3. Mr. H.M. Chohan, former Secretary, Election Commission, was transferred on sound administrative grounds. Posting and transfer of officers is a routine matter which should not be stretched to lable an officer of ones liking to be "honest" and branding others to be "corrupt or biased". The opinion expressed in the White Paper about the outgoing officer and against the serving officers of the Election Commission is, by itself, biased and without any evidence. The officers of the Election Commission who conducted the 1988 and 1990 General Elections, have a long record of meritorious services to the country and the nation and the short stay of Mr. H.M. Chohan on two occasions during slack period is not comparable with their performance in any manner.

4. Under the rules, officers within the Commission are transferred and posted by the Chief Election Commissioner. In this case, the Secretary was transferred and posted by the Establishment Division in normal course. The President has no concern with the postings/transfers of officers in the Election Commission.

5. In their enthusiasm to discredit the entire electoral machinery and the process, the authors of the White Paper have not spared even the Chief Election Commissioner and have raised doubts about his impartiality and role in the following manner:—

> "Mr. Justice Naimuddin, who throughout the electoral process was referred to as the "Chief Election Commissioner" is in fact the "Acting Chief Election Commissioner". The fact that he is "Acting Chief" has been deliberately suppressed in the press and correspondence. An "Acting Chief Election Commissioner" does not enjoy the security of office and the protection guaranteed to a Chief Election Commissioner under the Constitution. He is, therefore, most vulnerable and can be pressurized."

6. Mr. Justice Naimuddin, a lawyer of repute with 21 years standing in the profession, who had been President of the High Court

Bar Association in 1971, was appointed as Judge of Sindh and Balochistan High Court in 1975 when Mr. Z.A. Bhutto was Prime Minister and the PPP Government was in power. He was appointed Chief Justice of High Court of Sindh in 1986 when Mr. Muhammad Khan Junejo was the Prime Minister and General M. Ziaul Haq was the President. The role of Mr. Justice Naimuddin as Chairman, Sindh Zakat Council for 9 years upto 1989 and as Chairman, Sindh Taxation Commission, had been lauded by all sections of the society, without any exception. In his capacity as Chief Justice, he acted as Governor of Sindh twice in 1986. Mr. Justice Naimuddin was appointed as Judge of the Supreme Court of Paksitan in 1989 when the PPP Government was again in power. This has clearly established the fact that because of his integrity and impartiality, he enjoyed the confidence of all successive Governments.

7. Under Article 217 of the Constitution, the then Chief Justice of Pakistan, Mr. Justice Mohammad Haleem, who on retirement was appointed as Chairman, Islamic Ideology Council by PPP Government, nominated Mr. Justice Naimuddin to act as Chief Election Commissioner as would appear from Notification No.F.12(4)/89-PA dated 30-4-1989 issued by the Ministry of Law, Justice and Parliamentary Affairs (PA Division), Government of Pakistan, Islamabad (Annex-33). This Notification was published in the Gazette of Pakistan Extraordinary dated the 30th April, 1989 and had also appeared in the national press and widely publicized in the electronic media. The question that his "acting appointment" was suppressed in the Press, is thus unfounded on the face of it.

8. As a matter of fact, the President of Pakistan had no say in this appointment. The nomination of Mr. Justice Naimuddin as Acting Chief Election Commissioner solely rested with the Chief Justice of Pakistan and no one else as provided in Article 217 of the Constitution which reads as under:—

"At any time when—

(a) the office of Commissioner is vacant, or

(b) the Commissioner is absent or is unable to perform the functions of his office due to any other cause,

a judge of the Supreme Court nominated by the Chief Justice of Pakistan shall act as Commissioner."

9. Based on the false assumption that Mr. Justice Naimuddin was appointed as Acting Chief Election Commissioner by the President, it has further been alleged that by virtue of his acting appointment as Chief Election Commissioner, Mr. Justice Naimuddin was "most vulnerable" and could be "pressurized". These remarks are highly derogatory and smack of disrespect for the high judicial office. It is a case of gross contempt of court. The integrity and propriety of a sitting Judge of the Supreme Court has been questioned merely on the basis of wrong assumption. It appears that authors of the White Paper were unmindful of the fact that a sitting Judge of the superior court enjoys as much protection and security under the Constitution as a retired Judge if appointed as Chief Election Commissioner. Mr. Justice Naimuddin enjoyed the unique position of being a sitting Judge of the Supreme Court and also holding another high office under the Constitution and is, therefore, immune from all sorts of pressures or vulnerability. Indeed, the President of Pakistan in exercise of his powers could appoint a permanent Chief Election Commissioner but he gave preference to the nomination by the Chief Justice of Pakistan of a Judge whom he (the Chief Justice) considered the most suitable for the job. Instead of appreciating the trust and confidence which the President reposed in the judiciary he has been unduly criticized.

10. It may incidentally be pointed out that the case of the appointment of Mr. Justice Naimuddin as Acting Chief Election Commissioner is not the first of its kind in Pakistan. In the past as many as six sitting Judges of the Supreme Court had acted as the Chief Election Commissioner as listed below:—

(1) Mr. Justice S.A. Rahman

(2) Mr. Justice Wahiduddin Ahmad

(3) Mr. Justice Dorab Patel

(4) Mr. Justice Karam Elahee Chauhan

(5) Mr. Justice S.A. Nusrat

(6) Mr. Justice Aslam Riaz Hussain

Mr. Justice S.A. Nusrat remained as Acting Chief Election Commissioner till he retired from the Supreme Court. It may be remembered that he was appointed during the martial law regime when the Constitution was held in abeyance. It was open to the PPP

Government to suggest to the President of Pakistan to appoint Mr. Justice S.A. Nusrat or some other Judge as permanent Chief Election Commissioner, but no such suggestion is claimed to have been made. Even no suggestion was made to the Chief Justice of Pakistan to replace Mr. Justice Naimuddin with a permanent Chief Election Commissioner.

11. Regarding appointment of Acting Chief Election Commissioner, the Supreme Court has observed as under in Criminal Appeal No. 199 of 1988 - Mr. Zulfiqar Ali Bhutto versus the State - (PLD 1978 Supreme Court 40):—

> "Before concluding, a word might be said about the contention that the combination of the two offices in question in one person is likely to affect his independence in either or both these capacities. The contention as well as the apprehension underlying it are unfounded. Even the Constitution of 1973, by its Article 217, permits a serving Judge of the Supreme Court to be appointed as the Acting Chief Election Commissioner, thereby showing that the makers of the Constitution did not entertain any apprehension that a temporary responsibility of this nature was likely to adversely affect the independence. Article 218 of the Constitution provides that two serving Judges of the High Court shall act as Members of the Commission for the purpose of holding a general election. There is no provision that during such membership they would cease to function as Judges of the High Court. We can also take judicial notice of the fact that in the past Chief Justice or Judges of the High Courts have been appointed to undertake the work of delimitation of electoral constituencies in addition to their judicial functions. Serving Judges have also been called upon to work as Election Tribunals. The apprehension expressed by Mr. Yahya Bakhtiar is, therefore, misplaced."

12. The posting of Ch. Shaukat Ali as Secretary to the Election Commission in place of Mr. H.M. Chohan has been agitated in no less voluble words in the White Paper.

13. Mr. H.M. Chohan had previously worked as Secretary, Election Commission in 1982—84. Normally, an officer is not again posted to the same office but, in case of Mr. Chohan, an exception was

made by the then Government and he was posted for the second time as Secretary, Election Commission in grade-21 on 20th March, 1989. He was promoted, out of turn, by the then Government to grade 22 on August 10, 1989. He was transferred from the Election Commission on cogent administrative reasons and posting of Ch. Shaukat Ali in his place was not at all unusual. There are other instances where Government servants were called from leave preparatory to retirement on active service on account of their competence. Before cancellation of the LPR of Ch. Shaukat Ali, the competent authorities fully ascertained the facts and found no involvement with the alleged embezzlement case. The malicious campaign in the press was a calculated move of the PPP to advance its so-called theory of rigging.

14. It is noteworthy that right from the date of Ch. Shaukat Ali's posting as Secretary, Election Commission, till the publication of the White Paper, not a single instance of any irregularity or incompetence on his part in the process of holding general elections has been cited or brought to the notice of the Election Commission. Likewise, the allegation of embezzlement against him in his capacity as Additional Secretary in the Ministry of Religious Affairs, is without any proof. Had there been any substance in the case, the PPP government during its twenty-month stay would have taken some action against him. This fact alone is sufficient to prove that he is being victimized for some ulterior motives.

15. The next victim of the PDA is Mr. M. Humayun Khan whose role has also been criticized in the White Paper.

16. Mr. Humayun Khan was promoted as Additional Secretary purely on the basis of merit. He has about thirty years unblemished record of service to his credit in the Election Commission. It is a matter of record that he is being constantly victimized and persecuted by persons, with vested political interests, for performance of his duties faithfully, honestly and impartially in compliance with the orders of the Election Commission.

17. It has been alleged in the White Paper that the Punjab Election Officers' Association at Lahore had strongly represented against his appointment as Joint Secretary. Since no such representation was available on the record of the Election Commission, reference was made to the Association to verify the authenticity of this allegation. The Punjab Election Officers'

Association have categorically contradicted this allegation as per copy of their letter at Annex-34. In its press statement, the Association has strongly protested against the character assassination campaign launched by the PDA against officers of the Election Commission for political motives as per news item appearing in the national press on 19-10-1991. Press report of daily "Nation" Islamabad dated 19th October, 1991 is reproduced below:—

> "Punjab Election Officers Association PEOA has criticised allegations by the PDA in its White Paper that the Election Commission's appointment of Humayun Khan as Joint Secretary was irregular and has refuted the assertion that the PEOA had sent a strong representation against his appointment, says a Press release.
>
> Addressing a Press conference here on Tuesday, President PEOA Khalilur Rehman said that quite contrary to the contentions of the PDA, the Assocation highly praises the services and the abilities of Humayun Khan who has a reputation of being an impartial and devoted official who carried out his duties strictly according to law.
>
> Asking the PDA to provide documentary evidence to support its accusations, he said that falsely implicating officials of the Election Commission in preposterous allegations of rigging would only harm public confidence in these institutions and weaken democracy.
>
> He said that the credibility and the capability of the Election Commission of Pakistan had been certified by the fact that the UNO had requested the services of 40 personnel of the EC Pakistan for assistance in the holding of election in Namibia.
>
> In fact a team of 30 officials of the Election Commission led by Humayun Khan himself has recently been selected for helping in holding elections in Western Sahara" he added.

18. Another allegation made against Mr. Humayun Khan in the White Paper is to the effect that an inquiry was still pending against him with the FIA. The Election Commission was not aware of any such inquiry. The matter was, therefore, referred to the Director General

FIA who has confirmed that no inquiry is pending with FIA against him, as per copy of the FIA's letter at Annex-35.

19. The services rendered by Mr. M. Humayun Khan at the national level have been recognized and appreciated even by the international agencies. In his address to the United States House Foreign Affairs Committee on October 2, 1990, Mr. Kenneth Wollack, Executive Vice President of the National Democratic Institute for International Affairs, Washington, while referring to the 1988 elections in Pakistan, stated as under:—

> "In its post-election statement and final report, the international delegation congratulated Acting President Ghulam Ishaq Khan, General Aslam Beg, and the Chief Election Commissioner Syed Nusrat Ali for their actions in supporting the integrity of the electoral process. The delegation also concluded that the electoral laws and procedures compared favourably with those used in other democratic countries. *Indeed, the delegation's positive assessment of the Election Commission's efforts is perhaps best reflected by the fact that NDI invited the senior civil servant responsible for administering the 1988 elections to participate in a mission to analyze the Namibian electoral process in May 1989,* when there were considerable concerns about the intention of the South African authorities to establish internationally acceptable electoral procedures."

(Page 126 of the NDI report on "The October, 1990 Elections in Pakistan").

20. Mr. M. Humayun Khan was nominated as a member of the international delegation to Namibia in May – June, 1989. His role in election held in Namibia was highly commended and the leader of delegation, in a communication, stated that Mr. M. Humayun Khan was "indeed a credit to both his profession and his country." It was due to his efforts that the United Nations requisitioned the services of 40 officers of the Election Commission to supervise the Namibian elections. The services of these officers were lauded by the Secretary General of the United Nations. The UN has again requested the Election Commission of Pakistan to place the services of its officers at the disposal of UN for holding election in Western Sahara in the near future.

21. In a nutshell, the allegations levelled by the PDA against senior officers of the Election Commission are mere allegations and are not supported by any evidence in the White Paper. The Secretary, Additional Secretary, Provincial Election Commissioners and other officers of the Election Commission do not have any powers under the law in the process of conduct of elections. Nor were such powers delegated to them by the Election Commission in any respect during the last general elections. As officers of the Commission, they were simply required to implement decisions of the Election Commission. All instructions issued by them to the District Returning Officers and Returning Officers during the election had the authority and approval of the Election Commission. Practically, it is not possible for any person to give "illegal or un-authorised" instructions to any or all District Returning Officers and Returning Officers who are senior and experienced officers of the judiciary. In addition, none of the election petitions filed by the PDA candidates contain any covert or overt reference to any sort of malpractice or irregularity on the part of the Secretary, Additional Secretary or any other officer of the Election Commission.

22. The most disturbing part of the present campaign is that attempts are being made to destroy the institutions for political motives. There can be no two opinions about the fact that the institutions provide a firm and solid foundation for the nation building. If the state organs are weakened or destroyed, the entire set up will, God forbid, collapse sooner or later. Let us all save the state organs before it is too late.

CHAPTER – 5

The Election Commission, in fulfilment of its constitutional duty of holding free, fair and impartial elections, issued a letter to the Caretaker Chief Ministers and Ministers, etc. in September, 1990 inviting their attention to the general principles to be observed by them during elections. A copy of that letter is placed at Annex-36. In furtherance of that cause, the Commission also introduced a code of conduct for election campaign by the political parties, a copy of which appears at Annex-37.

2. While referring to and quoting from these two documents, it has been concluded in the White Paper that "The Commission, however, lacked the power and effective machinery to prevent the caretakers from violating the rules for fair election and enforcing the code of ethics"

3. This is a general allegation. In the absence of any particular evidence or proof, the Election Commission is unable to take action against any person. Mere allegations, without particular evidence or proof in support thereof, do not prove the ineffectiveness of the Election Commission.

4. The question of "election cells" raised in chapter-II has again been discussed in this chapter. The Election Commission has already offered its comments on this issue in chapter 3. It is, however, reiterated that result of election was received by the Election Commission from the District Returning Officers and Returning Officers through the Provincial Election Commissioners and was announced from the Central Control Room at Islamabad and no other agency was involved in this exercise in any manner.

5. Mr. Khursheed Mahmood Kasuri, Secretary General, PDA stated in his letter dated 23-10-1990 that he had reasons to believe that the Government was planning to rig the election by controlling the announcement of the results thereof and that a cell has been formed in Presidency. He further complained of arrest of various election agents of the PDA.

6. The complaint was duly examined and a suitable reply was given as per letter No.3(10)/90-Law, dated 23-10-1990 (copy at Annex-38). It was stated that the result of the elections will be announced by the Election Commission and by no one else. As regards the arrest of the PDA election agents, it was pointed out that a report was being called from the Sindh Government.

7. The President's address to the nation on the eve of the polls has been described as "violation of election rules" as under:—

> "The Election Commission had fixed the time and date for ending the electoral campaign by all political and independent candidates at mid-night on October 22, 1990 which PTV violated in two ways. First, it allowed the President to give a partisan speech which was a virtual condemnation of the PPP and support of the IJI not the former. This violation of the Election Commission's rule by the President, though it fitted well into his role as champion of the IJI cause, did not sit well on the highest functionary of the state who had dismissed the PPP government for not following the Constitution...."

8. Attention in this respect is drawn to section 84 of the Representation of the People Act, 1974, which provides as under:—

> "No person shall convene, hold or attend any public meeting, and no person shall promote or join in any procession, within the area of any constituency during a period of forty-eight hours ending at mid-night following the conclusion of the poll for any election in that constituency.
>
> Any person who contravenes the provisions of sub-section(1) shall be punishable with rigorous imprisonment for a term which many extend to six months, or with fine which may extend to one thousand rupees, or with both"

9. A bare reading of the provision quoted above would reveal that there is no contravention of law and there is no other law which prohibits the President to address the nation. Election was a national event and the precedent is that the President addresses the nation on all such occasions. It will be interesting to note that the President had

also addressed the nation over the radio and TV net work on November 15, 1988, before the 1988 elections but no objection was then raised in this respect by any person or political party.

10. Allegation relating to the "partiality of electronic media" has been made as under:—

> "The bias of the electronic media did not go unnoticed. Besides the frequent remarks in the press, members of the PDA leadership appealed both to the courts and the Election Commission against the media's partiality. For example, Ch. Aitzaz Ahsan, former Interior Minister, wrote two letters to the Chief Election Commissioner apprising him of the corrupt and illegal practices being committed by the caretaker government. He particularly complained that the electronic media, directly and exclusively under the control of caretaker governments, was being used in an organized vilification campaign against the previous and democractically elected government of the PPP, without affording the latter any opportunity of responding to the most preposterous and unfounded charges being levelled against it. The Election Commission did not take any action and the bias continued throughout campaign ".

11. The question of misuse of electronic and print media raised by the PDA was referred by the Election Commission to the Ministry of Information and Broadcasting, Government of Pakistan, as per letter No.F.3(10)/90-Law dated 12-10-1990 placed at Annex-39. Comments offered by the Ministry *vide* its letter dated 16-10-1990 at Annex-40 were considered by the Election Commission and the following Order was passed in this behalf on 17th October, 1990:—

> "However, we would add and direct the Ministry of I&B that they should treat all the political parties which are participating in the election in the matter of coverage of their election campaign or activities equitably in consonance with justice, fairplay and the relevant fundamental rights guaranteed in the Constitution.
>
> A grievance was made that when coverage is given to the meetings of PDA on the TV the picture fades out and is

smoky. If it is so, care shall be taken that the coverage is clear and bright, otherwise officers controlling TV programme will not be able to say that they are performing their public duty properly and fairly".

12. No complaint was made in this regard to the Election Commission thereafter.

13. Mr. Khursheed Mahmood Kasuri, Secretary General, PDA, submitted a petition dated 7-10-1990 under Article 218(3) of the Constitution, read with section 103 of the Representation of the People Act, 1976, as at Annex-41, containing various prayers mentioned at (a) to (h) in the order dated 17-10-1990 of the Election Commission at Annex-42.

14. The Election Commission issued notices to the complainant who appeared on 17-10-1990 alongwith Syed Afzal Haider, Advocate and Air Commodore (Retd.) Mr. Sajjad Haider. Syed Afzal Haider was heard at length, who failed to bring home any of the charges by adducing evidence in support thereof. However, in respect of the prayer that the PTV Corporation may be directed to exercise a balance between the political parties both in allocation of time as well as selection of material in covering the election campaign of the two main parties, the Election Commission directed the Ministry of Information and Broadcasting to make sure that no discrimination was made in this behalf. The order of the Election Commission is at Annex-42.

15. With regard to the "misuse of public funds", the following allegation is made in the White Paper:—

> "The Election Commission had ruled in a very clear and unambiguous way that any use of government funds and patronage for influencing election results is prohibited. It has also stated that "all those persons entrusted with powers to sanction funds must bear in mind their moral and legal obligations to exercise these powers in a fair manner which preclude suspicion of electoral partiality or bias" (emphasis added). However, the caretakers at the federal and provincial level showed no respect for democratic norms, election laws, and the specific instructions of the Election Commission and used powers at their disposal to provide public funds, facilities and employment to get votes from the

people as described below. Among the pre-poll rigging methods used by the caretakers and the IJI, this method proved to be one of the most effective and decisive factors in securing the IJI "victory".

16. On an inquiry from the Election Commission, the Secretary, Local Government and Rural Development Department, Government of the Punjab, clarified factual position with regard to the allegation of misuse of public funds as under:—

> It has been reported in a section of the Press that development funds are being distributed through the candidates contesting the forthcoming elections. It is to clarify that no money has been delivered or paid to any candidate contesting the General Elections in the Province.
>
> It is a normal feature that Annual Development Programme is prepared by this Department which is implemented in consultation with public representatives. For every proposal schemes are prepared on prescribed pattern which are technically scrutinized by the experts. These schemes are placed before the competent forum for consideration and approval. After approval their execution takes place through normal channels by observing codal formalities, i.e. calling tenders etc. No money is placed or handed over to any private person or party who are contesting the elections. However, in some cases, small schemes are executed through Project Committees which comprise a panel of persons drawn from various walks of life. This again is done through close association of Chairman/Secretary, Union Council.
>
> None of the candidates is in a position to either approve the schemes or execute them."

A copy of letter dated 20-10-1990 from the Secretary, Local Government, Punjab is placed at Annex-43.

17. The allegation misuse of funds has further been levelled in the White Paper as under:—

> "This information is corroborated by several petitions submitted to the Election Commission by PDA candidates.

For example, Dr. Ghulam Hussain the PDA candidate from NA-46 Jhelum, filed a complaint that the IJI candidate from his constitutency was using development funds to influence the elections. Annexure 10 contains photocopies of the cheques issued by the government to various persons and Union Councils to promote the popularity of the IJI candidate. These amounts were disbursed or utilized by the government under the instructions of the IJI candidates. In addition to government funds, the local administration was also openly used in the election campaign of the IJI candidate ".

18. The complaint was inquired into and the Deputy Commissioner, Jhelum reported as under:—

"No money has been released/issued to any unauthorized person with the exception of the funds released for the development works in the district".

19. Further comments on this allegation can not be offered as the matter is already sub-judice before the Election Tribunal in an election petition.

20. Air Marshal (Retd.) M. Asghar Khan filed a complaint, alleging therein:—

(i) That a convention of Lumbardars was held and the Chief Minister, Punjab urged the Government servants to block the coming into power of Pakistan Peoples Party;

(ii) A quota of 30 constables was allocated for each candidate of IJI in the Punjab;

(iii) A sum of rupees twenty crores was distributed amongst IJI candidates in the Province; and

(iv) A large number of transfers were made despite instructions of the Election Commission on the contrary.

21. The Election Commission heard the learned counsel at length and perused the complaint in detail. The complainant failed to

substantiate the allegations listed at number (i) to (iii) with any evidence. As regards the fourth allegation, it was found that no such instructions were issued by the Election Commission. Thus, the complaint was held to be without merits and was consequently dismissed by the Election Commission *vide* order dated 17-10-1990 (copy at Annex-44).

22. Various letters written by Ch. Aitzaz Ahsan, one of the PDA candidates, to the Election Commission, embodying certain allegations have also been made the subject matter of the White Paper. The relevant excerpts are quoted as under:—

(i) "Ch. Aitzaz Ahsan, former interior minister, detailed a number of these abuses in a letter to the Election Commission. He said that public funds were being used improperly and illegally to provide transport to IJI candidates and to arrange for IJI election rallies to be attended by the people. The IJI Chief, Mian Nawaz Sharif, was being transported on his election campaign in official helicopter."

(ii) "Ch. Aitzaz Ahsan, former interior minister, in letters written to the Chief Election Commissioner, pointed out that according to newspaper reports of September 5, 1990, the caretaker government in Punjab has decided to distribute 550,000 plots of land on the recommendation of the IJI candidates in the following elections."

(iii) "In his letter, Mr. Aitzaz Ahsan also pointed out that the Punjab administration, on the directive of the caretakers, had already (by October 17) started requisitioning through force and the police, thousands of vehicles (wagons, buses, suzuki pick-ups, etc). Assistant Commissioners and magistrates, accompanied by police officers were impounding the papers of these vehicles and telling the drivers and owners to report to them on the night of the October 23, 1990."

23. The allegations listed at (i) and (iii) are contained in Ch. Aitzaz Ahsan's letters dated 8-9-1990 and 14-9-1990, addressed to the Chief Election Commissioner, whereas the allegation at (ii) was mentioned in the letter dated 18-9-1990. Upon the receipt of the letters,

at (i) and (iii) telegraphic notice was issued to Ch. Aitzaz Ahsan to appear before the Election Commission on 17-10-1990 at Islamabad, but he could not attend.

24. The two letters received from Ch. Aitzaz Ahsan were considered by the Election Commission in its meeting held on 20-9-1990 and it was observed that the letter from the Secretary, Election Commission, (issued under the instructions of the Commission) which was also released to the press, met the ends of justice. It was further observed by the Commission that the allegations made by Ch. Aitzaz Ahsan were vague and general.

25. Mr. Aitzaz Ahsan of PDA in a detailed letter dated 18-10-1990, made a number of allegations which are summarised as under:—

(i) Lady Presiding Officers/officials were not to question the age recorded on National Identity Cards;

(ii) Papers of almost all the (public) transport were impounded and all petrol pumps were ordered to be closed down on 24th and 27th October, 1990;

(iii) PTV continued to slander the PDA and the Election Commission took no action;

(iv) IJI flags were ordered to be put up and distributed by the SHOs;

(v) PPP candidates were harassed, victimised and arrested; and

(vi) The complainant was attacked in the Lahore High Court premises.

26. All the aforementioned allegations were dealt with in the letter No.F.2(1)/90-Cord. dated 20-10-1990 (Annex-45) issued under the directions of the Election Commission. It was stated, in nutshell, that all of them were vague, general, lacking in necessary details and unsupported by evidence. It was pointed out that to redress every grievance, there was a proper forum, which could have been approached.

27. It is noteworthy that most of the material for accusations has been drawn from various newspapers reports without verifying the authenticity thereof or disclosing the sources of the information. It was tantamount to making a mountain out of a mole.

28. It has been alleged in the White Paper that National Identity Cards were not issued to the voters of the PDA candidates, who were, thus disenfranchised. The relevant portion is reproduced as under:—

> "Voters wishing to exercise their right of franchise must produce a national identity card at the polling station to prove their identity. One of the administrative hurdles which amounted to disenfranching a large number of voters who were supporters of PDA candidates, was the discriminatory attitude of the administration in issuing national identity cards to persons who did not have the blessings of IJI candidates or their principal supporters. In contrast, national identity cards were issued liberally to the supporters of IJI candidates. This point has been brought out in a number of petitions of PDA candidates filed with the Election Commission.
>
> In a telegram sent to the Director Registration, Karachi, Director FIA Karachi, Election Commission in Karachi, Secretary of Interior, Islamabad, Chief Election Commissioner, Islamabad, and the President, on October 3, 1990, Mohammad Siddique Depar, Chairman of the Union Council, Dars, Talko Moro, who was a supporter of the PDA candidate from NA-158 contesting against Ghulam Mustafa Jatoi, complained that "500 national identity cards prepared by mobile teams were 'misplaced' by Nek Mohammad Jatoi at the instance of Prime Minister Jatoi."

29. This allegation appears to be wild and general. In the first place, it has not been shown as to whether all the five hundred persons whose cards were allegedly misplaced had sympathies with the PDA candidates. No particulars of such persons or any evidence in support of the allegation is produced in the White Paper. Secondly, if they were in fact lost, what steps were taken to get duplicates made. No details of the petitions said to have been filed with the Election Commission on this point have been given. In any case, this issue required a detailed

enquiry which was outside the ambit and purpose of section 103AA of the Representation of the People Act, 1976 and ought to have been raised in the election petitions. This contention also suffers from vagueness and generality.

30. In a letter dated 19-10-1991, Mr. Iqbal Haider, Secretary Information, PDA contended that:—

(i) Location of polling stations was changed;

(ii) Results will be first collected and consolidated in the Presidential Election Cell and afterwards released to the media;

(iii) Government funds/machinery were used to boost election campaign of IJI candidates; and

(iv) Ballot papers were supplied to the Returning Officers few days before the polling day.

31. A comprehensive reply was given as per letter No.F.4(10)/90-Law, dated 22-10-1990 (copy at Annex-46). It was stated that as the numbers and names of the polling stations were not given, no investigation was possible. The existence of any Presidential Election Cell was controverted. As regards misuse of funds/machinery, it was mentioned that detailed instructions were issued to the quarters concerned. Factual position with regard to the allegation of supply of ballot papers few days prior to the polling day was also clarified.

32. Mr. Iqbal Haider, Secretary Information, PDA, in his letter dated 15-10-1990 made *inter alia* the following allegations:—

(i) Government servants have been appointed as Returning Officers in Uthal, Balochistan and PS-67 Sanghar;

(ii) District Councils were dissolved;

(iii) Mr. Asif Ali Zardari was arrested;

(iv) PDA candidates and their workers were arrested; and

(v) Government resources were being misused.

The complaint was placed before the Election Commission and was duly considered. It was held to be vague and without any proof/evidence whatsoever and the complainant was informed *vide* letter No. F. 4(10)/90-Law, dated 19-10-1990 (Annex-47). However, some of the issues were clarified. It was stated that Additional District and Sessions Judge was appointed as Returning Officer for constituency No. NA-206 Lasbela-*cum*-Gawadar and Mr. Muhammad Zarif Qureshi, Civil Judge, Sanghar was appointed as Returning Officer for constituencies No. PS-67 Sanghar-IV and PS-68 Sanghar-V. In reply to allegations No. (ii) and (iii), it was pointed out that the Election Commission had no say in the matters of dissolution of District Councils and the arrest of Mr. Asif Ali Zardari. With regard to allegation No. (iv), it was stated that details were called for from the Provincial Government and necessary action will be taken, if so warranted. Detailed instructions were issued in respect of the last accusation.

33. Quite few more allegations were levelled by Mr. Iqbal Haider in his letter dated 22.10.1990. Some of those have already been dealt with in the Election Commission's letters at Annex-46 and 47. Additional accusations are as under:—

(i) National identity cards were denied to the PDA workers;

(ii) Issue of postal ballot papers on unprecedented scale; and

(iii) Re-demarcation of constituencies.

34. A reply was sent *vide* letter No.F.2(45)/90-Cord on the same day, i.e. 22-10-1990 (copy at Annex-48), in which the above accusations were effectively met with. As regards the first allegation, it was stated that the Election Commission directed the Ministry of Interior to issue National Identity Cards to all the persons regardless of their party affiliation. It was also pointed out that the other two allegations were based on lack of knowledge of full facts or were purely for public consumption. The allegation of misuse of postal ballot papers has been dealt with at paragraph 26-27 of chapter 8.

35. The White Paper also embodies an accusation with regard to delimitation of constituencies in Naushero Feroze/ Nawabshah under

the heading "Manipulation of constituency Boundaries" which, *inter alia,* is quoted below:—

> ".....The interesting thing in the carving out of the new district of Naushero Feroze was the impact this gerrymandering had on the surrounding constituencies. Mr. Ghulam Mustafa Jatoi was a candidate from NA-158 Nausheroferoze-I, his son Ghulam Mujtaba Khan Jatoi was a candidate from NA-159 Nausehroferoze-II, and his other son Ghulam Murtaza Khan Jatoi was a candidate from NA-160 Nawabshah-I....."

36. The very heading is misleading and does not conform to the text given thereunder. In fact, the final list of constituencies delimited in accordance with the 1981 population census was notified by the Election Commission on October 1, 1988. The general elections were held in 1988 on the basis of these constituencies. The following four new districts were, however, created in 1989-90 after the general elections in 1988 by the Provincial Governments:—

(1) Nowshera in the NWFP.

(2) Pakpattan in the Punjab.

(3) Naushero Feroze in Sind.

(4) Killa Saifullah in Baluchistan.

37. The Commission decided to consider the proposals for delimitation of constituencies only of the four newly created districts and the districts affected due to their creation in respect whereof the Commission considered only twelve such representations due to time constraints although the Commission had in all received 41 representations for modification of the final list of constituencies.

38. Persons filing twelve representations and their lawyers were heard at Peshawar and Lahore on 3rd and 5th September, 1990. Since the allegation of gerrymandering the constituencies of Naushero Feroze/Nawabshah has been made, decision of the Election Commission with regard to these constituencies is summed up as under:—

(1) Before the creation of Naushero Feroze district, Nawabshah district was entitled to four seats in the

National Assembly and nine seats in the Provincial Assembly, Sind. After creation of the new district, the number of seats falling to the share of two districts on the basis of population was as under:—

	National Assembly	Provincial Assembly
Nawabshah	2	4
Naushero Feroze	2	5
Total.....	4	9

The Commission changed the nomenclature and modified the description of National Assembly constituencies viz. NA-158, NA-159, NA-160 and NA-161 in accordance with the boundaries of new districts.

(2) The extent of nine constituencies of the Provincial Assembly viz. PS-15 to PS-23 was modified according to the boundaries of new administrative units and nomenclature of these constituencies were also changed.

39. All this was done to the satisfaction of the interested parties as none of them questioned the decision of the Commission by filing any review application or in superior courts in writ jurisdiction or in any other proceedings.

40. It would thus be seen that no substantial changes were made in the limits of the constituencies of the new districts and that the constituencies pertaining to the remaining 78 districts were not at all touched. Consequently, the 1990 general elections were held almost on the basis of the same constituencies as were delimited for the 1988 general elections.

41. There is yet another allegation listed in the White Paper that Mr. Ghulam Qadir Bugti, an independent candidate, was prevented by

the civil administration to file his nomination papers for election from constituency No. PB-19 Dera Bugti. It has been stated that:—

> "Another example of pressurizing opposition candidates to withdraw comes from Dera Bugti, Balochistan. Nawab Akbar Khan Bugti contested the seat for the provincial assembly from this constituency (PB-19). Two unknown candidates, both Bugtis, retired from the contest in his favour and Nawab Bugti was elected unopposed. However a fourth candidate, Ghulam Qadir Bugti (independent), claimed that he was prevented from filing his nomination papers for the seat by the Dera Bugti administration. He claimed that his proposer, Mohammad Nawaz, and his seconder, Ali Bakhsh, were arrested on September 12, 1990, while they were going to the returning officer to file nomination papers. Both were reportedly held until September 16, when the date for filing nominations for the provincial assembly elections had passed."

42. This allegation is also baseless and devoid of truth. The fact is that-

(i) Upon the receipt of a telegram from Mr. Ghulam Qadir Bugti, an enquiry committee comprising Mr. Abdul Qadir Mengal, District and Sessions Judge, Sibi and the Commissioner, Sibi Division was formed which after a detailed enquiry held that the accusations levelled by Mr. Ghulam Qadir Bugti were unfounded. The report thereof revealed that one Jumma Khan was arrested on the charge of vagrancy who denied as having been proposer or seconder of the complainant. It is significant to note that the said complainant did not mention the names of his proposer and seconder in his telegraphic complaint.

(ii) The Returning Officer of the constituency was directed to furnish a complete report in respect of the allegation, which he did and denied any such happening at all.

(iii) The matter was taken cognizance of by the Election Commission. Mr. Ghulam Qadir Bugti and the Returning Officer were directed to appear before it on

18-11-1990. On that date, the Returning Officer appeared but the complainant sent a telegram showing his inability to attend the proceedings. The case was fixed for 11-2-1991, on which date the complainant failed to turn up, whereas the Returning Officer made his appearance. The hearing of the matter was adjourned to 10-8-1991. On this date, too, the complainant remained absent and consequently his complaint was dismissed by the Commission for want of prosecution and evidence in support thereof.

(iv) The aforementioned account clearly shows that the complaint was palpably false and merely a cry in the wilderness. It also establishes the keenness of interest which the Election Commission took in holding free, fair and impartial election.

43. It will not be out of place to compare the uncontested return of candidates in 1990 elections with the unopposed returns in the elections held in March, 1977. In case of uncontested election of three candidates in 1990, complaint in respect of only one Provincial Assembly constituency was received by the Election Commission and this complaint has been discussed in the preceding paragraphs. As regards the National Assembly, two candidates from Federally Administered Tribal Areas and one candidate from the Punjab were returned un-opposed but without any complaint from any quarter. Against this, in March, 1977, as many as 19 candidates had managed to procure their uncontested election to the National Assembly, including the then Prime Minister, and sixty candidates to the four Provincial Assemblies including the Chief Ministers of all the Provinces.

CHAPTER – 6

While making postings and transfers of various officers as basis for rigging the election, it has been stated in the White Paper that:—

> "That the local administration was fully involved in these efforts is no secret despite the Election Commission's repeated assurances that only the Judiciary will be involved."

2. The aforequoted allegation is vague and misleading, especially, so far as it relates to involvement of judiciary. It is an established fact that the elections were conducted/supervised by judicial officers, in whose appointment/transfer the civil administration had no say. The job of local administration, as in the 1988 general elections, was confined to logistics, maintenance of peace and order, etc.

3. It has been stated in the White Paper that the Secretary, Irrigation and Power, Sind was found canvassing for IJI candidates. The relevant portion is as under:—

> "Syed Zafar Ali Shah, PDA candidate from NA-159 Naushero Feroze-II, in a complaint to the Returning Officer, dated September 17, 1990 pointed out that the Secretary of Irrigation and Power, Sindh, Mohammad Alam Baloch was canvassing for IJI candidates in violation of rules."

4. This accusation was also mentioned by Mr. Iqbal Haider, Secretary Information, PDA, in his letter dated October 15, 1990. A report was called from the Home Secretary, Government of Sindh in this behalf. The relevant extract thereof is reproduced below:

> "Mr. Alam Baloch is Secretary, Irrigation and Power Department, Government of Sind. His duties involve extensive touring which is related to development and maintenance of the world's biggest artificial irrigation system. Incidentally, he also hails from district Naushero Feroze. His involvement in political activity, is totally baseless and incorrect."

5. The Election Commission also took cognizance of this allegation and observed that it was not supported by affidavit or any proof.

6. Another unproven allegation with regard to appointment of an officer of a bank as polling agent for the ruling party candidate has been listed in the White Paper. It reads as under:—

> "Besides transfers and postings, it has been reported by the PDA candidates that government officials acted as polling agents for the ruling party's candidates. Syed Zafar Ali Shah provided photographs of an Assistant Vice President of UBL (a nationalized bank) at Mohubedero polling station on October 27, 1990, acting as polling agent for the ruling party candidate"

7. This allegation is unfounded on the face of it. In the first place, the photographs have not been included as annexures to the White Paper. Secondly, the name of the said official has not been mentioned. Thirdly, it is impossible to determine from the photographs that he was acting as polling agent for a particular candidate. Some sensible and concrete evidence was required to bring home the charge, which is unbelievable as no Government officer would risk legal action against him.

8. Another accusation mentioned in the White Paper is with regard to the appointment of the Returning Officer in constituency No. PS-67 Sanghar-IV. It is reproduced as under:—

> "In Jam Sadiq Ali's constituency, PS-67 Sanghar-IV, a low level government functionary — a tehsildar — was appointed as Returning Officer, rather than a member of the judiciary."

9. This charge was also preferred by Mr. Iqbal Haider, a PDA leader, in his letter dated 15-10-1990 addressed to the Commission. The reply thereto was given in the Election Commission's letter No.4(10)/90-Law dated 19th October, 1990, the relevant excerpt is quoted as under:—

> "……

(b) Mr. Muhammad Zarif Qureshi, Civil Judge, Sanghar is acting as Returning Officer for constituencies No. PS-67 Sanghar-IV and No. PS-68 Sanghar-V since September 4, 1990.".....

10. It is a matter of record, which ought to have been checked before hurling accusation merely for the sake of accusation.

CHAPTER – 7

Chapter 7 of the White Paper deals with the role of the Chief Election Commissioner and the Election Commission in the 1990 general elections. Before embarking upon discussion thereon, it would be in the interest of propriety to mention that most of the material has been scrambled from unproven, unverified and untrue newspaper reports. The nature of allegations embodied in the chapter under discussion demands concrete unrebuttable proof and it is elemental that in the absence thereof, they are merely a cry in the wilderness. The various points raised therein are discussed in the succeeding paragraphs.

2. Reference has been made to a telephonic interview of the Chief Election Commissioner, given to "The Frontier Post" in which his attention was drawn to a television programme against the PPP and he allegedly said that he had not seen the programme or the election campaign of the caretaker ministers being covered by the television. Suffice it to say in this matter that in the absence of the details in respect of the programme or the election campaign, it is impossible to determine as to whether they were in fact detrimental to the cause of the PPP or not. It appears that the interview of the Chief Election Commissioner has been twisted.

3. A statement has been attributed to the Chief Election Commissioner, given by him, while inspecting the printing of ballot papers at the Printing Corporation of Pakistan Press, Islamabad, saying that no rigging could be made in the presence of the Election Commission and if anybody had a proof, they should bring it to light. What is wrong with this statement, is beyond comprehension. As pointed out earlier, proof is the essential requirement before any allegation, unless admitted, is accepted, may it be before a court of law or otherwise, and it is still not forthcoming. Even in 70 constituencies, in which rigging has been volubly alleged, only 35 election petitions have been filed. The allegations of illegal or corrupt practices made in these 35 election petitions are still required to be proved before the Election Tribunals concerned. In case of the remaining 35 out of 70 constituencies, where no election petition has been filed, the election of the returned candidate has not been questioned and the result thereof has, therefore, already attained finality.

4. A portion of a statement, stated to have been made on Thursday (25-10-1990) by a spokesman of the Election Commission and appearing in "The Nation", dated 26th October, 1990, has also been included in the White paper. In accordance thereof, none of the contestants, polling agents and voters had *so far* lodged any complaint about rigging with the Election Commission. This part of the statement has been linked with a letter dated 19th October, 1990 from Mr. Iqbal Haider, Secretary Information, PDA, appearing on pages 350-351 (Annexure-17) and containing certain apprehensions and accusations. Another portion of the said statement, conveniently omitted from the press release, is reproduced as under:—

> "He said till the closure of the polling hours even Ms. Bhutto did not complain about rigging, but as soon as the election results started pouring in and Ms. Bhutto found that PDA was facing defeat, she started complaining about so-called rigging.
>
> The spokesman, however, added that some minor complaints of threatening each other by the rival contestant parties outside the polling booths were brought to the notice of the Commission which found these threats based on personal enmity."

It is evident that the spokesman mentioned about non-receipt of complaints on the polling day *i.e.* October 24, 1990. He did not say that the complaints were not received prior thereto. Thus, there is absolutely no contradiction in the statement vis-a-vis Mr. Iqbal Haider's letter dated 19th October, 1990.

5. A press conference was held by the Chief Election Commissioner in Islamabad on October 31, 1990 in which he stated that recounting of votes was a lengthy process and will delay the transfer of power to the elected representatives and that it could not be ordered unless cogent reasons were given. This statement also forms part of the White Paper. The attention of the authors thereof is invited to section 39(6) of the Representation of the People Act, 1976 which is quoted as under:—

> "39(6)—The Returning Officer may recount the ballot papers—
>
> (a) upon the request of, or challenge in writing made by a contesting candidate or his election agent, if the Returning

Officer is satisfied that the request or the challenge is reasonable; or

(b) if so directed by the Commission, in which case the recount shall be held in such manner and at such place as may be directed by the Commission."

It will be seen that the powers of recounting of votes conferred upon the Returning Officer and the Election Commission are discretionary and not mandatory and are to be exercised only when the validity and genuineness of the demand of a contesting candidate is established by him. He cannot claim recounting of votes as a matter of right. Had this been allowed, every defeated candidate would have come forward with applications for recounting of the votes. And, as rightly pointed out by the Chief Election Commissioner, the recounting process is a lengthy one and quite few days are required to recount votes cast at one constituency, which would have inordinately delayed induction of returned candidates into the Assemblies.

6. An important factor ignored by the authors of the White Paper is that the Election Commission is ordained by the Constitution to declare the results of election not later than fourteen days after the conclusion of the polls. For facility of reference, clause (2) of Article 224 of the Constitution is reproduced below :—

> "When the National Assembly or a Provincial Assembly is dissolved, a general election to the Assembly shall be held within a period of ninety days after the dissolution, and the results of election shall be declared not later than fourteen days after the conclusion of the polls"

7. A petition as at Annex-49 moved by Maj. General (Retd.) Naseerullah Khan Babar, the Election Agent of Ms. Benazir Bhutto (PDA), a candidate from the constituency. A prayer for re-counting of total votes of the constituency was made on the following grounds:—

(i) A number of bogus votes were polled;

(ii) False signatures of the Presiding Officers;

(iii) Fake stamps impressed on the ballot papers;

(iv) Ballot papers not matching with the counterfoils; and

(v) The number of votes polled not tallying with the electoral rolls.

The counsel of the petitioner and the respondents in person were heard in detail and it was observed that no order for re-count can be passed on general, vague or subjective pleas. The petition was, therefore, dismissed by the Commission *vide* its order dated 26-11-1990 at Annex-50.

8. Maulana Goher Rehman (IJI), a contesting candidate, filed an application, praying for re-count of votes of the entire constituency on the ground that he had been informed by the Returning Officer on telephone that he was winning by a margin of 2,000 votes. But subsequently, it was announced in the electronic media that the applicant had lost election by 1,800 votes.

9. The Commission dismissed the petition *vide* its order dated 9-11-1990 at Annex-51. It was held that the applicant had failed to make out any case for re-counting and the allegations required detailed enquiry which could be conducted by an Election Tribunal.

10. Raja Muhammad Afzal (IJI), a candidate for constituency No. NA-45 Jhelum-I, submitted an application for recounting of votes of the entire constituency. However, the applicant later on specified 27 polling stations for re-counting. The grounds for re-counting were as under:—

(i) The Presiding Officers have committed mistakes in counting of votes;

(ii) The District Returning Officer is a supporter of PDA and he appointed polling staff of his own choice; and

(iii) The ballot papers bearing marking stamp at more than one place have been counted in favour of the opposite candidate.

11. The Commission held that the case of re-count in terms of section 39(6) of the Representation of the People Act, 1976 has not been made out, as the allegations are based on mere apprehension or miscalculation.

12. The order of the Commission dated 2-11-1990, dismissing the said application is at Annex-52.

13. Another interview of the Chief Election Commissioner given in Karachi on November 23, 1990, has been made part of the White Paper. The Chief Election Commissioner had said that the whole world had acclaimed the 1990 general elections as honest, just and fair and no rigging was reported in the international press and that our election laws were foolproof and more safeguards against rigging were provided therein than many other democratic countries. Thereafter, a passage of the report made by the National Democratic Institute (NDI) was quoted which is reproduced below:—

> "The Election Commission, whether constrained by law or by custom, was unable or unwilling to alleviate the problems that emerged. At times, the Commission relied too heavily on other governmental bodies to implement its directives and to investigate complaints.
>
> These breakdowns in the electoral system are a very serious matter. Unless corrective action is taken immediately including expeditious adjudication of election petitions and the replacement of officials who, either through incompetence or wilfulness, tolerated irregular behaviour – confidence in the electoral system will be badly damaged, and the negative consequences will be felt for many years".

14. The first observation is based on lack of full knowledge of the working of the Election Commission. The Election Commission do not have a task force of its own employees to investigate the complaints. The complaints were generally referred for inquiry and report to District Returning Officers and Returning Officers, drawn from the highly esteemed judiciary and, wherever necessary, to the executive authorities, who are bound to assist the Chief Election Commissioner and the Election Commission in discharge of his or their functions as provided by Article 220 of the Constitution. It is a matter of record that no complaint, how trivial it was, went unattended and prompt action was taken by the Commission whenever received. In this regard 103 major complaints filed before the Election Commission were disposed of without delay, at the most within sixty

days of the publication of the name of returned candidate, as required under section 103AA of the Representation of the People Act, 1976. A complaint filed two days before the expiry of statutory period of sixty days was heard and disposed of by the Commission within the specified time. Detail of the complaints has been given in chpater 2.

15. The second observation of the NDI delegation is also based on misunderstanding and lack of knowledge of the law and procedure and is inconsistent with their preliminary report as well as the report compiled by the NDI on the 1988 general elections, as the 1990 general elections were held under the same laws as were in force in 1988. All the phases of election were successfully completed and the poll was held on the due date in a peaceful manner and with a minimum number of complaints. There has been no break down of the process or arrangements at any stage of election in any manner. It is pertinent to note that the rules and, by and large, even the polling personnel were the same for both the elections of 1988 and 1990. It will not be out of place to quote the following extracts from the NDI report on 1988 elections in Pakistan:—

> "The process established by laws and regulations for the conduct of the November elections in Pakistan is highly impressive and compares favourably with those of democratic countries around the world. Irregularities – such as intimidation of votes, multiple vote casting, last-minute movement of polling places, ballot-stuffing, and fraud during the counting phase can be deleted by Pakistanis monitoring the process. The real message of this report is that those who would seek to manipulate the election will be swimming against the current in Pakistan. If political leaders try to cheat, or cry foul when there is no foul, the system will expose them to their fellow citizens.
>
> The electoral laws and regulations used in these elections compared favourable with those of democratic countries around the world, and they provided the necessary confidence to ensure the participation of all prospective candidates, and to secure broad respect for the results, among both the contestants and the Pakistan people."

16. As regards the question of expeditious disposal of election petitions, it may be noted that the election petitions are, under the law,

triable by Election Tribunals comprising Judges of the High Courts and are disposed of as nearly as possible, in accordance with the provisions of the Code of Civil Procedure, 1908. The Election Commission has no control over the Election Tribunals once they are appointed by the Chief Election Commissioner and the petitions are referred to them. However, the Chief Justices have been requested to draw attention of the Election Tribunals to the imperative need for expeditious disposal of election petitions. Many other factors cause delay as has already been explained in detail at paragrah 22 of chapter 2 of this volume of the Report.

17. The electoral process is multi-dimensional and comprises numerous phases which are equally important and inter-linked. There is no denying the fact that all phases of elections were meticulously planned and executed within the scheduled time and there is not a single instance of dislocation of arrangements or lack of action on the part of the Election Commission. It not only organized and conducted the elections in 68 days but also disposed of all complaints, including stereotyped and routine complaints, preferred before it, on merit. The statement with regard to the officials' incompetence, wilful behaviour is, therefore, neither justified nor backed by facts and reasons.

18. The "irregularities" in appointment of Ch. Shaukat Ali and Mr. M. Humayun Khan as Secretary and Additional Secretary respectively, as alleged in the White Paper, have been adequately discussed and effectively replied in chapter 4 of this volume.

19. As regards the appointment of Returning Officers from local administration instead of the judiciary, it is stated that all efforts were made to appoint judicial officers, but in a few cases, they were taken from the local administration due to non-availability of judicial officers in that area. In fact, the requirement of section 7 of the Representation of the People Act, 1976 is that the Returning Officers have to be appointed from amongst the officers of the Federal Government, Provincial Governments, corporations controlled by any such Government and local authorities. Judicial officers are and were preferred and appointed because of their competence well known or well established integrity and impartiality and because they are free from the influence of the executive and with the sole aim of holding free, fair and just elections in the country.

20. Likewise, appointment of unqualified polling staff in many cases has been alleged. However, only one example has been stated, relating to constituency No. NA-181 Sanghar-II. It has been averred that a Mukhtiarkar was appointed as Assistant Returning Officer, who made appointments of polling staff, received ballot papers/other documents, supplied ballot papers/other material, counted votes, made and announced official results, packed and sealed election record etc., and was in effective charge of the constituency.

21. This is yet another case of ignorance or deliberate suppression of the legal provisions on the subject. Sub-section (3) of section 7 of the Representation of the People Act, 1976 is reproduced below for the information of all concerned:—

> "7(3) An Assistant Returning Officer shall assist the Returning Officer in the performance of his functions under this Act and may, subject to any condition imposed by the Commission, exercise and perform, under the control of the Returning Officer, the powers and functions of the Returning Officer".

Now, if any one of them did perform any function of the Returning Officer, subject to the requirement of the said provision of law, what was wrong with it, although no evidence has been adduced to indicate that the functions of the Returning Officer were allegedly performed by the Assistant Returning Officer. It may be stated that a Mukhtiarkar in Sind Province is a Tehsildar in Punjab Province and as such, a responsible officer. As many as three Mukhtiarkars were appointed as Assistant Returning Officers in the constituency under reference. It is also not mentioned as to who he was. Another allegation to the effect that he worked directly under the instructions, influence and pressure of caretaker Chief Minister of Sind on account of latter's son being a candidate, also is only an allegation, without particulars, evidence/proof.

22. The appointment of teachers as members of the polling staff is also questioned on the ground that they were sympathetic towards the IJI candidates and used ballot papers in their favour. This allegation seems to be baseless as neither any particulars of the teachers as to who they were, nor any evidence in support thereof has been introduced in paper. Repetition of false allegation could serve none.

23. A brief mention of the partisan attitude of the local polling staff has been made in chapter 7 of the White Paper, details of which are stated to be given in chapter 8. A befitting reply thereto is contained in chapter 8 of this volume.

24. Besides, the gist of a statement of Mr. Mumtaz Ali Bhutto of Sind National Front, appearing in the Daily Jang, dated 26th October, 1990 is given, which is to the effect that he would boycott the Provincial Assembly, Sind election on account of massive rigging in his constituency (NA-155 Shikarpur-II), but this press statement is belied as he did not do so. On the contrary, he contested the election from constituency No. PS-30 Larkana-II and was defeated. He also filed the return of election expenses, showing an expenditure of Rs. 1,53,434. The press statement is further belied as he did not question the result of election by filing an election petition which is the only legal course to establish rigging, if any. Thus, he accepted the verdict of the electorate.

25. Another excerpt from the NDI's report in respect of disposal of complaints of election petitions is added which is a repetition and has already been dealt with at paragraphs 6 and 8 of this chapter.

26. It has been further contended that although the offences and penalties are provided under the law, the Election Commission lacks the authority to prevent the commission thereof. In reply thereto, it would suffice to quote an example. Section 302 of the Pakistan Penal Code deals with the offence of murder and the punishment provided therefor. Can a murder be prevented, despite a sizeable contingents of law enforcing agencies and the judiciary? Such limitations are inherent in every field, but the Election Commission never shirked from their legal and constitutional duties and took all possible steps to prevent electoral abuses.

27. Another limitation ascribed to the Election Commission is the presence of an elaborate procedure for the trial of election petitions and inordinate delay in disposal thereof. It has been concluded that in this way unless the election petition is decided, a candidate returned by irregular means will continue to remain a member.

