

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. SIKANDAR SULTAN RAJA, CHAIRMAN
MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MUHAMMAD JATOI, MEMBER

Case No. 13(1)/2022-Law

In Ref: DECLARATION OF DEFECTION FROM PAKISTAN TEHREEK-E-INSAF
UNDER ARTICLE 63A(1)(b)(I) OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN 1973

(1) APPLICATION TO SUBMIT VIDEO EVIDENCE ALONG WITH
TRANSCRIPT

(2) REQUEST TO SUBMIT LIST OF WITNESSES ON BEHALF OF
APPLICANT/PETITIONER OF THE DEFECTION

Mr. Imran Khan, Chairman, Pakistan Tehreek-e-Insaf (Party Head)

Petitioner

Versus

Noor Alam Khan, Member National Assembly, NA.27, Peshawar-I and 19 others

Respondent

For the Petitioner	:	Faisal Fareed, ASC a/w Muhammad Azhar Siddique ASC, Ms. Maleeka Ali Bukhari, Advocate & Amir Saeed Rawn, Advocate
For the Respondent	:	Khalid Ishaq, ASC
Date of Hearing	:	11.05.2022

ORDER

Sikandar Sultan Raja, Chairman. The subject applications involve identical questions of law and facts; we therefore propose to decide the same through a single order.

2. Mr Faisal Fareed Learned Counsel representing the party head (PTI) has submitted two applications seeking permission to submit evidence comprising videos, along with its transcripts, and a list of persons to be produced as witnesses



of alleged defection. Applications have been taken on record and copies whereof provided to the opposite counsels.

3. Keeping in view the time constraint learned counsel for the petitioner was asked to advance his arguments in support of his applications.

4. Learned counsel for the petitioner while arguing his applications submitted that the declaration has been made on the basis of information and material available with the party head. He further argued that video clips, its transcripts and the statements of its witnesses are material and substantial piece of evidence which falls in the public domain and it will enable the Commission to arrive at correct conclusion. He further contented that the Commission has vast powers under the constitution and law to summon any record or to call any witness for fair and just conclusion of the matter. He argued that there is no barring provision in the constitution and law to turn down the applications. He while referring to section 3 of the Elections Act, 2017 stated that while performing its functions and exercising its powers, the Commission regulates its own procedure. He prayed for acceptance of his applications in the interest of justice.

5. On the other hand learned Counsel for the respondent(s) vehemently opposed the applications and submitted that the applications are not maintainable at this belated stage. Next limb of his arguments is that provisions of Article 63-A of the constitution of Islamic republic of Pakistan entails penal consequences and therefore shall be strictly construed. He submitted that the party head after making a declaration was required to forward a copy of the declaration to the presiding officer and the Chief Election Commissioner along with relevant documents/evidence. He argued that production of documents at this stage is an afterthought. He also attacked the evidence as being fabricated and concocted. He read out the declaration and stated that details i.e particulars with respect to time date and place of the evidence comprising video clips etc is not mentioned therein. While concluding their arguments he prayed for the rejection of the applications on the grounds that the alleged evidence has been fabricated and had it been available

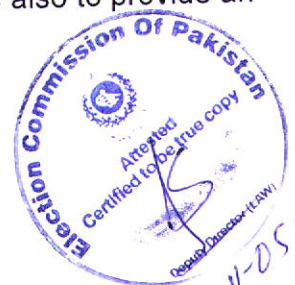


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with the party head, he could have attached with the show cause notices and declarations

6. We have heard the arguments from the parties and perused the available record before us.

7. It is an admitted fact that we have received the declarations from the presiding officer (speaker National assembly) in terms of clause 3 of Article 63-A of the constitutions on 11-04-2022, accompanied by a copy of declaration and a copy of show cause notice and no other supporting material/documents are enclosed. Matter was initially fixed for arguments on 28-04-2022 with notice to the party head (PTI) and all the alleged defectors. On 28-04-2022 parties appeared and submitted their vakalatnamas and also sought time to file their respective replies. We adjourned the matter with the consent of the parties on 06-05-2022, on which date respondents submitted their replies and copies of the replies were handed over to the petitioner. Today matter was fixed for final submissions on behalf of both the parties and counsel for the party head (PTI) has also submitted rejoinder against the replies of all the alleged defectors. From the date of submission of declaration i.e 11.04.2022 till date the petitioner had ample time to move an application for additional documents. At this belated stage, counsel representing the party Head (PTI) submitted abovementioned applications as an afterthought when only one day is left to decide the matter as provided under Article 63-A(3) of the constitution. Secondly it was the responsibility of the party head to make sure that all documents have been attached with the declaration and if the material was available with the party head, it should have been shared with the respondents, presiding officer and the Commission but it was not done so. It is a settled principle of law that all available evidence should be submitted at the initial stage of the proceedings. All documents/evidence relied upon were to be produced at the early stage so that the opposite parties could know as to what documents are being relied upon. In the instant matter parties have submitted their replies and learned counsel for the party head had also submitted rejoinder in response thereto. Commission under Article 63-A (3) of the constitution is obliged to decide the instant matter within 30 days which are going to expire on 11-05-2022. The Commission has also to provide an



opportunity of hearing on the main matter to all the parties and after hearing them is required to dispose off the issue of declaration.

Article 63-A(3) is reproduced under for easy reference..

(3) Upon receipt of the declaration under clause (1), the Presiding Officer of the House shall within two days refer, and in case he fails to do so it shall be deemed that he has referred, the declaration to the Chief Election Commissioner who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner.

8. For the reasons recorded above, we are of the considered view that the applications of the petitioner/counsel for the party head are devoid of force and cannot be entertained at this belated stage and are hereby dismissed.

Sikandar Sultan Raja
Chairman

Nic Afzal Durrani
Member

Shah Muhammad Zatoor
Member



11-05-2022