

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

W.P. No. 1187 of 2018

Dr. Farooq Sattar

Versus

Election Commission of Pakistan and others

Petitioner By : Mr. Babar Sattar and Ms. Zainab Janjua,
Advocates

Respondents By : Dr. Muhammad Farogh Naseem, Dr.
Muhammad Ali Saif, Mr. Imran Farooq,
Mr. Irshad Ali, Advocates.
Malik Mujtaba Ahmed, Addl. D.G, Election
Commission of Pakistan.

Date of hearing : 17.04.2018

AAMER FAROOQ, J. - The instant petition calls in question order(s) dated 26.03.2018, whereby applications/ petitions filed by respondents No. 2 & 3 were allowed.

2. The facts, relevant for the purposes of present controversy, are that the petitioner is the former convener and party leader of Muttahida Qaumi Movement Pakistan ("**MQM-P**"). He served as MQM-P's convener and party leader from 21.06.2012 to 30.05.2016 and 31.10.2016 to 26.03.2018. The petitioner was removed from his position as convener / party leader on 11.02.2018 in a meeting of the Central Coordination Committee ("**CCC**") of MQM-P. The referred removal was confirmed by the Election Commission of Pakistan ("**ECP**")/ respondent No.1 vide the impugned order. In this behalf, respondents No.2 & 3 filed applications under section 4 of the Elections Act, 2017 and under rules 157 and 158 of the Election Rules, 2017 read with sections 209 and 4 of the Elections Act, 2017. Application under section 4 *ibid* was filed

by respondent No.2 and the one under rules 157 and 158 *ibid* was filed by respondent No.3.

3. On 05.02.2018, the petitioner issued direction that no meeting of the Central Coordination Committee (CCC) shall be called by deputy convener or any other person, however, the meeting was called wherein deliberations were made with respect to awarding of tickets in the Senate elections after which press conference was held. On 05.02.2018, another meeting of CCC was held at the residence of the petitioner and certain disputes cropped up amongst the members of the CCC. The petitioner called an emergent meeting of the General Workers Assembly on 06.02.2018, however, on the request of some members of the CCC, to find out amicable resolution, the meeting was cancelled. On 07.02.2018, again a meeting of the CCC was called which was presided by the Senior Deputy Convener and in the same authority of the petitioner to issue party tickets was withdrawn. On 08.02.2018, the petitioner announced that he shall chair the CCC meeting at MQM-P office situated at Bahdarabad, Karachi in order to deliberate on the issuance of party tickets for the Senate elections. However, on 09.02.2018, he discovered that a group of members of CCC (recalcitrant faction) held meeting on 07.02.2018 wherein the party tickets had been awarded. On 09.02.2018, the petitioner issued notice for joint meeting of the General Workers Assembly for 11.02.2018. A meeting of the CCC was convened attended by recalcitrant members (according to the petitioner) and the petitioner was removed as a party leader. The said action was taken without issuance of show cause notice or prior to any intimation to the petitioner. The petitioner, on 11.02.2018, held a meeting of the General Workers Assembly of the MQM and in the same it was resolved that fresh party elections shall be held. In this behalf, process for the same commenced and pursuant thereto he got elected as party leader by the newly elected members of CCC. It is pertinent to observe that results were submitted before ECP on 19.02.2018 and certification

was made on 24.02.2018. On 14.02.2018, respondent No.2 filed an application under section 4 of the Elections Act, 2017 with following prayers:

"However, for the time being we respectfully pray before this august forum i.e. the ECP to clarify as follows:-

- a) That the statement of its spokesman broadcasted in the media that the ECP does not acknowledge Dr. Khalid Maqbool Siddiqui to be Convener till such time intra-party elections are held by the MQM(P), is not correct because the requirement to hold intra-party elections would not arise once the Convener of the Party is removed by more than 2/3 majority of the Central Coordination Committee, electing a new Convener of the Party, strictly in terms of the Constitution of the Party;*
- b) One the Central Coordination Committee has confirmed that through the required majority and procedure in the Constitution of the party it had removed Dr. M. Farooq Sattar and elected Dr. Khalid Maqbool Siddiqui as Convener in his place, the ECP should categorically state that the ECP recognizes Dr. Khalid Maqbool Siddiqui as the Convener of MQM (Pakistan). This would also be in line with the indoor management rule.*

*10. Lastly we may just add that the ECP under Article 218(3) of the Pakistani Constitution is to act fairly, justly and in accordance with law. This means that the ECP would not become partisan and **shall enforce the constitution of the political party** and take actions accordingly."*

Respondent No.1 issued notice to the petitioner with direction to appear before it on 27.02.2018. On 20.02.2018, respondent No.3 filed another application under Rules 157 and 158 of the Election Rules, 2017, wherein the following prayer was made:

"8. That it is respectfully submitted that in light of the above it may respectfully be declared and clarified as follows:-

- a. The respondent had no authority to dismiss/ dissolve the central co-ordination committee and remove its duly elected convener Dr. Khalid Maqbool Siddiqui;*
- b. That the so called intra party elections conducted by the respondent and similarly the consequent central co-ordination*

committee elected on 18.02.2018 are not in relation to MQM (Pakistan);

- c. That the office bearers elected by the respondents on 18.02.2018 are also not in relation to MQM (Pakistan);*
- d. That Dr. Khalid Maqbool Siddiqui is the duly elected convener of the MQM (Pakistan), whose allotted electoral symbol by the ECP is "KITE".*

Both the applications were clubbed wherein the petitioner filed replies. Moreover, an application was also filed challenging the jurisdiction of ECP. As stated above, the applications filed by respondent No. 2&3 were accepted and the issue of jurisdiction was decided against the petitioner vide the impugned order(s).

