

**IN THE ISLAMABAD HIGH COURT ISLAMABAD.**

No.

IHC/Jud. Deptt.

**(REVISED FORM OF BLUE SLIP)**

Case No. WP-2008/13

Titled. Ms. Naheed Khan -v/s- Election Commission Pakistan.

a) Judgment approved for reporting

✓  
Yes/No

b) Judgment any comment upon the conduct of the  
Judicial officer for quality of the impugned judgment  
Is desired to be made.

Yes/No ✓

(In case the answer is affirmative separate  
confidential note may be sent to the Registrar  
drawing his attention to the particular aspect).

Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting or any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

W.P. No. 2008 of 2013

Ms Naheed Khan.

*Vs*

Election Commission of Pakistan, etc.

DATE OF HEARING : 23-01-2017.

PETITIONER BY : Mr Zulfiqar Khalid Maluka, Advocate.

RESPONDENTS BY : Syed Nayyar Hussain Bokhari, Malik  
Amir Fida Paracha and Raja Shakeel  
Ahmed Abbasi, Advocates.

ATHAR MINALLAH, J:- The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**"), assailing order dated 25.03.2013, passed by the Election Commission of Pakistan (hereafter referred to as the "**Commission**").

2. The facts, in brief, are that the petitioner filed an application, dated 04.03.2013, under the Political Parties Order, 2002 (hereinafter referred to as the "**Order of 2002**") seeking the registration of a political party in the name of

'Pakistan Peoples Party'. The respondent no.2, namely Muhammad Jahangir Badar, pursuant to his claim of being the Secretary General of a political party by the name of 'Pakistan Peoples Party', had earlier filed an application, dated 21.12.2012, seeking the intervention of the learned Commission to the effect that no other political party in the name of 'Pakistan Peoples Party' be registered and in addition a request was made that the symbol of the sword may not be allotted to any other political party. Likewise, an application dated 31-12-2012 was filed by the Chairperson and Secretary General of the Pakistan Peoples Party (Shaheed Bhutto) praying that the name of the latter be changed to 'Pakistan Peoples Party' and the election symbol of the 'sword' be allocated to contest the forthcoming elections. A fourth application was filed on 22.03.2013 by the respondent no.4, claiming to be the Secretary General of the 'Pakistan Peoples Party' and requesting the enlistment and restoration of the symbol of the 'sword'. Four distinct applications were thus filed, each laying a claim in respect of the political party which had hitherto existed in the name of the 'Pakistan Peoples Party'. All the four said applications were clubbed together, and after affording an opportunity of hearing to all the applicants, the learned Commission, vide impugned order dated 25.03.2013, dismissed the applications of the petitioner and respondents no.1 and 2, while that of the respondent no.4 was accepted. Aggrieved by the order passed by the learned Commission, the petitioner has filed the instant petition.

3. The learned counsel for the petitioner has contended that; the application filed by the respondent no.4 was entertained despite the fact that the same was neither fixed nor heard on 19.03.2013, when the case was adjourned to 25-03-2013; the documents submitted by the respondent no.4 on behalf of the political party in the name of the 'Pakistan Peoples Party' were forged; at the time that the petitioner filed her application, no party in the name of 'Pakistan Peoples Party' had been enlisted nor had an election symbol of a 'sword' been allotted; the petitioner had complied with all the requirements prescribed under the Order of 2002, and therefore, the same could not have been dismissed; the petitioner had never obtained membership of the 'Pakistan Peoples Party' (Parliamentarian) despite the fact that she had contested an election as its ticket holder; the learned Commission could not have declared the petitioner ineligible on the basis of Article 5(3) of the Order of 2002; using the same analogy, the application of the respondent no.4 could also not have been accepted and was liable to be dismissed; the office bearers of the association in the name of 'Pakistan Peoples Party', represented by the respondent no.4, were disqualified from being elected and, therefore, the application was not competent; the respondent no.4 and another office-bearer, namely Barrister Masood Kausar, had served as Governors and were disqualified from being appointed as office-bearers according to the First proviso of Article 5 (1) of the Order of

2002; the application filed by the respondent no.4 was not competent; the respondent no.4 was in service of Pakistan and two years had not lapsed since he had ceased to hold the post and, therefore, to this extent the application was hit by clause (1)(k) of Article 63 of the Constitution. Reliance has been placed on the case titled "*Air Marshal (Retd) Muhammad Asghar Khan versus General (Retd) Mirza Aslam Baig, former Chief of Army Staff and others*" [PLD 2013 S.C. 1], particularly paragraph no.5 thereof, in support of the contention that the post of governor falls within the expression 'Service of Pakistan' as defined under Article 260 of the Constitution; the impugned order has been passed without lawful authority and jurisdiction; the learned counsel has referred to the order dated 06.02.2013, passed in Criminal Original No. 1373-W of 2012 titled "*Munir Ahmad versus Asif Ali Zardari, etc*", passed by a Full Bench of the Lahore High Court in order to emphasize that a statement was made on behalf of the association represented by respondent no. 4 that 'Pakistan Peoples Party' was not a registered political party but merely a private political association of which the then President was the Co-Chairperson. On a query, the learned counsel conceded that the said statement had been accepted by the Lahore High Court and that neither the petitioner nor any other association of citizens or group had challenged the said order.

