

# ELECTION COMMISSION OF PAKISTAN

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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.1 (3)/2023-O/o-DD-Law

Subject: ELECTION PETITION FILED BY SYED AZIZ UD DIN KAKA KHEL FOR INITIATING NECESSARY ACTION FOR FREE, FAIR AND TRANSPARENT GENERAL ELECTION IN PAKISTAN AND REMOVAL OF BIASED FEDERAL CABINET MEMBERS

Syed Aziz Ud Din Kaka Khel (Advocate Supreme Court of Pakistan): Apex Law Chamber, District and Session Court Nowshera, KPK.

.....Petitioners

### VERSUS

1. Dr. Syed Tauqir Hussain Shah, Principal Secretary to Caretaker Prime Minister of Pakistan
2. Mr. Ahad Cheema, Advisor to Caretaker Prime Minister of Pakistan, for Establishment
3. Mr. Fawad Hassan Fawad, Advisor to Caretaker Prime Minister of Pakistan, for Privatization.
4. Care taker Prime Minister of Pakistan, through its Secretary.

.....Respondents

For the petitioner	:	In Person.
For the respondents	:	Chaudhary Aamir Rehman, Addl Attorney General
Date of hearing	:	<u>19-12-2023</u>

### ORDER

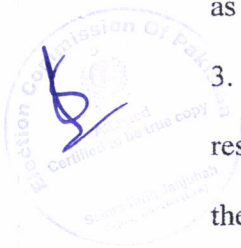
**Sikandar Sultan Raja, Chairman-** Brief facts of the case are that the instant petition has been filed by the petitioner, Mr. Aziz-ud-din Kaka Khel wherein he has stated that he is a practicing lawyer and member of Supreme Court Bar Association. He also highlighted that it is the constitutional mandate of the Commission to ensure free, fair and transparent elections and to guard against all possible electoral corrupt practices to ensure level playing field to all the stakeholders. In his prayer the petitioner seeks



removal of respondent No.1 to 3 on the grounds that they are biased and can influence the transparency of the Elections. Matter was fixed before the Commission with notices to the petitioner for preliminary hearing on 10-10-2023. After hearing the arguments of the petitioner, the Commission *vide* order dated 10-10-2023, accepted the petition for regular hearing and notices to the respondents were issued for 26.10.2023 including Care Taker Prime Minister.

2. The petitioner namely Mr. Aziz Ud Din Kaka Khel appeared before the Commission and at the very out-set stated that respondent No.1 (Dr. Syed Tauqir Hussain) had resigned from his post so his prayer to the extent of respondent No. 1 has become infructuous. He further, argued that the respondent No. 2 (Mr. Ahad Cheema) had previously worked as advisor to Ex-Prime Minister Mr. Shahbaz Sharif and now working as advisor to Care taker Prime Minister. The counsel contended that respondent No. 2 is biased as he has remained part of previous political government. The counsel elaborated his arguments and referred to para 'g' of the ECPs notification No. 2(1)/2023-Coord dated 15-08-2023 wherein directions have been issued for termination of services of head of institutions appointed on political basis and he added that the Commission has also issued directions to refer all the matters regarding transfer and posting to it. He further argued that Establishment Division deals with all the issues of government servants including their promotions, transfers and postings and as such Minister/Advisor on Establishment is an important position and can influence holding of free and fair elections. He while concluding his arguments prayed for the removal of Mr. Ahad Cheema Advisor to Care Taker Prime Minister of Pakistan for Establishment on the basis of political alignment and referred to the Supreme Court of Pakistan's judgment reported as PLD 2012 SC 681.

3. Chaudhary Aamir Rehman, Addl. Attorney General appeared on behalf of the respondents and stated that according to Article 224 of the Constitution of Pakistan it is the discretion of Prime Minister to appoint his cabinet. He stated that respondent No. 2





has served as Civil Servant and he has no political affiliation. Commission enquired from him whether it is a prerogative of elected Prime Minister or Care taker Prime Minister to appoint the Care Taker Cabinet Members. On the query of the Commission he stated that in his opinion it is the prerogative of Prime Minister irrespective of Elected or Care Taker Prime Minister.

04. We have heard the arguments of the counsel for the petitioner and Learned Additional Attorney General for Pakistan.

05. The Election Commission of Pakistan is constituted under Article 218(2) of the Constitution of Islamic Republic of Pakistan. It is the duty of the Commission to organize and conduct elections in free, fair and transparent manner and to guard against corrupt practices which is given under Article 218(3) of the Constitution. The Care Taker government in this context has a special role to perform for assisting the Election Commission so that level playing field is provided to all the stakeholders' i.e contesting candidates and political parties. Section 230 is clear in this context which is reproduced below:-

**"230. Functions of caretaker Government.—(1) A caretaker Government shall—**

**a)....**

**b) Assist the Commission to hold elections in accordance with law;"**

06. The Commission in exercise of its powers and performance of its functions and duties can pass consequential orders and issue necessary directions for the conduct of honest, just, fair and transparent elections. In this respect Section 4 and 8 of the Elections Act, 2017 are reproduced below:-

**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.

**8. Power of Commission to ensure fair election.**—Save as otherwise provided, the Commission may—

(a) .....

