

## Pakistan Information Commission

### Government of Pakistan

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  @PkInfoComm



**In the Pakistan Information Commission, Islamabad**

**Appeal No 1869-04/22**

**Zahid ur Rehman**

**(Appellant)**

**Vs.**

**Election Commission of Pakistan**

**(Respondent)**

### **ORDER**

Date: September 09, 2022

Zahid Abdullah: Information Commissioner

#### **A. The Appeal**

1. The Appellant filed an appeal, dated April 14, 2022 to the Commission, stating that he submitted an information request to the Election Commission of Pakistan on January 26, 2022 under the Right of Access to Information Act 2017 but did not receive any response from the public body.
2. The information sought by the Appellant is as follows:
  - i. *“That petitioner is the law abiding citizens of Pakistan and has never ever violated any law of the land in his entire life. (Copy of the CNIC of the petitioner is attached as annexure “A”).*
  - ii. *That petitioner has obtained the degree of law in the year 2011 with excellent marks and is the practicing lawyer since 2011 till date. (Copy of the license of Bar Council is attached as annexure “B”).*
  - iii. *That the office of your good-ship advertised some posts of law officers and the petitioner applied for the post of law officer well within time with all requisite documents (which was the requirement of the said advertisement). (Copy of the advertisement is attached as annexure “C”*
  - iv. *That petitioner attended the said written test and qualified the same up to the mark.*
  - v. *That thereafter, the calling letter for interview was issued to the petitioner on 21/09/2021 which was also qualified /passed with good marks by the petitioner. (Copy of the calling letter is attached as annexure”).*
  - vi. *That petitioner was fallen into the top listed candidate but he has been illegally knocked out from the process of selection due to the deception and malafide of the concerned officials of the office of your good-ship.*
  - vii. *That the selection authority played foul and committed fraud with the petitioner, by not either information or handing over the above mentioned results and similarly the same has not been uploaded for perusal of the general public/ petitioner, which is illegal, unlawful, perverse, fanciful corm-non-judice, void-ab-initio, against the reasonableness, due*

*process, excess to justice to all, natural justice, transparency fair play, honesty and the same is liable to be deprecated and regretted.*

- viii. *That the selection authority/ committee while suppressing and concealing the above mentioned results and not appointing the petitioner has grossly violated articles 2-A, 3,4,5,9,10-A,25 and 227 of the constitution of Islamic Republic of Pakistan 1973, Read with Section 24-A, of the General Clauses Act, 1897 and RTI Act.*
- ix. *That petitioner time and again very humble requested for obtaining the relevant documents (results) of the entire impugned selection process but in vain, therefore, the instant application.*
- x. *That it is, the inalienable and indefeasible fundamental right of the petitioner to receive the above mentioned results as is enshrined and envisaged in the commanding and mandatory language of the Article 19-A of the Constitution of Islamic Republic of Pakistan 1973.*
- xi. *That is hold by the Hon'ble Supreme Court of Pakistan in (PLD 2012 SC 466) and (PLD 2015 SC 401) that public functionaries are the servants of their sovereign paymasters/ citizens because they are receiving their salaries from the pocket/ treasury of the citizens for which they will serve honesty.*
- xii. *That the selection process is matter of public importance and not a petty issue.*
- xiii. *That your good-shop has ample authority to entertain and dispose of the instant application in accordance with law.*
- xiv. *Those other points will be raised by the petitioner before your-self if opportunity of personal hearing is provided to the petitioner.”*

## **B. Proceedings**

- 3. Hearing on the instant Appeal was fixed for August 11, 2022 vide letter dated July 28, 2022.
- 4. The commission received communication from the Office of the Deputy Registrar (J) of Peshawar High Court dated August 15, 2022 containing the Order ddated August 08, 2022 stating that “The Respondent No. 5/Chief Information Commission of Pakistan is directed to decide the fact of the appeal within one month from the date of the receipt of this order, if any, filed by the petitioner”.

