

ELECTION COMMISSION OF PAKISTAN

PRESENT

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

CASE No. F. 4(4)/2014-Confid

Subject: **PROCEEDINGS UNDER THE POLITICAL PARTIES
ORDER 2002 AND POLITICAL PARTIES RULE 2002.**

**ORDER ON APPLICATION FOR ADDUCING EVIDENCE
AND SUMMONING OF WITNESSES MOVED ON
18.04.2023.**

On Commission Notice.

Pakistan Tehreek-e-Insaf through its Chairman Mr. Imran Ahmed Khan Niazi,
Khan House, Banigala, Mohra Noor, Islamabad.

.....Respondents

For the respondents:
Anwar Mansoor Khan Senior ASC, Umaima A.
Khan, ASC & Naveed Anjum, Adv

Date of hearing: 16-05-2023

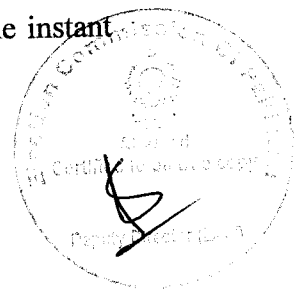
ORDER

Sikandar Sultan Raja, Chairman- Brief facts of the case are that the Commission while deciding the complaint/ application filed by Mr. Akbar Sher Babar vide order dated 02nd August, 2022 issued directions to the office to initiate proceeding for the confiscation of prohibited funds as provided under Rule 6 of Political Parties Rule (hearing after referred as PPR), 2002. The process of confiscation of prohibited funding was initiated and Show Cause notice as provided under Rule 6 of PPR 2002, was issued to the respondent party for providing opportunity of hearing to them. The matter was



initially fixed for hearing on 23-08-2022 and various opportunities have been granted to the respondent party for submission of comprehensive reply of the Show Cause notice however the reply had not been submitted till date even after elapse of approximately more than 8 months. The matter was fixed for hearing for submission of reply on 18-04-2023 on which date the instant application has been submitted by the counsel for the respondent.

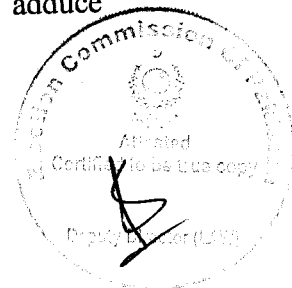
2. Mr. Anwar Mansoor Khan, senior counsel for the respondent appeared before the Commission and argued that Interim reply had been filed by the respondent party on 19.09.2022 in response to the Show Cause Notice dated 02.08.2022. He also argued that previously an application was moved for the summoning of witnesses and leading of evidence, which was argued by him on 20.12.2022 and the Commission has decided the application by an order dated 22.03.2023. He also argued that prior to this order the Hon'ble Islamabad High Court passed an order dated 02-06-2022 in WP. No. 2998 of 2022, titled Pakistan Tehreek-e-Insaf vs ECP. He further argued that while deciding the WP mentioned above the Hon'ble Islamabad High Court declared and held that the order passed by the Commission dated 02.08.2022 is not a final order but it would be treated as fact finding/ tentative report. He extended his arguments and contended that the Commission cannot pass an order in the instant matter. In support of his arguments he referred to paras 19 and 20 of the order dated 02.02.2023 passed by the Hon'ble Islamabad High Court in WP No.2998 of 2022. He argued that order of the Commission was challenged before the Islamabad High Court under Article 199(1) clause a (i) of the constitution and the purpose of this Article is to get directions regarding to do a thing permitted by law or refrain from doing anything which is not permitted by law. He further submitted that the Hon'ble Islamabad High Court has also held that the respondent's party must be given full opportunity of hearing and fair trial in the instant



case as provided under Article 10(A) of the Constitution. He further drew our attention towards WP No. 1105/2023 which has been filed against the order passed by the Commission dated 22.03.2023 through which the application for production/ cross examination of the members of the scrutiny committee and three other persons relating to different banks as witnesses was dismissed. He while referring the WP No. 1105/2023 added that the order of the Commission dated 22.03.2023 was challenged by the respondent party on following grounds.

