

# 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. 3(94)/2002-Confid.**

Subject: **SHOW CAUSE NOTICE TO PARTY NAMELY NIZAM-E-MUSTAFA PARY UNDER SECTION-208 (5) ON FAILURE TO THE CONDUCT INTRA PARTY ELECTION.**

**ON COMMISSION'S NOTICE:**

**For the respondent:**

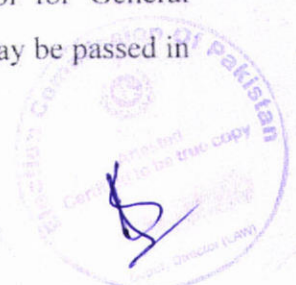
Mr. Hanif Tayyab, Presidnet Nizam-e-Mustafa Party : Pir Fida Hussain,  
Advocate

Date of hearing: **04.01.2024**

## **ORDER**

**Sikandar Sultan Raja, Chairman-** Brief background of the instant matter is that the above mentioned Political Party was registered with the Commission under Section 202 of the Elections Act, 2017. It is the requirement of Section 208 of the Elections Act, 2017 that every Political Party has to conduct its intra party elections in accordance with their constitution and further to provide the details to the Election Commission of Pakistan. The Political Party mentioned above remained fail to comply with the above mentioned provisions of Elections Act, 2017, therefore, the matter was fixed for hearing with notice to the above Political Party for 04-01-2023.

02. DG-Political Finance appeared and briefed the Commission in detail. The submissions of DG-Political Finance have been taken on record. He submitted that the above mentioned political party has been issued several notices, reminders and show cause notices but the party did not fulfilled the requirement of Section 208 and 209 of the Elections Act, 2017. He further requested the Commission that the allocation of symbol for General Election 2024 will be concluded on 13.01.2024 therefore appropriate orders may be passed in this matter.





03. Pir Fida Hussain, Advocate appeared on behalf of Nizam-e-Mustafa Party and submitted the documents of intra party election which were due since 2002 without condonation of delay. The documents were handed over to the Political Finance wing for scrutiny and submission of their reply.

04. The political finance wing examined the documents submitted by the counsel for the political party and submitted their report which is as under:-

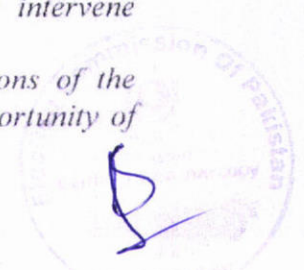
- i. Last intra party election of the party was held in August, 2002.
- ii. Party has no symbol since its enlistment (2002)
- iii. Tenure of office bearer as per party constitution is four years with next election due on 03.08.2006.
- iv. Thereafter, no intra party election has been conducted by the party contrary to Section 208.
- v. Show Cause notice under Section 208(5) and 215(4) have been issued on 07.12.2023.
- vi. Party had applied for election symbol under Section 216 for General Election 2024 but was not considered due to ineligibility on account of non-conduct of intra party election and non submission of party accounts.
- vii. The party election under submission has been stated, as conducted on 23.07.2023.
- viii. Election has been conducted in accordance with Article-X of the Chapter-3 of party Constitution.
- ix. Many cuttings have been observed in the notifications issued by Chairman Election Committee.
- x. Election has been conducted at Central and Punjab & Sindh provinces whereas nothing has been provided with regard to other provinces.
- xi. Photocopies of the NICs of office bearers elected at provincial level are without attestation.
- xii. Date of last intra party election on Form-65 is incorrect.

5. We have gone through the available record and perused the details of the political party given by the concerned wing in shape of report mentioned above.

6. Before going through the details of the case the relevant provisions of the law are reproduced under:-

**208. Elections within a political party.**— (1) The office-bearers of a political party at the Federal, Provincial and local levels, wherever applicable, shall be elected periodically in accordance with the constitution of the political party: Provided that a period, not exceeding five years, shall intervene between any two elections.

(2) A member of a political party shall, subject to the provisions of the constitution of the political party, be provided with an equal opportunity of contesting election for any political party office.





(3) All members 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.

(4) The political party shall publish the updated list of its central office-bearers and Executive Committee members, by whatever name called, on its website and send the list, and any subsequent change in it, to the Commission.

**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. 68

(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.

