



In the Pakistan Information Commission, Islamabad
Appeal No 1394-10/21

Zahid Gishkori

(Appellant)

Vs.

Election Commission of Pakistan

(Respondent)

ORDER

Date: August 24, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated October 04, 2021 to the Commission, stating that he submitted an information request to the Chief Election Commissioner, Election Commission of Pakistan under the Right of Access to Information Act 2017 but did not receive the requested information from the public body.
2. The information sought by the Appellant is as follows:
 1. *“What is the total number of voter’s overseas (NICOP holders)? Can ECP give us country-wise breakup of these NICOP holders? Can you provide constituency-wise breakup for NICOP holders?”*
 2. *How many NICOP holders/Pakistanis expats are registered to voter lists presently?*
 3. *Did ECP formulate any policy/survey/study to evaluate how many Overseas could opt for online/internet voting in upcoming elections?*
 4. *Can ECP provide Constituency-Wise breakup of overseas voters who got registered themselves in voter’s lists?*
 5. *What could be an estimated cost of an internet voting system for overseas Pakistan, if it happens in upcoming elections?*
 6. *What are the challenges in the internet voting system for ECP as well as for overseas voters to perform their duty?*
 7. *Can ECP provide certified details of expenditures that occurred during acquiring lands for ECP offices in different districts or Pakistan in the past ten Years? Can ECP provide name, number of plots, price of each plot and from whom these plots were acquired and when?*
 8. *Did ECP conduct any internal audit of this expenditure on acquiring offices of ECP across the country? What is the total expenditure of these buildings either newly builds by ECP or hired to run its affairs in different districts of Pakistan?*
 9. *How many buildings/accommodations/warehouses were rented by ECP currently? What are their expenditures?*
 10. *How much was spent by ECP on a recently acquired 1022-square yard plot close to the official residence of the Chief Justice of the Supreme Court? What is the total cost of this*

plot, building constructed on it and overall expenditures directly or indirectly linked to the chief election commissioner's official accommodation?

11. *Can ECP provide a certified copy of its list internal audit report?"*

B. Proceedings

3. The record on the file suggests that the Respondent submitted its response on the intervention of this commission on December 23, 2021 and its text is as under:

"I am directed to refer to Notice/Summon bearing reference no. Appeal 1394-10/21, dated 1 December, 2021, issued by this worthy Commission i. e the Pakistan Information Commission (PIC"), regarding the captioned subject, whereby the Election Commission (ECP) has been summoned to appear before the PIC on 23 December, 2021, in connection with hearing of the subject Appeal filed by Mr. Zahid Gishkori, seeking indulgence of the PIC under the provisions of the 'Right of Access to Information Act, 2017' ("RAIA 2017").

1. *In this regard, it is submitted that prior to institution of the subject Appeal, different individuals filed Appeals before the PIC seeking information under the RAIA 2017, against the ECP It is pertinent to mention here that out of these Appeals, six Appeals were decided by the PIC against the ECP on different dates without affording an opportunity of hearing to the ECP. The said orders of the PIC and the jurisdiction assumed by it under RAIA 2017 was assailed by the ECP before the Hon'ble Islamabad High Court by way of filing five different Writ Petitions bearing numbers 963 to 965 of 2020 and 784 to 785 and 3564 of 2020, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The said Writ Petitions were fixed for hearing on 0.03.2020, and the Hon'ble Court was pleased to order status quo and the PIC being sic respondent in these Writ was directed by the Hon'ble Court to file report and Para-wise comments. The said Writ Petitions are pending adjudication before the said Hon'ble Court and no date has been fixed by the Hon'ble Court so far. (Copies of orders passed in the Writ Petitions are annexed herewith as Annexure A to E) information*

2. *. In the abovementioned Writ Petitions, it is the stance and argument of the ECP that "sub-section (2) of section (1) of the RAIA-2017 provides applicability of the RAIA-2017 to the effect that it shall apply to all public bodies of the Federal Government, which means that RAIA-2017 shall apply only to those public bodies which are part of the Federal Government or working under the control and supervision of the Federal Government. The ECP is an independent constitutional entity having its independent status and autonomy, established under Article 218(1) of the Constitution of Islamic Republic of Pakistan ("Constitution") and its duties and functions have been provided in Article 218(3) of the Constitution and the jurisdiction assumed by the PIC under the RAIA-2017, is without lawful authority as RAIA-2017 does not apply to the ECP and it is not amenable to the jurisdiction of the learned PIC under the RAIA-2017 Furthermore, the Hon'ble Islamabad High Court earlier while allowing a Writ Petition No. 490/2014 on 23.01.2020, of the ECP against the Federal Ombudsman, Islamabad, had been pleased to declare the independent status and autonomy of the ECP in the following terms (relevant portion of the order)*