- a. That the Impugned Order is in violation of the fundamental right of the petitioner enshrined under Article 10-A as the Impugned Order is denying the Petitioner of a proper opportunity of hearing as per due process.
- b. That the Impugned Order is bad in law and is in complete violation of the IHC Order dated 02.02.2023.
- c. That the Impugned Order has erred in holding that the prayer for reopening or re-examination of matter at this stage cannot be considered as the proceedings under Rule 6 of the PPO. In fact that IHC Order, clearly states that the proceedings under Rule 6 are independent of the proceedings of the scrutiny committee and the Respondent is liable to give a complete, impartial, with an open mind, opportunity to the Petitioner to present its evidence for its effective defense. In fact this finding in the Impugned Order is in direct conflict with the IHC Order dated 02.02.2023.
- d. That the Commission has given an unlawful finding that the allowing of application would amount to reopening of matter as the proceedings of Show Cause Notice are entirely separate and new proceedings as held in the Islamabad High Court's order referred hereinabove.

3. He also argued that Hon'ble Islamabad High Court issued notice to the ECP on 28.03.2023 and fixed the matter on 31.03.2023, which was attended by the representative of the ECP. He also contended that the Commission is bound by the orders of the Islamabad High Court, and added that the Commission has to act fairly, justly and with an open mind without being influenced by the findings of the tentative fact finding report. He further submitted that the Commission is also required to allow PTI to adduce

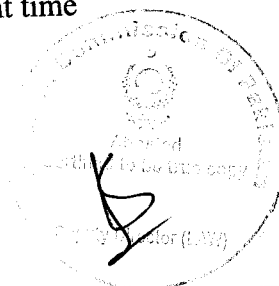


evidence and call witnesses for a proper defense as per the requirements of fair trial under Article 10-A. Learned Counsel further elaborated that in light of the Hon'ble Islamabad High Court's order in WP. 2998 of 2022 dated 02.02.2023 and in WP.1105 of 2023 dated 31.03.2023, the ECP has to ensure that PTI is given a fair opportunity to defend itself. He also contended that the ECP cannot contest on the evidence and/ or the findings given in the fact finding report whereof, PTI has to adduce complete evidence and also require bank statements to be produced for proper perusal. He also argued that since PTI has Pakistani donors who reside abroad, further time is required to collect the information from all over the world where the Pakistani donors are resident. He further argued that the respondent party is in process of collecting the information for a complete defense against these allegations. In support of his arguments he referred the judgments of Apex Courts which are:

1. 2009 PTD 692
2. 219 SCMR 640
3. 2022 SCMR 1360
4. PLD 2012 SC 553

4. He while concluding his arguments prayed that this instant application may be allowed and further time of at least four (4) months may be granted to collect the information for submission of comprehensive reply.

5. Director General Law along with Additional Director General Law, ECP, appeared and submitted that the instant application is not maintainable and is hit by the principle of Res-judicata. He submitted that the Commission has already decided the matter vide order dated 20-12-2022. He also submitted that there is no restraining order passed by the Hon'ble Islamabad High Court in WP.No 1105/2023. He further added that the respondent party is estopped by his conduct as they have raised similar prayer on two forums at same time. He also added that the application may be rejected as sufficient time



has been granted in past nine years to the respondent party for agitating this ground and now at this stage they just want to delay the proceedings by submitting applications on one pretext or another.

6. We have heard the arguments of learned counsel of the respondent and perused the record.

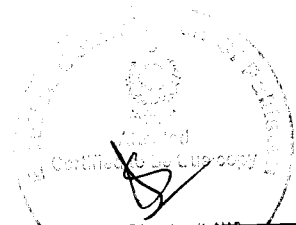
7. From the perusal of record it reveals that the process of scrutiny was started by the scrutiny committee in April 2018 and the committee concluded it and submitted the report to the Commission in December 2021. Numerous hearings were conducted by the scrutiny committee in presence of counsels for both the parties, their financial experts and authorized representatives. During the entire process of scrutiny the parties submitted documents from time to time in shape of applications for production of record, replies of the applications moved by the opposite party or documents required by the scrutiny committee. After finalization of the report in December 2021, copies of the report were provided to the parties and they have submitted their detail responses before the Commission during the hearing. Furthermore pursuant to the decision of the Commission dated 14 April 2021, eight (8) regular working days from 9 AM to 2 PM were allowed to both the parties i.e MR. Akbar Sher Babar and Pakistan Tehreek-e-Insaf for inspection/scrutiny of record/ documents. The said scrutiny was started on 27-04-2021 and the detail of perusal conducted by both the parties mentioned above is given below.

