

ELECTION COMMISSION OF PAKISTAN

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

CASE No.F.17(2)/2024-Coord. (Main File)

Subject: REFERENCE FOR DISQUALIFICATION OF MR. SOHAIL SULTAN MEMBER NATIONAL ASSEMBLY (NA-04) UNDER ARTICLE 62 AND 63 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN

Mr. Nasrullah Khan S/o Muhammad Nazir Khan

.....Petitioner

VERSUS

Mr. Sohail Sultan, MNA, NA-04, Swat

.....Respondent

For the Petitioner : In person alongwith Sultan Muhammad Khan, AHC

For the Respondent : In person alongwith Mr. Babar, Awan, Senior ASC

Date of hearing : 21-01-2026

ORDER

Sikandar Sultan Raja, Chairman- The matter was fixed for argument on the point of maintainability of the case. The counsel for the Respondent has submitted concise statement/ reply on the last date of hearing and raised all the objections including the issue of maintainability of the subject reference. The Commission on receipt of the reference started proceedings which were challenged by the Respondent (MNA) before the Peshawar High Court Peshawar by invoking the Constitutional jurisdiction of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan. The Division Bench of the Peshawar High Court, Peshawar after hearing all concerned parties vide order dated 18.12.2025, decided the writ petition .The relevant para is reproduced as under;—

“11..... However, we expect that the worthy Election Commission of Pakistan, as a first step, shall determine the maintainability of the reference through a speaking order, after providing an opportunity of hearing to all the concerned parties.

12. With aforesaid observation, the petition stands dismissed”

02. Learned senior counsel Mr. Babar Awan ASC appeared on behalf of Respondent and argued that the impugned reference is not maintainable and liable to be



rejected in limine. He argued that the reference forwarded to the Commission shall be decided within a period of 90 days from its receipt. He referred page-2 of concise statement and stated that the reference was filed to the Speaker National Assembly on 09.09.2024 which was sent to the ECP on 07.10.2024. He stated that in terms of Article 63(3) of the Constitution it was required for the Commission to decide the same within a period of 90 days i.e. on or before the 2nd week of January, 2025 before the sunset clause hit it. He added that as of today the reference has become un-Constitutional and the ECP has become functus officio. He further argued that Article 225 of the Constitution specifically provides that the election to a House or Parliament can be called in question by filing an election petition before the Election Tribunal. He further mentioned that two remedies were available to the Petitioner under the Constitution and Law i.e. in terms of Article 225 of the Constitution and Section 9 of the Elections Act, 2017 which were not availed by him. He further argued that it was a question of pre-election qualification/ disqualification which could be challenged before appropriate forums referred herein above. He also referred to Section 9 of the Elections Act, 2017 and read out sub-Section 1 and 3 before the Commission. He pointed out that the Petitioner opted not to approach to ECP under Section 9 of the Act, 2017 or the Election Tribunal under Article 225 of the Constitution. In this regard he referred to the judgment of Lahore High Court reported in 1995 MLD 1903 and stated that pre-election dispute cannot be raised after taking oath. His next point of arguments was that specific hierarchy is provided under the law which cannot be by-passed and it is either to come to the Commission within 30 days or to go to the Election Tribunal. He placed reliance on the judgment of Supreme Court of Pakistan reported in PLD 2005 SC 52 and stated that since two remedies have been by-passed, therefore, the reference is not maintainable. He also argued that Commission has no jurisdiction to inquire about the pre-qualifications/ disqualification of Returned Candidate and in support of his arguments he referred to the judgment reported in 2021 SCMR 1675, 2023 SCMR 370 and CA No. 1040/2022. He stated that it is the matter of pre-election dispute which has to be decided at pre-election stage and it is not a valid reference, therefore he requested that the same may be rejected being not maintainable.

