

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER

MR. SHAH MUHAMMAD JATOI, MEMBER

MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

Case No. F.3(10)/2002-Confid.

In ref: **APPLICATION FOR DIRECTION TO THE FEDERAL INVESTIGATION AGENCY FOR THE RETURN OF RECORDS. (Application-A)&**

In ref: **APPLICATION FOR STAY OF PROCEEDINGS TILL SUCH TIME "AN ORDER IS PASSED BY THE HON'BLE SUPREME COURT ON THE APPLICATION OF ECP FILED FOR GUIDANCE ON "CERTAIN LEGAL AND FACTUAL ISSUES IN THE RESERVED SEATS CASE" (Application-B) &**

In ref: **APPLICATION FOR STAY OF PROCEEDINGS TILL SUCH TIME AS THE DETAILED REASONS FOR THE SHORT ORDER IN THE "RESERVED SEATS CASE" ARE ISSUED BY THE HON'BLE SUPREME COURT (Application-C) &**

In ref: **JURISDICTIONAL OBJECTIONS TO THE TITLED PROCEEDINGS (Application-D)**

IN

In ref: **SUBMISSION OF DOCUMENTS RELATING TO INTRA-PARTY ELECTION OF PAKISTAN TEHREEK-E-INSAF (PTI) HELD ON 03.03.2024.**

ON NOTICE:

1. Barrister Gohar Ali Khan, Chairman, Pakistan Tehreek-e-Insaf
2. Raouf Hasan, Chief / Federal Election Commissioner, Pakistan Tehreek-e-Insaf

...Respondents

For the Respondents : Mr. Uzair Karamat Bhandari, ASC
Mr. Ali Uzair Bhandari, Advocate
Mr. Faisal Fareed, ASC a/w
respondent No.1 present in
person

For PF Wing of ECP : Mr. Masood Akhtar Sherwanee,
DG (Political
Finance)



7.5.21

For Law Wing of ECP : Mr. Muhammad Arshad Khan,
DG (Law)
Date of Hearing : 27.08.2024

ORDER

Nisar Ahmed Durrani, Member.— It reveals from the record that reply was furnished by the respondent's party on previous date of hearing, upon queries raised by the office vide letter dated 30.04.2024. However, request was made by the respondent's for adjournment on the ground to furnish relevant documents thereto. Today Mr. Uzair Karamat Bhandari along with Barrister Gohar Ali Khan, learned counsel for the respondents is in attendance and has furnished four separate applications which are marked as A, B, C & D.

Application-A

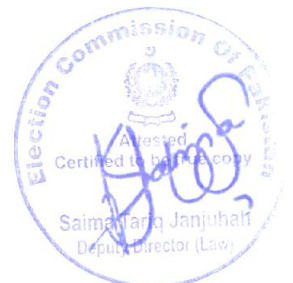
2. Through application-A, respondent have made a request for issuance of a direction by ECP to the Federal Investigation Agency (FIA) to return the record, including all files, computer, hard-drives, electronic storage media and physical files and documents including record of intra party elections (IPE) seized from the Central Secretariat of PTI on 22.07.2024.

Application-B

3. Through application-B, respondents have prayed to stay the present proceedings of intra party election before the Commission till such time "an order is passed by the Hon'ble Supreme Court of Pakistan on the application filed by ECP seeking guidance on certain legal and factual issues in the appeal.

Application-C

4. By way of application-C, respondents have made a request to stay the present proceedings of intra party election till such time



the Hon'ble Supreme Court of Pakistan releases detailed judgment for the Short Order in the "Reserved Seats Case".

Application-D

5. Through application-D, respondents have called in question the jurisdiction of ECP that ECP has no jurisdiction to conduct roving inquiry into the matter of intra party election of a political party.

6. While arguing the matter, learned counsel for the respondents contended stated that he is not in a position to submit his reply / documents to the deficiencies pointed out by Political Finance Wing because on 22.07.2024 members of Islamabad Police and the Federal Investigation Agency raided the Central Secretariat of PTI where the record pertaining to intra party election was stored and took away all computers, electronic storage devices, physical files and original records/documents. He has prayed that FIA may be directed to return the above said record to PTI.

7. Learned counsel further contended that in the Notice dated 30.04.2024 ECP has alleged that PTI has lost its organizational structure on account of its alleged failure to hold intra party election within 5 years. ECP has asked as to what is status of PTI now in this perspective, as political party? To answer the query, learned counsel has stated that in para 5 of the Short Order, dated 12.07.2024 pertaining to Reserved Seat Case, the august Supreme Court has decided that *"the Pakistan Tehreek e Insaf (PTI) was and is a political party, which secured or won general seats in the National and Provincial Assemblies in the General Elections of 2024"*. Learned counsel has prayed that proceedings of intra party election may be stayed till such time the august Supreme Court of Pakistan give detailed reasons for the short order in the Reserved Seats case.