(b) .....

and

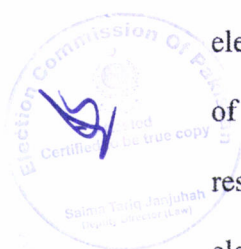
(c) issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of this Act and the Rules.

07. From the perusal of record it is revealed that respondent No. 2, Mr. Ahad Cheema has remained the part of previous political government and has served as Advisor to the Ex-Prime Minister. Presently he is working as Advisor to the Care Taker Prime Minister for Establishment Division.

08. The Commission has announced the election programme on 15.12.2023 and for the purpose of conduct of General Elections-2024. DROs and ROs have been appointed vide notification dated 11.12.2023 from district administration and other departments (District Commissioners, Assistant Commissioners and Education officers etc). Promotions, transfers and postings and other matters of District Commissioners and Assistant Commissioners are dealt by Establishment Division.

09. The Apex Courts while dilating upon the importance of the duties and powers of the Commission has held that it is the prime duty of the Commission under the Constitution and Law to take all necessary steps and pre-emptive measures to ensure that elections is conducted in a free, fair and transparent manner. The August Supreme Court of Pakistan in Worker's Party case reported in PLD 2012 SC 681 held that it is the responsibility of the Commission to make necessary arrangements before and after elections with the assistance of all executive authorities for transparent elections the relevant paras of the judgment are reproduced as under:-

*"40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all*





necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in *Election Commission of Pakistan v. Javaid Hashmi and others* (PLD 1989 SC 396), observed that "(g)enerally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including all stages involved in the election process. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein.

41. The Election Commission may also exercise its powers in anticipation of an ill that may have the effect of rendering the election unfair. In the case titled as *In Re: Petition filed by Syed Qaim Ali Shah Jellani* (PLD 1991 Jour. 41) the Elections Commission exercised its powers under Article 218(3) pre-emptively, by making all necessary arrangements to ensure that a certain class of people would be allowed to vote. This case implies that where a violation of the standards mentioned in Article 218(3) has not as yet taken place, the Election Commission is legally empowered under Article 218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Furthermore, *Mst. Qamar Sultana v. Public at Large* (1989 MLD 360) and *In Re: Complaint of Malpractices in Constituency No. NA-57, Sargodha-V* (supra) both reinforce the argument that the Election Commission is fully empowered by Article 218(3) to make 'such orders as may in its opinion be necessary for ensuring that the election is fair, honest etc'. These decisions recognize that the Election Commission enjoys broad powers not only to take pre-emptive action but also to pass any and all orders necessary to ensure that the standards of 'honesty, justness and fairness' mentioned in Article 218(3) are met.

81. In pursuance of the above, we hold and direct as under: -

- a) All the election laws be strictly implemented by the Election Commission in the discharge of its constitutional mandate under Article 218(3) of the Constitution, Representation of the People Act and other laws/rules;
- b) The Election Commission is empowered to check not just illegal actions relating to the election (violating the limits set for campaign finance, etc.) or corrupt practices (bribery, etc.), but is also empowered to review all election activities, including Jalsas, Jaloos, use of loudspeakers, etc. for their effects on the standards of 'fairness, justness and honesty' that elections are expected to meet. The Election Commission is also empowered to take pre-emptive measures to ensure that the spirit of democracy and 'fairness, justness and honesty'



*of elections is fully observed. The Election Commission is, therefore, directed to take all necessary steps to ensure the same;"*

10. In view of the above mentioned grounds the Commission has reached to the conclusion that Mr. Ahad Cheema has remained part of previous political government and it is not advisable that he should be part of Care Taker government.

11. Above are the detailed reasons of short order of the Commission dated 19.12.2023 given below:-

*"For reasons to be recorded later on, the Commission in exercise of its powers under Article 218(3) of the Constitution read with Sections 4 and 8 of the Elections Act, 2017 decides that the prayer of the petitioner for removal of respondent No. 2, Mr. Ahad Cheema, Advisor to the Caretaker Prime Minister of Pakistan for Establishment Division is reasonable and is accepted on the grounds that Mr. Ahad Cheema has remained the part of the previous political government and presently he is working as Advisor to the Care Taker Prime Minister for Establishment Division, which may influence the holding of free, fair and transparent Elections. Therefore, Mr. Ahad Cheema is directed to be removed from the Post of Advisor to the Caretaker Prime Minister of Pakistan for Establishment Division. Secretary Cabinet Division is directed to issue the notification for his removal immediately".*

*sd/*  
**Sikandar Sultan Raja**  
Chairman

*sd/*  
**Nisar Ahmed Durrani**  
Member

*sd/*  
**Shah Muhammad Jatoi**  
Member

*sd/*  
**Babar Hassan Bharwana**  
Member

*sd/*  
**Justice (R) IkramUllah Khan**  
Member

Dated: 21.12.2023