28. The reply is very simple. The promulgation of law/rules and procedure framed thereunder is within the exclusive province of the Federal Government and the only function of the Election Commission is to implement them. It will not be out of place to mention that

1988 general elections were held under the same law, rules and procedure. As many as 103 election petitions were filed in respect of 1988 elections yet no attempt whatsoever was made by the then Government to effect any amendment therein. The fact is that the delay is generally caused by the petitioners themselves for many reasons, such as, lack of evidence, non-availability of witnesses and court adjournments, pre-occupation of advocates in other cases, heavy load of normal court cases etc. This Commission has, therefore, recommended legislation in this regard.

29. The role of the Election Commission has been described as "dubious than its role in other years". It is a matter of ordinary prudence and common intellect that the Election Commission is an institution and not a group of specific individuals. The Chairman and the Members change but the Election Commission stays as a constitutionally formed body, fully alive to their conscience, the functions and duties assigned to them under the law and the Constitution. This institution was the same which conducted the previous general elections. Their role was not criticised in the 1970, 1985 and 1988 general elections although the elections of 1985 and 1988 were held under the Representation of the People Act, 1976, under which 1990 elections were held by almost the same judicial and executive officers and the number of election petitions in 1985 was much more than in 1990. The success or defeat in the elections of particular party cannot be made the criterion for judging the creditability of the Election Commission.

30. It has been further asserted that action on election irregularities, excesses and even offences was deferred by the Election Commission. It has been stated at more than one place in this volume that in each and every complaint, regardless of its nature, appropriate relief was granted wherever found necessary by the Election Commission or their functionaries.

31. Similarly, it has been alleged that rigging was committed at 30/35% polling stations, so as to enable the Election Commission to point to some 65/70% polling stations where election day activities were orderly and fair.

32. Both of these allegations are devoid of any force, as no particulars, evidence/proof is furnished to substantiate the same.

CHAPTER – 8

The first allegation made in this chapter of the White Paper relates to change of procedure by the Election Commission for bulk-breaking of election material. It has been alleged that :—

> "The normal practice of the Election Commission is to deliver boxes and the ballot papers only a day or two prior to the day of elections. In the October, 1990 elections, boxes and ballot papers were delivered to the Returning Officers 5 to 7 days before the date of the elections with orders that the ballot papers should be checked prior to the elections. The boxes of ballot papers were thus with the Returning Officers for about a week prior to the elections and thus open to all kinds of manipulations and tampering".

2. In support of this allegation, photostat of a telex issued by Mr. M. Humayun Khan, Additional Secretary, Election Commission, Islamabad has been appended to the White Paper as Annexure-18. Incidentally, it may be pointed out that this telex is the only piece produced as evidence in the White Paper against the conduct of Mr. Humayun Khan. But the fact is that, in keeping with the past practice, a teleprinter message bearing No. F. 2(11)/90-Cord. dated 18-10-1990 was addressed by the Additional Secretary, Election Commission to the Provincial Election Commissioners five days before the polling day for checking the ballot papers before distribution down to the level of polling stations. The telex in question was issued with the approval of competent authority. This exercise is unavoidable to ensure that the ballot papers do not contain any error, mistake or omission and that the requisite quantity of ballot papers is available to meet the requirement of each constituency to avoid last-minute dislocation of arrangements. The authors of the White Paper have misconstrued and misinterpreted the contents of this telex in an attempt to create doubts and misgivings in the public mind. For facility of readers, it may be pointed out that the ballot papers of a constituency are packed in wooden boxes in the Printing Press for safe transportation to the District Headquarters. These boxes are opened at the District Headquarters under the supervision of District and Sessions Judges (District Returning Officers) and the Returning Officers (Senior Civil

Judges, Civil Judges) for distribution of the ballot papers to each polling station in that constituency before the polling day. The number of polling stations in a National Assembly constituency generally ranges between 150 and 200. This essential exercise has been misconstrued to mean that the District Returning Officers were instructed "to open boxes containing ballot papers on the pretext of checking them" which is misleading. At the time of bulk-breaking of the election material consisting of more than 100 items and distribution of ballot papers, officers of the Election Commission (such as, Election Officers, Assistant Election Commissioners, Deputy Election Commissioners) remain present to assist the District Returning Officers and Returning Officers in preparing invoices and in packing the election material, including ballot papers, in polling bags separately for each polling station, according to its requirement. The bags are sealed after packing and handed over to the Presiding Officers a day before the poll against proper acknowledgement. The Presiding Officers open the sealed bags in the presence of polling agents of the candidates before commencement of the poll on the polling day. No complaint of any irregularity or misuse in this regard was made by the PDA or its candidates to the Election Commission. The instructions issued in this behalf during the 1990 general elections are identical to the instructions issued during the 1988 elections and prior to that in 1985, 1977 and 1970 elections. For comparison, a copy each of the instructions issued for the 1990 general elections and for the 1988 general elections appear at Annex-53 and Annex-54 respectively. The allegation of change of procedure for distribution of ballot papers is, therefore, false and has intentionally been designed to malign an officer of the Election Commission.

3. Allegation with regard to the change of polling staff has been made as under:—

> "In a number of constituencies, the original polling staff as declared was changed just a couple of days prior to October 24, 1990. This was a clear violation of election procedures, but even after many complaints no action was taken. This happened, for example, in NA-1 Peshawar-I, where Mohtrama Benazir Bhutto was contesting against Ghulam Ahmed Bilour of the ANP. Annexure 19 contains copies of the office memorandum issued from the office of the returning officer of this constituency. Names of polling staff have clearly been changed in this memorandum. According

to the petition filed with the Election Commission by Mohtrama Benazir Bhutto, this memorandum was issued on either the 22nd or 23rd of October".

4. The appointment of Presiding Officers and polling officers is made by the Returning Officer with the approval of District Returning Officer as required by sub-section (2) of section 9 of the Representation of the People Act, 1976, as reproduced below:—

"A list of such Presiding Officers and polling officers shall be submitted to the District Returning Officer at least 15 days before the polling day for its approval and no change in the personnel shall be made except with the approval of the Commission."

5. These provisions were complied with. Since the matter is *sub judice* before the court, no detailed comments are offered on the question raised above. Suffice it to say, however, that the Additional District and Sessions Judge and the District and Sessions Judge, Peshawar, who had acted as Returning Officer for constituency No. NA-1 Peshawar-I and District Returning Officer, Peshawar respectively, were conscious of their responsibilities fixed under the law and violation of the procedure by them, as alleged, is simply out of the question.

6. In this context, it will not be out of place to mention that Mr. Islam-ud-Din Sheikh (IJI), a contesting candidate from constituency No. NA-151 Sukkur-I filed a petition under section 103AA praying therein that the election of the constituency may be declared as void on the ground that large number of polling personnel were changed by the Returning Officer concerned in contravention of section 9 of the Representation of the People Act, 1976.

7. The Returning Officer alongwith the record was summoned who appeared before the Commission at Islamabad as well as at Karachi. Parties were heard at length at both the said places. After perusal of the relevant record, the Commission was of the view that the petitioner failed to establish any *mala-fide* on behalf of the Returning Officer. The petition was, therefore, dismissed *vide* order dated 30-12-1990 at Annex-55.

8. Enrolment of voters on the eve of 1990 general elections has been questioned in the White Paper in the following manner:—

> "One means of rigging polling results is through manipulation of voter registration. This took place in the October 1990 elections. It has been authoritatively learnt that 2.5 million new voters were registered on the 4th and 5th September, just a day prior to the closing of the registration on the 6th of September. This means that on these two days alone an average of over 12,000 new voters were added to each constituency (*i.e.* 2.5 millions divided by 207 seats). As, however, the addition of new votes would not have been equally spread out, the number of registered votes in certain constituencies were substantially increased."

9. The allegations are false. No evidence in support of the allegations is produced. No name of authority from where it was learnt that 2.5 million new voters were registered. No source is disclosed. No details are given even province-wise much less constituency-wise. However, the factual position in this regard has already been explained in the booklet titled "Facts and Figures relating to the General Elections 1990" published by the Election Commission in January this year. Extract of the relevant paragraphs at pages 5-6 thereof is reproduced below:—

> "The total number of registered voters on the eve of the 1988 general elections was 4,80,61,670. At the commencement of the process of 1990 general elections on September 6, 1990, the total voting strength was 4,86,48,960. In all 5,87,290 fresh voters were registered by the Registration Officers, in due course of law, during a period of 22 months falling between November, 1988 and September 5, 1990. In accordance with the provisions of section 20 of the Electoral Rolls Act, 1974, no addition, deletion or correction of names was or could be made in the electoral rolls after the constituencies were called upon by the Election Commission on September 6, 1990 to elect their representatives. The increase of 5,87,290 voters during the intervening period is 1.22% only.
>
> For further comparison, the number of registered voters during the previous elections and percentage of increase in

registered voters during the intervening period was as follows:—

1970	=	2,57,30,280	(the then West Pakistan)
1977	=	3,08,99,152	(20.09%)
1985	=	3,43,96,661	(11.32%)
1988	=	4,80,61,670	(39.73%)
1990	=	4,86,48,960	(1.22%)

Dividing the total increase of 5,87,290 voters by the total number of 217 seats in the National Assembly, the average increase of votes per National Assembly constituency was 1,216. The increase of votes in about two years' period is normal and it does not in any manner indicate the excessive enrolment of voters."

10. The allegation of excessive enrolment of voters to the extent of 2.5 millions is not based on facts and is, therefore, not tenable.

11. In this regard it has further been alleged as under:—

"Haji Rehmatullah Behan, PDA candidate from NA-158 (Naushero Feroze), filed a petition with the Election Commission regarding registration of bogus votes in NA-158 which was being contested by Mr. Ghulam Mustafa Jatoi. The petition stated that new voters had been added in the thousands to the voting lists of scarcely populated areas. Further the new voting lists were not published according to the legal procedure but were unauthorized and not signed by the registration officer or the election officer."

Haji Rehmatullah Behan and Mr. Muhammad Younis, Advocate, had agitated this question before the Election Commission. The Election Commission held that in the absence of the particulars and evidence in this regard, names of all the disputed voters cannot be deleted from the electoral rolls. A copy of the order passed by the Election Commission in this behalf has been appended at Annex-56.

12. The following objection has been raised with regard to the provision of supplementary lists of electoral rolls to the PDA in the White Paper :—

> "Polling lists with added voters' names were supplied to the presiding officers and IJI candidates' agents on polling day during the process of voting in selected constituencies, while the polling agents of PDA candidates were either not given these new lists or were given them several hours later, which meant that the PDA polling agents could not verify the accuracy of the counts or the genuineness of the voters.
>
> The Frontier Post estimated that IJI leaders had enlisted from 2,000 to 3,000 new votes in each constituency. These lists were available at the local election office but were not provided to PDA candidates."

13. The electoral rolls and additional lists of voters are priced publications under the rules. As per instructions of the Election Commission, the electoral rolls for a whole constituency were placed on sale by the Registration Officers and Election Officers. The candidates, their election agents and political parties were free to purchase as many copies of the electoral rolls of a constituency as were required by them. It was for the parties or the candidates to purchase the electoral rolls for supply to their polling agents. The allegation is baseless and devoid of any substance.

14. The following allegation has been made in respect of duplicate entries in the electoral roll of constituency No. NA-95 Lahore-IV :—

> "Air Marshal Asghar Khan, a central leader of the PDA, claimed that in his constituency (NA-95, Lahore-IV) supplementary lists were provided to presiding officers and to the IJI polling agents alone at about midday of October 24. Asghar Khan also said that a large number of duplicate entries in the voters lists were identified prior to polling day. This was pointed out in writing to the returning officer along with the voters lists showing duplicate entries well before polling day, but no action was taken to prevent bogus voting on polling day. Air Marshal Asghar Khan presented the press with a list of the voters of NA-95, Lahore belonging to wards 70 and 81 which showed 193 double entries of voters. (see Annexure 21)".

A "list of bogus votes" was sent by Mr. Zia H. Rizvi, Advocate and representative of Air Marshal (Retd.) Asghar Khan through a letter dated 20-10-1990 (Annex-57) to Mr. Ziaur Rehman, Additional District and Sessions Judge, Lahore and Returning Officer for constituency No. NA-95 Lahore-IV. The list was forwarded by the Returning Officer to the Provincial Election Commissioner, Punjab who referred the matter to the Registration Officer for investigation and report. According to his report, "no voter included in the disputed list has been found bogus." A copy of his letter appears at Annex-58. The allegation made in the above quoted paragraph is baseless and without substance.

15. It will not be out of place to refer here to a petition moved by Air Marshal (Retd.) Asghar Khan before the Chief Election Commissioner on October 7, 1990 which *inter alia* contained the following allegation :—

> "In this connection I am attaching the list of bogus votes registered in this constituency of people who do not reside there. This include 476 voters registered at 90-Railway Road, Lahore. The actual number of voters cannot exceed above 50. 90-Railway Road, Lahore belongs to Mian Nawaz Sharif and 75% of the area is an open plot. Would you kindly hold an immediate spot enquiry and make sure that the names of persons who do not qualify to be voters under the People's Representation Act and Election Rules are excluded from the list of voters. These suspicions have been augumented by the news that an inordinately high number of votes have been registered in NA-95 and that this number exceeds the additions made in any other constituency."

16. The petition was rejected by the Chief Election Commissioner *vide* order dated 17-10-1990, on the ground that under section 20 of the Electoral Rolls Act, 1974, no amendment in the electoral rolls could be made after the constituency was called upon to elect its representative. Section 20 is reproduced as under:—

> "20. No correction to be made after constituency called upon to elect.—No revision or correction of any electoral roll for an electoral area shall be made nor shall any order under section 19 be made in respect of any electoral roll at any time

> after the constituency of which such electoral area forms part has been called upon to elect its representative and before such representative has been elected."

The Chief Election Commissioner also directed that the representation/complaint may be placed before the Election Commission. The Election Commission considered the representation, agreed with the order of the Chief Election Commissioner and consequently declined to grant relief as prayed for by the complainant. Copies of the orders of the Chief Election Commissioner and the Election Commission are at Annex-59 and Annex-60 respectively.

17. The following allegation of double enrolment of voters in constituency No. NA-13 Abbottabad-III has been made in the White Paper:—

> "Omer Asghar Khan, PDA candidate from NA-13 Abbottabad-III pointed out in writing to the Returning Officer prior to the election that there were duplicate entries in the voters lists in two wards, but no action was taken."

The letter dated 8-10-1990 addressed by Mr. Omer Asghar Khan to the Returning Officer with a copy endorsed to the Chief Election Commissioner was referred to the Returning Officer who reported as under :—

> "Regarding third application about double entry, it was held that the fact of double entry in the electoral rolls should have been brought before appropriate authority at relevent time. Moreover, due to punching of identity cards possibility of double voting is excluded. However, in case electors cast their votes in two polling stations, the same fact be brought to my notice but no such complaint has been received by me that electors have cast double votes in Khanpur polling station."

18. It is a matter of record that the Election Commission received the following complaints from Mr. Omer Asghar Khan, a PDA candidate for election from constituency No. NA-13 Abbottabad-III :—

(1) Letter dated 9-10-1990 addressed to the Returning Officer with a copy to the Chief Election Commissioner (Annex-61).

(2) Letter dated 8-10-1990 addressed to the Returning Officer with a copy to the Chief Election Commissioner (Annex-62).

(3) Another letter dated 8-10-1990 addressed to the Returning Officer with a copy to the Chief Election Commissioner (Annex-63).

(4) Letter dated 31-10-1990 addressed to the Chief Election Commissioner (Annex-64).

All the aforesaid complaints were referred by the Election Commission to the District and Sessions Judge (District Returning Officer), Abbottabad for inquiry and report. The Additional District and Sessions Judge/Returning Officer made the necessary inquiries and according to the findings of inquiry officer, these complaints were found baseless. A copy of the inquiry report dated 4-11-1990 has been placed at Annex-65.

19. The general allegation by Mr. Omer Asghar Khan that no action was taken by the Election Commission and Returning Officer on his complaints is, therefore, not correct.

20. Further, Mr. Omer Asghar Khan did not file a petition before the Election Commission under section 103AA of the Representation of the People Act, 1976, nor did he file an election petition challenging the election from constituency No. NA-13 Abbottabad-III in accordance with law.

21. The allegation of "Shifting and Creating "Ghost" polling stations" has been made in this chapter and the constituencies referred to in this connection are NA-181 Sanghar-II, NA-171 Hyderabad-V, NA-158 Naushero Feroze-I, NA-159 Naushero Feroze-II and PS-16 Naushero Feroze-II. No particulars of such polling stations and no evidence in support of the allegations is produced. Further, the process of setting up of polling stations is not an administrative measure as is generally believed. This process is governed by section 8 of the Representation of the People Act, 1976, which is reproduced below for facility of ready reference:—

"(1) The Returning Officer shall, before such time as the Commission may fix, submit to the District Returning

Officer a list of polling stations he proposes to provide in a constituency for the purpose of election of a member for that constituency.

(2) Subject to the direction of the Commission, the District Returning Officer may make such alterations in the list of polling stations submitted under sub-section (1) as he deems necessary and shall, at least fifteen days before the polling day, publish in the official Gazette the final list of polling stations specifying the electoral area the electors whereof will be entitled to vote at each polling station.

(3) The Returning Officer shall establish in each constituency polling stations according to the final list published under sub-section (2).

(4) No polling station shall be located in any premises which belong to, or are under the control of, any candidate."

According to the directions of the Commission contained at paragraph 67 of the Manual of Instructions for the Guidance of District Returning Officers and Returning Officers, "the polling scheme of the last general elections held in 1988 should ordinarily be adopted for ensuing elections." The location of polling stations was changed according to law only in a few cases where the building was not found suitable on physical verification. The lists of polling stations were published in the official Gazette at least fifteen days before the polling day and no change was possible in the lists of polling stations thereafter. The allegations of shifting and creating 'Ghost' polling stations are unsupported by any proof.

22. It has been alleged in the White Paper that requirement of identity card was used to rig the elections as under :—

"The identity card requirement was used to rig the elections in two ways. Firstly the requirement disenfranchised voters who did not have, or who were unable to obtain identity cards. Secondly, false identity cards were used to cast bogus votes, and false thumb impressions or signatures were put on the counterfoils of ballot papers. This was made easier because, while according to the rules the national identity

card had to be shown and its number noted on the ballot counterfoil, at most polling stations the identity card number was not recorded."

The instances quoted to substantiate this allegation are: a report submitted to the PDA by Mr. Mohammad Aslam Bodla, observation of Mr. Omer Asghar Khan at the female polling station of constituency No. NA-13 Abbottabad-III, press statement of Mr. Asghar Khan regarding abuses of identity card in constituency No. NA-95 Lahore-IV which was supported by the team of French observers, complaints of PDA candidates regarding with-holding identity cards from PDA supporters in NA-158 Naushero Feroze-I and NA-159 Naushero Feroze-II, and finally the press statement of Mr. Mehran Khan, PDA candidate from NA-157 alleging installation of identity card machine in the Ministers' homes.

23. No proof or evidence of any kind has been produced or quoted in support of these allegations. The allegations are generally based on hear-say and press reports. In one case, extract from the election petition filed by one of the PDA candidates has been quoted. In the absence of any evidence and in view of the fact that the matter is *sub judice* before the court, no further comments are made. The credentials of the French team are discussed in chapter-9 of this report.

24. Another allegation under the caption "Looting ballot papers and ballot box stuffing" has also been made in this chapter of the White Paper. The instances quoted therein are briefly stated as under:—

(i) In NA-95 Lahore-IV, armed men forcibly took away ballot papers;
(ii) in the same constituency, 1300 ballot papers were supplied whereas there were only 800 voters;
(iii) in NA-158 Naushero Feroze-I, fraudulant ballot papers were stuffed into ballot boxes;
(iv) in PB-16 Sibi, ballot boxes were removed from a female polling station;
(v) in NA-181 Sanghar-II, ballot boxes were illegally taken away;
(vi) in PP-82 Gujranwala-VI, armed men stamped ballot papers; and
(vii) in PP-84 Gujranwala-VIII, voters were harassed and polling staff was forced to sign ballot papers.

25. Firstly, these are baseless allegations without any evidence. Secondly, in all the above-mentioned cases, election petitions have been filed. Election petitions in respect of the case at (iii) was dismissed, while the one at (v) was withdrawn. As the remaining petitions are *subjudice*, no comments can be offered in respect thereof. However, in case of election in constituency No. PP-82 Gujranwala-VI, the Election Commission considered the report of Returning Officer and ordered repoll at 13 polling stations, which was held on 17th November, 1990. The order of the Commission passed in this case is reproduced below:—

> "Perused the report of the Returning Officer which is based on the reports of the Presiding Officers of thirteen polling stations, namely, 5,6,7, 17, 18, 19, 24, 28, 29, 30, 49, 61 and 69.
>
> We have heard the advocate Hafiz S.A. Rehman and Azam Cheema of the candidates who have secured the highest number of votes and the candidate who has secured the next highest number of votes.
>
> The facts narrated in the report could not be satisfactorily controverted. It has, therefore, been established that in these 13 polling stations the votes recovered from the ballot boxes failed to reflect the correct choice of the voters.
>
> We would, therefore, declare the votes cast at aforesaid 13 polling stations void and further direct that repoll will be held on these 13 polling stations on the date to be fixed by the Commission."

26. It has repeatedly been alleged that "postal ballot papers were fraudulantly used in some cases to provide extra votes for IJI candidates" and this allegation also finds a place in the White Paper. At the very outset, it may be pointed out that in all 63,635 votes were cast by postal ballot in case of election to the National Assembly and 78,844 votes were cast by postal ballot for election to the four Provincial Assemblies. The total number of valid votes cast by postal

ballot during the five general elections to the National Assembly is tabulated below for comparison :—

Name of Province/Area	Number of valid postal ballot papers				
	1970	1977	1985	1988	1990
Federal Capital	26,146	37	191	104	17
Punjab		26,412	28,703	33,783	37,398
Sind	8,227	4,829	8,275	14,752	8,089
NWFP	5,229	10,224	8,358	10,762	14,772
FATA		16	5	5	8
Baluchistan	407	NIL	1,291	3,255	3,351
Total :	40,009	34,518	46,823	62,641	63,635

From the above table it is discernible that this time the number of postal ballot papers cast was more only by 994 than the previous general election held in 1988, while the voting strength had increased by 5,87,290. If the increase of postal ballot papers is divided per constituency, the average is less than five votes.

27. The allegation of misuse of postal ballot papers during this election stands belied by the afore-mentioned facts and figures. To quote only one example, it was alleged that "24,000 postal ballots were polled by the retired and in-service personnel of the Armed Forces which changed the electoral game in favour of Mr. Ejaz-ul-Haq". According to the result of election consolidated by the Returning Officer for constituency No. NA-39 Rawalpindi-IV, Mr. Ejaz-ul-Haq polled 87,829 votes as against 57,130 votes polled by his nearest rival, Raja Shahid Zafar. The difference of votes between the two candidates was 30,699. In this constituency, the total number of votes cast through postal ballot was 132, of which Mr. Ejaz-ul-Haq bagged 90, Raja Shahid Zafar polled 36 and Syed Riaz Hussain Shah secured 6 votes. The actual number of ninety postal ballot papers falling to the share of winning candidate was inflated to 24,000 to make a basis for a spurious allegation. Press clipping from the daily "Muslim", Islamabad dated 29-10-1990 and another press cutting from the daily "Jang", Rawalpindi dated 30-10-1990 appear at Annex-66 and Annex-67 respectively.

28. It has been stated that ballot papers in constituencies No. NA-152 Sukkur-II and NA-153 Sukkur-III were looted. On receipt of this information, immediate corrective action was taken by the Election Commission and polling was conducted in a peaceful and orderly manner and the ballot papers used unauthorisedly were preserved as case property.

29. It has been alleged that three books of ballot papers were snatched away from the Presiding Officers of polling station No. 24 of constituency No. PP-140 Sheikhupura-VII. This allegation is based on a newspaper report and has not been substantiated in any way.

30. Sanctity of the ballot was allegedly violated at various polling stations of PP-226 Bahawalnager-II. On receipt of telegraphic complaints from Mr. Abdul Qadir Shaheen, the defeated candidate, the Election Commission called a report from the Returning Officer concerned, who made detailed enquiries in the matter and found that the allegations were baseless. The reports of the Returning Officer are at Annex-68.

31. The election in constituency No. PS-14 Jacobabad-V has also been made the subject matter of the White Paper. Apparently, the mention thereof was hardly called for, as it has been further stated that the Election Commission took cognizance of the matter and ordered fresh poll in the entire constituency.

32. A vague and general statement has also been included which is to the effect that many PDA candidates complained of rigging at "selected constituencies" by the Presiding Officers during lunch and tea breaks. This contention is baseless for three reasons amongst others. Firstly, no details or particulars of constituencies are given. Secondly, casting of votes is a continuous process and break or adjournment of any kind during the polling process is strictly prohibited and thirdly, polling agents of the candidates must have been there.

33. Use of un-numbered ballot papers in election to constituency No. NA-160 Nawabshah-I has been alleged. Annexure-28 to the White Paper is a copy of a letter from Mr. Muhammad Ismail Odhejo, election agent to Mr. Asif Ali Zardari, addressed to the Returning Officer to this effect. It will be pertinent to point out that the Constitution provides for secret ballot. The ballot papers do not,

therefore, contain any serial number or other mark as any such number or mark will violate the secrecy of ballot. The allegation generally made by the PDA that un-numbered ballot papers have been used in the 1990 election is either based on ignorance or is misleading. It may, however, be clarified that for counting purpose the counterfoil of each ballot paper of a constituency is serially numbered and the ballot paper is detached from the counterfoil before handing it over to the voter after completion of the necessary formalities. The ballot papers used during the 1990 elections were exactly the same as were used in the 1970, 1977, 1985 and 1988 elections.

34. A portion of the NDI report has also been quoted which is to the effect that incidents of violence and intimidation took place in certain constituencies and that PPP supporters were arrested prior to the polls. In the absence of any particulars and details of the constituencies, the report does not at all call for a reply. But in one constituency of National Assembly, namely, NA-91 Sialkot-VII, one IJI candidate was killed. Further, such matters are taken care under sections 81 and 86 of the Representation of the People Act, 1976 and could be made grounds for setting aside an election if the allegations are proved before the Election Tribunal.

35. Likewise, a report of the French Observers Team included in the White Paper with regard to preventing women voters from casting their votes is also devoid of any particulars of the constituencies or details. Hence no comments can be offered.

36. Same is the position of a report published in "The Frontier Post", dated 26th October, 1990 in which it has been stated that a number of women were deprived of the right of franchise, as the Returning Officer demanded 'Nikah Namas'. A press report without proof has no legal validity. Further, this report appears to be the figment of imagination of the reporter, as no such complaint was ever made by any person and the Returning Officer is not required to identify the voter at the polling station.

37. It has been stated that in constituency No. NA-13 Abbottabad-III, Mr. Omer Asghar Khan, PDA candidate, was manhandled at a ladies polling station and turned out therefrom and that he informed the duty magistrate and the police but no action was taken by them. This is a mere allegation without particulars as to who

manhandled him and in which polling station. Further, no evidence to this effect has been adduced either by him or by the authors of the White Paper.

38. According to a report in "The Nation", dated 30th October 1990, Ms. Benazir Bhutto alleged that not less than 100 PDA polling agents were picked by the Sindh Police and goondas of Mr. Jatoi's son on the polling day. This statement is too vague to make any comment thereon and also lacks evidencial support.

39. An FIR stated to have been lodged by one Ayub Shah in respect of disturbance outside a women's polling station in constituency No. NA-1 Peshawar-I by ANP supporters has been included in the White Paper. It is stated that a copy of the said FIR appears at Annexure-32 thereof. It is interesting to note that there is no annexure by this number. Thus, it is not possible to make any comment thereon.

40. As regards complaints received from Syed Zafar Ali Shah, a PDA candidate regarding arrest of his supporters, the same were forwarded to the Chief Secretary, Govenment of Sind. It is, however, stated that no evidence was furnished by the candidate in support of his allegation.

41. An accusation has been levelled that in PP-111 Sialkot-X, sixty nine polling agents of the PDA were thrown out from various polling stations and that certified copies of the result of count were not issued to them. There is neither any mention of the source of information nor the names of the polling agents or number of polling stations are given, nor affidavit of any such polling agent is included in the White Paper in support of the allegation. The text is also silent as to whether the matter was reported to any concerned quarter. The report is too general and vague.

42. The report of Mr. I.A. Rehman, stated to have appeared in "Newsline", November, 1990 about bullying a presiding officer at a polling station lacks details.

43. A report of Mr. Allah Dino Channa, the district reporter of daily "Ibrat", has been quoted. According to him, he was beaten up, but by whom and why, is not stated. He went on to say that while sitting in the office of a Returning Officer, a faked result was brought

from a polling station, which was torn by the Returning Officer, who asked the staff to prepare a new one. Mr. Channa also claimed that on 20 polling stations, PDA's agents were not present who were removed by force. It is also stated that two cases were got registered against Mr. Channa. The contentions contained in the aforementioned report could have been proved by furnishing documentary evidence in the shape of statements/affidavits of witnesses, number and dates of FIRs etc. However, no such attempt has been made in this behalf and as such, no notice can be taken thereof.

44. Under caption "Refusing to give PDA polling agents official result sheets" in this chapter, an attempt has been made to show that the Presiding Officers either refused to give the results of the count to the PDA election agents or the ones supplied to them were on plain paper, written with lead pencil and without signatures. A statement of the Chief Election Commissioner appearing in the "Nation", dated January 8, 1991, has been referred to in which he directed that in future polling agents should be furnished with written statements of the results of the count and their signatures be obtained so that no false propaganda could be made. It may be pointed out that the statements referred to in the daily "Nation" pertained to the bye-elections, which were held on 10th January, 1991. It was not an acknowledgement but a reminder to the Presiding Officers to observe the same procedure for bye-elections, as they had followed during the general elections.

45. Presiding Officers are required under sub-section (11) of section 38 to furnish certified copies of the statements of the count to such of the candidates, their election agents or polling agents as may be present and obtain a receipt for such copies. Express instructions were issued to all Presiding Officers in this behalf by the Election Commission and this item was part of their training in the polling process. It is a common and unfortunate practice that defeated candidates invariably resort to false propaganda that they did not receive the result or if received, it was not on prescribed form or in proper shape. In quite a few cases, the candidates or their agents are not present at the time of counting of votes. The Chief Election Commissioner issued the aforementioned instructions with a view to obviating baseless and scandalous propaganda from the candidates for bye-elections who would say any thing to save their face and blame others for their defeat. Again, the basis of such accusations is unproven reports published in various newspapers. The charges could have been

brought home by annexing copies of the results of the count on plain paper, written with lead pencil and without the signatures of the Presiding Officers, if there were any.

46. Quoting a French observer, it is alleged that a Presiding Officer, while on his way to see the Returning Officer for reporting, stayed at the house of an IJI candidate and rigged the results. The Presiding Officer, the constituency or the polling station do have name and number. Neither the name of the Presiding Officer, nor the house address of the candidate, nor the name of the candidate or the number and name of his constituency has been mentioned. It seems that the French observers were fed with wrong and incorrect information.

47. A specific instance of rigging the result of election in respect of constituency No. PP-226 Bahawalnagar-II has repeatedly been quoted in the White Paper, which is to the following effect :—

> "In PP-226 Bahawalnagar-II, results were changed in 37 polling stations. In this provincial assembly constituency of the Punjab, out of a total of 82 polling stations, the vote count of the PDA candidate, as shown in the certified result sheets (Form-XIV) in 37 polling stations, were more than the votes shown in the consolidated result compiled by the returning officer on October 30, 1990. For example, according to the results issued on Form-XIV by the presiding officer for polling station No. 1, Government City High School, Bahawalnagar, Mr. Abdul Qadir Shaheen, the PDA candidate, received 351 votes and Mr. Shaukat Ali of IJI received 239 votes, but the consolidated result sheet shows 251 votes for Mr. Abdul Qadir Shaheen. Similarly the votes of the IJI candidate have been increased by 100 to 329 instead of 239 as shown in the result sheet of this polling station. As mentioned above, such irregularities have been committed in 37 polling stations of this constituency."

To prove this allegation, copies of the result of election on Form-XIV in respect of 37 polling stations have been appended as Annexure-23, at pages 416-452 thereof.

48. Facts of the case are that a publication titled "Intikhabat 90 Ka White Paper" written by Mr. Abid Tehami was published by M/s. Jang Publishers, Lahore in April, 1991 which carried at pages 188 to

225 the Statements of the Count on Form-XIV relating to election held on 27-10-1990 in constituency No. PP-226 Bahawalnagar-II. These statements were purported to have been issued by the Presiding Officers under their signatures and supplied to the candidate.

49. The Election Commission took immediate cognizance of the matter and ordered the District and Sessions Judge (District Returning Officer), Bahawalnagar and the Civil Judge 1st Class, Bahawalnagar and Returning Officer for this constituency to investigate the matter in order to establish the veracity or otherwise of these statements as per Election Commission's letter dated 22-5-1991 at Annex-69.

50. According to the inquiry reports, the statements in question were found by the District Returning Officer and Returning Officer to be forged and fabricated. The reports of the District Returning Officer and the Returning Officer appear at Annex-70 and Annex-71.

51. Mr. Abid Tehami, the author of the publication, was asked as per Annex-72 to let the Commission know as to wherefrom the statements in question were procured by him and published in his book without first verifying their authenticity. Mr. Abid Tehami replied as per his letter at Annex-73 that the said statements were supplied to him personally by Mr. Abdul Qadir Shaheen. It may be noted that Mr. Abdul Qadir Shaheen had contested election from this constituency as a nominee of the PDA and lost by a margin of 7,677 votes. He has not challenged the election from this constituency by filing an election petition.

52. The Commission issued a notice to Mr. Abdul Qadir Shaheen on August 20, 1991 to let the Commission know the source from which he obtained the statements in question. Despite a reminder dated 9th September, 1991 and a Press Release dated 15-9-1991, nothing was heard from Mr. Abdul Qadir Shaheen. Notices were issued on 7th October and 10th October, 1991 both to Mr. Abdul Qadir Shaheen and Mr. Abid Tehami respectively to appear before the Election Commission on 17th October, 1991 to explain their position. Copies of Notices, and the Press clipping are placed at Annex-74-76.

53. Mr. Abid Tehami, Sh. Izharul Haq, counsel for Mr. Abdul Qadir Shaheen, Dsitrict Returning Officer, Bahawalnagar and four Presiding Officers appeared before the Election Commission on 17th

October, 1991. After hearing the parties, the Election Commission directed Mr. Abid Tehami and Mr. Abdul Qadir Shaheen to file written statements. The latter was further directed to appear before the Commission in person on 31st October, 1991 and bring with him the original statements of the count. On 31st October, 1991, Mr. Abdul Qadir Shaheen neither appeared nor filed the written statement and failed to produce the original statements of the count even through his counsel, although full opportunity was afforded to him. Mr. Abid Tehami again categorically stated before the Election Commission that photo copies of the statements of the count were supplied to him by Mr. Abdul Qadir Shaheen personally and that he (Abid Tehami) did not get them verified from the District Returning Officer, the Returning Officer or any Presiding Officers. The District Returning Officer and the Returning Officer have clearly stated in their reports that the statements of the count were forged and fabricated. In these circumstances, the Election Commission has no reasons to disbelieve the findings of the District Returning Officer and the Returning Officer and is of the view that Mr. Abdul Qadir Shaheen failed to prove the authenticity of the statements of the count statedly supplied by him to Mr. Abid Tehami. Copies of the reports of the District Returning Officer and the Returning Officer are at Annex-70 and Annex-71 respectively.

54. While this report was being sent to the Press, written statement of Mr. Abdul Qadir Shaheen was received in the Commission's Secretariat on November 5, 1991. In the concluding paragraph of his statement, he has stated as under:—

> "On the night of 18-10-1991 I was putting up with my friend Raja Mohammad Akram in the Pakistan Coaching Centre, Ferozepur Road, Lahore. Three unidentified persons broke open the room and at gun point deprived me of my purse and brief-case which contained, among other things, the original statements of count on From-XIV".

55. It has been alleged that immediate recount was not held in constituency No. NA-143 Bahawalpur-III on the request of Mr. Riaz Peerzada, PDA candidate and that his election petition is still pending hearing before the Election Tribunal, headed by Mr. Justice Sh. Khizar Hayat of Lahore High Court. It is stated that the request for recounting can not be granted as a matter of right. It can only be carried out if the Returning Officer is satisfied that the request is

reasonable. It has not been shown that his request was based on good reasons and it is left for the learned Election Tribunal to decide before whom the election petition is stated to be pending.

56. The presence of police officials inside the polling stations of NA-35 Federal Capital, NA-191 South Karachi-III and NA-95 Lahore-IV is yet another charge contained in the chapter under discussion. The reply thereto has to be repeated in an interrogative form. Where is the evidence? Mere newspaper reports are grossly inadequate to prove anything.

57. The White Paper also embodies accusations to the effect that the voters were pressurized to stamp the 'bicycle' at one polling station each of constituencies No. PS-24 Khairpur-I and PS-6 Sukkur-VI. The source of the complaint is stated to be a voter and an election agent respectively but their names have not been mentioned nor any reliable evidence has been adduced in support thereof.

58. An excerpt of the statement of Mr. Shah Nawaz Junejo, PDA candidate, made in his election petition relating to constituency No. NA-181 Sanghar-I saying that he was continually compelled to withdraw his candidature from the day he filed his nominaton papers is also included in the White Paper. It will be of interest to note that the election petition was dismissed by the learned Election Tribunal as withdrawn, *vide* order dated 28-8-1991. The allegation stands belied.

59. A statement attributed to Chaudhry Anwar Aziz, PDA candidate from constituency No. NA-91 Sialkot-VII, also forms part of this chapter. According to him he was forced to withdraw from the contest in favour of Syed Ghaus Ali Shah in the bye-election. No evidence in this case, too, has been presented to corroborate the allegation.

60. Before parting with the discussion on the aforementioned allegations, it will be of advantage to quote article 117 of the Qanun-e-Shahadat, 1984 :—

> "117. Burden of Proof.– (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

It will be seen that onus lies on the person who wants to prove the existence of a fact in a court of law. This principle applies with equal force to the matters outside a judicial forum. It is a lot easier to hurl accusations but the authors of the White Paper have failed to substantiate them.

CHAPTER – 9

Chapter 9 of the White Paper deals with pre-and post-election analysis of the 1990 general elections.

2. As regards pre-poll analysis under the heading "Apprehensions", it has been stated that in view of the allegations of misuse of power and preparation to rig the election by the caretaker government, it was apprehended that free and fair elections will not be held.

3. There is no denying the fact that all these apprehensions were proved to be imaginary, baseless and unfounded and the election was held in a free, fair and impartial manner.

4. Under the heading "Predictions", speculations with regard to the result of elections made by the local press, intelligence agencies, IJI and diplomats, have been listed. It has been concluded that the PDA could have won more seats in accordance with the predictions if the election day process had been relatively fair and free.

5. Quite interestingly, only such predictions have been quoted in the White Paper as have been found favourable. For example, the Gallup Pakistan had predicted that IJI was ahead of the PDA, in its "Political Weather Report" published on October 15, 1990, which is as under :—

> "A Gallup Poll conducted on October 5, nearly three weeks prior to the forthcoming elections in Pakistan, shows that until that date IJI was ahead of the People's Party/People's Democratic Alliance, by nearly 10 percent. The Poll which was conducted in all the four provinces, rural as well as urban areas, indicated that nearly 40 percent of the voters intended to vote for the IJI as opposed to 30 percent for the PPP. Ten percent intended to vote for other parties while the remaining 20 percent had still not made up their mind. The sample for the survey was selected through a two stage area probability sampling technique in accordance with internationally recognized norms for such surveys.

The Gallup Poll of October 5, showed interesting regional differences in the likely voting pattern. The PPP enjoyed a strong hold over the voters in the rural Sind where sixty-seven percent of the voters intended to vote for the People's Party as against nineteen percent for the IJI, fourteen percent were undecided PPP's sway over the Sindhi-speaking voters was even higher, seventy seven percent of whom intended to vote for the PPP. The poll showed that electoral support for the Sindhi nationalist parties was meagre.

The Urban Sind presented a different picture. Here the division of voting pattern was as follows: MQM: 34 percent; PPP:26 percent; IJI: 14 percent, with 27 percent undecided. In Karachi and Hyderabad, the intended voting pattern on October 5 was: MQM 35 percent; People's Party 20 percent; IJI 15 percent; Undecided: 30 percent. However, among the Urdu-speaking population of these two cities, MQM support was 56 percent as against 10 percent for IJI and 32 percent undecided.

The Poll showed that the voting picture in Baluchistan was trickly. 75 percent of those polled in the Survey said that they had not made up their mind. Among those who had firmed up their views, the People's Party seemed to be doing well in the urban areas. But, the statistical picture was too hazy to be of any predictive value.

In the urban areas of the North West Frontier Province (which comprise 15 percent of the entire province) PPP, IJI, ANP and JUI(F) were neck-and-neck in a highly split composition of voting strength. According to the latest Poll, PPP, singly, claims more vote than any other party in urban NWFP. However, in constituency where IJI and ANP are cooperating, PPP would not match their combined strength.

In rural NWFP, the People's Party made a poor showing in the latest opinion poll. Voters were mainly divided between IJI, JUI(F), and ANP in that order.

Voters in the province of Punjab, which has 115 seats, or more than 50 percent of the National Assembly, the IJI appeared to have a substantial edge over the People's Party

> until October 5, the date on which the survey was conducted. While nearly 30 percent intended to vote for the PPP, those intending to vote for the IJI were in the vicinity of fifty percent. Interestingly, IJI's edge over PPP was accounted for more by its success in the rural than in the urban Punjab. In the urban areas the contest was closer, although the IJI was still ahead of PPP."

The White Paper has ignored this and similar other reports. It appears that the PDA relied upon the homespun political assessments instead of facing the realities. The Commission had , from the very beginning, advised all concerned through a press note that such forecasts or predictions should not be taken on their face value.

6. The predictions are not always correct, particularly in the underdeveloped or the developing countries as they are not based on scientific data or analysis. Here, those who made them failed to notice certain basic facts as mentioned in the White Paper itself under the heading "Post Poll Analysis–Pakistani Press."

7. Under the heading "Post Poll Analysis–Pakistani Press", it is stated that according to "The Pakistan Times", IJI's success was attributed to voters dissatisfaction with the PPP when it was in power, personal failings of the then Prime Minister, one-to-one strategy employed by the IJI and garnering new votes for its cause. These seem to be appropriate reasons which belie PDA's version that free and fair means were not adopted on the polling day.

8. It has been further alleged that "Anomalous Situation" in announcing the result of election was first hidden by the Election Commission, as it refused to announce full results, only declaring results of the first two candidates. This assertion is false, baseless and unfounded. The Election Commission never refused to announce complete result of a constituency. The Election Commission announced and released to the print and electronic media complete results of all constituencies. A central control room was set up in the Election Commission's Secretariat, Islamabad for announcing the results. The proceedings were attended by the representatives of the Pakistan Television Corporation, Pakistan Broadcasting Corporation, national and international media. All the Provincial Election Commissioners forwarded complete results, showing names and the number of votes polled by each candidate. The result was displayed on

boards and copies thereof were supplied to the media. Complete result was broadcast by Pakistan Broadcasting Corporation. However, the Pakistan Television Corporation announced the names of only two candidates, securing the first and the second highest position for want of time. Similarly, the newspapers generally did not publish the names and number of votes of all candidates for their own reasons. The Election Commission notified detailed result of each constituency in the official Gazette and Volume-II of this Report contains further detail of the result of each constituency of the National Assembly and the Provincial Assemblies.

9. Excerpts from the reports of the French Observers Team and National Democratic Institute are repeated in this chapter, which have already been dealt with in chapter-8 of this volume.

10. The statement of President Ghulam Ishaq Khan has been cited in which he quoted a pushto proverb. Pushto-speaking persons know that the proverb has been misquoted in the White Paper and meaning attributed to this proverb is misleading. Its meaning is stated to be that the President had delivered the PPP to its opponents on a platter and it was now up to the caretaker administration to administer the *coup de grace* (finishing stroke). There is hardly anything in the proverb to suggest the meaning ascribed to it. It appears that the authors are bent upon picking even a straw to discredit even the Head of the State whom they had voted to this exalted office.

11. A statement has been attributed to Mr. Jam Sadiq Ali, Chief Minister, Sind in which he allegedly stated that Ms. Benazir Bhutto won from NA-116 Larkana-III through the courtesy of Mr. Ghulam Ishaq Khan otherwise he would have made sure she was defeated from there also.

12. It is hard to understand as to what kind of rigging is present in the second part of the aforesaid statement which at least is a political rhetorical statement. Rather, the first part is a tribute to the President. It is anybody's guess as to what the authors intend to prove by quoting the said statement.

13. Then, a statement of Mr. Taj Muhammad Jamali, Chief Minister, Baluchistan has been made part of White Paper in which he stated that he suspended ten Deputy Commissioners and one Assistant Commissioner for their role in rigging. Upon an inquiry from the Chief

Secretary, Baluchistan, by the Election Commission in this behalf, he stated in his letter dated 18th December, 1990 (copy at Annex-77) that no Deputy Commissioner was suspended. The position was further clarified by the Baluchistan Chief Minister's Secretariat in a press release appearing in "Baluchistan Times," Quetta, dated 22nd November, 1990 wherein it was stated that the Chief Minister's statement was misquoted. In fact, he said that action against the Deputy Commissioners will be taken on account of reported administrative excesses, corruption etc. It was further stated that they did not interfere in the conduct of free and fair elections (copy at Annex-78).

14. Lastly, Mr. Ghulam Mustafa Jatoi has been quoted as saying that Nawabzada Nasrullah Khan was defeated through a pre-planned conspiracy and that it was Mian Nawaz Sharif who did not want Nawabzada Saheb to enter the National Assembly. This statement has been categorically denied by Mr. Jatoi in a press statement published in the daily "Pakistan Times", dated 6-1-1991 (copy at Annex-79). In addition, he described the White Paper as "rubbish" as per press statements appearing in the national press on September 28, 1991. The daily "Frontier Post", Peshawar carried this news item as under:—

> "Ghulam Mustafa Jatoi, former caretaker prime minster and NPP Chairman has said that the October 1990 general elections were "absolutely free, fair and impartial".
>
> He said this on Friday while commenting on the allegations contained in the PDA white paper that the October 1990 elections were rigged. "As far as, I, as caretaker prime minister in October 1990, am concerned, the general elections were absolutely free, fair and impartial."
>
> "At least I am grateful to the PDA that they have certified my overwhelming success from my National Assembly constituency from Sialkot in Punjab in the October 1990 election", he added.
>
> The former caretaker prime minister said that the extracts he had read in the PDA white paper were nothing but "rubbish".

"As far as I am concerned, at least the allegations concerning me and our constituencies are baseless, unfounded and a pack of lies."

"I challenge that these can not be proved even today. Some of the stories in the PDA white paper have been carried from some weekly magazines which contained such thrash news at that time," Jatoi maintained."

"Let us go and visit those sites and let the people decide whether the allegations are true or unfounded", he concluded."

This news item also appeared in the Daily "Dawn", Karachi, the "Nation", Islamabad, the "News", Islamabad, daily "Jang", Lahore, daily "Jasarat", Karachi, daily "Pakistan", Lahore, etc. etc.

15. The above account clearly shows that the entire saga of allegations, predictions, pre-and-post election analysis, compiled by the authors of the White Paper at some pain and in eleven months' time are in fact much ado about nothing and they were grossly unable to prove anything worth the name.

16. The Election Commission has not taken notice of the press statement of Mr. Naveed Malik because he did not lodge a formal complaint before the Commission at any stage of election or even thereafter nor he was a candidate for election to the National Assembly or a Provincial Assembly during the last general elections or at any bye-election held thereafter. The statement made by him merits no consideration for another reason that he has not produced any evidence or proof in support thereof. The facts and figures stated in this report also belie his claim.

CHAPTER – 10

ANALYSIS OF RESULT OF THE NATIONAL ASSEMBLY

The IJI strategy of "one-to-one" contests, the problem of voter increase, method of determining rigging and finally analysis of results are main features of this chapter of the White Paper. Criteria for establishing rigging have been "devised" to prove "statistical anomalies". The purpose of statistical analysis has been clearly stated at page 224 which is as under :—

> "Secondly, this analysis does not necessarily attempt to "prove" specific cases of rigging. Rather, the approach here is to present the statistical anomalies and other supporting evidence to establish, as conclusively as possible, *reasonable doubt* on the fairness of the electoral process, as carried out in October, 1990"

2. It may be stated that legal rights are established through legal process, if questioned through legal evidence and are not resolved on the basis of "reasonable doubt". The PDA was not charged with any crime that it could claim it should be given the benefit of reasonable doubt because it has claimed that it had been able to create, in its own assessment, a reasonable doubt. But how far the White Paper has been able to establish "reasonable doubt on the fairness of election" is left to the people of Pakistan. In an abortive attempt to establish "reasonable doubt", the authors of White Paper have leaned to the distortion of facts on the lines indicated by the French team. One of the examples is that type "C" of rigging "devised" by them has been attributed to the following procedure :—

> "*Type C Rigging*.—About 10 to 15 polling stations were earmarked and staffed with 'selected' personnel. These polling stations were provided with 1 or 2 ballot boxes, which were pre-stuffed with ballots, pre-stamped in favour of the IJI. These bogus boxes were surreptitiously added to the genuine boxes, while being transported to the central point, where the counting of votes was carried out."

3. What is the evidence in support of this allegation ? The polling stations where "pre-stuffed" ballot boxes were allegedly provided have

not been named or specified. It has also not been stated whether the PDA raised this objection before any authority at the appropriate time.

4. As has already been stated, the ballot boxes are emptied at the polling stations immediately after conclusion of the poll and the ballot papers are counted on the spot in the presence of the polling agents of the candidates. The law and procedure do not, in any manner, envisage transportation of ballot boxes to a central or any other place for counting. Under the system of elections in vogue in Pakistan, it could never happen and it has never happened. This fact alone is sufficient to prove that the entire "thesis of rigging" is based, to say the least, on misrepresentation of facts.

.. In order to dispel the "reasonable doubts" being created to prove "statistical anomalies", analysis of the result of election is being carried out on a scientific basis in the following paragraphs.

5. Out of 207 Muslim constituencies of the National Assembly, election in three constituencies had ended in uncontested return of the candidates. Election in the remaining 204 constituencies was contested. The total number of valid votes cast for 204 Muslim constituencies of the National Assembly comes to 2,11,63,911. The number of votes polled by the IJI candidates is 79,08,513 or 37.37% and the PDA candidates polled 77,95,218 or 38.83%. The other minor parties polled 32,80,224 votes or 25.50% and the independent candidates polled 21,79,956 or 10.30% of the votes cast. The number of candidates put up by each party has also to be kept in mind.

6. Province-wise detail of the votes polled by the two major contesting parties is as under:—

Province/ Area	IJI			PDA			Variation	
	Number of Candidates Nominated	Votes Polled	Number of Seats Won	Number of Candidates Nominated	Votes Polled	Number of Seats Won		
1	2	3	4	5	6	7	8	
Federal Capital	1	56,795 52.84%	1	1	43,467 40.44%	—	(+) 13,328	(12.40%)
Punjab	113	68,60,928 49.46%	92	112	53,53,122 38.59%	14	(+) 15,07,806	(10.87%)
Sindh	15	3,85,403 8.81%	3	43	18,27,612 41.80%	23	(–) 14,42,209	(32.99%)

1	2	3	4	5	6	7	8		
NWFP	18	5,22,546 24.84%	8	19	4,67,801 22.24%	5	(+)	54,745	(2.60%)
Balochistan	7	82,841 11.93%	2	7	1,03,216 14.86%	2	(-)	20,375	(2.93%)
Total:	154	79,08,513 37.37%	106	182	77,95,218 36.83%	44	(+)	1,13,295	(0.54%)

7. It may be seen from the above table that the IJI had a lead of 13,328 votes, in the Federal Capital, 15,07,806 votes in the Punjab and 54,745 votes in the NWFP over the PDA whereas the PDA had a lead of 14,42,209 votes in Sind and 20,375 votes in Balochistan over the IJI. The lead of 15,07,806 votes over the PDA in the Punjab resulted in 92 seats falling to the share of IJI while the PDA got only 14 seats. Difference in terms of percentage between the two parties is 10.82% in favour of IJI. In aggregate, the IJI has polled, 1,13,295 more votes than the PDA, which comes to 0.54%.

8. It is being said that minor difference of percentage has "translated itself into about 130 percent more seats for the IJI which bagged 106 National Assembly seats against the PDA's 44." This assertion is totally based on misunderstanding and is misleading. As a matter of fact the percentage indicates the total number of votes polled by a party and not the number of seats won by that party in an Assembly. Voting strength of a party should not, in any manner, be confused with the number of seats bagged by that party. Under the existing system of election by simple majority vote, the seats are not distributed to the political parties in proportion to the number of votes polled by them. Such a distribution is made only under the system of proportional representation which is not provided in the Representation of the People Act, 1976.

