

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. 3 (10)/2022-Confid.

In Ref: **INTRA PARTY ELECTIONS OF PAKISTAN TEHREEK-E-INSAF ON COMMISSION'S NOTICE**

Imran Ahmed Khan Niazi, Khan House, Mora Noor, Banigalla, Islamabad
...Respondent

For the Respondent : Barrister Gohar Ali, ASC a/w Barrister Adil Kahlon
For ECP : Mr. Masood Akhtar Sherwanee, DG (Political Finance/AS)
Date of Hearing : 13.09.2023

ORDER

Justice (R) Ikram Ullah Khan, Member:- In order to resolve the issue of intra party election of the respondent party, we would like to recapitulate brief facts of the issue; under consideration.

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2. According to the Constitution of PTI 2017, the term of office bearer, and all other organizations per Article VIII was 4 years, and as per record the tenure of office bearer, had completed on 13-06-2021. The Commission, in pursuance of its Constitutional and Legal Duties, issued the required notices, to the Respondent Party for holding of intra party election in accordance with its then prevailing Constitution 2019, however, on request of Respondent Party, on account of worse health situation prevailing across the country due to pandemic of Covid-19, the Commission was pleased to grant, one year un-extendable period for holding of Intra Party Election.

3. To remind the respondent their legal obligations, in matter of intra party election, the Commission, at the first place, issued reminder notice dated 24-05-2021 and thereafter, various Notices, in Order to hold intra party election.



4. In pursuance of numerous Notices Mr. Jamal Akbar Ansari, CEC of PTI, through his letter No. Ref#:Con-Amd-1/22, dated 09-06-2022 and 10-06-2022 received both in Commission Office on 13-06-2022, informed the Commission, not only in regard to holding of Intra party election but also, a plain photo copy of amendment, introduced and approved by the National Council in Clause 5 of Article V of 2019 Constitution, whereby, not only the procedure for casting of votes was amended but also the electoral college for election of office bearer was amended, therefrom voting of all members registered / data base of the party to members of the National Council and from secret ballot to show of hands or panel Constitution respectively.

5. As, it was not requirement of Law, to accept a plain letter, in regard to intra party election without the required authentic related documents in term of section 201(d), 208, and 209 of the Election Act, 2017, therefore, vide letter dated 22-6-2022 the respondent party was asked to full fill the deficiencies detected in the documents submitted to the Commission in the following order;-

i. *Certificate regarding intra-party elections (form-65) required under section 209 of the Election Act, 2017. Read with rule 158 of the Election Rules, 2017 has not been provided;*

ii. *The names, designations and addresses of the party leader and all other office-bearers (along with their attested copies of CNICs) elected members of Central Executive Committee have not been provided; as required under Section 209(2) (b) of the Elections Act, 2017 read with rule 158(i) (ii) of the Election Rules, 2017,*

iii. *Copy of Party Notifications declaring (Party Election Commission) the results of the elections is required under Section 209 of the Election Act, 2017;*

iv. *Resolution of the National Council approved by the two-third (2/3) Majority members is not signed and stamped.*

v. *The term of office bearers is not mentioned in the amended Constitution.*

Sd-



vi. *The intra-party elections and the amended constitution have contradiction with reference to Section 208, of the Election Act. 2017.*

6. In response to letter dated 22-06-2022, the respondent party, submitted before the Commission its letter dated 07-04-2022 along with some un-attested / un-authentic and incomplete documents, which could not be accepted under the Law and Rules, as such, the Commission communicated its concern vide letter dated 04-08-2022 to the respondent party whereby the following deficiencies were directed to be removed which are as under :-

i. *The last date of intra-party elections (Form-65) not given.*

ii. *The certificate regarding intra-party elections (Form-65) is not duly signed and certified by the party's head.*

iii. *The Notification of names, designations and addresses of the party leader and all other office-bearers (along with their attested copies of CNICS) elected Central Executive Committee have not been provided by the party's head as required under Section 209(2) (b) of the Elections Act, 2017 read with rule 158 (i) (ii) of the Election Rules, 2017.*

iv. *The CEC's stamp not affixed on the notification by the Party's Election Commission.*

v. *The term of office bearers is not mentioned in the amended Constitution.*

vi. *Resolution of the National Council approved by the two-third (2/3) majority members is not signed.*

vii. *A printed copy of the amended party's Constitution in terms of Section 201 (3) of the Elections Act, 2017 not provided.*

viii. *Each page of the amended constitution is not duly signed and stamped by the party's head.*

7. In response to the letter dated 04-8-2022, the respondent party, through letter dated 19-08-2022, received in office on 14-09-2022, provided some documents but the same were also deficient and incomplete, however, along with this letter instead of previous amended Constitution of 2019 another copy of amended Constitution of 2022 approved by the National Council on 01-08-2022 was submitted, which made the whole situation highly confused and complicated and, thereby raised serious questions over



holding of intra party election in accordance with prevailing Constitution. Therefore the Commission communicated letter dated 30-12-2022 to the respondent party for sake of clearance and satisfaction over holding of intra party election in accordance with respondent Constitution and also made arrangement for reconciliatory meeting by office with CEC of the party and finally, the party Chairman was summoned by the Commission for 28-03-2023 for clarification and satisfaction, as to whether, the intra party election had conducted in accordance with the prevailing Constitution.