Sd/-



8. Learned counsel has further emphasized that ECP has filed a civil miscellaneous application before the august Supreme Court of Pakistan seeking guidance in the matter of issuing party affiliation certificate because at present PTI has no organizational structure determined through intra party election and ECP is facing difficulty in determining "who will confirm the political affiliation of the returned candidates (MNAs and MPAs) on behalf of PTI, who have filed their statements in light of the Supreme Court Order. That PTI has filed a reply to the ECP application, wherein it has rebutted ECP's stance, in the light of the 3rd March 2024 Intra Party election and the applicable law, the objection taken by the ECP is without any merit. Learned counsel has stated that as the ECP's application is pending before the Supreme Court, any further proceedings in the matter of intra party election before ECP are not justified. Learned counsel has prayed that intra party election proceedings may be stayed till such time the august Supreme Court of Pakistan decides the application of ECP.

9. Learned counsel for the respondents further vehemently contended that ECP has no jurisdiction to conduct roving inquiry into the matter of intra party election. He put reliance on the case law Bahadur Khan Bangulzai V. Attaullah Khan Mengal reported in 1999 SCMR 1921 wherein it was held in para 18 of the judgment that *"we are in full agreement with the observation of the High Court that the Chief Election Commission has the jurisdiction to determine as to how is the head of a political party being a jurisdictional fact, but he has not power to resolve in-built organizational structural disputes which might have cropped up in the folds of a political party"*. In para 19 of the above said judgment it was held that *"However, in case he finds that there is no reliable*



material before him to conclude that factually the person who has made the reference is the head of the political party involved and that the above question relates to inbuilt organizational structural disputes of the political party involved, in that event he may ask the parties to get the above question resolved through a civil proceeding." He has further placed reliance on the case law titled ECP Vs. Pakistan Tehreek e Insaf PLD 2024 SC 295 in para 55 it was held that "we can also not bring ourselves to agree with the learned Judges that section 209 only deals with the submission of document and in no manner authorizes the ECP to question or adjudicate upon the validity of Intra Party Election". Learned counsel has further stated that any inquiry into the alleged issues or irregularities in the conduct of the 3rd March 2024 intra party election is beyond the powers and jurisdiction of the ECP. It is settled law that issues relating to jurisdiction are to be decided in the first instance as preliminary issue. Reference is made to PLD 2002 SC 452, 2008 SCMR 240, 2021 CLC 2152, 2001 CLC 899, 2000 CLC 904, 2016 CLC 1197 and 2014 MLD 19. He has prayed that issue of jurisdiction may be treated as a preliminary issue and may be decided first before further proceeding in the matter.

10. The Director General (Law) of ECP appeared and apprised the Commission that in pursuance of short order, dated 12.07.2024 of the august Supreme Court of Pakistan, the seats of 39 MNAs have been assigned to PTI under Article 51(5) of the Constitution by the August Supreme Court. However, direction was given that remaining 41 independent MNAs out of 80 may within 15 working days of this Order file a statement duly signed and notarized stating that he or she contested the General Election as a candidate of the political party specified therein. ECP filed a Civil Miscellaneous

- sd/-



Application in terms of paras 7-10 of the above said Short Order, dated 12.07.2024 seeking guidance on certain legal and factual issue. He further apprised that PTI is a political party in the record of ECP without any organizational structure because the case of Intra Party Election of PTI is still pending before the Commission. That a political party may exist on paper but it cannot operate nor confirm any statement in the absence of validly elected organizational bodies, mentioned in the party constitution. With this backdrop of the matter, the Commission is facing difficulty to implement the Order of august Supreme Court of Pakistan as PTI at the moment has no organizational structure for confirmation of statements of MNAs/MPAs purportedly belonging to PTI and who will confirm the political affiliation of the returned candidates (MNAs and MPAs on behalf of PTI, who have filed their statements in light of the order of august Supreme Court Order of Pakistan. Guidance is solicited of the legal consequences of confirmation of statements of MNAs / MPAs by an unauthorized person on behalf of PTI in absence of its organizational structure. He emphasized that respondents should immediately file reply to the deficiencies pointed out by the Political Finance Wing regarding conduct of intra party election so that Commission may decide the instant case.

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11. We have heard the arguments advanced by learned counsel for the respondents and gone through the applications submitted by the respondents as well as judgments referred by the learned counsel.