Sl.No.	Date	Proceeding
1.	27.04.2021	Parties inspected the relevant document-record.
2.	28.04.2021	Only PTI was present. Day excluded from count.
3.	29.04.2021	Parties inspected the relevant document-record.
4.	30.04.2021	Adjournment with consent of both parties. Complainant was not present

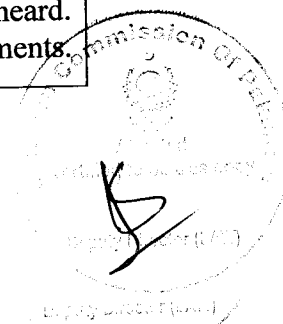
5.	01.05.2021-02.05.2021	Public Holidays
6.	03.05.2021	Parties inspected the relevant document-record.
7.	04.05.2021	Adjournment granted by scrutiny committee.
8.	05.05.2021	Parties inspected the relevant document-record.
9.	06.05.2021	Adjournment granted by Hon'ble CEC.
10.	07.05.2021	Parties inspected the relevant document-record.
11.	08.5.2021-16.05.2021	Public Holidays
12.	17.05.2021	Parties inspected the relevant document-record.
13.	18.05.2021	Parties inspected the relevant document-record.
14.	19.05.2021	Parties inspected the relevant document-record

8. After submission of report by the scrutiny committee the Commission started the process of hearing with notice to the parties in January 2022 and almost after 24 extensive hearings the matter was reserved on 21.06.2022 and the Commission decided it vide order dated 02.08.2022 and finally held that the respondent party has received funds from prohibited sources. It is also mentioned here that during the entire process of hearing, ample opportunities were given to both the parties to present documents, advance arguments etc. financial experts from both the sides were also allowed to present their submissions on the technical side and they have also submitted their reports along with required documents which have been taken on record. The detail of date wise proceedings of the Commission is given below.

Sl.No.	Date	Proceeding
1.	04-01-2022	Scrutiny Committee constituted by the commission in the subject matter has submitted its final report. Copies were provided to both the parties for submission of comments/objections, Matter was adjourned to 18-01-2022 for arguments.
2.	18-01-2022	Mr. Anwar Mansoor, Senior ASC appeared on behalf of respondent and sought time for perusal of the report submitted by the scrutiny committee and filing of comments/ objections



		on it. His request was allowed and case adjourned for 24-01-2022.
3.	24-01-2022	Mr. Anwar Mansoor, Senior ASC appeared and again sought time for perusal of the report submitted by the scrutiny committee and filing of comments/ objection on it, on account of his ailing health his request was allowed and case adjourned for 09-02-2022.
4.	09-02-2022	Junior Counsel for the respondent appeared and stated that senior counsel was busy before the august Supreme Court. With the consent of the parties matter was adjourned to 01-03-2022 for submission of report/ reply.
5.	01-03-2022	<p>The complainant through his counsel filled comments on the report of the scrutiny committee, However the comments from the respondent's side were still awaited till date.</p> <p>Mr. Anwar Mansoor Khan, Senior ASC, advanced arguments in respect of his application which was moved by him after submission of the report of the scrutiny committee. In his application dated 25-01-2022, it was prayed that the instant complaint be dismissed as no proof was provided by the complainant and third part of the scrutiny committee was completed without the presence of the complainant, therefore it lost efficiency and he was not allowed to participate in the proceedings.</p> <p>Matter was adjourned for 15-03-2022. For submission of the comments by the respondent on the scrutiny report as well as for arguments by respondent's counsel in rebuttal on the application.</p>
6.	05-03-2022	Applications dated 25-01-2022 and 31-01-2022 filed by the respondent were dismissed by the Commission.
7.	17-03-2022	Partial arguments of the counsel for the complainant in respect of comments submitted on the reports heard. Matter was adjourned for 31.02.2022 due to non-availability of Mr Anwar Mansoor ASC,
8.	31-03-2022	The copy of written comments/ report filed by the respondent party obtained by the complainant. Matter was adjourned for 13-04-2022 for further arguments.
9.	13-04-2022	The partial arguments of the learned counsel for the respondent heard. The respondent also responded in writing to the written report/ comments submitted by the complainant side. Matter was adjourned for 19-04-2022 for further arguments.
10.	19-04-2022	The partial arguments of the counsel for the respondent heard. He sought three consecutive days to complete his arguments.



