Civil Review Petition Nos. 312, 313, 319, 320, 331 & 332 of 2024

Civil Misc. Application Nos. 3611, 3612 & 3640 of 2025

Facts:

The civil review petitions ('**CRPs**'), filed under Article 188 of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**') read with Order XXVI of the Supreme Court Rules, 1980 (**SCRs of 1980**), seek a review of the judgment dated 12.07.2024 passed by majority members[1] of this Court in the case of Sunni Ittehad Council ('**SIC**'). A meeting of the Committee ('**the committee**') constituted under section 2 of the Supreme Court (Practice & Procedure) Act, 2023 ('**the Act**) was held on 18th July 2024, for fixation of the CRPs for hearing. The majority members of the Committee (HCJ dissenting) did not agree to fix the CRPs during summer vacations.

2. During the pendency of the CRPs, Twenty-Sixth Constitutional Amendment ('**the amendment**') was introduced, resulting in some radical changes in the Constitution, especially in its PART II ("The Judicature"). Through an amendment in Article 175A, the composition of the Judicial Commission of Pakistan ('**JCP**') was changed, whereas, Articles 191A and 202A were inserted in the Constitution. Sub-Article (1) of Article 191A of the Constitution established Constitutional Benches ('**CBs**') in the Supreme Court, comprising such Judges of the Supreme Court and for such term as may be nominated and determined by the JCP from time to time. It further provides that the CBs may comprise equal number of Judges from each Province. The constitutional intent of the Legislature behind this equal representation, regardless of provincial population, is to ensure that all Provinces have an input in the constitutional matters. This idea is helpful in understanding the viewpoint of each Province, in order to foster public trust and confidence in the judiciary. However, the Judges of the Supreme Court, who for the time being or in future are not nominated as Judges of the CB, shall continue to perform their judicial functions in regular benches, in respect of matters, other than those covered under sub-Article (3). According to Sub-Article (3) of Article 191A

[1] Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan, JJ.

of the Constitution, no bench of the Supreme Court, other than a CB shall exercise jurisdiction in respect of matters mentioned in the said sub-Article. Sub-Article (4) of Article 191A of the Constitution provides for creation of a Committee ('**constitutional committee**') comprising the most senior Judge of the CB and next two most senior Judges from amongst the Judges nominated by the JCP under sub-Article (1). This committee is mandated to constitute benches consisting of not less than five judges, from amongst the judges nominated by the JCP. Sub-Article (5) of Article 191A of the Constitution addresses the matters pending or filed before the Supreme Court prior to the constitutional amendment, which reads as under:

> *All petitions, appeals or review applications against judgments rendered or orders passed to which clause (3) applies pending or filed in the Supreme Court prior to commencement of Constitution (Twenty-sixth Amendment), Act 2024 (XXVI of 2024), forthwith stand transferred to the Constitutional Benches and shall only be heard and decided by the Constitutional Benches, constituted under clause (4).*

3. By operation of sub-Article (5), all cases pending or filed in the Supreme Court, prior to commencement of the amendment, to which sub-Article (3) applies, automatically stand transferred to the docket of the CB, without intervention of the Court. The constitutional committee constituted a thirteen-member bench ('**the bench'**) from amongst the Judges of the Supreme Court nominated by JCP under sub-Article (1) for hearing the CRPs on 06.05.2025. On the said date, two Hon'ble Members[2] of the Bench dismissed, whereas, the remaining members opted to proceed with the CRPs and further held that the opinion of two Hon'ble dissenting members shall be part of the final decision. The respondents submitted four miscellaneous applications, out of which the application bearing No. CMA 3641/2025 was allowed and the rest were dismissed. CMA Nos. 3611-12/2025 were filed with the prayer as under:

> "***CMA 3611-12/2025:***
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> *In view of the above, it is most respectfully and most humbly prayed that this Honourable Court may graciously be pleased to send this present Civil Review Petition, as well as other connected Civil Review Petitions, to the Committee under Section 2 of the Supreme Court (Practice and Procedure) Act, 2023, for reconstitution and formation of the Bench under Rule 8, Order XXVI, The Supreme Court Rules, 1980.*

[2] Mrs. Ayesha Malik and Mr. Aqeel Ahmad Abbasi , JJ

On 22.05.2025 after hearing the learned counsel for the parties, applications bearing CMA Nos. 3611, 3612 and 3640 of 2025 were dismissed through short order, for the reasons to be recorded later. My separate opinion for dismissal of the listed CMAs is set out below.