9. The result of election is declared on the basis of the highest number of votes polled by the candidates and not on any other basis. To quote an example, two leading candidates in constituency No. NA-29 Tribal Area-III polled 956 and 955 votes respectively. The candidate securing 956 votes won the seat with a narrow margin of one vote but the difference of percentage of the votes secured by them would be paractically none. The view point is further elaborated by quoting the example of five constituencies where the IJI candidates had won the

election with a narrow margin of votes. The following table indicates the number of votes polled by the IJI and PDA candidates:—

NA-94 Lahore-III	Mian Umer Hayat (IJI) Mr. Salman Taseer (PDA)	53,352 51,953
		1,399
NA-102 Sheikhupura-II	Ch. Nazir Ahmad Virk (IJI) Mr. Munawar Hussain Manj	39,430 38,377
		1,053
NA-111 Okara-II	Syed Sajjad Haider (IJI) Mian Mohammad Aslam Khan (PDA)	50,728 48,895
		1,833
NA-143 Bahawalpur-III	Syed Tasneem Nawaz Gardezi (IJI) Mian Riaz Hussain Pirzada (PDA)	65,321 65,052
		269
NA-206 Lasbela-*cum*-Gawadar	Shahzada Muhammad Yousaf (IJI) Mr. Ghulam Akbar (PDA)	20,487 19,828
		659

10. Out of total number of 5,54,384 votes polled in five constituencies, the IJI got 2,29,318 and the PDA polled 2,24,105 votes, with a margin of 5,213 between the two leading parties. Percentage of the votes polled by the IJI comes to 41.36% and that of the PDA is 40.42%. Thus with a margin of 5,213 votes or 0.94%, the IJI secured five seats and the PDA failed to get even one seat. The same phenomenon as is noticed at national level is discernible in the Province of Sind where PDA got more seats than the number of votes polled. For instance, after getting 41.80% votes, it secured 23 seats, whereas all the parties/independents having secured 58.20% only got 22 seats. If PDA's logic is accepted, then it should have shared seats in the ratio of about 42: 58.

11. In 1988, the IJI polled 11.32% votes in Sindh but it got no seat in the National Assembly. Again, the PPP polled 38.52% votes

throughout the country in 1988 as against IJI which polled 30.16%. The difference was 8.36% but the PPP bagged 93 seats and the IJI could capture 54 seats, otherwise according to the percentage of votes polled by IJI, they should have secured 72 seats. Thus, a difference of 8.36% resulted in 39 more seats falling to the share of the PPP. It is, therefore, fallacious to equate the number of seats won or lost to the percentage of number of votes polled.

12. Further, it is equally fallacious to take the percentage of votes polled in Pakistan as a whole. In the Punjab, the IJI polled 49.46% votes while the PDA polled 38.59% and thus IJI got 10.87% more votes resulting in 78 more seats to IJI.

13. In the present system of election, a candidate can win a seat by simply getting one more vote over his rival candidate though the difference in percentage of votes of the two rival candidates may be 0.01. Actual example of it is the one where in one constituency the successful candidate secured 956 votes, while the losing candidate secured 955 votes as stated earlier.

14. The following additional facts further support this contention :

"(a) The PDA sponsored a total number of 182 candidates as against 154 nominated by the IJI for election to the National Assembly. In other words, the PDA fielded 28 candidates more than the IJI for the same number of seats. In the final tally, 182 candidates of PDA polled 77,95,218 and 154 candidates of the IJI polled 79,08,513 votes. Ordinary student of arithmetic can explain that if a party with eight candidates secures 100 votes, the average share of each candidate will be 12-1/2. As against this, if a party nominates ten candidates and secures the same number of 100 votes, each of its candidate will get only 10 votes. Therfore, all the candidates of the first party with less candidates will succeed because they got more votes.

(b) In Sind, 43 candidates of the PDA were able to secure 18,27,612 votes as against 15 IJI candidates who could poll 3,85,403 votes.

(c) Personal influence of the winning candidates has also played a positive role, besides greater efforts for the high stakes involved could be the reason. Similar phenomenon is noticeable in case of Larkana NA-166 and NA-164 wherefrom Ms. Benazir Bhutto and Begum Nusrat Bhutto contested elections and got excessively larger number of votes than were cast in favour of PDA in other constituencies. Ms. Benazir Bhutto polled 94,462 votes and her main rival secured 718 votes. Begum Nusrat Bhutto obtained 79,901 votes as against her rival who polled 9,203 votes.

(d) Further, due to one-to-one contest, the electorate had to choose between the two major candidates. This strategy worked against the candidates sponsored by smaller parties and the independent candidates and, consequently, the votes were mainly divided between the major contestants.

15. The analysis of result carried out by Mr. Ghani Eirabie, a well-known journalist, in his article titled "What lies behind IJI's landslide victory", published in the daily "Muslim", Islamabad, dated 1-11-1990, is quoted below:—

> "Those claiming shocked by the electoral upheaval in Pakistan in consequence of a minor shift in popular vote can pacify themselves by recalling precedents from other lands. Only last year, in neighbouring India, the long-established Congress Party slipped by barely eight percent in national esteem, but lost 222 seats in Lok Sabha. In the same polls, the Bharatiya Janata Party's gain of five percent in the general vote resulted in its raising its parliamentary strength from two to 88 seats. Ten years earlier in UK, the Labour Party lost 50 seats in parliament as a consequence of a two percent drop in the popular vote, and the Conservatives gain of six percent in the electoral vote won it an additional 62 seats in the Commons. This, wrote correspondent Derek Brown in the Guardian of October 27, explaining the IJI landslide in Pakistan, it is "a pattern familiar in countries with Westminister-style first-past-the-post elections; a small movement of votes causing high seat turnover.
>
> Under this system, in the latest elections, the Pakistan People's Party shed only two percent of the popular vote but

lost 48 of the National Assembly seats and the IJI's gain of six percent in the popular vote was rewarded with an additional 50 parliamentary seats. In this, the "winner takes all" system, a candidate wins a seat by simply polling the largest number of votes and not necessarily a majority and small swing in votes has a disproportionate effect on seats.

It would be somewhat odd for the PPP to begin to denounce the system now, for it benefitted immensely from it both in 1970 and 1988, when with a minority of the popular vote, it secured a preponderance of seats in the National Assembly. With barely 38/39 percent of the electoral support, PPP won 59 percent of parliamentary seats in 1970 and 46 percent in 1988. It is the same system that has now slashed the tally of its National Assembly seats to 23 percent".

16. The voting pattern in the General Election held in Bangladesh in February, 1991, has produced almost the same results as in Pakistan. In his article "Bangladesh Poll Watching—issues that proved decisive", published in the daily "Dawn", Karachi, dated the 26th March, 1991, Mr. Nikhil Chakravartty has analyzed the result as under :—

"The Bangladesh electorate this time has given out-right majority in Parliament to no party. Before the poll on February 27, political observers and poll specialists had forecast that the Awami League might get a majority in the House though it could be only a small majority, while the BNP was expected to come up as a close second. The final results proved the forecasters wide of the mark.

When the ballot box was opened, the results did create a surprise with the BNP getting 140 seats out of 298 where elections were held, with the poll having been countermanded in two constituencies, for the house of 300. The Awami League, on the other hand, could bag only 85 seats, with Ershad's Jatiya Party getting as many as 35 seats and Jammat-i-Islami winning 18 seats. Just as few had expected, the BNP to emerge as the first party within the reach of the majority, hardly anybody could anticipate Ershad's party getting nearly double the seats secured by the Jamaat.

What is significant is that both the BNP and the Awami League got almost the same number of votes—the BNP 31.44 percent and the Awami League 31.13 percent of total votes polled. At the other end, the Jamaat with only 18 seats got 11.73 percent of votes—that is, just a little more than the Jatiya Party which with 11.69 percent could capture as many as 35 seats, nearly double that of the Jamaat.

The picture that emerges is that the Awami League popularity has declined *vis-a-vis* the BNP which has gained to be on par with the Awami League, and the Jamaat support base has not widened at all, while Ershad's new entrant party has got the same number of votes as the Jammat-i-Islami, though it has bagged almost double the seats that Jammat has got".

17. The result of bye-elections held in a large number of constituencies in January, 1991 has further confirmed the pattern of voting at the general elections held earlier in October, 1990.

18. In view of the facts stated above, the point raised with regard to the number of votes polled and the seats won does not stand to reason and is based on misconception or misconstruing the facts.

19. The long and short of the allegations made in the 484 paged White Paper is that elections in 70 constituencies of the National Assembly have been "rigged". In order to expose this fallacious claim, analysis of the result of each such constituency as also the nature of complaints relating thereto, is tabulated as under:—

Number and Name of Constituency	Name of first two candidates with party affiliation	Complaint, if any, filed with Election Commission. If so, decision in brief	Whether election petition filed	Remarks
1	2	3	4	5
NA-1 Peshawar-I	1. Mr. Ghulam Ahmad Bilour (ANP) 2. Ms. Benazir Bhutto (PDA)	Ms. Benazir Bhutto (PDA) filed a complaint for Re-counting u/s 39(6) (b) R.P. Act. 1976, which was dismissed for the reasons stated at Annex-50	Election petition filed.	—
NA-2 Peshawar-II	1. Arbab Mohammad Jehangir Khan (ANP) 2. Mr. Aftab Ahmed Khan Sherpao (PDA)	—	Election petition *not* filed.	—
NA-3 Peshawar-*cum*-Nowshera.	1. Arbab Mohammad Zahir (ANP) 2. Mr. Abdul Latif (PDA)	—	Election petition *not* filed.	—
NA-4 Nowshera	1. Mr. Mohammad Ajmal Khan Khattak (ANP) 2. Mr. Perwaiz Khan Khattak (PDA)	—	Election petition *not* filed.	—

1	2	3	4	5
NA-6 Mardan-I	1. Mr. Mohammad Azam Khan (ANP) 2. Mr. Khanzada Khan (PDA)	—	Election petition *not* filed.	—
NA-24 Chitral	1. Shahzada Moheyuddin (IJI) 2. Mr. Piyar Ali Allana (PDA)	—	Election petition *not* filed.	—
NA-39 Rawalpindi-IV	1. Mr. Mohammad Ejaz-ul-Haq (IJI) 2. Raja Shahid Zafar (PDA)	—	Election petition *not* filed.	—
NA-40 Rawalpindi-V	1. Ch. Nisar Ali Khan (IJI) 2. Mr. Ghulam Sarwar Khan (PDA)	—	Election petition filed.	Ch. Nisar Ali Khan (IJI) was also elected from this constituency in 1988.
NA-41 Attock-I	1. Sh. Aftab Ahmed (IJI) 2. Malik Mohammad Aslam Khan (PDA)	Haji Khan Ghalib (PDA) filed a Misc. Petition which was dismissed with observation that the petitioner may file an election petition.	Election petition *not* filed.	—

1	2	3	4	5
NA-43 Chakwal-I	1. Lt. Gen. (Retd.) Malik Abdul Majeed (IJI) 2. Sardar Mohammad Ashraf Khan (PDA)	—	Election petition filed.	Lt. Gen. (Retd.) Malik Abdul Majeed (IJI) was also elected from this constituency in 1988.
NA-48 Sargodha-II	1. Mian Mohammad Nawaz Sharif (IJI) 2. Mr. Liaqat Hayat (PDA)	—	Election petition *not* filed.	—
NA-49 Sargodha-III	1. Haji Muhammad Javaid Iqbal Cheema (IJI) 2. Syed Ehsan Qadir Shah (PDA)	—	Election petition filed.	Haji Mohammad Javaid Iqbal Cheema (IJI) was also elected from this constituency in 1988.
NA-57 Faisalabad-I	1. Sardar Dildar Ahmed Cheema (IJI) 2. Mr. Umar Daraz Khan (PDA)	—	Election petition filed.	—
NA-59 Faisalabad-III	1. Alhaj Mian Nasir Ali Khan (IJI) 2. Khan Shahadat Ali Khan (PDA)	—	Election petition *not* filed.	—

1	2	3	4	5
NA-61 Faisalabad-V	1. Ch. Mohammad Nazir Ahmed (IJI) 2. Ch. Mohammad Ilyas Ahmed (PDA)	Ch. Mohammad Ilyas Ahmed (PDA) requested *vide* his telex that the result of the constitutency may be with-held as he is filing a petition under section 103AA which was not filed.	Election petition filed.	(a) Ch. Mohammad Nazir Ahmed (IJI) was also elected from this constituency in 1988. (b) Election Petition dismissed by the CEC as it suffered from legal infirmity. Order of the CEC not questioned in the High Court or Supreme Court.
NA-63 Faisalabad-VII	1. Haji Mohammad Akram Ansari (IJI) 2. Mr. Ahmed Saeed Awan (PDA)	—	Election petition filed.	—
NA-64 Faisalabad-VIII	1. Mian Zahid Sarfraz (IJI) 2. Mr. Fazal Hussain Rahi (PDA)	—	Election petition *not* filed.	—

1	2	3	4	5
NA-72 Toba Tek Singh-II	1. Mr. Mohammad Ejaz-ul-Haq (IJI) 2. Qazi Ghias-ud-Din Janbaz (PDA)	Mr. Ghias-ud-Din Janbaz (PDA) filed a petition u/s. 39(6) (b) for re-counting which was dismissed as reported by Returning Officer. No action was called for.	Election petition *not* filed.	—
NA-73 Toba Tek Singh-III	1. Mr. Hamza (IJI) 2. Haji Mohammad Ishaq (PDA)	—	Election petition *not* filed.	—
NA-74 Gujranwala-I	1. Ch. Hamid Nasir Chatha (IJI) 2. Lt. Col. (Retd.) Ghulam Sarwar Cheema (PDA)	—	Election petition *not* filed.	—
NA-76 Gujranwala-III	1. Mr. Ghulam Dastagir Khan (IJI) 2. Al-Haj Amanullah (PDA)	—	Election petition filed.	—
NA-77 Gujranwala-IV	1. Ch. Mohammad Asghar (IJI) 2. Kh. Mohammad Aslam Lone (PDA)	—	Election petition *not* filed.	—

1	2	3	4	5
NA-80 Gujrat-I	1. Ch. Tajamal Hussain (IJI) 2. Shahzada Ghazanfar Ali Gul (PDA)	—	Election petition filed.	Ch. Tajamal Hussain (IJI) was also elected from this constituency in 1988.
NA-82 Gujrat-III	1. Syed Manzoor Hussain Shah (IJI) 2. Haji Mohammad Asghar (PDA)	—	Election petition *not* filed.	—
NA-83 Gujrat-IV	1. Mr. Nasir Iqbal (IJI) 2. Mr. Zafarullah Tarar (PDA)	—	Election petition filed.	—
NA-86 Sialkot-II	1. Mr. Amir Hussain (IJI) 2. Mian Mohammad Rashid Akhtar (PDA)	—	Election petition *not* filed.	Mr. Amir Hussain (IJI) was also elected from this constituency in 1988.
NA-87 Sialkot-III	1. Mr. Nazir Ahmed Khan (IJI) 2. Mr. Javaid Mehmood Ghumman (PDA)	—	Election petition *not* filed.	—
NA-92 Lahore-I	1. Mr. Humayun Akhtar Khan (IJI) 2. Mr. Rafiq Ahmed Shaikh (PDA)	—	Election petition filed.	—

1	2	3	4	5
NA-94 Lahore-III	1. Mian Umer Hayat (IJI) 2. Mr. Salman Taseer (PDA)	Mr. Salman Taseer (PDA) filed a petition u/s 39(6) (b) for re-counting which was dismissed for the reasons stated at Annex-24.	Election petition filed.	—
NA-95 Lahore-IV	1. Mian Mohammad Nawaz Sharif (IJI) 2. Air Marshal (Retd.) M. Asghar Khan (PDA)	—	Election petition filed.	Mian Mohammad Nawaz Sharif (IJI) was also elected from this constituency in 1988.
NA-96 Lahore-V	1. Mian Mohammad Shahbaz Sharif (IJI) 2. Mr. Jehangir Badar (PDA)	—	Election petition filed.	—
NA-97 Lahore-VI	1. Mr. Liaqat Baloch (IJI) 2. Mr. Ahmed Tariq Raheem Khawaja (PDA)	—	Election petition filed.	—
NA-98 Lahore-VII	1. Mian Mohammad Usman (IJI) 2. Sh. Mohammad Rashid (PDA)	—	Election petition filed.	Mian Mohammad Usman (IJI) was also elected from this constituency in 1988.

1	2	3	4	5
NA-99 Lahore-VIII	1. Mr. Wazir Ali Bhatti (IJI) 2. Mr. Mohammad Arshad (PDA)	—	Election petition filed.	—
NA-100 Lahore-IX	1. Mr. Mohammad Ashiq Ali diyal (IJI) 2. Mr. Meraj Khalid (PDA)	—	Election petition filed.	—
NA-101 Sheikhupura-I	1. Rana Tanveer Hussain (IJI) 2. Mr. Nisar Ahmed Punnun (PDA)	—	Election petition filed.	—
NA-104 Sheikhupura-IV	1. Haji Naeem Hussain Chatha (IJI) 2. Ch. Tawakal Ullah Virk (PDA)	—	Election petition *not* filed.	—
NA-105 Sheikhupura-V	1. Rai Mansab Ali Khan (IJI) 2. Rai Rashid Ahmed Khan (PDA)	—	Election petition filed.	—
NA-109 Kasur-IV	1. Moulana Moeen-ud-Din Lakhvi (IJI) 2. Sardar Mohammad Ashiq Dogar (PDA)	—	Election petition *not* filed.	—

1	2	3	4	5
NA-110 Okara-I	1. Mian Mohammad Zaman (IJI) 2. Rao Sikandar Iqbal (PDA)	—	Election petition filed.	—
NA-112 Okara-III	1. Mian Manzoor Ahmed Khan (IJI) 2. Syed Abbas Raza Rizvi (PDA)	—	Election petition *not* filed.	—
NA-113 Okara-IV	1. Mian Mohammad Yaseen Khan Watto (IJI) 2. Mian Atta Mohammad Khan Maneka (PDA)	—	Election petition *not* filed.	—
NA-115 Multan-II	1. Syed Hamid Saeed Kazmi (JUP-Noorani Group) 2. Mr. Riaz Hussain Qureshi (PDA)	—	Election petition filed.	—
NA-116 Multan-III	1. Mr. Tanvir-ul-Hassan Shah Gilani (IJI) 2. Malik Mukhtar Ahmed Awan (PDA)	—	Election petition *not* filed.	—

1	2	3	4	5
NA-117 Multan-IV	1. Haji Hayatullah Khan (IJI) 2 Rana Mumtaz Ahmed Noon (PDA)	—	Election petition *not* filed.	—
NA-119 Multan-VI	1. Syed Javaid Ali Shah (IJI) 2. Rana Shaukat Hayat (PDA)	—	Election petition *not* filed.	—
NA-120 Multan-*cum*-Khanewal	1. Makhdoom Mohammad Javaid Hashmi (IJI) 2. Mr. Khalid Iqbal Randhawa (PDA)	—	Election petition *not* filed.	—
NA-121 Khanewal-I	1. Syed Fakhar Imam (IJI) 2. Haji Mohammad Iqbal Hiraj (PDA)	—	Election petition *not* filed.	—
NA-123 Khanewal-III	1. Mr. Ghulam Hyder Wyne (IJI) 2. Pir Mohammad Aslam Bodla (PDA)	—	Election petition *not* filed.	Mr. Ghulam Hyder Wyne (IJI) was also elected from this constituency in 1988.

1	2	3	4	5
NA-124 Sahiwal-I	1. Mr. Anwar-ul-Haq Ramay (IJI) 2. Mr. Naurez Shakoor (PDA)	—	Election petition filed.	Election petition dismissed by the Election Tribunal. No appeal filed in the Supreme Court against the order of the Election Tribunal.
NA-126 Sahiwal-III	1. Rai Ahmed Nawaz Khan (IJI) 2. Mst. Shahnaz Javed (PDA)	—	Election petition filed.	Rai Ahmed Nawaz Khan (IJI) was also elected from this constituency in 1988.
NA-128 Pakpattan	1. Mian Mehmood Ahmed Khan (IJI) 2. Mr. M. Hashim Khan (PDA)	—	Election petition *not* filed.	—
NA-129 Vehari-I	1. Mr. Mohammad Nawaz Khan *alias* Dilawar Khan (IJI) 2. Mian Muhammad Mumtaz Khan Bhabha (PDA)	—	Election petition *not* filed.	—

1	2	3	4	5
NA-131 Vehari-III	1. Syed Shahid Mehdi Nasim (IJI) 2. Mr. Qurban Ali Chohan (PDA)	—	Election petition filed.	Syed Shahid Mehdi Nasim (IJI) was also elected from this constituency in 1988.
NA-134 Rajanpur	1. Mir Balkh Sher Mazari (IJI) 2. Sardar Ashiq Mohammad Khan Mazari (PDA)	—	Election petition filed.	—
NA-139 Layyah-I	1. Syed Mohammad Khursheed Ahmed Shah Bukhari (IJI) 2. Malik Niaz Ahmed Jakhar (PDA)	—	Election petition *not* filed.	—
NA-142 Bahawalpur-II	1. Sahibzada Farooq Anwar Abbasi (IJI) 2. Mr. Mohammad Farooq Azam Malik (PDA)	—	Election petition *not* filed.	—
NA-149 Rahimyar Khan-III	1. Mian Abdul Khaliq (IJI) 2. Makhdoom Rukan-ud-Din (PDA)	—	Election petition *not* filed.	Mian Abdul Khaliq (IJI) was also elected from this constituency in 1988.

1	2	3	4	5
NA-156 Jacobabad-I	1. Mr. Illahi Bukhsh (IND) 2. Sardar Mohammad Muqeem Khan (PDA)	(1) Mr. Illahi Bukhsh Soomro filed a petition u/s 103AA which was dismissed with the observation that the R.O. should consolidate the result. (2) Sardar Mohammad Muqeem Khan also filed petition under Article 218 of the Constitution and u/s 103 and 103AA. The petition was disposed of with the direction to the DRO to recount the ballot papers of entire constituency and consolidate the result.	Election petition filed.	—
NA-157 Jacobabad-II	1. Mir Hazar Khan (IJI) (IND) 2. Mir Mehran Khan (PDA)	—	Election petition filed.	—

1	2	3	4	5
NA-158 Naushero Feroze-I	1. Mr. Ghulam Mustafa Khan Jatoi (IJI) 2. Mr. Rehmatullah Khan Bihan (PDA)	—	Election petition filed.	Election petition dismissed by the CEC as it suffered from legal infirmity. Order of the CEC not questioned in the High Court/ Supreme Court.
NA-160 Nawabshah-I	1. Mr. Ghulam Murtaza Khan (IJI) 2. Mr. Asif Ali (PDA)	—	Election petition filed.	—
NA-174 Tharparkar-I	1. Mr. Anees Ahmed (HPG) 2. Syed Qurban Ali Shah (PDA)	Syed Qurban Ali Shah (PDA) filed a petition u/s 39(6)(b) for recounting which was dismissed for the reasons stated at Annex-25.	Election petition filed.	—
NA-175 Tharparkar-II	1. Mr. Mohammad Khan Junejo (IJI) 2. Mr. Ali Nawaz Shah (PDA)	—	Election petition filed.	—
NA-176 Tharparkar-III	1. Arbab Ghulam Raheem (IND) 2. Fakir Mohammad Hafeez (PDA)	—	Election petition *not* filed.	—

1	2	3	4	5
NA-180 Sanghar-I	1. Pir Syed Ali Gohar Shah (IND) 2. Mr. Zahoor Alam Khan Rind (PDA)	—	Election petition filed.	(a) Pir Syed Ali Gohar Shah (IND) was also elected from this constituency in 1988. (b) Election petition dismissed by the CEC as it suffered from legal infimity. Order of the CEC not questioned in the High Court/Supreme Court.
NA-181 Sanghar-II	1. Jam Mashooq Ali (IND) 2. Mr. Shah Nawaz Junejo (PDA)	—	Election petition filed.	Election petition dismissed by the Election Tribunal. No appeal filed in the Supreme Court against Order of the Election Tribunal.
NA-199 Loralai	1. Sardar Mohammad Yaqub (IJI) 2. Mir Baz Mohammad Khan Khetran (PDA)	Mir Baz Mohammad Khan (PDA) filed a petition u/s 103AA which was dismissed.	Election petition filed.	—

1	2	3	4	5
NA-202 Sibi-*cum*-Dera Bugti-*cum*-Ziarat-*cum*-Kohlu	1. Mr. Saleem Akbar Bugti (JWP) 2. Mr. Raziq Bugti (PNP)	Mr. Raziq Bugti (PNP) filed a petition u/s 103AA which was dismissed as detailed enquiry was required.	Election petition *not* filed.	Mr. Saleem Akbar Bugti (IND) was also elected from this constituency in 1988.
NA-206 Lasbela-*cum*-Gawadar	1. Shahzada Mohammad Yousaf (IJI) 2. Mr. Ghulam Akbar (PDA)	—	Election petition *not* filed.	—

20. A perusal of the above table shows that:—

(a) Election of 35 constituencies has been challenged by filing election petitions, as required by law. The allegations made in these petitions are still to be proved before the Tribunals. Of these, five petitions have already been dismissed.

(b) The election in case of the remaining 35 constituencies has not been questioned according to law. Consequently, the result of these constituencies has attained finality.

(c) A summary of the White Paper appearing in the newspapers on 13th June, 1991 contained a list of 70 National Assembly constituencies in which rigging was alleged by the PDA. On the basis thereof, a list of 33 constituencies was drawn in respect of which the PDA candidates had filed election petitions. Now the list given in the White Paper differs from the list in the summary to the extent that constituencies No. NA-161 Nawabshah-II, NA-178 Dadu-II and NA-191 Karachi South-III mentioned in the summary have been replaced in the White Paper with constituencies No. NA-160 Nawabshah-I, NA-180 Sanghar-I and NA-199 Loralai. The number of election petitions filed by the PDA candidates in respect of the constituencies referred to in the White Paper comes to 35.

(d) As against the allegation of rigging in 70 constituencies and the allegation of inaction on the part of the Election commission in this behalf, only ten compalints, as detailed in column 4 of the above table, were filed which were disposed of by the Commission in due course of law. The orders passed by the Commission or the Chief Election Commissioner were not challenged in the High Court or Supreme Court of Pakistan.

(e) Election in constituency No. NA-115 Multan-II has also been alleged to have been rigged by the IJI. But the fact is that the returned candidate from this constituency belonged to the Jamiat-ul-Ulema-e-Pakistan (Noorani Group), which is not a component party of the IJI.

(f) Out of the said 70 constituencies, twelve candidates of the IJI, one independent candidate and one candidate of Jamhoori Wattan Party (making a total of 14) were elected in the 1988 as well as in the 1990 elections.

21. The IJI candidates, who had lost election, filed five election petitions against three PDA and two independent candidates elected to the National Assembly.

22. The authors of the White Paper have made a vain attempt to show that unprecedented, unparalleled and massive rigging took place in the 1990 general elections and all norms, laws, rules and regulations connected therewith were brushed aside with the solitary aim of defeating the PDA candidates. The allegations made therein are vague and general and un-substantiated. The mechanism and methodology to rig elections, as alleged, is devoid of realities. It is practically impossible to implement a plan of "invisible and scientific rigging" even by a most dictatorial regime with all the resources at its command. Here, the electorate have become fully oriented with the electoral process and are conscious of their rights and thus can distinguish between right and wrong. The elections were conducted by senior officers drawn from the judiciary, whose integrity was never in doubt. Foreign teams and representatives of the national and international media were present on the polling days and they observed the polling. Polling agents of the candidates were also present. In these circumstances, rigging could not have been possible.

23. While alleging malpractices during the last elections, the President, the Parliament, the Government, the judiciary and the Election Commission have been unduly criticized and held responsible therefor. All these persons and the institutions are held in the highest esteem by the people, and if their role in relation to the elections is questioned in an irresponsible manner, what else is there to look forward to.

24. As stated earlier, the Election Commission, while dealing with various allegations contained in the White Paper and reports has confined itself to such allegations as are made in respect of electoral

process. A huge and voluminous book will be required to be written if each and every accusation is dilated upon. The Election Commission has placed bare facts and figures before the knowledgeable people and it is upto them to judge and decide for themselves the worth of the services rendered by the Election Commission for the advancement of democratic process in the country and to the people of Pakistan.

ANNEXURES

LIST OF ANNEXURES

Annexure No.	Reference	Contents
1.	Introduction Para-3(a)	Urdu Text of editorial note of daily 'Musawat', dated 10-9-1990 regarding day and night performance of the Commission for holding fair election.
2.	Introduction Para-3(b)	Urdu Text of editorial note of daily 'Musawat', dated 8-10-1990 regarding round the clock hardwork and impartiality of the Commission.
3.	Introduction Para-3(c)	Urdu Text of editorial note of daily 'Musawat', dated 21-10-1990 with regard to impartiality of the Commission.
4.	Introduction Para-3	People Democratic Alliance's advertisement published in the daily 'Nawa-i-Waqt' and Jang on 23-10-1990 about the effective arrangements made by the Election Commission.
5.	Introduction Para-5	Press clippings of press statement of the Chief Election Commissioner dated 18-6-1991 in consequence of release of summary of PDA's white paper appeared in daily 'The Nation, Islamabad and Jang, Rawalpindi' on 19-6-1991.
6.	Introduction Para-6	Press clippings of Chief Election Commissioner's press statement dated 27-9-1991 after release of PDA's white paper appeared in daily 'Pakistan Times' and 'Nawa-i-Waqt' on 28-9-1991.
7—19	Chapter-2 Para-20	13 Orders of the Election Commission accepting complaints.
20—32	Chapter-2 Para-21	13 Orders of Election Commission on miscellaneous complaints.

Annexure No.	Reference	Contents
33	Chapter-4 Para-7	Notification dated 30-4-1989 issued by Ministry of Law & Justice nominating Mr. Justice Naimuddin to act as Chief Election Commissioner.
34.	Chapter-4 Para-17	Letter of Election Officers' Association contradicting the allegation of PDA regarding appointment of Mr. M. Humayun Khan as Joint Secretary and press clipping thereof appeared in daily 'DAWN', Karachi on 16-10-1991.
35.	Chapter-4 Para-18	D.G. FIA's letter confirming that no inquiry is pending in FIA against Mr. M. Humayun Khan Joint Secretary.
36.	Chapter-5 Para-1	Letter of the Election Commission issued to the Caretaker Chief Ministers in September, 1990 to observe general principles during general elections.
37.	Chapter-5 Para-1	Code of conduct introduced by the Commission for election campaign of the political parties.
38.	Chapter-5 Para-6	Commission's reply dated 23-10-1990 in response to the complaint of Mr. Khursheed Mahmood Kasuri.
39.	Chapter-5 Para-11	Letter regarding misuse of media dated 12-10-1990 issued by the Commission to Ministry of Information & Broadcasting.
40.	Chapter-5 Para-11	Comments offered by Ministry of Information & Broadcasting *vide* their letter dated 16-10-1990.
41.	Chapter-5 Para-13	Petition filed by the PDA dated 7-10-1990 under Article 218(3) of the Constitution.
42.	Chapter-5 Para-13-14	Order passed by the Commission dated 17-10-1990 directing the Ministry of

Annexure No.	Reference	Contents
		Information & Broadcasting not to discriminate in covering the election campaign of two main parties.
43.	Chapter-5 Para-16	Letter of Secretary, Local Government, Punjab dated 20-10-1990 clarifying the position with regard to misuse of public funds.
44.	Chapter-5 Para-21	Order of the Election Commission dated 17-10-1990 dismissing complaint of Air Marshal (Retd.) M. Asghar Khan regarding alleged pre-poll rigging by IJI leadership.
45.	Chapter-5 Para-26	Commission's letter dated 20-10-1990 dealing with the vague and general allegations of Ch. Aitzaz Ahsan.
46.	Chapter-5 Para-31	Reply of the Commission dated 22-10-1990 to Mr. Iqbal Haider denying his allegations contained in his complaint dated 19-10-1990.
47.	Chapter-5 Para-32	Commission's letter dated 19-10-1990 to Mr. Iqbal Haider in response to his complaint dated 15-10-1990.
48.	Chapter-5 Para-34	Letter to Mr. Iqbal Haider dated 22-10-1990 in reply to complaint of the same date regarding issuance of National Identity Cards, etc.
49.	Chapter-7 Para-7	Petition moved by Maj. Gen. (Retd.) Naseerullah Khan Babar on behalf of Ms. Benazir Bhutto regarding recounting of votes of NA-1 Peshawar-I.
50.	Chapter-7 Para-7	Commission's order dated 26-11-1990 on the said petition of Maj. Gen. (Retd.) Naseerullah Khan Babar.
51.	Chapter-7 Para-9	Commission's order dated 9-11-1990 on the application of Maulana Gohar

Annexure No.	Reference	Contents
		Rehman regarding recounting of votes in NA-26 Malakand Protected Area-*Cum*-Dir.
52.	Chapter-7 Para-12	Commission's order dated 2-11-1990 on the application of Raja Mohammad Afzal regarding recounting of votes in NA-45 Jhelum-I.
53-54.	Chapter-8 Para-2	Copies of Instructions issued for 1988 and 1990 general elections for checking the ballot papers before distribution.
55.	Chapter-8 Para-7	Commission's order dated 30-12-1990 dismissing petition of Mr. Islamuddin Sheikh (IJI) under section 103AA of the Representation of the People Act, 1976.
56.	Chapter-8 Para-11	Order of the Commission on complaints of Haji Rehmatullah Behan and Mr. M. Younis.
57.	Chapter-8 Para-14	Letter of Mr. Zia H. Rizvi dated 20-10-1990 that bogus votes were registered in NA-95 Lahore-IV.
58.	Chapter-8 Para-14	Report of the Registration Officer dated 26-11-1990 that no bogus enrolment was found in NA-95 Lahore-IV.
59-60.	Chapter-8 Para-16	Order of the Chief Election Commissioner and the Election Commission each dated 17-10-1990 dismissing the representation regarding enrolement of bogus votes of Air Marshal (Retd.) Asghar Khan.
61.	Chapter-8 Para-18(1)	Letter of Mr. Omar Asghar Khan dated 9-10-1990 regarding shifting of polling station.
62.	Chapter-8 Para-18(2)	Letter of Mr. Omar Asghar Khan dated 8-10-1990 regarding change of polling station.

Annexure No.	Reference	Contents
63.	Chapter-8 Para-18(3)	Letter of Mr. Omar Asghar Khan dated 8-10-1990 regarding double enrolment.
64.	Chapter-8 Para-18(4)	Letter of Omar Asghar Khan dated 31-10-1990 regarding irregularities during election in NA-13 Abbottabad-III.
65.	Chapter-8 Para-18	Copy of Inquiry Report dated 4-11-1990 of Returning Officer of NA-13 Abbottabad-III about the complaints of Mr. Omar Asghar Khan.
66-67.	Chapter-8 Para-27	Press clippings of daily 'Muslim' and 'Jang' dated 29-30 October, 1990, respectively regarding casting of postal ballot papers.
68.	Chapter-8 Para-30	Reports of the Returning Officer for PP-226 Bahawalnagar-II refuting the baseless allegations contained in telegraphic complaints filed by Mr. Abdul Qadir Shaheen.
69.	Chapter-8 Para-49	Commission's letter dated 22-5-1991 asking the District Returning Officer & Returning Officer to investigate the matter in order to establish the veracity of the statements of count.
70-71.	Chapter-8 Para-50	Reports of District Returning Officer and Returning Officer both dated 5-6-1991 declaring the statements of the count on Form-XIV to be forged and fabricated.
72.	Chapter-8 Para-51	Letter of the Commission dated 12-6-1991 to Mr. Abid Tehami to explain as to where from the statements in question have been obtained and published without first verifying their authenticity.
73.	Chapter-8 Para-51	Reply of Mr. Abid Tehami that the documents had been personally handed over to him by Mr. Abdul Qadir Shaheen.

Annexure No.	Reference	Contents
74—76.	Chapter-8 Para-52	Copies of Notices and press clipping asking both to Mr. Abdul Qadir Shaheen and Mr. Abid Tehami to appear before the Commission on 17-10-1991 and explain their position.
77.	Chapter-9 Para-13	Chief Secretary, Baluchistan's letter dated 18-12-1990 regarding suspension of the Deputy Commissioners.
78.	Chapter-9 Para-13	Press statement of Chief Minister, Baluchistan appeared in daily 'Baluchistan Times' on 22-11-1990.
79.	Chapter-9 Para-14	(1) Mr. Jatoi's statement published in the daily "Pakistan Times", on 6-1-1991 that IJI had no hands in Nasrullah's defeat. (2) Mr. Jatoi's press statements regarding fairness of 1990 general elections and denial of allegations of PDA in their so-called 'White Paper'.

Annexure-1
[Introduction, para-3(a)]

مساوات

بروز پیر، 10 ستمبر، 1990ء

انتخابات ؟

"..... جہاں تک الیکشن کمیشن کا تعلق ہے۔ اس کی کارکردگی ہر قسم کے شک و شبہ سے بالا تر ہے اور وہ منصفانہ انتخابات منعقد کروانے کے لئے دن رات کام کر رہا۔ جیسے....."

Annexure-2
[Introduction, para-3(b)]

مساوات

بروز پیر، 8 اکتوبر 1990ء

منصفی کے نرالے معیار

"..... جہاں تک الیکشن کمیشن کا تعلق ہے
اس کی شبانہ روز محنت اور غیر جانبداری تمام
شکوک و شبہات سے بالاتر
ہے....."

Annexure-3
[Introduction, para-3(c)]

مساوات

بروز اتوار '21 اکتوبر '1990ء

تاریخ کا ریکارڈ

"..... اس سارے عمل میں الیکشن کمیشن کی غیر جانبداری مسلمہ اور تمام شکوک و شبہات سے بالا ہے....."

Annexure-4
(Introduction, para- 3)

روزنامہ "جنگ" راولپنڈی، 23 اکتوبر 1990ء

دھاندلی کو کیسے روکیں؟

الیکشن کمیشن نے اس سلسلے میں موثر طریقہ کار اختیار کیا ہے، مگر پیپلز ڈیموکریٹک الائنس کے امیدوار اور پولنگ ایجنٹ مندرجہ ذیل ہدایات کو ضرور مدنظر رکھیں۔

- تسلی کریں کہ بیلٹ بکس خالی ہوں اور پریذائیڈنگ افسر آپ کے سامنے اسے سیل کرے۔
- ووٹر جب پولنگ سٹیشن میں آئے تو اس کا شناختی کارڈ خود چیک کریں۔ اس کے نام اور پتہ کی تصدیق اپنی ووٹر لسٹ سے کریں اور لسٹ میں اس کے نام پر نشان لگا دیں۔
- اطمینان کریں کہ پولنگ افسر ووٹر کا شناختی کارڈ پنچ کرے اور ووٹر کے انگوٹھے پر انمٹ سیاہی کا نشان لگا کر اس کو سکھائے۔
- پریذائیڈنگ افسر کا فرض ہے کہ جب وہ ووٹنگ کے شروع میں اور دوران ہر بار ووٹوں کی نئی کاپی پولنگ افسر کو دے تو کاپی آپ سے چیک کرائے۔ اور ووٹوں کے نمبر آپ کو نوٹ کرائے۔ اس سلسلے میں ذرا بھی غفلت نہ برتیں۔
- ووٹنگ کے اختتام پر چیک کریں کہ تمام امیدواروں کو جو ووٹ ملے ہیں ان کی کل تعداد وہی ہے جتنے نشان آپ نے ووٹنگ لسٹ پر لگائے ہیں۔
- پریذائیڈنگ افسر سے پولنگ کی دستخط شدہ لسٹ حاصل کیے بغیر پولنگ سٹیشن مت چھوڑیں۔ یاد رکھیں کہ دستخط شدہ لسٹ آپ کو دینا پریذائیڈنگ افسر کا فرض ہے اور وہ اس سے کسی حالت میں بھی انکار نہیں کر سکتا۔
- اس لسٹ کی کاپی خود بھی محفوظ رکھیں اور پارٹی آفس بھی پہنچائیں تاکہ تصدیق ہو سکے کہ جو نتیجہ اناؤنس ہو وہ صحیح ہو۔
- جس ووٹر پر آپ کو ذرا بھی شک ہو اس کو چیلنج کرنے سے ہرگز نہ گھبرائیں۔ آپ جتنے ووٹروں کو چاہیں چیلنج کر سکتے ہیں۔
- اپنے ساتھ ٹارچ یا بیٹری لیمپ ضرور رکھیں۔ اچانک اندھیرا ہو جانے کی صورت میں آپ کو اس کی ضرورت پیش آ سکتی ہے۔

ضروری

پوسٹل بیلٹ کی تاریخ بڑھا دی گئی ہے ۱۹۸۸ اور ۱۹۹۰ء کے انتخابات میں استعمال ہونے والے پوسٹل بیلٹس کے درمیان موازنہ کریں اور صحیح اعداد و شمار جلد از جلد **بلاول ہاؤس** بھجوائیں۔

پیپلز ڈیموکریٹک الائنس

Note.—English version of the above advertisement may be seen on the back of this page.

DAILY JANG, RAWALPINDI
Dated 23-10-1990

HOW TO PREVENT RIGGING?

Although the Election Commission of Pakistan has adopted a very effective procedure in this regard, yet the candidates and Polling Agents of People Democratic Alliance should keep in view the following instructions:—

(1) Make sure that the ballot box ~~is~~ or empty and that the ballot boxes are sealed by the Presiding Officer before you.

(2) As soon as a voter enters the polling booth, check up his identity card; verify his name and address from the voters' list and tick mark his name in the list.

(3) Ensure that the polling officer punches voter's identity card and that the mark of indelible ink on the thumb of voter is dried up.

(4) It is the duty of the Presiding Officer to give a fresh book of ballot papers to the polling officer at the commencement or during the polling process, and to get the ballot papers book checked by you and also to give to you the number of ballot papers. Do not act negligently in this behalf.

(5) At the conclusion of the poll please check that the number of votes polled by the candidates tallies with the tick marks put by you on the list of voters.

(6) Do not leave the polling station without getting the attested copy of the statement of count from the Presiding Officer, who is legally bound to supply a copy thereof to you. He can not refuse to do so in any circumstances.

(7) Preserve a copy of the statement of the count with you and also supply a copy thereof to the party office so as to facilitate verification of authenticity of results announced.

(8) Do not hesitate to challenge a voter who appears to be doubtful to you. You can challenge as many voters as you like.

(9) Please do have with you a torch or battery lamp, which you may require in case of power breakdown.

Important : The date for postal ballot has been extended. Compare the use of postal ballot during 1988 and 1990 elections and convey data to Bilawal House.

PEOPLES DEMOCRATIC ALLIANCE

روزنامہ "نوائے وقت" لاہور، 23 اکتوبر، 1990ء

دھاندلی کو کیسے روکیں؟

الیکشن کمیشن نے اِس سلسلے میں مؤثر طریقۂ کار اختیار کیا ہے، مگر پیپلز ڈیموکریٹک الائنس کے امیدوار اور پولنگ ایجنٹ مندرجہ ذیل ہدایات کو ضرورِ مدِ نظر رکھیں۔

- تسلی کریں کہ بیلٹ بکس خالی ہوں اور پریذائیڈنگ افسر آپ کے سامنے اسے سیل کرے۔
- ووٹر جب پولنگ سٹیشن میں آئے تو اس کا شناختی کارڈ خود چیک کریں۔ اس کے نام اور پتہ کی تصدیق اپنی ووٹر لسٹ سے کریں اور لسٹ میں اس کے نام پر نشان لگا دیں۔
- اطمینان کریں کہ پولنگ افسر ووٹر کا شناختی کارڈ پنچ کرے اور ووٹر کے انگوٹھے پر انمٹ سیاہی کا نشان لگا کر اس کو سکھائے۔
- پریذائیڈنگ افسر کا فرض ہے کہ جب وہ ووٹنگ کے شروع میں اور دوران ہر بار ووٹوں کی نئی کاپی پولنگ افسر کو دے تو کاپی آپ سے چیک کرائے۔ اور ووٹوں کے نمبر آپ کو نوٹ کرائے۔ اِس سلسلے میں ذرا بھی غفلت نہ برتیں۔
- ووٹنگ کے اختتام پر چیک کریں کہ تمام امیدواروں کو جو ووٹ ملے ہیں ان کی کل تعداد وہی ہے جتنے نشان آپ نے ووٹنگ لسٹ پر لگائے ہیں۔
- پریذائیڈنگ افسر سے پولنگ کی دستخط شدہ لسٹ حاصل کیے بغیر پولنگ سٹیشن مت چھوڑیں۔ یاد رکھیں کہ دستخط شدہ لسٹ آپ کو دینا پریذائیڈنگ افسر کا فرض ہے اور وہ اس سے کسی حالت میں بھی انکار نہیں کر سکتا۔
- اِس لسٹ کی کاپی خود بھی محفوظ رکھیں اور پارٹی آفس بھی پہنچائیں تاکہ تصدیق ہو سکے کہ جو نتیجہ اناؤنس ہو وہ صحیح ہو۔
- جس ووٹر پر آپ کو ذرا بھی شک ہو اُس کو چیلنج کرنے سے ہرگز نہ گھبرائیں۔ آپ جتنے ووٹروں کو چاہیں چیلنج کر سکتے ہیں۔
- اپنے ساتھ ٹارچ یا بیٹری لیمپ ضرور رکھیں۔ اچانک اندھیرا ہو جانے کی صورت میں آپ کو اِس کی ضرورت پیش آ سکتی ہے۔

ضروری

پوسٹل بیلٹ کی تاریخ بڑھا دی گئی ہے۔ ۱۹۸۸ اور ۱۹۹۰ء کے انتخابات میں استعمال ہونے والے پوسٹل بیلٹس کے درمیان موازنہ کریں اور صحیح اعداد و شمار جلد از جلد **بلاول ہاؤس** بھجوائیں۔

پیپلز ڈیموکریٹک الائنس

Midas

Note.—English version of the above advertisement may be seen on the back of this page.

DAILY NAWA-I-WAQT
Lahore dated 23-10-1990

HOW TO PREVENT RIGGING?

Although the Election Commission of Pakistan has adopted a very effective procedure in this regard, yet the candidates and Polling Agents of People Democratic Alliance should keep in view the following instructions:—

(1) Make sure that the ballot boxes are empty and that the ballot boxes are sealed by the Presiding Officer before you.

(2) As soon as a voter enters the polling booth, check up his identity card; verify his name and address from the voters' list and tick mark his name in the list.

(3) Ensure that the polling officer punches voter's identity card and that the mark of indelible ink on the thumb of voter is dried up.

(4) It is the duty of the Presiding Officer to give a fresh book of ballot papers to the polling officer at the commencement or during the polling process, and to get the ballot papers book checked by you and also to give to you the number of ballot papers. Do not act negligently in this behalf.

(5) At the conclusion of the poll please check that the number of votes polled by the candidates tallies with the tick marks put by you on the list of voters.

(6) Do not leave the polling station without getting the attested copy of the statement of count from the Presiding Officer, who is legally bound to supply a copy thereof to you. He can not refuse to do so in any circumstances.

(7) Preserve a copy of the statement of the count with you and also supply a copy thereof to the party office so as to facilitate verification of authenticity of results announced.

(8) Do not hesitate to challenge a voter who appears to be doubtful to you. You can challenge as many voters as you like.

(9) Please do have with you a torch or battery lamp, which you may require in case of power breakdown.

Important : The date for postal ballot has been extended. Compare the use of postal ballot during 1988 and 1990 elections and convey data to Bilawal House.

PEOPLES DEMOCRATIC ALLIANCE

Annexure-5
(Introduction, para-5)

نام اخبار : روزنامہ (دی نیشن)

مقام اشاعت : اسلام آباد

تاریخ اشاعت : 19/جون 1991ء

Allegations in White Paper vague: CEC

ISLAMABAD—Informal Press briefing by Mr. Justice Naimuddin, Chief Election Commissioner on June 18, 1991, on the summary of the so-called 'White Paper' issued by the People's Democratic Alliance.

1. The People's Democratic Alliance have released to the Press on June 12, 1991, a summary of the White Paper on elections 1990. The allegations made from time to time by various leaders of PDA have apparently been compiled and published in that summary.

2. The Commission tried its level best during the last four to five days to procure a copy of the main White Paper which reportedly contains proof of rigging, as alleged by PDA. Written as well as telephonic requests for the supply of a copy of the main White Paper were made to the Chairperson, Secretary-General and the Information Secretary of PDA. In addition, telephonic inquires were made by the Election Commission from Omer Asghar Khan, at the instance of the Secretary-General PDA, and from the Provincial heads of the PDA. Moreover, almost all Editors of the leading newspapers published from Islamabad, Rawalpindi, Lahore, Karachi, Peshawar and Quetta were contacted to ascertain whether they have received copies of the so-called White-Paper, but all of them staed that no such White Paper has so far been supplied to them. There is thus no White Paper of PDA in existence at present.

3. Factual position with regard to the allegations, made by PDA from time to time, concerning the elections or the Election Commission has already been explained by the Commission in its publication entitled "Facts and Figures Relating to General Elections 1990" published in January, 1991 and the press statements. Copies of the publication were sent to all members of the National Assem-bly and the Senate and to all newspapers in the country.

4. However, in order to keep the record straight, the Commission would like to deal with the allegations listed in the Summary of the so-called White Paper which is without any supporting documents, material, substance, particulars or proof and is based on conjunctures and surmises. The allegations are, in fact, vague and too general.

5. It has been stated in the summary of the White Paper that "the total number of constituencies where a very high probability of rigging is indicated stands at 70." It will not be out of place to point out here that, out of 70 constituencies listed in the sum-mary, election petitions have been filed by PDA candidates only in case of 33 constituencies. No election petition has been filed in case of the remaining 37 constituencies.

6. Out of 37 constituencies, where no election petition has been filed by PDA candidates, three applications/petitions were filed earlier before the Election Commission under section 39, 103 and 103 AA of the Representation of the People Act, 1976. After hearing the parties, the Commission rejected those applications/petitions in due course of law and no further appeal or writ petition was filed by any candidate or party in the High Court or the Supreme Court against the decisions of the Election Commission.

7. It will be pretinent to state that 33 election petitions filed by the PDA candidates are pending trial before the honourable Election Tribunals, presided over by the Judges of the High Courts of the

respective provinces. It may be added that it is a contempt to comment on the proceedings pending before a court in circumstances that prejudice a fair trial of the issue. See de Smith on *Judicial Review of Administrative Action*, page 77, 4th edition. Therefore, no comments are offered on the general allegations for the reason that such comments may affect fair trial of the election petitions in one way or the other.

8. It is noteworthy that PDA has been shifting its stand on the number of constituencies every now and then. In the first instance, the allegation of rigging the election was made in respect of 34 constituencies. Immediately thereafter, fresh poll was demanded in all constituencies of the National Assembly. Again, the allegation of rigging was made in respect of 70 constituencies. Then the number was raised to 100. In their latest publication, they have named 70 constituencies out of which no election petition or appeal has been filed by the defeated candidates in 37 constituencies and their results have become final under the law. In the remaining 33 constituencies, the election petitions are pending and the matters are subjudice as stated earlier.

9. It is being repeatedly alleged that the socalled rigging "was centrally directed by an Election Cell that was established in the Presidency in Islamabad." This allegation has already been denied on several occasions in the past and is hereby denied again. The general elections were conducted by Judicial Officers under the supervision of the Election Commission and by no other agency. The result of election was announced by the Election Commission and no other authority or cell could interfere with the results which were received by the Election Commission from the Provincial Election Commissioners and District Returning Officers who all were the District & Sessions Judges and could not be influenced by the executive in the provinces or in the Federal Capital.

10. It has been further alleged that M. Humayun Khan, Additional Secretary, Election Commission, asked "the District Returning Officers to open boxes containing ballot papers on the pretext of checking them." This allegation has been made on the basis of a teleprinter message signed and issued by him on 18th October, 1990. Factual position of the case is that a teleprinter message bearing No. F.2(11)/90-Cord, dated 18-10-1990 was addressed by the Additional Secretary, Election Commission, to all the Provincial Election Commissioners in keeping with the past practice. The author of summary of the White Paper has misinterpreted the contents of this telex. It may, however, be explained that the ballot papers of a constituency are packed in wooden boxes in the printing press for safe transportaion to the District Headquarters. These boxes are opened at the District Headquarters under the supervision of District and Sessions Judge (District Returning Officers) and the Returning Officer for distribution of the ballot papers to each polling station in that constituency well before the polling day. The number of polling stations in a National Assembly constituency generally ranges between 150—200. This unavoidable exercise has been miscontrued to mean that the District Returning Officers were instructed "to open boxes containing ballot papers, on the pretext of checking them," which is misleading. At the time of bulk breaking of the election material and distribution of ballot papers officers of the Election Commission (such as Election Officers, Assistant Election Commissioners, Deputy Election Commissioners) are required to be present to assist the District Returning Officers and Returning Officers in preparing invoices and in packing the election material, including ballot papers, in polling bags separately for each polling station. The bags are sealed after packing and handed over to the Presiding Officers against proper acknowledgement. The Presiding Officers open the sealed bags in the presence of polling agents of the candidates before commencement of the poll on the polling day. No complaint in this regard was made by PDA or its candidates to the Election Commission. The instructions issued on this behalf during the 1990 general elections are identical to the instructions issued during 1988 elections.

11. It may be pertinent to point out here that another publication based on fictitious and fabricated documents came to the notice of Election Commission recently. A book entitled *White Paper on 1990 Elections* written in Urdu by Abid Tehami contained statements of the count of votes purported to have been prepared, signed and issued by the Presiding Officers of 38 polling stations of constituency No PP-226 Bahawalnagr-II. On an inquiry, the District Returning Officer/District & Sessions Judge, Bahawalnagr and the

Returning Officer concerned found that these statements were "forged and fabricated" and that signatures of the Presiding Officers appended thereon were not genuine. Both the author and publisher of this book have been asked to let the Election Commission know as to wherefrom they procured the statements in question and as to why they published these statements without first verifying their authenticity. Further action in the matter will be taken according to law on receipt of replies from the author and publisher. It may be interesting to note that no complaint or elction petition has been filed by any candidate from this constituency.