4. Learned counsel for the petitioner, *inter alia*, contended that the Election Commission of Pakistan/ respondent No.1 had no jurisdiction to decide the internal dispute amongst the party members; that the jurisdiction of respondent No.1 as provided in Articles 218 to 220 of the Constitution as well as sections 200-213 of the Elections Act, 2017 do not envisage the decision of Intra- Party Disputes. It was further contended that the contentions raised in the applications filed by the respondent No.2&3 involved factual controversies which could not have been adjudicated by the Election Commission of Pakistan in light of the judgment of this Court titled as ***Sumaira Malik Vs. Election Commission of Pakistan and Others (2018 YLR 104)*** as well as ***Dr. Raja Aamer Zaman Vs. Omar Ayub and others (2015 SCMR 1303)***. Learned counsel for the petitioner contended next that bare perusal of the applications filed by respondents 2&3 shows that intra-party disputes have been put forwarded before the ECP which was beyond the jurisdiction of respondent No.1 rather under the constitution of the party i.e. Article 17 procedure is provided for resolution of the party disputes. Learned counsel placed reliance on case reported as ***Sardar Behadur Khan Bangulzai and others Vs. Sardar Attaullah Khan Mengal and another (1999 SCMR 1921)*** to substantiate

that inbuilt organizational structural disputes of the political party are not to be adjudicated by respondent No.1.

5. Learned counsel also contended that applications filed by respondents No.2&3 sought certification regarding party leadership as stipulated under section 209 of the Elections Act, 2017 and respondent No.1 does not have any authority to adjudicate the intra-party disputes; that impugned orders recognized illegal change of MQM-P party head; that impugned orders have been passed in violation of Articles 4 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 as well as Article 17 *ibid*. Reliance was placed on case titled as ***Awais Younus Vs. Federation of Pakistan (PLD 2016 Lahore 1)***. It was further contended that impugned orders are liable to be set-aside on the ground that they were passed on the basis of forged and fabricated documents. In this behalf, it was contended that minutes of the meeting dated 11.02.2018 show attendance sheet in which 2/3rd majority of the CCC is fabricated; that some of the members were not present and the others attended the meeting through Skype which is not permissible and they are not to be counted as part of the meeting and if the same is done, the resolution for removal of the petitioner in the meeting did not enjoy 2/3rd majority.

6. Learned counsel further contended that objection to the jurisdiction of respondent No.1 was raised which ought to have been decided at the earliest in light of the decision of the Hon'ble Supreme Court of Pakistan reported as ***Lt. Gen. (R) Salahuddin Tirmizi Vs. Election Commission of Pakistan (PLD 2008 SC 735)*** as well as ***Muhammad Aslam Bhootani Vs. Deputy Speaker, Balochistan Provincial Assembly and 2 others (PLD 2013 Balochistan 66)*** as well as ***Samar Singh Vs. Kedar Nath Alias K.N. Singh (AIR 1987 SC 1926)***. It was also contended that the ECP has neither a Court nor a Tribunal and cannot adjudicate factual controversies. Reliance was placed on case titled ***Muhammad Hanif Abbasi Vs. Imran Khan Niazi and others***

(C.P. No. 35 of 2016). It was further contended that the Election Commission of Pakistan lacks jurisdiction to denotify after conclusion of elections and notification of the results. Reliance was placed cases reported as ***Syed Khurram Abbas Bukhari and others Vs. Election Commission of Pakistan and others (PLD 2017 Lahore 470)*** as well as ***Muhammad Ashraf Vs. Election Commission and others (2017 MLD 1209)*** as well as ***Moulana Atta-ur-Rehman Vs. Al-Hajj Sardar Umar Farooq and others (PLD 2008 SC 663).***

7. Learned counsel submitted that even internationally intra-party disputes are not interfered by the Regulator / Election Commission. Reliance was placed on ***California Democratic Party ET Al. Vs. Jones, Secretary of State of California, ET Al.*** It was further contended that public authorities are permitted to do what they are authorized to do by law. Reliance was placed on case titled ***Messrs Gadoon Textile Mills and 814 others Vs. WAPDA and others (1997 SCMR 641)*** as well as ***Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A and others Vs. Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 Supreme Court 642).***

8. It was submitted that the party constitution formed a contract amongst its members and respondents No.2&3 have committed breach of that contract. Reliance was placed on ***United Liner Agencies of Pakistan (Pvt.) Ltd., Karachi and 4 others Vs. Miss Mahenau Agha and 8 others (2003 SCMR 132)*** and ***Messrs Kingsway Capital LLP and another Vs. Murree Brewery Co. Ltd. and 10 others (2017 CLD 587-Lahore).*** It was further contended that Qanun-e-Shahadat Order, 1984 is applicable to all judicial and quasi judicial proceedings, therefore, respondents No.2&3 were required to prove the meeting and the change brought about therein. Reliance was placed on ***Mehram Ali and others Vs. Federation of Pakistan and others (PLD 1998 SC 1445).*** It was further contended that the directive to indoor

management is exception. Reliance was placed on ***Pak Turk Enterprises (Pvt.) Ltd. Vs. Turk Hava Yollari (2015 CLC 1-Sindh)***. It was further contended that holistic interpretation required to be made of the entire situation and is to be interpreted accordingly. Finally, it was contended that power to call the meeting vests in the Chairman. Reliance was placed on ***Nadeem Ahmed, Advocate and others Vs. Federation of Pakistan and others (PLD 2010 Supreme Court 1165)***.

