

ELECTION COMMISSION OF PAKISTAN

PRESENT:

Mr. Sikandar Sultan Raja, Chairman
Mr. Nisar Ahmed Durrani, Member
Mr. Shah Mohammad Jatoi, Member

Case No. 17(1)/2022-Cord.

DECLARATION FOR DISQUALIFICATION ON GROUNDS OF DEFECTION UNDER ARTICLE 63A (1) (a) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

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

Petitioner

Versus

S. No.	Name	Constituency	Counsel
1.	Noor Alam Khan	NA-27 Peshawar-I	Barrister Gohar Khan, ASC
2.	Chaudhary Farrukh Altaf	NA-66 Jhelum-I.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
3.	Mr. Muhammad Asim Nazir	NA-101 Faisalabad-I.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
4.	Dr. Muhammad Afzal Khan Dhandla,	NA-98 Bhakkar-II.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
5.	Mr. Nawabsher,	Na-102 Faisalabad-II.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
6.	Raja Riaz Ahmad,	NA-110 Faisalabad-x.	
7.	Mr. Ahmed Hussain Deharr	NA-154 Multan-I,	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
8.	Rana Muhammad Qasim Noon,	NA-159 Multan-VI.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
9.	Mr. Muhammad Abdul Ghaffar Wattoo,	NA-166 Bahawalnagar-I.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
10.	Makhdoom Syed Sami Ul Hassan Gillani,	NA-174 Bahawalpur-V.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
11.	Syed Mobeen Ahmed	NA-175 Rahim Yar Khan-I.	Azeem Ashraf Cheema Advocate



12.	Mr. Makhdoom Zada Sayed Basit Ahmad Sultan,	NA-185 Muzaffargarh-V.	Haseeb Shakoor Paracha, ASC
13.	Mr. Amir Talal Gopang,	NA-186 Muzaffargarh-VI.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
14.	Mr. Muhammad Amjad Farooq Khan Khosa,	NA-190, D.G.Khan-II.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
15.	Sardar Riaz Mehmood Khan Mazari,	NA-195, Rajanpur-III.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
16.	Mr. Aamir Hussain	NA-245, Karachi East-IV.	
17.	Ms. Javaria Zafar Aheer,	Reserved Seat For Women.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
18.	Ms. Wajiha Qamar,	Reserved Seat For Women.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
19.	Ms Nuzhat Pathan,	Reserved Seat For Women.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.
20.	Ramesh Kumar Vankwani	Reserved Seat For Minorities.	Khalid Ishaq, ASC Mian Muhammad Faisal, ASC and Usman Ghumman Advocate.

.....Respondents

For the Petitioner : Faisal Fareed, ASC a/w
Muhammad Azhar
Siddique ASC, Ms. Maleeka
Ali Bukhari, Advocate & Amir
Saeed Rawn, Advocate

Dates of hearing 28.04.2022 & 9.05.2022,
10.05.2022 & 11.05.2022

ORDER

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

2. Relevant facts giving rise to instant declarations are that respondents No. 1-16 contested General Election 2018 on the party ticket of Pakistan Tehreek-e-Insaf (PTI) and were declared as returned candidates (Members National Assembly). Respondents No. 17-20



were elected from the party list of Pakistan Tehreek-e-Insaf as Member National Assembly on reserved seats.

3. Background of the instant matter is that on 8-03-2022 opposition parties moved a resolution of no confidence against Prime Minister Mr. Imran Ahmed Khan, for which Chairman, Party Head, PTI Mr. Imran Ahmed Khan forwarded the above titled declarations to Mr. Asad Qaisar, the then Speaker, National Assembly under Article 63 A(1)(a) of the Constitution of Islamic Republic of Pakistan, 1973 with the contentions that alleged defectors have joined the opposition parties and they may be de-seated on the ground of defection. The then Speaker National Assembly then referred the declarations to Chief Election Commissioner of Pakistan vide letters dated 09.04.2022 which were received on 11.04.2022 vide diary No. 871.