12. It transpires from preceding order sheet dated 23.07.2024 that respondent No. 1 namely Barrister Gohar Ali appeared and made a request for adjournment for submission of relevant documents. However, respondents' party instead of filing



documents has furnished applications *inter alia* seeking therein to stay the present proceedings and also called in question the jurisdiction of ECP.

Application-D

13. As urged by learned counsel by the respondent, first of all, we will take up the objection of respondent with regard to jurisdiction over the matter. Section 208 (1) of the Elections Act, 2017 cast a responsibility upon a political party enlisted with the ECP that office bearers of a political party at the Federal, Provincial and local levels, shall be elected periodically in accordance with the constitution of the party. The first question which arises is that who would determine that intra party election has been conducted by the party in accordance with the constitution of the party. The second question is whether the certificate will be published under section 209 (3) of the Elections Act, 2017 without ascertaining the facts, either the election of the party has been conducted in accordance with section 208 of the Elections Act, 2017 and constitution of the party as well as information contained in the certificate is correct or otherwise. We are of the considered view that Election Commission of Pakistan, before whom the documents were submitted by the party, is duty bound to verify that mandatory requirements of section 208 of the Elections Act, 2017 have been fulfilled by the party, prior to publication of certificate under section 209 (3) of the Elections Act, 2017.

14. It is pertinent to mention here that PTI's own members have filed certain complaints/objections before the Commission objecting over intra party election of PTI conducted on 03.03.2024 and challenged it on various grounds, i.e. that nomination forms & voter list have not been provided / nomination papers have been



rejected / ideological & founder members have been restricted to contest election / majority of the voters have been deprived of their right of franchise as non elected PTI leadership has no locus standi to run party's affairs and to conduct party election, etc. In such circumstances, Election Commission of Pakistan is fully empowered and duty bound under sections 208, 209, 202 (2) and 215 of the Elections Act, 2017 to look into the matter, whether a political party has conducted its intra party election as per law and party constitution or otherwise.

15. For better understanding, guidelines can be sought from the judgment reported as (PLD 2012 SC 681) Workers' Party Pakistan through Akhtar Hussain Advocate vs Federation of Pakistan and 2 others. The relevant portion is reproduced herein below:

“42. The Parliament has framed different laws to effectuate the above constitutional provision and to regulate elections to the National and Provincial Assemblies. ROPA reiterates and further vests the Election Commission with the responsibilities and powers to, inter alia, regulate and check intra-party affairs and actions taken by candidates and parties in anticipation of and on Election Day, resolve all election disputes, declare the election void and to award punishments for violating relevant election laws. In appreciation of the arduousness of its task, section 5(2) of ROPA further empowers the Election Commission to "require any person or authority to perform such functions or render such assistance for the purposes of this Act as...it may direct". The Election Commission may, under section 103(c) of ROPA also "issue such instructions and exercise such powers, and make such

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consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provisions of this Act and the rules". Article 220 of the Constitution also directs the Federal and Provincial machinery to assist the Election Commission in fulfilling its constitutional responsibilities. The law, therefore, entrusts the Election Commission with exclusive, broad and extensive powers to attend to all issues related directly and ancillary to the election process."

In view of above discussion and judgment referred above, the argument of learned counsel for the respondent with regard to jurisdiction of ECP in the matter in hand, does not bear any weight, which is hereby turned down.

Application-A

16. Through application-A, respondent has sought that directions may be issued to FIA for return of files, computers, hard-drives etc. which according to learned counsel were taken away by personnel of FIA and police. In this regard it is observed that respondents may approach the competent Court of law having jurisdiction over the matter, for retrieval of documents and other accessories, which were allegedly taken away, if they so desire and if so advised.


Application B & C

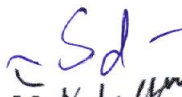
17. Contents of applications B and C reveals that respondents seek to stay the proceedings of intra party election till the announcement of detailed judgment by the august Supreme Court of Pakistan in the case of Reserved Seats. It is matter of record that the party under consideration has already delayed the matter and




violated sub section 1 of section 208 and section 209 of the Elections Act, 2017. In such view of the matter, we are of the view that it would not be in the fitness of things to further delay the matter as prayed for by the respondents. Hence their request is turned down and as such applications are hereby dismissed.

18. Case to come up for arguments on **18.09.2024.**


(Nisar Ahmed Durrani)
Member


(Shah Muhammad Jatoi)
Member


(Justice (R) Ikram Ullah Khan)
Member

Islamabad •
the 30th August, 2024