9. Learned counsel for respondents No. 2&3, *inter alia*, contended that he has two objections; firstly, it was contended that impugned orders passed by the Election Commission of Pakistan was suspended on the statement of the learned counsel for the petitioner that status quo shall be maintained which the petitioner has breached. In this behalf, it was contended that it is a settled principal of the law that in case the petitioner violates terms of an ad-interim relief, petition is liable to be dismissed without the need of going into the merits of the case. Reliance was placed on ***Muhammad Imran Vs. Pakistan Electronic Media Regulatory Authority (2005 CLC 880)*** and ***Muhammad Hussain Vs. Additional Deputy Commissioner (1986 CLC 816)*** as well as ***Dewan Cement Ltd. Vs. Federation of Pakistan (2013 PTD 446)***. It was further contended that on 15.4.2018, the petitioner used contemptuous language against superior judiciary and does not deserve the relief under the equitable jurisdiction in a petition under Article 199 of the Constitution. It was also contended that the petitioner did not file any rebuttal to the documents filed by respondents No.2&3 before the ECP despite arguing the matter both on jurisdiction as well as merits; that the petitioner never challenged his ouster as convener before any Court/forum hence he cannot be granted any relief in the instant petition. Reliance was placed on case reported as ***Khawar M. Butt and another Vs. Abdullah H. Habib and 2 others (1985 MLD 1193)*** and ***M/o***

IPC through Secretary and others Vs. Arbab Altaf Hussain and others (2014 SCMR 1573).

10. It was submitted that the foremost ground of attack by the petitioner is that ECP lacked the jurisdiction. It was contended that parent judgments on the issue are ***Attaullah Mengal Vs. Chief Election Commissioner (1999 CLC 1460)*** and ***Bahadur Khan Bangulzai Vs. Attaullah Khan Mengal (1999 SCMR 1921)*** which confirms that if two preconditions are present i.e. the matter should concern an inbuilt organizational structural dispute and plea raised before the ECP is not based on any bonafide or reliable material, only then the Commission lacks the jurisdiction. It was contended that phrase "inbuilt organizational structural dispute" has not been defined either in the judgment of Balochistan High Court or in the Judgment of the Hon'ble Supreme Court of Pakistan. However, according to an expert from the American Government and Politics in the Information Age, it is provided that organizational structure of political parties consists of the machinery, procedures, and rituals party leaders and professionals employ so that parties operate effectively in the electoral and governing process. It was further submitted that in order to discern meaning of the phrase help can be drawn from the dictionary. On the basis of it, it was contended that it is clear that dispute before the ECP was not an organizational structural dispute.

11. It was contended that with regard to existence of bonafide, reliable material, the relevant judgment is of ***Dr. M. Mohan Babu Vs. Chief Election Commissioner (AIR 1999 AP 405)***. Reliance was also placed on case reported as ***Watan Party Vs. Federation of Pakistan (PLD 2012 SC 681)***. In ***Kanhiya Lal Omar Vs. R.K, Trivedi (AIR 1986 SC 111)***, it was held that the Election Commission of India is empowered to recognize political parties and decide disputes amongst them. Reliance was placed on ***Javed Akhtar Vs. Returning Officer (2004 YLR 1459)***.

12. Learned counsel contended next that it has been argued that even if the Commission has jurisdiction to decide the controversy, it involves disputed questions of facts which cannot be adjudicated without recording of evidence. It was contended that it is a settled principle that unless prohibited, the Court, Tribunal or a forum can devise, adopt or regulate its procedure which should be fair and just in the circumstances. Reliance was placed on ***Pakistan Lawyer's Forum Vs. General Pervez Musharraf (2000 SCMR 897)***, ***Ahmed Khan Vs. Jewan (PLD 2002 SC 655)***, ***Hakim Deen Vs. The State (PLD 2006 AJK 43)*** and ***M. Ijaz Chaudhry Vs. Mumtaz Tarar (2016 SCMR 1)***. Learned counsel further contended that Rule 158(1) of the Election Rules, 2017 provides that after completion of intra-party election, a certificate confirming the fulfillment of requirements is to be filed before ECP and under 158 (2) *ibid*, the Election Commission publishes the certificate of results after satisfying itself that the law has been complied with. It was further contended that publication after satisfying itself means that the Election Commission of Pakistan can devise procedure for reaching to the just conclusion. Reliance was placed on ***Abdullah Malik Vs. Ministry of Information (PLD 2017 Lahore 273)***, ***Sabar Ali Sajid Vs. M. Maqsood (PLD 2006 Lahore 607)***. It was argued emphatically that under section 208(4) of the Election Act, 2017 any change in the office bearer of a party is to be duly informed to the ECP expeditiously.

13. Learned counsel also argued that in order to satisfy itself the ECP has ample powers to adopt any procedure which is just and fair. Reliance was placed on ***The Election Commissioner Vs. P. Kakkan (1971 ILR 2 Madras 80)***, ***Abbas Khaleeli Vs. Saifuddin Valika (PLD 1969 Karachi 692)*** as well as ***Jahangir Mughal Vs. Karachi Gymkhana (2012 CLC 1829)*** and ***Muhammad Fikree Vs. Fikree Development Corporation Limited (1992 MLD 668)***.

14. Learned counsel further contended that the party constitution did provide calling for the meeting of CCC and passing the resolution. In this behalf, it was contended that the party meeting can be convened in accordance with constitution and it is not the sole prerogative of the party convener. It was further argued that resolution of the removal of the petitioner was carried with 2/3rd Majority. Analogy was drawn to the meeting of CCC with the Board of Directors of a company and in this behalf reliance was placed on ***Ram Parsad Somani Vs. The Bank of Rajasthan Limited (2002 (1) WLN 153 Rajasthan High Court)***. Learned counsel relied upon Articles 9(i) and (ii) of the party constitution, whereby any office bearer can be removed by 2/3rd majority. It was contended that the requisite documents regarding requisition of the meeting, minutes of the meeting and decision of the CCC was placed on record but the petitioner did not file any rebuttal to the same.