نام اخبار : روزنامہ "جنگ"

مقام اشاعت : راولپنڈی

تاریخ اشاعت : 19/جون 1991ء

الیکشن کمیشن نے پی ڈی اے کے وائٹ پیپر کو مسترد کر دیا

سمری میں لگائے گئے الزامات بے بنیاد ہیں ان کا کوئی دستاویزی ثبوت فراہم نہیں کیا گیا

الزام 70 حلقوں میں دھاندلی کا ہے جبکہ عذر داریاں صرف 33 حلقوں کے بارے میں دائر کی گئی ہیں جو زیر سماعت ہیں ○ چیف الیکشن کمشنر

کراچی (اپ پ) چیف الیکشن کمشنر جناب جسٹس نعیم الدین نے پی ڈی اے کی جانب سے جاری کردہ قرطاس ابیض کو نام نہاد قرار دیتے ہوئے اس میں الیکشن کمیشن پر عائد کردہ الزامات کی تردید کی ہے۔ یہاں ایک پریس بریفنگ کے دوران چیف الیکشن کمشنر نے کہا ہے کہ ان الزامات کو' جو قطعی بے بنیاد ہیں' مسترد کیا جاتا ہے۔ انہوں نے کہا کہ پی ڈی اے کی جانب سے جاری کردہ اس دستاویز میں جو الزامات عائد کئے گئے ہیں ان کا کوئی بھی دستاویزی ثبوت نہیں دیا گیا ہے۔ انہوں نے کہا کہ پی ڈی اے کے اس وائٹ پیپر میں 70 انتخابی حلقوں میں دھاندلی کا الزام عائد کیا گیا جبکہ پی ڈی اے کی جانب سے صرف 33 حلقوں پر انتخابی عذر داریاں دائر کی گئی ہیں جن پر فیصلے ابھی باقی ہیں اور وہ زیر سماعت ہیں۔ جناب جسٹس نعیم الدین نے کہا کہ الیکشن کمیشن پر اس قسم کی بے بنیاد الزام تراشیاں توہین عدالت کے مترادف ہیں انہوں نے کہا کہ پی ڈی اے نے اپنے اس وائٹ پیپر کی جو سمری 12 جون کو جاری کی ہے اس میں پی ڈی اے کے لیڈروں کی جانب سے گاہے گاہے جو الزامات عائد کئے جاتے رہے ہیں انہیں اس سمری میں شامل کر دیا گیا ہے۔ انہوں نے کہا کہ الیکشن کمیشن نے گذشتہ چار پانچ روز کے دوران اس اصل وائٹ پیپر کی ایک کاپی حاصل کرنے کی بھرپور کوشش کی ہے جس کے بارے میں دعویٰ کیا جارہا ہے کہ اس میں دھاندلی کے الزامات کے ثبوت فراہم کر دیئے گئے ہیں۔ جناب جسٹس نعیم الدین نے کہ اس اصل وائٹ پیپر کی ایک کاپی فراہم کرنے کیلئے پی ڈی اے کی چیئرپرسن' اس کے سیکرٹری جنرل اور اس کے انفارمیشن سیکرٹری کے ساتھ تحریری اور ٹیلی فون پر درخواست کی گئی۔ الیکشن کمیشن نے مسٹر عمر اصغر خان اور پی ڈی اے کے دوسرے صوبائی سربراہوں سے ٹیلی فون پر استفسار کئے۔ اس ضمن میں اسلام آباد' راولپنڈی' لاہور' کراچی' پشاور اور کوئٹہ سے شائع ہونے والے اخبارات کے مدیروں سے بھی پتہ کیا گیا کہ کیا انہیں اس نام نہاد وائٹ پیپر کی کوئی کاپی ملی ہے یا نہیں لیکن ان سب کا یہی کہنا تھا کہ انہیں کوئی کاپی فراہم نہیں کی گئی۔ چیف الیکشن کمشنر نے کہا کہ اس طرح پی ڈی اے کے کسی وائٹ پیپر کا کوئی وجود ہی نہیں ہے۔ اس طرح اصل پوزیشن یہ ہے کہ پی ڈی اے کے لیڈروں کی جانب سے جو الزامات عائد کئے جاتے رہے ہیں جنہیں اس سمری کی بنیاد بنایا گیا ہے ان کا الیکشن کمیشن لمحہ بہ لمحہ جواب دیتا رہا ہے۔ اور اس ضمن میں الیکشن کے بارے میں اصل حقائق کا کتابچہ جو جنوری 1991ء میں شائع کیا گیا تھا قومی اسمبلی کے ارکان میں تقسیم کیا جاچکا ہے۔ لیکن ریکارڈ درست کئے گئے الیکشن کمیشن اس نام نہاد وائٹ پیپر کی سمری کے جواب میں یہی کہتا ہے کہ یہ تمام الزامات بے بنیاد ہیں۔ اس میں الزام لگایا گیا ہے کہ 70 حلقوں میں دھاندلی ہوئی ہے لیکن الیکشن کمیشن کو 33 انتخابی عذر داریاں موصول ہوئی باقی 37 حلقوں کے بارے میں کوئی اعتراض داخل نہیں کیا گیا۔ انہوں نے کہا کہ پی ڈی اے کے لیڈروں کی جانب سے دھاندلیوں کے الزامات کے سلسلے میں حلقوں کی تعداد تبدیل ہوتی رہتی ہے لیکن 70 حلقوں میں دھاندلی کا الزام لگایا گیا اور کبھی 100 حلقوں میں دھاندلی کیلئے کہا گیا۔ ایک مرتبہ الزام لگایا گیا کہ دھاندلی الیکشن سیل کی ہدایات پر کی گئی ہے جس کا ہیڈکوارٹر پریذیڈنسی میں بنایا گیا۔ اس الزام کا جواب دیا جاچکا ہے۔ اس کی ایک مرتبہ پھر پرزور تردید کرتے ہوئے واضح کیا جاتا ہے کہ الیکشن عدالیہ کے حکام کی زیر نگرانی کرائے گئے۔ الیکشن کے نتائج کا اعلان بھی الیکشن کمیشن نے کیا۔ اس میں کسی ادارے یا سیل نے مداخلت نہیں کی۔

Annexure-6
(Introduction, para-6)

نام اخبار : روزنامہ "پاکستان ٹائمز"

مقام اشاعت : راولپنڈی

تاریخ اشاعت : 28 ستمبر 1991ء

NO PRESIDENTIAL PLAN TO ELIMINATE PPP FROM ELECTORAL PROCESS—CEC

PDA 'WHITE PAPER' NOTHING BUT POLITICAL PROPAGANDA

LAHORE, Sept. 27: The Chief Election Commissioner of Pakistan has said that the so-called "White Paper on Election 1990" contains vague and oft-repeated allegations and irrelevant matter.

In a Press statement, the CEC has refuted PDA allegations.

The following is the text of the statement:

The so-called "White Paper on Election 1990" has at last seen light of the day exactly eleven months after the polls were held last year. It contains general, vague and oft-repeated allegations and irrelevant matters some of which have already been dealt with by the Election Commission in its publication titled "Facts and Fingures relating to the 1990 general elections", released to the press in January-February, 1991. The Election Commission proposes to deal with other allegations levelled in the so-called "White Paper" in its Report on General Elections 1990 which is under print and will be available in the next three weeks.

The PDA have alleged that an elaborate plan was prepared under the supervision of the President to eliminate the PPP from the electroal process and that the plan was put into action starting with the dissolution of the assemblies. It should be remembered that Presidential order of dissolution of National Assembly has been up-held by two High Courts of the country. While no appeal has been filed against decision of Sind High Court which has attained finality, an appeal filed by a citizen is pending before the Supreme Court. No comments can, therefore, be made on a matter pending before the highest court of the country. It is asserted that the elections were conducted by the judicial officers under the supervision of the Election Commission consisting of members of the superior judiciary and none else.

The so-called "White Paper" also contains fictitious documents. To quote an example, the statements of the count purported to have been issued by Presiding Officers have been placed at Annexure-23 (Pages 416-452) thereof. These statements were first published by Mr. Abid Tehami in his book "Intikhab 90 Ka White Paper" in April this year. The Commission took cognizance of the statements and referred them to the District Returning Officer and Returning Officer of constituency No. PP-226 Bahawalnagar-II for verification. The statements were found by them to be forged and fabricated. A notice was accordingly issued by the Election Commission to Mr. Abid Tehami who disclosed in his written reply that the statements in question were personally given to him by Mr. Abdul Qadir Shaheen, the defeated candidate of PDA from that constituency. A notice was, therefore, issued to Mr. Abdul Qadir Shaheen to let the Commission know the source from which he obtained these statements. Mr Shaheen has failed to respond to the two

notices of the Commission. Further action according to the law is under consideration.

In all 62 election petitions including bye-elections were filed challenging the election of members of the National Assembly. Of these, the Chief Election Commissioner dismissed five election petitions for non-compliance of the law and the Election Tribunals have so far rejected two petitions in due course of law. The rest of the election petitions are subjudice before the courts. The so-called "White Paper" does not even contain any evidence of rigging much less the proof of rigging in a sophisticated, scientific and invisible manner. It has been alleged that election in 70 constituencies was rigged. As against these constituencies, the number of election petitions filed by the PDA candidates is only 33. No election petition has been filed in respect of the remaining 37 constituencies which means that the defeated candidates have accepted verdict of the electorate.

Since promulgation of the Constitution in 1973, the judiciary has been charged with the duty of organising and conducting election to the National Assembly, Provincial Assemblies and the Senate under Article 213 read with Article 218 of the Constitution. The elections, held in 1988 and 1990, were conducted by the judiciary. The role of judiciary in the electoral process was further expanded by appointing senior officers of the judiciary as District Returning Officers and Returning Officers for the 1988 general elections and the 1990 general elections. It is interesting to note that the electoral reforms were not even mentioned during the 20-month rule of the former government.

Let me remind all concerned that the general elections of 1988 and the general elections of 1990 were held by almost the same judicial officers, polling staff and functionaries of the Election Commission on the basis of the same electoral rolls, the delimitation of constituencies, the polling scheme and the polling procedure. A total number of 5,87,290 fresh names were added to the electoral rolls in about two years after the 1988 elections which comes only to 1.22%. The constituencies were also the same as were delimited in 1988 with minor adjustments in two National Assembly constituencies, necessitated due to the creation of new districts, after hearing the parties at length. The decision of the Election Commission in this behalf was not challenged in a court of law. All complaints relating to 1990 elections were properly investigated and disposed of by the Election Commission in due course of law. All decisions of the Election Commission were either accepted by the parties or, if challenged, they were upheld by the High Courts or the Supreme Court. I may add that the daily "Musawat" Lahore, which is considered to be the spokesman of PDA, has in its editorial note dated 10-9-1990 commented as under:—

"So far as the Election Commission is concerned, its performance is above board and it is working day and night to hold fair elections".

It further commented as under in another editorial note dated 7-10-1990:–

"So far the Election Commission is concerned, its hard work round the clock and impartiality is beyond all doubts."

On the eve of elections, the editorial note dated 21-10-1990 further stated as under:–

"In the entire process, the impartiality of the Election Commission is an admitted fact and beyond all suspicion".

The PDA advertisement published in the daily "Musawat", 'Jang', etc. on 23-10-1990 also expressed satisfaction, in the following words, over the arrangements made by the Election Commission:–

"The Election Commission has in this behalf made effective arrangements but the candidates and polling agents of PDA should keep in mind, the following instructions....."

It may further be added that result of the bye-elections, held in a large number of constituencies in January is consistent with the result of general elections. This fact alone leads to the conclusion that the general elections were, held freely, fairly and impartially and that no rigging had taken place.

The sole aim of publishing the so-called "Executive Summary of the White Paper" and "the White Paper on Elections 1990" is to discredit the process of elections. The PDA did not even have the courtesy to supply a copy thereof to the Election Commission which is mainly concerned with elections. Publication of such books is, therefore, nothing more than political propaganda.

In the end, I appeal to all sane people in the country to preserve and protect the sanctity of the institutions. If institutions are destroyed, nothing will be left to

depend upon. If judiciary has not come up to the expectations of the PDA, it should have suggested alternative to the judiciary. If judges are continuously harassed like this, they will themselves beg not to be associated with such an important national duty. What is the alternative?

I would further appeal to those who want rule of law in the country, that they should themselves follow the course provided by law framed when they were in power.

نام اخبار : روزنامہ "نوائے وقت"

مقام اشاعت : راولپنڈی

تاریخ اشاعت : 28 ستمبر 1991ء

وائٹ پیپر میں اکثر دہرائے جانے والے عمومی اور غیر ضروری الزامات درج ہیں۔

○ چیف الیکشن کمشنر

ایسے من گھڑت اور جعلی گوشوارے درج کئے گئے ہیں جو ایک کتاب کے مصنف کو پی ڈی اے کے ایک ہارنے والے امیدوار نے دیئے تھے۔

اگر عدلیہ پی ڈی اے کی توقعات پر پوری نہیں اتری تو انہیں عدلیہ کا متبادل تجویز کرنا چاہئے' کوئی دستاویزی ثبوت کتاب میں درج نہیں

لاہور (پ ر) چیف الیکشن کمشنر جناب جسٹس نعیم الدین نے ملک کے اہل دانش و بصیرت سے کہا ہے وہ قومی اداروں کے تقدس کی پاسداری کریں' اگر یہ ادارے تباہ کر دیئے گئے تو اتحاد بھی کوئی چیز باقی نہیں رہے گی۔ چیف الیکشن کمشنر نے کہا کہ اگر عدلیہ پی ڈی اے کی توقعات پر پوری نہیں اتری تو انہیں عدلیہ کا متبادل تجویز کرنا چاہئے' اگر اسی طرح معزز جج صاحبان کو ہراساں کیا جاتا رہا تو وہ اپنے قومی نوعیت کے فرائض کی انجام دہی سے خود کو علیحدہ کرنے کی خود ہی درخواست کریں گے پھر آپ اور ہمارے پاس کیا متبادل رہ جائے گا۔ انہوں نے کہا کہ پی ڈی اے کے وائٹ پیپر میں اکثر دہرائے جانے والے عمومی اور غیر ضروری الزامات درج ہیں اور ایسے من گھڑت اور جعلی گوشوارے دیئے گئے ہیں جو ایک کتاب کے مصنف کو پی ڈی اے کے ایک ہارنے والے امیدوار نے دیئے تھے۔ میں ایسے میں ان اشخاص سے جو ملک میں قانون کی حکمرانی چاہتے ہیں اپیل کرتا ہوں کہ وہ جب حکمرانی کر رہے ہوں تو خود بھی ان قوانین پر عمل کریں۔ چیف الیکشن کمشنر نے آج ایک بیان میں ان خیالات کا اظہار کرتے ہوئے کہا کہ بالآخر گزشتہ سال منعقد ہونے والے انتخابات کے ٹھیک گیارہ ماہ بعد پیپلز ڈیموکریٹک الائنس نے نام نہاد "وائٹ پیپر الیکشن 1990ء" جاری کر دیا جس میں اکثر دہرائے جانے والے عمومی اور غیر ضروری الزامات درج ہیں۔ الیکشن کمیشن پہلے ہی جنوری' فروری 1991ء میں اپنے جاری کردہ کتابچے Facts And Figures Relating to General Election-1990 میں ان الزامات کا جائزہ لے چکا ہے۔ تاہم الیکشن کمیشن عام انتخابات 1990ء پر زیر طبع رپورٹ میں وائٹ پیپر میں مندرج دیگر الزامات کا جائزہ پیش کرے گا جو آئندہ تین ہفتوں میں منظر عام پر آئے گی۔

2:۔ پی ڈی اے نے الزام لگایا ہے کہ پاکستان پیپلز پارٹی کو انتخابی عمل میں شکست سے دوچار کرنے کے لئے صدر مملکت کی سربراہی میں ایک جامع پروگرام تشکیل دیا گیا اور اسمبلیوں کے برخاست کرنے کے فوراً بعد اس کو عملی جامہ پہنانا شروع کر دیا گیا یاد رہے کہ اسمبلیوں کو برخاست کرنے کا صدارتی حکم نامہ ملک کی دو عدالت ہائے عالیہ نے جائز قرار دے دیا ہے اور سندھ ہائیکورٹ کے فیصلے کے خلاف کوئی اپیل دائر نہ کر کے عدالت عالیہ کے فیصلہ کو دوام بخش دیا گیا۔ البتہ ایک عام شہری نے عدالت عظمیٰ میں ایک اپیل دائر کی ہے چونکہ یہ اپیل عدالت عظمیٰ میں زیر سماعت ہے اس لئے اس بارے میں کسی قسم کا تبصرہ نہیں کیا جا سکتا۔ یہ بات وثوق سے کہی جا رہی ہے کہ حالیہ انتخابات اعلیٰ عدلیہ کے ارکان پر مشتمل الیکشن کمیشن کی زیر نگرانی عدالیہ کے افسران نے بلا شرکت غیرے منعقد کروائے۔

3:۔ نام نہاد وائٹ پیپر جھوٹے الزامات کا پلندہ ہے۔ مثال کے طور پر کتاب ہذا کے جدول 23 (صفحات 416 تا 452) میں پریذائیڈنگ افسران کے مبینہ طور پر جاری کردہ گنتی کے گوشوارے شائع ہوئے ہیں۔ یہ گوشوارے سب سے پہلے سال رواں کے ماہ اپریل میں جناب عابد تہامی کی لکھی ہوئی کتاب بعنوان "انتخابات 90ء کا وائٹ پیپر" میں شائع کئے گئے۔ الیکشن کمیشن نے فوری نوٹس لیتے ہوئے مذکورہ گوشوارے صوبائی اسمبلی' پنجاب' حلقہ نمبر پی پی۔ 226 بہاولنگر۔ 2 کے ڈسٹرکٹ ریٹرننگ افسر اور ریٹرننگ افسر کو تصدیق کے لئے فوری طور پر ارسال کئے۔ مذکورہ افسران نے ان گوشواروں کو "من گھڑت اور جعلی" قرار دیا۔ اندریں صورت جناب عابد تہامی کو الیکشن کمیشن نے نوٹس جاری کیا۔ نوٹس ہذا کے جواب میں جناب عابد تہامی نے کمیشن کو مطلع کیا کہ اسے

مندرجہ بالا حلقہ کے انتخابات میں ہارنے والے پی ڈی اے کے ایک امیدوار جناب عبدالقادر شاہین نے یہ گوشوارے بنفس نفیس فراہم کئے لہٰذا جناب عبدالقادر شاہین کو ایک نوٹس جاری کیا گیا اور اس سے اس بات کا استفسار کیا گیا کہ اس نے مذکورہ گوشوارے کہاں سے حاصل کئے۔ تاہم جناب عبدالقادر شاہین، کمیشن کے جاری کردہ یکے بعد دیگرے دونوں نوٹس کا جواب دینے سے قاصر رہے، اس ضمن میں مزید قانونی کارروائی زیر غور ہے۔

4:۔ قومی اسمبلی کے ارکان کے انتخابات بشمول ضمنی انتخابات کے خلاف کل 162 انتخابی عذر داریاں دائر کی گئی ہیں۔ جس میں پانچ عذر داریاں جو قانونی تقاضے پورے کئے بغیر دائر کی گئی تھیں، چیف الیکشن کمشنر نے خارج کر دیں جبکہ الیکشن ٹریبونلز نے باضابطہ سماعت کے بعد قانونی تقاضے پورے کرنے کے بعد اب تک صرف دو عذر داریاں خارج کیں بقیہ عذر داریاں عدالتوں میں زیر سماعت ہیں۔ نام نہاد وائٹ پیپر میں مبینہ دھاندلی سے متعلق قطعاً کوئی دستاویزی ثبوت نہیں ہے۔ چے جائیکہ سائنسی یا کسی پوشیدہ طریقے سے دھاندلی کا ثبوت فراہم کیا جائے۔ یہ الزام لگایا گیا ہے کہ 70 حلقوں کے انتخابات میں دھاندلی کی گئی جبکہ ان حلقوں کے برعکس پی ڈی اے نے کل 33 انتخابی عذر داریاں دائر کیں اور بقیہ 37 حلقوں سے متعلق کوئی عذر داری پیش نہیں کی گئی جو اس بات کا بین ثبوت ہے کہ ناکام امیدواروں نے عوامی فیصلے کو تسلیم کر لیا۔

5:۔ 1973ء میں آئین کی تشکیل کے بعد آئین کے آرٹیکل 213 اور 218 کی رو سے قومی اسمبلی، صوبائی اسمبلیوں اور سینٹ کے ارکان کے انتخابات کی ذمہ داری عدلیہ کے افسروں کو سونپ دی گئی۔ 1988ء 1990ء کے انتخابات عدلیہ کی نگرانی میں ہوئے، انتخابی عمل میں عدلیہ کے کردار کو مزید توسیع دی گئی اور 1988ء اور 1990ء کے انتخابات کے سلسلہ میں عدلیہ کے سینئر افسروں کو بطور ڈسٹرکٹ ریٹرننگ افسران اور ریٹرننگ افسران کے طور پر تعینات کیا گیا۔ یہ بات بڑی دلچسپ ہے کہ سابقہ حکومت کے بیس ماہ کے دورانیہ میں انتخابی اصلاحات کا تذکرہ تک نہیں کیا گیا۔

6:۔ میں سب کو اس بات کی یاد دہانی کروانا چاہتا ہوں کہ 1988ء اور 1990ء کے عام انتخابات کم و بیش عدلیہ کے ان ہی افسران اور الیکشن کمیشن کے اسی انتخابی عملہ نے ایک ہی انتخابی فہرستوں پر، ایک جیسی حلقہ بندیوں، پولنگ سکیم اور انتخابی قواعد و ضوابط کی روشنی میں انعقاد پذیر ہوئے۔ 1988ء کے عام انتخابات کے بعد دو سال کے عرصہ میں کل 290، 87، 5 نئے نام بطور ووٹر انتخابی فہرست میں درج کئے گئے جس کی شرح 22ء1 فیصد بنتی ہے۔ حلقہ بندیاں بھی وہی تھیں جو 1988ء کے انتخابات کے وقت تھیں، سوائے قومی اسمبلی کے دو حلقوں کے جن کی حلقہ بندیوں میں نئے اضلاع کی تشکیل کے باعث معمولی سی تبدیلی ناگزیر ہو گئی تاہم یہ تبدیلی متعلقہ فریقوں کی باضابطہ طویل سماعت کے بعد کی گئی اور اس ضمن میں الیکشن کمیشن کے فیصلے کو کسی بھی عدالت میں چیلنج نہیں کیا گیا۔ 1990ء کے انتخابات سے متعلق تمام شکایات مناسب تفتیش کے بعد قانون کی رو سے الیکشن کمیشن نے نمٹائیں اور تقریباً سبھی فریقوں نے ان فیصلوں کو تسلیم کیا اگر کسی فیصلے کے خلاف عدالت ہائے عالیہ یا عدالت عظمیٰ میں چیلنج کیا گیا تو ان اعلیٰ عدالتوں نے کمیشن کے فیصلوں کی توثیق کی۔ میں اس بات کی وضاحت کر دوں کہ روزنامہ "مساوات" لاہور نے جو کہ پی ڈی اے کا ترجمان اخبار شمار کیا جاتا ہے اپنی اشاعت مورخہ 10 ستمبر 1990ء کے اداریے میں تحریر کیا:۔ "جہاں تک الیکشن کمیشن کا تعلق ہے اس کی کارکردگی مسلم ہے اور یہ منصفانہ انتخابات کروانے میں دن رات مصروف عمل ہے۔" مورخہ 7 اکتوبر 1990ء کی اشاعت میں اخبار نے آگے چل کر مزید تبصرہ کیا کہ:۔ جہاں تک الیکشن کمیشن کا تعلق ہے اس کی شبانہ روز محنت اور غیر جانبداری تمام شکوک سے بالاتر ہے۔ اسی اخبار نے انتخابات کے موقع پر مورخہ 21 اکتوبر 1990ء کی اشاعت میں مزید لکھا:۔ "اس تمام عمل میں الیکشن کمیشن کی غیر جانبداری تمام شکوک سے بالا ایک مسلمہ حقیقت ہے۔"

7:۔ روزنامہ "مساوات" اور روزنامہ "جنگ" کی 23 اکتوبر 1990ء کی اشاعت میں پی ڈی اے کی جانب سے شائع شدہ اشتہار میں انتخابات کے متعلق الیکشن کمیشن کے کئے گئے انتظامات پر اطمینان کا اظہار ان الفاظ میں کیا:۔ "الیکشن کمیشن نے اس ضمن میں موثر انتظامات کئے ہیں لیکن پھر بھی پی ڈی اے کے امیدوار اور پولنگ ایجنٹ مندرجہ ذیل ہدایات کا خاص خیال رکھیں۔"

8:۔ اس بات کی وضاحت کی جاتی ہے کہ ماہ جنوری 1991ء میں حلقہ جات کی بڑی تعداد میں منعقد ہونے والے ضمنی انتخابات کے نتائج عام انتخابات کے نتائج سے مماثلت رکھتے ہیں، صرف یہی حقیقت یہ نتیجہ اخذ کرنے کے لئے کافی ہے کہ عام انتخابات آزادانہ، منصفانہ اور غیر جانبدارانہ طور پر کسی قسم کی دھاندلی سے پاک اور مبراء انعقاد پذیر ہوئے۔

9:۔ نام نہاد وائٹ پیپر کے خلاصے اور اس کی اشاعت کا واحد اور صرف ایک مقصد ہے کہ انتخابی عمل کو ناقابل اعتماد اور ناقابل یقین بنا دیا جائے۔ پی ڈی اے والوں نے اتنی وضع داری کا مظاہرہ نہیں کیا کہ مذکورہ وائٹ پیپر کی ایک جلد الیکشن کمیشن کے ادارے کو فراہم کر دی جاتی جس کا تعلق انتخابات سے ہے۔ کتاب ہذا کی حیثیت سیاسی پروپیگنڈے سے زیادہ کچھ نہیں۔

10:۔ آخر میں، میں ملک کے اہل دانش و بصیرت سے قومی اداروں کے تقدس اور ان کی پاسداری کی اپیل کرتا ہوں۔ اگر یہ ادارے تباہ کر دیئے گئے تو اتحاد نام کی کوئی چیز باقی نہیں رہے گی۔ اگر عدلیہ پی ڈی اے کی توقعات پر پوری نہیں اتری ہے تو انہیں عدلیہ کا متبادل تجویز کرنا چاہئے۔ اگر اسی طرح معزز جج صاحبان کو ہراساں کیا جاتا رہا تو وہ اپنے آپ کو ایسے قومی اہمیت کے فرائض کی انجام دہی سے علیحدہ کرنے کے لئے از خود درخواست کریں گے۔ پھر آپ اور ہمارے پاس کیا متبادل رہ جائے گا؟

11:۔ میں ایسے اشخاص سے جو اس ملک میں قانون کی حکمرانی چاہتے ہیں یہ اپیل کروں گا کہ وہ خود ان قوانین پر عمل کریں جس وقت کہ وہ حکمرانی کر رہے ہوں۔

Annexure-7
(Chapter-2, Para-20)

SUBJECT: *Conduct of election in Constituency No. PB-15 Killa Saifullah*

ORDER

At about 3.00 P.M. a telephonic message was received by me from the Commissioner, Zhob Division informing that one Muhammad Ayaz Jogezai has been attacked by the opponent party who received a bullet injury and was removed to Quetta for treatment. As a result of firing, tension spread through the area and the polls were to be stopped throughout the constituency. Later on, I again received a mesage from the Commissioner concerned that being a tribal area, the people got themselves armed and there was acute danger of blood-shed in the entire contituency. As a result of such tension, the polling could not be ordered to be restored. The Commissioner also sought advice. He however, requested that he may be allowed to stop the polling in the entire area in view of the grave situation throughout the constituency. He was advised to send a wireless message to that effect so that proper order could be passed. However, before sending such wireless message, the Commissioner again informed that two vehicles have been burnt and roads have been blocked.

2. Soon after this telephonic call, I received another call from one of the candidates namely Maulana Asmatullah of JUI who alleged that Nawab Muhammad Ayaz Jogezai attacked him by firing at him but he was not hit. He further informed that one of the Presiding Officers had been forced on gun point to hand over the ballot papers to Nawab Jogezai who rigged the elections. He requested that the polling may be ordered to be stopped and fresh poll be ordered.

3. The Commissioner, Zhob Division, the Political Agent-*cum*-Returning Officer, Killa Saifullah and District Returning Officer concerned informed me through wireless messages reaffirming the aforesaid versions (copies enclosed).

4. Today, I again received an application from Maulana Asmatullah which was filed by one Jan Muhammad of JUI, requesting for re-poll in the entire constituency. I also received a telegram to the said effect. (copies annexed).

5. Since law and order situation went out of control of administration, as a result of altercation and firing between the parties, the polls were ordered to be stopped and polling could not be restored despite all the efforts made by the District administration.

6. It is the duty of the Election Commissioner under the Constitution of Islamic Republic of Pakistan to organise and conduct the elections and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against. In the afore-mentioned circumstances, no fair, honest and just election was possible, therefore, there was no other alternative left, but to order that the polling be stopped in this constituency because voters could not fairly, honestly and justly exercise their right of franchise.

7. I, therefore, as a Member of Election Commision while exercising my powers under section 103 (c) of the Representation of the People Act, 1976 ordered the stopping of the polls in the entire constituency. I further propose that subject to the confirmation by the Commission re-poll be ordered in this constituency for which purpose the date shall be announced/determined by the Election Commission of Pakistan.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)

8. Read the above order of Member-II. In consultation with Mr. Justice Khalil-ur-Rehman Member-I on phone today at 6 p.m., it is ordered that fresh poll will be held in this constituency on 3-11-1990.

Sd/-
(JUSTICE NAIMUDDIN)
28-10-1990.

9. The date for repolling shall be fixed later on, due to law and order situation in the said constituency, as reported by the administration, on telephone.

Sd/-
(JUSTICE NAIMUDDIN)

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
3-11-1990

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
3-11-1990

Annexure-8
(Chapter-2, Para-20)

ORDER

NA-29 Tribal Area-III.

Perused the complaint. A case for recount under section 39 (6) of the Representation of the People Act, 1976 in respect of Constituency No. NA-29 T.A.-III has been made out. We would, therefore, direct the Returning Officer to recount the ballot papers at Peshawar on 31st October, 1990 at 10 a.m. in the Office of the Provincial Election Commissioner in his presence after due notice to the contesting candidates. The polling bag shall be brought and taken back by the Returning Officer under proper security arrangements including escort.

Sd/-
(JUSTICE NAIMUDDIN)
29-10-1990

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
29-10-90

Annexure-9
(Chapter 2, Para-20)

ORDER

PF-25 Swabi-II

A copy of the petition be sent to R.O., drawing his attention to the content of paras 7 & 8. He may also consider the contention contained in Para 9 if some specific plea, with respect to specific polling stations is made and the same is considered reasonable in terms of section 39 (6) of the Representation of People Act, 1976. The application stands disposed accordingly.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member
31-10-1990

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner
1-11-1990

Annexure-10
(Chapter 2, Para-20)

SUBJECT:—*Conduct of Election in Constituency No. PB-35 Lasbella-II*

ORDER

The District Returning Officer, Khuzdar telephoned me that law and order situation has worstened in Hub area of constituency No. PB-35 Lasbella-II. A mob has blocked the road. The Polling Agents of all the major political parties have left the respective polling stations and there is panic throughout the constituency. Soon after, the Deputy Commissioner, Lasbela informed on telephone that the polling has been stopped because the representative of B.N.M. has alleged that their agents while proceeding to Dureji have been kidnapped by persons of the opponent independent candidate. After receiving this report, the Polling Agents of almost all the political parties left the polling stations and have gathered as a mob. This mob of about 2000 to 3000 persons has blocked the road by putting tyres on fire etc., I advised him to control the situation through law enforcing agencies, but the Deputy Commissioner replied that there is no sufficient number of forces available to control the situation. I talked to Assistant Commissioner-*cum*-Returning Officer of the constituency who verified that on a report of kidnapping of agents of B.N.M., their followers as well as members of P.N.P. and P.P.P. have gathered to lead the mob and have blocked the road. All the Polling Agents have left the polling stations and as a result thereof polls could not continue. Since sufficient force was not available, the polls, therefore, could not be restored. He also informed that a mob of 2000 to 3000 persons was demonstrating on the main road, chanting slogans and was very aggresive.

2. I received repeated telephonic calls both from the Deputy Commissioner and the Assistant Commissioner to the same effect. The Deputy Commissioner requested for stoppage of the poll. However, he stated that he has called armed forces from Karachi but the said forces could not reach before 5.00 P.M.

3. This situation continued till the close of the poll time. Polling could not be restored in the entire constituency.

4. I also received wireless message from Assistant Commissioner-*cum*-Returning Officer of PB-35 Lasbela-II wherein, inter alia, it was stated that the RCD highway was blocked and a procession attacked and put on fire the office of Assistant Commissioner, Hub. Fire Brigade was called to extinguish fire. A similar wireless message was also received by the Deputy Commissioner, Lasbela (copies enclosed).

5. Since it is the contitutional duty of the Election Commission to conduct election in a fair, honest and just manner, the said objective could not be achieved in the circumstances narrated here-in above. Admittedy, the polls were stopped prior to 3.00 P.M. and could not be restored till the close of the polls in the entire constituency and Polling Agents of the political parties left the polling stations and resorted to demonstration, hence the voters could not exercise their right of franchise, in a fair and just manner. The over all situation was out of control of the District Administration, therefore, the polls were ordered to be stopped.

6. In the circumstances, I, as a Member of the Election Commission, while exercising my powers under section 103 (c) of the Representation of the People Act, 1976, confirm the order of stopping the polls in entire constituency. I, therefore, propose that subject to the confirmation by the Commisison, re-poll be ordered in this constituency for which purpose the Commission may determine/ announce the fresh date.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member Election Commission

Date: 28th October, 1990.

In view of the order of Member-II, it is, in consultation with Member-I, ordered that fresh poll in constituency No. PB-35 shall be held on 3-11-1990.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner
28-10-1990

Annexure-11
(Chapter 2, Para-20)

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PF-46 Mansehra-V

Present: Mirza Anwar Baig, Advocate,
for Mr. Sakhi Mohammad, Petitioner.

Malik Fazal Hussain, Advocate,
for Mr. Habib-ur-Rehman, respondent.

R.O. and D.R.O. were also present.

ORDER

Mr. Justice Amir-ul-Mulk Mengal, J.—The grievance of the petitioner is that he was declared elected, having received 61 votes more than the votes obtained by Mr. Habib-ur-Rehman after the count of postal ballots and at the time of provisional result. But later on, without issuing him notice, the bags were opened in his absence and votes were recounted. As a result thereof, Mr. Habib-ur-Rehman was declared elected with a margin of 13 votes.

After receiving the petition, the Commission ordered that the result of the constituency would be with-held.

Notices were issued to the parties and the counsel thereof were heard on 6th instant as well as today. The statement of R.O. was also recorded.

The main consideration in this matter appears to be whether the petitioner was served with a notice for attending the consolidation of the result or not.

According to the petitioner, he received a notice for 31-10-1990 when the R.O. counted the postal ballots and declared him as leading by 61 votes. Immediately thereafter the R.O. instead of consolidation of the result insisted to recount ballot papers of 18 polling stations. Petitioner, therefore, did not attend and thereafter received no notice for the consolidation of the result by the R.O.

The Returning Officer admits that the notice for consolidation of the results was issued for 31-10-1990 but he did not carry out the consolidation of the result on that day, and instead postponed it for 1-11-1990. The reason for adjouring the consolidation of the result was that the contesting candidates except Mr. Habib-ur-Rehman and IJI candidate boycotted the recount.

It is apparent from the aforesaid circumstances that notice for consolidation was given for 31-10-1990 but instead of consolidating the result the Returning Officer started recounting the votes of 18 polling stations and did not consolidate the result on the date fixed by him. R.O. further admits that he started recounting of the votes as well as consolidation of the result simultaneously on 1-11-1990 which is, in fact, a violation of section 39 (2) of the Representation of the People Act, 1976 which lays down that the consolidation proceedings shall be held without any avoidable delay as soon as possible after the polling day.

From the entire circumstances and the fact that consolidation of the results and recount were conducted in absence of the petitioner who had unofficially been declared as successful candidate, we have come to the conclusion that procedure was not properly followed, which materially affected the result. The petitioner showed his willingness for the repoll of the entire constituency and respondent Habib-ur-Rehman had already applied for repoll of one of the polling stations.

In the circumstances, it is declared that repoll shall be held in PF-46 Mansehra-V on a date to be announced by the Commission.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member, EC
8-11-1990

I agree.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

I agree.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member, EC

Annexure-12
(Chapter 2, Para-20)

ELECTION COMMISSION OF PAKISTAN

PF-59 Bannu-II

Present: Mr. Abdul Latif, Advocate for
Mr. Alamgir, candidate.

Qazi Anwar, Advocate for
Mr. Baz Muhammad, candidate

Returning Officer was also present.

ORDER

Mr. Justice Amir-ul-Mulk Mengal, J.—Heard the counsel for the parties and perused the record produced by Returning Officer.

The Presiding Officer of female polling station Shahbaz Azmat Khel, had reported that some armed persons entered the polling booth and at the gun point, managed to cast bogus votes. She ordered stopping of the poll.

On receipt of such report, the result of PF-59 Bannu-II was withheld by the Commission.

Meanwhile, one of the opponent parties filed application, requesting for repoll in two more polling stations, namely Domel and Kotha Jamma Gul.

From perusal of record, it was found that polling in these aforesaid two polling stations was held in a peaceful manner and there was no complaint whatsoever by any of the parties.

Since polling station Shahbaz Azmat Khel was disturbed, and voters were not allowed to freely cast their votes and bogus polling was resorted to, which fact was fully substantiated by the record, therefore, we order repoll at polling station Shahbaz Azmat Khel (female).

With consent of the parties, the date for repoll at the said polling station is fixed for 12-11-1990.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member Election Commission

I agree.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

I agree.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member Election Commission

Dated: 6-11-1990

Annexure-13
(Chapter 2, Para-20)

ORDER

PF-51 Kohistan-II

Mr. Justice Khalil-ur-Rehman Khan, J.—The reports of the Returning Officer, the Presiding Officer and the petition of the contesting candidate have been perused. The result of the constituency was withheld as the Returning Officer had reported that at Polling Station No. 16, Government Primary School, Lohi, 417 votes were polled forcibly by armed persons on gun point. The reports further show that due to illegal interference of the armed persons, the Polling Staff closed the polls at 11.30 A.M. and reported the incident of bogus voting etc., to the District Returning Officer.

The votes polled by the two contesting candidates namely Maulana Abdul Baqi and Maulana Usmat Ullah at other Polling Stations respectively are 1,533 and 1,417, hence the lead of Maulana Abdul Baqi is of 116 votes only.

The votes assigned to are 3,654 and in the circumstances, the votes polled in favour of either candidate, at polling station No. 16, Lohi have to be excluded, as due to illegalities committed, the real choice of the voters cannot be ascertained. The votes polled at the other polling station do not determine the election.

For the reasons given above, we declare the poll at Polling Station No. 16, Lohi void and direct repolling at the said polling station. The date of poll shall be notified by the Commisison in due course.

Sd/-
(JUSTICE KHALIL-UR-REHMAN)
Member
9-11-1990

I agree.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member
9-11-1990

I agree.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Dated: 9-11-1990

Annexure-14
(Chapter 2, Para-20)

BEFORE THE ELECTION COMMISSION OF PAKISTAN AT KARACHI

Present: Mr. Justice Naimuddin, Chief Election Commissioner.
Mr. Justice Khalil-ur-Rehman Khan, Member.
Mr. Justice Amir-ul-Mulk Mengal, Member.

Constituency
PS-14 Jacobabad-V

ORDER

Mr. Abdul Hafeez Pirzada for the petitioner.
Mr. Ahmad Mian Soomro for the respondent.

Amir-ul-Mulk Mengal, Member.—The petitioner initially moved an application to the Chief Election Commissioner of Pakistan on 29-11-1990 against alleged bogus voting, corrupt practices and lawlessness in the conduct of repolls at following three polling stations of PS-14 Jacobabad-V:—

1. Polling Station No. 28;
2. Polling Station No. 32;
3. Polling Station No. 41.

However, subsequently on 4-12-1990, a petition under Article 218 (3) of the Constitution of Islamic Republic of Pakistan, 1973 read with sections 27, 103 and 103 AA of the Representation of the People Act, 1976 (hereinafter referred to as the Act) was moved in which the following prayer was made:—

> "The petitioner therefore prayed for order for repoll at all the five polling stations with cast iron safeguards to prevent recurrence of the illegalities. In the alternate, the petitioner prays that due to grave illegalities and violation of the Constitution and law, the entire poll in the Constituency ought to be declared void and fresh elections may be ordered."

2. Briefly the facts leading to the filing of the petition are that after the poll conducted on 27-10-1990, the petitioner filed a petition under section 103 AA of the Act, which was heard by the Commission and with the consent of the parties, repoll was ordered in the following five polling stations of the aforesaid Constituency :—

1. P.S. 26 Rasoolabad,
2. P.S. 28 Amirabad,
3. P.S. 32 Piaro Umrani,
4. P.S. 41 Jaffarabad,
5. P.S. 46 Allahbad

The repoll was to take place on 29-11-1990. The petitioner sent various telegrams to the Commission prior to and during the day of repolling, alleging that his main opponent Ghulam Ali Buledi was involved in malpractices and bogus voting and that his polling agents were denied access to three polling stations till 10.00 a.m. and that it was only with the help of the police that they managed to enter the polling stations and they were shocked to note that a large number of votes had already been cast. In the petition filed on 4-12-1990 it was also alleged that the voters were prevented from casting their votes as three cordons were thrown around polling stations at various distances. It was also alleged that Provincial and District Administration officials alongwith other influential persons completely took over the three polling stations namely Amirabad, Piaro Umrani and Jafferabad and illegally stuffed ballot papers into ballot boxes.

3. Heard Mr. Abdul Hafeez Pirzada for the petitioner and Mr. Ahmad Mian Soomro for respondent Ghulam Ali Buledi.

4. At the outset, we would like to point out that petitioner in his petition dated 29-11-1990 had grievance only in respect of three polling stations number 28, 32 and 41 whereas in petition dated 4-12-1990 the petitioner requested repoll in five polling stations including Rasoolabad and Allahbad. When the counsel for the petitioner was confronted with this fact he candidly admitted that he would confine his arguments regarding the three polling stations as mentioned in the earlier petition dated 29-11-1990.

5. The Main thrust of attack of the petitioner was that the turn out of votes in three polling stations namely Amirabad, Piaro Umrani and Jafferabad was surprisingly very high and that it was an

impossibility that turn out of the voters can be as high as 98% of the total registered votes. Learned counsel, whilst substantiating his arguments, reproduced the following tabulation for comparative study:—

Polling Station		Petitioner	Agha Ghulam Ali	Total
(a) Rasoolabad	(26)	2180	44	2235
(b) Allahbad	(46)	2015	6	2188
(c) Jafferabad	(41)	15	2498	2514
(d) Amirabad	(28)	259	1713	2000
(e) Piaro Umrani	(32)	157	1709	1876
Total ..		4626	5970	10813

3. That in the re-poll held on 29-11-1990, the position is as under:—

(a) Rasoolabad	(26)	323	03	331
(b) Allahbad	(46)	136	09	157
(c) Jafferabad	(41)	10	2673	2694
(d) Amirabad	(28)	32	1905	1937
(e) Piaro Umrani	(32)	42	1740	1792
Total ..		543	6330	6911

6. On the basis of the aforesaid tabulation, the learned counsel argued that percentage of the votes in two polling stations under the influence of petitioner shrinked from a very high turn out into the lowest ebb, whereas on the other hand, the percentage of votes in three polling stations within the area of influence of contesting respondent was so increased that in one of the polling stations it reached 98% of the total registered votes. While further giving the details, it was pointed out that the turn out in polling station Amirabad was about 93%, of polling station Piaro Umrani it touched 91% and of polling station Jafferabad it was about 98%. He, therefore, tried to convince us that this variation was on the face of it abnormal and sufficient to support the contention of the petitioner that his voters were prevented to cast their votes whereas their agents were not allowed to enter the

three polling stations atleast till 10.00 a.m., whereafter with the help of Police they managed to enter the polling station. He urged that it was rather a virtual impossibility that the turnout of the votes can be as high as indicated in the above tabulation, particularly in view of the fact that almost half of the voters in the area are lady voters living in rural areas, who usually do not come to cast their votes, particularly in a tense situation.

7. In reply thereto, Mr. Ahmad Mian Soomro, Advocate for contesting respondent, argued that since repoll was ordered only in five polling stations by the Commission, therefore, the candidates put all their efforts to convince the voters to exercise their rigth of franchise and it was as a result of such convincing that there was heavy turn out which may not be taken as abnormal or alarming.

8. It cannot be laid down as a rule that high percentage of turn out of voters ipso facto should lead to inescapable conclusion that there was some malpractice or grave illegality. However, in the instant case, the question to be seen is whether the circumstances emerging from the record do prima facie establish that the polling on the three polling stations was conducted in free and fair manner.

9. Before adverting to the aforesaid moot question, we would like to dilate upon and discuss the scope of jurisdiction to be exercised by the Commission under section 103 AA of the Act. The primary duty of the Election Commission is to ensure that the elections are conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against. To achieve this object, it will be the constitutional duty of the Election Commission to see that there was no grave illegality rendering the conduct of elections to a travesty. Thus when it is brought to the notice of the Election Commision by a party or when Election Commission otherwise comes to know regarding some corrupt practices, it may even take such suo moto actions which are necessary to ensure the conduct of honest, just and fair elections.

10. In the instant case, we passed order of repoll only in five polling stations, with the consent of the parties. We were even at that time mindful of the fact that there were some grave illegalities, as for instance, missing of two ballot boxes and putting off light in order to facilitate the disappearance of the election record. However, it may not

be out of place to mention that even at that time the high percentage of turn out in some polling stations of the petitioner and in others of the respondent had been alleged.

11. The petitioner as well as other contesting candidates started sending numerous telegrams, complaining to the Chief Election Commissioner, regarding the conduct of polls. The first telegram was sent on 28-11-1990 by the petitioner that his agents were being arrested with a view to prevent them to reach polling station Jafferabad, polling station Amirabad and polling station Allahbad. Similarly, petitioner's election agent also sent a telegram with the effect that only a day earlier to the polls, the Deputy Commissioner of the area was transferred as also the Superintendent of Police. Likewise, Anwar Shah, another candidate, sent another telegram that his agents and agents of the petitioner were not being allowed to enter the polling stations by respondent Agha Ghulam Ali Buledi. In this regard, yet another telegram by Bilawal Buriro was sent on the polling day that the Police has blockaded different roads leading to Jafferabad and Piaro Umrani where votes were being stamped and stuffed by the workers of the respondent. lastly, on 29-11-1990, the petitioner while repeating all the aforesaid allegations sent a detailed telegram to the Chief Election Commissioner.

12. As far as the contesting respondent is concerned, prior to the polls, he moved an application for removal of the Assistant Returning Officer which was allowed, but the Commission specifically ordered that he would not be replaced by any other person for the simple reason that the Returning Officer shall supervise the conduct of elections of only five polling stations.

13. It may be noted that no rejoinder has been filed by the contesting respondent, repudiating the allegations. However, the contesting respondent has relied on the statements of the Returning Officer and of Presiding Officers. But it may also be noted that Mr. Pirzada took strong exception to the statements of Presiding Officers stating that in order to prove that they have given the afore-said statements they should be summoned personally and examined by the Commission.

14. On the day of hearing, Returning Officer was present. Some queries were made from him and he was unable to properly reply the question and he appeared to justify that nothing went wrong and in

that he tried to conceal the receipt of the complaint filed by the petitioner to him on the polling day. It may further be noted that on the complaints, the Commission asked for the comments of the Returning Officer in which he submitted that he had received no complaint either by the petitioner or his polling agents. But in his detailed comments submitted on 4-12-1990 in para-2, he has referred to a complaint made by the petitioner, which according to Returning Officer was factually dropped before his steno while he was away on visiting different polling stations at about 4.15 p.m. In the same comments, according to Returning Officer, he visited four polling stations. Obviously he must have gone at late hours because as per statements of the Presiding Officers, the polling agents of the petitioner left the polling stations on the pretext of taking meal and then did not turn up. We, however, want to make it clear that since the Presiding officers were not before us, therefore, no credibility can be attached to their statements. However, even if taken as it is, such statements *ex*-facie belie the stand of the Returning Officer. None of the Presiding Officers stated that the Returning Officer ever visited the polling stations and that two of them stated that the polling agents of the petitioner left the polling stations voluntarily at about meal time and thereafter never came back. This gives an impression that conduct of poll was not normal, smooth or fair, otherwise there was no reason to believe that agents of only one of the parties would voluntarily leave polling stations in such a hotly contested election. In this context, the assertion that the personnel of Provincial and District Administration specifically named, took over the three polling stations under the direction of the Deputy Commissioner who was posted to the District on a day before the poll. Due to the aforesaid factors, we are inclined to hold that grave illegalities were committed and that election was not conducted fairly, honestly and justly in this Constituency.

15. The effect of the grave illegalities committed at the three polling stations is that the poll in the constituency ought to be declared void, as in the remaining polling stations of the constituency, the votes obtained by the petitioner and the respondent respectively are 13966 and 11249. The total votes assigned at the three polling stations are 6639, while the total registered votes assigned to all the aforesaid five polling stations are 11562.

16. We, therefore, declare the election of PS-14 Jacobabad-V as void and keeping in view the principle as laid down in *Muhammad Ayub Khan* vs. *Alamzeb Khan* by the Supreme Court of Pakistan and

resultantly call upon the entire constituency to elect a member in the manner provided for in section 108 of the Representation of the People Act, 1976.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member, Election Commission.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member, Election Commission.

ELECTION COMMISSION OF PAKISTAN AT KARACHI

Constituency No. PS-14 Jacobabad-V

Present :

Mr. Abdul Hafeez Pirzada, advocate, with Mr. Ghulam Mohammad Shahlani (Petitioner)

Mr. Ahmed Mian Soomro, advocate, with Sardar Agha Ghulam Ali Khan Bulaidi.
Mr. Hameedullah, contesting candidate, present in person
Mr. Bukhsh Ali, contesting candidate, present in person.
Mr. Anwar Ali Shah, contesting candidate, present in person.
Mir Dad Mohammad Khan, contesting candidate, present in person.
Mr. Aftab Ahmed, Additional District and Sessions Judge, Returning Officer.
Mr. Khawand Buksh Bhutto, Presiding Officer, PS-46 Allahabad.

Date of hearing : 19th November, 1990.

ORDER

We have heard the learned counsel for the parties and the contesting candidates, present in person, as well as the Returning Officer and the Presiding Officer. We have also gone through the record and the reports, including those of the A.R.O. and *Mukhtarkar*. We have also seen the consolidated statement of count in respect of the polling stations, excepting polling stations, PS-26 Rasoolabad, and PS 46-Allahabad.

Constesting candidates as well as their learned counsel have finally agreed that re-polling be directed in the following polling stations :

1. P.S. 26—Rasoolabad.
2. P.S. 28—Amirabad.
3. P.S. 32—Piyaro Umrani.
4. P.S. 41—Jafferabad
5. P.S. 46—Allahabad.

As the aforesaid agreement advances the interest of fair and just elections, we accept the agreed arrangement and direct that re-poll shall be held at the aforesaid five polling stations on the date to be fixed by the Commission.

This disposes of the report and application submitted by Mr. Ghulam Mohammad Shahlani.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member

Karachi, the 19th November, 1990.

Annexure-15

(Chapter 2, Para-20)

BEFORE THE ELECTION COMMISSION OF PAKISTAN
AT KARACHI

Constituency No. PB-38 Turbat-II

Present: Petitioner alongwith his counsel
Mr. Shahinshah Hussain.

Mr. Sarfraz Khan Tinoli, Advocate
for Respondent Mr. Munshi Mohammad.

ORDER

Mr. Justice Amir-ul-Mulk Mengal (J).—On the information received from the Provincial Election Commissioner regarding deteriorating law and order situation, the polling was ordered to be stopped. Deputy Commissioner Turbat had informed that ballot boxes/ballot papers of the following Polling Stations were forcibly taken away by the rival candidates and Assistant Presiding Officers were also kidnapped:—

(1) Polling Station No. 5 Primary School, Chib.
(2) Polling Station No. 6 High School, Mehnaz.
(3) Polling Station No. 3 Improvised Jardain.

2. The petitioner has made a grievance that there was rigging in many other Polling Stations. He, therefore, prayed that besides the 3 above-mentioned Polling Stations, re-poll may be ordered in 6 more polling stations.

3. The counsel for the petitioner submitted that the result of the remaining polling stations was allegedly changed after polls, except the 3 polling stations where the polling was stopped due to deterioration in the law and order situation.

4. The other allegations made by the petitioner require detailed enquiry and recording of evidence, which falls within the jurisdiction of the Election Tribunal.

5. After summary enquiry, we are inclined to order re-poll in the following polling stations of PB-38 Turbat-II, where ballot boxes/ ballot papers were removed:—

(1) Polling Station No. 5 Primary School, Chib.
(2) Polling Station No. 6 High School, Mehnaz.
(3) Polling Station No. 3 Improvised Jardain.

6. However, the petitioner may file an election petition in order to prove the remaining allegations before the Election Tribunal if so advised.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member

Dated: 19-11-1990

Annexure-16

(Chapter 2, Para-20)

ELECTION COMMISSION OF PAKISTAN
KARACHI

Constituency No. PS-97 Karachi (E)-VII.

Present: Mr. Iqbal Haider and N.M. Shahani with Khawaja Mohammad

Soaib Ahmed Bokhari, advocte with Mohammad Arif Khan

Chaudhry Iftikhar Ahmed, advocate with Mohammad Taj

Date of hearing: 19th November, 1990.

