

Hamid Khan S/O Ghulam Hassan Khan R/O H.No.6, Falcons Enclave, Tufail Road, Lahore Cantt., Lahore.

Petitioner.

Versus

Khawaja Saad Rafique S/O Khawaja Muhamamd Rafique R/O H.No.86-D Block Defence Housing Authority, Lahore.

FINAL DECISION

This Election Petition was originally entrusted to the Election Tribunal, Lahore but, subsequently, vide orders dated 16.01.2014 passed by the Election Commission of Pakistan, it was transferred to this Tribunal, for hearing at Lahore.

2. During General Elections, 2013 the petitioner had contested from NA-125-Lahore-VIII. The Election Commission of Pakistan had notified the respondent No.1 Khwaja Saad Rafique as returned candidate. Feeling aggrieved, the petitioner has instituted the instant petition under Section 52, Representation of the People Act, 1976, read with Article 218(3) of the Constitution of the Islamic Republic of Pakistan.

3. The petitioner has claimed that election of the returned candidate be declared void and the petitioner himself be declared as returned candidate from NA-125 or in alternative the election be declared to be void as a whole and the orders for re-poll be issued, as well as criminal proceedings be initiated against the respondent No.1, and his Election and Polling Agents and other Supporters. It was contended that the polling scheme was not finalized until 10.05.2013, and even certain polling stations were added falling beyond the limits of the constituency. Further claimed that the returned candidate alongwith Mian Naseer, Yaseen Sohal, their Agents/ Supporters, with active connivance and support of Presiding Officers/ Polling Officers and the Police violated numerous provisions of the ROPA, 1976, with intent and purpose to manipulate the polls fraudulently to their benefit. Certain instances of alleged malpractices were also described in Para-6 of the petition, as well as some details were given in affidavits of witnesses.

4. In addition to the contesting candidates from NA-125, the petitioner also impleaded Mian Naseer and Yaseen Sohal MPAs, as respondents No.19 and 20. Except respondent Nos. 4, 19 and 20, other respondent did not join the proceedings.

5. The returned candidate/respondent No.1 has refuted all the allegations of misconduct and malpractices before or during the polls and claimed in the written statement that the Election Petition was defective in form and liable to dismissal as well as it lacked necessary details of alleged incidents. Violations of provisions of the ROPA 1976 were also raised.

6. The respondent No.4 also has filed his written statement, mainly supporting the allegations, contending that gross contraventions of provisions of the ROPA, 1976 were committed during the polls and massive rigging affected the election for entire constituency and violated mandate of the voters.

7. The respondents No.19 and 20, who were also notified as returned candidates from PP-155 and 156 respectively, were initially proceeded against ex-parte by my learned predecessor but subsequently on their request, ex-parte proceedings were set aside by my learned predecessor vide Orders dated 18.09.2013. I am unable to find out written statement filed by either of the respondents No.19 and 20, however, they have been joining the proceedings intermittently, as well as cross examined some of the petitioner's witnesses and also made their statements on oath and concluded their evidence voluntarily. It means that none of these two respondents was interested in filing written statement. The Notification of 1985 issued under Section 62(1) of the ROPA, 1976, requires a respondent to file written statement alongwith affidavits of witnesses, within 7 days of receipt of petitioner's notice about filing of the Election Petition. None of these respondents ever requested either to my learned Predecessor or to this Tribunal for permission to file any written statement. In fact, they filed affidavits as witnesses of respondent No.1 and same affidavits were adduced into evidence by them as their own witnesses. Since it is not a civil suit and the Tribunal was not obliged to require a respondent to

8. Following issues were framed by my learned predecessor:

ISSUES

Whether the election petition has been drawn up in utter disregard of the provisions of Section 54, 55 read with Section 63 of the Representation of People Act, 1976, and Notification No. F-1(685-Coord) 16.03.0985, if so, its effect? OPR 1.

Whether all the documents/ annexure relied upon by the petitioner have not been verified in accordance with law, if so, its effect? OPR 1.

Whether the petitioner failed to dispatch copies of the election petition and its annexures to all the contesting candidates under registered cover in terms of section 54 (b) ibid and clause 1 of above said Notification, if so, its effect? OPR 1.

Whether the petitioner failed to put forward specific instances of malpractices and instead introduced vague and general allegations, if so its effects? OPR 1.

Whether the illegalities/ irregularities/ corrupt practices/ malpractices set up in the election petition, if proved and established with evidence, would provide a legal basis to declare the election in question followed by the Notification by the Election Commission of Pakistan in favour of respondent No.1 declaring him as returned candidate, void as a whole? OPP.

Relief OP? Parties.

9. While deciding an application for additional issues, as well as application for verification of electoral record by the NADRA, this Tribunal re-framed the issues on 21.02.2014, mainly for the reasons that the onus upon the petitioner was not placed for proving the instances capable of invoking the provisions of Sections 68 or 70 of ROPA, as the previous issues out-rightly accessed to the effect of illegalities/irregularities/corrupt practices/malpractices. It was held that without allowing a party raising factual allegations to discharge onus of such assertions, the Tribunal cannot go into the question of consequential effect. Following issues were framed by this Tribunal:

ISSUES

Whether the election petition has been drawn up in utter disregard of the provisions of Section 54, 55 read with Section 63 of the Representation of People Act, 1976, and Notification No. F-1(685-Coord) 16.03.0985, if so, its effect? OPR 1.

Whether all the documents/ annexure relied upon by the petitioner have not been verified in accordance with law, if so, its effect? OPR 1.

Whether the petitioner failed to dispatch copies of the election petition and its annexures to all the contesting candidates under registered cover in terms of section 54 (b) ibid and clause 1 of above said Notification, if so, its effect? OPR 1.

Whether the petitioner failed to put forward specific instances of malpractices and instead introduced vague and general allegations, if so its effects? OPR 1

5. Whether the election of the returned candidate has been procured or induced by corrupt or illegal practice? OPP

6. Whether any corrupt or illegal practice has been committed by the returned candidate, or his Election Agent, or by any other person with the connivance of the candidate or his Election Agent? OPP

7. Whether the result of the election n has been materially affected for reason of failure of any person to comply with the provisions of the Act or the Rules or by prevalence of extensive corrupt or illegal practice at the election? OPP

8. If issues 5 to 7, or any of them, is proved in affirmative, then to what relief the petitioner will be entitled to? OPP

10. The petitioner's application made under Section 151 CPC for getting verified the entire record of NA-125 from NADRA, was disallowed on 25.2.2014, holding that, at first, the petitioner should conclude his evidence, and if instances of impersonation be apparent from such evidence, the petitioner may make a fresh request for comparison by physical persons having reliable and sufficient expertise in the science of finger prints. It was held in such a situation,

electoral forensics, in re: Makhdoom Syed Faisal Saleh Hayat. Vs. Ghulam Muhammad Lali and others E.P.No.192/2013, details whereof are provided in the aforesaid Order dated 25.2.2014.