8. Mr. Jamal Akbar Ansari, along with Barrister Gohar Ali (ASC) appeared before the Commission and, CEC of the respondent party made its admission and stated before the Commission that he intends to withdraw the amendment so submitted before the Commission along with the result of intra party elections conducted on the basis thereof.

9. In this regard, the Commission rendered its order dated 28-03-2023, the operational part is reads as:-

"10. Mr. Jamal Ansari, CEC of PTI entered appearance and shortly briefed the Commission with regard to the amendment and the fate of intra party elections conducted pursuant to the amendments in Article-V of the party's Constitution. However, he submits that in order to resolve the controversy on in question amendment and intra party elections, he intends to withdraw the amendment so submitted before the Commission along with the result of intra party election on the basis thereof".

sd- 10. But as per commitment made before the Commission, the respondent party did not hold its intra-party election in accordance with the prevailing Constitution of the party, as such the Commission issued show case notice dated 02-08-2023.

11. On 04-08-2023, learned counsel for respondent made his appearance before the Commission and sought adjournment, which was granted accordingly. On 24-08-2023, learned counsel for respondent Mr. Ali Zafar Senior ASC appeared before the Commission and made submission, that on 28-03-2023, the CEC had never stated that, he intended to withdraw the first amendment dated 06-08-2023 in the 2019 Constitution,



however, he had stated that the 2nd overall amendment dated 01-08-2019 had to be withdrawn and in this regard, in support of his assertion sought permission of the Commission to submit not only reply thereto the show cause notice but also affidavit of Mr. Jamal Akbar Ansari.

12. After submitting Affidavit and reply, final argument was heard on 03-08-2023 and the decision was reserved by the Commission.

13. As, some of the member of the Commission, who had heard final argument of learned counsel, were on official duties abroad, therefore, the judgment was not scribed and now through the instant order, we intends to resolve the everlasting issue of intra party election of respondent.

14. In so far as affidavit of Mr. Anwar Mansoor Khan Senior Advocate Supreme Court is concern, although on 30-08-2023 when the instant matter came before the Commission, he was not present before us, however he had already submitted his affidavit in office, being a high profile Senior Advocate we have no other option but to admit his statement that Mr. Jamal Akbar Ansari had stated before the Court that he intended to withdraw the 2nd Constitutional Amendment 2022 effected therein party Constitution 2019, However, neither Mr. Jamal Akbar Ansari appeared on 28-03-2023 before the Commission nor before office of the Commission in order to support his affidavit, while the first alleged amendment dated 06-08-2023, in case the amended Constitution 2022 is accepted was not in existence at all on 28-03-2023 and, it will be presumed that he intended to withdraw the 2nd amendment, however, as he was unable to explain to the Commission the illegalities and irregularities conducted therein the alleged intra party election therefore, he categorically made admission that elections result would be withdrawn and at this stage and after a long period of time, he could not be allowed to resile therefrom his clean breast admission before the Commission on 28-03-2023. Irrespective of fate of statement, we would like to embark upon merit of the alleged intra party election as well as the first amendment allegedly effected on 8-6-2022 in the party Constitution 2019.



Election Act 2017 place some embargo on formation of General Council which read as:-

"208(3) all member of the political party at the Federal, Provincial and local levels shall constitute the electoral-college for election of the party general council at the respective levels".

20. The PTI in the year 2018 amended its constitution whereby clause 4 of article 5 was introduced which reads as:-

4.1 after the adoption of this amendment constitution first party election shall be held not later than 18 months after the date of adoption of this constitution, however Chairman may decide to hold party election in any other time of choosing.

4.2 the Chief Organizer shall use all powers and functions of the Chairman given herein with the approval of the Chairman and shall be responsible for following function.

