

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MOHAMMAD JATOI, MEMBER
MR. BABAR HASSAN BHARWANA, MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

Case No. F. 17(1)/2023-Cord

In Ref: **DECLARATION OF DEFECTION FROM PAKISTAN TEHREEK-E-INSAF
UNDER CLAUSE (1) OF ARTICLE 63 A OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN**

Imran Ahmed Khan Niazi, Chairman (Pakistan Tehreek-e-Insaf)

...Petitioner

VERSUS

Ch. Masood Ahmed, Member Provincial Assembly, H. No. 427, Sector-D,
Lane-8, Askari-10, Lahore Cantt, Lahore

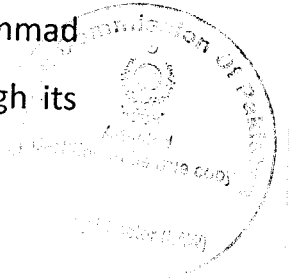
... Respondent (s)

For the Petitioner : Nemo
For the Respondent (s) : Syed Mehmood Hussain Shah, Adv.
a/w Mr. Jawad Masood, Adv.
Date of Hearing : 07.02.2023

ORDER

Mr. Nisar Ahmed Durrani, Member.— In order to resolve, the controversy of disqualification of one Ch. Masood Ahmed, sitting Member of Punjab Assembly (PP-257) raised before the Worthy Speaker of Provincial Assembly of Punjab, who in term of clause 2 of Article 63 of the Constitution of Islamic Republic of Pakistan, has referred the matter before the Election Commission of Pakistan (ECP), however, before discussing merits of the case, the facts necessary, for determination of the issue, is reproduced in a summary manner as under:

The Hon'ble Supreme Court of Pakistan while hearing the Civil Petition No. 2242 of 2022 titled "Muhammad Sibtain Khan and others vs Province of Punjab through its



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Chief Secretary and others" made directions for holding election to Chief Minister of Punjab on 22.07.2022.

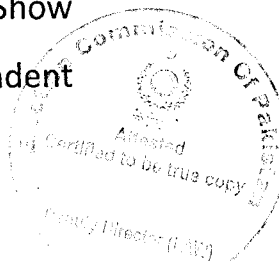
In Pursuance to the direction of the Hon'ble Supreme Court of Pakistan dated 01.07.2022, the Speaker of the Provincial Assembly of Punjab, issued formal notification for convening the session in that regard for 22.07.2022, with clear direction that, the aforesaid election will be held on 22.07.2022.

Mian Mehmood-ur-Rasheed, Parliamentary Leader, of Provincial Assembly of Punjab for Pakistan Tehreek-e-Insaf issued written directions to all sitting MPAs of PTI in the following words:

"c) That, you being member of the parliamentary party of the Pakistan Tehreek-E-Insaf in Punjab Assembly are directed / instructed/ advised to cast your vote in favor of Mr. Pervaiz Ellahi, as candidate for the election of Chief Minister, Punjab.

d) That, all members are required to strictly adhere to the above directions in true letter & spirit and keep in mind the intent behind the provision of Article 63-A of Constitution of Pakistan. 1973."

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However, despite clear directions, conveyed to all MPAs from PTI through TCS Courier services, Ch. Masood Ahmed (respondent herein) did not attend the session of the Punjab Assembly in order to cast his vote, under the directions of the Parliamentary Leader of PTI in the Punjab Assembly. Being absent, therefore, on the occasion of voting of Chief Minister Punjab, the respondent was served with Show Cause notice which was duly replied by the respondent



wherein, respondent explained his position that as he was on visit to Turkey in month of July, 2022, wherein, on 21.07.2022 he lost his passport on Istanbul Airport, and matter had reported to police, however, he managed to come to Pakistan on Emergency Passport issued by Embassy of Pakistan on 25.07.2022.

The party Head of PTI, being not convinced and satisfied therefrom the reply of respondent, filed declaration of disqualification of the respondent with Speaker of the Punjab Assembly in term of Article 63-A of the Constitution of Islamic Republic of Pakistan.