15. It was reiterated that resolution was passed with the requisite majority of 2/3rd as attendance sheet and affidavits filed clearly show the same. It was contended that once this Court comes to the conclusion that the petitioner was removed by requisite 2/3rd majority, this Court cannot replace its findings in a writ petition. Reliance was placed on ***Lt. Gen. (R) Salahuddin Tirmizi Vs. The Election Commission of Pakistan (PLD 2008 SC 735)*** and ***Karachi Shipyard & Engineering Works Ltd. Vs. Abdul Gaffar (1993 SCMR 511)***. In this behalf, it was submitted that attendance sheet was duly signed by the all members, however, it has been a practice that attendance sheet is signed belatedly/subsequently. Moreover, it was contended that exception was taken with respect to certain members that is Barrister Saif Muhammad Ali Khan Saif, Haider Abbas Rizvi and Izhar Ahmed Khan cannot be counted in as they did not attend the meeting physically but through video link from Islamabad, Canada and UK. In this behalf it was argued that the requisite affidavits were filed before ECP hence it was contended that after the ouster of Kamal Malik and Mian Ateeq,

the membership dropped down from 35 to 33, and out of 33, 27 members ousted the petitioner which was more than 2/ 3rd majority.

16. The petitioner is aggrieved of order(s) passed by the Election Commission of Pakistan, whereby the applications filed by respondents No.2 & 3 were allowed vide orders dated 26.03.2018. The applications in question were filed by respondents No.2 & 3 under section 4 of the Elections Act, 2017 and under Rules 157 & 158 of the Election Rules, 2017. The petitioner has levelled attack on the judgment impugned in the instant petition on two scores. Firstly, that the Election Commission of Pakistan had no jurisdiction to embark upon the controversy raised in the applications and adjudication upon internal affairs of the party i.e. MQM-P. Secondly, that on merits the conclusion reached by the ECP is erroneous and that the meeting of the CCC was illegally convened and it had no authority to remove the petitioner as resolution regarding his removal was not passed with 2/3rd majority as required under the constitution of the party.

17. Before advertng to the above issues, it is just and appropriate to reproduce the relevant provisions of the Elections Act, 2017 and Election Rules, 2017. The first application was filed by respondent No.2 under section 4 *ibid* which reads as follows:

"After the Election Programme has been issued and till the publication of the names of the returned candidates in the officials Gazette, any Government or authority shall not post or transfer any officials appointed or deputed in connection with an election without prior approval in writing of the Commission, including posting or transfer the decision in respect whereof has not been implemented, and the Commission may itself issue necessary directions to any such Government or authority for the posting or transfer of any official."

The law governing political parties is provided in chapter 11 of the Elections Act, 2017. The sections relevant for the purposes of the present controversy are sections 207 to 209 of the 2017 Act which reads as follows:-

"207. **Functioning of a political party.** - (1) A political party shall have an elected general council at the Federal, Provincial and local levels, wherever applicable, and by whatever name it may be referred.

(2) A political party shall, at least once in a year, convene a general meeting at the Federal, Provincial and local level of a political party, wherever applicable, and shall invite the members of the political party or their delegates to participate in the general meeting.

208. **Elections within a political party.** – (1) The office-bearers of a political party at the Federal, provincial and local levels, wherever applicable, shall be elected periodically in accordance with the constitution of the political party:

Provided that a period, not exceeding five years, shall intervene between any two elections.

(2) A member of a political party shall, subject to the provisions of the constitution of the political party, be provided with an equal opportunity of contesting election for any political party office.

(3) All members of the political party at the Federal, Provincial and local levels shall constitute the electoral-college for election of the party general council at the respective levels.

(4) The political party shall publish the updated list of its central office-bearers and Executive committee members, by whatever name called, on its website and send the list, and any subsequent change in it, to the Commission.

209 **Certification by the political party.**- (1) A political party shall, within seven days from completion of the intra-party elections, submit a certificate signed by an office-bearer authorized by the Party Head, to the Commission to the effect that the elections were held in accordance with the constitution of the political party and this Act to elect the office-bearers at the Federal, Provincial and local levels, wherever applicable.

(2) The certificate under sub-section (1) shall contain the following information-

(a) the date of the last intra-party elections;

- (b) *the names, designations and addresses of office-bearers elected at the Federal, Provincial and local levels, wherever applicable;*
- (c) *the election results; and*
- (d) *copy of the political party's notifications declaring the results of the election.*

(3) *The Commission shall, within seven days from the receipt of the certificate of a political party under sub-section (1), publish the certificate on its website."*

Likewise, the relevant Rules for the purposes of present controversy are Rules 157 and 158 of the Election Rules, 2017 which are as follows:-

"157. Scrutiny of political parties' constitution and information, etc. – *Where the Commission is of the opinion that the constitution, other documents and information submitted by a political party is not in conformity with the Act, it shall return the same with specific observations to the concerned political party for resubmission in accordance with the provisions of the Act.*

158. Submission of certificate to the commission regarding intra-party elections. – (1) *The Party Leader of each political party under his signature shall, within seven days of the completion of intra-party elections, submit a certificate to the Commission in Form-65 specifying that the intra-party elections have been held in accordance with the constitution of the party and the provisions of the Act.*

(2) *The Commission shall, after satisfying itself that the certificate fulfills the requirements of sections 208 and 208, publish the certificate including the details of election in the official Gazette."*