11. After conclusion of petitioner's evidence, the petitioner made another application under Section 151 CPC for issuance of direction to the NADRA to verify the entire voting record of NA-125. Such application was heard and decided vide Order dated 26.06.2014, whereby the petitioner's application was partly allowed, in view of the evidence led by the petitioner, and following Commissions were ordered to be issued:

"Para-8-a. A Commission would be appointed by this Tribunal for taking in custody all the Polling Bags of NA-125 from the treasury and to keep in safe custody at a appropriate place, preferably in the office of the Provincial Election Commissioner Punjab, where round the clock security is available.

b. The Commission would examine and report on following aspects:

- *Whether complete polling bags for all the Polling Stations are available.*
- *Whether each polling bag for each Polling Station carries all the essential record as to be sealed therein under the Election Laws and instructions.*
- *Whether number of ballot papers issued is correct according to ballot papers count prepared by Presiding Officers of each Polling Station and submitted to the Returning Officer.*
- *Whether locked electoral rolls carrying entries on equal number of voters as declared by Presiding Officers in statement of counts in Form-XIV.*
- *Whether counterfoils on ballot papers contained all necessary entries and remarks as required by law.*
- *Whether sealed copies of statements of counts and ballot paper counts are available in polling bags and to get prepared on attested photocopy of such statements.*
- *Whether the polling personnel to whom election honorarium was paid for election duties for NA-125 was duly appointed in the statement of polling personnel prepared by the R.O/D.R.O (the Commission would only compare the list of authentic polling personnel with the receipts of payments of honorarium and may require such record for his inspection from the office of the DRO/DSJ Lahore).*

c. Simultaneously, a technical commission having expertise in Finger Print forensic would be appointed by this Tribunal to work together with the first commission and to submit report after technical appraisal of thumb impressions on electoral rolls at Polling Station Nos.5, 6, 98, 107, 110, 111, 120 that how many thumb impressions, with respect to serial numbers and CNIC numbers, are capable of being compared with specimens of thumb impressions.

d. After receipt of reports from these Commissions, this Tribunal would appoint one or more I.T professional of the NADRA to compare and analyze thumb impressions as to be decided by the Tribunal and to produce the report on similarity or otherwise, alongwith a report if such voters with reference to their CNIC numbers were duly registered voters of NA-125 or if anyone of them had cast vote in more than one constituency.

e. It is further directed that the contesting candidates would be authorized to remain present while retrieving polling bags from the treasury and their transit to the designated place for temporary storage for commission's examination. They also may put their seals at opening and closing of temporary store where such polling bags would be contained. If polling bags are found in worn out condition, the commission may ask the petitioner to provide canvas bags for safe storage of election material until examination is completed and for returned to the treasury after the whole exercise.

f. The Commissions would be authorized to seek assistance from the parties or any concerned authority in discharge of their functions.

g. The contesting parties may propose names of first two commissions for appointment with concurrence on 28.6.2014, otherwise the Tribunal would proceed to appoint appropriate persons. Fee of the Commission would also be decided in the Orders of appointment. The Commissions would carry out their functions on day to day basis with all expectance, transparency, in presence of representative of such candidates as would opt be present such proceedings."

12. The First Commission was issued to Sheikh Muhammad Tareef, former District and Sessions Judge, the Second Commission was issued to Dr.Amir Ali Hussain, Project Director, National Forensic Science Agency, Islamabad, and the third Commission was issued to Mr.Ghazali Zahid, Director NADRA. Reports from all the three Commissions have been received

"10. However, apart from petitioner's application, I find report of the first Commission deficient in view of aspects entrusted to him for reply vide order dated 26.6.2014. The first Commission has not given the report of examination for each Polling Station separately, but has made cumulative remarks basing upon his observations. At one point it is stated that polling bags were bearing wrong numbers and also of Provincial Assembly and even otherwise they were not complete, rather contain, waste and litter having a smeary dirt and mixture of disagreeable to the sight which reflect carelessness of polling personnel. At the other place, it is remarked that on close examination of bag of each polling stations shows worthless things in a heap of litter and on serious searching nothing is recovered so as to ascertain what articles are material provided to each polling station.

11. Since remarks are generalized, and not specific to particular Polling Stations, so either specific answers are to be demanded after fresh examination of record or new Commission is to be appointed for the purpose. Keeping in view the time to be consumed in such exercise again, as well as incurring valuable expenditure afresh, I would like to summon polling bags of 10 polling stations; 5 of each party, to be selected either by consensus of parties, or if there is no consensus, by the Tribunal itself, preferably from polling stations where each party bagged the highest votes. Such bags would be examined by the Tribunal in presence of parties/ counsel, in view of original reference to the Commission dated 26.6.2014 and examination report of such inspection would become part of record."

14. In pursuance of such Order the petitioner and the respondent No.1 were allowed to suggest 5 Polling Stations each of the other side for examination of their record by the Tribunal itself. Since the parties could not reach at consensus, so vide Order dated 13.03.2015 the Tribunal selected following Polling Stations for verification of their record by the Tribunal itself.

<u>Polling Stations Nos.</u>	<u>Hamid Khan</u>	<u>Khwaja Saad Rafique</u>
30	180	942
32	147	954
46	842	199
98	802	228
112	216	898
120	161	728
191	267	578
193	848	228
194	824	154
195	1220	301

It is significant to note that at 5 of aforesaid selected Polling Stations, the petitioner was successful with big margin and at the other 5 Polling Stations, the respondent No.1 was winner with significant margin. The record of such polling stations was requisitioned through the DRO/R.O and whatever record was made available, it was examined by the Tribunal in presence of representatives of the parties on 18.03.2015, 19.03.2015 and 21.03.2015, where after the report of examination was prepared on 26.03.2015 by the Tribunal and placed on record for availability to the parties. Thereafter, the respondent No.1, 19 and 20 led their evidence which was concluded on 04.04.2015.

15. Record perused. Arguments heard.

16. Issues are decided as follows:

I may take issue No.3, first.

ISSUE NO.3.

23. I may refer to the application made by the respondent No.1 under section 63 read with Section 54 (b) of Representation of the People Act, 1976, for dismissal of Election Petition mainly on allegation of non-compliance of provisions of Section 54 (b) and Section 55 ibid, contending that complete copy of the Election Petition alongwith annexures was not provided to the respondent No.1, which eventually would result into dismissal of Election Petition. Such petition was heard by my learned predecessor, and vide Orders dated 22.10.2013 the same was disposed of with observation that returned candidate would be at liberty to prosecute and

communication to the respondent No.1 was only 70 grams whereas the election petition alongwith annexures weighed over 2 KG, and thus it is to be inferred that the petitioner failed to provide complete annexures alongwith the election petition as required under the law. Section 52(2) of the Representation of the People Act, 1976 requires as follows:

"52(2) An election petition shall be presented to the Commissioner within [forty-five days] of the publication in the official gazette of the name of the returned candidate and shall be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury in favour of the Commissioner, under the prescribed head of account, as security for the costs for the petition, a sum of one thousand rupee."

I may also reproduce Section 54(b) *ibid* as follows:

"54(b) any other candidate against whom any allegation of any corrupt or illegal practice is made and shall serve personally or by registered post on each such respondent a copy of the petition."

