

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.3503/2021

Pakistan Muslim League (N)
through Parliamentary Party Leader in the Senate of Pakistan

Versus

Federation of Pakistan
through Secretary Ministry of Law and Justice & 3 others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	01-10-2021	Mr Mansoor Usman Awan and Ms Zainab Janjua, Advocates for petitioner.

Athar Minallah, C.J.- Pakistan Muslim League (Nawaz) (*hereinafter referred to as the "**Petitioner Party**"*) has invoked the jurisdiction of this Court challenging the vires of the Election (Third Amendment) Ordinance, 2021 (*hereinafter referred to as the "**Amendment Ordinance, 2021**"*), which was notified in the official gazette on September 3, 2021.

2. The learned counsel has been heard at length. He was asked to satisfy this Court why it should exercise its extraordinary discretionary jurisdiction under Article 199 of the Constitution of

the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the "**Constitution**"*). It is noted that a plain reading of section 2 of the Amendment Ordinance, 2021, whereby section 72A has been inserted in the Election Act, 2017, shows that the legislation has been promulgated to ensure that no elected office remains vacant and the constituents unrepresented for an indefinite period. The inserted section 72-A is reproduced as follows.-

"72A. Seat to become vacant on not making oath.- *The seat of a returned candidate shall become vacant, if he willfully does not make oath within sixty days from the date of the first sitting of the Assembly, the Senate or the local government or within forty days of the commencement of the Elections (Third Amendment) Ordinance, 2021, as the case may be."*

3. The Amendment Ordinance, 2021 obviously intends to achieve an object, which is based on the established democratic principle i.e. no elected office ought to be left vacant so that the actual stakeholders, the people of Pakistan, do not suffer by remaining unrepresented. In the case titled "*Riaz Hanif Rahi v. Federation of Pakistan through*

Secretary, Ministry of Law and Justice and 14 others" [PLD 2019 Islamabad 230], the production orders issued by the worthy Speaker of the National Assembly had been challenged. Incidentally, the production orders had been issued so as to enable two elected parliamentarians belonging to the Petitioner Party to attend the proceedings. One of the elected representatives happened to be the President of the Petitioner Party and Leader of the Opposition in the National Assembly. The learned Division Bench had highlighted the seminal principle as follows.-

"The above observations made by two most honourable and distinguished jurist Judges manifests the embedded principle of law that allowing constituents to go unrepresented offends their constitutional rights. This is the obvious wisdom for incorporating Rule 108 in the Rules of 2007. Moreover, since the expression 'may' has been used therein, therefore, the power vested in the Speaker is of a discretionary nature. The Speaker, while exercising discretion under the said rule, has to, inter alia, take into consideration the rights of the constituents, particularly that they cannot be allowed

to go unrepresented. In this case respondents no. 8 and 12 were arrested in connection with investigations which are pending under the Ordinance of 1999. They have not been convicted and at this stage they are only accused in the proceedings. Their status as accused entitles them to be treated as innocent till they are proven guilty. They are not disqualified from being members of the Majlis-e-Shoora (Parliament) and, therefore, they cannot be restrained from attending the sessions of the National Assembly because it would then be violative of the constitutional rights of the constituents and consequently they would suffer if they remain unrepresented.”

4. On the touchstone of the above principle, it would not be in consonance with the fundamental rights of the electorate and definitely not in public interest for this Court to exercise its extraordinary discretionary jurisdiction vested under Article 199 of the Constitution. This Court is guided by the judgment titled as '*Secretary to the Government of the Punjab, Forest Department, Punjab Lahore v. Ghulam Nabi*' [PLD 2001 SC 415].

5. There is yet another crucial aspect of the case in hand. Admittedly, the Petitioner Party has a significant presence in both the Houses of the Majlis-e-Shoora (Parliament). It has also been conceded that the ruling political party in the upper House i.e. the Senate of Pakistan does not enjoy the majority. The opposition parties are in the majority. It is a constitutional obligation under Article 89 of the Constitution to lay every Ordinance promulgated by the President before both the Houses, if it pertains to provisions dealing with such matters as have been described under Article 89(2)(a)(ii). The proviso is reproduced as follows.-

"Provided that either House may by a resolution extend it for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by a House, upon the passing of that resolution:"

It is, therefore, obvious that the Petitioner Party and other opposition parties have a constitutional remedy of disapproving any Ordinance.

6. It is noted that this Court has consistently observed that its involvement in matters which otherwise could be resolved by the Majlis-e-Shoora (Parliament), is in violation of the scheme of the Constitution. The scheme is based on the principle of trichotomy of powers. Moreover, political question raised before the courts by political parties having representation in the Majlis-e-Shoora (Parliament), undermines its sanctity and supremacy.

7. The Majlis-e-Shoora (Parliament) is the supreme legislative organ and the scheme of promulgation of an Ordinance under Article 89 is subject to the oversight of the representatives of the people in both the Houses. The trend of involving the judicial branch of the State in matters having political content is one of the factors which has contributed towards the weakening of the Majlis-e-Shoora (Parliament) on the one hand, and on the other it has exposed the judicial branch to unnecessary controversies. It is an obligation of the political parties and their respective leaderships to ensure that political disputes are resolved within the

Majlis-e-Shoora (Parliament) instead of involving the courts.

8. It is also for the courts to show utmost restraint in matters which fall within the domain of the Majlis-e-Shoora (Parliament) or have a political content. The two Houses of the Majlis-e-Shoora (Parliament) are the highest national forums for debating and resolving political disputes and for formulating policies that are in the best interest of the actual stakeholders i.e. the people of Pakistan. This Court has profound respect for the elected representatives and, therefore, it expects that they would resolve their disputes within the Majlis-e-Shoora (Parliament) rather than unnecessarily involving constitutional courts.

9. In the case in hand, each House is vested with the constitutional power and remedy for disapproving the Amendment Ordinance, 2021. This Court has been informed that the political party in power does not enjoy the majority in the upper House, Senate. Despite having majority, if the Petitioner Party and other opposition parties do not disapprove the Amendment Ordinance, 2021, then

this Court has no reason to interfere and thus usurp the constitutional authority vested in the forums representing the people of Pakistan. Moreover, a plain reading of the inserted section 72A in the Election Act, 2017 through the Amendment Ordinance, 2021, persuades this Court that it is in public interest because it is intended to ensure that no elected office remains vacant and the electorate unrepresented for an indefinite period. Any interference by this Court would be contrary to public interest and the guaranteed fundamental rights of the people.

10. For the foregoing reasons, this Court is not inclined to exercise its extra ordinary discretionary jurisdiction vested under Article 199 of the Constitution and consequently the petition is accordingly dismissed. This Court expects that the Petitioner Party and all other political parties having representation, will endeavor to strengthen the Majlis-e-Shoora (Parliament) by resolving the political disputes in accordance with the constitutional provisions and the principles of democracy. It is further expected that they will show restraint in unnecessarily involving the judicial

branch of the State to resolve disputes having political content.

(CHIEF JUSTICE)

Approved for reporting.

Luqman Khan.