The controversy raised in the applications filed by respondents. No.2&3 is to the effect that the petitioner has been removed as Convener of the MQM-P and in his place Dr. Khalid Maqbool Siddiqui has been appointed as the Convener; the petitioner had no authority to dissolve the CCC and call for intra-party elections. The controversy in hand is as to who is the Head of MQM-P i.e. the petitioner or respondent No.3. The role of the Party Head in any political party is pivotal and

has been recognized recently by the Hon'ble Supreme Court of Pakistan in case titled ***Zulfiqar Ahmed Bhutta versus Federation of Pakistan (C.Ps No. 37 to 45/2017)*** vide judgment dated 21.2.2018 in the following words:-

"The words "Party Head" has been defined in Article 63A of the Constitution to mean any person by whatever name called, declared as such by the party. The Party Head typically performs various key functions, including but not limited to forming the central working committee, appointing a central executive committee, heading the central parliamentary board of the party, being a leader of the parliamentary party and other pivotal functions. It can safely be said that the President of political party is the material head of the entire organization, he is at the centre of all decision making and exercises all powers inherent in his office to ensure that the organization works in consonance with the constitution and byelaws adopted under the constitution. Section 209 of the Act, 2017 provides for certification to be filed with the Commission regarding intra party elections to be signed by an office bearer authorized by the Party Head."

The bare perusal of the above provisions of law show that the Election Commission of Pakistan acts as regulator of the political parties. In this regard information regarding office bearer of the political parties is to be furnished periodically to the Commission along with certificate that these are the office bearers. Under Rule 158 of the Election Rules, 2017, the ECP has to satisfy itself that change of office bearer(s) was brought about in accordance with the constitution of the political party and sections 208 and 209 of the Elections Act, 2017. The applications in question under section 4 and rule 157 were filed to intimate the change brought about regarding removal of the petitioner as convener and appointment of Khalid Maqbool Siddiqui as his successor. Hence, applications were well within the mandate and authority of the Election Commission of Pakistan. Learned counsels for the parties have relied upon two judgments to emphasize their point of view. Learned counsel for the petitioner

relied upon a set of judgments to argue that the Commission did not have jurisdiction to enter into the controversy regarding change of the office bearers inasmuch as the petitioner disputed the facts as narrated in the applications and learned counsel for respondents No.2&3 argued that the Election Commission of Pakistan was sole forum before which this sort of controversy could have been resolved. In case reported as ***Sardar Attaullah Khan Mengal Vs. Chief Election Commissioner and another (1999 CLC 1460)***, the Division Bench of the Hon'ble Balochistan High Court observed as follows:-

""The Chief Election Commissioner, exercises the powers of Judicial Officer, because it is the condition precedent for his appointment, that either he is or has been the Judge of the Supreme Court or is or has been the Judge of the High Court and is qualified under paragraph (a) of clause (2) of Article 177 of the Constitution, to be appointed as the Judge of the Supreme Court, and on his appointment under Article 214, he makes oath before the Chief Justice of Pakistan. Therefore, when he is seized with a reference, he does exercise powers in capacity of a Judicial Officer and not as an Administrative Authority. This being so, in absence of procedure laid down under Article 63-A, he can regularize his jurisdiction, on following the recognized natural principle or administration of justice and for the purpose of discharging his functions, he can also follow the principles of the Code of Civil Procedure. In this behalf, it is noteworthy that section 4 of the Code of Civil Procedure provides; that in the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

Chief Election Commissioner, while deciding a disqualification reference under Article 63-A of the Constitution, can regularize proceedings before him, on following the principles of the Code of Civil Procedure and he is also empowered to record evidence under Qanun-e-Shahadat Order, 1984, because its Article 1(2) provides; that it applies to all judicial proceedings in or before any Court, including a Court Martial, a Tribunal or other Authority exercising judicial or quasi judicial powers or jurisdiction, but does not apply to proceedings before an arbitrator.

Article 63-A had conferred exclusive jurisdiction upon Chief Election Commissioner to determine the defection of a Parliamentarian/M.P.A., on the grounds mentioned therein and his findings, so recorded, are not amenable to the jurisdiction of an ordinary Court, under clause (6) of Article 63-A of the Constitution. Therefore, any findings recorded by him, to determine jurisdictional facts, would not be of a tentative nature and shall have a binding effect.”

In view of the above judgment of the Hon’ble Balochistan High Court, the Chief Election Commissioner while hearing the reference under Article 63-A of the Constitution can regulate the procedure and follow the principles of the Code of Civil Procedure as well as Qanun-e-Shahadat Order, 1984. The above judgment of the Balochistan High Court was challenged before the Hon’ble Supreme Court of Pakistan in case reported as ***Sardar Bahadur Khan Bangulzai and others Vs. Sardar Attaullah Khan Mengal and another (1999 SCMR 1921)***. The Hon’ble Supreme Court of Pakistan in the referred judgment observed as follows:-

“We are in full agreement with -the observation of the High Court that the Chief Election Commissioner has the jurisdiction to determine as to who is the head of a political party being a jurisdictional fact, but he has no power to resolve in-built organizational structural disputes which might have cropped up in the folds of a political party.

19. *We are inclined to hold that if a plea is raised before the Chief Election Commissioner that the person who had made reference on account of alleged defection is not the head of the political party involved, the Chief Election Commissioner is obliged to examine the bona fides of such a plea. If the person who has made the reference as the Head of the political party involved has been acting as such in the past, the Chief Election Commissioner is supposed to proceed on the assumption that he is the Head of the political party involved. However, in case he finds that there is no reliable material before him to conclude that factually the person who has made the reference is the head of the political party involved and that the above question relates to inbuilt organizational structural disputes of the political party involved, in that*

event he may ask the parties to get the above question resolved through a civil proceeding.