03. The counsel for the Petitioner who is responding the objections of maintainability stated that the facts of the case are un-disputed and have been confirmed by the Respondent himself during the pendency of matter before the Peshawar High Court, Peshawar. He stated that ECP has the jurisdiction and the reference is maintainable before the Commission in terms of Article 63(3) of the Constitution. He referred the judgment of



Supreme Court of Pakistan reported in PLD 2012 SC 1089 titled Syed Mehmood Akhtar Naqvi Vs. FOP & Others by three member bench and relevant paras are 39, 46, 81 & 82. He argued that the august Supreme Court of Pakistan in case mentioned above confirmed the disqualification by the Commission and directed to de-notify all the members who have made false and incorrect declaration along with their nomination papers which was a pre-election stage. He referred to Article 63 of the Constitution and assisted the Commission that the language of Article 63(1) covers all the stages including pre-and-post qualification and disqualification of a member of Assembly. He also referred to the ground (k) of Article 63(1) and stated that if the arguments of counsel for the Respondent are accepted then this ground would become redundant. He stated that Article 225 of the Constitution and Section 9 of the Elections Act, 2017 apply to the election disputes while Article 63 provides the procedure and grounds for disqualification of Member of Parliament. He further argued that the procedure is given under Article 63(2) of the Constitution. He further informed that on 17.10.2024 the proceedings upon the reference forwarded to the Commission by the Speaker were suspended by Peshawar High Court, Peshawar which remained suspended till the final order passed on 19.12.2025. He also referred to Article 254 of the Constitution and stated that if the arguments of the Respondent are accepted for a moment then Article 254 of the Constitution provides that failure to comply with requirement as to time does not render an act invalid. He also stated that the case of Mr. Faisal Vawda relied upon by the counsel for the Respondent is irrelevant and the facts are different which cannot be relied upon at this stage. He also referred the case reported in PLD 2017 SC 265 by five members bench and PLD 2018 SC 449 and argued that in both the cases pre-election matters were involved which were upheld by the Supreme Court of Pakistan. In respect of time frame he referred the judgments reported in 2013 SCMR 5 and 2024 SCMR 1059 and stated that due to the suspension of proceedings the clock stops, therefore, he prayed that the reference is maintainable and may be proceeded accordingly.

REBUTTAL

04. In rebuttal the counsel for the Respondent read out the relevant para-3 of Faisal Vawda's case and also referred the judgment reported in PLD 2018 SC 678 Samiullah's case and rebutted the provisions of Article 254 by stating that it was not an act it was a *list* and no word "proceedings" has been mentioned in Article 254, therefore, it cannot be relied upon.



NOTE

The counsel for the parties also advanced certain arguments regarding the facts of the case which are not added in this order because the case is fixed for arguments on the maintainability.

05. Arguments heard and record perused.

06. Article 63(3) of the Constitution of Pakistan obligates the Commission to decide the question of disqualification referred to by the Speaker of an Assembly or Chairman Senate as the case may be within 90 days from its receipt or deemed to have been received. The subject reference was received to the Commission on 08-10-2024. The Commission fixed the matter for hearing on 23-10-2024 with notices to the parties on 10-10-2024. In the meantime the Respondent challenged the reference and proceedings of the Commission before Peshawar High Court Peshawar through writ petition No.5195-P-2024. The Peshawar High Court after hearing the counsel for respondent ordered for issuance of notices to the parties and the proceedings of the Commission were also stayed vide order dated 17-10-2024. The copy of stay order was provided to the Commission during first hearing on 23-10-2024. upon receipt of the stay order which was till next date of hearing the matter was adjourned to 11.11.2024. Thereafter the matter was adjourned to date in office with the directions to the office to fix it after vacation of stay by the Peshawar High Court. However, the interim order continued till the final disposal of the Writ Petition on 19-12-2025. The Commission could not meet the time line provided under Article 63(3) of the Constitution due to continuous stay order by the Peshawar High Court. The clock had stopped on 17-10-2024 and revived on 19-12-2025. Therefore 90 days time will expire on 11-03-2026 after deducting the time consumed before the stay order. The arguments of the learned counsel for the respondent are not supported by the record.