25. I may refer to Para-1 of the Notification dated 16.03.1985 issued by the Election Commission of Pakistan reproduced on under:

"Every election petition shall be filed with the Secretary, Election Commission of Pakistan, Islamabad, in triplicate and shall be accompanied by all such documents and affidavits of the witnesses as are desired: to be produced by the petitioner alongwith the receipt indicating that the copies of the petition and the attached documents and the affidavits annexed to the petition have been supplied to the respondent."

26. Section 63(a) *ibid* entails dismissal of the election petition if the provisions of Section 54 or 55 have not been complied with. Section 54(b) simply requires a petitioner to serve personally or by registered post to each of such respondents a copy of the petition. It does not stipulate a condition for annexing all affidavits and annexures with copy of election petition to be provided to a respondent. Such provision was added subsequently in Para-1 of the Notification dated 16.3.1985. Had the provision of Section 54(b) sufficient to cover annexures and affidavits of witnesses to be supplied with Election Petition, there would have been no legal necessity to require such documents to be furnished through Para-1 of the aforesaid Notification. As such it is evident that while referring to Section 54(b) *ibid* the statutory provision would be complied with if a copy of election petition simplicitor is served upon the respondent or provided through registered post. The provisions of Para-1 of the aforesaid notification requiring all documents and affidavits of witnesses to be supplied to a respondent alongwith copy of the Election petition is not of mandatory nature because the Notification dated 16.03.1985 was issued under Section 62(1) of Representation of the People Act, 1976, whereas Section 63 *ibid* covers only two full Sections i.e. 54 and 55 and one partial Section i.e. 62(4). As such any instruction, direction, requirement or Notification issued by the ECP under Section 62(1) Representation of the People Act would not entail penal consequences under Section 63, and hence the aforesaid requirement envisaged in Para-1, would not be of mandatory nature, and without going into debate as to what was the weight of the election petition or its annexures or whether such allegation was proved in absence of summoning postal authorities, it is held that the objection is devoid of force, hence, repelled and this issue is thus decided in negative.

ISSUES NO.1 & 2

17. Both the issues are inter-linked, hence taken up together. The respondent No.1 has taken a plea that petitioner failed to comply with the provisions of Sections 54, 55 and the Notification dated 16.3.1985 as well as the petition was not duly verified, hence liable to dismissal.

18. So far as the question of furnishing incomplete copy of election petition is concerned, with reference to Section 54(b) and the Notification of 16.03.1985, that has already been discussed while deciding issue No.3 and need not be revisited.

19. On the plea of verification, learned counsel for the respondent has submitted that verification at the foot is defective as well as the petitioner has filed a short affidavit with the Election Petition. Moreover, the schedules and annexures filed with the election petition were not duly verified as affidavits of witnesses filed with the petition were not verified by the petitioner. Reliance is placed on 2007 SCMR 34, 2007 SC 362, PLD 2005 SC 600, 2010 SCMR 1877, 2000 SCMR 250.

also another affidavit with the election petition Ex.PZ dated 2.7.2013 which is signed by the petitioner but specific verification on Oath before Oath Commissioner was not recorded thereon, so such affidavit is held inadmissible. Subsequently, after re-framing of issues by this Tribunal the petitioner had filed a detailed affidavit Ex.PAA, which was accepted as examination-in-chief. It has been fully settled now that the petitioner either may verify the contents of the affidavit at foot of the petition or may annex an independent affidavit. It also has been settled that it is not necessary for the petitioner to provide paragraph numbers in the verification clause or to declare specifically as to which paragraph he believed true as per his knowledge and which paragraphs he believed correct as per his information. The verification was signed by the petitioner at the foot of the election petition duly verified on Oath before an Oath Commissioner the same day, thus finds no defect worth credit to throw away the petition on this ground alone.

21. Now I may refer to the ground that on affidavits of witnesses filed by the petitioner alongwith the election petition, such affidavits being not verified by the petitioner on Oath would make the election petition liable to dismissal under Section 63 read with Section 55(3) *ibid*.

22. Section 55(3) requires an election petition as well as every schedule or annexure to the petition to be signed by the petitioner and verified in the manner laid down in Code of Civil Procedure for verification of pleadings. Now it is to be examined if affidavit of a witness was required to be filed with an election petition and whether such affidavit would be considered as annex to the petition. Section 55 does not require itself a petitioner to file any affidavit of the witnesses to be produced before a Tribunal. Such provision comes through Paragraph-1 of the Notification dated 16.3.1985 issued by the ECP under Section 62(1) of Representation of the People Act, and potential of such notification has been discussed earlier and it has been held that anything required through a Notification issued under Section 62(1) *ibid* would not be considered a mandatory requirement of law and a default in fulfilling such provisions would not entail penal consequences. It has been held consistently by this Tribunal that requiring the parties to file affidavits of witnesses through Paragraph-1 *ibid* before framing of issues runs counter to principles of natural justice and fair play. Only after framing of issues parties are sure as to what is to be proved and by whom and so they should file list of witnesses and affidavits of witnesses. Moreover, affidavit of a witness is the substitution for examination-in chief and not an addition or annex to the election petition. Once an affidavit is signed and duly attested by an Oath Commissioner in prescribed manner, it becomes admissible in evidence even without additional verification by a petitioner. As such these objections being devoid of substance are repelled, and issues No.1 & 2 are decided in negative.

ISSUE NO.4

27. The respondent No.1 has claimed that the election petition does not disclose necessary details of allegations of corrupt or illegal practices, as required by Section 55 (1)(b) of the ROPA and non-fulfillment of statutory condition would make the instant petition liable to dismissal under Section 63 *ibid*.

28. I may refer to Paras 2 to 5 of the Election Petition and later Para-6 (a to r) of the election petition, from page-3 to page-16 and then Para-9(a to h) of the petition page at 16 to 23 which all dilate upon details of allegations and wherever possible show names and places relating to such allegations. By giving so much details spreading over about 20 pages, it cannot be said that allegations raised were vague or thirsty of necessary details. The obvious reason for requiring a petition to provide such details is to bind down a petitioner to facts pleaded while leading evidence, as well as to facilitate a respondent to understand nature of allegations for preparation of defence. Obviously, every word of a witness likely to be produced is not required to be provided in pleadings. As such this plea also goes without substance and is turned down and this issue is decided in negative.

Issues No.5 and 6.

29. Both the issues are inter-twined and similar evidence received thereon, hence these are being decided together.

30. Mr.Hamid Khan, the petitioner (PW-12) has filed his affidavit as Ex.PAA as examination-in-chief. Following is the summary of allegations raised by the petitioner in his affidavit.

While all other provincial legislatures in the country have elected the Election Commission, the Government of Punjab has not done so.

Presiding Officers were employees of Education Department and the Police was under administrative control of Home Secretary.

Polling Scheme was not finalized till 10.5.2013 and certain polling stations were added beyond the jurisdiction of NA-125.

Khwaja Saad Rafique, Mian Naseer and Yaseen Sohal and their Agents with active connivance and support of Polling Staff and the Police manipulated the Polls to their benefit and caused massive rigging.

