

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

Appeal No. 2116-08/2022

Sofia Siddiqui

Vs

Election Commission of Pakistan

Fawad Malik: Information Commissioner

A. APPEAL

1. Miss. Sofia Siddiqui filed an application under the Right of Access to Information Act, 2017 read with Article 19A of the Constitution of Islamic Republic of Pakistan, 1973. Through her application dated 07.06.2022 addressed to the Secretary, Election Commission of Pakistan, she has requested the following information:

- a. *“Please share all sources documents that were used to initiate the transfer of my vote.*
- b. *Please share a system generated report / screenshots showing the complete transfer history of my vote.*
- c. *Please include the following information separately if not available in the screenshot/system generated report:*
 - *Date(s) of transfer*
 - *Operator(s) name who did the transfer.*
 - *Name and designation of all approvers who approved the transfer.*
 - *Reference to Election Act 2017 & rules under which the transfer was made.”*

2. Feeling aggrieved for the non-provision of requested information within the time frame provided under the Act she has filed appeal before Pakistan Commission on access to information, Islamabad.

B. PROCEEDINGS

3. The Assistant Registrar (E.R), Election Commission of Pakistan vide letter dated 23.08.2022 responded the notice of the Commission as follows:

- a. *“I am directed to refer to your office letter of even number, dated 11.08.2022 on the subject cited above to state that the*

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Election Commission of Pakistan is not amenable to your jurisdiction as per Order dated 25.03.2020 passed by the Hon'ble Islamabad High Court, Islamabad.

- b. *It is further stated that the application was received from Ms. Soufia Siddiqui, via email, dated 07.06.2022 for provision of certain information about history of vote; however, the Competent Authority did not accede to her request."*

Along with the reply copy of order dated 24.03.2020 passed in W.P 963/2020 titled "Election Commission of Pakistan Vs Pakistan Information Commission and others" is attached.

C. COMMISSION'S VIEW

4. The appellant being a citizen of Pakistan and an eligible voter has desired the information pertaining to the source documents that were used to initiate the transfer of her vote and a system generated report / screenshots showing the complete transfer history of her vote including the date(s), operator(s) name who did the transfer and the name and designation of all approvers who approved the transfer with reference to Election Act 2017 and rules made there under. The appellant has demanded the said information invoking her right under the Right of Access to Information Act, 2017 and Article 19A of the Constitution of Islamic Republic of Pakistan, 1973.

5. The Election Commission of Pakistan has claimed that it is not amenable to the jurisdiction of Pakistan Information Commission. The ECP's claim 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.

In the said Writ Petitions the orders of the PIC passed on the appeals filed by Shahbaz Akmal Jandran, Advocate and Mr. Naeem Sadiq have been suspended that were impugned therein, before the Hon'ble Islamabad High Court, Islamabad. The orders of the Hon'ble Islamabad High Court are applicable to the extent of the pending petitions only for the reasons, firstly that it is interim order whereby the orders of the PIC are suspended, writ petitions are pending for final adjudication, secondly that it is not *Judgment in rem*; as interim relief is given on a particular subject matter, it will only remain between the said parties and thirdly the subject matter in the present

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appeal is altogether different by a different appellant from the ones pending adjudication before the Hon'ble High Court.

6. On the other hand the bare reading of the request alarms a very vital and spirited interrogation of public importance that if not addressed at the earliest may affect a large number of voters in the election process. The voters including the appellant has the privileged right to know whether the selection of polling stations has been made in line with the policy of ECP keeping in view their ease or has been made under some political pressure against their interest. The right of access to the information and record is fundamental right guaranteed under article 19A of the Constitution of Islamic Republic of Pakistan, 1973 and statutory right under the Right of Access to Information Act, 2017. This right cannot be delayed or denied on the pretexts and whims of beurocratic hurdles and delaying tactics as it would amount to infringement of fundamental rights.
7. It would not be out of place to point out here that the working and performance of the ECP is not exemplary in the past. The limpidity and transparency in the conduct is questioned after every elections held under the control of the ECP. The role and function of the ECP as a democratic institution is very vital, particularly in Pakistan where the process of democratization has had not been a smooth sailing. Free and fair elections are the hallmark of any democracy, thus, an institution like the ECP is crucial to the advancement of democracy. In the past years, the ECP has been heavily criticized for alleged oversight and mismanagement in carrying out its functions as an authority for conducting fair and free General Elections in Pakistan. Largely, it is believed that it is crucial to bring the ECP into public discourse in order to debate its performance and identify what can be done to improve its performance.
8. Transparency in the working of the government departments is the essence for the enactment of the Act 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable to the people. This practise would improve the participation of the people in the public affairs aimed at reducing corruption, misuse of authority and power, nepotism, discrimination and inefficiency in the governance.

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D. ORDER

9. The appeal is allowed. The Secretary, Election Commission of Pakistan is directed to furnish the appellant all the requested information and record detailed in para 1 of this order, forthwith, but in any case not later than seven days of the receipt of this order

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Announced on: September 27, 2022

This order consists of 04 (four) pages, each page has been read and signed