4. The question for consideration through these applications is whether the CRPs can be posted before the same bench that delivered the judgment under review, as provided by rule 8 of Order XXVI of the SCRs of 1980. The amendment is admittedly part of the Constitution and is in force, therefore, it is a constitutional obligation of this Court to obey and implement each and every provision of the Constitution in its entirety until and unless it is repealed or struck down by a competent court of law. As the judgment under review involves interpretation of Article 51(6)(d) & (e) of the Constitution, therefore, by operation of sub-Article (5) of Article 191A of the Constitution, the CRPs immediately and automatically stood transferred to the CB. The only responsibility of the Committee constituted under sub-Article (4) of Article 191A of the Constitution was to constitute the bench accordingly, whereas, the office performed its responsibility to shift the files of the CRPs to the docket of CBs. Reliance in this behalf is placed on the case of Dewan Motors (Pvt) LTD[3].

5. The purpose of fixing the matter before the same bench that delivered the judgment under review is to enable the Judges of that bench to rectify any mistake or error, if any, floating on the surface of the record. Though the SCRs of 1980 derive their authority from the Constitution, but do not have the same force as the Constitution itself. However, they have the force of law and are binding on the Supreme Court and all concerned, provided where any of its provision is in conflict or inconsistent with the Constitution, such provision shall not be acted upon. Rule 8 of Order XXVI of the SCRs of 1980 provides that “as far as practicable, application for review shall be posted before the same Bench that delivered the judgment sought to be reviewed.” The phrase “as far as practicable”, means that something is to be done to the extent that it is feasible, achievable, possible or practical. Prior to the Amendment, it was practicable for the committee to fix the matter before the same bench that delivered the judgment under review and an attempt in this behalf was made by the committee, but it did not succeed. However, the situation after the amendment has

[3] PLD 2025 SC 394

significantly changed. Sub-Article (3) of Article 191A of the Constitution specifically authorizes the CB to exercise the inherent jurisdiction of the Supreme Court to hear matters to which clause (3) applies. After the amendment, the JCP nominated fifteen Hon'ble Judges of the Supreme Court for the purpose of constitution of benches of CBs, including six Hon'ble members of the Bench[4] that delivered the judgment sought to be reviewed. Out of the nominated Judges, a thirteen-member bench was constituted by the constitutional committee. The remaining two Hon'ble members (Justice Shakeel Ahmad and Justice Ishtiaq Ibrahim), nominated by the JCP were not included in the bench as they were members of the bench of the Peshawar High Court that delivered the judgment impugned in the writ petitions filed by SIC. Before the amendment, every bench of the Supreme Court was authorized by the SCRs of 1980 to exercise jurisdiction of the Supreme Court. After the amendment, sub-Article (5) of Article 191A mandates that the matters to which sub-Article (3) applies, *shall only be heard and decided by Benches constituted under clause (4)*. This sub-Article limited the power of the benches of the Supreme Court and vested the exclusive authority to the CBs to exercise the inherent jurisdiction of the Supreme Court, granted to it by Article 184(3) of the Constitution. Thus, the provision of Article 191A of the Constitution shall have precedence over the SCRs of 1980, therefore, its rule 8 of Order XXVI cannot be applied in the case in hand. Since, the Hon'ble six members[5] of the same bench that delivered the judgment sought to be reviewed were not nominated by the JCP under sub-Article (1), the constitutional committee in the given circumstances, had no jurisdiction to include them as members of the CB. It was, therefore, not practicable to fix the CRPs before the same Bench that had delivered the judgment under review.