The Worthy Speaker, thereafter the receipt of "Declaration" from PTI head Mr. Imran Khan Niazi, sent a reference to Election Commission of Pakistan through Provincial Election Commissioner, Punjab for decision under the relevant provision of the Constitution. ~~The only pivotal~~ question for determination of the ECP is as to whether, the absence of the respondent, at the occasion of election of Chief Minister from the Session of Provincial Assembly formally summoned by the Speaker, Provincial Assembly, Punjab amounts to claim "abstain" as mentioned there in Article 63-A of the Constitution, which reads as:

"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) votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relation to—
- (i) election of the Prime Minister or the Chief Minister; or
- (ii) a vote of confidence or a vote of no-confidence; or
- (iii)

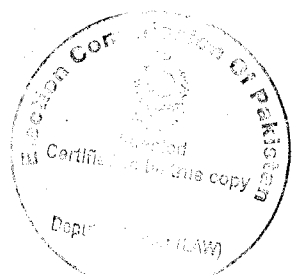
he may be declared in writing by the Party Head to have defected from the political party, and the Party Head may forward a copy of the declaration to the Presiding Officer and the Chief Election Commissioner and shall similarly forward a copy thereof to the member concerned :

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.

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- (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.

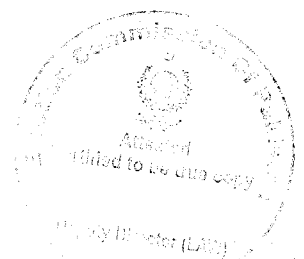
- (3) Upon receipt of the declaration under clause (1), the Presiding Officer of the



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.

- (4) Where the Election Commission confirms the declaration, the member referred to in clause (1) shall cease to be a member of the House and his seat shall become vacant.
- (5) Any party aggrieved by the decision of the Election Commission may, within thirty days, prefer an appeal to the Supreme Court which shall decide the matter within ninety days from the date of the filing of the appeal.
- (6) Nothing contained in this Article shall apply to the Chairman or Speaker of a House.
- (7) For the purpose of this Article,--
- (a) "House" means the National Assembly or the Senate, in relation to the Federation; and a Provincial Assembly in relation to the Province, as the case may be;
- (b) "Presiding Officer" means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be.
- (8)

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2. The record reveals that respondent had categorically, taken the plea that on 22.07.2022 he was abroad and, on account of loose of his passport, he was unable to come back to the country in order to cast his vote.

3. The record further reveals that neither the Secretary General, Pakistan Tehreek-e-Insaf nor Leader of the party, had refuted, the claim of the respondent, in so far as his absence from the country or his lost of passport.

4. In such state of affairs, as the word "abstain" not further defined in Article 63-A of the Constitution, therefore, we have to take its "Dictionary". The meaning which according to Black Law Dictionary tenth edition reads as:

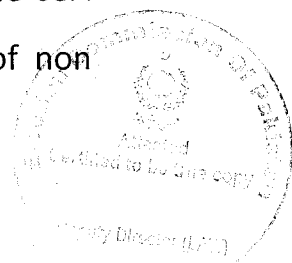
"Abstain: to voluntarily refrain from doing to choose not to vote for or against something, especially in a formal parliamentary session."

But as the respondent was not present in the session of the Assembly, therefore, it could not be construed that he abstained there from casting his vote.

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5. It is a part of the record that, respondent had come to Pakistan on an emergency passport issued by Pakistan Embassy in Turkey, which fact, was not declined by other party, in their correspondence.

6. In such circumstances, it could not be held that the case of respondent comes within the ambit of disqualification, in terms of Article 63-A (1) (b) of the Constitution.

7. Since the ECP was bound in terms of clause 3 of Article 63A to decide the reference within 30 days but, on account of non



attendance of the parties, particularly the petitioner side, the ECP did not decide the reference within the prescribed 30 days as envisaged thereunder clause 3 of Article 63-A.

8. As discussed herein above, this reference fails on merit and the reference is not confirmed and answered in negative.

Order accordingly.

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(Nisar Ahmed Durrani)

Member

- Sd-

- Sd-

(Shah Muhammad Jatoi)

Member

(Babar Hassan Bharwana)

Member

(Justice (R) Ikram Ullah Khan)

Member

Islamabad

The 15th February, 2023