4. On receipt of declarations, notices were issued to the Party Head, PTI and all the alleged defectors for 28-04-2022. On 28-04-2022 parties appeared and the counsels submitted their power of attorneys. They sought time to file their respective replies. The cases were adjourned with the consent of the parties for 06-05-2022, on which date respondents submitted their replies and copies of the replies were handed over to the petitioner. Cases were adjourned to 10.05.2022 with the request from the counsel for Party Head, PTI for submission of rejoinders against the replies of all the alleged defectors and for final arguments in the case. On 10.05.2022 counsel for the petitioner moved two applications for submission of additional documents and production of witnesses. The arguments on the said applications were heard from both sides and applications were dismissed on 11.05.2022.



5. The learned counsel for petitioner on 28.4.2022, vociferously contended that respondents having been elected as Member National Assembly on the party ticket of Pakistan Tehreek-e-Insaf, in the General Elections of 2018 have left Pakistan Tehreek-e-Insaf which is

Parliamentary Party and joined PDM consisting of PML-N, Pakistan People Party Parliamentarian and other parties who brought a motion of vote of no confidence against Prime Minister of Pakistan on 8th March, 2022. He further contended that the respondents have publically declared and announced that they have left PTI. He further submitted that respondents neither denied nor contradicted the said press and media reports. That in this backdrop, Show Cause Notices were issued to all the respondents on 19.03.2022 with the directions to submit their replies to the Show Cause notices on or before 26.03.2022 at 2:00 PM. He added that replies filed by the respondents were carefully considered and found unsatisfactory, evasive and misconceived upon which the declarations were issued. Further added that sufficient material is available to hold that the above referred Members have joined the PDM during the no confidence motion and willfully defied the trust and policy of the party as well as violated their oath by disobeying the sacred command of the party. That respondents were thus declared to have been defected from P.T.I. and declarations in terms of Article 63A (1) (a) of the Constitution were issued and referred to the Speaker and the Commission for decisions as required by law. He prayed that declarations may be confirmed.

6. Today, the counsels for the parties appeared and learned counsel for the petitioner after hearing the fate of his applications resulting in dismissal stated that he would not advance further arguments and requested the Commission to decide the case on the basis of available record.

7. Learned counsel Barrister Gohar Ali appeared on behalf of respondent No. 1, Mr. Noor Alam Khan (MNA-Peshawar) and submitted his written arguments. In addition to his written synopsis he also made verbal contentions. At the very outset, the learned counsel denied the service of Show Cause Notice by the Party Head in terms of



Article 63 A of the Constitution. He also contended that no receipt of the service of notice, acknowledgement (AD) and affidavit in this regard has been provided or annexed with the declaration by the party head. He also objected that Show Cause Notice was issued by Mr. Asad Umar, Secretary General of PTI which was required to be issued by the Party Head in terms of Article 63A of the Constitution. He argued that No Confidence Motion was moved by the opposition on 08.03.2022. He submitted that on 15.03.2022 and 18.03.2022 Pakistan Tehreek-e-Insaf (PTI) issued instructions which were not conveyed to the respondent No. 1 and these instructions were neither provided to the Presiding Officer (Speaker) National Assembly nor attached with the declarations before the Election Commission of Pakistan. He further submitted that Speaker National Assembly summoned the Session on 20.03.2022, 25.03.2022 and 28.03.2022. During this period Secretary General PTI issued Show Cause Notice to the respondent on 19.03.2022. The counsel has referred the contents of the notice and stated that voting on the resolution took place on 09.04.2022 while through Show Cause Notice, it has been already declared by the Secretary General, PTI that the respondent No.1 had already violated the instructions and joined the other Parliamentary Party. He further added that respondent never announced his intentions about leaving the Parliamentary Party. He elaborated that on 30.03.2022, Chairman, PTI, issued instructions for not attending the session scheduled on 03.04.2022 which were later on recalled through the subsequent instructions. He contended that the declaration issued by the Chairman / Party Head PTI even did not disclose the name of the party allegedly joined by the respondent. He emphasized that the respondent has never joined any other Parliamentary Party till date nor he has resigned from membership of the Political Party (PTI). He submitted that the respondent never voted during vote of No Confidence and not a single evidence or document has been produced or placed along with the declaration. In support of his arguments he placed reliance on the judgments 2018 SCMR 1043,



1999 SCMR 215, 1999 SCMR 1921, 2000 MLD 709, PLD 2016 SC 80. He also raised objection regarding the maintainability of declarations and its proceedings before the Commission on the ground that declaration could not be processed till the final composition of the Commission as mentioned under Article 218(2) of the Constitution. He submitted that the Commission is required to proceed in accordance with the Constitution and not with the provisions of the statutory law. To support his argument, he referred the judgments PLD 2022 SC 39, 2021 SCMR 1675, AIR 1996 SC 1810.

