

1

F.No.3(4)/2024-Cord-M/F (P/F-1)
ELECTION COMMISSION OF PAKISTAN

ORDER
02-04-2024

Subject: **POSTPONMENT OF THE SENATE ELECTIONS ON ACCOUNT OF DELAY OF OATHS OF RESERVED SEATS IN KHYBER PAKHTUNKHWA PROVINCE.**

WHEREAS, the Election Commission of Pakistan is a Constitutional body constituted under Article 218(2) of the Constitution of Pakistan, 1973 (hereinafter referred as the "Constitution").

AND WHEREAS, the Election Commission of Pakistan is mandated under Article 218(3) of the Constitution 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.

AND WHEREAS, the Commission passed an order on 01-03-2024 on applications of Sunni Ittihad Council (SIC) and other political parties for allocation of reserved seats in the National Assembly and Provincial Assemblies,. Operative part of which is reproduced as under;

"33. Therefore, the Commission is of the view that in light of clear provisions of Article 51(6) of the Constitution read with Section 104 of the Elections Act, 2017 and Rule 92 and 94 of the Election Rules, 2017, SIC is not entitled to claim for the quota for reserved seats for women and non-Muslims due to having non curable legal defects and violation of mandatory provision of submission of party list for reserved seats which is the requirement of law. The request of Petitioner No. 1 is rejected and all the other petitions from Serial Number 2-10 are partially accepted. The seats in the National Assembly shall not remain vacant and will be allocated by Proportional representation process of Political Parties on the basis of seats won by Political Parties. Office is directed to calculate the quota accordingly."

AND WHEREAS, the order *supra* was challenged before the Hon'ble Peshawar High Court Peshawar by Sunni Ittihad Council (SIC) through W.P. No. 1272-P/2024 and the Hon'ble Peshawar High Court Peshawar vide order dated 04-03-2024 upheld the Order of the Commission, operative part of which is reproduced as under;

"28. Since we have held that SIC is not entitled for any share in the reserved seats for women, therefore, the request for filing list of candidates for reserved seats at a belated stage does not arise. Petitioner has essentially assailed the interpretation of the section as done by the ECP. Besides, the section is not a substantive provision rather it merely provides a mechanism for effective conduct of election. Other than what has been stated above, the learned counsel did not lay much stress on the vires of the section 104 of the Act of 2017."



His objection was mainly on the manner it was interpreted by the ECP allocating the reserved seats to other political parties. Therefore, the occasion does not arise to declare the said provision contrary to the letter of Constitution.

29. In view of what has been stated above, the instant petitions being devoid of any merit are accordingly dismissed."

AND WHEREAS, the Speaker Provincial Assembly Khyber Pakhtunkhwa was approached by the notified members of Khyber Pakhtunkhwa Assembly for the reserved seats for administration of oath to them, however, no arrangement for oath was made.

AND WHEREAS, the Returning Officer for Senate Election to the Khyber Pakhtunkhwa has informed vide letter No. F.1(26)/2024-Els (PEC) dated 2nd April 2024 alongwith written request of the elected and notified members of the Khyber Pakhtunkhwa Assembly against the reserved seats that the Speaker Provincial Assembly has not arranged oath.

AND WHEREAS, the Commission is of the considered view that the standards of honesty, justness and fairness of election as provided in Article 218(3) of the Constitution cannot be fulfilled due to non-administration of oath to elected members and which amounts to disenfranchisement of lawful voters and denial of level playing field to the voters. Thus, the Electoral College is incomplete for the purpose of Senate elections in Khyber Pakhtunkhwa Province.

NOW THEREFORE, the Commission in exercise of powers under Article 218(3) of the Constitution read with Section 4(1), Section 8(c) and Section 128 of the Elections Act, 2017 and all other enabling provisions of the Constitution and law in this behalf, postpones the poll to the Senate Election to the extent of Khyber Pakhtunkhwa till the administration of oath to the elected members against the reserved seats and accordingly makes necessary amendment in the notification issued under Section 107 of the Act. Office is directed to take follow up action.

Sd/-

SIKANDAR SULTAN RAJA
Chief Election Commissioner/
Chairman

Sd/-

NISAR AHMED KHAN ANI
Member

Sd/-

SHAH MUHAMMAD JATOI
Member

Sd/-

BABAR HASSAN BHARWANA
Member

Sd/-

JUSTICE (R) IKRAMULLAH KHAN
Member