## **C. Issues**

- 5. The instant appeal has brought to the fore the following issues:
  - (a) Does the Respondent, Election Commission of Pakistan come within the jurisdiction of the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?
  - (b) Has any competent legal forum barred this commission to issue Orders against the Respondent, Election Commission of Pakistan?
  - (c) Has the Respondent followed procedure enunciated in the Act, 2017 in responding to the information request of the citizen and notices of this commission?
  - (d) Is the disclosure of the requested information warranted under the provisions of the Act, 2017?

## **D Discussion and commission's views on relevant issues:**

- 6. 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 it Orders have been suspended. The ECP maintains that it does not come within the jurisdiction of the Right of Access to Information Act, 2017 and this assertion is based on

the orders dated 25-03-2022 passed by the Hon'ble Islamabad High Court in Writ Petition Nos. 963/2020, 964/2020, 965/2020, 984/2020 and 985/2020 titled Election Commission of Pakistan Vs Pakistan Information Commission etc. filed before the Islamabad High Court, Islamabad.

7. In these Writ Petitions, the orders of the PIC passed on the appeals filed by Shahbaz Akmal Jandran, Advocate and Mr. Naeem Sadiq have been suspended.
8. This commission maintains that the orders of the Hon'ble Islamabad High Court are applicable to the extent of the pending petitions for the following reasons:
  - (a) These are interim order whereby the orders of the PIC are suspended and that the writ petitions are pending for final adjudication;
  - (b) Subject matter of the requested information is different in each case and that the matter is between the particular parties involved in each case; and
  - (c) In the instant Appeal, the Appellant is different and subject matter of the requested information is also different.
9. The Act does not accord blanket exemption to any public institution. In the instant Appeal, the Respondent is a public body under Section 2 (xi) (e) of the Act, 2017 which is as under: *"Any court, tribunal, commission, or board under the Federal law;"*.
10. In the instant Appeal, the record on the file shows that the Respondent demonstrated utter disregard to the provisions of the Act, 2017.
11. In the instant appeal, the Respondent failed to provide written acknowledgement of the request for information filed by the citizen as required under Section 10 (1) of the Act.
12. The Respondent also failed in following the procedure enunciated in the Act for acceptance and refusal of request for information laid down in Section 13 (2) of the Act.
13. The Respondent also failed in adhering to the timeline for responding to the information requests as required under Section 14 (1) and (2) of the Act as the PIO did not respond to the information request at all.
14. The Respondent failed to respond to notices of the commission and also failed to attend the hearing.
15. This commission holds that the requested information pertains to a matter of public importance and its disclosure is warranted both by the letter and spirit of the Act, 2017.
16. This commission has held through its different Orders that merit list, interview marks allotted to the candidates, copies of the educational certificates of successful candidates, appointment letters and the copies of domiciles are public documents and their disclosure is permissible under the provisions of the Act, 2017.
17. This commission issued a detailed Order in Appeal No. 942-03/21, Abdullah Rashed Waraich Vs. Pakistan Housing Authority Foundation which was upheld by the Honourable Islamabad High Court. In this Order, the commission held that information such as regional quota roster maintained by a public body, consolidated result of written test of the posts, attendance sheet of written tests, online applications submitted by candidates who were shortlisted for interview, educational certificates/degrees of the candidates who were shortlisted for interview, answer sheets of all candidates who were called for interview, attendance sheet of interviews, evaluation Proforma containing detail of academic records, marks obtained in written as well as in interviews by the candidates shortlisted for

interview, duly signed by Departmental Selection Committee, recommendations of the Departmental Selection Committee regarding selection of candidates is a matter of public importance.

18. This commission holds that the disclosure of the requested information would shed light on the level of transparency adopted in the entire recruitment process and hence help achieve stated objectives of the Act enunciated in its Preamble which are as under:
  - a) Making government more accountable to citizens’;
  - b) Greater level of participation of citizens in the affairs of the government’;
  - c) ‘Reducing corruption and inefficiency’;
  - d) Promoting sound economic growth’; and
  - e) Promoting good governance and respect for human rights.
19. 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.
20. 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.
21. 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.
22. 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**

23. 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.
24. 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](http://www.rti.gov.pk). The compliance report be submitted to this commission within 10 working days of the receipt of this Order.

25. 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](http://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.
26. Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

**Mohammad Azam**

Chief Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on:

September 09, 2022

This order consists of 5 (five) pages, each page has been read and signed.