

BEFORE THE ELECTION COMMISSION OF PAKISTAN ISLAMABAD

PRESENT:

MR. SIKANKAR SULTAN RAJA, CHAIRMAN
MR. NISAR AHMED DURRANI, MEMBER
Mr. JUSTICE (R) IKARAMULLAH KHAN, MEMBER

Case No. 23(217)/2022-Law

In subject: **VIOLATION OF DIRECTIVES ISSUED BY THE ELECTION COMMISSION OF PAKISTAN**

Notice to Muhammad Hamza Shahbaz Sharif, Chief Minister, Punjab

On behalf of ECP : Director General (Law),

For the Respondent : Mr. Khalid Ishaq, ASC

Date of Hearing : 07-07-2022

ORDER

Mr. Sikankar Sultan Raja, Chairman— The Election Commission of Pakistan "the Commission" announced schedule for bye-election in twenty constituencies of the Punjab Assembly in the backdrop of the disqualification and de-seating of twenty Members of the Punjab Assembly under Article 63-A of the Constitution of Islamic Republic of Pakistan.

2. The Commission also issued a Code of Conduct for the political parties, contesting candidates and polling agents in exercise of its powers under Article 218(3) of the Constitution of Islamic Republic of Pakistan "the Constitution" read with Section 233 of the Elections Act, 2017 "the Act" on 25th May, 2022. The para 42 of the Part-I of the Code of Conduct provides "that the Political parties, candidate, their supporters, government/ local government functionaries or elected representative, shall not announce or inaugurate, openly or in secret, their overall development schemes or development work or do anything which tends to influence the result of an election in favor of or against a particular candidate or political party after the announcement of the election program till the day of polling and shall not



give any subscription or donation, or make promises for giving such subscription or donation, to any institution of their respective constituency or to any other institute as well".

3. The respondent announced hundred units monthly free electricity for an estimated 9 Million poor families in the Province of Punjab from the current month by incurring an amount of Rs. 100 Billion from Government exchequer under Punjab Chief Ministers, "Roshan Gharana Programme" while addressing a Press Conference on 04-07-2022. This announcement was flashed in print and electronic media with wide publicity.

4. The Commission took notice of the press conference addressed by the respondent and decided to issue notice to him. The respondent is also head of a political party and also a public office holder and government functionary.

5. Accordingly notice was issued to the respondent with direction to appear in person or through counsel on 07-07-2022 before the Commission and explain his position.

6. The respondent appeared through Mr. Khalid Ishaq, ASC and submitted reply on behalf of the respondent.

7. Argument of the learned counsel for the respondent and Director General (Law) heard.

8. Learned Counsel for the respondent at the very outset argued that the respondent and his government are bound by the constitutional and mandate of the Election Commission and holds constitutional obligation to assist the Commission as and when required for ensuring free, fair and honest election. He contended that the respondent has not and will not act in any manner which may be construed as violation of the directives issued by the Commission. He submitted that the respondent and his cabinet are bound by their oath to do right to all manner of people according to law. He argued that the respondent and his cabinet considering



the rampant rise of the fuel, energy and the food prices directed all the departments to device a policy and measures to extend relief to the masses of Punjab. He submitted that realising the problems of low income citizens of the province of Punjab and current inflation the government of Punjab decided to launch "Roshan Ujala Program" providing Rs. 100 Billion subsidies out of budgetary resources during financial year 2022-23. He submitted that this programme will provide free electricity to 90 Lakh consumers which is equal to 05 Crore 40 Lakh citizen of Punjab. During his argument he referred to the launching of the subject scheme and explained that most of the benefits of the subject programme will be availed in the territorial areas of the province of Punjab where either no elections are being held or are held in ignorable marginal areas of the DISCOs concerned. He submitted that there is no element of political angling or undue gains in the elections. He further submitted there is no possibility of cherry pickings or discrimination in execution of this program, as compared to the developmental scheme. He submitted that the subject programme is not covered by the developmental scheme prohibited by the Commission through Code of Conduct. While concluding his arguments he submitted that the bye-elections are schedule to be held on 17th July, 2022 whereas the possible benefits of "Roshan Ujala Programme" will be available to the lifeline consumers in august 2022 and requested that the subject programme does not fall within the contours and interpretation of "announcement of any development scheme for the constituencies". It is further submitted that the provision/clause quoted in the Notice and made basis for the issuance of the Notice, has to be construed strictly being penal in nature. At the end of his arguments he requested that the notice dated 5th July, 2022 may be withdrawn.

9. Contrarily, the Director General (Law) argued that the Commission is charged with the duty to organize and conduct the election and make such arrangements to ensure that election is conducted honestly, justly, fairly and in accordance with law as ordained in Article 218(3) of the Constitution. He further argued that the Commission has issued clear directions that no developmental scheme shall be announced, where the bye-elections are scheduled to be held. He contended that the Commission is under constitutional obligations to provide level playing field to all the political parties and contesting candidates. In support of his arguments he placed reliance on a case reported in PLD 2012 SC 681 "Workers



Party through Akhter Hussain Advocate Vs. Federation of Pakistan and two others". While concluding his argument he requested the Commission to suspend the "Roshan Ujala Programme" till the culmination of the bye-election in the province of Punjab to avert public perception that the subject programme has been announced to influence the election process of bye-elections in the province of Punjab.

10. Arguments on either side heard and record perused.

11. Article 218(3) of the Constitution mandates the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against. Section 233 of the Act provides that the Commission shall frame a Code of Conduct for the political parties, contesting candidate, election agents and polling agents. In line with its constitutional and statutory mandate, the Commission framed a Code of Conduct for the twenty bye-elections in Punjab and notified the same on 25th May, 2022. Para 42 of the Code of Conduct prohibits announcement and inauguration of developmental schemes openly and secretly. The Commission is under obligation to provide level playing field to all the political parties and contesting candidates. Announcement of any developmental scheme which directly or indirectly influence the election process is prohibited under the Act. Article 218(3) of the Constitution empowers the Commission to ensure that the election process does not suffer from any corrupt and/or illegal practices and to take pre-emptive action and pass any and all orders and exercise such powers as may in its opinion be necessary for ensuring the election is conducted honestly, justly and fairly and in accordance with law. The Commission is under obligation to ensure that the standards of 'honesty, justness and fairness' mentioned in Article 218(3) are met. Notwithstanding the inclusion of the subject scheme in the budget of 2022-23 for the province of Punjab, the announcement of the same scheme openly through a press conference by the respondent has created a public perception that the government is incentivizing the voters of the bye-elections in the garb of consumers of electricity. The announcement of such schemes by a public functionary through open press conference directly influence the election process and is against the standards of election as provided in Article 218(3) of the Constitution.



12. The resume of our above discussion leads us to the conclusion that the subject developmental scheme announced by the respondent has direct influence over the election process and is against the mandate of the Constitution regarding free, fair, just and honest elections on a level playing field and need to be suspended till the culmination of the bye-elections in the province. Therefore, the subject developmental scheme is suspended till 19th July, 2022.

(SIKANDAR SULTAN RAJA)
Chief Election Commissioner/
Chairman

(MR. AHMED DURRANI)
Member

(JUSTICE (R) IKRAMULLAH KHAN)
Member

Announced
7th July, 2022.