**210. Information about the sources of funds.**—(1) A political party shall, in such manner as may be prescribed, submit to the Commission within sixty days from the close of a financial year, a consolidated statement of its accounts audited by a Chartered Accountant on Form D containing—

- (a) annual income and expenses;
- (b) sources of its funds;

And

- (c) Assets and liabilities.

(2) The statement under sub-section (1) shall be accompanied by the report of a Chartered Accountant with regard to the audit of accounts of the political party and a certificate signed by an office-bearer authorized by the Party Head stating that—

- (a) no funds from any source prohibited under this Act were received by the political party; and
- (b) the statement contains an accurate financial position of the political party.

**215. Eligibility of party to obtain election symbol.**—(1) Notwithstanding anything contained in any other law, a political party enlisted under this Act shall be eligible to obtain an election symbol for contesting elections for Majlis-e-Shoora (Parliament), Provincial Assemblies or local government on submission of certificates and statements referred to in sections 202, 206, 209 and 210.

(2) A combination of enlisted political parties shall be entitled to obtain one election symbol for an election only if each party constituting such combination submits the certificates and statements referred to in sections 202, 206, 209 and 210.

3) An election symbol already allocated to a political party shall not be allocated to any other political party or combination of political parties.



*(4) Where a political party or combination of political parties, severally or collectively, fails to comply with the provision of section 209 or section 210, the Commission shall issue to such political party or parties a notice to show cause as to why it or they may not be declared ineligible to obtain an election symbol.*

*(5) If a political party or parties to whom show cause notice has been issued under sub-section (4) fails to comply with the provision of section 209 or section 210, the Commission may after affording it or them an opportunity of being heard, declare it or them ineligible to obtain an election symbol for election to Majlis-e-Shoora (Parliament), Provincial Assembly or a local government, and the Commission shall not allocate an election symbol to such political party or combination of political parties in subsequent elections.*

7. The corresponding Rules of the above sections contained in the Election Rules, 2017, provide the following:-

**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."*

8. The above mentioned political party was enlisted with the Commission under Section 202 of the Elections Act, 2017 in the year 2002 and the first intra party election was conducted by the party on 03.08.2002. The tenure for conduct of next intra party election of the said political party was four years and the next intra party election was due on 03.08.2006. The subject party did not comply with the provisions of Section 208, 209 and 210 of the Elections Act, 2017 due to which several notices, reminders and show cause notices have been issued. The said political party is without symbol since enlistment as the party has never applied for any symbol to contest the election. Show cause notices dated 09.09.2022 and 07.12.2023 were issued to the political party to comply with the provisions of Section 208, 209 and 210 of the Act, *Ibid*, however, during the hearing of the matter on 06.12.2022 no one appeared on behalf of the said party and the Commission vide the order of even number dated 06.12.2022 directed that the symbol may not be issued to the said party till the completion of mandatory requirements of Section 210 of the Act.

9. In response to the show cause notice dated 07.12.2023, the said political party has submitted intra party documents along with details of party accounts for the financial year 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23. The details of intra party



documents and details of party accounts have been minutely checked by the concerned wing and submitted its reports.

10. We have perused that the auditor reports as provided for all the years, which are photocopies except for the year 2019-20 which is a scanned copy. Moreover, the dates marked on these reports are back dated. The details of the accounts were presented to the Commission while hearing the instant matter on 04.01.2024. It is also observed that the balance sheet is not providing the exact figures which needs consolidation and the figures provided on Form-D does not match with the accounts. It is also noticed that there is variance between Form-D and the figures stated in the receipt of payment details. It is also observed that the party did not conduct the intra party election in accordance with the provisions of Elections Act, 2017 and Election Rules, 2017. The deficiencies are highlighted above. The Commission has also observed that the party failed to conduct intra party elections since 2002 and no explanation has been given nor has provided any application for condonation of delay. The party has shown irresponsible and non serious attitude towards the compliance of mandatory provisions of law and its constitution.

