

**IN THE SUPREME COURT OF PAKISTAN**  
(Original/Appellate Jurisdiction)

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Amin-ud-Din Khan  
Justice Athar Minallah

**Constitution Petition Nos. 32 and 36 of 2023**

*Supreme Court Bar Association of Pakistan through  
its Secretary, Islamabad and others.*  
(in Const. P. No. 32/23)

*Munir Ahmed.*  
(in Const. P. No. 36/23)

... *Petitioners*

*Versus*

*Federation of Pakistan through Secretary,  
Cabinet Division, Islamabad and others.*  
(in both Constitution Petitions)

... *Respondents*

And

**Civil Misc. Appeal Nos. 118 and 119 of 2023 in Const.P.NIL/2023**

*Pakistan Tehreek-e-Insaf (PTI), Islamabad through  
its Secretary General and another.*  
(in CM Appeal No. 118/23)

*Ibad-ur-Rehman Lodhi, ASC.*  
(in CM Appeal No. 119/23)

... *Appellants*

*Versus*

*Election Commission of Pakistan through Chief  
Election Commissioner, Islamabad and others.*  
(in CM Appeal No. 118/23)

*The Registrar, Supreme Court of Pakistan,  
Islamabad and others.*  
(in CM Appeal No. 119/23)

... *Respondents*

For the Petitioners:  
(In Const.P.No.32/23)

Mr. Abid S. Zuberi, ASC.  
assisted by Miss Amna Khalili, Adv.  
and Agha Ali Durrani, Adv.  
Mr. Muqtadir Akhtar Shabbir, ASC.  
Mr. Shakeel-ur-Rehman, ASC.  
Ms. Bushra Qamar, ASC.  
Mr. Saim Chaudhry, ASC.

Mr. Irfan Mir Halepota, ASC.  
(Through video-link from Karachi)

For the Petitioner:  
(In Const.P.No.36/23)

Mr. Anwar Mansoor Khan, Sr. ASC.

For the Appellant: (In CM Appeal 118/23)	Syed Ali Zafar, ASC. assisted by Syed Haider Ali Zafar, Adv.
For the Appellant: (In CM Appeal 119/23)	Mr. Ibad-ur-Rehman Lodhi, ASC.
For the Federation:	Mr. Mansoor Usman Awan, Attorney-General for Pakistan. assisted by Maryam Ali Abbasi, Adv., Mr. Ahmed-ur-Rehman, Adv. and Mr. Saad Javid Satti, Adv. Ch. Aamir Rehman, Additional Attorney General for Pakistan.
For Govt. of Punjab:	Mr. Waseem Mumtaz Malik, Additional Advocate-General, Punjab.
For Govt. of Sindh:	Mr. Saulat Rizvi, Additional Advocate-General, Sindh.
For Govt. of Khyber Pakhtunkhwa:	Mr. Sultan Mazher Sher Khan, Additional Advocate-General, KP.
For Govt. of Balochistan:	Mr. Ayaz Khan Swati, Additional Advocate-General, Balochistan.
For Islamabad Capital Territory:	Mr. Ayaz Shaukat, Advocate-General, Islamabad.
For the ECP:	Mr. Sajeel Sheryar Swati, ASC. Mr. M. Arshad, DG (Law) ECP. Mr. Khurram Shehzad, Addl. DG (Law) ECP. Mr. Falak Sher, Legal Consultant, ECP.
Date of Hearing:	03.11.2023.

### JUDGMENT

**Qazi Faez Isa, CJ.** Constitution Petition No. 32 of 2023 was filed by the Supreme Court Bar Association of Pakistan by its Secretary and three Members, on 16 August 2023, and was represented by the learned Mr. Abid S. Zuberi. Constitution Petition No. 36 of 2023 was filed by Mr. Munir Ahmed, an Advocate of the High Court, on 13 September 2023, but he remained absent throughout and replaced his counsel with learned Mr. Anwar Mansoor Khan today, when matters stood almost concluded. The petitioners want early elections but surprisingly did not seek their petitions' early hearing.

2. Civil Miscellaneous Appeal No. 118 of 2023 was filed by the Pakistan Tehreek-e-Insaf ('PTI') through its Secretary General, Mr. Omer Ayub, on 28 August 2023, and PTI was represented by the learned Mr. Ali Zafar and Civil Miscellaneous Appeal No. 119 of 2023 was filed by Mr. Ibad-ur-Rehman Lodhi, an Advocate of the Supreme Court, against objections to their maintainability. Such appeals are usually heard by a Judge-in-Chambers, but since the same relief was sought in the petitions these appeals too were ordered to be fixed in Court.

