

ELECTION COMMISSION OF PAKISTAN

PRESENT

MR. SIKANDAR SULTAN RAJA, CHAIRMAN
 MR. NISAR AHMED DURRANI, MEMBER
 MR. SHAH MUHAMMAD JATOI, MEMBER
 MR. BABAR HASSAN BHARWANA, MEMBER
 MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

CASE No. F. 4(2)/2018-MCO.

Subject: USE OF INTEMPERATE LANGUAGE AND CONTEMPTUOUS REMARKS AGAINST THE ELECTION COMMISSION OF PAKISTAN DURING MEDIA TALK ON 24-01-2023.

On Commissions Notice.

Fawad Ahmed S/o Chaudhary Naseem Hussain, r/o

- 1) Village and post of Ladhar, District Jhelum; &
- 2) H.No.13-A, St No. 8, F-7/3, Islamabad

.....Respondents

For the respondents: Proxy Counsel Tanvir Janjuha, Adv
 Date of hearing: 06-06-2023

ORDER

Sikandar Sultan Raja, Chairman- Today, the matter was fixed for arguments on objections raised by the counsel for the respondent and personal appearance of Fawad Ahmad Chaudhary. However, proxy Counsel Mr. Tanvir Janjuha appeared on behalf of senior counsel and submitted a cause list of the Court of Mr. Tahir Abbas Supra, learned Additional Session Judge, Islamabad in which at Sr No.32 the case of Fawad Ahmed Choudhary is fixed for hearing. So due to appearance before the such Court, reportedly he is unavailable and request for adjournment has been made on his behalf.

2. Perusal of record reveals that the instant matter is pending since January, 2023 and seven date^s of hearing^s have been fixed for submission of reply to the notice dated 27-01-2023 and for personal appearance of Fawad Ahmed Choudhary. Except 14-03-2023 the respondent never appeared before the Commission and on every date of hearing has been seeking adjournments on one or the other pretext. On the last date of hearing adjournment was sought by the counsel for respondent



on the similar ground that the bail matter is pending before the learned Session judge and today the same repeated request has been made by the learned proxy counsel. The entire conduct of the respondent seems to be a tactic to linger on the present proceedings and an attempt to avoid appearance before the Commission, for the reasons best known to him.

3. Despite several opportunities granted to the respondent, he has finally submitted the reply on last date i.e. 23-05-2023, wherein instead of responding to the contemptuous and derogatory remarks made by him, he primarily assailed the jurisdiction of this Commission. The gist of the objections raised by the respondent is as under:-

- (1) The notice is vague, cursory and without jurisdiction and it is also unclear that under what law it issued;
- (2) The notices have been issued by the Secretary, Election Commission who has no authority to act as Commission;
- (3) The Commission or the Secretary, Election Commission cannot exercise suo-moto powers as this power vests only in Superior Courts;
- (4) Vires of section 10 of the Elections Act, 2017, are under challenge in WP No.4977/2022 filed by Mr. Asad Umar before the Hon'ble High Court of Sindh .
- (5) That Secretary, Election Commission has already lodged FIR No.69/2023 dated 24-01-2023 on the same accusations and cause against the respondent and he is being prosecuted for the same offence twice which is unconstitutional.
- (6) Notice sates that the respondent has willfully scandalized, ridiculed and maligned the Commission and in terms of section 11 (3) of the Contempt of Court Ordinance, 2003, the Members of the Commission are barred to sit as adjudicator in their own cause.

4. On factual side, the respondent, in a cursory manner, has denied the allegation of making derogatory remarks or contemptuous language against the Commissioner or the Election Commission.

5. Brief facts of the matter of Mr. Asad Umar case are that proceedings of the Commission in respect of contempt including show cause notice were assailed by him on almost similar grounds taken by the present respondent before



us, before the Hon'ble High Court of Sindh through C.P. No. D- 4977/2022, and the Hon'ble Court was pleased to pass order on 29.08.2022, *inter alia*, in the following terms:

“.....Meanwhile, the ECP may continue its proceeding pursuant to the impugned Show Cause Notice, however, shall not pass any final order.”