		The counsel chosen 27 th , 28 th and 29 th April, 2022 for addressing arguments which was allowed case to come up for 27-04-2022.
11.	27-04-2022	Counsel for the respondent sought time and committed that he will conclude the arguments within one week. Matter was adjourned to 10-05-2022.
12.	10-05-2022	Counsel for the respondent appeared and advanced his arguments and explained his view point on various points of the report of scrutiny committee.
13.	11-05-2022	Matter was Delisted
14.	12-05-2022	Partial argument on behalf of PTI's counsel heard. Matter was adjourned to 17-05-2022
15.	17-05-2022	Partial argument on behalf of PTI's counsel heard. Matter was adjourned to 18-05-2022
16.	18-05-2022	Partial argument on behalf of PTI's counsel heard. Matter was adjourned to 19-05-2022
17.	19-05-2022	Partial argument on behalf of PTI's counsel heard. Matter was adjourned to 01-06-2022
18.	01-06-2022	Muhammad Arshad GM Finance of PTI appeared and assisted the Commission regarding the accounts of PTI. He requested for further time to complete his arguments Matter was adjourned to 02-06-2022
19.	02-06-2022	Muhammad Arshad GM Finance of PTI appeared and assisted the Commission regarding the accounts of PTI. He requested to submit the report for assistance within five days request was allowed. Matter was adjourned to 07-06-2022
20.	07-06-2022	Muhammad Arshad GM Finance of PTI has appeared and assisted the Commission regarding the accounts of PTI. He submitted the report for assistance of the Commission. He sought further time. Request was allowed. Matter was adjourned to 08-06-2022.
21.	08-06-2022	Muhammad Arshad GM Finance of PTI appeared and assisted the Commission regarding the accounts of PTI. The learned Counsel, Mr. Anwar Mansoor Khan on behalf of PTI requested for further time for the finalization of arguments in the matter. Request was allowed. Matter was adjourned to 14-06-2022
22.	14-06-2022	The learned Counsel, Mr. Anwar Mansoor Khan on behalf of PTI made arguments in continuation of his previous

		arguments. Matter was adjourned for 15-06-2022 for his remaining arguments.
23.	15-06-2022	Learned counsel for the complainant contends that he was ready to made arguments in rebuttal. However, due to paucity of time as the bench has to arise for second time hearing to be held at 12:00 pm. Matter was adjourned for 20-06-2022 for arguments of the complainant.
24.	20-06-2022	The counsel for the petitioner Syed Ahmed Shah concluded his arguments and further he made request that the time may kindly be granted to assist the Hon'ble Commission on issue of accounts and their financial expert may continue the arguments. Request was allowed and matter was adjourned for 21-06-2022.
25.	21.06.2022	Matter was finally heard and reserved.

9. The Commission which deciding the matter held that respondent party has received funds from prohibited sources and upon the decision of the Commission, Show Cause notice dated 05.08.2022 was issued to the respondent party in terms of Rule 6 of PPR, 2002. Rule 6 PPR is reproduced below for easy reference:

"Confiscation of Prohibited funds:

Where the Election Commission decides that the contributions or donations, as the case may be, accepted by the political parties are prohibited under clause (3) of Article 6, it shall, subject to notice to the political party concerned and after giving an opportunity of being heard, direct the same to be confiscated in favour of the State to be deposited in Government Treasury or sub-Treasury in the following head of the account:

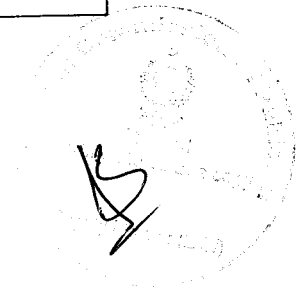
"3000000-Deposits and Reserves-B-Not Bearing interest, 3500000-Departmental and Judicial Deposits, 3501000-Civil Deposits, 3501010-Deposits in connection with Elections".