20. *We may observe that the approach of the learned Chief Election Commissioner should be that the above Article 63-A of the Constitution which is intended to eliminate cancerous vice of defection which has brought bad name to our country and also political instability should not be rendered ineffective on account of raising of frivolous pleas before him. If we were to hold that the Chief Election Commissioner has no power to examine the above plea, it would render the above Article 63-A ineffective as it will be very easy for a member who has defected to challenge the status of the head of the political party involved before the Chief Election Commissioner and then to compel initiation of a civil proceeding which could not have been the intention of the framer of above Article 63-A of the Constitution. It also runs counter to clause (2) of Article 63, thereof, which is to be read in conjunction with above Article 63-A."*

The examination of the relevant paragraphs of the above mentioned judgment shows that the Chief Election Commissioner (now Election Commission of Pakistan) while deciding the controversy which is within its jurisdiction can also determine the jurisdictional fact i.e. basis for invoking the jurisdiction of ECP. The phrase jurisdictional fact was explained by the Supreme Court of India in case titled ***M/s Srinivasa Rice Mills versus Employees State Insurance Corporation (Appeal No. 4774/2006)*** in the following manner:-

"A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which is otherwise does not possess."

It is further stated:

"it is clear that existence of 'jurisdictional fact' is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of jurisdictional fact', it can decide the 'fact in issue' or 'adjudicatory fact'. A wrong decision on 'fact in issue' or on 'adjudicatory fact' would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present."

The Hon'ble Supreme Court of Pakistan in a recent judgment titled ***Muhammad Hanif Abbasi Vs. Imran Khan Niazi and others (C.P. No. 35 of 2016)***

highlighted the functions of ECP. In this regard, the august Apex Court observed as follows:

"44. The ECP is a constitutional body created under Article 218 of the Constitution, sub-Article (3) whereof provides:

"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."

The ECP's duties are contained in Article 219 of the Constitution and include, inter alia:-

(e) Such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament):

Although the PPO is the Chief Executive's Order (No. 18 of 2002), one may argue that it is not an Act of Parliament. We find that considering the period and the circumstances in which the PPO was passed, this edict falls within Article 270AA (2) of the Constitution and has thereby been saved and declared by the said Article to continue in force. The PPO has accordingly been given due status in law. The provisions of the PPO specify the functions of the ECP in relation to matters pertaining to the formation and regulation of political parties. As mentioned above, Article 19 of the PPO has given the ECP rule-making power but exercisable subject to the approval of the President. The ECP is an independent and autonomous body which exercises executive and regulatory powers derived from the Constitution. Though it has the

power to appoint Election Tribunals [Article 219(c) of the Constitution] which exercise judicial powers under Article 225 of the Constitution, the ECP itself is a supervisory body which exercises regulatory and administrative powers under the Constitution and the law.

45. *Undoubtedly, the ECP is not a Court or a Tribunal as argued by the learned counsel for PTI. However, he conceded that ECP is an administrative authority and in terms of Article 17(3) of the Constitution it is the forum to which political parties are obliged to and must account for the sources of their funds. Besides being a limb of the executive that is charged with the duty to conduct and oversee elections in the country, we find that the ECP must necessarily possess the power to collect facts, information and data that enable it to properly and effectively perform such duty. Such a capability represents the constitutional and inherent legal power of the ECP. Therefore, in exercise of its powers under Article 6 of the PPO read with Rule 6, the ECP has all the necessary authority to ask for and collect the requisite information and facts that enable it to decide and determine whether the contributions or donations accepted by a political party are prohibited under Article 6(3) supra. Without such power, we are of the opinion that the ECP's power to decide as to whether a political party is receiving contributions or donations from sources prohibited under Article 6(3) *ibid* would for all practical intents and purposes be rendered redundant, nugatory and ineffective. Such a result would be against the clear command of Article 17(3) of the Constitution and the provisions of the PPO and the Rules.” (Emphasis Added by this Court).*

The functions of ECP are also laid down with brevity by the august Apex Court in case reported as ***Watan Party Vs. Federation of Pakistan (PLD 2012 SC 681)***. In the referred judgment, the Hon'ble Supreme Court held that ECP enjoys broad powers not only to take pre-emptive actions but also to pass any order necessary to ensure that standards of honesty, justness, and fairness mentioned in Article 218 (3) are met. In the ***Election Commissioner versus P. Kakkan (Writ Appeals No. 327 and 345 of 1970)*** the High Court of Madras held that with respect to a recognized political party it is the function of Election Commission to find out which of the two groups is the legitimate one for the purpose of issuance of tickets. It was further observed that Election Commission

is to decide the matter tentatively as to which of the rival groups represent the political organization. It cannot abdicate its function and drive the parties to court of law and continue the status quo till decision by the court. In ***Baba (Pt.) Nand Kishore Mishra & Ors versus Dinesh Chandra Tyagi and others*** [CS (OS) 745/2014] Delhi High Court observed as follows:-

"10. ABHM as aforesaid is not a recognized political party. Though the term "recognized political party" is not defined in the Act but the Explanation to Section 52 thereof provides that "recognized political party" means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The said Order vide Clause 15 thereof empowers the ECI, when there are rival sections or groups of a political party each of whom claims to be that party, to after taking into account all the available facts and circumstances and hearing representatives of the sections or groups, decide which of such rival section or group is that recognized political party; such decision of ECI is made binding on all such rival sections or groups."