4. A request was made on behalf of the respondent no.4 for an adjournment. However, we had

unequivocally observed on the last date of the hearing, in the presence of the counsels for the parties, that the request for an adjournment shall not be entertained and that the petition shall be decided on the basis of the available record. However, Syed Nayyar Hussain Bukhari, ASC, has appeared and has contended that the respondent no.4 is no more the Secretary General of the 'Pakistan Peoples Party', which had been allotted the symbol of the 'sword' vide impugned order, dated 25.03.2013. The latter has strenuously argued that the petition is not competent since natural persons have been arrayed as parties, while the applications had been filed on behalf of and decided by the learned Commission in relation to distinct political entities. He has stressed that 'Pakistan Peoples Party' (Parliamentarian), despite being a necessary and proper party, has not been arrayed amongst the respondents.

5. The learned counsels have been heard and the record perused with their able assistance.

6. The controversy stems from claims made by four distinct applicants, representing separate associations of citizens, regarding the enlistment or registration of a political party in the name of 'Pakistan Peoples Party'. It is not disputed that such a political party was in existence at one point of time and had also formed Government in the seventies. The petitioner claims that she had fulfilled the conditions prescribed under the Order of 2002 and, therefore, her application for the

allotment of the symbol of 'sword' and enlistment of a political party in the name of 'Pakistan Peoples Party' could not have been dismissed on the sole ground that her case was hit by the mischief of Article 5(3) of the Order of 2002. The learned counsel for the petitioner has strenuously emphasized that since, on behalf of the association represented by the respondent no. 4, a statement was made before and recorded by the Lahore High Court in its order dated 06-02-2013 in Crl. Org. No. 1373-W of 2012, therefore, the same entity was estopped from claiming a right to be registered as a political party. Perusal of the said order shows that a statement had actually been made and duly recorded therein to the effect that the 'Pakistan Peoples Party' was a private political association and was not registered as a political party, and that the then President of Pakistan was its Co-Chairperson. The learned counsel for the petitioner has candidly conceded during the course of his arguments that the said statement was eventually accepted by the Lahore High Court and was not challenged by the petitioner or any other respondent. The fact that an association of citizens, of which the petitioner was not a member, existed in the name of the 'Pakistan Peoples Party', was acknowledged by the latter herself in her letter dated 15-02-2013, addressed to the respondent no. 2. The relevance of this acknowledgment would be discussed later. It is, however, obvious that the petitioner filed her application before the learned Commission on 04-03-2013, after the Lahore High Court had passed the above referred order.

7. The petitioner admits that she had remained associated with the 'Pakistan Peoples Party' (Parliamentarian) and that she had contested an election on its ticket in the year 2002. It is also not denied that she had neither resigned nor had been expelled in the manner prescribed under the Ordinance of 2002. However, it is her case that she was never a member of the 'Pakistan Peoples Party' (Parliamentarian) and, therefore, the learned Commission was not justified in giving a finding in this regard. The questions which emerge for our consideration are, firstly, the scope and jurisdiction of the learned Commission in the context of the Ordinance of 2002; secondly, whether in the facts and circumstances of the case this constitutional petition is maintainable and, lastly, whether the impugned order suffers from illegality, thereby requiring our interference. In order to answer these questions in the context of the facts and circumstances of the instant case, it would be beneficial to examine the relevant provisions of the Constitution and the Order of 2002.

8. Freedom of assembly and freedom of association are undoubtedly pivotal rights guaranteed to the citizens in a democratic society. Article 17 of the Constitution guarantees to every citizen the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan, public order or morality. The most effective platform for the citizens to



be able to exercise the said guaranteed right is a political party. Political parties are indispensable for the effective functioning of democratic governments. The legislature has enacted laws having the object of facilitating the formation and regulation of political parties. The Political Parties Act 1962 was repealed by the Political Parties Order, 2002. The object and purpose of enacting the Order of 2002 has been explained in its preamble as to provide for the formation and regulation of political parties. The preamble acknowledges the importance of a political party by declaring that a political party plays a pivotal role in fostering a constitutional, federal, democratic political culture and that the practice of democracy within the political parties enables to promote democratic governance in the country for sustaining democracy. The Order of 2002 was obviously enacted in order to facilitate and regulate the formation of political parties.