8. Learned Counsel, Mr. Khalid Ishaq, ASC representing Respondent No. 2-11 and 13-20 adopted the arguments of the learned counsel for Respondent No. 1 and also advanced his own arguments. He argued that no Show Cause Notice(s) were received by the respondents No. 2-11 and 13-20. He submitted that no service has been effected on the respondents in terms of section 27 of the General Clauses Act, 1897. He contended that question of service of show cause notice does not arise as no address was mentioned on the said notice(s). He argued that the show cause notice(s) are vague, ambiguous as they did not disclose the venue for personal hearing of the respondents. He also attacked the same being not issued by the party head as required under Article 63-A(1) of the Constitution. He further agitated that no evidence which has been relied upon by the party head in the declarations are provided nor confronted to the respondents. He also argued that the allegations of joining another party by the respondents are not established through cogent evidence as no detail of the press clippings, videos and large scale broadcast is mentioned in the declaration nor the name of the political party allegedly joined by the respondents has been given. He submitted that according to the proviso of Article 63-A(1) of the Constitution, at the time of forwarding a copy of the declaration to the presiding officer (Speaker) and the Chief Election Commissioner, the party head was



required to forward the declaration to the respondents as well, which was not done in the present case. He placed emphasis upon the issue that in case of penal provisions if any procedure is left half way or incomplete it shall have no value. In this regard he placed reliance upon PLD 1998 SC 1263, 2018 SCMR 1043, PLD 2018 SC 97, 1999 SCMR 215, 2014 SCMR 1477, 2017 SCMR 1427, 2019 SCMR 1989, PLD 2015 SC 380. He also argued that defection is not covered by Article 63A(1)(a) as action cannot be taken on the acts of the parliamentarians outside the house of the parliament. He elaborated that the respondents neither made any speech on the floor of the house nor admitted the allegations through any press conference regarding joining any other political party or resigning from PTI. While concluding his arguments, he prayed that the alleged defection has not been proved against the respondents and the declaration may be declined.

9. Learned counsel, Mr. Haseeb Shakoor Paracha, ASC appeared and argued on behalf of respondent No. 12 Mr. Makhdoomzada Syed Basit Ahmad Sultan and adopted the arguments advanced by the counsel for respondent No. 1-11 and 13-20. In addition, to the adopted arguments he submitted that the word intention to leave the political party and joining of other parliamentary party has been used in the show cause notice issued to the respondent. He further argued that defection and subsequent declaration can be made only on the basis of formal resignation or joining another parliamentary party as envisaged in Article 63A(1)(a) of the Constitution. He argued that respondent No. 12 had submitted his reply to the show cause notice but the same was not considered nor is mentioned in the declaration. Regarding composition of the Commission, he relied upon PLD 2018 SC 97 titled "Sardar Sher Bahadur Khan and others vs. Election Commission of Pakistan and others" wherein the August Supreme Court has held that the orders of Election Commission of Pakistan shall not be invalid or called in question only on the ground of the existence of the vacancy



therein or absence of any member. He requested the Commission to turn down the declaration against respondent No. 12.

10. Arguments heard and record perused with the able assistance of the learned counsels.

11. Before dilating on the issues of alleged defection it would be advantageous to reproduced Article 63A (1)(a):

"63A. Disqualification on grounds of defection, etc.—

(1) If a member of a Parliamentary Party composed of a single political party in a House—

(a) resigns from membership of his political party or joins another Parliamentary Party; or

(b)

(i)

(ii)

(iii)

he may be declared in writing by the Party Head to have defected from the political party, and the Party Head may forward a copy of the declaration to the Presiding Officer and the Chief Election Commissioner and shall similarly forward a copy thereof to the member concerned;

Provided that before making the declaration, the Party Head shall provide such member with an opportunity to show cause as to why such declaration may not be made against him."