Under sections 208 and 209 of the Elections Act, 2017 read with Rule 158 of the Election Rules, 2017, it is incumbent upon political parties to inform the ECP regarding any change with respect to the office bearer of the political parties. Since the meeting of CCC had resolved to remove the petitioner and appoint respondent No.2 as a convener, therefore, applications were filed for informing the ECP about the change. It was incumbent upon ECP that while deciding the matter to satisfy itself regarding the fact that the change is in accordance with the law and the party constitution. The word satisfaction has been explained in various judgments. In ***Sohail Butt versus DIG (2011 SCMR 698)***, it was observed that the word satisfied means existence of mental persuasion much higher than mere opinion; a mind not troubled with doubt; a mind which has reached on clear conclusion. In ***Ahmed Fahim Mughal versus Muhammad Saleem Khan (PLD 1990 Karachi 474)*** the Hon'ble Division Bench of Sindh High Court held that satisfaction has to be objective in nature and not subjective

of such nature to allow authorities to act on whims and caprices without there being material before them in support of grounds of detention. What High Court is concerned with is to see that executive or administrative authority had before it, sufficient material upon which a reasonable person could have come to the conclusion that requirement of law has been satisfied. Hence on the basis of the above mentioned provisions of law as well as case law discussed, Election Commission of Pakistan had jurisdiction to entertain the applications regarding change of the party head. The only exception which has been created in decision of the Balochistan High Court as well as the Hon'ble Supreme Court of Pakistan in ***Attaullah Mengal Vs. Chief Election Commissioner (1999 CLC 1460)*** and ***Bahadur Khan Bangulzai Vs. Attaullah Khan Mengal (1999 SCMR 1921)*** supra is that where there is any inbuilt organizational structural dispute, the matter is to be referred to the Court of plenary jurisdiction. The august Apex Court in the latter judgment also observed that where plea is raised regarding organizational structural dispute, bonafide of the same is to be examined by the Election Commissioner (who was then competent to hear such matters) as it would be convenient for anyone to dispute the party head who makes reference before the Election Commissioner.

18. The petitioner in replies to the applications filed by respondents No. 2&3 has contradicted facts as such but no specific denial has been made. It has been submitted in reply that CCC did not have 2/ 3rd majority and meeting was not convened in accordance with the constitution of the party. The referred pleas could not be regarded as inbuilt organizational structural dispute inasmuch as it can be examined by the ECP especially while exercising authority under Rule 158 *ibid* to satisfy itself regarding application for certification filed before it. The ECP while holding inquiry is to satisfy itself and while doing so can adopt procedure which is fair and just to both the parties. In view of the foregoing, the ECP had

jurisdiction to entertain applications filed by the respondents No. 2&3 and decide the same.

19. The petitioner has also challenged impugned order(s) on the ground that even on merits his removal was wrong and meeting of the CCC was not duly convened. In this regard, the fundamental document to examine whether the convening of the meeting and the procedure adopted in the same is the constitution of MQM-P. Under Article 3(d), the Committee means Central Coordination Committee of MQM-P. Under Article 6(a), the management of the party is to be administered by the Committee comprising of Convener, Senior Deputy Convener, Deputy Convener and members. Under 6(g), the Central Coordination Committee is to run the administrative and political functions of the party through various wings through its Party's Central Office. The functions of the General Workers or General Assembly of the party is to allow or regularize ad hoc and interim changes in the organization or party structure and inclusion or removal of any office bearer except the Convener, Senior Deputy Convener, Deputy Convener. Under Article 9(i) &(ii), the CCC by 2/3rd majority can remove any office bearer. Under Article 13-A, the notice of meeting is to be served in the following manners:-

- a) Ordinary meeting is to be held at a notice of three days.
- b) An emergent meeting may be held at a notice of six hours; and
- c) A general meeting may be held at a notice of seven days.

The convener of the party is elected by the members of the CCC with simple majority of the votes (Article 18-C). In light of the above provisions of the constitution of MQM-P, the CCC could remove any office bearer including the convener with 2/3rd majority. In this regard, the CCC vide resolution dated 11.02.2018, passed by 27 out of 35 members of the CCC, removed the petitioner as the convener/ party head of the MQM-P and elected respondent No.3 as the convener and party head. The minutes of the meeting held at Bahadarabad,

Karachi dated 11.02.2018 list down the names of 27 attendants. Along with the minutes, the list of the referred persons who attended the meeting and their signatures is appended. The petitioner challenges the authority of recalcitrant group or some members of the CCC to call meeting and even the proceedings conducted. The examination of the Articles of the constitution of MQM-P, mentioned hereinabove, shows that it is silent about as to who is competent to summon the meeting. Under the Articles of the constitution, it does not seem to be the sole prerogative of the convener as the function of the convener is to preside over the meeting of the CCC. Where such is the case i.e. constitution of the party is silent, the convening of the meeting and the same being attended by 35/33 members out of whom 27 members voted for removal of the petitioner. The referred act seems to be within the mandate of the constitution especially when there is nothing contrary to the same. Likewise, as to the persons attended and the requisite numbers required for removal of the convener, respondents No. 2&3 with their applications as well as in the reply to the instant petition have appended documents to the effect that notice of the meeting was given and the same was attended by members of CCC who passed the resolution removing the petitioner as party head and the Election Commission of Pakistan after satisfying itself and examining the referred documents concluded that the convener of MQM-P has been changed. A political party is a voluntary group with its constitution as a contract inter se the members. The position of a political party is similar to a Company which is managed by Board of Directors. Meeting of the Board of Directors can be conducted through Skype or video link. Following is SECP Circular No. 18/2005 dated 17.10.2005 on the subject:-