6. The purpose of fixing a review application before the same bench of Judges that delivered the judgment or order under review, is to ensure judicial continuity and consistency. This raises an important issue that whether in the current scenario, is it still possible to fix these CRPs before the same bench that delivered the original judgment? An age-old proverb, "Where there is a will, there's a way" suggests that there is always a solution to any problem, provided that the person or authority possesses

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[4] Mr. Amin-ud-Din, Mr. Jamal Khan Mandokhail, Mr. Muhammad Ali Mazhar, Mrs. Ayesha A. Malik, Syed Hasan Azhar Rizvi and Mr. Naeem Akhter Afghan, JJ

[5] Mr. Yahya Afridi, CJ, Mr. Syed Mansoor Ali Shah, Mr. Munib Akhtar, Mr. Athar Minallah, Mr. Shahid Waheed and Mr. Irfan Saadat Khan, JJ

the requisite motivation, desire and determination to overcome obstacles, in order to solve the problem and achieve the desired goal. Article 191A(1) of the Constitution empowers the JCP to nominate any number of Judges of the Supreme Court for such term as may be determined by it from time to time. There is no bar upon the JCP to nominate all judges of the Supreme Court, including those Hon'ble Judges who were members of the bench that delivered the judgment under review, even for the limited purpose of hearing these CRPs. In order to make it practicable to fix these CRPs before the same bench, I proposed that the matter be referred to the JCP to nominate rest of the members of the original bench, enabling the constitutional committee to reconstitute a bench comprising Judges of the same bench, that delivered the judgment under review. It was possible because the SCRs of 1980 had the force of law, hence, are binding upon the JCP as well. Had the matter been referred to the JCP, the SCRs of 1980 could have been implemented within the parameters of the Constitution. It was the best solution to resolve the problem, which would have fostered public trust and confidence in the judiciary. However, the majority members of the CB did not agree and decided to proceed with the matter through the available members nominated by the JCP.

Review Jurisdiction:

7. Judges are humans and humans are bound to make mistakes, which is a normal human psyche. The Supreme Court is the ultimate forum having inherent powers. There is no higher body where its decision can be appealed. Therefore, by virtue of Article 188 of the Constitution, the Supreme Court derives the power to review any judgment pronounced or order made by it. Such power is regulated by rule 8 of Order XXVI of Part IV of the SCRs of 1980, which provides that the Court may review its judgment or order in a Civil proceeding on grounds similar to those mentioned in Order XLVII, rule 1 of the Code of Civil Procedure, 1908 ('**CPC**'), which are as under:

> *1. Application for review of judgment– (1) Any person considering himself aggrieved–*
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> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
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> *(b) by a decree or order from which no appeal is allowed, or*
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> *(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him*

> *at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

8. The Supreme Court or any of its bench can exercise such power of the Supreme Court only when serious injustice could be seen in its judgment or order on account of clear and evident mistake or an error apparent on the face of the record, that leads to unjust result. A mistake or an error in the judgment under review can only be corrected when circumstances of a substantial and compelling character, leading to a miscarriage of justice make it necessary to revisit the matter with a view to correction or improvement in the judgment, not to substitute its view. A mistake or an error could be factual, constitutional or legal. A mistake or an error of fact occurs when Judges misunderstand the facts brought before them, misinterpret, overlook, fail to consider crucial facts or important piece of evidence or form an opinion based on false information. This power can also be exercised from the discovery of new and important matter or evidence, which, after exercise of due diligence was not within the knowledge of the Court or could not be produced before it at the time when the judgment/order was made. An error of Constitution involves an act of violation of constitutional principles or misinterpretation of constitutional provisions. While, an error of law is a mistake in how a legal rule is applied or failure to apply relevant law. It is only for the Judges who delivered the judgment under review, to consider all these facts and if convinced, may correct an error or mistake apparent on the face of the record. The scope of review is specific and limited. It does not extend an opportunity to re-argue the case, merely for the purpose of taking a chance to get a favorable decision, as is permissible in an appeal, which is why, it differs from the appellate jurisdiction.

