

IN THE SUPREME COURT OF PAKISTAN

(Original/Review Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ

Mr. Justice Gulzar Ahmed

Mr. Justice Sh. Azmat Saeed

CIVIL MISC. APPLICATION NO.64 OF 2013

[For Implementation of Judgment dated 08.06.2012,
passed by this Court in Constitution Petition No.87 of 2011]

AND

CIVIL REVIEW PETITION NO.191 of 2012

IN

CONSTITUTION PETITION NO.87 OF 2011

Workers' Party Pakistan through
its General Secretary & 6 others

(in both cases)
Petitioner(s)

VERSUS

Federation of Pakistan & 2 others

(in both cases)
Respondent(s)

For the Applicant/
Petitioner(s) : Mr. Hamid Khan, Sr. ASC
Mr. Bilal Hassan Minto, ASC
Mr. Mehmood A. Sheikh, AOR

For the Federation : Mr. Irfan Qadir, Attorney General for Pakistan.

For the ECP : Mr. Muhammad Munir Paracha, Sr. ASC
Mr. Abdul Rehman, Addl.DG (Elections)
Mr. Sanaullah Malik, Director (L)

Date of Hearing : 14.03.2013

ORDER

Iftikhar Muhammad Chaudhry, CJ.— In continuation of
our order dated 13.03.2013, the Election Commission of Pakistan
(ECP) and the learned DAG were required to submit as under:

- i. Details of the compliance of observations/directions
contained in the judgment reported as Workers' Party
Pakistan through Akhtar Hussain and 6 others v.*

Federation of Pakistan and 2 others (PLD 2012 SC 681), which were to be implemented without promulgation or amendment in the Representation of the People Act, 1976, (ROPA).

- ii. *And details of those directions which were to be implemented through legislation.*

2. On behalf of the Federation, the learned Attorney General for Pakistan has appeared and stated that the Government of Pakistan (GOP) got examined the proposed amendments through Law Ministry and in the meanwhile a Special Committee of the Senate was also constituted and on the basis of the same coupled with the observations made by the Law Ministry, draft of the proposed amendments was sent back to the ECP for further action and according to his instructions reply of the same has not been received so far.

On our query, learned counsel for ECP stated that he has no instructions and after contacting the Commission, he would be in a position to react in this behalf.

3. The learned Attorney General also informed that in all fairness perhaps it would not be now possible for the Parliament to legislate the law as it was desired by the ECP because on 15th March, 2013, the Parliament is going to complete its term of five years under Article 55 of the Constitution of the Islamic Republic of Pakistan, 1973, but if need be, subsequent thereto by adhering to the process of legislation in terms of Article 89 of the

Constitution, needful can conveniently be done through issuance of an Ordinance.

4. Learned counsel for the ECP stated that in view of various provisions of the Representation of the People Act, 1976 (ROPA) some of which have been read in the Court i.e. Section 70 onward covering the definition of corrupt practices etc., and directions & observations made in the case of Workers' Party Pakistan (*supra*) etc., ECP is of the opinion that it is equipped with sufficient powers under the Constitution to arrange/organize free and fair elections. However, if ECP decided to take up any issue requiring legislation, a request shall be sent to the concerned authority for approaching the President of Pakistan to issue the Ordinance.

5. Thus, it is observed that in view of the importance of the issue of holding general elections in the country, if need be, the President of Pakistan in accordance with the Constitution is always competent to issue Ordinance to meet the requirement and to fulfil the objects and purposes, for which it is to be promulgated and there should not be any difficulty either for the ECP or the Competent Authority to act in accordance with the Constitution.

6. The ECP has also placed on record nomination paper, which has been prepared by it, for the forthcoming elections of the National and Provincial Assemblies.

7. We have gone through it with the assistance of learned counsel for parties.

8. Learned Attorney General has stated that under Section 107 of the ROPA, a request was sent by ECP for the amendment of Rule 3 of the Representation of the People (Conduct of Election) Rules, 1977, but the President of Pakistan so far has not approved the amendments, therefore, without adhering to the rules, the Election Commission may have not got printed nomination papers as GOP had reservations on some of its portions like *'as what is the necessity to seek information about a person with regards to his involvement in any criminal case in the last six months etc. because a person cannot be disqualified unless he has been convicted and sentenced for the commission of offence, if committed by him'*. In the same manner the requirement of disclosing information about the travelling of a candidate outside the country, etc. are unnecessary.

9. The argument so raised by the learned Attorney General has been opposed by learned counsel for the ECP. He has contended that the Election Commission has to arrange/organize free, fair and honest elections and also to guard against

the corruption in terms of Article 218(3) of the Constitution. Therefore, when a candidate who presents himself before the electors, they are entitled to know about his full credentials and issuance of such nomination papers is not beyond the scope of the Constitution and law.

10. Mr. Hamid Khan, learned Sr. ASC appearing for one of the political parities, i.e. PTI stated that there was no necessity for seeking amendment of Rule 3 of the Representation of the People (Conduct of Election) Rules, 1977, as the proforma of the Nomination Paper has been improved to gather further information with regard to a candidate to fulfil the object, purpose and command of the Constitution. He stated that besides Article 218(3), Article 222 of the Constitution also empowers the Commission as according to it *"subject to Constitution, no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or an Election Commission under this Part"*. He has also referred to the residuary powers of the ECP under Section 104 of the ROPA. He further stated that no one amongst the present Parliamentarians or prospective candidates and the voters have come forward to raise objection on this proforma.