"5. Attendance of the Directors though tele/ video conferencing. The Commission is of the view that holding of the Board meeting through tele/ video conferencing would facilitate the companies whose Directors sometimes find it difficult to travel to Pakistan for participating in the meetings

due their busy schedule. This would also ease pressure on the directors of the companies who have to attend quarterly Board's meetings in audit committee's meetings as per the requirement of the Companies Ordinance, 1984 and the Code of Corporate Governance. Besides, the use of modern technologies would also be cost effective and would ensure participation of almost all the directors in such meetings. This would also help in achieving the objective of good Corporate Governance. It has, therefore, been decided to allow the listed companies to hold their Board's meeting through tele/ video conferencing where it is not possible for the directors to be physically present at the venue of the meeting. Moreover, such meeting shall be valid if the minutes of such meeting has been approved and signed subsequently by all Directors of the Boards who participated in such meeting. The listed Companies are, however, advised to avail this facility in emergent situation and the requirements of the requisite quorum and other legal formalities relating to holding of such meetings must be observed strictly. It would also be the responsibility of the Company's secretary to secure the tele/ video recording the proceedings of the meetings and keep it in his custody along with the others relevant record."

Moreover, it is trite law that what is not prohibited is permissible. In this behalf there is no prohibition in the party constitution of MQM-P regarding holding of meeting through video link. Reliance is placed on ***Masud Humayun versus FPSC (2016 PLC (CS) 1091)***. Moreover, it is also established principle that decision of the Board of Directors is effective the moment resolution is passed and not when the minutes are signed.

20. The petitioner did not file any application before ECP intimating the election results held under his direction. He also did not challenge his removal before any forum. In case reported as ***M/o IPC through Secretary and others Vs. Arbab Altaf Hussain and others (2014 SCMR 1573)***, the

Hon'ble Supreme Court observed that where Chairman Pakistan Cricket Board did not come forward to challenge his removal and supersession that means he accepted the same. The august apex Court observed that in such circumstances doctrine of acceptance by silence could be invoked against the Chairman. Learned counsel for respondents No. 2&3, however, has controverted the power of convener to call for election or taking decision in the general assembly meeting on the touchstone of Article 6(j) of the constitution of MQM-P which stance *prima facie* seems to be correct. However, since the same is not the subject matter of the controversy before this Court, in the instant petition, therefore, no further opinion needs to be expressed.

21. The role of this Court under Article 199 of the Constitution while examining the order / decision by the executive authority or quasi judicial body is to see whether there is any error of law or jurisdictional defect. The ECP while deciding the applications filed by respondents No.2&3 came to the conclusion that 27 members of the Rabita Committee/ CCC out of 35 removed Dr. Farooq Sattar. The said findings of the ECP are based on the documents appended by respondents No.2&3 with their applications. No specific denial to the same was made by the petitioner, however, collateral attack was made. In light of the said position, the ECP rightly concluded that CCC had the authority to remove the petitioner as a convener and appoint his successor and no disputed questions of facts are involved. Likewise, it has been rightly concluded that the election of the petitioner as convener in the General Body Meeting is in violation of the party constitution. The Hon'ble Supreme Court of Pakistan in a recent case titled ***Malik Ameer Haider Sangha and another Vs. Mrs. Sumaira Malik, etc. (Civil Petition No. 3122/2017)*** vide judgment dated 08.05.2018, while setting aside the judgment of this Court, observed that ECP can undertake factual inquiry while deciding the controversy before it. The referred view of the august Apex Court is in consonance with the earlier decision of the Supreme Court i.e. **1999**

SCMR 1921 *supra*, wherein it was held that the Election Commissioner could examine the jurisdictional fact while deciding any controversy before it.

22. Moreover, the fact that the minutes of the meeting has been placed on record regarding the persons who attended the meeting and their signatures and without their being any denial on their part or any material to the contrary it would be assumed that procedure required for passing of resolution for removal of the petitioner as convener is in accordance with the provisions of the constitution. Since the petitioner disputed the fact that meeting was illegally convened and/or the resolution was not passed with the requisite majority, therefore, burden of proof/ onus was on him to establish that meeting was called illegally or that the CCC did not pass the resolution with the requisite majority. In doing so, the petitioner could also have challenged his removal before the Court of competent jurisdiction which he did not do so and as observed above, he did not file any application under Rule 158 of the Election Rules, 2017 in contrast to the application filed under Rule 158 *ibid* by respondents No. 2&3. In the absence of any application filed by the petitioner under Rule 158 *ibid*, or independently challenging his removal as Convener before the Court of competent jurisdiction, it can be said that there is no inbuilt organizational or structural dispute.

23. It is trite law that while adjudicating a petition under Article 199 of the Constitution of Pakistan against a decision passed by executive authority or quasi judicial body the Court is generally not to interfere in the findings on the facts of the case. In case reported as ***Lt. Gen. (R) Salahuddin Tirmizi Vs. Election Commission of Pakistan (PLD 2008 SC 735)***, the august apex court observed that the jurisdiction of High Court under Article 199 cannot be enlarged to cases relating to factual inquiry or in cases where another view of the matter was also possible and if such view would have been taken it would not be illegal or unconstitutional. High Court is not supposed to substitute its opinion on the question of fact with the opinion formed by the election authority

or a Tribunal of competent jurisdiction. Similar view was expressed by the Hon'ble Supreme Court in case reported as ***Karachi Shipyard & Engineering Words Ltd. Vs. Abdul Gaffar (1993 SCMR 511)***.

24. In view of the foregoing, the instant petition is without merit and is accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in open Court this_____ day of June, 2018.

JUDGE

M.Shah/.

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