Policy of 'go slow' was adopted at majority of Polling Stations, especially at female Polling Stations to reduce the number of votes cast.

The polling process did not start at P.S.145 and 146 until 4 p.m.

Polling Stations set up in suburbs and villages remained in possession and control of Khwaja Saad Rafique, Mian Naseer and Yaseen Sohal.

Bogus/unverified votes were cast especially at Polling Station Nos.162, 163 and 179.

Ballot boxes and papers were tampered with.

Voters were harassed and assaulted by Khwaja Saad Rafique, Mian Naseer, Yaseen Sohal and their Agents. Final results and polling material were returned by Presiding Officers on 12.5.2013 from 9 a.m. to 4 p.m, leaving ample time to tamper with ballots/results.

With reference to Polling Agents, the petitioner has quoted some instances of alleged malpractices, which were witnessed by his Agents, which are not being reproduced here but would be taken up while discussing statements of Polling Agents as primary evidence.

Despite extension of polling time till 6 p.m. by Order of the Election Commission of Pakistan, the polling process was forcibly stopped at 5 p.m. at majority of the polling stations by Presiding Officers.

No results were provided to the R.O. after 9.30 p.m. on the polling night and Polling Agents were physically threatened and removed from polling stations and were excluded from the counting process, in collusion with Khwaja Saad Rafique, Mian Naseer, Yaseen Sohal and their Agents.

Statements of count were prepared in absence of petitioner's Polling Agents, which are fraudulent, illegible, incorrect and lacking stamps or thumb impressions. Male Presiding Officer was posted at female P.S.No.129.

Hundred percent voting was recorded at P.S No.124, 23, 2, 57, 7, 253, 85, 255 and 233, 171, 163, 288 and 261.

31. Mr.Abdul Latif Hanjra, PW-1, has filed the affidavits as Ex.PA (under objection) and Ex.PB. The PW-1 through affidavit Ex.PB has claimed to be the Election Agent for Mr.Hamid Khan. It was deposed that he visited various polling stations throughout the day especially those wherefrom complaints of illegalities and irregularities were reported. Following is the summary of his deposition:

i) At P.S Nos.43, 44, 45, 46, 50, 51, 52, 53, 58-62, 93-100, 104-105, all set up in R, S and Z blocks of the DHA, Presiding Officers adopted the policy of go slow to ensure with minimum votes were cast as well as Presiding Officers and staff misled the voters to deprive them of right of vote.

ii) At P.S.250 Presiding Officer and staff were preventing pro-PTI voters from voting but were asking them to leave the Polling Station and there was no polling for two hours.

iii) No polling had started at P.S.No.122, 123 until 11 a.m. when ballot boxes were already sealed with ballot papers inside.

iv) At P.S.No.261, 262, the voters were protesting against unlawful stamping of ballots by polling personnel.

v) At P.S.260 Presiding Officer was threatening voters of arrest and assault.

vi) No polling started at P.S.No.145 and 146 till 4 p.m.

vii) At P.S.No.83, 84, 66, 67, 224, 225, 219, 221, 179, 107, 110, 111, 120, 121 and 11-12 polling staff was forcing people to stamp on SHER.

viii) Despite extension of polling time till 6 p.m. by the Election Commission of Pakistan all polling stations were closed at 5 p.m. and voters inside the polling stations were ousted by the police without allowing them to vote.

Office of the R.O. NA-125 Mr.Khalid Mahmood Bhatti, for getting final result when the R.O informed them that the results with ballot boxes were returned by Presiding Officers on 12.5.2013 between 9 a.m and 4 p.m.

33. Mr. Shanmim-ur-Rahman, PW-3 has filed affidavits Ex.PE (under objection) and Ex.PF. He also has filed a copy of the application Ex.PG, which was made to the DRO. In Ex.PF it is deposed that alongwith the petitioner, he visited Office of the R.O. NA-125 on 13.05.2013 to get final result when they were informed by the R.O. Mr.Khalid Mahmood Bhatti that final results alongwith ballot boxes and material were submitted by Presiding Officers on 12.5.2013 between 9 a.m. and 4.0 p.m.

34. Mst.Zainab Lodhi, PW-4, has filed affidavits Ex.PH(under objection) and affidavit Ex.PJ. As per Ex.PJ the PW-4 has claimed to have served as Polling Agent for the petitioner at P.S.No.98. It is deposed that after a, while from commencement of polls, Khwaja Saad Rafique and Mian Naseer reached there, disrupted the polling process by fighting with Polling Agents and voters and misbehaved with PW-4, causing annoyance to other women and demanded them to leave the premises. Further claimed that at around 11 a.m., Khwaja Saad Rafique and Mian Naseer alongwith 10-15 men reached there, and intimidated the voters, whereupon they called the Police, and Army personnel to escort them out of the Polling Station. It is stated that the Polling Staff was going slow with voting process by design, and many voters were dissuaded, and many voters were allegedly declined to exercise their right of vote on various excused and Polling Officers were not striking out names of voters on electoral rolls. It is further deposed that Khwaja Saad Rafique and Mian Naseer also returned in afternoon with 50-60 persons and stayed outside the Polling Station to harass the voters, whereupon Army was called for assistance. It is added that Khwaja Saad Rafique and associates forced the gates of Polling Station shut, despite extension of polling time, and the Army intervened and polling extended upto 6.15 p.m. It is stated that the ballots were counted in presence of Army officials and results were announced at around 9.30 p.m. but copies of statements of counts were not provided to Polling Agents until they protested, whereupon copies were given at 12.30 a.m.

35. Rashid Ahmad Khan, PW-5, has produced the affidavits Ex.PK (under objection) and Ex.PL. As per Ex.PL, he served as petitioner's Polling Agent at P.S.No.120. It is claimed that when he reached the Polling Station at 9 a.m. Mian Naseer candidate from PP-155 was inside the Polling Station with bodyguards, and no other was permitted to enter, and when ultimately he succeeded to go inside, he saw Mian Naseer and his bodyguards standing next to ballot boxes and ballot books were placed on top of the boxes, whereas Presiding Office, was defending the presence of Mian Naseer. It is claimed that the ballot boxes placed in the corner were already stuffed with ballot papers and when two persons tried to make video of such rigging, one of them was severely beaten by Mian Naseer's bodyguards. It was further deposed that the polling was stopped at 5.00 p.m and no voter was permitted to cast vote thereafter as well as he was kept away from the counting process, and copy of statement of count was also not provided to him, and when demanded, he was manhandled and driven out forcibly and the doors then were locked from inside.

36. Mrs.Nelam Irshad, PW-6, has submitted her affidavits Ex.PM (under objection) and Ex.PN. As per Ex.PN she was serving as Polling Agent for the petitioner at P.S.No.6. She said that the polling started at 8 a.m. sharp but despite setting up four booths, only 3 Polling agents of the PTI were allowed. Further she deposed that at about 10.0 a.m. Khwaja Saad Rafique reached there with entourage who agitated to wearing party badges by PTI Polling Agents, despite party badges worn by PML(N) Polling Agents and he, alongwith his driver, abused her. She also witnessed armed personnel with PML(N) vehicles. It is further claimed that many a times ballot books were taken by Polling Staff downstairs on the pretext of assisting handicapped voters, whereas only one such handicapped woman came to cast vote. It is deposed that in addition to Polling Agents, other women of PML(N) remained inside canvassing voters for PML(N), despite her complaint to the Presiding Officer. Further deposed that at the time of counting only one Polling Agent of PTI was allowed to remain present whereas 4 representatives of PML(N) were permitted. Finally, she stated that results were announced at 9 PM when the PTI Agent received signed statement.