3. The National Assembly was dissolved on the advice of the Prime Minister on 9 August 2023, and the Chief Ministers of the provinces advised the dissolution of the provincial assemblies. The President of Pakistan was required to '*appoint a date, not later than ninety days from the date of the dissolution, for the holding of a general election to the Assembly.*'<sup>1</sup> And, the Elections Act, 2017 requires the notification of the Election Programme, including the date of the general election, as under:

'57. **Notification of Election Programme.** (1) Subject to the Constitution, the Commission shall by notification in the official Gazette announce the date or dates, as the case may be, of the general elections.'

4. However, general election is not being held within the stipulated period because of the belated conduct of the '7<sup>th</sup> Population and Housing Census, 2023' ('**the 7<sup>th</sup> Census**'). Census is held pursuant to section 31 of the General Statistics (Re-organization) Act, 2011. After a census is held the Council of Common Interest ('**CCI**') approves it, pursuant to Article 154(1) of the Constitution read with the ninth entry of Part-II of the Federal Legislative List.<sup>2</sup>

5. The CCI had approved the previous census, the '6<sup>th</sup> Population and Housing Census, 2017' ('**the 6<sup>th</sup> Census**'), on 12 April 2021, that is after a period of about four years, and directed that the process of the next census be commenced:

'The CCI decided to approve the Final Results of the 6<sup>th</sup> Population and Housing Census, 2017 in the larger national interest. The Decision was taken by majority vote, in terms of Rule 5(10) of the Rules of Procedure of the Council of Common Interests, 2010, as seven members supported the approval of Final Census Result while the Chief Minister Sindh opposed it. The CCI directed that the process of next

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<sup>1</sup> Constitution of the Islamic Republic of Pakistan, Article 48(5)(a).

<sup>2</sup> Constitution of the Islamic Republic of Pakistan, Fourth Schedule.

Census should start as early as possible according to international best practices by using latest technology.'

A proviso to Article 51(5) of the Constitution was added on 22 December 2017,<sup>3</sup> stating:

'(5) The seats in the National Assembly shall be allocated to each province and the Federal Capital on the basis of population in accordance with the last preceding census officially published:

'Provided that for purposes of the next general elections to be held in 2018 and bye-elections related thereto, the allocation shall be made on the basis of provisional results of the 2017 census which shall be published by the Federal Government.'

6. Pursuant to the decision of CCI taken on 5 August 2023 the 7<sup>th</sup> Census was carried out. However, since the proviso to Article 51(5) of the Constitution had restricted the application of the 6<sup>th</sup> Census to the '*general elections to be held in 2018 and bye-elections related thereto*', it necessitated that another census be undertaken for the next general election, that is, the 7<sup>th</sup> Census.

7. A census is followed by delimitation. Article 222(b) of the Constitution empowers Parliament to make laws providing for the '*delimitation of constituencies*', and *Delimitation of Constituencies* is provided in Chapter III of the Elections Act, 2017. The Election Commission of Pakistan ('ECP') issued notification dated 17 August 2023<sup>4</sup> setting out the '*schedule for carrying out of delimitation of constituencies afresh in accordance with the official result of 7<sup>th</sup> Population and Housing Census, 2023*'. As per the ECP's said notification, the first step towards delimitation was taken on 17 August 2023 and the last action was the '*Final Publication of Delimitation*' which is to take place on 14 December 2023; but, we were informed that an amendment was made on 1 September 2023 which brought forward the date of '*Final Publication of Delimitation*' to 30 November 2023.

8. Article 224(2) of the Constitution also requires that general election '*shall be held within a period of ninety days after the dissolution*'. However, CCI took almost four years to approve the 6<sup>th</sup> Census, which delayed the 7<sup>th</sup> Census and in turn delayed delimitation. Section 57(2) of the Elections Act, 2017 stipulates that within '*seven days of the announcement under sub-*

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<sup>3</sup> Constitution (Twenty-Fourth Amendment) Act, 2017.

<sup>4</sup> No.F.9(1)/2021-Elec-I.

section (1)' of section 57, the election programme is announced, which, we were told, requires a minimum period of 54 days.