9. A political party is defined in clause (d) of Article 2 of the Order of 2002 as meaning an association of citizens, or a combination or group of such associations, formed with a view to propagating or influencing political opinion and participating in elections for any elective public office, or for the membership of a legislative body. The expression 'Election Commission' is defined in clause (b) of Article 2 as meaning the Election Commission of Pakistan. Chapter-II of the Order of 2002 provides for the modalities relating to the formation, constitution, membership etc of a political party. Article 3

declares that, subject to the provisions of the Order of 2002, it shall be lawful for a body of individuals or association of citizens to form, organize, continue or set-up a political party. Article 4 makes it mandatory for every political party to formulate its constitution, with a distinct name, and that such a constitution must include the ingredients prescribed in clauses (a) to (g) of sub-article (1) of Article 4. Every political party is under an obligation to provide a copy of its constitution to the learned Commission. Article 5 entitles every citizen, not being in the service of Pakistan, as of right to form or be a member of a political party, or be otherwise associated with a political party, or take part in political activities, or be elected as an office-bearer of a political party. The first proviso of sub-article (1) to Article 5 provides that no person shall be appointed, or shall serve as an office bearer of a political party, if he is not qualified to be, or is disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) under Article 63 of the Constitution of the Islamic Republic of Pakistan, 1973 or any other law for the time being enforced. Article 11 relates to the elections within a political party. Articles 12 and 13 mandates that a political party shall submit a certificate and such information to the Commission as are specified therein. Article 14 prescribes the requirements and criteria of eligibility for a political party to obtain an election symbol for contesting elections. Articles 12 and 13 provide for the conditions which every political party necessarily has to meet so as to be eligible for the purposes of the allotment of an election symbol. Article

15 prescribes the procedure for the dissolution of a political party and Article 16 enumerates the effects thereof.

10. A plain reading of the provisions of the Order of 2002 clearly shows that there is no formal registration of a political party. Nevertheless, the Order of 2002 is a comprehensive and self contained statute, which regulates the formation of political parties and empowers the Commission to ensure that each political party complies with the mandatory requirements stipulated in the Order of 2002. The power to allot election symbols to the political parties vests in the Commission. The allotment of an election symbol is subject to the satisfaction of the Commission that a political party has fulfilled the requirements in this regard. It is obvious from the scheme of the Order of 2002 that the allocation of a symbol is in fact a form of certification by the Commission that the political party has completed its requirements and that its formation has taken effect. Before allotting a symbol, the learned Commission essentially has to satisfy itself regarding three fundamental characteristics; identify and determine an association of citizens or a combination or group of such associations formed with a view to propagate or influence political opinion and participate in elections for any elective public office or for membership of a legislative body; secondly, that such an association or conglomerate has a distinct name i.e. a separate, distinguishable and decidedly different name from the political parties already formed and granted symbols and, lastly, that

such an entity has complied with the mandatory pre conditions prescribed in the Order of 2002. The function of the learned Commission in respect of the first two characteristics is crucial. There is no cavil to the proposition that an association of citizens, which meets the definition of a 'political party' under Article 2(d) of the Order of 2002, cannot propose a name which is similar to an existing political party unless the latter has given its consent. In this case Pakistan Peoples Party (Parliamentarian) would have been justified in raising an objection since the name 'Pakistan Peoples Party' would not have been treated as distinct. The name of a political party which intends to acknowledge its formation under the Order of 2002, inevitably has to be clearly separate, unmistakably and visibly distinguishable from any other political party already recognised under the Order of 2002 by allotting a symbol, otherwise it would defeat the legislative intent, which is obvious from the explicit use of the expression 'distinct' in the context of the name of a political party. As a corollary only one entity would be eligible to be recognised as a political party with a distinct name. It is, therefore, obvious that on the factual side the Commission has to make two pivotal determinations; the association of citizens which meets the definition of a political party under Article 2(d) and the distinctiveness of the name. Both these determinations are within the exclusive domain of the Commission and as a general rule not open to judicial review while exercising jurisdiction under Article 199 of the Constitution, unless it can be clearly shown that the findings are

perverse or fanciful. Even otherwise it is settled law that disputed questions of fact cannot be resolved while exercising jurisdiction under Article 199 of the Constitution. The constitutional provisions i.e. Articles 213 to 219, read with the provisions of the Order of 2002, unambiguously vests the power and jurisdiction in the learned Commission to make such a factual determination.