ORDER

Mr. Justice Khalil-ur-Rehman Khan, J.—We have heard the learned counsel for the contesting candidates. We have also gone through the petitions, replies and the reports of the Returning Officer, as well as the consolidated statement of the Results of the Count (Form XVI). The note of the R.O. on the Provisional Result of Count reads:—

> "Right from 11.00 a.m. on 27-10-1990, complaints were constantly received through wireless sets and other sources from Mr. Arif Khan Advocate, a constesting candidate, that thousands of voters were not being allowed to cast their votes by the P.D.A. candidate, his agents and his supporters. At polling station No. 26 and 27, ballot books were snatched away by un-known persons. The total voters assigned to these polling stations are 4984. According to the Presiding Officer concerned, it was impossible to continue the polling and, therefore, polling was stopped and suspended at both polling stations at 2.00 p.m. due to unavoidable circumstances and the matter was reported to the Election Commission, D.R.O. as well as R.O. Moreover,

in Majeed Colony at polling stations No. 12 and 13, voters were not permitted to cast their votes by P.D.A. supporters and candidate. The detailed report follows."

In the detailed report the Returning Officer proposed that re-poll at polling stations 12, 13, 24, 28, 26 and 27 be ordered.

The reasons given in this report are that at polling stations No. 12 and 14 in Majeed Colony, hundreds of persons inside and outside the polling stations were complaining that their votes were not being allowed to be cast by the agents of PPP candidate and that this complaint was also confirmed by the polling staff of polling station No. 12 with the addition that they were also being threatened of dire consequences if any vote was allowed to be cast. It is added that some persons were taken into custody and on their arrest, the situation was controlled and, thus, the polling was re-started at 4.45 p.m. with the directions to the Presiding Officer to permit all such voters to cast their votes which were inside the premises of the polling station.

It will be seen that on these polling stations the polling was restored and it is not the case that the voters who were present within the premises of the polling station were not allowed to exercise their right of vote.

The other polling stations mentioned in the report are polling stations No. 23, 24, 25 and 28. The plea of Chaudhry Iftikhar Ahmed, advocate, was that due to indiscriminate firing, the voters assigned to polling stations No. 23 to 28 were scared away with the result that out of 14,860 registered voters only 2533 voters exercised their right of vote. He added that polling stations No. 23,24 and 25 were located in one building while polling stations No. 26, 27 and 28 were housed in another building, situated at a distance of 25 paces from the other building. As regards polling stations No. 26 and 27, it was argued that as the polling was admittedly stopped at about 2.00 p.m. re-polling at these polling stations and at those mentioned in the report of the R.O. be directed in order to ascertain the true choice of the electorate.

Learned counsel for Mr. Khawaja Mohammad, contesting candidate, submitted that Khawaja Mohammad had a lead of 4760 votes, as per the provisional count, and 4673 votes, as per the re-counting conducted by the Returning Officer as a result of the polling

at polling stations other than polling stations No. 26 and 27. He submitted that the total votes cast together with the votes cast at the aforesaid two polling stations till the closure of the polling have determined the election and as such there is no need to direct re-poll. He added that almost 800 voters out of 4984 registered at the two polling stations had cast their votes till the time of closure. So the votes polled at these polling stations alongwith the votes polled by each candidate at the remaining polling stations has determined the result of the election.

As regards polling station No. 23, 24, 25 and 28, it was argued that the polling was admittedly continued through out the day at the said polling stations and that the plea that the voting percentage at these polling stations was low does not furnish legal basis for ordering re-poll. It was submitted that at polling stations in Majeed Colony the polling was admittedly resumed. A reference to consolidated statement of the result of count will show that at these polling stations almost 50% of the voters have cast their votes. This percentage is higher than the percentage of voting at other polling stations of the same constituency.

The above submissions with regard to polling stations in Majeed Colony, (polling stations No. 12, 13 and 14) and polling stations No. 23, 24, 25 and 28 of the learned counsel for the respondent are borne out from the consolidated statement of the result of count. Even otherwise, the question whether the voters were scared away is a disputed question of fact which cannot be determined except by holding a detailed inquiry and by examining witnesses. In summary proceedings, these questions cannot be determined. As regards polling station No. 26 and 27, the polling was admittedly stopped at about 2.00 p.m. but considering the number of votes statedly polled till the polling was stopped and the number of votes polled in various polling stations in the constituency, we are satisfied that the polling that had already taken place at polling stations No. 26 and 27, taken with the result of the polling at other polling stations, the difference being 4673, the result of the election has been determined.

We would accordingly direct the Returning Officer to count the votes polled at polling station 26 and 27 and after completing the consolidation of the results, declare the candidate who amongst the contesting candidates has polled the highest number of votes as the returned candidate.

We may add that the contesting candidates will be at liberty to challenge the election of the returned candidate under law by filing an election petition, which, if filed, will of course be decided on its merits without being influenced by anything said herein.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member

Karachi, the 19th November, 1990.

Annexure-17

(Chapter 2, Para-20)

ELECTION COMMISSION OF PAKISTAN

PP-82 Gujranwala-VI

Present: 1. Hafiz S. A. Rehman, advocate for Chaudhry Bashir Ahmad, candidate.

2. Mr. Mohammad Azam Cheema, advocate for Mr. Khalid Javaid Virk, candidate.

and other candidates as well as the Returning Officer.

ORDER

Mr. Justice Khalil-ur-Rehman Khan, J.—Perused the report of the Returning Officer which is based on the reports of the Presiding Officers of thirteen polling stations, namely, 5, 6, 7, 17, 18, 19, 24, 28, 29, 30, 49, 51 and 69.

We have heard the advocate Hafiz S.A. Rehman and Azam Cheema of the candidates who have secured the highest number of votes and the candidate who has secured the next highest number of votes.

The facts narrated in the report could not be satisfactorily controverted. It has, therefore, been established that on these 13 polling stations the votes recovered from the ballot boxes failed to reflect the correct choice of the voters.

We would, therefore, declare the votes cast at aforesaid 13 polling stations void and further direct that re-poll will be held on these 13 polling stations on the date to be fixed by the Commission.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member

I agree.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member

I agree.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Annexure-18

(Chapter 2, Para-20)

ELECTION COMMISSION OF PAKISTAN

PP-134 Sheikhupura-I

Present: 1. Mr. Khawar Ikram Bhatti, Advocate for Mr. Tanweer Hussain, Candidate.
2. Mr. Nisar Ahmad Dhillo, Candidate.
3. Mr. Riaz Ahmad, Candidate.
4. Mr. Mahmood Ahmad, Candidate.
5. Mr. Mohammad Akram Bhuttar, Candidate.
6. Mr. Mohammad Gulfam Ashraf, Candidate.
7. Mr. Wajid Ali Khan, Candidate.

ORDER

Perused the reports of the Returning Officer, Assistant Returning Officer and Presiding Officers and after hearing all the contesting candidates and by their consent and agreement, we pass the following order :—

"That there will be a fresh poll on a date to be fixed by the Election Commission in Polling Station Nos: 11, 17, 21, 25, 26, 27, 29, 30, 31, 32, 33, 36, 38, 41, 45, 51, 53, 56, 57, 67 and 68 of Constituency No. PP-134 Sheikhupura-I."

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member

Annexure-19
(Chapter 2, Para-20)

ELECTION COMMISSION OF PAKISTAN

Sardar Muhammad Muqeem Khan
vs.
Mr. Ilahi Bux Soomro etc.

Constituency
N.A. 156-Jacobabad-I

Mr. Justice Khalil-ur-Rehman Khan, J.—This petition under Artice 218 (3) of the Constitution of Islamic Republic of Pakistan read with Section 103 (a), (b) & (c) and Section 103-AA of the Representation of Peoples Act, 1976, was filed by Sardar Muhammad Muqeem Khan, a candidate for National Assembly from Constituency N.A. 156-Jacobabad-I, seeking declaration that the order of re-count dated 5-12-1990 of the Returning Officer and all the proceedings whereby 2750 ballot papers were excluded from the count of the petitioner, be declared void, or be reviewed or setaside, and the petitioner be declared to have been elected and be notified as the returned candidate. It was further prayed that the prosecution of Ilahi Bakhsh Soomro, the rival candidate, and the Returning Officer be ordered on account of violation of law and the Constitution and they also be proceeded against for contempt under Section 103-A of the Act.

2. Learned counsel for the petitioner, at the outset, stated that Section 103-AA has been erroneously mentioned in the heading of the petition and, as such, it be ordered to be deleted therefrom.

3. The necessary facts briefly stated are, that the petitioner and the rival candidate (respondent No. 1) alongwith others contested for National Assembly seat from the aforesaid Constituency and after conclusion of the poll held on 24th October, 1990, the votes obtained, as per provisional result, were as follows:—

Petitioner.....54554
Respondent .....No. 1.....52555

According to this unofficial result, the petitioner had a lead of 1999 votes, while the rejected votes were 1824.

4. Mr. Ilahi Bakhsh Soomro filed a petition with the complaint that at Polling Station No. 78, one of the ballot boxes, containing large number of votes, was not counted by the Presiding Officer which materially affected the result of the Constituency; that some burnt ballot papers and burnt counterfoils of ballot papers were found by his agents and that these burnt ballot papers were, in fact, the votes cast in his favour. The reports dated 25-10-1990 and 27-10-1990 of the Returning Officer and the pleas of the present petitioner, who was respondent in the aforesaid petition, were considered and also after hearing the parties, the Commission dismissed the petition of Mr. Soomro. The direction passed by the Commission while dismissing the petition, reads as under:—

> "The Returning Officer shall now, after due notice to the parties consolidate the result of all the polling stations without including 1438 ballot papers recovered from the disputed ballot box. The result of polling station No. 78 and polling station No. 79 forwarded by the Presiding Officers shall, however, be included. The Returning Officer may however examine the invalid ballot papers in the presence of the parties. As a result of the consolidation, the candidate securing the highest votes shall be notified by the Commission as returned candidate."

5. The order of the Commission was received by the Returning Officer on 25-11-1990 and notice dated 26-11-1990 was issued to the parties, informing them that the Consolidation of the result will take place on 5-12-1990. The Consolidation of the result, on the said date, commenced with the counting of the postal ballot papers. Sardar Muqeem Khan, petitioner, and Ilahi Bakhsh Soomro, respondent, obtained 338 and 778 votes through postal ballot papers respectively. At this stage, Mr. Soomro submitted an application requesting the Returning Officer to re-count the ballot papers of all the polling Stations of the Constituency, cast in favour of Sardar Muqeem Khan, as it had been reported to him by his polling agents,that invalid ballot papers on a large scale were illegally counted in favour of the said candidate. This application was rejected there and then with the following observations:-

> ".....The Returning Officer has to consolidate the result of the count provided by the Presiding Officers after examining the excluded ballot papers as well as the postal

ballots. There is no reason to re-count of the whole constituency without any cogent reason or solid ground. In such circumstances, I am of the considered view that the re-count of the whole constituency will be an exercise in futile, therefore, I reject this application."

6. After sometime, on the same day, another application was submitted by Mr. Soomro, requesting that the ballot papers purported to have been cast in favour of Sardar Muqeem Khan Khoso, a P.D.A. candidate, at the Polling Stations specified in his application be re-counted, as on 24-10-1990, invalid ballot papers have been cast on a large scale and that written complaints have already been made soon after the day of polling. The count at Polling Stations, which were 33 in number, was challenged. This application for re-count of the ballot papers cast at the specified Polling Stations was, however, accepted *vide* order dated 5-12-1990, with the following observations:—

> ".....the Returning Officer is competent to re-count the ballot papers if there is a reasonable request of any candidate in writing. At this stage it is quite irrelevant to consider the instant application the same which has already been rejected as the request of re-count of the whole constituency was without any cogent reason,therefore, the same has not been considered, however, here in the instant case there are as many as 28 complaints of about 50 Polling Agents wherein they have specifically pointed out the polling stations where they had complained regarding the count of invalid ballot papers of Sardar Mohammad Muqeem Khan Khoso. In such circumstance, it is quite un-justified to say that the request is unreasonable. Nevertheless, it will be an exercise which will take a long time but since reasonable request has been made in writing, supported by the complaints of the polling agents which had been made at very day of the polling,therefore, I am afraid that the refusal of the request will not meet the ends of justice. In such circumstances, I allow this application. Let the re-counting of the ballot papers in favour of Sardar Mohammad Muqeem Khan Khoso on the polling stations referred in the application be made."

7. The re-counting at the specified polling stations, thereafter, commenced and after examination of ballot papers of polling stations No.10, 21, 42, 62, 73, 87, 89, 90, 92, 98, 112, 120, 124, 132, 137, it was found that 2697 invalid votes had been counted as valid votes. As this much scrutiny of the ballot papers was sufficient to determine the result of the election, Mr. Soomro requested that further scrutiny of the ballot papers remains no longer necessary. As a result of re-counting, the position which emerged, as per Result of the Count on Form XVII, is that out of 106867, the total number of valid votes polled, 53137 votes were cast in favour of Mr. Soomro while Sardar Muhammad Muqeem Khan obtained 52210 votes. Thus, Ilahi Bakhsh Soomro obtained 927 votes more than Sardar Muhammad Muqeem Khan.The total number of rejected votes thus increased from 1824 to 4510. The Returning Officer submitted the report dated 5-12-1990 alongwith the Consolidation of the Result on Forms XVI and XVII. The consolidation proceedings and the result of the re-count submitted by the Returning Officer was then challenged by Sardar Muhammad Muqeem Khan by filing the present petition.

8. Mr. Abdul Hafeez Pirzada, learned counsel for the petitioner argued that the order of re-count passed as well as the proceedings of re-counting of the ballot papers pertaining to the specified Polling Stations conducted by the Returning Officer are illegal and without jurisdiction, as firstly, neither any cogent nor sufficient reason was made out for ordering re-count in exercise of power, vesting in Returning Officer, under section 39 (6) of the Act; secondly, the Returning Officer having rejected the application for re-count, could not review his own order and accept the second application. In support of the first plea, reliance was placed on *Kanwar Ijaz Ali vs. Irshad Ali* (PLD 1986 S.C. 483) while in support of second plea, reliance was placed on *Muhammad Asghar vs. Shah Muhammad Awan* (PLD 1986 S.C. 542). Next, it was contended that the Commission is enjoined under Article 218 of the Constitution and section 103 of the Act to exercise its powers to ensure that the election is conducted honestly, justly and fairly and keeping in view the above mandate, it is imperative that the illegal recounting of the ballot papers is declared void and the result achieved by making the recounting is ignored completely and the Commission should grant this petition by making the declarations and directions prayed for therein.

9. On facts, it was urged that all those who attended the Consolidation proceedings took lunch which lasted from 2.45 p.m. till

4.00 p.m. and during the interregnum, Returning Officer and respondent No. 1, the rival candidate, were alone for about 10 minutes and immediately thereafter, respondent No. 1 wrote out a second application requesting for re-count of the votes of the petitioner alone at 33 polling stations specified therein. It is further stated in the petition that the seals of the bags were found to be broken and envelops containing valid votes of the petitioner were open and had no seals whatsoever and while the petitioner walked-out in protest and phoned his counsel at Karachi, Mir Hassan Khan Khoso, another candidate objected in writing and his allegation was not denied by the Returning Officer. In support of this,a photo copy of the application submitted to the Returning Officer has been placed on record. The contents of this photo copy read:—

> "I protest that envelops containing valid votes are tampered with, therefore, counting of the same is against law and justice, it may, therefore, be stopped."

10. The endorsement of the Returning Officer on this application shows that this was received from Mir Hassan Khan Khoso at 7.00 p.m. It is pertinent to note that on comparison with the original application, it was found that the sentence which reads, "there is no tampering at all", appearing towards the end of endorsement made by the Returning Officer on the original application is missing from the photo copy placed on record. Secondly, this application was submitted at 7.00 p.m. by Mir Hassan Khan Khoso, another candidate. No such application or objection was submitted by the petitioner himself or his election agents who admittedly remained present throughout the consolidation proceedings. Thirdly, the re-counting of the ballot papers after acceptance of the second application commenced at 5.00 p.m. according to the Returning Officer and at 5.30 p.m. according to the petitioner. The important fact to be noted is that no objection to the effect that seals of the bags were found to be broken and envelops containing valid votes of the petitioner were open and had no seals thereon as is being alleged in the petition,was raised when the re-counting of the ballot papers of the petitioner commenced. The objection later taken appears to be an after-thought. There is still another document on record, bearing signatures of the petitioner as well as of other candidates to the effect that they have verified the seals of the bags and postal ballots and that counting in the prescribed manner was held. It is pertinent to also note that the petition has neither been verified on oath nor any affidavit in support of the factual

assertions taken in the petition has been filed. It was also admitted by the learned counsel for the petitioner that all those ballot papers which were declared invalid had two prescribed marks on each of them; one in the space containing name and symbol of the petitioner, and, second within the space containing the name and symbol of one or the other rival candidate.

11. The plea of tampering with in view of the facts noted above and on the basis of the material on record, cannot be accepted in these summary proceedings. We will, therefore, for the present purposes,treat that these 2697 votes, as were found containing two prescribed marks, are invalid. The question that remains to be answered is, whether these invalid votes were rightly and legally noticed and excluded from counting, pursuant to the second order of re-count passed by the Returning Officer. To answer this question, the relevant provisions of sub-section (6) of section 39 of the Representation of Peoples Act, 1976, may be referred to. This sub-section reads:—

"The Returning Officer may re-count the ballot papers—

(a) upon the request of, or challenge in writing made by, a contesting candidate or his election agent, if the Returning Officer is satisfied that the request or the challenge is reasonable; or

(b) is so directed by the Commission in which case the re-count shall be held in such manner and at such place as may be directed by the Commission."

The power of re-counting vesting in the Returning Officer is not disputed. The plea of the petitioner is that request could be allowed on reasonable ground and that in this case no such reasonable ground was made out and that the power stood exhausted after rejection of the first application and as such on second application the order could not be reviewed and the second application could not be legally accepted.

12. The second objection may be taken-up first. The order passed on the second application cannot be treated as the order passed in review of the first order. The record shows that many applications were filed by the polling agents of the petitioner in the evening of 24-10-1990, or within one or two days thereafter, complaining that invalid

votes were counted by the Presiding Officers on various Polling Stations including those mentioned in the second application dated 5-12-1990. These applications were ordered to be considered at the time of Consolidation of the result. Then on 5-12-1990, the application filed first in time was rejected saying that, "there is no reason to re-count the whole Constituency without any cogent reason or solid ground". The second application was then made, requesting to re-count the ballot papers purportedly cast in favour of the P.D.A. candidate at the undermentioned Polling Stations, as invalid ballot papers have been counted on a large scale in favour of the petitioner though those should have been treated as spoiled papers and that such complaints challenging the counting at the specified Polling Stations have already been made. This was a different request which in fact was pending consideration since 24-10-1990. The fact that there was mistake in the counting was also *prima facie* established from the very fact that out of 1824 rejected ballot papers, 100 ballot papers were found to have been erroneously rejected. This itself made the challenge reasonable. Moreover, the challenge made and the objection with regard to the counting at specified Polling Stations, raised was pending before the Returning Officer who in any case was duty-bound to deal with and dispose of the same. The order of re-count in the circumstances, cannot be said to have been passed in review of the other order passed on the same day, rejecting the request of re-counting of the Ballot Papers cast at the Polling Stations of the whole Constituency. In the circumstances noted above, two judgments relied upon by the learned counsel in support of the aforesaid two pleas do not apply to the situation prevailing in the present case.

13. The crux of the matter is that 2697 votes bearing two prescribed marks and thus rendering the ballot papers invalid, had been counted in favour of the petitioner. These votes being invalid, as found on 5-12-1990, cannot be ignored by the Commission, unless it is found and held that one of the two prescribed marks was put unauthorizedly afterwards. We have observed above that in the record produced before us there is nothing to even prima facie establish the allegations contained in the application to the effect that 2750 valid votes cast in favour of the petitioner have been illegally, deliberately and maliciously spoilt as a result of conspiracy between two respondents and others. This petition as pointed out above, has neither been verified on oath nor any affidavit has been filed in support of the said petition. In the circumstances, in the present summary proceedings, we

cannot ignore the votes found invalid and hence liable to be excluded from the count. We may also add that no request was made to us by the peitioner for ordering recount of these very votes or any other ballot papers and as such power vesting in the Commission under Section 39(6) of the Act was not invoked.

14. Learned counsel, however, argued that on accepting the request of recounting, the Returning Officer could not legally recount the ballot papers of only one candidate *i.e.* the petitioner and that it is obligatory under section 39(6) to recount all the ballot papers of the contesting candidates.

15. This plea, as a legal proposition, does not depict the true interpretation of sub-section (6) of section 39. A close examination of this provision shows that the Returning Officer on being satisfied that the request of count or challenge to the counting made is reasonable, is to recount the ballot papers with reference to the request or the challenge made. It may thus entail examination of the ballot papers of one or more candidates or of particular kind of ballot papers of one or more candidates depending on the request or the challenge or the circumstances of the particular case. A reference to the provisions of section 38(10) of the Act would show the different kinds of ballot papers.

16. Though the petitioner has not made a specific request to recount the ballot papers of the petitioner or of the respondent, Mr. Elahi Bux Soomro, we in the circumstances of the case, are of the view that the interest of free, just and honest election does require recounting of the ballot papers cast in the entire constituency in favour of both the candidates. The reasons for coming to the aforesaid conclusion are that (i) on examination of excluded votes, 100 were found to have been wrongly excluded as invalid votes; (ii) as many as2697 invalid votes were found to have been counted as valid votes; and (iii) the challenge was made to the counting made at 33 polling stations but the examination was stopped after examination of the ballot papers of 16 polling stations only. The examination of the ballot papers pertaining to the remaining 17 polling stations should have been made. Now that the mistakes committed in counting at large scale stand established, we find it a fit case for ordering recount of the ballot papers cast at all the polling stations of the constituency in favour of both the candidates. There will, however, be no need to examine or recount the excluded ballot papers, the postal ballots and the ballot

papers of polling stations Nos. 10, 21, 42, 62, 72, 73, 87, 89, 90, 92, 98, 112, 121, 124, 132 and 137 as both the parties have not raised any objection to the recounting of these ballot papers before us on the factual plane. The argument addressed was that the recounting could not legally be ordered. This plea remains no longer available as the Commission in any case has the power to direct recounting under section 39 (6) and we hereby make the said direction in terms noted above.

The recounting of the ballot papers of the remaining polling stations of the centre constituency shall be done by the DRO, Jacobabad himself in the presence of the contesting candidates who may choose to attend the recounting on service of notice. The recounting shall commence within two days of the receipt of this order, and the consolidated statement of the Count shall be forwarded to the Commission immediately.

The petition stands disposed of accordinlgy.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member

Islamabad, the 27th December, 1990.

Annexure-20
(Chapter 2, para-21)

BEFORE THE ELECTION COMMISSION OF PAKISTAN

NA-22 Swat-II

Present: Mr. Muhammad Akram Shaikh for Haji Fazal-e-Raziq, petitioner

Qazi Muhammad Anwar, Advocate for Mr. Abdul Mattin Khan, respondent.

ORDER

Mr. Justice Amir-ul-Mulk Mengal, J.—An inquiry was ordered to be conducted by the District Returning Officer, Swat to probe into the allegations/complaints made by the petitioner and to submit his report. Accordingly, a detailed report has been received and the District Returning Officer has given finding that no illegality/irregularity has been committed during the elections. He has also concluded that the allegations are false.

Heard the parties alongwith counsel.

The total number of votes secured by Haji Fazal-e-Raziq is 18,901 and the number of votes in favour of Abdul Mattin Khan are 19,084. The difference thus comes to 183 votes.

The grievance of the petitioner is that the voters of polling station No. 77 and polling station No. 166 were not allowed to cast their votes. In fact, polling station No. 77 was for female voters and the result of Form-XIV indicates NIL for all the candidates.

It is alleged in the petition that the supporters of Abdul Mattin Khan did not allow the female voters to cast their votes, whereas, the supporters of People Party deterred the voters from casting their votes on polling station No. 166. It is revealed from the statement of Presiding Officer that in fact there arose a dispute between workers of Abdul Mattin Khan and the candidate of IJI over appointment of Polling Agents. One of the parties wanted lady Polling Agent, whereas, the other insisted for appointment of male Polling Agents. This issue

was settled at 3.00 p.m. but still workers of Mattin Khan, who were armed, tried to dis-allow female voters to cast their votes.

The District Returning Officer had examined Police Constables/officials who were on duty and who did not support the allegations as made by the petitioner. It is also transpired that the voters in fact had made certain demands and avoided to cast their votes in favour of any candidates because their demands had not been fulfilled.

The District Returning Officer while conducting inquiry examined Amil Khan Presiding Officer of Barbar Kot School and the Polling Officer who have stated that the voters were not prevented.

It is almost settled that no female voters cast their vote at polling station No. 77. The only question for determination would be whether voters were prevented by any of the candidates or not. In order to reach such conclusion a detailed inquiry is required and the allegations cannot be adjudged in a summary inquiry. We are, therefore, not inclined to entertain this petition. In view of the aforesaid circumstances the petitioner is at liberty to seek his remedy by filing an election petition if so advised.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member.
6-11-1990

I agree

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

I agree

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member.

Annexure 21
(Chapter 2, para 21)

BEFORE THE ELECTION COMMISSION OF PAKISTAN

Present: Mr. Justice Naimuddin, Chief Election Commissioner.
Mr. Justice Khalil-ur-Rehman Khan, Member.
Mr. Justice Amirul Mulk Mengal, Member.

Constituency No. NA-25 Dir

Sh. Mohammad Akram, Advocate
for Sahibzada Fateh Ullah.

Mr. Sardar Khan, Advocate
for Mr. Najamuddin.

ORDER

Amirul Mulk Mengal, Member.—This order shall dispose of the petition filed by petitioner praying for ordering re-poll in all the polling stations of Tehsil Lal Qilla of Constituency No. NA-25 Dir. It was further prayed that till then the result of the election of the aforesaid Constituency may not be notified.

2. We have heard Mr. Akram Sheikh, Advocate for petitioner and Mr. Sardar Khan, Advocate for respondent. Returning Officer was also present and we went through his reports and also report of District Returning Officer. The record was also perused.

3. It is the case of the petitioner that in almost all the polling stations of Tehsil Lal Qilla, voters were not allowed to cast their votes. Our attention was drawn to the fact that in the following six polling stations not a single vote was cast, out of 6,603 assigned votes:—

1. Polling Station B.H.U. Gul;
2. Polling Station GPS Srov Gul;
3. Polling Station Banda;
4. Polling Station Kasbocha Khail;
5. Polling Station Korshang;
6. Polling Station Sufray.

4. Similarly in 9 polling stations where the number of assigned votes was 10,454, only 104 votes were cast. So also in the remaining 15 polling stations 1,650 votes were polled out of 18,754. According to these numbers, the total votes assigned to the polling stations of Tehsil Lal Qilla was 36,751, but the number of votes polled was only 1,760. It was also pointed out that as per un-official result of the said constituency, respondent Najmuddin was declared successful, having obtained 1,335 votes more than the petitioner.

5. Besides the aforesaid contentions, the learned counsel for the petitioner urged that the Commission, after having been satisfied for ordering re-poll, has to order re-poll of the entire Constituency and not in six polling stations becuase while interpretting section 103 AA of the Representation of the People Act, 1976 (hereinafter referred to as the "Act"), the Supreme Court in the case of Haji Muhammad Ayub Khan *vs.* Alam Zaib Khan and another, while agreeing with the contention of the counsel for the petitioner that the Commission can only declare the poll void of the entire constituency and not of one polling station alone, observed as under:—

> "We are inclined to agree with this submission. The principle that when a Tribunal can decide or decree the maximum it has always the power and competency to grant the less is not applicable in the circumstances. Here under the statutory provision in point (Section 103 AA) the poll in the constituency can be declared void and the constituency called upon to elect a member in the manner provided for under section 108. In other words, it contemplates the holding of a bye-election in the entire constituency. Manifestly ordering a re-poll in one Polling Station does not constitute a part of this process. The relief awarded by the High Court would really constitute a step to regularise the earlier election with a view to avoid the fresh election; while Section 108 contemplates a situation where the earlier election stands set-aside in its entirety and thereafter when the seat has become vacant, a new election to fill up the vacant seat is held."

6. Our attention was also invited to the case of Haji Behram Khan *vs.* Abdul Hameed Khan Achakzai and others as reported in PLD 1990 S.C. 352, where the Election Commission had ordered re-poll in two polling stations which order was challenged in a

Constitution Petition before the High Court of Balochistan and it was held by the High Court that in a case where a serious violation of law or any statutory rules is established by a group of miscreants or by the supporters of a losing candidate in one or two polling stations, the election of the whole constituency may not be set aside, *if on the strength of the votes cast in other polling stations and the available record, a clear result is determinable.* The Supreme Court did not deem it fit to exercise discretionary jurisdiction to grant leave to appeal against the said judgment.

7. The question before the Commission is whether at all the provisions of the Act and the Rules made thereunder have been violated in the present case, if so, by whom and what would be the effect on the election of the said constituency.

8. Allegations as levelled in the petition would show that admittedly not a single vote was cast in the six polling stations mentioned in the preceding paras and in the remaining polling stations of Tehsil Lal Qilla the turn out of voters was very low. In such circumstances, it is to be established that the voters were harrassed and they were prevented to cast their votes out of fear and harrassment. In this context, Mr. Akram Sheikh relied on two posters which were published by one 'Shariat Mahaz', appealing to the voters not to participate in the elections until entire system is changed and is replaced by Islamic Sharia. Besides the aforesaid posters, some affidavits and F.I.Rs were produced in order to establish that the voters were harrassed and thus not allowed to cast their votes as a consequence whereof their right of franchise was adversely affected. The fact which is common in all the affidavits so filed, is that it was 'Shariat Mahaz' who tried to fail the Jamait Islami in the ensuing elections and that this 'Shariat Mahaz' was supported by Peoples Party of Pakistan. The other fact which is common, is that armed persons with Black Turbans were stationed at different polling stations who did not allow the voters by force to cast their votes.

9. However, regarding the issue, it is worth while to point out that the Election Commission, in exercise of its powers under section 103 AA of the Act, can hold summary inquiry in order to reach a conclusion whether illegalities or irregularities have been committed to the extent to declare the election of a constituency as void. The power of the Commission, thus, extends, to illegalities or irregularities as are

mentioned in the Act. In order to arrive at such conclusion, a summary inquiry has to be held and in the present case, the Commission directed the Returning Officer to submit his report and the Commission gave opportunity to the parties to *prima-facie* establish or controvert existence of illegalities. As mentioned hereinabove, the parties submitted several affidavits which were placed on record.

10. The sum total of the summary evidence consists of the affidavits of the parties, F.I.Rs and reports submitted by Returning Officer and District Returning Officer in addition to the fact that not a single vote was cast in six polling stations.

11. The gist of the affidavits produced by the petitioner is that Shariat Mahaz through its Black Turban agents threatened the voters of the area not to cast their votes until the time when whole prevailing system is changed and is replaced by Islamic system. In some of the affidavits, it is also alleged that the Peoples Party supported the Black Turbans and the police did not interfere when voters were being harrassed and prevented to cast their votes.

12. Similarly, the respondent filed affidavits showing that no one used force to prevent the voters from casting their votes and the voters voluntarily did not cast their votes on certain polling stations.

13. However, the report submitted by the District Returning Officer dated 31-10-1990 is relevant which may be reproduced as under :—

> "On the remaining Polling Stations of Tehsil Lal Qila, the polling did take place but the ~~out~~-turn out of voters was low as compared to the other Polling Stations in the Constituency. However, it is incorrect to say that there was any pressure on the voters from the opposite party or candidate. The polling staff remained available for duty on the Polling Stations throughout the day on 24-10-90. No complaint on the polling day was received regarding any irregularity occurred in the polling process or harrassment to the voters. I have also visited some of the Polling Stations *i.e.* Government Primary School Shadas, Government Primary School Kotkay, Government Primary School Lal Qilla and Government High School and no unpleasent incident was noticed or reported. Necessary security arrangements have been made in the area."

The factual position regarding non-participation of the voters at certain polling stations and low turn out of the voters on other polling stations in Lal Qila Tehsil was that a 'Shariat Mahaz' had been established some 7/8 months back in Tehsil Lal Qila under the Chairmanship of Maulvi Subi Muhammad, Darul Uloom Illaqa Maidan, Tehsil Lal Qila, District Dir and on the appeal of this 'Mahaz', most of the people did not participate in the election at certain polling stations. A pamphlet of this 'Shariat Mahaz' is sent herewith for ready reference and persual."

Besides this, another report was submitted by the Returning Officer to the Provincial Election Commissioner, NWFP, wherein the Returning Officer submitted that on the vigorous appeal by 'Shariat Mahaz' on six polling stations, no voter cast any vote and on remaining polling stations of Tehsil Lal Qilla restricted voters came to cast their votes. However, the election staff remained on duty through out the day. It was further submitted by returning officer as under :—

"No unpleasant incident was noticed or reported. No complaint whatsoever regarding any irregularity in the election process or harrassment to the Voters etc. was received either orally or in black and white from any candidate, voter, Presiding Officer etc.".

14. We have to sift the above evidence in the light of the Act, in order to determine whether illegalities or violation of any provision of the Act or Rules made thereunder have been committed to the extent to direct re-poll in the constituency. Firstly, we assess the version of Returning Officer and District Returning Officer of the constituency.

15. Both Returning Officer and District Returning Officer have categorically stated that proper arrangement had been made for conduct of polls in an impartial and peaceful manner. There was sufficient force deployed and no untoward incident was reported on the day of polls. The voters, however, voluntarily did not come to cast their votes on six polling stations on the appeal of 'Shariat Mahaz'. It was further stated that all the officials conducting election remained on their duty throughout the day. It shows that proper arrangements were made for the voters to cast their votes. The only question would be whether it is an illegality or irregularity if voters voluntarily do not cast their votes?

16. In our considered view, if voters of any area voluntarily do not cast their votes, this fact by itself shall not render the election void. However, it is an offence under the Act if a person in order to induce or compel any person to vote or refrain from voting, or to offer himself as a candidate, or to withdraw his candidature, at an election, directly or indirectly, by himself or by any other person on his behalf, calls down or threatens to call down divine displeasure or the displeasure or disapprobation of any saint or pir, or by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise by an elector, or compels, induces or prevails upon any elector to vote or refrain from voting, he shall be guilty of undue influence (Section 81).

17. There is hardly any direct evidence that respondent Najmuddin was guilty of undue influence. The evidence, however, is with the effect that 'Shariat Mahaz' appealed to the voters not to cast their votes unless the present system is replaced by a system based on Islamic Sharia. Voluntary abstention from casting vote is no offence under the Act, nor it is a circumstance which would render the election void. So also, a low turn out of the voters in a constituency without being prevented by either the candidates or by their election agents or persons on their behalf constitutes an illegality or irregularity to affect the result of the election.

18. It is worthwhile to point out that section 123 (3) of the Representation of People Act, 1951 of India is pari-materia with section 81 of the Act. In case of Kanti Prasad Jayshenker Yagnik *vs.* Purshottamdas, Ranchhoddas Patel and others (AIR 1969 S.C. 851), while interpretting the aforesaid section the Supreme Court observed :—

> "In our opinion, there is no bar to a candidate or his supporters appealing to the electors not to vote for the Congress in the name of religion. What section 123 (3) bars is that an appeal by a candidate or his agent or any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, *i.e.* the religion of the candidate".

19. Thus, the consent of the candidate or his election agent is a condition precedent before establishing an offence under the Act. As stated hereinabove, there is no *prima-facie* evidence that respondent o

his election agent ever gave their consent to 'Shariat Mahaz', appealing to the voters not to cast their votes. In such circumstances, the election of the returned candidate can not be declared void, particularly so when the Returning Officer and the District Returning Officer have categorically stated that the election staff remained on duty on the election day, as per schedule. There is no report whatsoever that any voter was persuaded not to cast his vote or prevented from casting his vote by any of the candidates or their election agents.

20. For all what has been stated above we see no merit in this petition which is hereby dismissed. The result is to be consolidated by the Returning Officer and the successful candidate shall be notified without delay.

Sd/-
(JUSTICE AMIRUL MULK MENGAL)
Member.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

Sd/-
(JUSTICE KHALILUR REHMAN KHAN)
Member.

21. I agree that no case for interference on the part of the Election Commission, under section 103 AA of the Representation of the People Act, 1976, has been made out. I would, therefore, agree that the petition is liable to be dismissed and is accordingly hereby dismissed. But, this will be without prejudice to petitioner's right to file an election petition, if so advised.

22. The name of the returned candidate, namely, the respondent, has already been published by the Commission in the Official Gazette dated 31st October, 1990. Therefore, further directions given by my learned brothers already stand complied with.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.
15-12-1990

Announced today.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.
15-12-1990.

Annexure-22
(Chapter 2, para 21)

BEFORE THE ELECTION COMMISSION OF PAKISTAN
AT ISLAMABAD

Constituency No. NA-31 Tribal Area-V

Present: Mr. Sardar Khan, Advocate for the petitioner, Mr. Ghias-ud-Din.

Qazi Jamil, Advocate accompanied by Mr. Abdul Latif Afridi, Advocate for the respondent, Haji Sakhi Jan.

Mr. Habibullah Khan, Political Agent/RO.

Date of hearing: 24th December, 1990.

JUDGEMENT

Mr. Justice Naimuddin.—This is a petition under section 103AA of the Representation of the People Act, 1976 by Mr. Ghias-ud-Din, a defeated candidate in the election to NA-31 Tribal Area-V.

2. The petitioner prays that a fair and impartial inquiry be conducted and the poll be declared as void. The main grounds urged in the petition are:—

(i) That Haji Sakhi Jan, the returned candidate, in violation of the election rules spent thirty millions of rupees during the election campaign to win over the voters.

(ii) That "Hundreds of votes were purchased and payment made openly to those sworn on Holy Quran".

(iii) That the Identity Cards of suspected voters who declined to swear Holy Quran were collected and payment made to them. Thus certain voters were deprived to exercise their right of franchise freely and fairly.

(iv) That voters were taken to unknown places and kept under vigilance. Their movements were restricted and were fully escorted.

(v) That attempts were made to create law and order situation and harrassment for the administration.

(vi) That voters were threatened to face dire consequences in case they failed to cast their votes in favour of the respondent.

3. All these grounds require recording of evidence of a large number of witnesses. These allegations cannot be gone into in a summary proceedings. The provisions of section 103AA of the Representation of the People Act, 1976 require that grave illegalities or violation of the provisions of the Act or the rules must be patent on the face of the record but there is nothing on the record, much less patent to support the allegations. Indeed, the petitioner has not even given the names of the voters whose votes were allegedly purchased by the respondent or who were prevented from voting or were intimidated. He has neither filed his own affidavit in support of the allegations nor has he filed any affidavit of any voter who was induced to vote for the respondent in violation of the provisions of section 79 of the Act, or any other provisions thereof. He has also not filed any affidavit of any other persons in whose presence any money was paid by the respondent to any voter as a bribe or inducement to vote for him or any other illegalities or violation of any provisions of the law was committed by him. Therefore, we are of the opinion that the petitioner has not made out any case whatsoever for interference by this Commission.

4. The petitioner could have made all these allegations in an election petition and in order to succeed, must have proved them. Our record does not show that he has filed any such petition. We enquired from the counsel for the petitioner whether he has filed any election petition but he admitted that the petitioner has not filed any such petition.

5. We, therefore, have no option but to dismiss this petition and we accordingly do so.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member, Election Commission.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member, Election Commission.

Annexure-23
(Chapter 2, para 21)

BEFORE THE ELECTION COMMISSION OF PAKISTAN

NA-70 Jhang-V

Present: Mr. Abdul Basit, Advocate for
Mr. Akhtar Abbas Bharwana, petitioner.

Raja Mohammad Anwar, Advocate for
Sahibzada Nazir Sultan, respondent.

Returning Officer also present.

ORDER

Mr. Justice Amir-ul-Mulk Mengal, J.—The petitioner is aggrieved from the result of polling station No. 32, Gebalpur of Constituency No. NA-70 Jhang-V.

The main grievance of the petitioner is that the Presiding Officer of the said polling station was in league with the rival candidate and after close of poll, he did not give the count of votes to the polling agent of the petitioner and also did not reach the Returning Officer till the next day to give him the result of the poll of the said polling station. It is also alleged that the Presiding Officer has been a party to the rigging and that the votes were not counted at the close of poll. Further more, the Presiding Officer kept the bags with him for 18 hours, therefore, re-poll be ordered in the said polling station.

We summoned the concerned Presiding Officer and Returning Officer and heard both of them in presence of the parties. The Presiding Officer submitted that he is an old patient of kidney and was posted as Presiding Officer in a remote place where he did not find any vehicle so that he could reach the R.O. in time. He further submitted that he had an acute pain and rushed to a doctor for treatment and this being the reason that he could not reach the headquarter within time. He also produced a certificate of the doctor and another certificate showing that he has been operated upon. In reply to the objection that he did not count the votes, the Presiding Officer submitted that the votes were

duly counted in presence of all the polling agents and the result was handed over to each polling agent and their thumb impressions were obtained. He also produced the result of the count showing thumb impressions of all the polling agents. When this document was confronted to the counsel for the petitioner, he submitted that in fact these thumb impressions were obtained prior to the count of votes.

From the above circumstances, we are of the view that the entire allegations require a detailed inquiry *i.e.* examination of polling agents, the statement of the doctor and other polling staff which definitely would require a detailed inquiry and is a subject matter which can best be adjudicated by an Election Tribunal. Therefore, this petition stands rejected. The petitioner is at liberty to file an election petition under section 52 of the Representation of the People Act, 1976, if so advised.

The result of the constituency may be declared on the basis of the result received.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member.

I agree

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

I agree.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member.

Annexure-24
(Chapter 2, para 21)

ELECTION COMMISSION OF PAKISTAN

NA-94 Lahore-III

In respect of this constituency an application was submitted through telefax by Mr. Salman Taseer on 29th October, 1990 at 7.33 p.m., complaining that he had repeatedly demanded recount on 164 polling stations. Votes in only 3 polling stations were recounted according to him. There is a difference of only 1200 votes out of a poll of 1,10,000.

An application was made before Ch. Shabbir Hussain, Returning Officer NA-94 Lahore-III under section 39 (6) (a) of the Representation of the People Act, 1976 for recount of the votes in the aforesaid constituency. This application was disposed of by the order dated 28-10-1990. According to this order, the representative of Mr. Salman Taseer had pointed out irregularities in the count in respect of polling station No. 132. According to the order, the bag of this polling station was opened and it was found that the Presiding Officer had wrongly rejected 67 ballot papers of the petitioner and 34 of the successful candidate, namely, Mian Umar Hayat and that the statement of count was corrected upto that extent. On further pointation in respect of polling station No. 142 and 148, it was found that on these polling stations the counting was found to be correct and there was no specific allegations about other polling stations.

According to the statement of final count received by the office from the Returning Officer, the total number of votes rejected were 661. Even if all these votes are counted in favour of Mr. Salman Taseer, that would not materially affect the result, as the difference between the successful candidate and the votes cast in favour of Mr. Salman Taseer is 1,200.

We, therefore, reject application for recount. We may record that no reasons or grounds are stated in the application.

The name of the successful candidate as per record may immediately be notified in the official gazette.

He (Mr. Salman Taseer) will be free to have recourse under section 52 or 103AA of the Representation of the People Act, 1976, if so advised.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member.

Dated: 2-11-1990.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member.

Annexure-25
(Chapter 2, Para-21)

ELECTION COMMISSION OF PAKISTAN AT KARACHI

CONSTITUENCY No. NA-174 THARPARKAR-I

Present :

Mr. Iqbal Haider with Mr. S. Qurban Ali Shah
Mr. Shoaib Ahmed Bokhari with Mr. Anis Ahmed Khan.

Date of hearing: 19th November, 1990.

ORDER

Khalil-ur-Rehman Khan, J.—Mr. Anees Ahmed Khan and Mr. S. Qurban Ali Shah are contesting candidates from NA-174 Tharparkar-I. An application for recount of the ballot papers pertaining to 9 polling stations was made on 27th October, 1990 by Syed Qurban Ali Shah to the R.O. The results were to be consolidated by the R.O. on 29th October, 1990. Mr. Anees Ahmed Khan submitted an application dated 29th October, 1990, saying that recount of particular polling stations is not proper because in Taluka Degree and Mirpurkhas, malpractices were committed and as such recount, if any, may be conducted as a whole and not for particular polling stations. On this learned counsel for S. Qurban Ali Shah stated the he has no objection if the whole constituency is recounted. The R.O. in his order dated 29th October, 1990 observed, firstly: "therefore, it is ordered to be made out only for the polling stations No. 6, 4, 10, 19, 30, 3, 17, 20 and 13, as these polling stations are specified by candidate/applicant but the recount can not be made for entire town Mirpurkhas." Again, it was observed in the later part of this very order: "therefore it is ordered that recount be made but it may be clarified that only the result sheets and the votes will be seen if they are valid or invalid, as provided under sub-clause 4 of clause 6 of section 38 of the Representation of People Act, 1976.

Mr. Gillani, also produced certified copy of the order said to have been passed on 30th October, 1990 by the same Returning Officer. This order reads as under :

"In the context of two telexes despatched by the undersigned to the various authorities and consulted the Chief Election Commissioner on telephone, request for re-count can be repeated by the concerned candidate before the Election Commission as per rules, hence no re-count is made and the consolidated result be sent."

Thereafter, the R.O. consolidated the result without recounting of the ballot papers pertaining to the afore-noted 9 polling stations, though it is stated that scrutiny of the postal ballot papers was held by the R.O. from 11.00 a.m. to 2.00 a.m. of the next morning. According to the consolidated statement of the result of polled votes, Anees Ahmed Khan obtained 44,132 votes while S. Qurban Ali Shah received 43,628 votes. Anees Ahmed was accordingly declared the returned candidate. A notification under section 42 of the Representation of People Act, 1976 was issued and Mr. Anees Ahmed Khan has also taken oath.

Syed Qurban Ali Shah, contesting candidate, sent a telegram dated 30th October, 1990 to the Chief Election Commissioner, saying *inter alia*, that Anees Ahmed Khan gave application while proceedings were going on that he has no faith in the R.O. and arranged slogans outside the court premises and by brow beating, got the work of consolidation and recounting stopped. It was prayed that R.O. be directed to perform his duty and finalise process as laid down by law.

Syed Qurban Ali Shah submitted an application dated 4th November, 1990 under section 39(6) of the Act for recount of ballot papers of the polling stations No. 6, 4, 10, 19, 30, 3, 17, 22 and 13.

Learned counsel for the petitioner argued that the order dated 30th October, 1990, reviewing the order dated 29th October, 1990 has no existence in law as the Returning Officer had no powers to review the said order, as such, the consolidation of results by the R.O. without complying with the order of recount passed under section 39(6) of the Act is illegal and resultantly the declaration of Mr. Anees Ahmed Khan as returned candidate is void. He argued that the Commission in exercise of the power vesting under clauses (b) and (c) of section 103 of the Act, should set aside the notification under section 42, issued by the Commission, declaring Mr. Anees Ahmed Khan as "the returned candidate".

The learned counsel for Mr. Anees Ahmed argued that the Commission can not set aside the notification issued under section 42 nor can order recount under section 39(6) of the Act after the declaration made under section 42 and after Mr. Anees Ahmed Khan has taken his seat in the National Assembly after taking oath. According to him, the remedy open to Syed Qurban Ali Shah is to challenge the election by filing election petition under section 52 of the Act. On facts, he argued that order dated 30th October is a manipulated order, as it did not exist till 4th October and had it been passed, the same must have been mentioned in the petition dated 4th October, 1990 of S. Qurban Ali Shah submitted before the Commission. He added that in order dated 29th October, 1990 in the last line, section 38 has been wrongly typed for section 39. According to him the reference is to clause (4) and (6) of Section 39 of the Act and that this order was complied with as Postal Ballots were checked from 11 a.m. to 2 a.m. of the next morning.

We have considered the respective submissions of the learned counsel for the parties. Section 39(6) of the Act empowers the R.O. to order recount of the ballot papers, if the challenge made by a contesting candidate or his election agent to the counting is reasonable or if so directed by the Commission. This exercise can be done before consolidation of the results of the count and declaration by public notice of the contesting candidate who received the highest number of votes. Once the public notice is issued under section 42 of the Act, the power of recount under section 39(6) of the Act can not be exercised either by the R.O. or by the Commission. The power vesting under section 103 of the Act is also not exerciseable or invokeable after the declaration of result as, thereafter, the remedy envisaged by the Act is that of election petition under section 52 of the Act on the grounds mentioned in section 55 of the Act which include illegal act alleged to have been committed. This scheme of the law gets support from the provisions contained in section 103AA of the Act, wherein it has been specifically provided that polling in any constituency may be declared void notwithstanding the public notification of the name of a returned candidate under sub clause (4) of section 42 of the Act. Such a provision is conspicuously absent in section 103 of the Act.

We are, therefore, of the view that neither the Commission can order recount at this stage nor it can determine the true meaning and implication of the order dated 29th October, 1990 passed by the R.O. The remedy for the petitioner lies in filing an election petition, if so advised.

The petition stands disposed accordingly.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member.

KARACHI:
The 20th November, 1990.

Annexure-26
(Chapter-2, Para-21)

ELECTION COMMISSION OF PAKISTAN

PP-85 GUJRANWALA-IX

ORDER

Mr. Justice Khalil-ur-Rehman J.—The Returning Officer forwarded the result statement alongwith the report with the following remarks :—

(1) Polling stations 61, 62 and 63, Maraliwala where indiscriminate firing was order of the day, six persons were murdered. Polling was stopped and the polling stations gave look of curfew imposed area.

(2) At polling station Chacherwali Rural, (No. 51) one person was murdered because of indiscriminate firing, polling was interrupted and stopped several times.

(3) Polling station 36 Kohlowal, polling stopped by Presiding Officer due to several interruptions.

(4) Polling station No. 30, polling stopped several times, secrecy was not maintained, polling staff was threatened and harassed.

2. Three candidates boycotted the election. In view of above report, the contesting candidates and the Returning Officer were summoned. They have been heard. Returning Officer in his supplimentary report submitted during the hearing that all the murders took place in the village and that polling was stopped for about two hours and on arrival of police force it was resumed. Similarly, at all polling stations where poll was interrupted, it was got resumed and continued till the closing hour. He further admitted that no murder took place at polling station 51 Chacharwali (Rural) and the mention of the same in his report dated 28-10-1990 is based on incorrect information.

3. It will be seen that Returning Officer has thus contradicted his own report in respect of all polling stations, especially by stating that six murders committed in the village Maraliwala (polling stations 61,

62, 63) was the result of old enmity between the parties. In other words, those were not due to any election dispute. The copies of FIRs filed on record support the above stated version of motive. The polling after interruption was also admittedly resumed and continued till closing hours.

4. The question still remains, whether the voters were scared away and were not in a position to cast their vote. In this respect, the answer given by the Learned Counsel for Mohammad Iqbal candidate was that the position of voting on each polling station was as under :—

P.S. No.	Votes assigned	Total polled	Votes cast in favour of		
			M. Iqbal	Khalid Zafar	Rana Abdul Ghaffar
61	1411	709	481	162	45
62	1628	574	339	123	105
63	2036	705	445	147	101

5. It was added that almost the same number of voters exercised their right of vote in the National Assembly election held on 24th October when admittedly no death/murder was caused. It was argued that it will show that the voters were not scared away or the murders did not affect the polls.

National Assembly Polls

Polling station	Votes cast	Provincial Assembly
61	822	709
62	941	574
63	620	705

6. Learned Counsel further pointed out that the reports of the Presiding Officer attached with the report dated 28-10-1990 do not in any way support the contents thereof and that Returning Officer has made the remarks without any material, or rather on the basis of false information conveyed to him unauthorizedly.

7. There is yet another important aspect, *i.e.*, the total votes assigned to the polling stations No. 61, 62, 63, 30, 36 and 51 respectively are 1411 + 1628 + 2036 + 1596 + 1138 + 1194 = 9003. Even if all these votes are credited to the account of Ch. Zafar Iqbal, still the result remains unaltered, as lead of Ch. Zafar Iqbal is of 33,672 votes. Faced with this situation, Ch. Zafar Iqbal and Rana Abdul Ghaffar candidates stated that grave illegalities were committed on about 23 polling stations due to which they boycotted the election. No proof whatsoever was, however, produced to support these averments.

8. Learned Counsel for Ch. Mohammad Iqbal, on the otherhand, stated that the party leaders of PDA at Gujranwala had decided to boycott the election due to victory of IJI, as is apparent from the written application of PDA agent to Returning Officer of PP-84/86 and the same policy was adopted in this constituency, but excuses in the form of allegations have been coined to support the alleged boycott.

9. These respective assertions require examination of witnesses and adducing of proof. There is nothing on record even *prima facie* to establish these assertions of the parties.

10. In the above noted circumstance no case for declaring the poll void in exercise of power vesting under section 103AA of the Representation of the People Act is made out. The allegations require proof which can be produced in a detailed enquiry. The contents of the report of the Returning Officer remains unsubstantiated, rather has been shown to have been made on unverified information.

11. The report as well as the petition is rejected. The result as per statement of count may be declared. The contesting candidates will be at liberty to challenge the election by filing petition under section 52 of

the Representation of the People Act, 1976, if so advised, and the same will of course be decided in accordance with law and without being influenced from any observations made herein.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member Election Commission.
3-11-1990.

I agree.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

I agree.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member Election Commission.

Annexure-27
(Chapter 2, Para-21)

ELECTION COMMISSION OF PAKISTAN

PP-86 Gujranwala-X

ORDER

The Returning Officer has forwarded the consolidated statement of count with the note that the count does not contain the result of poll of polling stations No. 9 and 40, as due to kidnapping of Presiding Officers polling was stopped and the Presiding Officer of polling station 40 is still not available, as he was kidnapped.