21. Going through the above mentioned provision of PTI Constitution this fact could not be denied that the National Council elected or nominated in the year 2017 had already been completed his full tenure on 13-06-2021 and thereafter neither the said tenure of the organization was extended nor any fresh organization with the name of National Council was constituted in accordance with the provision of Section 208(3) of the Election Act 2017 *ibid*, while there is no any notification ever issued for extension of tenure of any organization of PTI. According to the Constitution thereafter adoption of 2019 Constitution till fresh election of the party the Chief Organizer had to manage the PTI in term of clause 4.2 *ibid*, but the Chief Organizer had no power to form or constitute any wing of the PTI including formation of various organization / bodies. On one hand National Council was not in existence on 8-6-2022, being dissolved on account of completion of its tenure while on other hand ex-National Council was never constituted in accordance with the provision of section 208 (3) of Election Act. 2017 *ibid*.

22. According to article-XVI of PTI 2019 Constitution an amendment to the Constitution may be moved by Central Executive Committee before the National Council or by 1/3 of the total membership of National Council which would be approved by at least 2/3 of the members present in National Council at the occasion of the amendment brought before



it, however the proposed amendment shall be circulated amongst the members of National Council at least 14 days prior to the meeting and after every amendment the amended copy of the party constitution shall be deposited and submitted in Election Commission of Pakistan.

23. As already discussed on 8-6-2022 neither the Central Executive Committee nor National Council was in existence as both were already completed their tenure and there is no any documentary evidence provided by PTI, that after completion of their respective tenure any such organization had ever reconstituted in accordance with Election Act 2017. The concern CEC of PTI neither provided any requisition made by either Central Executive Committee or by 1/3 members of the National Council for amendment of the 2019 Constitution on 8-6-2022 or before. Even the CEC failed to provide the copy of attendance register that how many members attended the alleged National Council meeting on 8-6-2022. However latter on in the month of August 2022 a list of more or less 500 members were provided but it was a plain copy and it is not ascertainable that on which date they signed the attendance register, and for which meeting of the alleged National Council.

24. We scrutinized all the documents provided by the CEC in respect of meeting of the General Council as well as the alleged intra party elections of various office bearers on 10-06-2022, but we did not satisfy therefrom the available record, submitted by CEC that either the National Council (dissolved) had ever convened its meeting on 8-6-2022 or on 10-06-2022, at this juncture it would be pertinent to refer to various letter / document provided by the CEC which has made the alleged intra party election highly objectionable, dubious which are as:-

- i. Letter dated 10-06-2022 received in office on 13-06-2022, whereby in the last paragraph it is stated as;

"Hence thereof, in accordance with the power vested in me the party Chief Election Commissioner, I am pleased to notify the election of the following officials for a fresh term in office starting today 10-06-2022.

- ii. Letter dated 7-7-2022 received in office on 21-07-2022 whereby para 5 and 7 are read respectively as:-



"5. as per Article V clause 5.2.1 the term of elected office bearers is 3 years. The same shall hold for those elected on 8-6-2022".

"7. In the intra party election, held on 8-6-2022, the panel of Mr. Imran Ahmed Khan Niazi was declared elected unopposed when the other two panels chose to withdraw their nomination papers before the National Council vote".

iii. Para 2 of the reply submitted by Learned Council Barrister Gohar Ali Khan ASC, Which read as:-

"2. That as a back ground, it may be submitted that intra party election of PTI were held on 9-6-2022 under the PTI Constitution, 2019 as amended up to 8-6-2022.

iv. "3. Para 3 of the Affidavit filed in office on behalf of Mr. Jamal Akbar Ansari which read as:-

"That the Intra Party election of PTI were duly held on 9-6-2022 notified by the party and result and list of office bearer submitted before the ECP"

25. As, there is glaring, un-explained contradiction, in regard to holding of intra party election, as to whether the same was held on 8-6-2022 or 9-6-2022 or on 10-06-2022, while to the last moment, even after reconciliation meeting, the CEC; did not provide any authentic document, that the National Council of the party had ever held its meeting either on 8-6-2022, 9-6-2022 or 10-6-2022. On one hand, as, the National Council, after expiry of its tenure, was never re-constituted in accordance with provision of Section 208 (3) of the Election Act, 2017 while on other hand there is no any clear un-rebuttal document, provided by the CEC, that the meeting of the National Council was ever convened, summoned by the concern quarter in accordance with relevant provision of the party Constitution.

26. Despite direction of the Commission, the CEC failed to provide draft resolution either moved by Executive Committee or 1/3 member of the National Council, in order to clarify, the amendment, allegedly effected therein clause 5 of Article-V of 2019 Constitution on 8-6-2022, irrespective of the admitted fact, that neither the executive Committed nor the National Council was legally existing on the alleged date of amendment i.e 8-6-2022.

27. It is part of record that the CEC, failed to provide, either the printed copy of the alleged amendments allegedly approved on 8-6-2022 or



any copy of the same duly attested / verified / Signed by the competent authority in that behalf, within the prescribed period of 7 days, in order to believe that, the 2019 Constitution was in fact amended on 8-6-2022.