3. *A plain reading of the above provision unambiguously manifests that the Election Commission of Pakistan, which has been established under the Constitution, does not fall within the ambit of the expression Agency The Election Commission of Pakistan is not a Ministry, Division, Department or Commission of the Federal Government. Likewise it is not a statutory body, corporation or other institution established or controlled by the Federal Movement. It is, therefore, not an 'Agency for the purposes of the Order on 1983 The jurisdiction of the learned Ombudsman is confined to complaints regarding mal-administration of an entity which falls within the ambit of the expression Agency defined in the Order of 1983 The Election Commission of Pakistan is. Therefore, not amenable to the jurisdiction of the learned Ombudsman under the Order of 1983. 6. For the above reasons, both the petitions are allowed and consequently the proceedings before the learned Ombudsman are hereby declared as bereft of jurisdiction. (Detailed order of the Hon'ble Islamabad High Court is appended herewith as Annexure-F)*

4. *Keeping in view the above, it is again requested that the proceedings of the subject Complaint/Appeal may be adjourned sine die till the final disposal of the abovementioned six Writ Petitions wherein the Hon'ble High Court has to interpret the provisions of RAIA-2017, and its application to the ECP*

5. *This request/prayer is being made in the best interest of justice”*

5. Hearing on the instant Appeal was fixed for December 23, 2021 vide letter dated December 01, 2021 .

C. Issues

6. The instant appeal has brought to the fore the following issues:
- (a) Has any competent legal forum barred this commission to issue Orders against the Respondent, Election Commission of Pakistan?
 - (b) Is the disclosure of the requested information warranted under the provisions of the Act, 2017?

D Discussion and commission's views on relevant issues:

7. The record available on all files pertaining to the Respondent, ECP shows that no competent legal forum has barred this commission to issue Orders against it, though some of its Orders have been suspended. In the instant Appeal, the Appellant is different and subject matter of the requested information is also different.
8. The Act does not accord blanket exemption to any public institution. This commission has already held that Registrar office of Honourable Supreme Court of Pakistan comes within the definition of public body under Section 2 (xi) (e) which is as under:
“Any court, tribunal, commission, or board under the Federal law;”.
9. This commission maintains that the disclosure of the requested information about functions of the Respondent, ECP and expenditures incurred in performing these functions is warranted by both the letter as well as the spirit of the Act, 2017.
10. This Commission has observed that information of public importance mentioned in Section 5 of the Act is not being published through the web site of federal public bodies, including the Respondent, ECP. In fact, the Web sites of federal public bodies contain generic information and not specific information as required under Section 5 of the Act. This is despite the fact that Principal Officer of each public body was required to ensure proactive disclosure of information through web site within 6 months of the commencement of the Right of Access to Information Act, 2017.
11. This commission has also noticed that even when Public Information Officer, (PIO) is designated under the Act, information to this effect is either not provided on the web site, or, if it is provided, it is not displayed at a prominent place on the web site.
12. This commission holds that the federal public bodies should ensure that the name, designation, telephone number and E-mail of the PIO is placed at top right corner of the home page of their web sites. Furthermore, as a PIO is designated by post, any change to this effect should be immediately updated on the web site.
13. This Commission maintains that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be ‘accessible’ for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of ‘accessible’ in section 5 of

the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

E. Order

14. The Appeal is allowed. Secretary, ECP is directed to provide the Appellant certified copies of the records/information requested in para 2 of this Order within 7 working days of the receipt of this Order and submit compliance report to this effect to this commission.
15. Secretary, ECP is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission within 10 working days of the receipt of this Order.
16. Secretary, ECP is directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using 'Web accessibility checklist'. This checklist is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.
17. Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:

August 24, 2022

This order consists of 4 (four) pages, each page has been read and signed.