2. The votes received by the candidates as a result of polling at 77 out of 79 polling stations are:—

Mr. Imtiaz Safdar Warraich	PDA	24648
Mr. Muhammad Azam Cheema	IJI	28567
Mian Shaukat Ali	IND	1680

3. The report of the Returning Officer is to the effect that one supporter of IJI was killed in the area of polling station No. 13 but the polling continued uninterrupted. There was interruption in the polling for some time in polling station Ludhewala Warriach also. The Presiding Officer of polling station No. 9 was kidnapped alongwith Ballot Boxes or Ballot Papers by the candidate of PDA who forced the Presiding Officer to sign and seal the ballot papers which were then put into Ballot Boxes. The Presiding Officer alongwith the Ballot Boxes was dropped near Gujranwala Town in the evening and the same were presented to Returning Officer by the Presiding Officer alongwith written complaint.

4. The Presiding Officer of polling station 40 appeared before Returning Officer on 28-10-1990 and reported that after close of the polling hour the counting was held and he thereafter left the polling station with statement of count for the office of the Returning Officer, but on the way, he was lifted by Imtiaz Safdar Warraich and his men and was forced to sign the statement of count prepared by them and that the record of election was also forcibly snatched. The Returning

Officer in his report has submitted that the statement of count supplied to Muhammad Azim Cheema, the IJI candidate, clearly indicates that he received 724 votes while Imtiaz Warraich obtained 384 votes. This statement cannot be relied upon, as the election record is not available.

5. It is apparent that authentic result of poll of polling stations No. 9 and 40 is not available. The voters assigned to polling stations No. 9 and 40 respectively are 1236 and 1417 *i.e.* 2653 in all. Muhammad Azam Cheema of IJI has received 28567 votes against 24648 votes polled by Imtiaz Safdar Warraich at 77 polling stations. The lead is of 3919 votes. The result of the election thus stands determined by the polling already taken place at the seventy seven polling stations of the constituency. There is, therefore, no need to order fresh poll at the two aforesaid polling stations, as provided under sub-section (2) of section 27 of the Representation of the People Act, 1976. The IJI candidate may, therefore, be declared elected provisionally.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member Election Commission

I agree.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Dated:29-10-1990.

Annexure-28
(Chapter 2, Para-21)

BEFORE THE ELECTION COMMISSION OF PAKISTAN
AT ISLAMABAD

Constituency PP-154 Okara-II

Present: Sh. Mohammad Shafi, advocate for
Ch. Ikram-ul-Haq, petitioner.

Mr. Shabbar Raza Rizvi, advocate for
Rana Ikram Rabbani, respondent.

Returning Officer.

Date of hearing: 28th November, 1990

ORDER

Mr. Justice Naimuddin, J.—This is a petition for recount of votes in respect of PP-154 Okara-II. The only ground urged in support of the prayer, as pointed out by the learned counsel for the petitioner, is contained in para 3 of the petition which reads as follows:

> "The net result was that Mr. Ikram Rabbani was declared elected from this particular constituency having secured 303 more votes than the petitioner."

It is submitted in support of this petition that since the margin of votes is very narrow, therefore, recount may be ordered.

A similar application was made before the Returning Officer but the same was rejected. It may be pertinent to reproduce paragraph 3 of the order of the Returning Officer dated 1-11-1990, which reads as follows:—

> "The instant application has been made on 30-10-1990 at later hours when the consolidation of the result was being done whereas the polling was held on 27-10-90. On the day of polls at the time of the receipt of the result from the

polling stations, the election agents of the petitioner and respondent were present in the office of the undersigned and they personally watched the result. Neither the applicant nor any of his polling agents or election agents raised any objection on the day of polling against any polling staff regarding the incorrect counting. The polling agents of the applicant who were present at the time of counting by the Presiding Officers at different polling stations also did not raise any objection before any Presiding Officers, as there is no proof of any such complaint. The petitioner has in a very vague manner recorded in the application that his valid votes have been declared as invalid and that the invalid votes of the respondent have been declared as valid. He has not produced any proof of any such illegality. So much so that the petitioner has not filed affidavit of himself or any of his polling agent or election agent in support of his application. The applicant has also failed to record specifically as to at which polling stations such an illegality has been committed by the polling staff. During the course of hearing of this application, I specifically asked the petitioner as to whether he can point out any polling stations where such illegality have been committed but he failed to quote a single instance. I also made him an offer that he may point out any ten polling stations on which the recounting may be made or that the recounting of polling stations Nos. 1 to 10 may be made and if any such illegality is found during the recounting of the said polling stations, then the recounting of the whole constituency may be done but he refused to accept my proposal and rather kept on pressing that the recounting of all the 89 polling stations be done. It also goes without saying that the petitioner could not quote the name or number of any particular polling station on which any injustice might have been done to him by any member of the polling staff. The instant application has also been made after much delay of the declaration of the un-official result by the Election Commission."

The matter has been dealt with by the Returning Officer sufficiently in good detail. The reasons advanced before us are insufficient. Without going into the legality of the petition, we find no merits in this petition and accordingly dismiss it.

The Returning Officer, Ch. Abdul Sattar is present. He is allowed to leave the station.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member Election Commission

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member Election Commission

Annexure-29
(Chapter 2, Para-21)

BEFORE THE ELECTION COMMISSION OF PAKISTAN
AT KARACHI

Constituency No. PP-190 Pakpattan-I

Present: Chaudhry Mushtaq Ali, advocate, with Mian Ghulam Farid Chishty, petitioner.

C.M. Lateef Rawn, advocate, for the respondent.

Date of hearing: 13-12-1990

JUDGEMENT

Naimuddin, J.—This is a petition under section 103 read with section 27 A of the Representation of the People Act, 1976, praying for re-poll at the polling station Nos. 66, 68, 69, 71, 72, 76, 80, 81 and 88 of a Punjab Provincial Assembly constituency No. PP-190 Pakpattan-I and further praying that pending decision of the petition, official result of the said constituency may not be notified.

The grounds urged, *inter alia*, are that respondent No. 1 in the company of other persons created law and order situation and caused harrassment and insult to the voters of the petitioner. The petitioner has listed a number of illegalities/irregularities committed by respondent No. 1 at polling stations 70, 76 and 78. All these allegations are such that they require recording of detailed evidence and the alleged illegalities/irregularities are neither patent on the face of the record nor can be gone into in a summary way.

The petitioner had made a petition under section 103 AA of the Representation of the People Act, 1976 which was disposed of by this Commission by the order dated 19-11-1990, which reads as under:—

> "The petition as well as the report of the R.O. have been perused. The grounds urged are such that these can not furnish basis for summary proceedings under section 103 AA of the Representation of the People Act, 1976 and to

establish them evidence needs to be recorded. This may be a case for election petition. The petitioner may prefer the same, if so advised. He may be informed accordingly."

We may add that section 27 A is no more part of the Statute and the provisions of section 103 are not attracted at this stage, as name of the respondent has already been published in the Official Gazette as the returned candidate.

It was stated at the bar that the petitioner has already filed an election petition under section 52 of the Representation of the People Act, 1976 which we find, has already been referred to Election Tribunal, consisting of Mr. Justice Shaikh Khizer Hayat of Lahore High Court on 8-12-1990. Therefore, the petitioner could and must have urged all these points in the election petition.

We, therefore, dismiss this petition.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member

Karachi, the 13th December, 1990.

Annexure-30
(Chapter 2, Para-21)

BEFORE THE ELECTION COMMISSION OF PAKISTAN
AT KARACHI

Constituency No. PS-63 Dadu-VI

Present: Mr. Ahmed Mian Soomro, Advocate for the Petitioner.

Mr. Abdul Hafiz Pirzada and Rana Ikramullah, Advocates with Mr. Liaquat Ali Jatoi, Respondent.

Date of Hearing: 12-12-1990.

JUDGEMENT

Khalil-ur-Rehman, J.—Haji Zafar Ali Leghari a candidate for membership of Provincial Assembly from Constituency No. PS-63 Dadu-VI filed this petition under Sections 103 and 103AA of the Representation of the Peoples Act, 1976 for declaring the poll in the constituency void. Mr. Rashid Akhund, Advocate, Learned Counsel for the petitioner submitted that:—

(i) Bogus votes were cast;

(ii) Polling Agents were arrested by the Police under the orders of the Deputy Commissioner and Superintendent of Police;

(iii) Polling was stopped at various polling stations and after forcibly removing the polling agents of rival candidates, supporters of the Respondent stamped the ballot papers unauthorisedly and put these bogus votes in the ballot boxes; and

(iv) Statements of the Count were not provided by the Presiding Officers of the 30 polling stations to the polling agents of the Petitioner.

Learned Counsel for the petitioner, however, conceded that the last ground does not find mention in the petition. In support of the other

three grounds, Mr. Rashid Akhund, Advocate, placed reliance on the report of the Returning Officer dated 31-10-1990 and the documents attached therewith.

2. The Returning Officer's aforementioned report submitted to the District Returning Officer is based on the complaints of the Presiding Officers of 10 polling stations, the polling agents and the contesting candidates. The complaint, in short is that at 8 polling stations (P. S. 4, 5, 37, 45, 66, 73, 80 and 82) the polling was stopped un-authorisedly under the direction of the Deputy Commissioner and that bogus voting was resorted to by the supporters of the rival candidate namely, Mr. Liaquat Ali Jatoi. The complaint lodged by the Presiding Officers of the polling station No. 51 is to the effect that he was asked un-authorisedly to stop the polling but he did not comply with the said direction. Learned Counsel argued that these reports together with the incident of firing by miscreants on the jeep of the Returning Officer sufficiently establish the atmosphere prevailing on the polling day. He added that poll in the constituency merits to be declared void on account of the rigging and illegalities committed by the respondent and his supporters.

3. Mr. Abdul Hafiz Pirzada, in reply, submitted that the report of the Returning Officer dated 31-10-1990, based on the complaints of the Presiding Officer and others cannot be relied upon as the same has been manipulated 4 days after the polling day. He argued that if anything of the sort had actually happened, as is being alleged in the report, the same would have been mentioned in the earlier report, purportedly made on 27th October, 1990, though this report appears to have been written on 28-10-1990. He pointed out that the Respondent as well as his father who was a candidate for the National Assembly seat have submitted complaints many days before the National Assembly election pointing out the partial conduct of the Returning Officer. He also referred to the statement of the Presiding Officer, the polling staff and the polling agents of the candidates of polling station No. 4 to the effect that voting at the polling station continued peacefully and there was no interruption or interference through-out the polling hours. An affidavit of Miss Maroof, Presiding Officer of polling station No. 4, describing the circumstances under which the statement was obtained from her, has also been brought on record.

4. We have considered the respective submissions and have gone through the record including the report of the Returning Officer and comments of the Deputy Commissioner, wherein he has denied the allegations levelled against him. The difference of the votes of the two candidates is 26,794 votes, as Mr. Zafar Ali Petitioner obtained 18,419 votes while Mr. Liaquat Ali Jatoi, Respondent obtained 45,213 votes. Mr. Rashid Akhund did not dispute the fact that result of the election will not change even if all the votes assigned to the 8 objected to polling stations are counted in favour of the petitioner or are excluded from the count altogether. His plea was that the illegalities committed at these polling stations show the pattern with which the Administration had rigged the polls. The allegations levelled by the petitioner cannot be accepted or acted upon without formal proof. The complaints of the Presiding Officer and others as well as the report of the Returning Officer in the facts and circumstances of this case cannot be treated as substantive evidence. The statement require to be tested at the test of cross examination. This exercise cannot be undertaken in summary proceedings under Section 103 AA of the Representation of the Peoples Act, 1976. We may add that it will be appropriate not to offer any comment on these complaints and the reports lest it may adversely affect the case of the one or the other party, as the petitioner may like to file an election petition under Section 52 of the Representation of the Peoples Act, 1976, and in the said proceedings these reports and complaints are likely to be relied upon and proved.

5. We dismissed the petition by our short order dated 12th December, 1990 and these are reasons for dismissing the petition.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member

Dated: 13-12-1990

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member

Annexure-31
(Chapter 2 para-21)

ELECTION COMMISSION OF PAKISTAN
KARACHI

Constituency No. PS-97 Karachi (East) VII

Present: Mr. Iqbal Haider and N.M. Shahani with Khawaja Mohammad

Shoaib Ahmed Bokhari, advocate with Mohammad Arif Khan

Chaudhry Iftikhar Ahmed, advocate with Mohammad Taj

Date of hearing: 19th November, 1990.

ORDER

Mr. Justice Khalil-ur-Rehman Khan, J: We have heard the learned counsel for the contesting candidates. We have also gone through the petitions, replies and the reports of the Returning Officer, as well as the consolidated statement of the Results of the Count (Form XVI). The note of the R.O. on the Provisional Result of Count reads:

> "Right from 11.00 a.m. on 27-10-1990 complaints were constantly received through wireless sets and other sources from Mr. Arif Khan Advocate, a contesting candidate that thousands of voters were not being allowed to cast their votes by the P.D.A. candidate, his agents and his supporters. At polling station No. 26 and 27 ballot books were snatched away by un-known person. The total voters assigned to these polling stations are 4984. According to the Presiding Officer concerned, it was impossible to continue the polling and therefore polling was stopped and suspended at both polling stations at 2.00 p.m. due to unavoidable circumstances and the matter was reported to the Election Commission, D.R.O. as well as R.O. Moreover, in Majeed Colony at polling stations No. 12 and 13, voters were not permitted to cast their votes by P.D.A. supporters and candidate. The detailed report follows."

In the detailed report the Returning Officer proposed that re-poll at polling stations 12, 13, 24, 28, 26 and 27 be ordered.

The reasons given in this report are that at polling stations No. 12 and 14 in Majeed Colony hundreds of persons inside and outside the polling stations were complaining that their votes were not being allowed to be cast by the agents of PPP candidate and that this complaint was also confirmed by the polling staff of polling station No. 12 with the addition that they were also being threatened of dire consequences if any vote was allowed to be cast. It is added that some persons were taken into custody and on their arrest the situation was controlled and thus the polling was re-started at 4.45 p.m. with the directions to the Presiding Officer to permit all such voters to cast their votes which were inside the premises of the polling station.

It will be seen that on these polling stations the polling was restored and it is not the case that the voters who were present within the premises of the polling station were not allowed to exercise their right of vote.

The other polling stations mentioned in the report are polling stations No. 23, 24, 25 and 28. The plea of Chaudhry Iftikhar Ahmed, advocate, was that due to indiscriminate firing the voters assigned to polling stations No. 23 to 28 were scared away with the result that out of 14,860 registered voters only 2533 voters exercised their right of votes. He added that polling stations No. 23, 24 and 25 were located in one building while polling stations No. 26, 27 and 28 were housed in another building situated at a distance of 25 paces from the other building. As regards polling stations No. 26 and 27, it was argued that as the polling was admittedly stopped at about 2.00 p.m., re-polling at these polling stations and at those mentioned in the report of the R.O. be directed in order to ascertain the true choice of the electorate.

Learned counsel for Mr. Khawaja Mohammad, contesting candidate, submitted that Khawaja Mohammad had a lead of 4760 votes as per the provisional count and 4673 votes as per the re-counting conducted by the Returning Officer as a result of the polling at polling stations other than polling stations No. 26 and 27. He submitted that the total votes cast toghether with the votes cast at the aforesaid two polling stations till the closure of the polling have determined the election and as such there is no need to direct re-poll. He added that

almost 800 voters out of 4984 registered at the two polling stations had cast their votes till the time of closure. So the votes polled at these polling stations alongwith the votes polled by each candidate at the remaining polling stations has determined result of the election.

As regards polling station No. 23,24, 25 and 28, it was argued that the polling was admittedly continued through out the day at the said polling stations and that the plea that the voting percentage at these polling stations was low does not furnish legal basis for ordering re-poll. It was submitted that at polling stations in Majeed Colony, the polling was admittedly resumed. A reference to consolidated statement of the result of count will show that at these polling stations almost 50% of the voters have cast their votes. This percentage is higher than the percentage of voting at other polling stations of the same constituency.

The above submissions with regard to polling stations in Majeed Colony, (polling stations No. 12, 13 and 14) and polling stations No. 23, 24, 25 and 28 of the learned counsel for the respondent are borne out from the consolidated statement of the result of count. Even otherwise, the question whether the voters were scared away is a disputed question of fact which cannot be determined except by holding a detailed inquiry and by examining witnesses. In summary proceedings, these questions cannot be determined. As regards polling station No. 26 and 27 the polling was admittedly stopped at about 2.00 p.m. but considering the number of votes statedly polled till the polling was stopped and the number of votes polled in various polling stations in the Constituency, we are satisfied that the polling that had already taken place at polling stations No. 26 and 27, taken with the result of the polling at other polling stations, the difference being 4673, the result of the election has been determined.

We would accordingly direct the Returning Officer to count the votes polled at polling station 26 and 27 and after completing the consolidation of the results, declare the candidate who amongst the contesting candidates has polled the highest number of votes, as the returned candidate.

We may add that the contesting candidates will be at liberty to challenge the election of the returned candidate under law by filling a

election petition, which, if filed, will of course be decided on its merits without being influenced by anything said herein.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member.

Karachi, the 19th November, 1990.

Annexure-32
(Chapter 2, para-21)

BEFORE THE ELECTION COMMISSION OF PAKISTAN ISLAMABAD

Constituency No. PF-43 Mansehra-II

Present: (1) Ch. Hamidudin, Advocate and Malik Fazal Hussain, Advocate for Mian Waliur Rehman, petitioner (who is present).
(2) Mr. Sardar Khan, Advocate for respondent, Syed Qasim Shah (who is present).

ORDER

Mr. Wali-ur-Rehman, an IJI candidate in PF-43 Mansehara-II, lodged complaint *vide* telegram dated 27th October, 1990 that Syed Qasim Shah, the rival candidate and his supporters after ousting the Polling Agents from the Polling Station polled bogus votes. This was followed by a complaint dated 28th October, 1990, containing the allegations that at 12 polling stations, bogus votes were polled after forcibly evicting the Polling Agents, the voters were not allowed by the supporters of the rival candidate to cast their votes and that he, too, was stopped to enter the polling station Government Middle School, Balakot by throwing stones on him. It was further alleged that his gunman was arrested and as the complaints made to District Administration remained unattended and even his telephone contact was also cut off from 1200 hours to 1600 hours on the polling day, he boycotted the election.

2. This complaint was supplemented by another complaint dated 30th October, 1990 wherein number of polling stations were increased from 12 to 14 where allegedly the bogus voting was resorted to.

3. The complaint dated 28th October, 1990 was forwarded to the District Returning Officer, Mansehra with the direction to submit report within two days. The aforementioned complaints weredisposed of by one of us (Justice Khalil-ur-Rehman Khan), saying that the grounds urged have not been supported by any material or proof and

that detailed inquiry will be needed for determining correctness or otherwise of the allegations and as such, provisions of Section 103AA of the Representation of the People Act, 1976 are not attracted. It was added that the petitioner will be at liberty to file election petition under Section 52 of the aforesaid Act.

4. Thereafter, Mr. Wali-ur-Rehman, *vide* his telegram dated 6th November, 1990 informed the Commission that the ballot papers while being brought from Bala Kot to Mansehra in the custody of Government officials have been burnt to ashes and that on November 1, 1990 it has been proved before the Senior Civil Judge/Returning Officer that a large number of bogus votes including those of dead persons were polled and that dozens of voters including some members of the polling staff were forced by the supporters of Syed Qasim Shah to commit rigging. With these pleas, the repolling in the constituency was prayed for.

5. A petition dated 10th November, 1990 was then submitted saying that election was rigged at the 12 polling stations, that the DRO recorded statement of 21 witnesses produced by the petitioner and the Presiding Officer and polling staff was also examined in camera and that the statement of the witnesses examined by the RO be read as a part of the petition. It was added that record of the election was destroyed by burning on its way from Bala Kot to Mansehra and even in case of election petition, the applicant is not in a position to produce record of election before the Tribunal. It was prayed that election be declared as void and repolling be ordered.

6. The plea of the learned Counsel that due to burning of the election material, the result of the election has been materially affected and as such, repoll should be ordered in view of the provision contained under Section 27-A of Ordinance 28 of 1977 has no merit, Firstly, Section 27-A of the aforesaid Ordinance relates to the destruction of ballot boxes before the consolidation of election result and as such, said provision is not relevant, as admittedly, the election material pertaining to some of the polling stations was burnt after the consolidation of result and issuance of the notification of the returned candidate. Secondly, the ordinance applied only to the forthcoming elections, as is apparent from section 1 of the Ordinance itself. The forthcoming elections at the time of promulgation of Ordinance 28 of 1977 was elections announced to be held on 18th October, 1977. These

elections were postponed by the then President by making declaration on 1st October, 1977. The postponed elections were then ordered to be held on 17th November, 1979 which direction was rescinded *vide* Presidential Order No. 22 of 1979, notified on 4th November, 1979. Moreover, the pleas that the polling Agents were ousted from the Polling Stations; bogus voting was resorted to and the voters were not allowed by the supporters of the rival candidate from voting as Identity Cards were snatched, admittedly require to be proved by producing witnesses and other evidence. The two of the aforementioned allegations can be proved without reference to the election record and despite non-availability of election record of some of the polling stations. Moreover, it will be open to the petitioner to prove the effect of loss of the relevant election record and the parties responsible for causing the disappearence of the said record. The Election Tribunal will be in a better position to fix the responsibility and also to draw necessary inferences on the basis of the evidence and the relevant material produced before it.

7. Before proceeding further, it will be pertinent to note that the DRO was forwarded the complaint dated 28th October, 1990 of Mr. Wali-ur-Rehman for report to be submitted within two days. There was no direction of the Commission to hold an inquiry and then to submit the report. The DRO on his own, proceeded to examine 21 witnesses, produced by the petitioner and also to examine Presiding Officer, 18 in number. The Presiding Officers were examined in camera and the parties were not allowed to cross examine then. The proceedings held by the DRO on his own and the report based on these proceedings in which statement of as many as 18 witnesses were not scrutinized at the test of cross examination merit to be ignored and as such, need not be commented upon lest it may affect adversely any of the parties at any later stage.

8. The allegations made in the complaint dated 28th October, 1990 which allegations have been referred to again in the application dated 10th November, 1990, as discussed above, require for their proof, production of witnesses and documents in a detailed enquiry. Such an exercise cannot be undertaken in summary proceedings contemplated by Section 103AA of the Representation of the People Act, 1976. This very view was taken by one of us while disposing of the miscellaneous complaints on the administrative side. We having heard the learned Counsel for the parties and have arrived at the same

conclusion and hold that in the facts and circumstances of the case, the grounds urged do not attract the provision of Section 103AA of the Representation of People Act, 1976. The petition is, therefore, rejected. The petitioner will, however, be free to challenge the election of the returned candidate by filing Election petition under Section 52 of the aforesaid Act.

The parties be informed of the order.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member Election Commission.

I agree.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

I agree.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member Election Commission.

Dated the 30th November, 1990.

Annexure-33
(Chapter-4, Para-7)

REGISTERED No. M-302 / L.-7646

The Gazette of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, WEDNESDAY, MAY 3, 1989

PART III

Other Notifications, Orders, etc.

MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS

(Parliamentary Affairs Division)

Islamabad, the 30th April, 1989

No. F. 12(4) 89-PA.—In exercise of the powers conferred by Article 217 of the Constitution, the Chief Justice of Pakistan has been pleased to nominate Mr. Justice Naimuddin, Judge of the Supreme Court of Pakistan, to act as Chief Election Commissioner.

MR. JUSTICE NASIR ASLAM ZAHID,
Secretary.

Annexure-34
(Chapter-7, Para-17)

PUNJAB ELECTION OFFICERS ASSOCIATION
10-Court Street Lahore

Ref. No..... *Date 8th October, 1991.*

My dear Choudhry Sahib,

Your d.o. letter No. F. 6(5)/91-Estt-I, dated 5th October, 1991 was placed before the Members in the meeting of the Executive Body of the Punjab Election Officers Assocation. The Executive Body after careful examination of the case have concluded that no representation/complaint of any kind what so ever was made to the Election Commission or any other agency, at any stage, against promotion/appointment of Mr. M. Humayun Khan as Joint Secretary in the Election Commission Secretariat, Islamabad. In fact, we are proud of the talent, self less devotion to the official work of the above mentioned officer who by virtue of his fair and impartial conduct holds high esteem in the eyes of this Association. We are also grateful for his able guidance, always provided to us in connection with the discharge of our official duties fairly, impartially and strictly according to law.

2. We therefore, strongly denounce in un-equivocal terms, the allegations of the PDA in their recently issued white paper on general elections 1990 to the effect that this Association had sent a strongly

representation against the appointment of Mr. M. Humayun Khan, as Joint Secretary in the Election Commission Secretariat, Islamabad.

Yours sincerely,

Sd/-
(KHALIQ-UR-RAHMAN)
President.

Sd/-
(TANVEER ZIA BUTT)
General Secretary.

Sd/-
(ASHFAQ AHMED SARWAR)
Finance Secretary.

Ch. Iftikhar Ahmad,
Deputy Secretary (Admn),
Election Commission of Pakistan,
Islamabad.

PRESS CLIPPING

THE DAWN (SECTION 2) LAHORE
October 16, 1991

White Paper allegations refuted

Bureau Report

LAHORE, Oct. 15: The Punjab Election Officers Association (PEOA) has denied the allegation levelled in the PDA White Paper on general election, 1990 that the Association had sent a strong representation against the appointment of Mr. Humayun Khan as Joint Secretary to the Election Commission.

The denial was made in a joint statement of the association issued by President Khalil-ur-Rahman, General Secretary Tanyeer Zia Butt and Finance Secretary Ashfaq Ahmad Sarwar. It was read out at a Press conference called by them here on Tuesday.

They said the association's executive body, which discussed the matter, has reached a conclusion after careful examination of the allegation contained in the PDA white paper that no representation or complaint of any kind was made to the Election Commission or any other agency at any stage against promotion or appointment of Mr. Humayun Khan as joint secretary of the Election Commission. On the contrary "we are proud the talent, selfless devotion to official work of Mr. Humayun Khan", they observed.

Annexure-35
(Chapter-4, Para-18)

HEADQUARTERS FEDERAL INVESTIGATION AGENCY ISLAMABAD

No. HQ/VC/LE/32/91/5813 *Dated 27th October, 1991.*

To

Mr. Hasan Muhammad,
Joint Secretary (Admn),
Election Commission of Pakistan,
Secretariat Block-S,
Islamabad.

SUBJECT:—*Enquiry Against Mr. M. Humayun Khan, Joint Secretary*

Kindly refer to your office D.O. letter No. F. 6(5)/91-Estt-I, dated October 20, 1991, on the subject noted above.

2. It is for your kind information that no enquiry/case is under process against Mr. M. Humayun Khan, Joint Secretary in FIA.

Sd/-
(MUHAMMAD ZAHID MAHMOOD)
Deputy Director/Crime-I
For Director General.

Annexure-36
(Chapter-5, Para-1)

D.O. No. F. 2(45)/90-Cord.

ELECTION COMMISSION OF PAKISTAN

SECRETARIAT BLOCK 'S' ISLAMABAD

September 19, 1990

Ch. Shaukat Ali,
Secretary,
Tele: 820513

SUBJECT:—*General Principles to be observed during the General Elections 1990*

My dear,

Article 218 of the Constitution provides that it shall be the duty of the Election Commission, constituted in relation to an election, to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

2. In connection with the present process of general elections, the Election Commission has received some complaints against the misuse of public/Government facilities and staff in the election campaign.

3. These complaints have not been verified. However, it is, not only important that election proceedings be fair and orderly but that the public is assured that the requirements of law are bieng respected by the candidates, the electoral administration and Government functionaries at all levels. In this context, the Election Commission has deemed it necessary to highlight some of the provisions of the electoral law, and to direct that these provisions be meticulously observed.

4. Under section 81 of the Representation of People Act, 1976, the exercise of undue influence is prohibited. The various forms of undue influence have been defined in section 81 and include threat of

force, calling down divine displeasure, maligning the Armed Forces and use of official influence or Government patronage.

5. Section 81 of the Representation of the People Act, 1976, prohibiting use of official influence or governmental patronage and section 83 prohibiting procurement of assistance of any person in the service of Pakistan to further or hinder the election of a candidate, require the exercise of utmost discretion on the part of those persons, who are both candidates as well as are holding offices in Government. While it is not the intention that Ministers give up any of the personal privilages, which they enjoy under the law and rules and which are essential for the performance of their official duties, it is obvious that personal privileges do not extend to the use of general facilities of the Government for election purposes. For example, the utilisation of departmental transport (as distinct from the transport allotted to a Minister for his personal use, both private and public, including transport for police escort) for electoral campaign is not permissible.

6. Candidates, particularly those holding public offices and seeking election, must be careful not to employ public sevants for electoral work, since apart from the risk to candidates, the public official himself would be, at hazard, under the provisions of section 92 of the Representation of the People Act, 1976.

7. The use of Government patronage for influencing election results is prohibited. All those persons entrusted with powers to sanction funds must bear in mind their moral and legal obligation to exercise these powers in a fair manner which precludes suspicion of electoral partiality or bias.

8. The Election Commission are confident that all candidates, including holders of public offices seeking elections, and public servants will strictly conform to the provisions of law both in letter and spirit. The legal provisions are clear and unambiguous. The law and experience of past elections should provide sufficient guidance as to proper conduct, in relation to the forthcoming elections.

9. The Election Commission of Pakistan expects that above mentioned principles will be observed by the members of the caretaker Government in discharging their duties and in the process of their election campaigns.

10. The Election Commission also hopes that all the candidates contesting the general elections to abide, in their own interest, by the provisions of the Representation of the People Act, 1976 and the rules made thereunder and show to the world exemplary conduct of their election campaign.

For the Election Commission of Pakistan.

With regards,

Yours sincerely,

Sd/-
(CH. SHAUKAT ALI).

(1) Mr. Ghulam Haider Wyne,
Chief Minister, Punjab,
Lahore.

(2) Mr. Jam Sadiq Ali,
Chief Minister, Sind,
Karachi.

(3) Mr. Mir Afzal Khan,
Chief Minister, N.W.F.P.,
Peshawar.

(4) Sardar Mir Humayun Khan,
Chief Minister,
Baluchistan, Quetta.

Annexure-37
(Chapter-5 para-1)

CODE OF CONDUCT FOR THE POLITICAL PARTIES

GENERAL ELECTIONS 1990

ELECTION COMMISSION OF PAKISTAN

ISLAMABAD

CODE OF CONDUCT FOR THE POLITICAL PARTIES

(1) The political parties shall not propagate any opinion, or act in any manner prejudicial to the Ideology of Pakistan, or the Sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the armed forces of Pakistan, as provided under Article 63 of the Constitution.

(2) The political parties, their candidates, agents or workers shall not obstruct or break up meetings organised by the rival parties and candidates, nor interrupt speeches or prevent distribution of handbills, leaflets and pasting of posters of other parties and candidates.

(3) The political parties shall avoid criticism of other political parties, their leaders and candidates having no bearing on their public activities. Criticism and comments shall be confined to policies and programmes of other parties. Speeches and slogans shall be dignified and based on principles of morality, decorum and decency.

(4) The political parties shall refrain from speeches calculated to arouse parochial feelings and controversy or conflicts between sects, communities and linguistic groups.

(5) Public leaders and all other participants in political activity shall act with a sense of responsibility and dignity befitting their status. While propagating their own views and programmes, they shall not interfere with the freedom of others to do the same as that would be the negation of democracy.

(6) Appeals to violence or resort to violence during meetings, processions, or during polling hours shall be strictly avoided.

(7) Carriage of lethal weapons shall not be allowed in public meetings and official regulations in this regard shall be strictly observed. Use of crackers and other explosives at public meetings shall not be allowed.

(8) The political parties and their candidates shall extend cooperation to the officers on election duty in order to ensure peaceful and orderly polling and complete freedom for the voters to exercise their franchise without being subjected to any annoyance or obstruction.

(9) The political parties and their candidates shall scrupulously avoid all activities which are "corrupt practices" and offences under the election law, such as the bribing of voters, intimidation of voters, impersonation of voters, canvassing within 400 yards of a polling station, holding public meetings during the period of 48 hours ending with the hour fixed for the close of the poll.

(10) The political parties, their candidates, agents or workers shall not indulge in offering gifts or gratifications or inducing another to stand or not to stand as a candidate, or to withdraw or not to withdraw his candidature.

(11) The political parties and their candidates should not procure the support or assistance of any civil servant to promote or hinder the election of a candidate.

(12) The political parties and their candidates shall dissuade their workers or sympathisers from destroying any ballot paper or any official mark on the ballot paper.

Annexure-38
(Chapter 5, para-6)

D.O. No. 3 (10)/90-Law

ELECTION COMMISSION OF PAKISTAN
SECRETARIAT BLOCK 'S' ISLAMABAD

October 23, 1990

Mr. Khurshid Mahmood Kasuri,
Secretary General,
People's Democratic Alliance,
6-A Gulberg-II,
Main Boulevard Gulberg,
Lahore.

Dear Sir,

Kindly refer to your letter dated 23-10-1990 addressed to the Chief Election Commissioner.

2. It has been clarified by the Chief Election Commissioner and the Election Commission in various press statements in unequivocal terms that provisional results of election to the National Assembly and the Provincial Assemblies will be announced by the Election Commission from Islamabad on 24th October and 27th October, 1990 and by no one else. Attention in this connection is further invited to paragraphs 121—123 of the Manual of Instructions for the guidance of District Returning Officers, Returning Officers and Assistant Returning Officers as reproduced below:—

> "121. It should be clearly understood that release of unofficial election results by any source other than the election Commission Secretariat at Islamabad is strictly forbidden. The Provincial Election Commissioners, the District Returning Officers and the Returning Officers are, therefore, advised not to release directly the results to the news or any other information media.
>
> 122. The information passed on to the news media by the Election Commission Secretariat would indicate only the valid votes polled by each contesting candidate.

123. The release of these results will be unofficial and provisional. Final result will be declared and notified by the Election Commission after the consolidation of results by the Returning Officers".

The Manual of Instructions was issued to the Returning Officers immediately after their appointment on September 4, 1990.

3. The district administration is not linked with the process of election in any manner except logistics support. The apprehension that the district administration will interfere with the process of election is, therefore, unfounded.

4. With regard to the allegation of arrests of workers of the PDA, the Election Commission has already asked the Provincial Government to explain factual position of each case as may be seen from the enclosed copy of letter No. 3(10)/90-Law dated 16-10-1990 addressed by the Commission to the Home Secretary, Sind. A part reply received is being examined. Full facts in respect of all cases is likely to be received within a day or two. The Government of Sind has been reminded to expedite submission of full report.

5. The allegation that the Caretaker Governments has prepared plan for rigging election is based on presumption. In case you have any proof or evidence to substantiate this or any other allegation, the Commission will consider such complaints judiciously, if made properly and specifically.

Yours faithfully,

SD/-
(CH. SHAUKAT ALI)
Secretary.

Annexure-39
(Chapter 5 para-14)

D. O. No. F. 3(10)/90-LAW

ELECTION COMMISSION OF PAKISTAN

SECRETARIAT BLOCK 'S' ISLAMABAD

October 12, 1990.

Ch. Shaukat Ali,
Secretary.
Tele: 820513

My dear,

The Election Commission has received a petition from Mr. Khurshid Mahmood Kasuri, Secretary General, Pakistan Democratic Alliance, which *inter alia*, contains the following allegation against the misuse of electronic and print media by the Caretaker Government :—

(a) That the Television and Radio, just to quote two sources, are being used by these temporary and illegal entrants in the caretaker cabinets, to the disadvantage of the PDA and the PDA does not have equal opportunity to defend itself or expose the illegal actions of the President/ caretaker cabinets to the millions of viewers/listeners of T.V./Radio.

(b) That under the garb of initiating a programme entitled "Qaumi Siyasat", the T.V. is projecting the various components of IJI who are being prompted to accuse and abuse the former government (PPP). This condemnation in absentia, without an opportunity of defending oneself, is against the norms of justice. The principle of equality of time during election days is being violated every day with impunity both in the news bulletins of the TV/Radio and as well as the other programmes on the electronic media.

2. The petitioner has prayed that :—

(c) The Television Corporation and Radio Pakistan Corporation to exercise a balance between the political

parties both in the allocation of time as well as selection of the material in covering the election compaigns of both the PDA and IJI/COP parties.

(d) The said media should be directed not to broadcast anything affecting the cases being adjudicated in the various High Courts except those basic points which are argued on a particular day. The media, under the garb of giving news repeats the allegations which have yet to be proved.

3. Before proceeding further in the matter, the Election Commission would like to have your comments. The Commission would further like to know the policy, the basis of the policy, on which the political leaders are being interviewed, on the Television as also the apportionment of time between various political parties in the news.

4. The petition has been fixed for hearing on October 17, 1990. It will be appreciated if you could kindly furnish your comments before that date.

Yours sincerely,

Sd/-
(CH. SHAUKAT ALI)

Mr. Mazhar Rafi,
Secretary,
Ministry of Information & Broadcasting,
Government of Pakistan,
Islamabad.

Annexure-40
Chapter 5, para-11)
CONFIDENTIAL

GOVERNMENT OF PAKISTAN

MINISTRY OF INFORMATION & BROADCASTING

Islamabad, the 16th October, 1990

SUBJECT: PETITION OF MR. KHURSHID MAHMOOD KASURI, SECRETARY GENERAL, PAKISTAN DEMOCRATIC ALLIANCE.

My dear Chaudhry Sahib,

Please refer to your D.O. letter No. F. 3 (10)/90-LAW dated October 12, 1990 on the above subject.

2. Most of the allegations of Mr. Khurshid Mahmood Kasuri conveyed in your letter are general in nature and therefore defy any specific comment. However, the reference made to the specific programme entitled "Qaumi Siyasat" and news broadcasts about the references being made against the holders of public office, under the existing laws of the land are two specific cases on which it is possible to give very specific and clear rejoinder.

2. Before recording my comments on the allegations, I would like to state the principles of the policy on which the Caretaker Government has been directing the operations of the Electronic Media. The Caretaker Government has been all along conscious of its basic obligation to hold free and fair elections on the 24th October, 1990. The Government therefore, geared the Media towards the achievement of this goal. Very clear and unambiguous instructions were given to the Media to the effect that all political parties represented in the dissolved National Assembly have a right to reach the people through the Electronic Media and that whenever any leader of national status of any of those parties was undertaking any major political activity he or she should be covered by the TV. This has been the hall-mark of the Caretaker Government that all political parties and leaders who are even opposed to it have been regularly getting coverage. This did not happen even during the regime of the dismissed government when most of the time the opposition was blacked out

from the screen and denied access to the Radio. However, I will add that if a political leader was not doing any thing news-worthy on a particular date he or she obviously did not get any share of the Radio/TV time.

3. The PTV and PBC started a special programme on elections entitled "Qaumi Siyasat" with a very noble objective in view. The principle on which this programme is based was clearly stated by the Minister for Information and Broadcasting in her personal letters to the National Leaders of all important Political Parties on 13th September, 1990. I would like to quote from this letter to illustrate what I have stated :—

> "1. The basic responsibility of the Caretaker Government, led by the Prime Minister, Mr. Ghulam Mustafa Jatoi, is to ensure free and fair elections in October, 1990. Towards this end, the Government has taken all possible measures which it could during the short span of 10 weeks it has. You must have noticed that by now all the legal procedures required to set the electoral process in motion have been initiated. But we will need unstinted support of all the political leaders who have a commitment to the success of this process. The Government is firmly of the view that all political parties should have access to the electronic media. Political leaders have a right to reach the electorate and explain to them the principles, the objectives and the policies they stand for, in the same way as the electorate have a right to know what the political parties have planned for the future of the nation. We intend to use the power and potential of the electronic media to make this inter-communication possible.
>
> 2. To achieve this end, I propose to launch a special election programme on the TV and the Radio that will include panel discussions by political leaders of all major political parties in Pakistan. Through these discussions, they will be able to project the policies of the political parties they represent and their own position on national and international issues in which the voters are interested. This programme will be of 35 to 40 minutes

duration and is likely to commence in the next few days. I would solicit your cooperation in turning this programme into a useful vehicle of communication and political education of the electorate."

4. This letter was addressed to the following Political Leaders:—

1. Mr. Altaf Hussain,
2. Mr. Ghulam Mustafa Jatoi,
3. Mr. Mohammad Khan Junejo,
4. Ms. Benazir Bhutto,
5. Maulana Fazlur Rehman,
6. Maulana Abdus Sattar Khan Niazi,
7. Qazi Hussain Ahmed,
8. Nawabzada Nasrullah Khan,
9. Air Marshal (Retd.) Asghar Khan,
10. Malik Ghulam Mustafa Khar,
11. Nawab Akbar Bugti,
12. Mr. Abdul Wali Khan,
13. Mian Nawaz Sharif,
14. Mr. Mumtaz Ali Bhutto.

You will notice that this list contains the names of the most important Political Leaders who have national standing and represent the major political parties, whether national or regional. It is quite well-known that IJI has larger number of political parties, and COP still larger, and PDA consists of only four political parties out of which only one had representation in the defunct National Assembly. The IJI is represented in this list by five political leaders. These leaders, besides being representatives of the IJI are also the heads of their political parties *e.g.* Mr. Ghulam Mustafa Jatoi, President National Peoples Party; Mr. Mohammad Khan Junejo, President, Pakistan Muslim League; Qazi Hussain Ahmed, Amir Jamaat-e-Islami; Nawabzada Nasrullah Khan, President, Pakistan Democratic Party; and Mian Nawaz Sharif, President, IJI. Similarly important members of the COP who are not part of the IJI, *e.g.*, Maulana Abdus Sattar Khan Niazi and Mr. Abdul Wali Khan also appear in this list. Even leaders of the regional political parties who have important place in the national political life such as Mr. Altaf Hussain, Nawab Akbar Bugti and Mr. Mumtaz Ali Bhutto also appear in this list.

5. Though PDA had only one party represented in the dissolved National Assembly yet both Ms. Benazir Bhutto and Air Marshal (Retd) Asghar Khan were addressed these letters. I may point out that all political leaders with the exception of Ms. Benazir Bhutto have positively responded to this invitation.

6. Panel discussions based on the interviews of all but two leaders have already been recorded. Of the two, one is Mr. Ghulam Mustafa Khar who has not yet found time for his interview to be recorded but has not declined the request. On the other hand, Benazir Bhutto Sahiba has not even responded. Since the programme "Qaumi Siyasat" was to be concluded by the 13th October, 1990 a telegram was sent by the PTV on 10th October, 1990 to her with the request that she may have her interview recorded at any of the PTV Centres and that she may intimate her availability and choice of date, time and centre. A copy of the telegram is enclosed as Annexure 'A'. You will notice that this telegram was sent to all the possible addresses where she could have been available. This telegram was followed by a reminder telegram on the 14th October, 1990. A telegraphic reply was also solicited. Copy of this telegram is also enclosed as Annexure 'B'. It will be noticed that this telegram, besides other places, is also addressed to the former Prime Minister's Larkana address. As a measure of abundant precaution, G.M., Karachi Television Centre handed over a copy of the telegram dated 14-10-1990 to Mr. Wajid Shamsul Hasan to ensure that a response could be received from the former Prime Minister by the 15th October, 1990. This has not happened so far.

7. Election Commission would appreciate that never before in the history of Pakistan the official media provided such an opportunity to all the political parties to project themselves in this manner. It is unfortunate that the former Prime Minister has chosen to abstain from this programme.

8. It is obvious that the present period in the national life is devoted entirely to matters relating to the forthcoming elections. Election campaign of all the parties is the focus of the media as well. The political scene is dominated by two Alliances *i.e.* IJI & PDA. As

stated earlier, IJI has larger number of political parties as compared to the PDA. Obviously, all the components of IJI will not be extending compliments to their political opponents. While discussing the political situation and commenting on the performance of the last Government they are bound to be critical. The only way PDA could respond to this criticism was to participate in the programme which was developed with a view to project all the points of view to the electorate. It may also be added that the political leaders who have appeared in the "Qaumi Siyasat" are respected leaders of standing. It will be an infantile assumption that such political leaders could be tutored by PTV and PBC against PDA.

9. I may also add that official Electronic Media has run some other programmes as well in which the present Speaker of the National Assembly, Speaker Provincial Assembly, Punjab and the Speaker Provincial Assembly, NWFP have participated. I do not have to mention political affiliation of each. In another programme, Sheikh Rafique Ahmad, Secretary General, PPP also participated.

10. I have elaborately stated all this to illustrate the objectivity and fairness of the Electronic Media which is being made subject of an unnecessary and unfounded controversy.

11. In the course of the national "News" the activities of all political parties are being covered depending on the daily run of the events in the country and their newsworthiness.

12. So far as the Court references are concerned, the PTV and PBC are under strict instructions to report only on the exact text of the references. The reporting does not include any editorial comments. Unfortunately, the references are based on specific allegations which are obviously not complimentary to those who are subject of these references. Reports on the proceedings of the Special Courts also do not have any editorial comments.

13. In conclusion, I may assure the Election Commission that the Electronic Media will continue to project all the important political parties and the activities of their leaders to the best of their ability and within the constraints of time available.

With kind regards,

Yours sincerely,

SD/-
(MAZHAR RAFI).

Ch. Shaukat Ali,
Secretary,
Election Commission of Pakistan,
'S' Block, Pak. Secretariat,
ISLAMABAD.

Encls: as above.

Annexure 41
(Chapter 5, para 13)

THE ELECTION COMMISSION OF PAKISTAN

THROUGH THE CHIEF ELECTION COMMISSIONER, ISLAMABAD

Application on behalf of Pakistan Democratic Alliance through its Secretary General, Mian Khurshid Mahmud Kasuri, 6-A, Gulberg-II, Lahore

Respondent

Petition under Article 218(3) of the Constitution read with Section 103 of the Representation of People's Act, 1976.

Respectfully sheweth:

1. That as a result of the Presidential decree issued under Art. 58(2) (b) of the Constitution dated 6th August, 1970, the National Assembly of Pakistan was dissolved and a Caretaker Cabinet headed by Mr. Ghulam Mustafa Jatoi was nominated by the President of Pakistan. The four Provincial Assemblies were dissolved and caretaker cabinets appointed accordingly.

2. That the President while exercising authority under Article 48 of the Constitution in appointing 24th October, 1990 as the date of the general elections, instead of appointing a team of neutral umpires, proceeded to appoint in the Centre and the four Provinces, caretaker cabinets composed mainly of IJI/COP ministers. This group of ministers appointed for the interregnum are known political adverseries of the former Pakistan Peoples Party Government. The group now constituting the caretaker cabinets, is also contesting elections jointly as an electoral alliance known as the IJI. In this manner the President immediately after removing the government of Mohtarama Benazir Bhutto manoeuvred to transfer power, authority

and resources of the State to his favourite group of IJI/COP which has, without losing any opportunity, initiated an extensive campaign of character assassination of the PPP and now the Peoples Democratic Alliance along with the exercise of partial accountability under the unconstitutional law known as President's (Post Proclamation) Order 17 of 1977.

3. That the Presidential action of partial accountability has however, been challanged through a constitutional petition in the Lahore High Court on behalf of Mian Ghulam Mohammad Ahmed Khan Maneka a former M.N.A. and a Federal Minister. This is to bring to your notice that although section 2 (a) of P.O. No. 17 of 1977 defines the scope of misconduct from December 1970 yet the President of Pakistan has made only a few selected members of the PPP Government as the target of References which are pouring in at regular interval in various provinces with the sole object of maligning a political party before the polling date and causing serious obstructions in its way to launch a vigorous campaign for the forthcoming general elections. This action of the President and the caretaker cabinets has had such an adverse influence on the election campaign that election tempo has not been built up and the common man in the street seriously doubts whether the promised elections would at all be held.

4. That in this background the President proceeded to appoint this Honourable Commission under the Constitution to hold general elections throughout the country. Under these circumstances indicating pernicious partiality the petitioner begs to submit that this Honourable Commission is charged with the Constitutional obligation to organise and make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against.

5. That this authority is conferred upon this Honourable Commission by Article 218 (3) which envisages the pre-poll situation and the use of the word HONESTLY in addition to Justly, Fairly and in accordance with Law is significant and demands that all administrative actions undertaken by the President and the caretaker cabinets should be free from suspicion because the basis of justice is that it should not only be done but appear to have been done. The other reason for inserting the word Honestly in the electoral process is the

fact that—

(a) Under Article 24 of the Constitution of Pakistan the " State shall exercise its power and authority through the chosen representatives of the people ". In order to enable the people of Pakistan to exercise their right of franchise it is of utmost importance that nominated caretaker cabinets should not be allowed to exploit the resources of the state for their personal ends and permitted a free hand to oust other political parties from the electoral process.

(b) Under Article 25 of the Constitution all citizens are equal before law and are entitled to equal protection of law. The element of discrimination of the worst order has already been initiated by the President of Pakistan by installing a particular group in the capacity of caretaker cabinets and which in turn are exceeding their jurisdiction by manipulating official resources including electronic media to their advantage and particularly to the detriment of the other political parties. This is also contrary to the principle established in the case of Saleemi decided by the Full Bench of Lahore High Court.

6. That the scope of the caretaker cabinet as discernable in the case Federation *Vs.* Mohammad Saifullah PLD 1909 S.C. 166 at page 201, is limited to the day to day administration and does not extend to actions which are likely to influence the results of the general elections. Any allurement, inducement, use of official machinery, impediments in the path of opposition, calculated effort to arrest workers of one political faction, effecting release of certain favourites or persons who can be used by the caretaker cabinet etc. etc. would be attracted by the mischief contemplated by Article 218 of the Constitution.

7. That as a consequence of the declaration to hold elections on 24 October, 1990, four political parties including the Pakistan Peoples Party whose Co-Chairperson was the leader of the House in the dissolved Assembly, entered into an alliance known as Peoples Democratic Alliance and its operating through its Secretary General, Mian Khurshid Mahmud Kasuri of the Tehrik-i-Istiqlal, a component party of the Alliance. He has been authorised to initiate proceedings before competent authority by invoking the provisions of the Constitution of Pakistan and hence this petition.

8. That the President of Pakistan is authorised to appoint (a) a date of holding the elections within ninety days of the date of dissolution and (b) appointing a caretaker cabinet. These steps have to be taken contemporanously while passing the order of dissolution of Assemblies. This having been done the President becomes Functous Officio and ceases to have any authority to fatten or enlarge the caretaker cabinet appointed at the time of the dissolution of the Assembly as contemplated by Article 48 (5).

9. The fact that the President acquiesced in alluring defectors from the components of the PDA and administering oath to them as Federal Ministers in the caretaker cabinet is not only violative of the constitution but is a conscious malafide action calculated to influence the result of the elections.

10. That such periodic inclusions by the President in the caretaker cabinets of the defectors, who are themselves candidates in the forthcoming elections is a clear message to the people that the power that be would not countenance any other group, alliance or party winning the elections scheduled for 24th October, 1990. The President in this manner has indicated that IJI/COP is the only political group acceptable to him.

11. This fact of appointing defectors and people of doubtful credentials as ministers has made the very electoral process doubtful and innumerable articles/editorials have appeared in the national dailies disapproving the discriminatory attitude of the President of Pakistan who is supposed to be a neutral umpire in this situation. It may not be in the power of this Honourable Commission to annul the lateral entry of defectors and the favourite politicians in the caretaker cabinet but it is believed that this Honourable Commission in exercise of the powers entrusted under Article 218 can certainly take notice and declare this recurring illegality/irregularity as a corrupt practice and also advise the President to dissolve and dismiss the caretaker cabinets.

12. That the Television and Radio, just to quote two sources, are being used by these temporary and illegal entrants in the caretaker cabinets, to the disadvantage of the PDA and the PDA does not have equal opportunity to defend itself or expose the illegal actions of the President/caretaker cabinets to the millions of viewers/listeners of T.V./Radio.

13. It may be pointed out that References are being sent against Mohtarama Benazir Bhutto by the President to different High Courts in the country. Why should the President sent References against the some person to different courts necessitating repeated appearances in different provinces during the short electoral period? The answer is not far to seek.

14. That the Chief Minister Punjab summoned a convention of the Lumbardars of Punjab on 13 September, 1990 and a lot of concessions affecting public exchequer were announced. State land is being distributed to lure and win over the revenue administration so as to use it during the elections to the advantage of the IJI.

15. That the President has remained silent meaningfully on the release of Mr. G. M. Syed against whose release the national media has openly stated that the only purpose of his release was to put obstacles in the path of the PDA in Sind. However, the statement of Mr. G.M. Syed immediately after his release and withdrawal of sedition cases, is a loud slap on the face of the Government. It is urged that this Honourable Commission take notice of this fact as well; this has been widely reported and commented upon in the national press.

16. That the complaints of Pir Mazhar-ul-Haq former Law Minister Sind, who was ignomiously arrested by caretaker government, the complaints of Syed Zafar Ali Shah former Federal Minister and many others have been totally ignored by the temporary caretaker governments which is persisting in its systematic campaign to victamise supporters of the PDA.

17. That all those persons who were recruited in various services by the former government are being relieved by the caretaker governments and the gun licences issued by former Federal Government have been cancelled. In other words the President and caretaker governments through various actions and omissions are trying to give an impression that the results of the elections will not be accepted if the people vote for the PDA.

18. That innumerable transfers throughout the country are being effected and new recruitments in various executive branches are being made.

19. That the temporary caretaker cabinets are allotting state land for residential purposes only with the object of securing votes for the various candidates of IJI.

20. That the district administration is being used by the caretaker cabinets for electoral campaign of IJI candidates.

21. That under the garb of initiating a programme entitled "Qaumi Siyasat", the T.V. is projecting the various components of IJI who are being prompted to accuse and abuse the former government (PPP). This condemnation in absentia, without an opportunity of defending oneself, is against the norms of justice. The principle of equality of time during election days is being violated every day with impunity both in the news bulletins of the TV/Radio and as well as the other programmes on the electronic media.

22. That inspite of repeated demands of the people as well as the press, the President of Pakistan has refused to inquire into the charges of the misdeeds of the members of the non-PPP governments in Punjab and Baluchistan elected after 1988 elections. This total partiality is a challenge to the authority of this Honourable Commission to hold free fair elections.