Explanation.— "Party Head" means any person, by whatever name called, declared as such by the Party.

(2) A member of a House shall be deemed to be a member of a Parliamentary Party if he, having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the



House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of a declaration in writing.

(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.

12. For determination of the subject case following questions have been formulated:

- a) What mode of proof is required for disqualifying a member of Parliamentary party on the ground of defection?
- b) Whether the show cause notices have been issued by the party head as mandated by proviso to Article 63A(1)(a)?
- c) Whether the Commission has jurisdiction to decide the matter in the instant situation of vacancy of two members?
- d) Whether the alleged defection is established in line with the provisions of Article 63A(1)(a)?



11-05-2022

13. **Answer to question No. (a):** The declarations have been made under Article 63 (A)(1) (a) of the Constitution. The allegation of joining of another party must be proved through substantial and tangible evidence. In the instant matter, the pre-requisites of defection of a

member of Parliament is governed by Article 63A(1)(a) of the Constitution of Islamic Republic of Pakistan. There are two main ingredients mentioned under Article 63A(1)(a) of the Constitution where the consequences of defection would attract: (i) Resignation from the political party and (ii) joining of another parliamentary party. In the present case the allegation leveled against the respondent(s) were joining of another political party for which no substantial evidences have been provided by the party head while issuing show cause notices followed by the declarations. The proof in this respect in our view should be unambiguous and without any doubts that a member has left the political party and joined another political party. The only reliance placed upon were the newspaper clippings and videos which were just mentioned in the notices and declarations without details and source thereof i.e. name of news channels etc. The conclusive proof for joining another political party is also lacking. All the case is built up on allegations, conjunctures and surmises. Moreover, the declarations were sent to the Commissioner on 9.4.2022 and were received to the Chief Election Commissioner on 11.4.2022. From the date of receiving of the declaration till date the petitioner did not produce any reliable, credible and authentic evidences in support of their claim. The only material provided to this Commission was a copy of show cause notice and a copy of declaration passed by the party head (PTI). The petitioner raised the question of submission of additional documents at a very belated stage when only one day was left to decide the issue in hand in terms of Article 63A(3). This Commission was bound to decide the case on the basis of documents / evidences attached with the declaration or forwarded by the party head along with the declaration. It is pertinent to mention here that the petitioner submitted the rejoinder on 10.5.2022 in which photocopies of tracking history of TCS notices have been attached. However, the said notices have not been properly served.



14. The burden of proof squarely lies on the petitioner to prove that the respondents have practically left PTI and joined another political party. From perusal of record it reveals that petitioner has neither attached such reliable document with references nor been able to produce any such document that respondents have actually left PTI or tendered their resignations. Article 63A(1)(a) attracts penal consequences, therefore, no decision can be made on the basis of conjunctures and surmises. Reliance is placed on reported judgment PLD 2018 SCMR 1043 (Imran Khan Niazi versus Ayesha Gulalai) wherein august Supreme Court of Pakistan has observed as under:

"7. The first question that requires determination is whether the Respondent had resigned from the membership of her political party (PTI). We have gone through the material pointed out by learned ASC for the Appellant which has also been appended with the appeal. We find that although the Respondent on various occasions used language to the effect that she might leave her party or tender her resignation therefrom she did not follow that up with an intentional and voluntary act of resignation in the form of submitting her resignation in writing under her hand to the Party Head. We have specifically asked the learned counsel for the Appellant if there is any document submitted by the Respondent and duly signed by her which may constitute a letter of resignation. He has candidly admitted that no, such document is in existence or in possession of the Appellant.