Facts of the case:

9. For the elections of 2024, a number of candidates submitted their nomination papers declaring themselves affiliated with different political parties as well as independents. The ROs of the respective constituencies, in exercise of power conferred upon them by section 68 of the Election Act 2017 (‘**the Act’**) published names of the contesting candidates by drawing Form 33, as provided by rule 56 of the Election Rules, 2017 (‘**Rules of**

2017'). The mandate of the ROs was to fill up Form 33 strictly on the basis of the information given by the candidate in his/her nomination paper. Once, the nomination papers become final, the ROs shall fill up Form33 strictly on the basis of the information and contents provided by candidates in their nomination papers. Neither a candidate nor the ROs are empowered to change the contents of the nomination papers. Admittedly, 39 candidates in their nomination papers declared their affiliation with PTI, but the ROs, without having any authority, had illegally declared them as independents. After being elected as members of the NA, those 39 PTI's affiliated candidates along with the 41 independently returned candidates joined SIC within the period of three days as required under clause (d) of sub-Article (6) of Article 51 of the Constitution. After joining, 80 returned candidates, SIC alone approached the Election Commission of Pakistan ('**ECP**') claiming their entitlement to the reserved seats, but its request was turned down by the ECP, which decision was assailed by SIC before a five-member bench of the Peshawar High Court. The High Court dismissed the petitions and upheld the decision of the ECP, declaring that SIC is not entitled for the reserved seats. Feeling aggrieved, SIC filed a petition before this Court, which was converted into an appeal and was unanimously dismissed, holding that SIC is not entitled for the reserved seats. We (Qazi Faez Isa and Jamal Khan Mandokhail, JJ) and the majority members declared that 39 returned candidates are affiliated with PTI. The majority members further declared 41 returned candidates as independents with an option to join any political party within fifteen days. Feeling aggrieved from the decision of the majority members, the petitioners preferred these CRPs.

C.R.Ps:

10. It is important to mention here that while hearing the appeal of SIC, this Court inquired the learned counsel for the ECP that how the ROs showed PTI's 39 affiliated candidates as independents in Form 33, contrary to their declaration submitted through their nomination papers? The learned counsel replied that on account of refusal of election symbol, the PTI was no more a political party, as provided by explanation to rule 94 of the Elections Rules, 2017, as such, all the candidates were declared as independents. Though, neither the PTI nor any of 39 elected members appeared before this Court to claim themselves affiliated with PTI, however, during the pendency of the appeal, Mr. Salman Akram Raja, ASC filed an application on behalf of the PTI during the last limb of the main

appeal. Surprisingly, even through the said application, the learned counsel did not claim the reserved seats for the PTI, instead he supported the claim of SIC. We (Qazi Faez Isa, Jamal Khan Mandokhail, JJ) in our separate note have already held that the explanation to rule 94 of the Rules of 2017 is in conflict with Article 17 of the Constitution and section 2 (xxviii) of the Act, therefore, it shall not apply and the definition of a political party provided by the Act shall prevail. We had declared that the PTI retained all its rights provided by law to contest elections. We further clarified that refusal to allot common election symbol to a political party does not disfranchise it otherwise.