10. The language of the above mentioned rule clearly defines the intention of legislature that the Commission after holding that the funds have been received by a political party from prohibited sources shall serve a notice (Show Cause notice) and after

giving an opportunity of being heard shall order for confiscation of prohibited funding. The Commission proceeded against the respondent party in accordance with the spirit of Rule 6 of PPR,2002 and has not deviated from any provision of law. The respondent party has been challenging the orders of the Commission before the Hon'ble High Courts from time to time since the inception of the scrutiny. It is also highlighted that Commission has already decided the previous application of the respondent party for summoning of witnesses which was moved on 23.11.2022 which was dismissed vide order dated 20.12.2022 on the ground that the Commission has decided the matter of prohibited funding and after final decision of a case, at this stage of confiscation of funds which is an execution process the matter cannot be re open for hearing. It is also observed that the respondent party has already challenged the order of the Commission dated 20.12.2022 before the Hon'ble Islamabad High Court through WP NO. 1105/2023 which is still pending and there is no stay / injunctive order in field regarding the proceedings of the Commission in the instant matter. The principles of Res-judicata and Res-Sub Judice are attracted to the case in hand as the similar prayer is pending before the Hon'ble Islamabad High Court and no final order has been passed yet.

11. Furthermore it is mentioned that the proceedings under Rule 6 of PPR, 2002 were initiated by the Commission in August 2022 and progress of each and every date of hearing is given below.

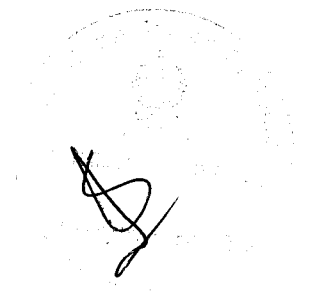
Sl.No.	Date	Proceeding
1.	23-08-2022	Junior counsel appeared and a request for adjournment for three weeks had been made by him for submission of reply to the notice. His request was allowed and case adjourned for 06.09.2022
2.	06.09.2022	Power of attorney had been filed by the respondent's counsel and requested for adjournment for two weeks. His request was allowed and case adjourned for 19.09.2022.



3.	19.09.2022	Mr. Shah Khawar, ASC appeared for the respondent and submitted an interim tentative reply and sought six weeks time for the submission of full-fledge reply. His request was allowed and case adjourned for 07.11.2022.
4.	07.11.2022	The matter was delisted the next date of hearing is 15.11.2022.
5.	15.11.2022	The matter was again delisted and the next date of hearing is 23.11.2023.
6.	23.11.2023	The matter was fixed for submission of comprehensive reply by the respondent party. However, counsel was abroad and barrister Umaima Khan, ASC requested for adjournment and also submitted an application for summoning of witnesses and cross examination the matter was adjourned to 13.12.2023.
7.	13.12.2023	? The matter was adjourned for 20.12.2022.
8.	20.12.2022	Application for summoning of witnesses and cross examination was argued and order was reserved for announcement.
9.	22.03.2023	Order announced matter was fixed for submission of comprehensive reply. However, Junior counsel appeared and sought adjournment for, matter was adjourned for 28.03.2023
10.	28.03.2023	The matter was fixed for submission of comprehensive reply. However, request for adjournment has been made matter was adjourned for 18.04.2023.
11.	18.04.2023	Another application was moved instead of filing of comprehensive reply and matter was adjourned to 16.05.2023

12. Perusal of the record reveals that the respondent party has been granted numerous opportunities and sufficient time, detail of which is given above. For submission of comprehensive reply along with documents, if any, however the respondent party is reluctant to submit and has been submitting miscellaneous applications resulting in delay of the subject case. The Commission has finally decided the matter vide order dated 02.08.2022 and held that the respondent party has received prohibited funding and has issued Show Cause notice dated 05.08.2023. The final order dated 02.08.2022 and show cause notice dated 05.08.2022 were challenged by the respondent party before the