8. It is also significant to note that the alleged speech/statement of the Respondent was not made on the Floor of the House. On the contrary, during a speech made on 07.08.2017 on the Floor of the House, she categorically stated that she neither had nor will resign from



her party. In addition the above, the constitution of the PTI provides the manner in which a citizen may become a Member of PTI. It does not contain any provision which deals with resignation or removal from the party. Therefore, considering the totality of circumstances before us, we find it difficult to hold that the Respondent had tendered her resignation from PTI within the contemplation of Article 63A of the Constitution.

15. From plain reading of above it goes without saying that there should be documentary evidence qua leaving and joining of party as discussed above. It is further observed that such alleged speech has to be made on the floor of the house. Instant references are lacking the above prerequisites.

16. So far as the allegation of meeting of respondents with the members of other parties is concerned, leaders and members of the Assemblies meet with each other, however, such meetings do not attract defection clause automatically unless the member concerned submits his formal resignation to the head of his party or formally joins another party. Such circumstances amounting to defection are not mentioned and covered by Article 63A of the Constitution.

17. **Answer to question No. (b).** The record reveals that the show cause notices have been signed by Mr. Asad Umar, Secretary General of PTI instead of party head as provided under proviso of Article 63A(1). It is pertinent to mention here that party head is defined in explanation to the proviso of Article 63A(1) which states "Party Head" means any person, by whatever name called, declared as such by the Party. It is also mentioned here that Mr. Asad Umar, Secretary General has not been nominated by the party head to issue such show cause notices and no such document has been produced before the Commission. Moreover, the prerequisites of show cause notices have also not been



fulfilled by the party i.e. addresses of the alleged defectors, attachment of evidences against them etc. The petitioner party has failed to prove that the show cause notices have been issued in line with the provisions of Article 63A(1). The question is answered accordingly.

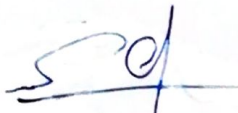
18. Answer to question No. (c). The composition of the Commission is defined under Article 218(2) of the Constitution. Commission comprises of Commissioner and four members one from each province. Article 218(3) oblige the Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that election is conducted honestly, justly, fairly and accordance with law. The Elections Act, 2017 is enacted under Article 222 of the Constitution. Section 3 of the Act provides that in the performance of its functions, and duties and exercise of its powers, the Commission shall regulate its own procedure. The Commission may exercise its powers and perform its functions even if the office of any member of the Commission is vacant or any of the members is, for any reason, unable to attend the proceedings of the Commission and the decision of the majority of the member shall have the effect of the decision of the Commission. Similarly section 6 of the said Act also empowers the Commissioner to constitute benches comprising of two members to hear and decide complaints, applications, petitions or appeals filed before it under this Act. This provision was added in the Act through an amendment No.F.22(18)/2018-Legis., dated 10th March, 2019. Wisdom is derived from the judgment reported in PLD 2018 SC 97 titled "Sardar Sher Bahadur Khan and others vs. Election Commission of Pakistan and others" wherein the issue of composition of the Commission was challenged before the August Supreme Court. The August Court has held that decision of the Commission shall not be invalid on the ground of vacancy or absence of any member. In the light of above, it is held that the Commission is functional for all practical purposes.




19. Perusal of record reveals that the alleged defectors have neither resigned nor made any statement before the media or any other forum that they have joined any other parliamentary party. It is settled law that the issue of defection entails penal consequences resulting in de-seating the Member of Parliament. It is well settled principle of interpretation that a penal provision should be construed strictly and its scope should not be extended unless it is to be required by the clear language used therein or by necessary intendment. Reliance placed on 1999 SCMR 215 titled "Fateh Ali Khan Umrani vs. Chief Election Commissioner of Pakistan"

In the light of arguments of the learned counsel for the parties and material available before us, we have arrived at irresistible conclusion that the petitioner party has failed to substantiate the factum of defection as mentioned in the declaration in compliance with the provisions of Article 63A(1)(a) of the Constitution.

For what has been discussed above, we are of the unanimous view that declarations/references have not been proved in terms of Article 63 A (1) (a) of the Constitution of Islamic Republic of Pakistan, 1973, hence answered in negative.


(Sikandar Sultan Raja)
Chairman


(Nisar Ahmed Durrani)
Member


(Shah Muhammad Jatoi)
Member

Islamabad
The 11th May, 2022