11. Admittedly, a number of candidates submitted their nomination papers for National Assembly ('**NA**') and the Provincial Assemblies ('**PAs**') declaring themselves as PTI's affiliated candidates. It is also a fact that PTI submitted its list of candidates for the reserved seats and the nominated candidates also submitted their nomination papers. The nomination papers of all the candidates went through the process of scrutiny and finally a list of contesting candidates was prepared. It is a well settled principle of law that when Constitution or law requires an act to be done in a particular manner, it is to be done accordingly. The ROs while preparing the list of contesting candidates, were legally bound to fill Form 33 in accordance with the particulars provided by the candidates in their nomination papers, but they without having any lawful authority to do so, had declared PTI's affiliated candidates as independents, contrary to the declaration given by each of them in their nomination papers. Out of the nominated candidates, 39 candidates affiliated to PTI in the NA won their elections from the respective constituencies, but they were considered as independently returned candidates. This act of the ROs has deprived the candidates who submitted nomination papers to the seats reserved for women and non-Muslims on the basis of PTI's list of candidates, which amounts to an infringement of a constitutional right of the political party, the candidates, the electorate as well as the candidates who submitted their nomination papers for reserved seats, as provided by Article 51(d) & (e) of the Constitution. The ECP was constitutionally bound to allocate reserved seats in accordance with law through proportional representation system of parties' list of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the NA, irrespective of any request on behalf of any political party. The ROs and the ECP had mis-exercised their jurisdiction by declaring the PTI's 39

affiliated candidates as independents by refusing to allot reserved seats to PTI on the strength of its affiliated returned candidates. It is an undisputed fact that the matter before the ECP, the Peshawar High Court and before this Court was in respect of distribution of reserved seats. It is a well settled principle of law that appeal is a continuation of main proceedings arising out of the fora below, therefore, the subject matter before us was actually the distribution and allocation of reserved seats, which was the cause of dispute right from the ROs till the instant appeal. It is for this reason, we[6] through our separate notes[7] had considered it necessary to exercise our power under Article 187 of the Constitution to do complete justice by rectifying the unconstitutional and illegal act of the ROs and the ECP. The opinion of majority members to the extent of 39 returned candidates, to which we also agreed is based on facts and judicial deliberation. The findings of the majority members to such extent are in accordance with the Constitution and the relevant law, which we cannot substitute with our view. I, therefore, respectfully, disagree with the decision of the majority members of this bench hearing the CRPs with regard to setting aside the majority judgment to the extent of 39 returned candidates. To this effect, the review petitions stand dismissed.

12. As far as the judgment under review about 41 returned candidates is concerned, admittedly, they while submitting their nomination papers, had declared themselves as independents. None of them disputed their such status either before the ROs, the ECP, the Peshawar High Court or before this Court. Similarly, they did not dispute their joining the SIC nor did they dispute SIC's claim for allocation of reserved seats. The learned counsel for SIC and PTI tried to make out a case that on account of peculiar circumstances arising out of the judgment dated 13th January, 2024 of this Court, those 41 candidates declared themselves as independents. According to Mr. Salman Akram Raja, the PTI's administration had decided that the candidates should submit their nomination papers independently to avoid any unwarranted situation. As per the election schedule, the date for submission of nomination papers by the candidates was with effect from 20th December till 24th December 2023. The 41 candidates while submitting their nomination papers by 24th December, 2023 declared themselves as independents, whereas, the judgment was passed by this Court on 13th January 2024, much after the

[6] Qazi Faez Isa and Jamal Khan Mandokhail, JJ
[7] PLD 2025 SC 235 & PLD 2025 SC 219

last date of submission of nomination papers. The contention of the learned counsel was neither supported by 41 independent candidates personally nor through a lawyer during the main proceedings as well as in these CRPs before this Court. They did not claim to be affiliated with PTI nor showed their intention to leave SIC and join any other party. Under such circumstances, how could it be presumed that their declaration as independent candidates was on account of that judgment. If the contention of the learned counsel with regard to peculiar circumstances is believed to be correct, a question arises as to how those 39 returned candidates and number of others who lost elections, submitted their nomination papers declaring themselves as PTI's candidates? Apparently, it was the PTI's decision-makers' decision, which compelled the 41 candidates and others to submit their nomination papers independently. The learned majority members did not consider this important aspect of the case. To their extent, the ROs have correctly prepared list of contesting candidates while drawing Form 33, showing them as independents.