11. We would now revert to the facts and circumstances of the instant case and examine the same in the light of the above discussion. In the instant case, four applicants claim to have formed respective associations of citizens within the meaning of a 'political party' defined under clause (d) of Article 2 of the Order of 2002. The petitioner had filed an application before the Commission on 04.03.2013. The petitioner herself acknowledged that another association of citizens in the name of 'Pakistan Peoples Party' not only existed but this crucial fact was duly recorded in a judicial order, dated 06.02.2013, passed by the Lahore High Court in Criminal Original No. 1373-W of 2012. During the arguments advanced by the learned counsel for the petitioner, great emphasis was laid on this statement made before and recorded by the Lahore High Court. It is also not disputed that this was the same association of citizens which had filed an application, dated 22-03-2013, through the respondent no.4. It is, therefore, not disputed that an association of citizens with political aims was already in existence prior to the filing of the application, dated

04-03-2013, by the petitioner. Moreover, perusal of the impugned order shows that the learned Commission had also taken into consideration the aspect of the name being distinct, particularly in the context of the already existing political party in the name of 'Pakistan Peoples Party (Parliamentarian)'. The petitioner had, admittedly, contested elections on the ticket of the said political party. She neither resigned nor was expelled from its membership thereof. The political party by the name of 'Pakistan Peoples Party (Parliamentarian)' has not raised an objection relating to the allocation of the symbol pursuant to the acceptance of the application of respondent no. 4, rather there appears to be a tacit approval as is evident from the impugned order. We, therefore, have not been able to find any legal infirmity with the impugned order, nor are the factual determinations perverse or fanciful.

12. The learned counsel for the petitioner has strenuously argued that the petitioner was never a member of the political party namely 'Pakistan Peoples Party' (Parliamentarian) despite the fact that she had contested an election on its ticket. The learned counsel's emphasis in this regard raises a disputed question of fact, which obviously cannot be resolved while exercising powers under Article 199 of the Constitution.

13. It is settled law that disputed questions of fact cannot be determined while exercising jurisdiction under Article

199 of the Constitution of the Islamic Republic of Pakistan, 1973. Reliance is placed on the cases of "*Dr. M. A. Haseeb Khan etc v. Sikandar Shaheen and 9 others*" [PLD 1980 SC 139], "*Ghulam Muhammad and another v. Mst. Noor Bibi and 5 others*", [1980 SCMR 933], "*Khawaja Muhammad Akhtar v. President, Cantonment Board, Sialkot Cantt Election Authority (Tribunal) and another*" [1981 SCMR 291], "*Benedict F.D' Souza v. Karachi Building Control Authority & 3 others*", [1989 SCMR 918], "*Federation Of Pakistan and 2 others v. Major (Retd) Muhammad Sabir Khan*", [PLD 1991 SC 476], "*Muhammad Younis Khan and 12 others v. Government of N.W.F.P. through Secretary, Forest and Agriculture, Peshawar and others*" [1993 SCMR 618], "*Shah Wali and other v. Ferozuddin and others*" [2000 SCMR 718], "*Collector of Customs and others v. Messrs Fatima Enterprises Ltd. and others*" [2012 SCMR 416], and "*Sher Afgan Khan Niaz v. Ali S. Habib and others*" [2011 SCMR 1813].

14. Lastly, we would advert to the argument that since the respondent no.4 was disqualified as an office-bearer, therefore, the application dated 22.03.2013, was not competent. We are of the opinion that this argument is misconceived. The application had been filed on behalf of an association of citizens which admittedly was already in existence. The first proviso to sub-article (1) of Article 5 relates to the qualification or disqualification of an office-bearer. The disqualification of an office-bearer is a matter distinct and

separate from the formation of a political party and its registration under the Order of 2002 by way of allocation of an election symbol. Both these eventualities are independent of each other. If an office-bearer is disqualified then he can be removed and, therefore, such a defect would not render the formation of a political party as invalid for the purposes of the Order of 2002. It is noted that the regulatory mechanism is exclusively within the domain of the learned Commission and the latter can remedy such a defect in exercise of powers conferred under the Constitution, read with the provisions of the Order of 2002.

15. For what has been discussed above, the instant petition is without merit and is, therefore, accordingly ***dismissed.***

(MIANGUL HASSAN AURANGZEB)  
JUDGE

(ATHAR MINALLAH)  
JUDGE

Announced in the open Court on 6<sup>th</sup> Feb 2017

JUDGE

JUDGE

Asad K/\*

*Approved for reporting.*