

ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.332 of 2023

Imran Ahmad Khan Niazi **V/S** *Election Commission of Pakistan
and others*

<i>S.No.of order / Proceedings</i>	<i>Date of order /Proceedings</i>	<i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i>
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05.01.2023 Senator Barrister Ali Zafar, ASC with Mr. Mohammad Azhar Siddique, ASC alongwith Munir Ahmed, Mian Shakir Ismail, Barrister Nudrat B. Majeed, Salma Riaz, Amna Liaqat, Arshad Ali Azhar, Asfand Yar Khan Lodhi, Sikandar Sultan Ch. and Abdullah Arif, Advocates.
Mr. Nasar Ahmad, Additional Attorney General and Mr. Nasir Javed Ghuman, Deputy Attorney General on Court's Call.
Rai Shahid Saleem Khan, Additional Advocate General with Syed Abul Ali Jafri, Assistant Advocate General.
Mr. Imran Arif Ranjha, Legal Advisor and Hafiz Adeel Ashraf, Law Officer for ECP on Court's Call.
Dr. Asim Murtaza Cheema, Civil Judge/Research Officer, Lahore High Court, Lahore.

Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”), the Petitioner has challenged the vires of impugned notice dated 07.12.2022 the (“**notice**”) issued in pursuance of order dated 21.10.2022 the (“**order**”) by the Election Commission of Pakistan (the “**ECP**”).

2. At the start of hearing the case, learned legal advisor for the Respondent-ECP objected that the Petitioner has not made certain Respondents as party to this petition (who filed reference against the Petitioner). However, with permission of the Court, learned counsel for the Petitioner has incorporated Federation of Pakistan through Secretary Law, Islamabad, Barrister Mohsin

Nawaz Ranjha MNA, NA-89, Agha Hassan Baloch, MNA, NA-266, Salah Uddin Ayubi, MNA, NA-283, Gohar Ali Khan, MNA, NA-103, Syed Rafi Ullah Agha, MNA, NA-236, Saad Waseem Sheikh, MNA, NA-137 and Speaker National Assembly, National Assembly Secretariat, Islamabad as the Respondents No.2 to 9 in this petition.

3. Senator Barrister Ali Zafar, ASC states that the Petitioner is basically aggrieved by the assumption of jurisdiction by the “*ECP*” through issuance of the “*order*” and the “*notice*” on the complaint of Respondents No.3 to 8 and seeks interpretation of Articles 218(3) and 219 read with Articles 4 and 5 of the “*Constitution*” and Section 8(c) and 9 of the Election Act, 2017 (the “*Act*”) in the light of Article 62(f) of the “*Constitution*”. He pointed out that a reference against the Petitioner was submitted by the Respondents No.3 to 8 before the Respondent No.9 who sent the same on 02.08.2022 (Annex-B, Page-22 of petition) to the “*ECP*” to decide the matter through the “*order*” resulting into the “*notice*”. Senator Ali Zafar, ASC maintains that the pivotal point involved in this case is whether the “*ECP*” can pass any declaration which is not mentioned under Article 218(3) of the “*Constitution*” and only words used therein is to “conduct” and “organize” election which is further specified in Article 219(a)(b) of the “*Constitution*”. He adds that the “*Act*” was enacted in year 2017 and the “*ECP*”, in terms of Sections 8 and 9 of the “*Act*”, has only power to ensure fair election a but power of declaration has nowhere been provided.

4. When confronted to maintainability of this petition in the light of judgment passed by the Hon’ble Supreme Court of Pakistan reported in “ALI ASJAD MALHI Versus Ms. Syeda NOSHEEN IFTIKHAR and others” (PLD 2023 Supreme Court 1) whereby criteria for interference in the

matters of ECP was made by referring the earlier judgment “Ejaz Ahmed Sandhu v. Election Commission of Pakistan (**2018 SCMR 1367**) observed that

“5. The Election Commission is a constitutional body and unless it is shown that the jurisdiction and discretion exercised by it is illegal, mala fide, manifestly arbitrary or unjustifiable its working and decisions should not be interfered with”

It becomes plain from the dicta cited above that only limited grounds exist for interfering with ECP’s decisions, namely, when these involve the exercise of illegal, or mala fide, or manifestly arbitrary or unjustifiable jurisdiction and discretion by the ECP. The rationale for this is obvious: the ECP is a constitutional body which is empowered by Article 218(3) of the Constitution to ensure that elections are conducted ‘honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against’.