28. However, instead of printed or signed copy of amendments allegedly approved on 8-6-2022 the CEC, provided on 18-08-2022 a copy of amended Constitution, 2022 alongwith Form-65, duly signed by head of the party as per provision of rule 158 of Election Rules, 2017, much after the prescribed period of 7 days provided thereunder the provision of Section 209 of Election Act and rule 158 of Election Rules, 2017.

29. It was mandatory in order to ascertain that intra party election had been conducted and held in transparent manner and mode in accordance with election act and PTI Constitution, the CEC was required to submit copy of amended Constitution with the Election Commission of Pakistan, duly attested and signed by an authorized person within 7 days, but no such authentic printed and signed documents was submitted before the Commission which caused serious doubts over intra party election allegedly held on 10-06-2022 as well as the amendment allegedly effected on 8-6-2022.

30. It is mandatory provision of section 209 of the Election Act 2017 that a political party shall within 7 days after completion of intra party election submit a certificate signed by the office bearers authorized by the party head, to the Commission to the effect that election were held in accordance with Constitution of the political party and Election Act 2017, to elect the office bearers at the Federal, Provincial and Local Levels where ever it is applicable.

31. No any such authentic attested copy of document related to amendment in the 2019 Constitution and of PTI intra party election allegedly held on 10-06-2022 was provided till 18-08-2022, however, 2nd amendment introduced in 2019 Constitution on 01-08-2022 was submitted alongwith Form-65 duly signed by the party leader beyond the prescribed period provided thereunder section 209 of Election Act. 2017.



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32. It is also mandatory requirement of law that certificate in respect of intra party election shall contain the following information in accordance with section 209 of the Election Act. 2017 which reads as:-

209. Certification by the political party.— (1) A political party shall, within seven days from completion of the intra-party elections, submit a certificate signed by an office-bearer authorized by the Party Head, to the Commission to the effect that the elections were held in accordance with the constitution of the political party and this Act to elect the office-bearers at the Federal, Provincial and local levels, wherever applicable.

(2) The certificate under sub-section (1) shall contain the following information— (a) the date of the last intra-party elections; (b) the names, designations and addresses of office-bearers elected at the Federal, Provincial and local levels, wherever applicable; (c) the election results; and (d) copy of the political party's notifications declaring the results of the election.

(3) The Commission shall, within seven days from the receipt of the certificate of a political party under sub-section (1), publish the certificate on its website.

While rule 158 of Election Rules, 2017 prescribes that:-

158. Submission of certificate to the Commission-- regarding intra-party elections.— (1) The Party Leader of each political party under his signature shall, within seven days of the completion of intra-party elections, submit a certificate to the Commission in Form-65 specifying that the intra-party elections have been held in accordance with the constitution of the party and the provisions of the Act.

(2) The Commission shall, after satisfying itself that the certificate fulfills the requirements of sections 208 and 209, publish the certificate including the details of election in the official Gazette.

33. No doubt the said Form-65 was submitted before the Commission, on 18-08-2022 much after the prescribed period provided thereunder Section 209 of Election Act. 2017 and rule 158 of Election Act, 2017, which it self casts serious doubts over holding of intra party election on the alleged dated i.e. 10-6-2023.

34. Keeping in view the afore stated reasons, we are confirmed in our views, that the Respondent Party failed to hold, transparent just and fair



intra party election in accordance with its prevailing Constitution, 2019 allegedly held on 10-06-2022, which is highly disputed/objectionable, which could not be accepted at all, therefore it is held that respondent party is failed to hold its intra party election within the extended period of one year, till 13-06-2022, but we instead of taking the final step to invoke the provision of section 215(5) of the Election Act, 2017, a lenient view is taken with direction to the respondent party to hold its intra party election strictly in accordance with the prevailing party constitution, within 20 days positively and its result along with all the required documents, including form 65 shall be submitted thereafter the election within 7 days before the Commission. In case, the respondent party failed to comply with direction of the Commission and failed to hold its intra party election within the prescribed 20 days which will run from today, the date on which this order is announced, in such eventuality the respondent will suffer the penal consequences of Section 215(5) of Election Act, 2017 accordingly and would be ineligible to obtain an election symbol for election to Majlis-e-Shoora (Parliament) etc.

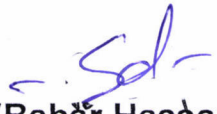
35. Order announced in open Commission today.



(Nisar Ahmed Durrani)
Member



(Shah Muhammad Jatoi)
Member



(Babar Hassan Bharwana)
Member



(Justice (R) Ikram Ullah Khan)
Member