37. Begum Tasneem Suadat, PW-7, has filed affidavits Ex.PP (under objection) and Ex.PQ. As per Ex.PQ she claimed to have served as Polling Agent for the petitioner at P.S.No.120. It is claimed that when she reached the Polling Station at 9 a.m. Mian Naseer candidate from PP-155 was inside the Polling Station with bodyguards, and no other was permitted to enter, and when ultimately she succeeded to go inside, she saw Mian Naseer and his bodyguards standing next to ballot boxes and ballot books were placed on top of the boxes, whereas Presiding Office, was defending the presence of Mian Naseer. It is claimed that the ballot boxes placed in the corner were already stuffed with ballot papers and when two persons tried to make video of such rigging, one of them was severely beaten by Mian Naseer's bodyguards. It was further deposed that the polling was stopped at 5.00 p.m and no voter was permitted to cast vote thereafter as well as she was kept away from the counting process, and copy of statement of count was also not provided to her, and when demanded, she was manhandled and driven out forcibly and the doors then were locked from inside.

She told that Khwaja Saad Rafique came to the ladies polling booth at-least twice despite their protest. It is claimed that one Polling Officer was found near the ballot box assisting voters to fold the ballot in appropriate manner and she had been watching stamping on ballots and getting additional thumb impressions of voters on front of the ballot, thereby disqualifying its relevancy at the time of counting. Further she told that after 5.00 p.m. only one PTI Agent was allowed to stay inside and they were ousted whereas polling continued till 6.00 p.m.

38. Mst.Iram Akmal, PW-8, filed the affidavits Ex.PR (under objection) and Ex.PS. As per Ex.PS she was serving as petitioner's Polling Agent at P.S No.111. It is deposed that she reached to Polling Station at 8.30 a.m. but entrance was not allowed until 9.00 a.m. when the polling commenced. It is contended that she was shown empty ballot boxes on commencement of polls but was not allowed to count ballot paper books or to note their serial numbers. Further she told that many voters were not given ballot papers and were misguided by Polling Officers that their votes were already cast, and when they continuously protested to the Presiding Officer against such practice, she promised to allow voters to cast votes who put thumb impressions on ballot books. Also she claimed that the Polling stopped at 5.00 p.m. despite extension of time till 6.00 p.m.

39. She claimed that after close of the polls, ballot boxes were emptied in presence of Polling Agents and herself and ballots were counted within their view but despite getting her signatures on blank Form-XIV, copy of the result was not given to her.

40. Shoaib Nabi, PW-9, has filed affidavits Ex.PT (under objection) and Ex.PU. As per Ex.PU he served at P.S.No.110 being petitioner's Polling Agent, where he arrived at 8.35 a.m. It is deposed that the President and the administration of Punjab Cooperative Society kept on visiting inside the Polling Station despite protest to the Presiding Officer as well as one of such persons had been indicating to Polling Officer about identity of PTI voters and such voters were being told that their names did not exist in the list. Also he told that the President of the Society kept on canvassing voters in queues to vote for 'SHER' as well as the polling was stopped at 5 p.m. and thereafter only a few people were permitted to cast votes but on the recommendation of the Punjab Cooperative Society. It is claimed that on completion of final count, result was forcibly announced and final result was not provided to him but Presiding Officer told to get final result next day from Office of the R.O. but on his insistence he was kept on waiting till 11 p.m. and thereafter she was ousted with aid of police.

41. Dawood Tanvir Ahmed Khan, PW-10, has filed affidavits Ex.PV (under objection) and Ex.PW. As per Ex.PW he was serving as petitioner's Polling Agent at P.S No.107. It was deposed that he reached the Polling Station at 8.45 p.m. and was not allowed to enter until 9 a.m. when voting already had started and inside he saw members of the administration of Punjab Co-operative Society, who were assisting Presiding Officer and the Polling Staff whereas the President and General Secretary of the Society kept on visiting repeatedly, despite his protest to Presiding Officer and they were identifying pro-PTI voters to the Polling Officer and such people were informed by such Polling Officer that their names were not in the list. Further he told that Presiding of the Society kept on canvassing voters in lines to vote for PML(N). It is claimed that polling was stopped at 5 p.m. and no voter was permitted to cast votes thereafter but the President and General Secretary of Punjab Co-operative Society brought a few people around 6 p.m. who were permitted to cast votes. It is also complained that he was kept standing at a distance at the time of count and he was unable to examine the accuracy of counting as well as no statement of count was issued to him and when protested, he was kept in awaiting till 11 p.m. where after through Police he was ousted forcibly.

42. Mokarram, PW-11, has filed affidavit Ex.PX (under objection) and Ex.PY. As per Ex.PY he served as petitioner's Polling Agent at P.S.No.5. He reached the Police Station at 9.00 a.m. and found Khwaja Saad Rafique at 10 am hurling abuses towards many voters and, PTI Polling Agents. He entered into Polling Station at 2 p.m. wearing a shirt with Imran Khan's picture, whereupon Khwaja Saad Rafique gripped his shirt from collar and started pulling out as well as abused him. Finally, he got released from his grip, took off his shirt, and got an extra shirt from his colleague. Polling was stopped for 15 minutes at 5 p.m. and then it ended at 6 p.m. when no other representation was made.

were filed. Objections were raised against these affidavits as not being duly verified on Oath. All these affidavits carry attestation stamps of Oath Commissioner but without a declaration of administration of Oath to the deponent and hence, without hesitation, it can be held that they were not proper affidavits and thus inadmissible into evidence as examination-in-chief. Subsequently, this Tribunal re-framed the issues and pursuing its consistent view about the Notification dated 16.03.1985 issued by the Election Commission of Pakistan, under Section 62(1) ROPA, as non-mandatory, and holding the requirement of filing of statements of witnesses before framing of issues as contrary to norms of natural justice and fair play, in this petition as well both the parties were allowed to file fresh lists of witnesses and their affidavits. None of the respondents filed any fresh affidavits, however the petitioner filed fresh affidavits of 11 witnesses and of the petitioner as well. Nature and substance contained in such affidavits filed subsequently remained the same as of affidavits previously filed, which today have been held as invalid. As such while accepting objections against first affidavits filed with the Election Petition, any objections against subsequent affidavits filed after framing of issues with permission of the Tribunal, are repelled.