23. That funds for the IJI nominees for the National Assembly have been allocated to help them in their election campaigns. Seventy-five lakh rupees meant the public works are nakedly being used for electoral purposes. Similarly fifty lakh rupees have been allocated for each IJI nominee for the provincial assembly election.

It is, therefore, respectfully prayed that the Election Commission of Pakistan in the exercise of its constitutional jurisdiction should direct—

(a) "The Television Corporation and Radio Pakistan Corporation to exercise a balance between the political parties both in the allocation of time as well as selection of the material in covering the election campaigns of both the PDA and the IJI/COP parties.

(b) The said media should be directed not to broadcast anything affecting the cases being adjudicated in the various High Courts except those basic points which are argued on a

particular day. The media, under the garb of giving news repeats the allegations which have yet to be proved."

(c) That all the transfers made after 6 August, 1990 be cancelled.

(d) That all those persons whose services have been terminated are restored.

(e) That all gun licences granted by the previous government under exercise of powers conferred by law are restored.

(f) That all orders granting monitary and proprietary rights to Lumberdars specifically to secure their help in the elections are withdrawn.

(g) That all moneys running into millions disbursed through various local councils and IJI nominees for the forthcoming elections under the garb of development programmes should be withdrawn.

(h) The President should be advised to remove all the temporary nominated caretaker cabinets consisting of the IJI/COP group and these should be substituted caretaker cabinets consisting of neutral persons such as retire Judges of superior courts, eminent scholars and other impartial citizens.

Petitioner

Sd/-
(KHURSHID MAHMUD KASURI)
Secretary General,
Peoples Democratic Alliance.

The 7th October, 1990.

Through

Sd/-
(SYED AFZAL HAIDER)
Advocate,
15-B, Justice Kiyani Road, Lahore.

Annexure 42
(Chapter 5, para 14)

ELECTION COMMISSION OF PAKISTAN

Islamabad, the 17th October, 1990

Petition filed by the Secretary-General, PDA under section 103 of the Representation of the People Act, 1976

ORDER

Peoples Democratic Alliance has filed this petition before the Election Commission claiming the following reliefs:—

"(a) The Pakistan Television Corporation and the Pakistan Broadcasting Corporation be directed to exercise a balance between the political parties both in the allocation of time as well as selection of the material in covering the election campaigns of both the PDA and the IJI/COP parties.

(b) The said media should be directed not to broadcast anything affecting the cases being adjudicated in the various High Courts except those basic points which are argued on a particular day. The media, under the garb of giving news repeats the allegations which have yet to be proved.

(c) That all the transfers made after 6 August 1990 be cancelled.

(d) That all those persons whose services have been terminated be restored.

(e) That all gun licences granted by the previous Government under exercise of powers conferred by law be restored.

(f) That all orders granting monetary and proprietary rights to Lumberdars specifically to secure their help in the elections be withdrawn.

(g) That all moneys running into millions disbursed through various local councils and IJI nominees for the forthcoming elections under the garb of development programmes should be withdrawn.

(h) the President should be advised to remove all the temporary nominated caretaker cabinets consisting of the IJI/COP

group and these should be substituted by caretaker cabinets consisting of neutral persons such as retired judges of superior courts, eminent scholars and other impartial citizens."

2. The Commission issued notice for hearing on 17th October, 1990. Pursuant to the notice, Syed Afzal Haider along with Mr. Khurshid Mahmud Kasuri and Air Commodor (Retd.) Mr. Sajjad Haider has appeared.

3. We have heard Syed Afzal Haider, counsel for the petitioner at length. We asked him to satisfy us that we have had jurisdiction to grant the relief claimed by him except the relief claimed at (a) (b) (f) and (g), but and he failed to satisfy by citing any law or case law from any democratic country of the world except pointing out that under Article 218 (3) of the Constitution, it is the duty of the Election Commission to organise and conduct the election in a just and fair manner. But we pointed out to him that it is also provided therein that we have to hold the election in accordance with law. We are clear in our mind that we have no jurisdiction to grant relief as claimed in sub-paras (c), (d), (e) and (h) of the relief para.

4. However, the learned counsel pointed out that in breach of the order of the Election Commission, a number of transfers have been made by the Provincial Governments and in support thereof he produced clippings from the newspapers. However, the learned counsel was informed that no such directions, as reported in the nwspapers were ever issued by the Election Commission. In fact, the direction issued to the Federal and Provincial Governments was that the officers engaged in the election duty should not be transferred and no such transfer appears to have been made. The counsel stated that he was misled by the newspaper reporting.

5. As regards the relief claimed in (f) and (g), he failed to substantiate the same by producing any cogent evidence except the press clippings which are not legal evidence in support of the allegations on the basis of which relief has been claimed. Some of these reports are based on information received from some sources which are not disclosed.

6. As regards the relief claimed against the media, we called for the report from the Ministry of Information and Broadcasting and

they have submitted their report, contained in their letter dated 16th October, 1990, a copy whereof is placed below and a copy of which has also been supplied to the counsel for the petitioner. The Ministry of I&B has assured the Election Commission that electronic media will continue to project the activities of all important political parties to the best of their ability, though of course, within the constraints of available time.

7. We are satisfied with the explanation given in the letter mentioned above. However, we would add and direct the Ministry of I&B that they should treat all the political parties which are participating in the election in the matter of coverage of their election campaign or activities equitably in consonance with justice, fairplay and the relevant fundamental rights guaranteed in the Constitution.

8. A grievance was made that when coverage is given to the meetings of PDA on the TV, the picture fades out and is smoky. If it is so, care shall be taken that the coverage is clear and bright, otherwise officers controlling TV programme will not be able to say that they are performing their public duty properly and fairly.

Sd/-
(JUSTICE NAIMUDDIN),
Chief Election Commissioner.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN),
Member.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member.

Annexure-43
(Chapter-5, para-16)

GOVERNMENT OF THE PUNJAB

LOCAL GOVERNMENT AND RURAL DEVELOPMENT DEPARTMENT

To

The Chief Election Commissioner,
Election Commission of Pakistan,
Secretariat Block "S",
ISLAMABAD

No. S.O.V-2-16/90. *Dated, Lahore, the 20th October, 1990.*

SUBJECT:—*Allocation of Development Funds.*

It has been reported in a section of the Press that development funds are being distributed through the candidates contesting the forthcoming election. It is to clarify that no money has been delivered or paid to any candidate contesting the General Elections in the Province.

2. It is a normal feature that Annual Development Programme is prepared by this Department which is implemented in consultation with public representatives. For every proposal schemes are prepared on prescribed pattern which are technically scrutinized by the experts. These schemes are placed before the competent forum for consideration and approval. After approval their execution takes place through normal channels by observing codal formalities *i.e.* calling tenders etc. No money is placed or handed over to any private person or party who are contesting the elections. However, in some cases, small schemes are executed through Project Committees which comprise a panel of persons drawn from various walks of life. This again is done through close association of Chairman/Secretary, Union Council.

3. None of the candidates is in a position to either approve the schemes or execute them.

Sd/-
(JAVED AHMAD QURESHI)
Secretary, Local Government.

Annexure-44
(Chapter-5, para-21)

ELECTION COMMISSION OF PAKISTAN

Islamabad, the 17th October, 1990

SUBJECT:—*Petition dated Nil regarding alleged pre-poll rigging by IJI leadership.*

ORDER

This is a complaint by Air Marshall (Retd.) M. Asghar Khan who is a candidate to one of the seats in the National Assembly. He alleges that the Chief Minister Punjab, Sindh, NWFP and Mr. Nawaz Sharif a Leader of IJI are indulging in a massive pre-poll rigging.

2. In this regard he has stated that a Convention of Lumbardars in Punjab was called and certain concessions or privileges were announced contrary to all rules and laws on the subject. In the Convention it is alleged that the Chief Minister Punjab specifically urged them who according to the complainant are Government servants, to block the coming into power of Pakistan Peoples Party. In support he has filed some press clippings and an editorial note from an English daily.

3. His other grievance was that it was reported in the Press that the Punjab Government of IJI had allocated a quota of 30 constables to each IJI candidate in the province.

4. His third grievance in the complaint is that a large sum of money amounting to Rs. 20 crores are being given by the caretaker Government of IJI in the Punjab to its candidates in the forthcoming elections.

5. His fourth grievance is that sometime ago it was directed by the Election Commission and it was reported in the national press and the media that all transfers of the Government servants have been banned till the general elections are over and yet that a large number of officers who were originally with the Federal Government have been transferred.

6. We issued notice for hearing of this complaint before the Election Commission on 17th October, 1990.

7. In response to the notice Malik Saeed Hassan and Syed Zafar Ali Shah, advocate along with Air Commodor (Retd.) Mr. Sajjad Haider appeared for the petitioner.

8. We heard them at length. We noticed that the allegations made in the complaint are not supported by affidavit/affidavits of the petitioner or any other persons who attended the Convention. However, reliance was placed on press clippings but no affidavit of any press reporter was filed in support of the allegations. The learned counsel stated that they would support the allegation by filing affidavits.

9. Assuming for the sake of argument that if any benefits were announced to the Lumbardars, no evidence has been produced that the announced benefits have been given to the Lumbardars. It was agreed that this can be done only by amending the law and the rules but no law or rules have been produced before us nor are we aware of any such law or rule giving effect to the alleged announcement of benefits. Further, it is not proved that such benefits have been promised only to those Lumbardars who would vote for candidates set up by the promiser or his party. It is therefore clear that the complaint of the petitioner is based on apprehensions. However, if such a promise materialises and comes within the mischief of sections 79 or 81 of the Representation of the People Act, 1976, the complainant will have his remedy under section 52 read with section 68 of the Representation of the People Act, 1976. At present, we have no legal evidence calling for any action on our part at this stage on account of alleged grievance.

10. As regards the second ground, it is not correct to call the Punjab Government as IJI Government. It is only a caretaker Government. Further, the newspaper report relied on by the complainant says that the reliable source has revealed that the Punjab Government of IJI has allocated a quota of 30 constables to each IJI candidate.This report further says as follows:—

> "These sources have further disclosed that the recruitment of these constables will be done on the recommendation of IJI nominees."

But no evidence has been brought on record that any recruitment has been made or any constable has been allocated to any IJI candidate much less 20 constables to each IJI candidate as alleged or in fact each IJI candidate is moving in the company of 30 constables or any number of constables.

11. As regards the third allegation, again no affidavit or proof or details have been produced in support of the allegations. Reliance is, however, placed on a press clipping which also does not support the allegations as made in the petition.

12. As regards the fourth grievance, the allegation made in this regard may be stated in the words of the complainant himself which are contained in paragraph 5 of the complaint which reads as follows:—

> "That you would recall that some time ago it was directed by the Election Commission and it was reported in the National Press and the media that all transfers of Government servants have been banned till the General Elections are over. In the news item published in the Daily Jang of 8th October, 1990, it is specifically mentioned that large number of officers who were originally with the Federal Government have been transferred to the Government of Punjab (copy attached Annex 'E'). A report in this regard has been published in the Daily "Jang" "Nation", of 9th October, 1990 (copy attached as Annex 'F')".

13. In this regard attention is invited to the report published in the Frontier Post of 20th September, 1990. No one can be in a better position to vouchsafe the correctness of this report than the Election Commission as the direction is attributed to the Election Commission. The Election Commission issued no such direction as alleged and it was verified from the Secretary and Additional Secretary present at the time of proceedings in the presence of the counsel for the complainant and they also confirmed that no such direction was issued even by the office. Further, we are of the opinion that the Commission has no jurisdiction to pass such a direction. Moreover, if we had power, we by passing such a general order would have interfered with the normal functioning of the Government which has to run the affairs of

the State or the Province from day-to-day. We explained to the counsel that the only direction given by the Election Commission to the Federal and Provincial Governments was that no officer of the Government engaged in election duty and during the election process should be transferred without the permission of the Election Commission and no case of such transfer has been brought to our notice by the complainant or even otherwise has come to our notice. This is an instance which would always caution us from giving full credence to press reports, more so when even the source or the name of the person is not disclosed and merely it is said that "it is reliably learnt". A fact is a fact and has to be stated by one who has seen the act being committed or the words being uttered.

14. For all these reasons we find no merit in this complaint and dismiss it but this will not preclude him to reagitate the question according to law when he has evidence of any illegal or corrupt practice being committed.

15. The complainant has also filed two more complaints which are being dealt with separately and separate orders are being passed thereon.

Sd/
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

Dated: 17-10-90.

Sd/
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member.

Sd/
JUSTICE AMIR-UL-MULK MENGAL)
Member.

Annexure- 4 5

(Chapter 5, para-31)

No. F.2(1)/90-Cord.

ELECTION COMMISSION OF PAKISTAN
SECRETARIAT BLOCK 'S'
ISLAMABAD

October 20, 1990

CH. SHAUKAT ALI,
SECRETARY
TELE: 820573

To

Mr. Aitzaz Ahsan,
5, Canal Bank,
Zaman Park,
LAHORE – 3

SUBJECT:- *Allegation of Corrupt/Illegal Practices in Elections*

Dear Sir,

Please refer to your letter No. Nil dated 18th October, 1990. It is regretted that some of your remarks in the letter are factually incorrect.

2. This Commission has not only been attending to every complaint received by it but has been giving directions to the concerned quarters, however remaining within its powers and jurisdiction provided the allegation made is specific and ascertainable. The receipt of letter dated 8th September, 1990 was acknowledged *vide* Memorandum of 12th September with information that the same will be placed before the Commission in its next meeting. In the meantime, on the question of use of Government vehicles and misuse of official resources the Commission had issued necessary instructions on 19th September. Notwithstanding aforementioned directions, your letter

dated 8th and 14th September were further considered by the Commission in the meeting held on 20th September and the decisions taken were released to the Press and these decisions were thus publicized for the information of all concerned including complainants like you.

3. The notice to appear on 17th October was issued to provide you an opportunity to establish allegations contained in your letter dated 14th October ibid was sent through TCS and delivered on 16th October. Complaints submitted by PDA containing similar allegations were fixed for hearing on 17th October for which the PDA had deputed its Counsel. The Commission also desired to hear you as well and thus instead of appreciating our efforts you are complaining of short notice.

4. The mere perusal of your letter dated 18th October received on fax today at 4 p.m. shows that most of the allegations contained in it are unjustified.

5. As regards the allegations made in paragraph 1 of your letter under reference, you have not provided the source of information nor have you stated the particulars as to the place, time and date of the meetings. Nor have you supported the allegations with the affidavit of any person. The Election Commission have already on 12th October, 1990 issued detailed instructions to all the District Returning Officers and Returning Officers separately and pointed out, *inter alia,* to them as follows:—

> "However, it is not only important that election proceedings be fair and orderly but that the public is assured that the requirements of law are being respected by the candidates, the electorate, administration and Government functionaries at all level...."
>
> "I would, therefore, request you to look into all complaints forwarded to you by the Election Commission or directly brought to your notice for inquiry and/or necessary action and provide redress to the genuine complainants in accordance with election laws, rules and the instructions issued by the Election Commission from time to time and fulfil your obligation as a competent, honest and impartial judicial officer."

"I am equally sure that by your exemplary conduct you will enhance the prestige of the judiciary and the Commission."

A copy of the above directions is enclosed herewith for your persual and record. Coverage was given to those instructions by the National Press.. you must have read the same.

6. As regards the allegation made in paragraph 2 of your letter under reference you have not provided any particulars or details of "impounding the papers of almost all the available transport so as to employ it exclusively for the interests of candidates" nor have you disclosed the source of the report that "the caretaker administration proposes to direct the closure of all petrol pumps on October 24 and 27 treating these as holidays at par". The other allegations made in this paragraph also remain unsupported.

7. As regards the request for instructions to the Commissioners and DIGs, it is not practicable to accede to the same. However, whenever a complaint is received it is attended to and necessay action is taken and if an inquiry is needed the officers are deputed to enquire into the allegations.

8. As regards the allegations made in paragraph 3 of your letter under reference, again the same are vague and general. If Pakistan Television "continues to salander and defame" [you have not stated whom] nothing prevented the aggrieved party to have recourse to law. However, when a specific allegation was made by PDA in their complaint, report from Ministry of Information and Broadcasting was called and their letter has been released to the press and a copy of which was also given to the representative of your alliance who appeared. This has also appeared in the Press. You must be aware that necessary directions have already been issued by the Commission. Moreover, the matter is sub judice in the two High Courts.

9. As regards the contents of paragraph 4 of your letter, no particulars or names of the SHOs have been furnished. No supporting document or affidavit of any person who has received such instructions has been produced before us. Flags of all the parties are visible in various towns. This Commission has issued strict directive to the

Administration and to all Government servants not to work for any political pary or candidate. The Commission is attending to specific complaints. If you have any specific instance, you are free to refer the same to the Commission with supporting evidence, so that appropriate action is taken.

10. As regards the contents of paragraph 5 of your letter under reference, whenever any complaint was received the same was forwarded to the concerned authorities for report and necessary action. You have yourself not given any particulars of the persons much less the candidates who have been arrested without due course of law. Moreover, remedies are available under the ordinary law as well as the constitutional law. This Commission is not an alternative forum to provide a relief in respect of those persons who are charged with substantive offences. The Chief Election Commissioner has already clarified the legal position in this regard in his press interviews which you must have seen or brought to your notice.

11. As regards the allegations made in paragraph 6 of your letter under reference, the programme of Mohtarma Benazir Bhutto should be given to the concerned quarters in advance so that necessary and adequate security arrangements are made. It may lastly be stated that we have not deemed it necessary to deal with matters included in your letter as a part of propaganda campaign even not sparing Election Commission which has throughout maintained impartiality in order to carry out the constitutional mandate of organizing and conducting fair, just or honest election in accordance with law.

Yours faithfully,

Sd/-
(CH. SHAUKAT ALI)
Secretary

Annexure-46
(Chapter-5, Para 31)

D.O. No. F.4(10)/90-Law

ELECTION COMMISSION OF PAKISTAN
SECRETARIAT BLOCK 'S'
ISLAMABAD

October 22, 1990

CH. SHAUKAT ALI
SECRETARY,
TELE: 820513

My dear Iqbal Haider,

Please refer to your letter dated the 19th October, 1990 received through fax.

2. A telegram dated 20th September, 1990 and letter dated 15th October, 1990 were considered by the Commission in its meeting on October 17, 1990. The decisions were also conveyed to you through fax *vide* this Commission's letter of even number dated 19-10-1990.

3. All the complaints received from time to time from PDA and others were considered at length and were disposed of. However, the question of arrests of a number of persons raised by you was referred to the Provincial Election Commissioner, Sind for report. A statement showing the offences in which these persons have been arrested is enclosed. You are requested to have recourse to the normal courts of law for relief. The Election Commission cannot interfere.

4. The question of postings/transfers referred to above in your letter communication was considered and position was explained in earlier communication.

5. You have raised four additional points which are clarified as under :—

(1) Since you have not indicated any specific polling station, it is not possible to investigate the complaint regarding change of polling stations. However, on the basis of the information gathered from the field, a few polling stations have been changed by the District Returning Officers after hearing both the parties and for the convenience of the voters on consideration of principles embodied in the Manual of general instructions for District Returning Officers and Returning Officers.

(2) Regarding the announcement of the results, the procedure followed in 1985 and 1988 is being followed this time also as explained by the Election Commission in their press conference on 21-10-1990. It was emphatically stated by the Chief Election Commissioner in his press conference that the result will be announced by the Election Commission only from its office in Islamabad and no one else.

(3) Regarding the misuse of the machinery by the caretaker Government, detailed instructions have been issued earlier (copy enclosed). The text of this letter has appeared in the press also.

(4) Your allegation regarding supply of ballot papers a few days earlier than the polling day is totally based on some misunderstanding. Ballot papers will be supplied only the day or night before the actual poll according to the requirement of logistic and not earlier. This practice has been followed all along. Further the bag containing election material and paper will be duly sealed and the same will be opened in the morning on the polling day in the presence of the polling agent of the candidate.

6. I am conscious of the fact that, in view of your other pressing preoccupations, it must be hard on you to write long letters frequently. I would urge that if you provide us more factual data and supporting

evidence, it will facilitate the Commission to take expeditious steps to redress the grievances on matters which fall within the jurisdiction of the Commission.

With regards,

Yours sincerely,

Sd/-
(CH. SHAUKAT ALI)

Mr. Iqbal Haider,
Secretary Information,
2nd Floor, Haroon House,
Dr. Ziauddin Ahmed Road,
KARACHI

Annexure-47
(Chapter-5, Para 32)

No. F.4(10)/90-LAW

ELECTION COMMISSION OF PAKISTAN
SECRETARIAT BLOCK 'S'
ISLAMABAD

October 19, 1990

From

Ch. Shaukat Ali,
Secretary

To

Mr. Iqbal Haider,
Secretary Information,
2nd floor, Haroon House,
Dr. Ziauddin Ahmad Road,
KARACHI.

Dear Sir,

Please refer to your letter dated 15th October, 1990, addressed to the Chief Election Commissioner.

2. Your representation under reference was placed before the Election Commission for consideration. The Commission has observed that you have made general allegations without furnishing particulars and details alongwith documentary evidence regarding these allegations. Besides, you have not furnished affidavit, duly signed and attested by the Oath Commissioner/Notary Public, in support of the allegation made therein.

3. With reference to specific issue regarding the appointment of Returning Officers, as alleged therein, it is clarified that:—

(a) In place of the Deputy Commissioner, Lasbela, Mr. Muhammad Nadir Khan, Additional District and Sessions Judge, was appointed as Returning Officer for constituency

No. NA-206 Lasbela-*cum*-Gwadar *vide* this Commission's Notification No. F.5(3)/90-Elec-II(6), dated 1-10-1990 (copy enclosed).

(b) Mr. Muhammad Zarif Qureshi, Civil Judge, Sanghar is acting as Returning Officer for constituencies No. PS-67 Sanghar-IV and No. PS-68 Sanghar-V, since September 4, 1990.

4. It will thus be seen that judicial officers have been appointed to hold election in the constituencies in question and the allegation that executive officers have been appointed as Returning Officers for these constituencies is not based on facts.

5. The daily allowance to the polling staff is being disbursed under the supervision of District Returning Officer at the polling stations, in contradistinction with the past practice when the polling staff used to run after district authorities after election for receiving their dues.

6. Dissolution of the District Councils is a Provincial Government subject outside the purview of the Election Commission and to the aggrieved person remedy is available under law before appropriate Court.

7. As regards the legal proceedings particularly against Mr. Asif Zardari and others named in the representation, the Election Commission is not competent to interfere with the normal course of law unless legal evidence is furnished to the Commission that such an action has been taken only to deprive the candidate from taking part in the polls. However, you may seek redress from the superior courts, if so advised.

8. Regarding the alleged *mala fide* arrests, Provincial Government has been asked to furnish details of the charges under which they were arrested, and if the Commission finds any misuse of authority, subject to Elections Laws, Commission would take all necessary steps to ensure free, fair and impartial polls.

9. The Commission considered the relief asked for in your representation. Regarding (i) and (ii), PTV/media has already been

directed as under :—

> "However, we would add and direct the Ministry of Information and Broadcasting that they should treat all the political parties which are participating in the election in the matter of coverage of their election campaign or activities equitably in consonance with justice, fair play and the relevant fundamental rights guaranteed in the Constitution.
>
> A grievance was made that when coverage is given to the meetings of PDA on the TV the picture fades out and is smoky. If it is so, care shall be taken that the coverage is clear and bright, otherwise officers controlling TV programme will not be able to say that they are performing their public duty properly and fairly."

10. In respect of D and E, the Electoral Rolls are priced publication and can be purchased from Election Commission on payment. As regards, the details of the persons who were isued Identity Cards, the Commission is not concerned and details may be obtained from concerned Department/Ministry of the Federal Government.

11. Regarding (h) and (i), detailed instructions have already been issued to all Ministers/Chief Ministers on 19th September, 1990, which were published in the national press.

Yours faithfully,

Sd/-
(CH. SHAUKAT ALI)
Secretary,
Election Commission of Pakistan
Islamabad.

Annexure-48
(Chapter-5, Para-34)

No. F.2(45)/90-Cord.

ELECTION COMMISSION OF PAKISTAN

Islamabad, the 22nd October, 1990

CH. SHAUKAT ALI,
SECRETARY,
TELE: 820513

To,

Mr. Iqbal Haider,
Secretary Information,
People's Democratic Alliance,
2nd Floor, Haroon House,
Dr. Ziauddin Ahmed Road,
KARACHI

Dear Sir,

Reference your letter, dated 22-10-1990. I regret to say that some of the observations made by you in your letter under reference are not relevant to the issue and are apparently meant for creating avoidable legal debate in the press for public consumption.

2. The Commission has already called for a report from the Government of Punjab on the allegation of misuse of helicopter and other resources. Further action in the matter will be taken on receipt of report from the Provincial Government.

3. The Commission directed the Ministry of Interior to issue identity cards to those who do not possess regardless of party affiliation. It is illogical to presume that after the identity cards have been taken away, the voters would cast bogus votes.

4. The District Returning Officers (District and Sessions Judges) have fixed polling stations keeping in view the convenience of voters and other cognate factors.

5. It is unfortunate that the PDA has generated un-necessary controversy regarding announcement of election results. The Commission has time and again clarified the position through media that the Election Commission will alone announce the result.

6. With regard to issue of postal ballot paper, supply of election material to the Returning Officer and delimitation of constituencies, the Commission feels that all these questions have been raised either because of misunderstanding or lack of knowledge of full facts or purely for public consumption. It is not the duty of the Commission to educate the political parties regarding processes and procedures as per rules.

7. The insinuating remarks about a senior official of the Commission are regretable. He has always displayed a very high sense of dedication to the national cause. The Commission is satisfied with the integrity, honesty and competence of the officer and advise PDA to desist from making such insinuating remarks of partisanship. The officer earned his promotion on a temporary basis on a seniority-*cum*-fitness basis and the question of buying his loyality is a much illogical as it is absurd.

8. The trend of PDA to release most of the correspondence to the press before it is received in the Commission is highly regretable as it tends to undermine the Constitutional position of the Commission. The Commission would like to urge on you to concentrate on matters requiring relief and redress in which some violations have been made and fall within the jurisdiction of the Commission.

Yours faithfully,

Sd/–
(CH. SHAUKAT ALI)

Annexure 49
(Chapter-7 para-7)

BEFORE THE CHIEF ELECTION COMMISSIONER

In the matter of:

ELECTION HELD ON 24TH OCTOBER 1990 FOR CONSTITUENCY No. NA-1 PESHAWAR-1

APPLICATION FOR RECOUNT UNDER SECTION 39 OF REPRESENTATION OF PEOPLE ACT, 1976

Respectfully Sheweth:

1. That I, Major General (Retd.) Naseer Ullah Khan Baber, am the Election Agent for Mohtarma Benazir Bhutto, the candidate for election at NA-1 Peshawar-1.

2. That on the day of polling gross irregularity and illegality was committed to the detriment of Mohtarma Benazir Bhutto, materially affecting the outcome of the unofficial results announced by the Election Commission, in that—

(a) A number of bogus votes, were polled which were not the official ballot papers.
(b) False signatures of the Presiding Officers.
(c) Fake stamps, impressed on the ballot papers.
(d) Ballot papers not matching with the counter-foils.
(e) Number of votes polled not tallying with the electoral rolls.

3. That even the sum total arrived at following the consolidation of results does not tally with the unofficial announcement of the number of votes polled in favour of Mohtarma Benazir Bhutto.

4. An application was filed before the Returning Officer of NA-I Peshawar-I on 1-11-1990 for recounting of all the ballot papers polled in the constituency but that application has been turned down on the plea that it should have been made on the day results were being

consolidated. In fact there is no provision under Sub-section 6 of Section 39 of the said Act to do so on the date of consolidation of results. However, this application is being made before your Honour for direction to the Returning Officer under the provisions of the said Section to carry out the recounting as requested.

5. That in view of the foregoing reasons, it is requested that recount of all the polling stations, in the said constituency may be ordered at a very early date.

MAJOR GENERAL (RETD.)
NASEER ULLAH KHAN BABER,
Election Agent for
Mohtarma Benazir Bhutto

Through: IFTIKHAR AHMAD,
Barrister-at-law,
Counsel for the Election Agent.

Darted: 7-11-90

Annexure 50
(Chapter-7 para-7)

BEFORE THE ELECTION COMMISSION OF PAKISTAN AT ISLAMABAD

Constituency No. NA-I Peshawar-I.

Present:	— Barrister Iftikhar Ahmad	For the petitioner
	— Mr. Ghulam Ahmad Bilor	Respondents
	— Syed Javed Hassan Shah	in person
	— Mr. Ghulam Jaffar	
	— Qazi Shah Jehan	
	— Returning Officer	

ORDER

Mr. Justice Amir-ul-Mulk Mengal, Member.—This order shall dispose of the application moved by Maj. Gen. (Retd.) Naseerullah Khan Babar, the Election Agent of Mohtarma Benazir Bhutto, a candidate from NA-I Peshawar-I, praying for recounting of total votes of the said constituency. A similar application was moved to the Returning Officer which was rejected on the ground that result of the said constituency has already been consolidated, thus, he had no jurisdiction to pass order for recounting.

2. Main reasons urged in this application for recounting are as under:—

(a) A number of bogus votes were polled which were not the official ballot papers.

(b) False signatures of the Presiding Officer.

(c) Fake stamps impressed on the ballot papers.

(d) Ballot papers not matching with the counter-foils.

(e) Number of votes polled not tallying with the electoral rolls.

3. Heard the counsel for the petitioner and respondents in person.

4. The learned counsel for the petitioner, *inter-alia*, submitted that the sum total of votes of the petitioner as given to her polling agents at the time of close of polls differ *vis-a-vis* the figures of the unofficial count of the votes as well as the number of votes at the time of consolidation of the result. The counsel urged that according to the certificates issued by the Presiding Officers to the polling agents of the petitioner, the total number of votes according to her advocate's calculation cast in favour of petitioner comes to 38,846 whereas the said figures in the unofficial count is shown as 38,695 (excluding the postal ballots). However, the official count by the Returning Officer after consolidation of the result indicates the total number of votes in favour of petitioner as 38,951.

5. The question for consideration would be whether slightest increase of 105 votes including 22 postal ballots, (which increase is in favour of petitioner) was as a result of any illegality or malafide, thus, providing justification for ordering recounting or not?

6. In the first instance, it may be noted that the number of votes in favour of petitioner, as shown by the Returning Officer in the unofficial count as well as in the consolidation of the result, indicated an increase in favour of the petitioner on their own calculation on the basis of the certificates as issued by the Presiding Officers to her. Secondly such a difference in the figures is but natural, because at the time of consolidation of the result, the Returning Officer examined rejected votes and added those found valid, in favour of respective candidates. Moreover, the postal ballot papers had to be counted at the time of consolidation. As such, the number of votes calculated during unofficial count and after consolidation cannot remain the same and change as such is normal. This fact by itself provides no justification for recounting of votes of the entire constituency.

7. It may be observed that order of recounting of votes cannot be passed as of course. It has therefore been constantly held that for the recounting of votes specific grounds and sound reasons must be advanced. No order for recount can be passed on general, vague or subjective pleas or to enable an applicant for the purpose of fishing out materials. Reference, if at all necessary, may be made to the case of *Bhabhi* vs. *Sheo Govind and others* (AIR 1975 S.C. 2117).

8. Regarding the contention that number of votes polled did not tally with the electoral rolls, suffice is to observe that the learned counsel failed to substantiate the allegation by producing any electoral rolls tick-marked by agents of the petitioner. The difference could only be seen if such electoral rolls were produced before the Commission. When enquired regarding the said electoral rolls, the counsel candidly admitted that he had no instructions in this respect.

9. The remaining grounds, which, too, are vague, general and without any *prima-facie* support can be determined only after recording of evidence and conducting thorough probe, and such an exercise cannot be undertaken in jurisdiction under section 103AA of the Representation of the People Act, 1976 by the Commission.

10. For the aforesaid reasons, we see no merit in the petition which is dismissed. However, it may be observed that the petitioner is free to seek her remedy through an election petition before the Election Tribunal, if so advised.

SD/-
(JUSTICE, AMIR-UL-MULK MENGAL)
Member Election Commission.

SD/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner.

SD/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member Election Commission.

Dated: 26-11-1990.

Annexure-51
(Chapter-7, para-9)

ELECTION COMMISSION OF PAKISTAN

NA-26 MPA-CUM-DIR.

Present: Mr. Khalid Mehmood, Advocate, for petitioner
Qazi Muhammad Anwar, Advocate, for respondent.

ORDER

Maulana Gouhar Rehman submitted an application for re-count of the votes of the entire constituency on the ground that he had been informed by Returning Officer on telephone that he was winning by a margin of 2000 votes. But subsequently, it was announced in the electronic media that petitioner has lost election by 1800 votes and now the difference is stated to be only of 543 votes.

2. The Returning Officer, in his comments, denied the fact that he has ever informed Maulana Gouhar Rehman about the result. He further denied to have informed anyone else about the result except the Election Commission of Pakistan. It is further stated that postal ballot papers were opened and counted in presence and to the satisfaction of agents of all the contesting candidates. On initial count, difference was of 1717 votes which subsequently was reduced to 1443, because of the count of postal ballots.

3. The counsel for the petitioner failed to assign any reason to satisfy the Commission for ordering re-count of the ballots in the entire constituency. The difference of the margin has accrued due to the counting of postal ballots. Even in order to establish these allegations, a detailed inquiry is required, which can be conducted by an Election Tribunal. Moreover, re-counting by the Commission cannot be ordered as of course, and on general assumptions. The petition is

therefore, dismissed. However the petitioner is at liberty to file an election petition, if so advised.

SD/-
(JUSTICE AMIR-UL-MULK MENGAL,)
Member Election Commission.

I agree

SD/-
(JUSTICE NAIMUDDIN,)
Chief Election Commissioner.

I agree

SD/-
(JUSTICE KHALIL-UR-REHMAN KHAN,)
Member Election Commission.

Dated: 9-11-1990.

Annexure-52
(Chapter-7, para-12)

ELECTION COMMISSION OF PAKISTAN

NA-45 JHELUM-I

ORDER

The applicant has finally given a list of polling stations in respect of which recounting is requested. Before the Returning Officer and in the first application submitted to the Commission, recounting of ballot papers cast at all the 181 polling stations was demanded mainly on the apprehension that the Presiding Officers have committed mistakes in counting the votes, and many of the votes cast in his favour were counted in favour of the opposite candidate. It is also alleged that the District Returning Officer is a supporter of PDA and due to his leaning, he appointed polling staff of his own choice, having leaning towards PDA. Lastly, it is alleged that ballot papers bearing marking stamps at more than one place, have been counted in favour of the opposite candidate. The request to recount was also made to the Returning Officer, who rejected the same observing as under:—

> "The Returning Officer although has power to recount the ballot papers if it is so requested and the request is supported by reasonable grounds. The only ground argued by the Election Agent of Raja Muhammad Afzal Khan is the apprehension of miscalculation by the Presiding Officers. The polling Agents of the said contesting candidate remained present at the time of counting, they signed the statements and that no objection to this extent was made before me prior to today. Therefore, the request of recounting of the ballot papers of the whole constituency is hereby turned down and the application rejected"

2. Learned counsel conceded that though request for general recounting was rejected but the rejected ballot papers of both the candidates were scrutinized and those ballot papers which were found to have been erroneously rejected by the Presiding Officer, were treated valid and counted in favour of the candidate in whose favour those had

been cast and the result to that extent was corrected. The applicant has no grievance on that score.

3. Coming to the request of general recounting of the ballot papers of all the polling stations or of twenty-seven polling stations finally specified, it is pertinent to note that the same is based on mere apprehension of miscalculation. This is apparent from the order dated 29-10-1990, passed by the Returning Officer.

4. The other grounds taken before us for determination require holding of a detailed enquiry. It is well established that the mere allegations that the applicant apprehends or believes that there has been improper rejection, refusal or rejection of votes or there has been irregularities in the counting of ballot papers can not be considered reasonable ground for ordering recount or for ordering inspection of the ballot papers. The case or recount in terms of section 39(6) of the Representation of People Act, 1976 is therefore not made out. The petitioner, if so advised, will be at liberty to challenge the count by filing an election petition which of course will be decided on the basis of the grounds taken and the evidence produced therein. With this objection, this application is dismissed.

SD/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member Election Commission.
2-11-90

I agree

SD/-
(JUSTICE AMIR-UL-MULK MENGAL)
2-11-90

I agree that the application may be dismissed.

SD/-
(JUSTICE NAIMUDDIN)
2-11-90

Annexure-53
(Chapter-8, para-2)

TELEX

FROM:

MR. M. HUMAYUN KHAN
JOINT SECRETARY.

TO

(1) MR. ABDUL AZIZ,
PROVINCIAL ELECTION COMMISSIONER,
PUNJAB,
LAHORE.

(2) MR. M.H. ZAIDI,
PROVINCIAL ELECTION COMMISSIONER,
SIND,
KARACHI.

(3) MR. ABDUR RAHIM KHAN,
PROVINCIAL ELECTION COMMISSIONER,
NWFP,
PESHAWAR.

(4) MR. REHMAT ALI MUJAHID,
PROVINCIAL ELECTION COMMISSIONER,
BALUCHISTAN,
QUETTA.

SUBJECT:—CHECKING OF PRINTED BALLOT PAPERS BY THE RETURNING OFFICERS.

No. F. 2(1)/88-CORD. DATED 9-11-1988

THE PRINTED BALLOT PAPERS FOR THE CONSTITUENCIES OF THE NATIONAL ASSEMBLY HAVE EITHER BEEN SUPPLIED TO THE RETURNING OFFICERS OR WOULD BE SUPPLIED TO THEM IN A DAY OR TWO(.) THE BALLOT PAPERS FOR THE CONSTITUENCIES OF THE PROVINCIAL ASSEMBLIES WOULD ALSO BE DELIVERED TO THE RETURNING OFFICERS WITHIN NEXT THREE TO FOUR DAYS(.)

PARA TWO(.) THE DISTRICT RETURNING OFFICERS AND RETURNING OFFICERS MAY KINDLY BE ADVISED

TO CHECK THE BALLOT PAPERS AND POSTERS OF EACH CONSTITUENCY CAREFULLY TO ENSURE THAT (1) THE NAMES AND SYMBOLS OF THE CONTESTING CANDIDATES HAVE CORRECTLY BEEN PRINTED COMMA (2) THE BALLOT PAPERS ARE IN ORDER IN ALL RESPECTS AND (3) THE BALLOT PAPERS HAVE BEEN PRINTED IN SUFFICIENT QUANTITY TO MEET THE REQUIREMENTS OF THAT CONSTITUENCY(.)

PARA THREE(.) THE DEPUTY ELECTION COMMISSIONER COMMA ASSISTANT ELECTION COMMISSIONER AND ELECTION OFFICER CONCERNED SHOULD ALSO UNDERTAKE THE SAME EXERCISE INDEPENDENTLY TO DOUBLY ENSURE THAT THE BALLOT PAPERS OF THE CONSTITUENCIES FALLING WITHIN THEIR AREAS DO NOT CONTAIN ANY DISCREPANCY COMMA OMISSION OR MISTAKE(.) THE CHECKING OF BALLOT PAPERS SHOULD BE UNDERTAKEN IMMEDIATELY ON RECEIPT OF THE BALLOT PAPERS(.)

PARA FOUR(.) THE FACT THAT THE BALLOT PAPERS OF EACH CONSTITUENCY HAVE BEEN THOROUGHLY CHECKED BY THE RETURNING OFFICERS AND RECHECKED BY FIELD OFFICERS OF THE COMMISSION AND FOUND TO BE IN ORDER MAY KINDLY BE CONFIRMED TO THIS COMMISSION BY 12TH AND 14TH INSTANT RESPECTIVELY IN CASE OF THE NATIONAL ASSEMBLY CONSTITUENCIES AND THE PROVINCIAL ASSEMBLY CONSTITUENCIES(.) MATTER URGENT(.)

Not to be teleprinted.

SD/-
M. HUMAYUN KHAN
Joint Secretary.

Copy by post in confirmation.

SD/-
M. HUMAYUN KHAN
Joint Secretary.

Annexure-54
(Chapter-8, para-2)

TELEX

FROM:

MR. M. HUMAYUN KHAN,
ADDITIONAL SECRETARY.

TO

(1) MR. REHMAT ALI MUJAHID,
PROVINCIAL ELECTION COMMISSIONER,
PUNJAB,
LAHORE.

(2) MR. M.H. ZAIDI,
PROVINCIAL ELECTION COMMISSIONER,
SIND,
KARACHI.

(3) MR. ABDUR RAHIM KHAN,
PROVINCIAL ELECTION COMMISSIONER,
NWFP,
PESHAWAR.

(4) CH. BASHIR AHMED,
PROVINCIAL ELECTION COMMISSIONER,
BALUCHISTAN,
QUETTA.

SUBJECT:—CHECKING OF PRINTED BALLOT PAPERS BY THE RETURNING OFFICERS.

NUMBER F. 2(11)/90-CORD. DATED 18-10-1990.

THE PRINTED BALLOT PAPERS FOR THE CONSTITUENCIES OF THE NATIONAL ASSEMBLY HAVE EITHER BEEN SUPPLIED TO THE RETURNING OFFICERS OR WOULD BE SUPPLIED TO THEM IN A DAY OR TWO(.) THE BALLOT PAPERS FOR THE CONSTITUENCIES OF THE PROVINCIAL ASSEMBLIES WOULD ALSO BE DELIVERED TO THE RETURNING OFFICERS WITHIN NEXT THREE TO FOUR DAYS(.)

PARA TWO(.) THE DISTRICT RETURNING OFFICERS AND RETURNING OFFICERS MAY KINDLY BE ADVISED TO CHECK THE BALLOT PAPERS AND POSTERS OF EACH CONSTITUENCY CAREFULLY TO ENSURE THAT (1) THE NAMES AND SYMBOLS OF THE CONTESTING CANDIDATES HAVE CORRECTLY BEEN PRINTED COMMA (2) THE BALLOT PAPERS ARE IN ORDER IN ALL RESPECTS AND (3) THE BALLOT PAPERS HAVE BEEN PRINTED IN SUFFICIENT QUANTITY TO MEET THE REQUIREMENTS OF THAT CONSTITUENCY(.)

PARA THREE(.) THE DEPUTY ELECTION COMMISSIONER COMMA ASSISTANT ELECTION COMMISSIONER AND ELECTION OFFICER CONCERNED SHOULD ALSO UNDERTAKE THE SAME EXERCISE INDEPENDENTLY TO DOUBLY ENSURE THAT THE BALLOT PAPERS OF THE CONSTITUENCIES FALLING WITHIN THEIR AREAS DO NOT CONTAIN ANY DISCREPANCY COMMA OMISSION OR MISTAKE(.) THE CHECKING OF BALLOT PAPERS SHOULD BE UNDERTAKEN IMMEDIATELY ON RECEIPT OF THE BALLOT PAPERS(.)

PARA FOUR(.) THE FACT THAT THE BALLOT PAPERS OF EACH CONSTITUENCY HAVE BEEN THOROUGHLY CHECKED BY THE RETURNING OFFICERS AND RECHECKED BY FIELD OFFICERS OF THE COMMISSION AND FOUND TO BE IN ORDER MAY KINDLY BE CONFIRMED TO THIS COMMISSION BY 20TH AND 22ND INSTANT RESPECTIVELY IN CASE OF THE NATIONAL ASSEMBLY CONSTITUENCIES AND THE PROVINCIAL ASSEMBLY CONSTITUENCIES(.) MATTER URGENT(.)

Not to be teleprinted.

SD/-
M. HUMAYUN KHAN
Additional Secretary.

Copy by post in confirmation.

SD/-
M. HUMAYUN KHAN
Additional Secretary.

Annexure-55
(Chapter-8, para-7)

BEFORE THE ELECTION COMMISSION OF PAKISTAN
AT KARACHI

CONSTITUENCY NO. NA-151 SUKKUR-I

PRESENT: MR. ABID ZUBERI, MR. JAVAID HASSAN KHAN AND MR. RAJA QASIT NAWAZ WITH PETITIONER, MR. ISLAMUDDIN SHAIKH.
MR. ABDUL HAFEEZ PIRZADA AND MR. ABDUL HALEEM PIRZADA, ADVOCATE, WITH RESPONDENT, MR. S. KHURSHID AHMED SHAH.
MR. ALI NAWAZ PIRZADA, R.O.

DATE OF HEARING: 30TH DECEMBER, 1990.

ORDER

Amir-ul-Mulk Mengal, J: This order shall dispose of the petition filed by Mr. Islamuddin Shaikh, a contesting candidate from Constituency No. NA-151 Sukkur-I.

The main grievance of the petitioner was that a large number of polling personnel were changed by the Returning Officer concerned in contravention of section 9 of Representation of the People Act, 1976 (hereinafter referred to as "the Act").

We heard the learned counsel for the parties at great length, both at Islamabad and at Karachi.

In order to set the aforesaid issue at rest, we had ordered the R.O. to be present before the Commission alongwith the record. The R.O. appeared before the Commission at Islamabad as well as at Karachi. He produced the polling scheme which, according to him, was approved by the District Returning Officer. He also presented two separate lists indicating the changes of the polling staff; one of the female polling staff and the other of male polling staff which had been

changed, according to him, on 23rd October, 1990. The R.O. further submitted that the changes so made were filled from the list of the reserved staff, which had already been approved by the D.R.O.

Mr. Abid Zuberi, learned counsel for the petitioner, vehemently urged that the changes of the polling staff in 58 polling stations were in utter violation of section 9(2) of the Act, because the approval of the Commission had not been obtained.

On the other hand Mr. Pirzada, learned counsel for the respondent raised the following two preliminary objections:

(a) There was inordinate delay in filing of this petition which had been filed after 40 days of the issuance of the Notification of the successful/returned candidate.

(b) That the allegations, as contained in the petition, are regarding *per se* violation of law and there is no specific allegation that the returned candidate had any connivance with the R.O. regarding the changes.

Besides the aforesaid objections, Mr. Pirzada submitted that no allegation has been made, nor argued, that the list of the polling staff has not been approved by the D.R.O. He further urged that in exercise of his powers, the Commission can interfere and declare an election void only if it is satisfied that grave illegalities have been committed. The learned counsel further submitted that since the changes have been made and staff replaced from amongst the reserved staff which was already approved by the D.R.O., therefore, there was no further need to have sought the approval of the Commission. He further argued even if at all prior approval of the Commission was necessary, non-compliance of the same, amounts to an irregularity and not a grave illegality.

It may be observed that the list, as produced before us by the R.O. today, showed several changes and the R.O. stated that he had given reasons for such changes. The R.O. however, explained that due to rush of work he could not give the details or write the reasons against each and every change but those who were absent and did not turn up to collect material were replaced by the staff from the list of reserved staff.

From the facts as stated hereinabove, it can not be conclusively determined that the changes were made not from the approved reserved staff but from out side. Unless it is established that there was *mala fide* in these changes or that changes were made not from the approved reserved list, the election can not be declared void merely because the R.O. made certain changes.

Mr. Pirzada also produced a list before the Commission, indicating that on various polling stations where changes of the election staff were made by the R.O., the petitioner secured a very high number of votes *vis-a-vis* the respondent. He further attempted to show that since the petitioner was having his following mainly in the urban areas, whereas the respondent had following in the rural areas, therefore, they succeeded in securing large number of votes in their respective area of influence.

On the basis of the aforesaid arguments, it was urged that the changes have not materially affected the result of the election.

Be that as it may, on the basis of record produced before us, it can not be held that the polling staff was not appointed from the approved reserved list. We also find sufficient force in the argument advanced by Mr. Pirzada that approved list also includes the approved list of reserved staff.

The next point requiring consideration is that as per section 9(2) of the Act, the D.R.O. should have sought the approval of the changes from the Commission. But since despite intimation the DRO did not appear and it was stated that he has gone out of the country, therefore, this question also is not fully established. It is pertinent to point out that today is the last day of the prescribed time within which powers under section 103AA could be exercised by the Commission, the matter cannot, therefore, be adjourned any further.

From the above discussions, we are of the view that the petitioner failed to establish that the changes were made not from the approved list but from out side the said list. Hence, to our mind, the petitioner has failed to make out any case of commission of grave illegality.

We, therefore, find no merits in this petition which is hereby dismissed.

Sd/–
(JUSTICE AMIR-UL-MULK MENGAL,)
Member.

Sd/–
(JUSTICE NAIMUDDIN,)
Chief Election Commissioner.

Sd/–
(JUSTICE KHALIL-UR-REHMAN KHAN,)
Member.

Annexure-56
(Chapter-8, para-11)

ELECTION COMMISSION OF PAKISTAN

Complaint regarding enrolment of bogus voters in Naushero Feroze District

We had given time to the advocate to file proof of the claim that about 20,000 votes have been unduly entered in the electoral roll but he has not filed any affidavit of any person. He has, however, filed a statement stating that 65 persons have been unduly entered in the register. Now this number is far low with the number initially mentioned in the complaint. The learned counsel pointed out that there are double entries of the same voters in two different areas. He further placed a statement that a number of voters are said to have four wives but he has not been able to support by filing any affidavit of any resident of the area that it is not so. In Sindh a large number of people have more than one wife. We asked the counsel why he has come so late with this complaint. He stated that he got the electoral rolls of the area very late. He, however, relied on the report of the two officers of the rank of Deputy Election Commissioner who were deputed to make an inquiry into the allegations who have stated in the report as follows:

> "The additional enrolment of voters in the District Naushero Feroze has not been made in accordance with the relevant provisions of section 18 of the Electoral Rolls Act, 1974 and to some extent bogus enrolment cannot be ruled out."

But even these officers have not pointed out which voters have been entered in the electoral roll after fulfilling the requirement of law or which have not. Therefore, in the absence of the particulars and evidence in this regard, the names of all the disputed voters cannot be deleted from the electoral rolls, even we presume we have under the Constitution and the law to do so.

Sd/-
(JUSTICE NAIMUDDIN,)
Chief Election Commissioner.

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN,)
Member.

Annexure-57
(Chapter 8, Para-14)

11-Fane Road, Lahore
Tel : 65879/324377

October 20, 1990

The Returning Officer,
NA-95, Lahore-IV,
Lahore.

Sir,

SUBJECT : *List of Bogus Seats*

As discussed in our meeting on 17-10-1990, we are pleased to enclose the details of bogus votes. Please see our Annexure attached.

Sd/-
(ZIA H. RIZVI)
Advocate
Representative of Air Marshal (Retd.)

M. ASGHAR KHAN
Candidate for NA-95, LHR-IV.

Encl: as above

LIST OF BOGUS VOTES

Sl. No.	Ward No.	Unit No.	From	To	(Total bogus Votes)
1.	72	10/14	37	47	(Total 10)
2.	72	10/14	97	236	(139)
3.	72	10/14	553	632	(79)
4.	72	10/14	7	40	(33)
5.	72	10/14	73	152	(79)
6.	72	10/14	233	312	(79)
7.	72	10/14	313	353	(40)
8.	72	10/14	378	392	(12)
9.	72	10/14	393	472	(79)
10.	72	10/14	473	527	(54)

Annexure-58
(Chapter-8, Para-14)

No. 144

Dated : 26-11-90

To

The D.E.C.
Office of the Provincial Election Commissioner,
Punjab.

SUBJECT : *Request for cancellation of bogus voters.*

Reference your letter No. F. 31(2)90-Elect dated 1-11-90.

The inquiry into the matter has been got conducted through Assistant Registration Officer (Head Master Sacred Heart Cathedral High School 1-Lawrence Road, Lahore). As intimated by him *vide* his letter No. 3042/SH/9 dated 20-11-90 (copy enclosed) no voter included in the disputed list has been found bogus. As such the complaint made calls for no action.

Sd/-
(MAZHAR-UL-HAQ)
(Registration Officer
for Ward No. 65 to 72)
&
Magistrate I Class P.S.
Krishan Nagar.
25-11-90.

Annexure-59
(Chapter 8, Para 16)

ELECTION COMMISSION OF PAKISTAN

SUBJECT :— *Registration of bogus voters.*

A grievance has been made by Air Marshal (Retd) M. Asghar Khan that 476 bogus votes have been included in the electoral rolls of Constituency No. NA-95 Lahore-IV. This allegation has been made after 6th September, 1990 when the elections to the National and Provincial Assemblies were announced. Therefore, under section 20 of the Electoral Rolls Act, 1974, it is not possible to delete any voters from the electoral rolls till the names of returned candidates are notified in official gazette in November 1990. An opinion was sought from the Ministry of Law, Justice and Parliamentary Affairs whether any deletions or additions can be made for any reasons after the constituencies have been called upon to elect their representatives. The Ministry of Law & Justice opined as follows:—

> "In my opinion, the proviso to Article 5 of the Preparation of Electoral Rolls (Federally Administered Tribal Areas) Order, 1975, totally and unambiguously prohibits the inclusion of any name in the electoral roll after the 6th September, 1990. The fact that a suggestion for the inclusion of names was received earlier than the said date does not alter that position.
>
> Sd/-
> *Addl. : Secretay/Draftsman*

"According to this proviso, no amendment in the electoral rolls is possible nor can any name be added therein or excluded therefrom after the constituency has been called upon to elect its representatives."

Sd/-
Secretary"

Under the circumstances, no action can be taken by me on the respresentation of Air Marshal (Retd.) M. Asghar Khan in view of the bar contained in section 20 of the above mentioned Act.

This representation may however, be placed before the Election Commission today.

Sd/-
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Annexure-60
(CHAPTER 8, PARA 16)

ELECTION COMMISSION OF PAKISTAN

Islamabad, the 17th October, 1990

ORDER

Perused the order of the Chief Election Commissioner on the representation made by Air Marshal (Retd.) M. Asghar Khan and also heard M/s Malik Saeed Hassan, Syed Zafar Ali Shah and Air Commodore (Retd) Sajad Haider.