5. In reply, Senator Barrister Ali Zafar, ASC has relied on the judgment of Hon’ble Supreme Court of Pakistan passed in Civil Petition No.397 of 2022 dated 25.11.2022 (2020 SCP 358) titled *“Muhammad Faisal Vawda Versus Election Commission of Pakistan through its Secretary and others”* wherein it has been observed “that “ECP” has no jurisdiction under Article 218(3) of the Constitution read with Section 8(c) or 9(1) of the Election Act 2017 to inquire into and decide upon the matter of pre-election qualification and disqualification of a returned candidate. Therefore, the decision of the ECP was without jurisdiction”. He pointed out that this view has already been given by this Court in *“TARIQ IQBAL Versus THE ELECTION COMMISSION OF PAKISTAN through its Secretary etc”* (**PLD 2022 Lahore 607**) and *“SAIMA ASHIQ Versus ELECTION COMMISSION OF PAKISTAN etc”* (**2022 MLD 2018**). Senator Barrister Ali Zafar, ASC states that in view of judgments referred to above, this petition is maintainable.

6. Points raised need consideration.

7. Learned counsel for the Respondent-ECP objected to maintainability of the petition on the touchstone of Articles 62(3) and 222 of the “*Constitution*” coupled with pendency of the “*order*” challenged by the Petitioner before the learned Islamabad High Court, Islamabad.

8. In order to proceed further, this Court has examined the judgment whereby the role of the “*ECP*” was discussed in W.P.No.2604 of 2022 dated 21.09.2022, titled “IMRAN AMHAD KHAN NIAZI Versus FEDERATION OF PAKISTAN etc” (2022 LHC 6501) by granting interim relief and when this order was challenged before the Hon’ble Supreme Court of Pakistan, the Apex Court in Constitution Petition No.30 of 2022 dated 06.12.2022 titled “Election Commission of Pakistan through its Secretary, Islamabad Versus Imran Ahmed Khan Niazi and others”, observed in paragraph No.2 which reads as:

“The learned counsel has pointed out that though the order of the Lahore High Court dated 21.09.2022, the petitioner ECP has additionally been prevented from taking adverse action against the respondents. That point is insignificant at the present stage. Any adverse action by the ECP can only follow once it has passed a final order under Section 10 of the Act against the respondents. That stage is yet to arrive”.

9. It is noted that the Hon’ble Supreme Court of Pakistan in aforesaid order has observed that all the Courts can decide the election petition and this has further been strengthened in “MUHAMMAD SALEEM BAIG, CHAIRMAN PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY (PEMRA), ISLAMABAD Versus Messrs LABBAIK (PVT.) LIMITED through Executive Admin Bol TV, Quetta and others” (PLD 2023 Supreme Court 27) by holding that “*the petitioner must face the litigation before the courts of competent jurisdiction*”.

10. Learned counsel for the Petitioner put much emphasis that before proceeding further, it is necessary to frame and formulate constitutional moot points and for this purpose, he has referred to judgment of this Court cited in "MUHAMMAD UMAIS Versus RAWALPINDI CANTONMENT BOARD etc" (**PLD 2022 Lahore 148**) wherein the Court, at paragraph No.12, Page 159, has held that before deciding a question of law, it has to formulate constitutional moot points if writ is admitted for regular hearing. Relevant part of the same is reproduced hereunder:

"12. After framing of issues on constitutional moot points, this Court has narrowed down the law points and determined the fundamental rights of the Petitioner but while rendering judgment, the constitutional petition filed under Article 199 of the Constitution, if the writ petition is admitted for regular hearing, and after perusing the record from the report and parawise comments, the Court has to render a decision strictly as per Articles 199 and 201 of the Constitution. The decision or order could be a judgment or an order passed on the constitutional petition filed under Article 199 of the Constitution but those decisions are made under the established law of precedent under Article 201 of the Constitution, to have a binding effect and its principles have to be followed later. Article 201 of the Constitution states that a decision of High Court if (i) it decides a question of law or is (ii) based upon or (iii) enunciates a principle of law be binding on subordinate Courts. In this case, writ petition was filed on 21.04.2021 and after hearing the parties on 28.04.2021, the Court while admitting the writ petition directed the parties to file written statement. Thereafter, written statement was filed by the Respondents and perused by this Court, hence, before proceedings further, the Court framed moot points in order to render a judgment under Article 201 of the Constitution. It is a settled norm that the decision on a question of law can only be made if question of law is framed and highlighted from the pleadings. In this case the Court on 02.06.2021 framed the constitutional moot points, mentioned above, in order to render a judgment, while keeping in mind the principles of law already established by the Superior Court,

relied by both the counsel for the parties, then passed its decision on it to be called a decision or a judgment. Accordingly, the judgment then passed will consists of ratio decidendi, facts, arguments of the parties, moot points involved, and stare decisis and obiter dicta. The Constitution clearly empowers the Courts in Pakistan to render on these parameters regarding the question of law or based on question enunciated a principle of law. As every judgment of the Supreme Court is binding on all Courts under Article 189 of the Constitution, the same words are used in Article 201 of the Constitution but subject to Article 189 to follow its principle for consistency”.

11. Admit. Notice to the Respondents for 11.01.2023.

Learned counsel for the Respondent-ECP accepts notice on behalf of Respondent No.1. Whereas, learned law officers accepts notice on behalf of newly incorporated Respondent No.2.

12. Since the case relates to interpretation of Articles of the “*Constitution*” and certain provisions of the “*Act*” involving infringement of fundamental rights of the Petitioner as per Article 10-A, 4 and 5 of the “*Constitution*” therefore, following constitutional moot points are hereby framed.

- i. *Whether the “ECP” can pass any declaration in the light of Article 218 of the Constitution and the judgments mentioned above, by examining the power of the “ECP” in terms of Section 8(c) and 9 of the Act?*
- ii. *Whether the word “declaration” falls under the wording “conduct” and “organize” as used under Article 218(3) and 219 of the “Constitution”?*
- iii. *Whether power of declaration has specifically been mentioned in the “Act” and the Rules framed thereunder in the light of judgments of Hon’ble Supreme Court of Pakistan?*

13. A separate notice be also issued to the learned Attorney General for Pakistan as well as learned Advocate

General Punjab in terms of Order XXVII-A of the Code of Civil Procedure (V of 1908).

C.M.No.01 of 2022

14. Dispensation sought for is allowed subject to all just and legal exceptions. C.M. stands *disposed of*.

C.M.No.02 of 2022

12. Notice for the above date. As the learned Law Officer has been heard as per requirement of Article 199(4) of the “*Constitution*” in light of the recent judgment passed by the Hon’ble Supreme Court of Pakistan in the case of “*FEDERATION OF PAKISTAN through Secretary, Ministry of Energy (Power Division), Islamabad and others Versus SHAFIQ UL HASSAN and others (2020 SCMR 2119)*” and the interpretation on the exercise of jurisdiction of the “ECP” on the issue of declaration is required, therefore, in the light of observation given by the Hon’ble Supreme Court of Pakistan in “*ASLI ASJAD MALHI Versus Ms. Syeda NOSHEEN IFTIKHAR and others*” (**PLD 2023 Supreme Court 1**) that the Court can interfere in the ECP’s decision when these involve the exercise of illegal, or malafide, or manifestly arbitrary or unjustifiable jurisdiction, hence, till the next date of hearing, no adverse action shall be taken against the Petitioner.

**(JAWAD HASSAN)
JUDGE**

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