44. Now I may examine the potential of statements of petitioner's witnesses in the light of cross examination conducted from the opposite side. Mst.Zainab Lodhi, PW-4 in cross examination has answered that she was working in the petitioner's office since about 13-14 years and she got stamp paper Ex.PH through a lawyer whereas affidavit was drafted by her lawyer Ch. Muhammad Hussain Chotya on her instructions. It is answered that she did not get affidavit Ex.PH attested herself but same was got attested through her lawyer. She was not cross examined about the subsequent affidavit Ex.PJ. Ex.PH, which was filed with the Election Petition, already has been held inadmissible whereas Ex.PJ was considered admissible. In absence of cross examination conducted on Ex.PJ, such affidavit would remain in force.

45. Rashed Ahmad, PW-5 has stated in cross examination that stamp papers for both the affidavits were not purchased by him nor he knew as to who purchased the stamp papers, then added that those were got purchased by his lawyer. He expressed ignorance as to where affidavits were attested. Since PW-5 did not appear anywhere for attestation of affidavit on Oath, so his affidavit Ex.PL would not be read into evidence. His previous affidavit Ex.PK being filed with the Election Petition without formal verification also has been held as inadmissible.

46. Miss Neelam Irshad Sheikh, PW-6 has stated in cross examination that for both the affidavits she paid amount to a peon in the petitioner's office. It is stated that she had given Rs.200 for purchase of stamp papers for 4-5 witnesses namely; Iram, Karam, Aneeka, Zarak, Shoaib. She could not name the peon, who purchased the stamp paper for affidavits. She told that both the affidavits were prepared in the petitioner's office at Lahore and both the affidavits were attested in the same Office after she read-over.

47. Mst.Iram, PW-8 however has stated in cross examination that she had given the amount for purchasing stamp paper to Neelam Irshad and the second stamp paper was purchased by herself whereas both the affidavits were attested at Civil Court and she remained there with her husband.

48. Shoaib, PW-9 has conceded that his signatures on both the affidavits do vary. It is stated that stamp paper for first affidavit was purchased by Neelam and he collected from her home and for the second affidavit he did not recall as to who purchased the same. He told that both the affidavits were typed at clerical office of Punjab Society and they probably were got verified by lawyer. He could not name of the lawyer but then volunteered that his lawyer was Mr.Chotya (petitioner's counsel). Statements of such witnesses about purchasing of stamp paper, their requisition and attesting are at variance but I do not find sufficient material to discard any of such affidavits and would proceed to examine the contents of their statements.

49. Begum Tasneem Suadat, PW-7 in cross examination has expressed ignorance as to where her affidavits were attested. She further added that she had delivered to Madam Neelam after signing the same in the same Office. Since PW-7 did not appear for attestation of affidavit anywhere and expressed ignorance about attestation, so her affidavit Ex.PQ is ignored whereas the previous affidavit Ex.PP has already been held as inadmissible being not properly verified.

50. Dawood Tanvir, PW-10 has answered in cross examination that both the affidavits were got prepared by Madam Neelam and stamp papers were purchased by her whereas he signed the affidavits after reading them over.

through Asif Khan. Rather stamp papers for all the subsequent affidavits were purchased through Asif Khan. PW-10 did not appear for attestation of affidavits anywhere, so his subsequent affidavit Ex.PW is ignored whereas the previous affidavit Ex.PV already has been held inadmissible for lack of proper verification.

51. Mokarram, PW-11 has replied in cross examination that both the stamp papers for his affidavits were purchased by Madam Neelam, which were prepared in his presence in the petitioner's evidence. Further he told that both the affidavits were already attested before his signatures thereon. Such a statement is sufficient to discredit authenticity of the affidavit Ex.PY and the same is thus ignored whereas the previous affidavit Ex.PX being lacking proper verification has already been held as inadmissible.

52. The petitioner was examined as PW-12, who produced the former affidavit as Ex.PZ and later affidavit as Ex.PAA. Objection was raised against first affidavit not prepared in accordance with law and that second affidavit was not annexed to the Election Petition. Objection against first affidavit has already sustained and such affidavit has been held inadmissible. The second affidavit was filed after reframing of issues in pursuance of Orders of this Tribunal, hence it was not possible to annex such affidavit with the Election Petition. The objection is thus over-ruled.

53. The petitioner also got summoned some official witnesses, who were recorded as Tribunal witnesses.

54. Mrs.Sumera Kausar, Lecturer, TW-1 served as presiding Officer at P.S.No.146. She has verified her report Ex.TW-A wherein it was informed that the wrong list which was given to them, those were delivered at 1.50 p.m. and polling was continued. In cross examination she told that such report perhaps was delivered to the R.O. It appears that she wanted to inform that, initially, wrong electoral rolls were provided, which were corrected at 1.50 p.m.

55. Muhammad Javaid, TW-2, Assistant Director Fisheries served as Presiding Officer at P.S.No.145. He has verified his report Ex.TW-B and explained that part of the report was in his handwriting and Part-A by Hamid APO but however he signed after recording of Part-A.

56. In cross examination he told that at his Polling Station, two out of four electoral lists were not of their polling station, and so polling could not start for those lists, and on the insistence of some voters he provided the report Ex.TW-B to one of them wherein it was scribed that for two electoral lists, which were not received, polling could not commence at booth No.1 and booth No.2 until 1.45 p.m. It is stated that the voting remained in progress for the voters out of the two lists, which were correctly delivered.

57. Mr.Nazir Ahmad Gajana, the then District and Sessions Judge, Lahore/ DRO appeared as TW-3. It was contended that he has been using cell phone 0304-5058300, but could not recall if the petitioner called him on his cell on the polling day between 10.30 and 11 p.m., however he did not rule out such call. It was not conceded that the results were stopped. He expressed ignorance if the R.O of NA-125 had switched off his mobile after 10 p.m. or if the petitioner complained to him about such fact telephonically. He expressed ignorance if after 9.30 p.m. on the polling night results were not delivered to the R.O till 9 a.m. He told that presently he was using a different mobile number and the data on his previous mobile phone for the polling day and night was not available but however, he offered no objection if call data record of his mobile phone be retrieved.

58. In cross examination he told that he did not receive any written complaint about any rigging or misconduct on the polling day about NA-125, volunteered he received no oral complaint as well.

59. The then DRO Lahore volunteered that in fact the Election Commission of Pakistan itself was responsible for delay in compiling the results as they had introduced computerized Result Management System (RMS) and R.Os. throughout were directed to feed results in RMS instantly for making available to the Election Commission of Pakistan immediately but such system slowed down gradually, and after midnight it was stalled.

60. Mr.Khalid Mahmood Bhatti, the then R.O. NA-125, TW-4, has replied that he had undertaken the whole electoral exercise from the day of issuance of nomination form, consolidation of result and consignment of record to the treasury as well as the results were communicated by him to the Election Commission of Pakistan. The petitioner's

results. He told that the R.Os were not given any specific training for the use of RMS but however, R.O. was provided two Data Entry Operators. The Returning Officers were informed about the RMS in two-day session conducted by the Election Commission of Pakistan, prior to receiving nomination forms. He has replied that the RMS worked fairly until 11 p.m-12 midnight, where after it got slowed down due to over burden and, later, at about 3-4 a.m. they received instructions from the D.R.O to prepare preliminary results manually. The RMS system also kept on running but in low speed and by midnight of polling day about 25 percent results could be forwarded through the RMS.

