

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE TASSADUQ HUSSAIN JILLANI, HCJ
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE EJAZ AFZAL KHAN

C.M.A. 7679 OF 2013 IN

C.R.P. NO. 191 OF 2012 IN

CONSTITUTION PETITION NO. 87 OF 2011

(Application on behalf of Mr. Saifullah Nyazee, Additional Secretary PTI for recount of votes in 4 constituencies, after verification of thumb impressions)

Workers Party Pakistan through Akhtar Hussain

... Petitioner

VERSUS

Federation of Pakistan and others

... Respondents

For the Petitioner: Mr. Hamid Khan, Sr. ASC
Mr. M.S. Khattak, AOR
Mr. Imran Khan, Chairman, PTI

For the Respondents: N.R.

Date of Hearing: 16.12.2013

ORDER

TASSADUQ HUSSAIN JILLANI, CJ.- Through this application, applicant who heads a political party makes a grievance that the directions given by this Court in the judgment reported at Workers Party Pakistan Vs. Federation of Pakistan (PLD 2012 SC 681) have not been complied with; that in the said judgment this Court had made certain declarations/observations and issued certain directions/instructions to ensure that the General Elections are free, fair and transparent; that there had been massive rigging in elections held on 11.5.2013 and the major victim of the said rigging has been applicant's party while. While arguing the application, learned counsel in particular referred to various incidents / irregularities in four constituencies and submitted that a direction be issued for recounting of the votes

cast as it would give a broad / general idea as to the extent of rigging, which according to him has eroded the sanctity of the Elections.

2. On Court query with regard to the maintainability of this application in view of the bar contained in Article 225 of the Constitution and in terms of Article 184(3) of the Constitution under which this application has been filed, learned counsel for the applicant referred to para 32 at page 719 of the aforementioned judgment wherein this Court *inter alia* adverted to the jurisdiction of this Court in terms of Article 184(3) and had observed that the Court would have jurisdiction if the issue raised (a) relates and affects the Fundamental Rights provisions of the Constitution which in the instant case are Articles 17 & 25, (b) if it is public interest litigation; and (c) the proceedings are not adversarial rather are more than in the nature of being inquisitorial.

At this stage Mr. Imran Khan sought permission to speak. However, this Court apprised him of the practice of this Court and the fact that he is represented by an able Member of the Bar. He requested for a few minutes and was allowed to speak. According to him the issue raised is not party specific rather it relates to the functioning of democracy which under the Constitution is not possible unless the electoral process is free, fair and transparent and the allegations leveled, according to him, indicate that there was massive rigging. He, however, added that he is conscious and appreciates the concern of this Court qua its jurisdiction but only prays that the Election Petitions pending before various Tribunals qua constituencies subject matter of this

application be directed to be decided expeditiously as notwithstanding the mandate of law that Election Petitions are to be decided within 120 days, those have not been decided. Mr. Hamid Khan referred to two cases in which despite direction of this Court the Tribunal did not decide the Election Petition and in yet another case the Tribunal did not comply with the order of the Election Commission wherein direction was issued to decide the application for comparison of thumb impressions within a certain period.

3. We would not like to comment at this stage on the merits of the issues raised. However, in the interest of justice, we direct the Secretary, Election Commission of Pakistan to submit parawise comments. A report shall also be called from Election Tribunals Lahore and Multan to report about the non-compliance of the orders to which reference has been made in constituency numbers NA-125 (Lahore) and NA-154 (Lodhran). The report shall be submitted within a fortnight and the case shall be listed thereafter.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
16th of December, 2013