07. The next contention of the learned counsel for the petitioner was that the office of speaker and the Election Commission is not the appropriate forum to decide the question of pre-election disqualification in view of bar contained in Article 225 of the Constitution and Section 9 of the Elections Act, 2017. Article 63(3) of the Constitution in express and unequivocal language provides that “the *Election Commission shall decide the question within 90 days from its receipt or deemed to have been received*”. The Constitution does not provide any other method of deciding a question of disqualification other than answering the



question on merits. The question of pre-election disqualification and other preliminary objections can be addressed at the time of final adjudication of the case.

08. The Peshawar High Court Peshawar while deciding the Writ petition No.5195-P/ 2024 has also discussed and decided the jurisdiction and maintainability of the reference in following term;

"Since in the present matter, we understand that the Election Commission of Pakistan is a Constitutional forum and has the mandate to decide and answer the reference sent by the speaker of the National Assembly."

09. The issue of qualification and disqualification under Article 62 and 63 of the Constitution has been discussed and decided by the august Supreme Court of Pakistan in case titled as Muhammad Salman vs. Naveed Anjum reported in 2021 SCMR 1675. The relevant para is reproduced below:-

"25. Now, the Constitution itself confers a jurisdiction on the Commission with regard to the disqualification of members of the Federal and Provincial legislatures. This is contained in Clause (2) and (3) of Article 63 (read, as appropriate, with Article 113), which provide as follows:

(2) If any question arises whether a member of Majlis-e-Shoora (Parliament) has become disqualified from being a member, the Speaker or, as the case may be, the Chairman shall, unless he decides that no such question has arisen, refer the question to the Election Commission within thirty days and should he fail to do so within the aforesaid period it shall be deemed to have been referred to the Election Commission.

(3) The Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant.

A special type of disqualification, by defection, is provided for in Article 63A. Clauses (3) and (4) specifically empower the Commission to rule on the validity of the declaration of defection against a member. (Clause (5) allows for a direct appeal to this Court against the decision of the Commission.) Thus, the Constitution is not silent on whether or when (and if so, under what circumstances) the Commission has the power to consider the issue of disqualification. The question therefore becomes whether this specific conferment of power is exhaustive. In other words, if the Constitution has itself conferred a limited, and not general, power and jurisdiction on the Commission in terms as noted above, can a general power nonetheless be discovered as inhering in Article 218(3)? In our view, the answer ought to be in the negative. The reason is that that would render the relevant provisions of Articles 63 and 63A redundant."



10. The Commission has exclusive jurisdiction and power to decide the question of disqualification in terms of Article 63(3) of the Constitution whether pre or post election, forwarded through a reference by the speaker or the chairman in terms of Article 63(2) of the Constitution. The reference is sent by Speaker of an Assembly or Chairman SENATE is subject to second scrutiny by the Commission. It is the exclusive domain of the commission to decide the question of pre and post disqualification of a Member of Parliament or a Provincial Assembly.

11. The august Supreme Court of Pakistan in another case reported in PLD 2012 SC 1089 titled as Syed Mehmood Akhtar Naqvi Vs. Federation of Pakistan & others has held that:-

"46. As regards the contention of learned counsel for the respondents that Article 63 of the Constitution, is related to pre and post election disqualification the same has no force. On plain reading of the said Article, the Legislature has used the word "a person" which demonstrates the intention that any person whether he is Member of the Majlis-e-Shoora shall be disqualified if any one of the disqualifications mentioned in the said Article applicable upon him. The Article further provides that the person shall be disqualified "from being elected or chosen" relates to pre election disqualification whereas "from being a Member of Majlis-e-Shoora" relates to post election disqualification. The Article 63 of the Constitution has dealt with both i.e. pre and post election disqualification."

12. On the assessment of available record and arguments advanced on both sides on the issue of pre and post election disqualifications under Article 63 (1) (a) to (p) , the reference sent by the Speaker is maintainable for adjudication by the Commission under clause (3) of Article 63 of the Constitution. Therefore, in view of abovementioned discussion it is decided that the subject reference is maintainable and proceed-able therefore, the objection regarding non-maintainability is rejected and case is fixed for 23-01-2026 at 10:00 am for arguments on the merits of the case.

Sd-
Sikandar Sultan Raja
Chairman

Sd-
Nisar Ahmed Durrani
Member

Sd-
Shah Muhammad Jatoi
Member