61. He told that consolidation of result was carried out on the basis of statements of count received from Polling Stations whereas consolidated result was prepared in 1-2 days wherein representatives of some candidates participated. He has stated that the present petitioner had not participated in final consolidation process whereas notices to all the candidates were given. It is claimed that the representatives of the petitioner Ahmad Awais and Latif Hanjra had appeared to pursue the petitioner's application but after its decision they did not join further proceedings.

62. The witness has explained that the consolidated result was based upon statement of count received from polling station as well as the postal ballots received. It is stated that the ballot papers, counterfoils etc. were received in prescribed bags provided by the Election Commission of Pakistan, however, some of the Presiding Officers used extra private bags for the reason of heavy volume of baggage.

63. The Returning Officer has stated that at the stage of consolidation of results he had not opened polling bags and volunteered that as he recorded in his Order, since difference in votes between the top candidate and the runner up was so enormous, so there was no need for examination of invalid ballot papers.

64. Further he told that polling bags were not opened in his Office and the ARO was directed to forward to the Treasury, who delivered the bags to the Treasury on 14.05.2013, and the acknowledgement was received whereas the bags containing postal ballot papers were consigned to the Treasury on 7.8.2013.

65. He has conceded that the petitioner visited him 3-4 days prior to the polls alongwith an application that polling personnel not be taken from LDA and PHA and the R.O was not sure about request pertaining to another department. He, however informed that on such request they relieved Presiding Officers from LDA, PHA, TEPA and WASA. He replied that the petitioner also might have requested for change of polling personnel but it was not feasible in such a short time and remaining staff remained as such.

66. The R.O has conceded that most of the Presiding Officers were taken from Provincial Government but added that the list of polling personnel was not prepared by the R.O, but prepared in the Office of the DRO and then delivered to them. It is stated that such list of polling personnel was fed into their computer through USB by the Staff of the DRO Office as well as the substituted Presiding Officers on the petitioner's request who were taken from the list of reserved staff kept in the Office of the DRO. It is explained that the DRO Office had taken the responsibility to prepare a centralized list to avoid duplicity of duties of staff. He told that copies of list of polling personnel were provided to candidates on request. It was denied that any Presiding Officer performed duties on polling day from LDA and TEPA departments. He told that he received no written order for change of Presiding Officers on petitioner's request, but denied that the petitioner was not informed about such change. He volunteered that the lawyers appearing for the petitioner were intimated verbally but no written order was delivered. He told that on the polling day he mainly used mobile No.03004913992. He did not recall if he ever talked to the petitioner on his Warid No.03228081395. He could not recall if his Warid number was put off after 9 p.m. on polling night. It was denied that he did not receive any result from Presiding Officers until 9.30 p.m. to 9 a.m. next morning. It was also denied that the Presiding Officers changed the results on the polling night and did so in his supervision. He was unable to answer as to from which polling station 25 % of results were fed into RMS. He told that he made no visits around the constituency but the A.R.Os had travelled around. It is stated that on polling day, Presiding Officer of P.S.145 informed him at about 8.30 a.m. that list of voters of P.S 145 and 146 were interchanged, as both the polling stations were situated in the same premises, whereupon he sent Mr. Tabir A.R.O. alongwith electoral list to P.S.145 and 146, which were duly

67. He has denied that rigging was done in the results and he supervised such misconduct. It was denied that as per original results, the petitioner was winner and the returned candidate was the loser.

68. In cross examination conducted by the respondent No.1 the R.O replied that he remained in the Office on the polling day the whole day having landline and fax facility. However, no official mobile phone was provided for election exercise and he used his personal mobile phones. It is stated that wrong number was printed in postal orders of election personnel. He told that on the polling day someone from petitioner's side made a complaint about some fuss whereupon he sent his A.R.O Miss Nabila, however till the close of polls he got no other complaint from the petitioner's side.

69. The R.O. has stated that no voter complained to him that he was deprived of right of vote or if some impersonation was done whereas only two complaints about some scuffle at polling stations were received, whereupon he sent his A.R.O Miss Nabila. He told that he got no other complaint about disruption in polls, and except P.S.145 and 146 he got no complaint of non-commencement of polls. He told that no Presiding Officer made to him any written complaint. Further he told that the polling continued up till termination of extended one hour. The R.O. has replied that no candidate recommended to him for appointment of any specific person for polling personnel. He told that the record received from Presiding Officers was duly sealed and kept in safe custody with A.R.O.s. He further told that he got no complaint from Presiding Officers that they were obstructed about delivery of results to the R.O. Office. It is stated that no polling agent complained to him that any Presiding Officer was not preparing the results properly and that the results submitted to the Election Commission of Pakistan were prepared in accordance with law whereas consolidation was prepared within the prescribed time limits. He has conceded that invalid ballot papers were not examined for the reason recorded that the difference was enormous, volunteered that the petitioner's side had requested for opening of bags.

70. Mr. Justice (Rtd) Riaz Kiyani, Member Election Commission of Pakistan, was examined as TW-5 at Islamabad through a Commission appointed by this Tribunal. He deposed that on the advice of the then Chief Election Commissioner on the day of Election after casting his vote, he visited various polling stations in New Garden Town, Model Town, Faisal Town, and Gulberg, where after he reached the Office of Provincial Election Commissioner, Punjab, wherefrom alongwith Provincial Election Commissioner, Superintendent of Police and a Col. Incharge of Rangers on duty, he visited various polling stations and found the election being conducted smoothly, without any untoward incident. At about 2 p.m. the S.P. received a message that gates of Polling Station in Phase-II S-Block DHA were closed by the Rangers, whereupon he directed the PEC to report the DRO/R.O about the situation and to take immediate remedial measures. However, the PEC could not get in touch with DRO/R.O. so they decided to visit such polling station immediately. When they reached there, large number of people were present. The gate was opened on the direction of accompanying Col. of Rangers. On inquiry it was told that a major of the Rangers had ordered to close the gates but such Major was not available there. The Polling Station was visited and polling was going smoothly. When they came to the ground-floor, he met Mr. Hamid Khan, who complained of certain irregularities about Mr. Saad Rafique, who also arrived by that time and denied deviations from the Code of Conduct. He then told Mr. Hamid Khan that since such deviations were not observed by him, so he better make a complaint to the DRO/R.O. or may also file petition after the election. At the outer gate, finding big rush of voters and feeling that they might not be able to cast votes, he talked to the Chief Election Commissioner for extension of voting time by one hour, to which he agreed and all concerned were intimated accordingly, including the media.

71. He said that on the request of Mr. Hamid Khan he visited the Polling Station in Phase-II, R-Block where he found large number of voters and Mr. Hamid Khan complained that 'go slow' policy was being adopted by Presiding Officers to deprive voters to exercise their right of vote. He also instructed the Presiding Officers to speed up the voting as well as directed gate keepers not to close the gate until 6.0 p.m. after allowing entry to every voter standing outside.