3. Mr. Asad Umar also filed objections before the Commission in pending proceedings of contempt with, *inter alia*, prayer that “*the Chief Election Commissioner, of the Election Commission of Pakistan and the members mentioned in the Notice and Show Cause Notice, may rescue themselves in the instant matter and act strictly in accordance with law. Moreover, the legality of the Show Cause Notice be decided as the same have been issued without lawful authority.*” This Commission assailed the interim orders of the Hon'ble High Court of Sindh passed in the petition of Mr. Asad Umar and the orders of the Hon'ble Lahore High Court, Rawalpindi Bench dated 21.09.2022 passed in connected Writ Petitions of Mr. Imran Ahmed Khan and Fawad Chaudhary bearing Nos. 2604 & 2605 of 2022, before the august Supreme Court of Pakistan through Civil Petition for Leave to Appeals No. 3679, 3680, 3681 and 3682 of 2022. The august Supreme Court of Pakistan disposed of the petitions on 06.12.2022, with the following observations:

“3. It is apparent that the impugned orders by the High Courts have not restrained the petitioners ECP from proceedings in the matters initiated by it under section 10 of the Act. The learned counsels for the respondents, who were present in the Court for an another case, have assisted us in the matter. They have drawn our attention to the statement made by the respondent before the ECP that affirms that the latter has not been restrained from proceeding ahead in the pending contempt matters. The said learned counsel however, inform that they have raised objection before the ECP, *inter alia*, about the alleged incompetence of its officer who had issued the show cause notices. As these objections have been raised in the pending proceedings under section 10 *ibid* before the ECP, the same are required to be considered and decided by it before passing



any final order. We hold that the petitioner-ECP may continue its proceedings, in accordance with law including, by decision on the objections raised on behalf of the respondents.”

4. The august Court was pleased to further observe that:

“5. In view of the foregoing legal position, the proceedings before the ECP under section 10 of the Act may continue without restraint. These petitions are disposed of with the above observations.”

5. The matter of Mr. Asad Umar is pending adjudication before the Hon’ble High Court of Sindh.

6. We have carefully perused the record and have also gone through the relevant provisions of law as well as the case law laid down by the Hon’ble Courts. First we would like to go through the provisions of Section 10 of the Elections Act, 2017, relating to the contempt powers of the Commission:

“10. Power to punish for contempt.—The Commission may exercise the same power as the High Court to punish any person for contempt of court and the Contempt of Court Ordinance, 2003 (V of 2003), or any other law pertaining to contempt of court shall have effect accordingly as if reference therein to a “court” and to a “judge” were a reference, respectively, to the “Commission” and the “Commissioner” or, as the case may be, a member of the Commission.”

6. There is another provision in the Elections Act, 2017, which directly deals with the powers of the Commission, in the following manner:-

“4. Power to issue directions.— (1) The Commission shall have the power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order for doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.



(2) Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.

(3) Anything required to be done for carrying out the purposes of this Act, for which no provision or no sufficient provision exists, shall be done by such authority and in such manner as the Commission may direct.”

7. The above provisions confer powers on the Commission as are allowed to a Hon'ble High Court under the law. In our view, the Commission in terms of section 10 of the Elections Act, 2017, is vested with the same powers of contempt as are vested in a Hon'ble High Court under Article 204 of the Constitution of Islamic Republic of Pakistan. Moreover, the Parliament has empowered the Election Commission Pakistan to make rules in terms of section 239 of Elections Act, 2017, which were framed, namely “the Election Rules, 2017. There is nothing available on record or brought before us that these rules were ever challenged. Rule 4 of the Elections Rules, 2017 relates to procedure of contempt of the Commission. Sub rule (1) of said rule 4 provides that the Commission may take cognizance of its alleged contempt under section.10 of the Elections Act, 2017 either suo moto or on a petition filed by any person on account of willful disobedience of any order, instruction or direction of the Commission or a breach of undertaking submitted to the Commission or using intemperate language against the Commissioner, or the Commission or any of its members. Sub-rule (9) of rule 4, states that the respondent shall, on the first hearing, file a written reply in answer to the allegations against him and shall be afforded reasonable opportunity to adduce evidence. It is also prominent feature of the matter that prior to enactment of the Elections Act, 2017, under section 103A Representation of People Act, 1976 Commission was vested with the same powers of contempt as vested under section 10 of the Elections Act, 2010, and the legislature has intentionally not removed the contempt provisions while enacting the Elections Act, 2017.