13. After being elected, 41 independent returned candidates by exercising their right provided by clause (d) of sub-Article (6) of Article 51 of the Constitution, joined SIC. The majority members through the impugned judgment, while exercising their power under Article 187 of the Constitution declared them as independents and gave them an option to join any political party within a period of fifteen days, despite the fact that the matter of 41 candidates was never pending before this Court as well as before any of the fora below. The decision of the majority members proves the fact that those 41 candidates were actually independents. By now, it is well settled that a candidate who is elected with an affiliation of a particular political party or after being elected independently, joins any political party, cannot leave that particular party nor can join another. If he does so, he will face the consequences of losing his seat, as provided by Article 63A(1) of the Constitution. We have already held that no authority including the Court has the power to declare a candidate independent or change his status contrary to his declaration. No doubt the jurisdiction of this Court under Article 187 of the Constitution is to do complete justice in a matter pending before it, but such power is not unlimited, hence, cannot be expanded in any circumstance. In this provision of the Constitution, pendency of a matter is a condition precedent. Admittedly, there was no matter pending before this Court with regard to declaring 41 candidates as independents nor did they claim such relief. While declaring

41 members of the NA as independents, the majority members did not mention the relevant provision of the Constitution and the law. Instead, they overlooked Article 51(6)(d) and consequences of Article 63A(1) of the Constitution. The presumption of learned majority members that those 41 candidates belonged to PTI, has not been supported by any evidence or material available before them. The judgment under review to the extent of 41 candidates is, therefore, in excess of the power granted to the Supreme Court by Article 187 of the Constitution. Thus, in view of the above, I am convinced that the judgment under review to the extent of declaring 41 candidates as independents, with further relief of providing them fifteen days' time with an option to join any other party, is an error of the Constitution and law, as well as an error of facts floating on the surface of the record. To such extent, the judgment under review cannot sustain.

These are the reasons for our short order dated 27.06.2025, which is reproduced herein below:

> *Today, at the verge of conclusion, one of the Hon'ble members of the larger Bench (Mr. Justice Salahuddin Panhwar) for certain reasons, recused to continue his sitting in this Bench and contributed his separate note, therefore, the Bench was reconstituted with all the available members of the Constitutional Bench. Initially this Constitutional Bench was constituted for hearing of the aforesaid review petitions by 13 Hon'ble Judges of this Court but two of them (Justice Ayesha A. Malik and Justice Aqeel Ahmed Abbasi) on the first date of hearing have dismissed all the review petitions.*
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> *For detailed reasons to be recorded later, subject to amplification or elucidation as may be deemed appropriate, by majority of 7 (Justice Amin-ud-Din Khan, Senior Judge, Justice Musarrat Hilali, Justice Naeem Akhter Afghan, Justice Shahid Bilal Hassan, Justice Muhammad Hashim Khan Kakar, Justice Aamer Farooq and Justice Ali Baqar Najafi), all Civil Review Petitions are allowed and the impugned majority judgment dated 12.07.2024 is set aside, as a consequence thereof, Civil Appeal Nos. 333 of 2024 and 334 of 2024 filed by the SIC are dismissed and the judgment rendered by the Peshawar High Court, Peshawar is restored.*
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> *Whereas, Justice Jamal Khan Mandokhail, for reasons to be recorded later, partly allowed the review petitions and maintained his original order with regard to 39 seats but reviewed the majority judgment to the extent of 41 seats.*
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> *Whereas Justice Muhammad Ali Mazhar and Justice Syed Hasan Azhar Rizvi, for reasons to be recorded later, also reviewed the judgment and allowed the review petitions with the rider that since the factual controversy or disputed questions of facts neither could be resolved by the Peshawar High Court nor this Court in original or review jurisdiction, therefore, directions are issued to the ECP to examine and consider the nomination papers/declaration and other relevant documents of all 80 returned candidates by means of de*

novo exercise with regard to their affiliation and take appropriate decision in accordance with law and applicable rules for allocation of reserve seats within 15 days from receiving the copy of this Short Order.

(**Jamal Khan Mandokhail)**
Judge

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APPROVED FOR REPORTING