We agree with the Chief Election Commissioner that in view of the bar contained in section 20 of the Electoral Rolls Act, 1974, no deletion can be made in the electoral rolls. However, the learned counsel argued that this can be done in exercise of power under Article 218(3) of the Constitution.

Assuming without conceding that we could delete 476 voters on the alleged ground, we find no valid reasons for acceding to the request. We asked the learned counsel for the party why he did not approach the Chief Election Commissioner before the cut out date *i.e.* 5th September, 1990. The learned counsel stated that till that date it was not possible for the candidate to know or decide that he would contest from this constituency and that he was not aware whether any bogus voters have been entered in the electoral rolls. Further, serial number of the voters in the electoral rolls which according to the petitioner have been unduly entered, have not been stated nor has any affidavit of any person in support of the allegations filed. But because of the time constraint it is not possible to issue notices to the voters generally or specifically to ascertain the truth or otherwise of the allegations and no such order could be passed in this regard without observing the

principles of natural justice. Therefore, in these circumstances it will not be possible to grant any relief to the complainant at this stage.

Sd/-
17-10-1990
(JUSTICE NAIMUDDIN)
Chief Election Commissioner

Sd/-
(JUSTICE KHALIL-UR-REHMAN KHAN)
Member.

Sd/-
(JUSTICE AMIR-UL-MULK MENGAL)
Member

Annexure-61
(Chapter 8, Para-18(1)

To

The Returning Officer,
N.A. 13-Abbottabad-III,
Haripur-Hazara.

SUBJECT : *Polling Station at Jam-Tehsil Haripur Kalinjar*

Sir,

It has come to my notice that according to the forth-coming Polling Schedule for the Election scheduled for October 24th, 1990, Polling Station has been shifted from Kalinjar to Jam (Union Council Kalinjar, Tehsil Haripur).

It is requested that the Polling Station at Jam be shifted back to Kalinjar where it was in 1988.

Yours sincerely,

Sd/-
(OMAR ASGHAR KHAN)
Candidate

N.A. 13, Abbottabad-III

Dated : 9-10-1990.

Copy to :

1. Chief Election Commission of Pakistan, Islamabad.
2. Deputy Election Commission, Abbottabad and
3. District Returning Officer, Abbottabad for information.

Annexure-62
(Chapter 8, Para-18(2)

To

The Returning Officer,
N.A. 13, Abbottabad-III,
Haripur-Hazara.

SUBJECT : *Situation of Polling Stations.*

Sir,

I have the honour to request your goodself that the Election for the above Constituency is going to be held as scheduled and I wish that the Polling Stations for this purpose should be made at the same places as were made in the Elections of 1988 and there should not be made any change in their situation-especially the Polling Stations of Villages Khanpur and Tarnawa should be made at the same places at which they were in 1988.

Thanking you.

Yours obediently,

Sd/–
(UMAR ASGHAR KHAN)
Candidate for N.A. 13, Abbottabad-III,

Election Office at Mari Bhagtan-wali,
Haripur City, Mohallah Qadeem, Haripur.

Dated : 8-10-1990.

Copy to :

1. Chief Election Commission of Pakistan, Islamabad,
2. Deputy Election Commission, Abbottabad and
3. District Returning Officer, Abbottabad, for information.

Annexure-63
(Chapter 8, Para-18(3)

To

The Returning Officer,
N.A. 13, Abbottabad-III,
Haripur-Hazara.

SUBJECT : *Double Entry of Voters in the Voters List.*

Sir,

I have the honour to inform your goodself that there a considerable number of Voters of Village March-Abad and Ward No. 2/1, Khanpur and Village Pind Gujran in area of above said Constituency have managed to get their names entered twice at different villages/wards. Copies of all the above-mentioned three villages are enclosed in respect of Lists of Voters of each Village.

It is, therefore, hoped that immediate legal action will be taken in this matter so that Double Entered Votes should not be let to be casted at two places or different places and only at one Place be Permitted. The undersigned may also be informed about the action.

Yours obediently,

Sd/–
UMAR ASGHAR KHAN,
Candidate for N.A. 13-Abbottabad-3

Election Office Mari Bhagtan,
Mohallah Qadeem, Haripur City.

Dated : 8-10-1990.

Copy to :

1. Chief Election Commission of Pakistan, Islamabad,
2. Deputy Election Commission, Abbottabad,
3. District Returning Officer, Abbottabad, for information.

Annexure-64
(Chapter 8, Para-18(4)

No. 40, STREET No. 1, F-6/3, ISLAMABAD-PAKISTAN
TELEPHONE : 812718

October 31, 1990

To

The Election Commissioner,
Election Commission,
Islamabad.

SUBJECT : *Irregularities During Election of NA-13, Abbottabad-III*

Sir,

I was a candidate for the National Assembly for NA-13, Abbottabad-III. I would like to bring to your notice the following irregularities in NA-13.

(1) I had in writing submitted to the returning officer that there are double entries on a large-scale in the voters lists of NA-13. The names that appeared in two places or more were family members and servants of IJI leaders as well as IJI candidates for the provincial assemblies. Despite my written complaint no action was taken on this matter. When I myself visited the Khanpur ladies polling station on 24-10-90 to enquire from my polling agent whether she has been able to prevent votes of women whose names appeared else where in the voters list, I was manhandled by Raja Nasir, nephew of Raja Sikandar Zaman, IJI Candidate from PF-39. One of Raja Nasir's companions threatened me with a revolver.

(2) The PDA candidate from PF-40 Asif Qazi had complained in writing at least two weeks before the elections that the Returning Officer for NA-13, Hameed Tareen is a relative of Mr. Gohar Ayub Khan, IJI candidate from NA-13. The PDA had demanded the immediate replacement of the returning officer in order to ensure free and fair elections. But no action was taken in this regard.

(3) Despite repeated demands by my polling agents we were not given results duly signed by the presiding officers. I have only received signed results of a few polling stations (not more than 35 polling stations).

(4) Canvassing was openly taking place for the IJI candidate in ladies polling stations. besides polling agents, family members of IJI candidates and leaders were present in large numbers arround polling booths. Despite our election agents pointing out these irregularities, no action was taken.

(5) Besides the above irregularities, it has been brought to my notice by a very reliable source (who was himself present at the meeting) that a meeting was held at the residence of Mr. Najeebullah Khan, a close relative of Mr. Gohar Ayub Khan a few days before the elections. This meeting was attended by officials of the administration, IJI candidates and a selected number of presiding officers. The rigging plan for NA-13 was operationalised at that meeting. The whole administrative machinery was geared-up to ensure the "success" of the IJI candidate for NA-13.

(6) Large amounts of public funds were put at the disposal of the IJI candidate to influence the election results. These funds were selectively disbursed in a number of areas in the last few days.

I am placing the following points on the record and request you to look in to the above sympathetically.

Yours Sincerely,

Sd/-
OMAR ASGHAR KHAN
PDA Candidate NA-13, Abbottabad-III

Copy to :

1. Ms. Benazir Bhutto,
   Bilawal House, Karachi.

2. Air Marshal (Retd.) Asghar Khan,
   1-Kutchery Road, Abbottabad.

3. Mr. Khurshid Kasuri,
   Main Boulevard,
   Gulberg III, Lahore.

Annexure-65
(Chapter-8, Para-18)

From

Mr. Miftahud Din Khan,
Addl: Distt. & Sessions
Judge, II/Returning Officer,
N.A. 13 Abbottabad-III
at Haripur.

To

The District Returning Officer/
District & Sessions Judge,
Abbottabad.

No. 1830 Elec. Dated Haripur the 4th Nov. 1990.

SUBJECT : *Conduct of General Election 1990.*

Memo :

Reference your letter No. 456-05/DRO/ Election-1990 dated 4-11-1990. I hereby submit my report in respect of complaint of Omar Asghar Khan a candidate from N.A. 13.

1. About para No. 1 of complaint I submit that three applications were presented, two about change of Polling Stations and one about double entry of voters. The two applications about change of polling stations were self Contradictory and found totally baseless, hence no action was taken. Regarding third application about double entry, it was held that the fact of double entry in the electoral rolls should have been brought before appropriate authority at relevant time. Moreover, due to punching of Identity-card possibility of double voting is excluded, however, in case electors cast their votes in two polling stations, the same fact be brought to my notice, but no complaint has been received by me that electors have cast double votes in Khanpur Polling Station.

2. As far as para No. 2 is concerned, I have not received any letter nor I am aware of any relationship of R.O with Gohar Ayub Khan.

3. I have received no complaint about the fact that the results were not given by the Presiding Officers to the Polling Agents.

4. The fact of convassing by the IJI candidates in ladies polling stations was neither brought telephonically or in writing to my notice.

5. I am neither aware of any meeting at the residence of Mr. Habibullah Khan nor any complaint in writing or telephonically was received by me in this connection.

6. I am also neither aware of allocation of public funds to the IJI candidates nor any regular complaint in this connection was submitted to me before the election.

Sd/-
(MIFTAHUD DIN KHAN)
Addl. Distt. & Sessions
Judge, II/Returning Officer,
N.A. 13 Abbottabad-III at Haripur.

Annexure-66
(Chapter 8, Para 27)

نام اخبار : روزنامہ "مسلم"
مقام اشاعت : اسلام آباد
تاریخ اشاعت : 29/اکتوبر 1990ء

Postal ballot brings victory to Ejaz

BUREAU REPORT

ISLAMABAD, Oct. 28: It was the postal ballot which swung the balance in favour of the banker-turned politician Ejazul Haq who was otherwise considered too weak to defeat his opponents particularly Raja Shahid Zafar of PDA.

It was generally believed that a spilt vote would give the *ex*-Minister of State an easy sailing over his rival as Riaz Hussain Shah of Pakistan Awami Tehrik would snatch a sizeable chunk of votes from Ejazul Haq. But all the estimates proved wrong and the son of the former President trounced both of them with a wide margin thanks to the postal ballot.

Informed sources revealed that in all 24,000 postal ballots were polled by the retired and inservice personnel of the Armed Forces which changed the electoral game in favour of Ejazul Haq.

Annexure 67
(Chapter-8, para-27)

نام اخبار : روزنامہ "جنگ"

مقام اشاعت : راولپنڈی

تاریخ اشاعت : 30 اکتوبر 1990ء

اعجاز الحق کو پوسٹل بیلٹ کے ذریعے

90 ووٹ ملے

اسلام آباد (پ پ ا) قومی اسمبلی کے حلقہ این اے۔ 39 کے لئے مسلح افواج سرکاری ملازمین اور پولنگ ڈیوٹی پر متعین عملہ کی طرف سے 132 پوسٹل بیلٹ وصول ہوئے ہیں یہ بات الیکشن کمیشن کے ترجمان نے بتائی۔ 132 پوسٹل بیلٹ میں سے 90 ووٹ آئی جے آئی کے امیدوار اعجاز الحق 36 ووٹ راجہ شاہد ظفر اور 6 ووٹ ریاض حسین شاہ کے حق میں تھے۔ جب کمیشن کی توجہ ایک مقامی انگریزی اخبار میں شائع ہونے والی خبر کیطرف دلائی گئی جس میں کہا گیا کہ اعجاز الحق کے حق میں ریٹائرڈ اور حاضر سروس فوجیوں کی طرف سے 24 ہزار پوسٹل بیلٹ وصول ہوئے ہیں۔ کمیشن کے ذرائع نے نیٹ مجر مبالغہ آرائی پر مبنی جھوٹی اور بے بنیاد ہے۔

Annexure-68
(Chapter-8, Para-30)

From

Malik Shaukat Ali Khan,
Returning Officer,
PP-226-Bahawalnagar-II.

To

The District Returning Officer,
Bahawalnagar.

No. 1625. *Dated:* Bahawalnagar the 11-11-1990.

Sir,

Reference your honour's letter No. Elec. 90/DRO/BWN/160 dated 5-11-1990 and the letter No. F. 31(2)/90 Elec. dated 31-10-1990 of the Provincial Election Commissioner, Punjab, Lahore, I have the honour to submit that I have recorded the statements of the Presiding Officers of Polling Stations No. 44 and 45, from which it appears that the allegations stated in the telegram are false. The letter of Provincial Election Commissioner under reference and photostat copy of the telegram annexed therewith are also enclosed herewith.

Your obedient servant,

Sd/-
RETURNING OFFICER,
PP-226-Bahawalnagar-II.

From:

Malik Shaukat Ali Khan,
Returning Officer,
PP-226-Bahawalnagar-II.

To

The District Returning Officer,
Bahawalnagar.

No. 1628 *Dated:* Bahawalnagar, the 11-11-1990.

Sir,

Reference your honour's letter No. Elec-90/DRO/BWN/160 Dated 5-11-1990 and the letter No. F. 31(2)/90-Elec. Dated 31-10-1990 of the Provincial Election Commissioner, Punjab, Lahore, I have the honour to submit that I have recorded the statements of the Presiding Officers of Polling Stations No. 63 (Sanattaka), 67 (Pir Sikandar), 60 (Pir Shah), 62 (Khai Bodla), 42 (Cheveka-Male) and 43 (Chefeka-Female), from which it appears that the allegations stated in the telegram are false. The letter of Provincial Election Commissioner under reference and the photostat copy of the telegram annexed therewith are also enclosed herewith.

Your obedient servant,

Sd/-
Returning Officer,
PP-226-Bahawalnagar-II.

From:

Malik Shaukat Ali Khan,
Returning Officer,
PP-226-Bahawalnagar-II.

To

The District Returning Officer,
Bahawalnagar.

No. 1626, *Dated* Bahawalnagar, the 11-11-1990.

Sir,

Reference your honour's letter No. Elec-90/DRO/BWN/160 dated 5-11-1990 and the letter No. F. 31(2)/90-Elec. dated 31-10-1990 of the Provincial Election Commissioner, Punjab, Lahore, I have the honour to submit that I have recorded the statement of the Presiding Officer of Polling Station No. 83, from which it appears that the allegations stated in the telegram are false. The letter of Provincial Election Commissioner under reference and photostat copy of the telegram annexed therewith are also enclosed herewith.

Your obedient servant,

Sd/-
Returning Officer,
PP-226-Bahawalnagar-II.

From:

Malik Shaukat Ali Khan,
Returning Officer,
PP-226-Bahawalnagar-II.

To

The District Returning Officer,
Bahawalnagar.

No. 1627. *Dated* Bahawalnagar, the 11-11-1990.

Sir,

Reference your honour's letter No. Elec-90/DRO/BWN/160 Dated 5-11-1990 and the letter No. F. 31(2)/90-Elec. Dated 31-10-1990 of the Provincial Election Commissioner, Punjab, Lahore, I have the honour to submit that I have recorded the statements of the Presiding Officers of Polling Stations No. 53 and 54, from which it appears that the allegations stated in the telegram are false. The letter of Provincial Election Commissioner under reference and the photostat copy of the

telegram annexed therewith are also enclosed herewith.

Your obedient servant,

Sd/-
Returning Officer,
PP-226-Bahawalnagar-II.

From:

Malik Shaukat Ali Khan,
Returning Officer,
PP-226-Bahawalnagar-II.

To

The District Returning Officer,
Bahawalnagar.

No. 1624. *Dated* Bahawalnagar, the 11-11-1990.

Sir,

Reference your honour's letter No. Elec-90/DRO/BWN/160 dated 5-11-1990 and the letter No. F. 31(2)/90-Elec. Dated 31-10-1990 of the Provincial Election Commissioner, Punjab, Lahore, I have the honour to submit that I have recorded the statement of the Presiding Officer of Polling Station No. 58, from which it appears that the allegations stated in the telegram are false. However, the statement of Presiding Officer of Polling Station No. 59 could not be recorded because the concerned Presiding Officer is on leave. The letter of Provincial Election Commissioner under reference, and photostat copy of the telegram annexed therewith are also enclosed herewith.

Your obedient servant,

Sd/-
Returning Officer,
PP-226-Bahawalnagar-II.

Annexure-69
(Chapter 8, Para-49)

No. F. 2(2)/91-Cord.

ELECTION COMMISSION OF PAKISTAN

Secretariat Block 'S' Islamabad

May 22, 1991

From:

Mr. Iftikhar Ahmed Qureshi,
Deputy Secretary (Elec-II).

To

Mr. Mohammad Zulfiqar Ali Khan,
District & Sessions Judge,
(District Returning Officer),
Bahawalnagar.

SUBJECT:—*White paper in respect of General Elections 1990*

Sir,

I am directed to send herewith photo copies of the statements of count on Form-XIV in respect of constituency No. PP-226 Bahawalnagar-II, as published in the book entitled "انتخاب 1990 کا وائٹ پیپر" by Abid Tehami for comparison with the original statements available on the record of Returning Officer for constituency No. PP-226 Bahawalnagar-II and to request that a detailed report on the authencity of these statements may please be furnished to this Commission immediately.

Your obedient servant,

Sd/-
(IFTIKHAR AHMED QURESHI,)
Deputy Secretary (Elec-II).

Encl: As above.

Copy forwarded for information to Mr. Shaukat Ali Khan, Civil Judge 1st Class (Returning Officer for Constituency No. PP-226 Bahawalnagar-II), Bahawalnagar. The Chief Election Commissioner has directed that office record of this constituency available with the Returning Officer (specially result of election on form-XIV and XVI) may please be kept in safe custody, duly sealed, with the Returning Officer after scrutiny by District Returning Officer until further orders.

Sd/-
(IFTIKHAR AHMED QURESHI)
Deputy Secretary (Elec-II).

Annexure–70
(Chapter-8, Para-50)

From

Zulfiqar Ali Khan,
District Returning Officer,
Bahawalnagar.

To

The Secretary,
Election Commission of Pakistan,
Islamabad.

No. 618 Dated Bahawalnagar, the 5-6-1991

SUBJECT: *WHITE PAPER IN RESPECT OF GENERAL ELECTION 1990.*

SIR,

I hereby forward the report of Returning Officer, PP-226-Bahawalnagar-II in respect of White Paper regarding the general elections, 1990 with the following comments:—

(1) The White Paper after its comparison with the result sheets Form No. XIV very clearly reveals that White Paper has been purposely forged and fabricated document. It further appears that Mr. Abdul Qadir Shaheen a PDA candidate who secured third position in this constituency has deliberately and purposely prepared the forged and fictitious results. He has reduced the number of votes cast in favour of Mian Shaukat Ali Laleka by a specific figure *e.g.* 100 & so and increased the same number of votes in the total of votes cast in his favour in the total of each polling station. As such, the total number of casting votes remains same. This is itself a clear proof of forgery and fabrication.

(2) Mr. Abdul Qadir Shaheen has not disputed the votes cast in favour of other candidates who were unsuccessful. It is a

fact that he has secured third position, whereas Mr. Tariq Amin Hotiana secured the second position.

(3) I have personally gone through the available record with the learned Returning Officer and say with confidence that the White Paper is a false and wrong document and prepared purposely to change the election result or with some other reason which has no basis or any foundation.

(4) The consolidated statement of the results of the constituency was signed by the Election Agent of PDA candidate, Mr. S.D.Shad. That was the first occasion to dispute the election result which the PDA candidate failed to do. On the contrary, the result was accepted by the candidates or their Election Agents as true.

(5) The Presiding Officers (37 out of 38 and the other 1 could not be contacted) have administered their affidavits and have disputed and denied the White Paper and denied the relevant contents of the White Paper and its figures.

(6) To further fortify the falsehood of the White Paper, are attached herewith the photo copies of records of Form No. XIV kept by the Returning Officer (38 in number). Furthermore, the photo copies of the result sheets of Form No. XIV kept by the Presiding Officers in their personal record are also attached (37 in number).

(7) The reccord of the election 1990 is lying in the double lock of the local treasury and that may be concerned by the Election Commission of Pakistan for verifying the report in hand. I fully endorse the report of Returning Officer, PP-226-Bahawalnagar-II.

Your obedient servant,
Sd/-
DISTRICT RETURNING OFFICER,
Bahawalnagar.

Annexure–71
(Chapter-8, Para-50)

From:

Malik Shaukat Ali Khan,
Returning Officer,
PP-266-Bahawalnagar-II.

To

The Secretary,
Election Commission of Pakistan,
Islamabad.

Through: The District Returning Officer,
Bahawalnagar.

No. 994 Dated Bahawalnagar, the 5-6-91

SUBJECT: *WHITE PAPER IN RESPECT OF GENERAL ELECTION 1990.*

SIR,

Reference your letter No. F. 2(2)/91-Cord. dated 22.5.1991, I received photo copies of the statements of count on Form No. XIV in respect of constituency No. PP-226-Bahawalnagar-II as published in the book entitled "انتخاب 1990ء کا اصل سچ" by Abid Tihami for comparison with the original statements available on my record of constituency No. PP-226-Bahawalnagar-II.

(1) My detailed report on the authenticity of these statements is as under:—

(2) I was supplied with thirty eight photo copies of the impugned statements of count as published in the white paper. A thorough comparison of these photo copies with my original record reveals that these photo copies are the forged and fabricated one. These photocopies of the statement of count appear to be in the hand-writing of a

single person, whereas in the original record each statement of count is in the hand-writing of different persons because different persons were appointed as Presiding Officers in the different Polling Stations. The impugned signatures of Presiding Officers as published in the white paper are forged. A comparison of photo copy of the white paper of statement of count of polling station No. 1 with the original statement of count as maintained in my record reveals that in the white paper the votes of Abdul Qadir Shaheen are increased to 351 instead of 251, whereas the votes of Mian Shaukat Ali have been decreased from 339 to 239.

(3) In the White Paper regarding the polling station No. 2, the votes of Mr. Abdul Qadir Shaheen have been again increased from 165 to 265 and that of Mian Shaukat Ali have been decreased from 249 to 149.

(4) In the White Paper in polling station No 15, the votes of Mr. Abdul Qadir Shaheen have been increased from 223 to 323 and the votes of Mian Shaukat Ali have been decreased from 297 to 197.

(5) In the White Paper in the result of polling station No 16, the votes of Mr. Abdul Qadir Shaheen have been increased from 182 to 282 and the votes of Mian Shaukat Ali have been deceased from 237 to 137.

(6) In the White Paper in the result of polling station No 17, the votes of Mr. Abdul Qadir Shaheen have been increased from 270 to 470 and the votes of Mian Shaukat Ali have been decreased from 439 to 239. Moreover, in the White Paper in the result of polling station No. 17, the signatures of polling agents of the candidates are missing, whereas in my record the statement of the count carries the signatures of polling agents.

(7) In the White Paper in the result of polling station No. 18, the votes of Mr. Abdul Qadir Shaheen have been increased from 217 to 317 and the votes of Mian Shaukat Ali have been decreased from 355 to 255.

(8) In the White Paper in the result of polling station No. 23, the votes of Mr. Abdul Qadir Shaheen have been increased from 253 to 353, whereas the votes of Mian Shaukat Ali have been decreased from 350 to 250.

(9) In the White Paper in the result of polling station No. 24, the votes of Mr. Abdul Qadir Shaheen have been increased from 149 to 249 and the votes of Mian Shaukat Ali have been decreased from 309 to 209.

(10) In the White Paper in the result of polling station No. 25, the votes of Mr. Abdul Qadir Shaheen have been increased from 198 to 298, whereas the votes of Mian Shaukat Ali have been decreased from 376 to 276.

(11) In the White Paper in the result of polling station No. 26, the votes of Mr. Abdul Qadir Shaheen have been increased from 153 to 253, whereas the votes of Mian Shaukat Ali have been decreased from 300 to 200.

(12) In the White Paper in the result of polling station No. 27, the votes of Mr. Abdul Qadir Shaheen have been increased from 318 to 418 and the votes of Mian Shaukat Ali have been decreased from 346 to 246.

(13) In the White Paper in the result of polling station No. 29, the votes of Mr. Abdul Qadir Shaheen have been increased from 244 to 344 and the votes of Mian Shaukat Ali have been decreased from 316 to 216.

(14) In the White Paper in the result of polling station No. 30, the votes of Mr. Abdul Qadir Shaheen have been increased from 207 to 257 whereas the votes of Mian Shaukat Ali have been decreased from 247 to 197.

(15) In the White Paper in the result of polling station No. 42, the votes of Mr. Abdul Qadir Shaheen have been increased from 27 to 227 whereas the votes of Mian Shaukat Ali have been decreased from 335 to 135.

(16) In the White Paper in the result of polling station No. 43, the votes of Mr. Abdul Qadir Shaheen have been increased from 17 to 117, whereas the votes of Mian Shaukat Ali have been decreased from 183 to 83. It is interesting to note that the Presiding Officer according to my record had written the names of the candidates in the statement of count in Urdu, whereas in the White Paper these names have been given in English.

(17) In the White Paper in the result of polling station No. 50, the votes of Mr. Abdul Qadir Shaheen have been increased from 61 to 361 whereas the votes of Mian Shaukat Ali have been decreased from 417 to 117.

(18) In the White Paper in the result of polling station No. 55, the votes of Mr. Abdul Qadir Shaheen have been increased from 18 to 118 and the votes of Mian Shaukat Ali have been decreased from 238 to 138.

(19) In the White Paper in the result of polling station No. 57, the votes of Mr. Abdul Qadir Shaheen have been increased from 60 to 260, whereas the votes of Mian Shaukat Ali have been decreased from 431 to 231.

(20) In the White Paper in the result of polling station No. 62, the votes of Mr. Abdul Qadir Shaheen have been increased from 30 to 130, whereas the votes of Mian Shaukat Ali have been decreased from 390 to 290.

(21) In the White Paper in the result of polling station No. 63, the votes of Mr. Abdul Qadir Shaheen have been increased from 65 to 165 and the votes of Mian Shaukat Ali have been decreased from 464 to 364.

(22) In the White Paper in the result of polling station No. 64, the votes of Mr. Abdul Qadir Shaheen have been increased from 65 to 165 and the votes of Mian Shaukat Ali have been decreased from 175 to 75.

(23) In the White Paper in the result of polling station No. 66, the votes of Mr. Abdul Qadir Shaheen have been increased from 134 to 234 and the votes of Mian Shaukat Ali have been decreased from 160 to 60.

(24) In the White Paper in the result of polling station No. 68, the votes of Mr. Abdul Qadir Shaheen have been increased from 129 to 229 and the votes of Mian Shaukat Ali have been decreased from 218 to 118. It is interesting to note that in the White Paper in the result of polling station No. 68, only the names of three candidates *i.e.* Mr. Abdul Qadir Shaheen, Mian Shaukat Ali and Muhammad Tariq Amin have been given, whereas the names of other six candidates are missing which are present in my record.

(25) In the White Paper in the result of polling station No. 69, the votes of Mr. Abdul Qadir Shaheen have been increased from 102 to 302, whereas the votes of Mian Shaukat Ali have been decreased from 321 to 121.

(26) In the White Paper in the result of polling station No. 70, the votes of Mr. Abdul Qadir Shaheen have been increased from 107 to 407, whereas the votes of Mian Shaukat Ali have been decreased from 621 to 321.

(27) In the White Paper in the result of polling station No. 71, the votes of Mr. Abdul Qadir Shaheen have been increased from 39 to 139, whereas the votes of Mian Shaukat Ali have been decreased from 350 to 250.

(28) In the White Paper in the result of polling station No. 72, the votes of Mr. Abdul Qadir Shaheen have been increased from 131 to 331 and the votes of Mian Shaukat Ali have been decreased from 314 to 114.

(29) In the White Paper in the result of polling station No. 73, the votes of Mr. Abdul Qadir Shaheen have been increased from 19 to 119, whereas the votes of Mian Shaukat Ali have been decreased from 291 to 191.

(30) In the White Paper in the result of polling station No. 74, the votes of Mr. Abdul Qadir Shaheen have been increased

from 18 to 118, whereas the votes of Mian Shaukat Ali have been decreased from 419 to 319.

(31) In the White Paper in the result of polling station No. 75, the votes of Mr. Abdul Qadir Shaheen have been increased from 27 to 227, whereas the votes of Mian Shaukat Ali have been decreased from 472 to 272.

(32) In the White Paper in the result of polling station No. 76, the votes of Mr. Abdul Qadir Shaheen have been increased from 56 to 256, whereas the votes of Mian Shaukat Ali have been decreased from 549 to 349.

(33) In the White Paper in the result of polling station No. 77, the number of votes shown against each candidate is correct as compared with my record but again this is a forged document. It has been added only to show that there is some truth in the White Paper.

(34) In the White Paper in the result of polling station No. 78, the votes of Mr. Abdul Qadir Shaheen have been increased from 46 to 246, whereas the votes of Mian Shaukat Ali have been decreased from 306 to 106.

(35) In the White Paper in the result of polling station No. 79, the votes of Mr. Abdul Qadir Shaheen have been increased from 52 to 252, whereas the votes of Mian Shaukat Ali have been decreased from 527 to 327.

(36) In the White Paper in the result of polling station No. 80, the votes of Mr. Abdul Qadir Shaheen have been increased from 110 to 310, whereas the votes of Mian Shaukat Ali have been decreased from 511 to 311.

(37) In the White Paper in the result of polling station No. 81, the votes of Mr. Abdul Qadir Shaheen have been increased from 21 to 221, whereas the votes of Mian Shaukat Ali have been decreased from 457 to 257.

(38) In the White Paper in the result of polling station No. 82, the votes of Mr. Abdul Qadir Shaheen have been increased

from 9 to 109, whereas the votes of Mian Shaukat Ali have been decreased from 349 to 249.

(39) In most of the photo copies of the White Paper, the formula of adding one hundred votes in the votes of Mr. Abdul Qadir Shaheen and the decrease of one hundred votes in the votes of Mian Shaukat Ali, the winning candidate has been used. In some cases instead of one hundred votes, the number of two hundred votes has been used and in some the other number has been used.

(40) When the Presiding Officers had come to me to submit the result on 27-10-1990, I had asked them to write their names in Urdu below their English signatures and they did the same, whereas in the White Paper the statements of count do not carry these Urdu words because the persons who prepared these forged statements of count for the White Paper did not know this fact. In my view, the persons behind the White Paper obtained from somewhere the Forms No. XIV of statement of count and then through the use of fraud and forgery tried to show that because Mr. Abdul Qadir Shaheen is candidate of PDA, had won, whereas it is an irony that instead of winning he had qualified only for the third position. Mr. Tariq Amin Hotiana an independent candidate secured more votes than the votes of PDA candidate. The copies of White Paper which have been supplied to me reveal that they are forged one. The signatures of Presiding Officers are also forged.

(41) A minute scrutiny of the result as given in the White Paper with original record also reveals some other differences in addition to the detail which has been given above. For instance, in the statement of count of polling station No. 1 of the White Paper the person behind this forgery failed to write a sentence which is present in the original statement of count and which is written as under:—

پیلاٹ بکس میں سے ایک ووٹ کم نکلا

(42) Likewise, in the White Paper in the statement of count of polling station No. 2, the word Zero has not been crossed by line as it has been crossed in the original statement of count against the names of Haji Ch. Muhammad Akram and of

Muhammad Azam and the name of Presiding Officer Mrs. Shagufta Najeeb has not been written in the White Paper whereas it has been written in the original record.

(43) In the White Paper in the statement of count of polling station No. 17, the signatures of the polling agents of the candidates are missing, whereas in my record the signatures of polling agents of Mian Shaukat Ali, Abdul Qadir Shaheen and Tariq Amin Hotiana are present and in the signatures of Presiding Officer, Muhammad Ahmad Shah, the shape of 'A' is much different as given in the White Paper and as compared with my record.

(44) In the White Paper in the statement of count of polling station No. 18, in the signatures of Presiding Officer Mrs. Riffat Bano the word 'B' as given in the White Paper is much bigger and diferent than the word 'B' of my original record and some other defects are also present which can be easlily deducted by a man of common prudence.

(45) In the White Paper in the statement of count of polling station No. 30, no initials of Presiding Officers are present against the name of Haji Muhammad Jehangir, whereas in the original one the Presiding Officer after making correction has given her initials against the name of Haji Muhammad Jehangir. The name of Bilqees Ishrat Presiding Officer in the Urdu words is missing in the White Paper, whereas it is present in my record.

(46) In the White Paper, in the result of polling station No. 33, the name of Muhammad Munir Ahmad Shah, the Presiding Officer, is missing in Urdu. His English signatures are also much different than the original one. The hand-writing of place and date in the White Paper are also different from the original one.

(47) In the White Paper, in the result of polling station No. 81, the word 'L' of Nil in the column of challenge votes is different than the original one. Against the name of Haji Ch. Muhammad Akram in the original record the Presiding Officer has written two times O, O in columns 3 & 5, whereas

in the White Paper this has been written as 'NIL' only. Again the signatures of White Paper are much different than those present in the record. The Presiding Officer had put seal alongwith his signatures in the result of polling station No. 81. The same is missing in the White Paper. Probably they could not make it in time. In the White Paper, the signatures of Muhammad Tariq, the Presiding Officer, are missing, whereas in my record the signatures of Presiding Officer are present in Urdu and in English. In the same statement of count in the White Paper the column No. 5 has been left blank by only writing NIL, whereas in the original statement of count, the detail of votes has been given against the name of each candidate.

(48) In the White Paper, in the statement of count of polling station No. 82, the total of votes has not been given in column No. 5, whereas in my record the total of votes has been entered by the Presiding Officer as 414. Moreover, the Urdu signatures of the Presiding Officer are missing in the White Paper, whereas these are present in my record and the English signatures which have been given in the White Paper are forged one as compared with the original one in my record.

(49) From the abstract of White Paper which has been supplied to me by the Election Commission shows that the PDA candidate has forged the statement of count of Form No. XIV of 38 polling stations of this constituency. The affidavits of 37 Presiding Officers of these polling stations are annexed herewith in which they have stated that no rigging was done in the polling station and the results were supplied to the polling agents and to the Returning Officer. Alongwith their affidavits the Presiding Officers have annexed a photo-stat copy duly attested by them of the statement of count of their polling stations which again support my version that my record is right and the entries of White Paper are totally false. I am also annexing with this report the attested copies of statements of count of 38 polling stations as maintained by my office and which have been duly sealed by the District Returning Officer, Mr. Zulfiqar Ali Khan and which are now under the supervision of the District Returning Officer.

In the end, I may add that this WHITE PAPER is actually a collection of WHITE LIES. It may also not be out of place to mention that when the result was consolidated by me, the candidates/their election agents had given their signatures that the counting was correct, hence, now the candidate of PDA is estopped from saying that the results were forged. The original record of ballot papers etc. sealed by the Presiding Officers is lying deposited with the Treasury at Bahawalnagar which is the best proof of the votes secured by each candidate. The same may be examined by the Election commission at any time which is the solid proof of holding free, fair and impartial election in this constituency.

The report is hereby submitted for your kind perusal.

Your obedient servant,

Sd/
RETURNING OFFICER,
PP-226, Bahawalnagar-II.

ANNEXURES:

1. Affidavits on the stamp papers of 37 Presiding Officers supported by the attested photo copies of statements of count which are in personal record of these Presiding Officers.
2. The attested photo copies of statements of count as maintained by this office.

Annexure-72
(Chapter-8, Para-51)
REGISTERED A/D

No. F.2(2)/91-Cord

ELECTION COMMISSION OF PAKISTAN

Secretariat Block 'S'
Islamabad

June 12, 1991

(1) Mr. Abid Tihami,
House No. 595, Huma Block,
Allama Iqbal Town,
Lahore.

(2) Mr. Abid Tihami,
Feature Writer,
Daily "Jang",
Lahore.

Dear Sir,

Reference your publication entitled "انتخابات 1990ء کا وائٹ پیپر" published by the Jang Publishers, Lahore, in April, 1991.

2. You have published on pages 188-225 of the book the statements of the count on Form-XIV relating to election in constituency No. PP-226 Bahawalnagar-II purported to have been issued by the Presiding Officers concerned under their signatures. The Returning Officer concerned was asked by the Election Commission to enquire into the matter in order to establish the veracity, or otherwise, of these statements.

3. After due inquiry, the District Returning Officer has reported that the statements published by you in your book under reference have been found to be forged and fabricated and that the signatures of the Presiding Officers as appearing on these statements are also not genuine.

4. You are, therefore, requested to please let this Commission know, within three days of the receipt of this reference, as to wherefrom the statements in question have been procured by you and published without first verifying their authenticity, so that further action in the matter could be taken according to law. In case you fail to respond to this letter within three days, you alone will be held responsible for the same.

Yours faithfully,

Sd/-
(R.B. JAN WAHIDI)
Section Officer (Law)

Annexure-73
(Chapter-8, Para-51)

REGISTERED A/D.

June 18, 1991

Mr. R.B. Jan Wahidi,
Section Officer (Law),
Election Commission of Pakistan,
Secretariat Block 'S',
Islamabad.

Dear Sir,

Reference your letter No. F.2(2)/91-Cord, dated June 12, 1991.

Kindly refer to your letter quoted above.

2. The statements referred to in your letter and published in my book were supplied to me by Mr. Abdul Qadir Shaheen, a contesting candidate for the Provincial Assembly from PP 226 Bahawalnagar-II seat. As the number of statements was fairly large *i.e.* 39, those had *prima facie* been written and signed by the Presiding Officers and were supplied to me personally by a responsible political figure, I had in all earnestness, nothing to doubt their authenticity or veracity. I did not publish anything with malice in my book.

3. If the Election Commission wants to probe the matter further, it may kindly summon the Presiding Officers and the District Returning Officer concerned in my persence so as to verify the authenticity of the statements.

Yours faithfully,

Sd/-
(ABID TEHAMI)
Feature Writer,
Daily "Jang", Lahore.

Annexure-74
(Chapter-8, Para-52)
REGISTERED A/D

No. F.2(2)/91-Cord.

ELECTION COMMISSION OF PAKISTAN

Secretariat Block 'S'
Islamabad

October 7, 1991

NOTICE

WHEREAS a publication entitled 'Intikhabat 90 Ka White Paper' has been written by Mr. Abid Tehami, Feature writer of Daily "Jang", Lahore and has been published by M/s Jang Publishers, Lahore in April, 1991;

AND WHREAS the publication carries at its pages 188-225 the statements of count on Form-XIV relating to election in constituency No. PP-226 Bahawalnagar-II purported to have been issued by the Presiding Officers under their signatures;

AND WHEREAS the matter was investigated by the District Returning Officer and Returning Officer concerned and the statements in question have been found to be forged and fabricated and that the signature appearing on them are also not genuine;

AND WHEREAS Mr. Abid Tehami, the author of the book, was asked to let this Commission know as to where from the statements in question have been procured by him and published without first verifying their authenticity;

AND WHEREAS Mr. Abid Tehami has replied that the said statements had been supplied to him personally by a responsible political figure, Mr. Abdul Qadir Shaheen who was a contesting candidate from the aforesaid constituency;

AND WHEREAS you were asked *vide* this Commission's notice of

even number dated 20th August, 1991 followed by a reminder dated 9-9-1991 to let this Commission know, within seven days of the receipt of the notice, as to whether you delivered the statements in question to Mr. Abid Tehami or not, and if so, how you get these statements;

AND WHEREAS the said notice was received by one Mubarak Ali on your behalf on August 24, 1991 but you failed to furnish reply to the said notice.

AND WHEREAS a press release was also issued in the national press on 18-9-1991 in the matter, but you failed to supply the requisite information;

NOW, THEREFORE, you are hereby asked to appear before the Election Commission in its office, situated in Pakistan Secretariat, Block 'S', Islamabad on 17-10-1991 at 10.00 A.M. to let the Commission know as to whether you delivered the aforesaid statements to Mr. Abid Tehami as stated by him or not, and if so, how you got these statements.

Sd/-
(K.M. DILSHAD)
Deputy Secretary (Elec-I)

Mr. Abdul Qadir Shaheen,
Mohallah Amir Kot,
Bahawalnagar

Annexure-75

(Chapter 8, Para 52)

REGISTERED A/D

No. F.2(2)/91-Cord

ELECTION COMMISSION OF PAKISTAN

Secretariat Block 'S'
Islamabad

10th October, 1991

N O T I C E

IN RE:–*Publication Entitled "Intikhabat 90 Ka White Paper" Published By M/s. Jang Publishers, Lahore.*

To,

(1) Mr. Abid Tehami,
House No. 595, Huma Block,
Allama Iqbal Town,
Lahore.

(2) Mr. Abid Tehami,
Feature Writer,
Daily 'Jang',
Lahore.

Please take notice and be informed that you are required to appear in person before the Election Commission on 17-10-1991 at 10.00 A.M. in its office situated in Pakistan Secretariat Block 'S' Islamabad to explain your position in connection with the publication cited as subject.

Sd/—

(SHAMIM WAHID)
Section Officer (Law)

Annexure-76

(Chapter-8, Para-52)

DAILY "PAKISTAN TIMES" Islamabad

18th September, 1991

EC takes notice for publishing false report

ISLAMABAD, Sept. 17: Election Commission has served an explanation notice on Abdul Qadir Shaheen a defeated candidate in 1990 election, for giving false information to Mr. Abid Tehami writer of a book entitled "Intikhabat 90 Ka White Paper".

According to EC press release M/s. Jang Publishers, Lahore, published a book entitled "Intikhabat 90 Ka White Paper", written by their feature writer, Mr. Abid Tehami. The publication carries at its pages 188 and 225 false and fabricated statements of count purported to have been issued by the presiding officers relating to election held on 27-10-1990 in constituency No. PP-226 Bahawalnagar-II.

Mr. Abid Tehami was asked to explain as to wherefrom the statements in question have been procurred by him and as to why did he publish the same without first establishing their veracity or otherwise. In reply, Mr. Tehami informed the Election Commission that the statements published in his book had been personally handed over to him by Mr. Abdul Qadir Shaheen, a defeated candidate for election from that constituency. Accordingly, the Election Commission has issued a notice to Abdul Qadir Shaheen on 20-8-1991 to explain his conduct in this behalf. The Commission has issued a reminder notice to him for early submission of his reply. In case no reply is received from Abdul Qadir Shaheen by the due date, the Commission will consider the future course of action in the matter in its next meeting.

نام اخبار : روزنامہ "نوائے وقت"

مقام اشاعت : راولپنڈی

تاریخ اشاعت : 18/ستمبر 1991ء

الیکشن کمیشن نے فیچر رائٹر سے وضاحت طلب کرلی۔

اسلام آباد (پ ر) الیکشن کمیشن نے فیچر نگار عابد تہامی کی تصنیف کردہ کتاب "انتخابات 90ء کا وائٹ پیپر" کے صفحات 188 تا 255 میں حلقہ پی پی 226 بہاولنگر۔ II کے انتخابات کے نتائج پر مشتمل پریذائڈنگ افسران کے جاری کردہ فرضی اور من گھڑت گوشوارے شائع کرنے پر عابد تہامی سے وضاحت طلب کی ہے کہ انہوں نے مذکورہ گوشوارے کہاں سے حاصل کئے اور ان کی جانچ پڑتال کئے بغیر انہیں کیوں شائع کیا۔ جس کے جواب میں جناب عابد تہامی نے الیکشن کمیشن کو مطلع کیا کہ مذکورہ گوشوارے انہیں اس حلقہ کے ایک ناکام امیدوار جناب عبدالقادر شاہین نے ذاتی طور پر دیئے تھے۔ چنانچہ الیکشن کمیشن نے 20 اگست کو عبدالقادر شاہین کو اپنے اس اقدام کی وضاحت کے لئے ایک نوٹس ارسال کیا اور اس سلسلہ میں انہیں ایک یاد دہانی کا مراسلہ بھی بھیجا ہے۔ اور اب اگر مقررہ تاریخ تک عبدالقادر شاہین کی طرف سے کوئی جواب موصول نہ ہوا تو الیکشن کمیشن اپنے اگلے منعقد ہونے والے اجلاس میں مزید کارروائی کے لئے لائحہ عمل پر غور کرے گا۔

Annexure-77
(Chapter-9, Para-13)

D.O. No. S.O. -II/S&GAD/90

GOVERNMENT OF BALOCHISTAN

Dated: Quetta, the 18th December, 1990

JAVED TALAT
CHIEF SECRETARY

Tele: 70406

SUBJECT:-*Suspension of Deputy Commissioners/Assistant Commissioners in Balochistan.*

***

Dear Mr. Humayun Khan

Kindly refer to your D.O. letter No. F.2(1)/90-Cord., dated 29th November, 1990 on the above cited subject.

2. No Deputy Commissioner has been suspended. However transfers of some Deputy Commissioners have been made by this Government. As regards the news item which appeared in the "Nawa-i-Waqt", dated 19-11-1990 is concerned, the Government of Balochistan have clarified the position. Press clippings of daily Balochistan Times, Quetta, Jang, Quetta and Mashriq Quetta, dated 22-11-1990 are enclosed herewith for your information.

with best regards,

Yours sincerely,

Sd/—
(JAVED TALAT)

Mr. M. Humayun Khan,
Additional Secretary,
Election Commission of Pakistan,
Secretariat Block 'S',
ISLAMABAD.

Annexure-78
(Chapter-9, Para-13)

DAILY "BALUCHISTAN TIMES" Quetta

22nd November, 1990

Clarification

QUEITTA, Nov. 21. The Balochistan Chief Minister's Secretariat has clarified the correct position with regard to the press Conference of the Chief Minister on November 18. A press release issued here this evening said.

"The Press Reports on the Press Conference held by the Chief Minister, Balochistan on 18th November, 1990 have totally mis-quoted the statement made by the Chief Minister in connection with action against Deputy Commissioners. The Chief Minister had stated that action would be taken against Deputy Commissioners on account of reported administrative excesses, corruption and *mal*-administration, particularly their failure to maintain law and order during Elections, but he never stated or even suggested that the Deputy Commissioners interfered in the conduct of free and fair elections".

Annexure-79
(Chapter-9, Para-14)

DAILY "PAKISTAN TIMES" Islamabad

January 6, 1991

IJI had no hand in Nasrullah's defeat: Jatoi

ISLAMABAD, Dec. 5: The former caretaker Prime Minister and a prominent IJI leader, Mr. Ghulam Mustafa Jatoi, has categorically contradicted a news item published in the Press attributed to him as having said that Nawabzada Nasrullah Khan's defeat in the October 90 elections was result of a planned rigging and despite having its knowledge he could not do anything in his capacity as caretaker prime minister.

Addressing a press conference on Saturday he said the elections held in October last year were *cent per cent* free, fair and impartial. The Chief Election Commissioner, Mr. Justice Naimuddin deserved all credit.

To a question he said that in his opinion "some persons made a political arrangement for Nawabzada Nasrullah Khan, Khan Abdul Wali Khan and Maulana Fazlur Rehman to carve way to their defeat.".

Mr. Jatoi, however, admitted that political persons had the right to manage through political moves the defeat or success of any candidate. "But we have moral obligations not to field candidates against the heads of COP component parties".

Asked whether he blames the IJI President Nawaz Sharif for 'political arrangement' he said "not at all". "However, I am working to find facts and soon after collecting them I will make them public".

Asked whether he had any differences with Prime Minister Nawaz Sharif, Mr. Jatoi said, "yes, on one point only which is that I do not recognise the IJI candidates in the bye-elections as formal IJI candidates because the heads of IJI component parties were not taken into confidence before awarding tickets they are PML candidates. Otherwise I am fully with him. I want prime minister's success in all fields so that we can deliver goods to the people.

DAILY "THE DAWN" Karachi

September 28, 1991

Oct 1990 elections were fair, says Jatoi

ISLAMABAD, Sept. 27: Mr. Ghulam Mustafa Jatoi, former Prime Minister and Chairman NPP; has said that the October 1990 general election was "absolutely free, fair and impartial".

He said this when he was asked by a PPI correspondent here on Friday to comment on the allegations contained in the PDA White Paper that the October 1990 elections were rigged.

"At least I am grateful to the PDA that they have certified my overwhelming success from my National Assembly constituency from Sialkot in the October 1990 election " he added.

The former Prime Minister said the extracts he had read in the PDA White Paper were nothing but "rubbish".

"As far as I am concerned at least the allegations concerning me and our constituencies are baseless, unfounded and a pack of lies.

"I challenge these can not be proved even today. Some of the stories in the PDA White Paper have been carried from some weekly magazines which contained these trash news at that time," Mr. Jatoi said.

Asked to comment on the allegations in the PDA White paper that as Caretaker Prime Minister he had directed that polling stations in his NA constituency in Nawabshah District be kept at a far distance so that voters could not come to vote in large numbers, he said "even today the location of these polling stations exists and they have not disappeared or evaporated.

"Let us go and visit those sites and let the people decide whether the allegations are true or unfounded," he further stated.—

DAILY "THE NEWS" Islamabad

28 September, 1991

Jatoi terms 1990 elections impartial

Denies PDA's charges of rigging

PPI

ISLAMABAD: M. Ghulam Mustafa Jatoi, Former Prime Minister and Chairman NPP, has said that October 1990 general elections were "absolutely free, fair and impartial," he said, while asked by a correspondent on Friday to comment on the allegations, contained in the PDA white paper that the Oct. 1990 elections were rigged.

"At least, I am grateful to PDA that they have certified my over-whelming success from NA constituency from Sialkot in the Oct. 1990 election," He added.

He said the extracts, he read in the PDA white paper, are nothing but "rubbish." "As far as I am concerned, at least, the allegations concerning me and our constituencies are baseless, unfounded and a pack of lies," he said.

He said, "I challenge that these cannot be proved even today, adding, some of the stories in the PDA white paper have been carried from some weekly magazines, which contained these trash news at that time."

He refuted the charge that he then directed to keep polling stations in his NA constituency in Nawabshah district at a far distance so that voters couldn't come to vote in large numbers. He said, "Even today the location of these polling stations still exists and they have not disappeared or evaporated." Let's go and visit those sites and let the people decide whether the allegations are true or unfounded," he stated.

DAILY "NATION"
Islamabad

28th September, 1991

White Paper nothing but rubbish : Jatoi

ISLAMABAD—Ghulam Mustafa Jatoi, former Prime Minister and Chairman NPP has said that the October 1990 general elections were, "absolutely free, fair and imprtial".

He commented the allegations contained in the PDA White Paper that the October elections were rigged. "As far as I as caretaker Prime Minister in October 1990 is concerned, the general elections were absolutely free, fair and imprtial".

"At least I am grateful to the PDA that they have certified my over-whelming success from my National Assembly constituency from Sialkot in Punjab in the October 1990 election", he added.

The former Prime Minister said that the extracts he had read in the PDA White Paper were nothing but "rubbish".

"I challenge that these cannot be proved even today. Some of the stories in the PDA White Paper have been carried from some weekly magazines which contained these trash news at that time", Mr. Jatoi said.

Asked to comment on the allegations in PDA White Paper that as caretaker Prime Minister he directed that polling stations in his National Assembly constituency in Nawabshah District be kept at a far distance so that voters cannot come to vote in large numbers, he said. "Even today the location of these polling stations still exists and they have not disappeared or evaporated.

"Let us go and visit those sites and let the people decide whether the allegations are true and unfounded", he further stated.—PPI

PCPPI—4744(91) ECP—8-11-91—2500.

Sl. No.	Page Number	Paragraph Number	Line Number	Printed matter	Correct matter
24.	178		29	admitedly	admittedly
25.	184	3	7	Respondent	Respondent No. 1.....
26.	185	4	5	Paers	papers
27.	187	8	3	counting	re-counting
28.	190	13	5	ws	was
29.	190	13	9	petitioenr	petitioner
30.	190	13	10	espondents	respondents
31.	191	16	1	petitioenr	petitioner
32.	191	16	17	candidtes	candidates
33.	192		2	124,123	124,132
34.	192		10	centre constutency	entire constituency
35.	192		14	Court	count
36.	197	8	15	to fail to	to fail the
37.	198	13	5	out turn	turn out
38.	204	(iii)	2	swear Holy	swear on Holy
39.	232	3	3	wer	were
40.	235		9	KAHN	KHAN
41.	239	3	8	state	stage
42.	239	3	11	proud the	proud of the
43.	254	6	14	enclsoed	enclosed
44.	262	21	2	V.T.	T.V.
45.	271		10	is disclosed	in not disclosed
46	272	2	7	meeing	meeting
47	317		6	123 پوسٹل بیلٹ	132 پوسٹل بیلٹ
48.	317		11	کمیشن کے ذرائع نے یہ خبر	کمیشن کے ذرائع نے کہا کہ یہ خبر
49.	332	Item No. (41)	7	After "as under :— read "بیلٹ بکس میں سے ایک ووٹ کم نکلا"	

ERRATA

Sl. No.	Page Number	Paragraph Number	Line Number	Printed matter	Correct matter
1.	14	4	15	Materliness	masterliness
2.	41	1	1	constituional	constitutional
3.	66	14	2	ACt	Act
4.	135	1	4	منعقد	منعقد
5	135	1	5	رہا۔	رہا ہے۔
6.	139	1	1	Box is	Boxes are
7.	139	9	1	torch	a torch
8.	142	1	1	Box is	Boxes are
9.	142	9	1	torch	a torch
10.	147	Column No. 1	2	جاری کردی	جاری کردہ
11.	147	Column No. 1	9	عائد کیا گیا۔	عائد کیا گیا ہے۔
12.	147	Column No. 1	21	نے کہ	نے کہا کہ
13.	147	Column No. 2	14	ہے یہ	ہے کہ یہ
14.	151	Column No. 1	3	اتحاد کی	اتحاد نام کی
15.	151	Column No. 1	16	کہا کہ	کہا ہے کہ
16.	151	Column No. 2	8	بخش دیا ہے۔	بخش دیا گیا۔
17.	152	Column No. 1	14	متلعق	متعلق
18.	152	Column No. 1	41	کیمشن	کمیشن
19.	152	Column No. 2	1	کیمشن	کمیشن
20.	152	Column No. 2	22	جاتی ہے۔	جاتی ہے کہ
21.	152	Column No. 2	43	وہ خود ان	وہ خود بھی ان
22.	158	1	13	enforing	enforcing
23.	160	5	1	peitioner	petitioner