Hon'ble Islamabad High Court through Writ Petition 2998/2022 titled "PTI vs. ECP" which was heard by the larger bench (3 Members bench) of the Islamabad High Court. The Hon'ble Court after hearing the parties turned down/dismissed the petition vide order dated 02.02.2023 and directed the Commission to continue its proceedings. After that respondent party has submitted an application for cross examination of witnesses (Members of the Scrutiny Committee and bank employees), upon which an order was passed by the Commission dated 20.12.2022 which has been challenged by the respondent party through Writ Petition No. 1105/2023, pending before the Hon'ble Islamabad High Court and no stay order has been passed. The proceedings for confiscation of prohibited funding by the respondent party in terms of Rule 6 of PPR, 2002, are still pending and instead of submitting reply to the show cause notice, the respondent party has once again requested for production of evidence and summoning of the bank employees and members of the Scrutiny Committee, as delaying tactics to prolong/linger on the proceedings. It is pertinent to mention that the respondent party maintains bank account in various banks, detail of which has been given by the party itself in the annual consolidated statements of its accounts. The respondent party has received sufficient funds from abroad which are reflected in their bank accounts and there are numerous transactions of withdrawal. The fate of show cause notice can be decided on the basis of available record because the Commission has decided the issue of receipt of prohibited findings on the basis of undeniable bank record of the respondent party. It is requirement of Article 17(3) of the Constitution read with Article 6 of PPO, 2002 that every political party shall account for the sources of its funds. The Honorable Supreme Court in the Benazir Bhutto's case reported in PLD.1988 page 416 while dilating upon the importance of sources of Funds of Political Parties has held as under;

A handwritten signature in black ink is written over a faint circular stamp. The signature is stylized and appears to be a set of initials or a name. The stamp is mostly illegible but seems to be an official seal.

“ Article 17(3) as worded requires every political Party to account for the Sources of its funds in accordance with law. The Direction is mandatory. The purpose obviously is to seek out foreign aided parties or others whose activities are prejudicial for the interest of sovereignty or integrity of Pakistan as the sources of funds provides a guideline amongst others, in determining the true character of a Political Party and the nature of its activities. The source of funds also give a clue as to the manner in which the funds are collected and also identifies those who subscribe to it so as to asses not only the financial position of the Political Party but also that the funds are not collected in an un-lawful manner.”

It is also mentioned that the Honorable Islamabad High Court has observed in wp.no.2998/2022 as under

“the right to a fair trial and due process in an administrative proceedings does not necessarily mean that the party is to be administer an oath or is to be provided an opportunity to cross-examine witnesses converting such proceedings into a trial with all its formalities . But what it does mean is that the adjudicator has a basic obligation to extend fair treatment to the party and an opportunity to enable it to correct or contradict the findings or allegations prejudicial to such parties.

13. The learned Counsel for the respondent party relies on the Judgment delivered in Writ Petition No 2998/2022 has no binding effect because the said writ petition has been dismissed on the ground of being premature. The present proceedings before the Commission is the implementation of the order passed by the Commission dated 02-08-2022. The respondent party is reluctant to contradict the contents of the show cause notice which is based on sound reasoning and undeniable bank record.

14. For what has been discussed above the Commission has arrived at the Conclusion that the respondent party is avoiding submission of detailed reply to the show cause notice and has been submitting miscellaneous application(s) to prolong the matter. The Commission is of the clear view that the present proceedings are the execution of the final order dated 02-08-2022 which still holds the field. The subject application for “adducing evidence and summoning of witnesses” has already been decided by the Commission vide order dated 20-12-2022 which is Sub-Judice before the Honorable Islamabad High Court through writ petition no.1105/2023 and there is no stay/restraining

order from the Honorable Court. Resultantly the application is devoid of merit and is rejected.

15. Case to come up for submission of comprehensive reply of Show Cause notice and arguments by the respondent's party on 30.05.2023

Sikandar Sultan Raja
Chairman

Nisar Ahmed Durrani
Member

Shah Muhammad Jatoi
Member

Date of Announcement: 23.05.2023