72. In cross examination, Mr. Justice (Rtd) Riaz Kiyani

he met an old man who complained that Presiding Officer got marked finger of his wife and daughter as well as thumb impressions on electoral rolls and counterfoils but refused to handover ballot papers. It was however denied that the voters made complaints regarding rigging or any woman or any person present there made any allegation that Khwaja Saad Rafique threatened or committed rigging. It was denied that any voter present, was complaining about Presiding Officer being in league with Saad Rafique, who made the election process run go slow. He volunteered that by showing the results of DHA NA-125 he found that Mr. Hamid Khan won therefrom by considerable margin. It was also denied that the petitioner pointed him out rigging and irregularities being committed by respondent No.1 or if he took no action, intentionally.

73. He told that he was not fully aware about Result Management System but stated that such system was used by R.Os at the time of compiling of results. He was unaware about objective of the RMS. He denied that he got no connection with PML(N). It was also denied that he managed the entire election by selecting staff from Provincial employees, or if the whole staff was posted with his connivance but added that it was not the job of the Election Commission of Pakistan as the polling staff was to be appointed by R.O. It was also denied that he put pressure on the DRO and got appointed the staff for rigging.

74. In cross examination conducted by the respondent No.1 it was conceded that during his inspection the voters present were having badges on their shirt and some of them were wearing shirts with sketch of Imran Khan. He conceded that Saad Rafique made complaint in that regard but he regretted to interfere as no one can be asked to be nude and matter of badges was too small to be interfered with. It was conceded that such persons wearing shirts were present at female booths but by then he had not consulted the Code of Conduct or perceived the same as violation of Election rules. He told that on getting complaint of old man about non issuance of ballot papers to his family, he contacted the Presiding Officer, he made some explanation that it was done due to heavy rush and when the book of ballot paper was examined, ballot papers were still there and not removed, so he got satisfied about the reply but warned her to proceed correctly and to deliver ballot papers after getting thumb impressions. He said that he did not observe any irregularity being committed by any Presiding Officer and no Polling Agent lodged any complaint about irregularities and no voter lodged complaint of being deprived of vote.

75. It was conceded that except for closing of gate in S-Block Polling Station the Election remained smooth at all the polling stations which he visited. He conceded that foreign media and European Union observers appreciated the conduct of election in this constituency and added that appreciation was for the whole election.

76. Mr. Ishtiaq Ahmed Khan, the then Secretary Election Commission of Pakistan was also examined at Islamabad through Commission as TW-6. He deposed that it was his responsibility to ensure that election was conducted fairly, justly and honestly and to make all necessary arrangements to achieve such objectives and so the Election Commission of Pakistan made all possible measures and visiting observers recognized and appreciated General Elections 2013 as historic in Pakistan.

77. In cross examination conducted by the petitioner he conceded that he used mobile No.03435474400 on the election day. He recalled that on 11.5.2013 in evening Mr. Hamid Khan called him but exact purpose was not recalled, perhaps it related to the speech of Mr. Nawaz Sharif on the T.V. It was conceded that he made no instructions to staff about issuance of results. He has conceded that if Presiding Officers failed to provide copies of the results, it was clear violation of law. He has denied that during such period the Presiding Officers were in league with returned candidate and changed the entire ballot papers and ballot books. He told that the RMS was the project of United Nations Development Project, who were providing technical assistance to the Election Commission but he expressed inability to explain the operation of the system. He told that so far as he recalled, the R.Os were trained to operate such system.

78. He told that no system operators were provided by the Election Commission of Pakistan to the R.Os. but Operators were supplied from UNDP to assist in operating the system. He recalled that complaints were received regarding communication of results from various R Os

2013 as Ex.TW-6/A. He told that the RMS was introduced first time in Pakistan for transparency in election, however some complaints were received regarding communication of results from various R.Os due to some operational problem in the system. He could not recall if any instructions were issued by the Election Commission of Pakistan after receipt of complaints from R.Os because R.Os were ultimately responsible for submission of consolidated statements in Form-XIV and result of count in Form-XVII. It was denied that owing to stalling of the RMS system by getting the benefit the results were changed. He could not recall as to how many results were communicated through RMS, or when RMS slowed down and stalled as well. He added that it can be checked from the record of the Election Commission of Pakistan. He explained that it was joint decision of the Election Commission of Pakistan that every Member of the Election Commission of Pakistan would go to his Province and watch over the election.

80. He expressed ignorance as to which party recommended the nomination of Mr. Justice (Rtd) Riaz Kiyani. However he added that all Members of the Election Commission of Pakistan were selected by a Parliamentary Committee of the National Assembly.

81. It was informed that the NADRA was hired through contract with Election Commission of Pakistan to prepare computerized voters lists as under Article 220, the Election Commission of Pakistan was competent to direct any executive authority of the Federation to perform certain functions as deemed appropriate for conduct of just and fair elections. He told that the NADRA was also given the task of preparation of electoral rolls with photographs of voters and to devise mechanism to obtain thumb impressions of voters on electoral rolls to ensure their identity. The Secretary explained, through such exercise 37 million unverified voters were excluded from electoral rolls prepared in 2007 and it was done on the basis of comparison of 2007 voters' lists with the data base of NADRA. Regarding procurement of thumb impressions of voters he recalled that a separate decision was taken by the Election Commission of Pakistan made in the meeting with NADRA.

82. TW-6 further explained that the NADRA had expressed that their scanning system was able to read and verify thumb impressions to be obtained on electoral rolls through specific ink and the specifications were sent to NADRA to manufacture magnetic ink; whereas the NADRA was asked by the Election Commission of Pakistan to verify the thumb impressions if required by the Election Tribunals.

83. The Secretary, Election Commission of Pakistan has added that directions were not issued in respect of counterfoils. He told that complaints were received against certain R.Os. He has denied that elections 2013 were not fair and rigging was committed in constituency.

84. The TW-6 was further cross examined by counsel for respondent No.1 and he told that after election, many complaints under Section 103-AA were filed including of the petitioner, which were placed before the Election Commission of Pakistan and were adjudicated upon under Section 103-AA. He expressed inability to provide technical details of specifications of ink but told that these were communicated by NADRA to Election Commission of Pakistan and were forwarded to PCSIR Karachi after a joint meeting with NADRA and PCSIR. He told that PCSIR had confirmed that the ink was manufactured as per specifications given by NADRA and those samples were forwarded to NADRA as well, which confirmed the specifications twice or thrice and, then, was approved finally. He told that stamp pads manufactured by PCSIR had distinguishing features as marked either by magnetic ink or PCSIR for distinguishing purpose. He told that some inquiry regarding procurement of magnetic ink was initiated by Ministry of Science and Technology, which had sought Election Commission of Pakistan views but he was not sure if such inquiry stood finalized.

85. Now, I would like to take up specific allegations raised by the petitioner and his election Agent in their affidavits provided in examination in chief. The petitioner has claimed that all the provincial secretaries were changed before the polls but the Home Secretary Mr. Shahid Khan and Secretary Schools Mr. Aslam Kamboh were not changed, whereas most of the Presiding Officers were employees of Education Department and the Police were under administrative control of the Home Secretary. No witness is produced by the petitioner to elaborate that either of the secretaries exercised undue influence over the Education or the Police personnel