

# 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	:	Javaid Wain, Addl: Attorney General
Date of hearings	:	<u>31.10.2023, 19.12.2023 and 21.12.2023</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. Moreover, the Commission has removed Mr. Ahad Cheema *vide* order dated 19-12-2023. He further, argued that the respondent No. 3 (Mr. Fawad Hassan Fawad) has remained in key posts awarded to him on political basis and according to him there is a chance of rigging and corrupt practices in the Elections. He further contended that Mr. Fawad Hassan Fawad has close ties with Ex-Premier, through which the provision of leveling playing field to the stakeholders will be compromised. 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 the Commission has also issued directions to refer all the matters regarding transfer and posting. He while concluding his arguments prayed for the removal of Mr. Fawad Hassan Fawad **Minister** to Care Taker Prime Minister of Pakistan for Privatization on the basis of political alignment and referred to the Supreme Court of Pakistan's judgment reported as PLD 2012 SC 681.

3. Javaid Wain, Addl. Attorney General appeared on behalf of the respondents No. 3 and 4 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. 3 has served as Civil Servant and he has no political affiliation. The learned Additional Attorney General also added that the petitioner has not given any ~~e~~vidence in support of the allegations leveled by him.

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 the record it reveals that Mr. Fawad Hassan Fawad is presently working as **Minister** to Care Taker Prime Minister of Pakistan for Privatization and he has served as a Civil Servant and remained posted at different key posts. He did not hold any political position in any political government rather he served as a Civil Servant under various political governments which was part of his duty. The petitioner has only emphasized that the respondent has worked with the political governments and has affiliation with them. The arguments of the petitioner is not supported by any evidence and he did not convince the bench regarding interference of the respondent in the ongoing election process. The matter cannot be decided in favor of the petitioner on



the basis of apprehensions. Civil Servants are liable to serve in any field assigned to them during their service and this fact does not prove that the Civil Servants have political affiliations.

08. From the foregoing facts, we are clear in our minds that the contentions of the petitioner qua biasness of Mr. Fawad Hassan Fawad; having served at key positions in previous governments and his political affiliation, are based on mere allegations which lack substantial evidence. Mr. Fawad, having portfolio of care-taker Privatization ~~Minister~~ has no nexus with the election process and cannot influence the upcoming general election. The contention of the petitioner that Mr. Fawad has served on key positions due to alleged political affiliation appears forceless and untenable as the appointment on such key posts is carried out strictly on merit keeping in view the performance of Civil Servants. Therefore, we are not convinced with the contentions of the petitioner and are inclined to reject the same. Order accordingly.

**Sikandar Sultan Raja**  
Chairman

**Nisar Ahmed Durrani**  
Member

**Shah Muhammad Jatoi**  
Member

**Babar Hassan Bharwana**  
Member

**Justice (R) IkramUllah Khan**  
Member

Dated: 28.12.2023

