

ELECTION COMMISSION OF PAKISTAN

PRESENT:

Mr. Sikandar Sultan Raja, Chairman
Mr. Nisar Ahmed Durrani, Member
Mr. Shah Mohammad Jatoi, Member

Case No. 4(4)/2014-Confid

In Ref: **NOTICE IN TERMS OF RULE 6 OF THE POLITICAL PARTIES
RULES, 2002 IN COMPLAINT UNDER ARTICLE 6 OF
POLITICAL PARTIES ORDER, 2002**

On Commission's Notice

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

.....Respondent

For the respondent : Mr. Anwar Mansoor Khan, ASC alongwith Ms. Umaimah Anwar Khan, ASC and Mr. Naveed Anjum Mumtaz Advocate.

Date of hearing : **20.12.2022**

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 dated 02nd August, 2022 issued directions to the office to initiate proceedings for confiscation of prohibited funds as provided under Rules 6 of Political Parties Rule (hereinafter referred as PPR), 2002. The Process for confiscation of prohibited funding was initiated and notice was issued to the respondent party for providing opportunity of hearing to them. The matter was initially fixed for hearing on 23.08.2022 However, the counsel for respondent sought time to file reply. The learned counsel also requested for 6 weeks time which was also granted in the interest of justice. The initial reply was submitted by the counsel for respondent on 19.09.2022 and the matter was fixed for submission of final reply and arguments on 23.11.2022 Whereby, an



application for summoning of witness was filed by the respondent's counsel with the prayer to issue notice and summon to the members of scrutiny committee and other 3 persons relating to different Banks for production of record and their cross examination. Adjournment was sought for arguments by the senior counsels and the matter was argued in length.

02. Learned counsel for the respondent appeared and submitted that notice dated 05.08.2022 issued to the respondent party under Rule 6 of PPR, 2002 has not been issued in accordance with law as according to him it has been issued by the secretary ECP and not by the Commission. He further argued that the word "Commission" as provided under the Constitution means it consists of 4 Members and the Chief Election Commissioner in support of his arguments he referred the judgments of apex courts reported in 2021 PLC (CS) 921 and 2018 SCMR 846. He argued that the issuing of show cause notice as provided under Rule 6 of PPR, 2002 is a fresh process and according to him cross examination may be carried out by him. He while referring Article 4 of the Constitution contended that the matter shall be treated in accordance with law by carrying out the due process. He also argued that Article 10 provided for fair trial and due process and emphasized that the respondent party should be given complete, full and fair hearing in the matter. He further argued that there are two steps for deciding the matter regarding prohibited funding. He extended his arguments and added that in the first process the Commission has decided the matter and according to him in second process the opportunity of hearing must be given to the political party concerned. In support of his arguments he placed reliance on 2019 PTD 692. He further argued that for production of satisfactory reply and to fulfill the legal requirements, it is necessary for him to cross examine the relevant persons involved in the process of scrutiny. He further added that the order passed by the Commission dated 02.08.2022 is not an order but according to him it shall be treated as a report. He also relied upon the judgments reported in 1971 SCMR, 681, PLD 1999 SC 1126 and 1998 SCMR 1863 for provision of reasonable opportunity in defense. He also contended that as there is no order in field and Commission has given a report dated 02.08.2022 therefore according to him it is not an execution process. He also relied upon the judgments of the apex courts reported in PLD 2013 SC 160, 2004 SCMR 966

and 2011 SCMR 713 and also relied upon the definition of hearing provided under law and while concluding his arguments prayed for summoning of 3 members of scrutiny committee and Mr. Muhammad Nawaz from MCB-Bank, Mr. Zubair from HBL-Bank and Mr. Ali Khan Akber for KASB-Bank for cross examination in the matter.

03. Mr. Khurram Shehzad Additional Director General Law appeared and submitted that the Commission is empowered to regulate its own procedure as provided under Section 3 of the Elections Act, 2017 and he added that while deciding the matter the Commission has granted sufficient time and opportunity to the respondent party for defending and assisting in the matter. He also added that the matter cannot be reopened as it is a close case and process of execution for confiscation of prohibited funds has been initiated by the Commission.

04. In rebuttal the counsel for the respondent submitted that the proceedings pending before the Commission are inquisitorial and according to him previously there was no show cause notice issued to the respondent. He added that now the Commission is initiating proceedings under Rule 6 of PPR, 2002, the respondent party should be given proper opportunity of defense in the matter.

05. We have heard the arguments advanced by the learned counsel for the respondent and perused the record.

06. It is matter of record that pursuant to the decision of this Commission dated 14th 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-i-Insaf for inspection/scrutiny of record/documents. The said scrutiny commenced on 27.04.2021, day-wise status of scrutiny by both the parties is as under:-

Sl. No.	Date	Proceedings
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.	08.05.2021- 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.

07. The above mentioned information proves that 40 hours period was evidently granted to both parties. Later on the objection of Mr. Akbar Sher Babar, three extra hours were also given to both the parties on 20.05.2021 from 1 pm to 4 pm.

08. It is an admitted position that proceedings before the Scrutiny Committee remained pending before it for a long time before which both the parties i.e. complainant and the political party alongwith their counsel presented their record/documents including statements, affidavits and on the basis of all available material Scrutiny Committee furnished its, detailed report before the Commission for appropriate orders. After receipt of report, both the parties submitted their objections/reservations on the report and after detailed hearing by the Commission, it was decided by it that certain contributions/donations received by the Pakistan Tehreek-i-Insaf are prohibited in terms of Article 6(3) of the Political Parties Order, 2002. It is worth mentioning that during the hearing on the Report, Pakistan Tehreek-i-Insaf never prayed for summoning of neither members of the Scrutiny Committee as

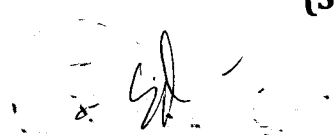
witnesses for the purpose of cross-examination nor the officials of banks for the purpose of record production.

09. In terms of Rule 6 of the Political Parties Rules, 2002, where under the instant proceedings are being carried out only deals with the confiscation of contributions or donations which are declared by the Election Commission to be prohibited, which is the case here. There are only two requirements of this Rule, *firstly; the party shall be put on notice and, secondly; opportunity of being heard shall be granted to the party.* In the instant case, both requirements of law have been met.

10. Therefore, at this stage, when all the proceedings in terms of Article 6 of the Political Parties Order, 2002, have been concluded and subsequent proceedings in terms of Rule 6 of the PPR, 2002, have commenced, acceptance of application would amount to retrial/reopening of the matter, which is not allowed under the law. Moreover, against the decision of the Commission Pakistan Tehreek-i-Insaf had already approached the Hon'ble Islamabad High Court which resulted in dismissal of its claim and reservations. (The prayer for reopening or re-examination of matter at this stage cannot be considered as the proceedings in terms of Rule 6 of the Rules *ibid* is execution of findings recorded in terms of Article 6 of the PPO, 2002 by the Commission.

11. In view of the above the application filed by the respondent is dismissed.)


(Sikandar Sultan Raja)
Chairman


(Nisar Ahmed Durrani)
Member


(Shah Muhammad Jatoi)
Member

Date of Announcement: 22nd March-2023