11. The importance of submission of sources of funds by the political parties in terms of Article 17(3) of the Constitution has been highlighted by the august Supreme Court in its judgment. The apex court has also discussed the non-disclosure of sources of party funds. The Honourable Supreme Court in the case titled "Ms Benazir Bhutto versus Federation of Pakistan and others" reported in PLD 1988 SC 416 while dilating upon the importance of Article 17(3) has held as under;

*"---Art.17(3)--Words "account for the source of its funds"--  
Connotation --Direction for every political party to account for the sources  
of its funds is mandatory--Purpose of direction--Rendition of accounts for  
audit cannot be regarded as unreasonable restriction or outside the ambit of  
Art.17(3).*

*Collectively the political parties are now expected to protect public  
morals in the same way as other legal institutions protect public truthfulness  
and public symbols of authority. To leave the political parties entirely free to  
do as they please is to suggest that morality does not matter. A situation like  
this might prove ultimately subversive to the fabric of the State in the  
maintenance of the law and order.. Therefore, political parties should  
conform to stringent obligations of high ethical standard.*

*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 to the interest of sovereignty or integrity of  
Pakistan as the source 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 gives a clue as to the manner in which the funds are collected and also identifies those who subscribe to it so as to assess not only the financial position of the political party but also that the funds are not collected in an unlawful manner.

The words "account for the source of its funds" would also include the expenditure as that provides a check for determining actual amounts received and disbursed in the context of the political activities carried on as to whether the funds are being utilized for lawful political activities or for promoting prejudicial activities against the sovereignty or integrity of Pakistan. The rendition of accounts for audit, therefore, cannot be regarded as an unreasonable restriction or outside the ambit of this sub-Article."

12. The August Supreme Court in another case SMC 07/2017 (Faizabad Dharna) reported in PLD 2019 SC 318 has also observed the

"53. For the reasons mentioned above this case is disposed of with the following declarations and directions:

(4) The Constitution earmarks the responsibilities of the Election Commission which it must fulfill. If a political party does not comply with the law governing political parties then the Election Commission must proceed against it in accordance with the law. The law is most certainly not cosmetic as contended on behalf of the Election Commission.

(5) All political parties have to account for the source of their funds in accordance with the law.

13. The Hon'ble Islamabad High Court in case reported in 2019 CLC 938 Islamabad titled Ms. Naheed Khan vs. Election Commission of Pakistan has held that:-

"The power to allot election symbols to the political parties vests in the Commission. The allotment of an election symbol is subject to the satisfaction of the Commission that a political party has fulfilled the requirements in this regard".

"the allocation of a symbol is in fact a form of certification by the Commission that the political party has completed its requirements and that its formation has taken effect. Before allotting a symbol, the learned Commission essentially has to satisfy itself regarding three fundamental characteristics; identify and determine an association of citizens or a combination or group of such associations formed with a view to propagate or influence political opinion and participate in elections for any elective public office or for membership of a legislative body; secondly, that such an association or conglomerate has a distinct name i.e. a separate, distinguishable and decidedly different name from the political parties already formed and granted symbols and, lastly, that such an entity has complied with the mandatory pre conditions".




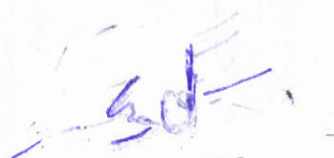
14. The Hon'ble Supreme Court in case title **Workers' Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others VS. Federation of Pakistan and 2 others reported in PLD 2012 SC 681** has held that;-

*"The Parliament has framed different laws to effectuate the above constitutional provision and to regulate elections to the National and Provincial Assemblies. ROPA reiterates and further vests the Election Commission with the responsibilities and powers to, inter alia, regulate and check intra-party affairs and actions taken by candidates and parties in anticipation of and on Election Day, resolve all election disputes, declare the election void and to award punishments for violating relevant election laws."*


15. In view of the above discussion and scanning of record of the political party, the Commission holds and decides that the political party namely Nizam-e-Mustafa Party has shown non-serious attitude and failed to comply with the mandatory requirements of Sections 208, 209 and 210 of the Elections Act, 2017 despite issuance of several reminders, notices, hearings and show cause notices by the Commission which are the pre-requisites for enlistment of a political party in terms of section 202 of the Act, *Ibid* .Therefore the Commission in exercise of powers conferred upon it under Article 218(3) read with section 202(5), 215 of the Act *ibid* cancel the enlistment of the political party namely Nizam-e-Mustafa Party.


Office is directed to take follow up action accordingly.

  
**Sikandar Sultan Raja**  
Chairman

  
**Nisar Ahmed Durrani**  
Member

  
**Shah Muhammad Jatoti**  
Member

  
**Babar Hassah Bhanwana**  
Member

  
**Justice (R) Ikram Ullah Khan**  
Member

Announced on: 12.01.2024