11. Mr. Bilal Hassan Minto, learned counsel for the petitioner also supported the contentions of learned counsel for

the ECP as well as Mr. Hamid Khan, learned Sr. ASC and also relied upon relevant Section 103(c) of the ROPA, which deals with the powers of the Commission to ensure fair elections.

12. This Court in the case of Workers' Party Pakistan vide order dated 28.03.2012 directed that any of the respondents or any other political party, which is interested to join the proceedings, may appear and file their concise statements without seeking any formal permission from the Court and in response thereto some of the political parties entered appearance to assist the Court.

13. The object and the purpose of pronouncement of the judgment in the case of Workers' Party Pakistan, was to ensure that elections are arranged and organized by the ECP strictly under Article 218(3) of the Constitution. For convenience the same is reproduced herein below:

"218(3) It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against."

14. The observations and the directions were made in the said case keeping in view the above provisions of the Constitution and the law. Expressions 'fairly', 'justly' and 'honestly' used therein were elaborately interpreted. Neither the learned counsel, who appeared to assist the Court nor anyone else subsequent

thereto, either representing any political party or the general public had objected on the judgment by seeking its review.

15. Now the ECP has made some additions in the nomination forms following command of Constitution under Article 218(3) as well as keeping in view observations/directions in Workers party's case. A copy of the same has been placed on record. It is not possible to reproduce the contents of the same, however, for sake of convenience the contents of the Nomination Paper shall be read as a part of this Order.

16. Mr. Hamid Khan, learned Sr. ASC for PTI stated that the contents of Nomination Paper are in the knowledge of all stakeholders i.e. electors, prospective candidates as well as the incumbent Parliamentarians and no objection on it has been raised by any one of them. The learned Attorney General for Pakistan at this stage stated that the GOP itself is a supporter for holding free and fair general elections in the country but subject to law, and Government has also not expressed any objection but some observations were made. It was the ECP, which had itself approached the President of Pakistan for amendment of the Rules and has now decided to print the nomination papers without his decision. The learned counsel for the ECP stated that after having given second thought as he has already stated in his arguments it was decided not to press for amendment of Rule 3 of ROPA,

1976. Therefore, nomination papers were printed and made available for the information of all concerned including interested persons, who are likely to contest elections, so he/they should have information of its particulars, which are required to be furnished at the time of filing the nomination paper.

17. In our order dated 12.03.2013, we had already made it clear that the ECP is required to perform its functions strictly in accordance with the Constitution. For sake of convenience, relevant paras from the judgment of Workers' party were reproduced. No doubt the ECP has a Constitutional commitment and obligation to arrange and organize elections according to Article 218(3) and it also enjoys powers to do so as it has been described under Article 222 of the Constitution. Under the constitutional provision, ECP is responsible to arrange, organize and conduct elections honestly, justly, fairly and in according with law and emphasis is that corrupt practices should be guarded against. Thus, in view of such provision of Constitution a solemn object should be that no corrupt person is allowed to enter in Parliament. With this commitment of the Constitution, the ECP without changing the complexion or contents of Rule 3 of the Rules, 1977, has made improvements in the proforma, already appended with the ROPA. There is no hard and fast rule to make improvement in a proforma of nomination paper, particularly

when required object is to enforce Article 218(3) of the Constitution. A detailed information about a candidate is essential to be obtained as on his success he has to represent a constituency on behalf of more than hundred thousands electors, for a period of five years and on winning the election he shall be a most responsible person along with others who will govern the country. It is the mandate of the Constitution that the people of Pakistan shall be governed by the Chosen Representatives, therefore, a candidate who comes forward for election, is supposed to provide his complete credentials to the voters enabling them to cast votes in favour of such person who is honest and believes in fairness and is free from any disqualification under Article 63 of the Constitution and is also qualified under Article 62 of the Constitution. Mr. Hamid Khan, Sr. ASC has stated that no one has raised objection to the contents of nomination papers. We agree with him and believe that GOP is also of the opinion that there must be free, fair and honest elections as well as free from any corruption. Therefore, when all the stakeholders i.e. the ruling party and the other political parties, voters, whose number is about eight crore and the Nation as a whole is expecting that their representation in the Parliament should be made by honest person(s) who are not polluted by allegation of corruption in any manner. Thus, it is declared that ECP in compliance of Article

218(3) read with Article 222 of the Constitution and sections 103 & 104 of Representation of Peoples Act, 1976 as well as the judgment in the case of Workers' Party Pakistan (supra) has prepared/improved nomination papers for the forthcoming General Elections of Pakistan for National and Provincial Assemblies, in accordance with the Constitution and the law.

18. As far as the other amendments are concerned, if any, the ECP may point out to the Court on the next date of hearing.

19. Adjourned to 15th March, 2013.

Chief Justice

Judge

Islamabad
14.03.2013
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Judge

APPROVED FOR REPORTING