8. The issue/objection so raised by the respondent with regard to double jeopardy loses force as the present proceedings are protected under a separate law and the criminal proceedings pending before the learned Session Judge, on a FIR, are regulated under a separate law having different offences, trials and procedures



and punishments. There is also no any conviction in any of the proceedings which is prerequisite in order to apply the doctrine of double jeopardy. In order to resolve the proposition of double jeopardy, we have gone through Section 403 of the Criminal Procedure Code, which provides as under:-

“403. Persons once convicted or acquitted not to be tried for the same offence

- (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be tried again for the same offence, nor on the same facts for any other offence for which is different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.
- (2) A person acquitted or convicted for any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under sections 235, subsection (1).
- (3) A person convicted of any offence constituted by any act causing consequences which together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequence had not happened, or were not happened, or were not known to the Court to have happened, at the time when he was convicted.
- (4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for any other offences constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
- (5) Nothing in this section shall affect the provision of section 26 of the General Clauses Act, 1897, or section 188 of this Code.”



9. We have also gone through Article 13 of the Constitution of the Islamic Republic of Pakistan, which is also reproduced as under:-

“13. Protection against double punishment and self-incrimination. No person----

(a) shall be prosecuted or punished for the same offence more than once; or

(b) shall, when accused of an offence, be compelled to be a witness against himself.”

10. In terms of the above provisions of law, protection to a person would be available when he is prosecuted for an offence and tried by a competent court of law and the trial has finally ended in shape of conviction or acquittal and he cannot be tried again on the same charge. Thus, it is made clear that legislature provides protection to a person from second trial on the same allegations, if the first has already ended either in conviction or acquittal. More so, contempt proceeding is not purely a criminal liability and it is mixed type of proceedings. In contempt proceedings, the Commission has ample powers to pardon the contemnor.

11. It is reiterated that the above objections/issues raised by the respondent qua jurisdiction of the Commission under section 10 of Elections Act, 2017 have already been settled by the August Supreme Court of Pakistan as well as Hon'ble Lahore High Court, Lahore. The legislature has intentionally inserted section 10 in the Elections Act, 2017, for the enforcement of Article 220 of the Constitution which bounds all the executive authorities in the Federation and the Provinces to assist the Commissioner and the Commission in performance of his/their functions and duties. Lack of contempt powers would apparently make Article 220 redundant. The pending CP filed by Mr. Asad Umar in the Hon'ble Sindh High Court challenging the vires of Section 10 of the Elections Act, 2017 has no effect on the present proceedings as the Hon'ble High Court has not restrained this Commission from proceeding against the present respondent under section 10 of the Act *ibid*. Mere pendency of the CP does not debar the Commission from proceeding under the law. The specific objection that the Secretary, Election Commission has no authority to issue the notice on behalf of the Commission, has no force as the



Commission in terms of section 6(1) of the Elections Act, 2017, read with amended rule 4(8) of the Election Rules, 2017, has duly authorized the Secretary, Election Commission to issue notice to the respondent on its behalf. It is also pertinent to mention here that all correspondence on behalf of the Election Commission is communicated, actualized and given effect by the Secretary who had already been authorized by the Commission in terms of section 6 of the Elections Act, 2017 read with the amended rule 4 of the Election Rules, 2017 and in pursuance of the above referred law and rules, the Secretary, Election Commission used to institute, defend and act on behalf of the Election Commission in all petitions instituted before the Hon'ble Supreme Court or the High Courts.

12. For what has been discussed above, the reply submitted by the respondent is found to be unsatisfactory wherein unnecessary objections have been raised instead of responding to the specific allegations which are subject matter of instant proceedings. We therefore, direct the office to issue Show Cause notice to the respondent to the effect that why contempt proceedings may not be initiated against him under the law. Matter to come up for reply to Show Cause Notice by the respondent and he shall also appear in person for further proceedings on **21-06-2023**. Order accordingly.


Sikandar Sultan Raja
Chairman


Nisar Ahmed Durrani
Member


Shah Muhammad Jatoi
Member


Babar Hassan Bharwana
Member


Justice (R) Ikram Ullah Khan
Member