9. All the learned counsel are of the unanimous view that it is no longer possible to hold elections within ninety days of the dissolution of the assemblies. The learned Syed Ali Zafar by referring to Article 254 of the Constitution stated that if for the doing of any act a particular period is prescribed but it was not done within such period it would not render the act invalid or ineffective. Article 254 of the Constitution is reproduced hereunder:

'When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or other-wise ineffective by reason only that it was not done within that period.'

10. In three of the cases before us the President is arrayed as a respondent. Constitution Petition No. 36/2023 attaches a message of the President, conveyed through social media (X, formerly Twitter) calling for the views of the ECP on the announcement of a date for holding elections. If the said message was that of the President, it leads one to question whether the country can be run on the basis of messaging on social media.

11. The President of Pakistan and the ECP subsequently reached an impasse. The correspondence between the two ended with the President's letter of 13 September 2023, which concluded:

'THEREFORE, taking into account all the above, the Election Commission of Pakistan in consultation with Provincial Governments and political parties under the relevant provisions of the Constitution and in view that some of these matters are already subjudice, may seek guidance from the Superior Judiciary for announcement of a single date for general election to the National and Provincial Assemblies.'<sup>5</sup>

ECP confirms the receipt of the above letter, which we are informed it did not reply to.

12. We pointed out to the learned counsel, that if their contentions required the *interpretation of the constitutional provision* it would attract section 4 of the Supreme Court (Practice and Procedure) Act, 2023, and a larger bench in terms thereof would have to be constituted. But, all the learned counsel stated that at this juncture they only want general election

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<sup>5</sup> President's letter dated 13 September 2023 to the ECP filed with CMA No. 9293/2023.

to be held and have no objection to this three-member Bench hearing the cases to achieve this objective.

13. Therefore, in order to ascertain how soon the general elections could be held, notices were issued, and 2 November 2023 was fixed as the next date of hearing on which date the following order was passed:

'... the Election Commission of Pakistan's ('ECP') counsel states that the process of delimitation is underway, which will conclude on 30 November 2023, and publication of the final result of the delimitation will be by 5 December 2023. Thereafter, the election programme is to be announced in terms of section 57(2) of the Elections Act, 2017, which provides certain timeframes and will conclude on 29 January 2024.'

'ECP's counsel further states that to maximize public participation elections should ideally be held on a Sunday, and the first Sunday after the above timeframe would be 4 February 2024. However, to enable political parties to convey their respective programmes and manifestoes it would be appropriate to hold elections on Sunday, 11 February 2024.'

'Let the ECP meet with the President of Pakistan today and the date for holding general elections in Pakistan be appointed. In this regard, the Attorney-General for Pakistan will arrange such meeting and shall provide to the President this Court's order of 23 October 2023 and today's order, and be available to render assistance.'

'We expect that the matter of appointing a date for holding general elections shall be settled, and this Court will be informed tomorrow, that is, 3 November 2023.'

14. The President in his letter (of 13 September 2023) had sought *guidance from Superior Judiciary*. The only possible avenue for the President to seek the Supreme Court's opinion was by invoking Article 186 of the Constitution, reproduced hereunder:

'186. (1) If, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration.

(2) The Supreme Court shall consider a question so referred and report its opinion on the question to the President.'

15. However, the President did not seek recourse to Article 186 requiring the Supreme Court to give its opinion. Needless to state, this was the only constitutionally permissible manner for the Supreme Court to provide *guidance*. The Supreme Court and the holder of every constitutional office

and every constitutional body, including the President and the ECP, must act in accordance with the mandate of the Constitution. Abiding by the Constitution is not optional. It is equally important that no institution transgresses into the constitutional jurisdiction of another. A matter which should have been dealt with by the President and the ECP was quite unnecessarily brought to this Court. Cognizant of the constitutional scheme and fully aware of the limit of our constitutional jurisdiction, we were careful not to encroach on the jurisdiction of the President, nor that of the ECP.

16. Since the election date was not announced, concerns were rising amongst the people of Pakistan, where many of them apprehended that elections may be indefinitely postponed or not take place, which undoubtedly would cause irreparable damage to democracy and the country. Conscious of the Supreme Court's lack of jurisdiction and careful not to trespass on the jurisdiction of the President and of the ECP, we encouraged them to meet and determine that which was within their constitutional domain. They met yesterday (2 November 2023) and the meeting proved to be a success.

17. Mr. Mansoor Usman Awan, the learned Attorney-General for Pakistan, brought a letter issued by the Secretary to the President,<sup>6</sup> which states that, *'after a briefing by Election Commission of Pakistan followed by due deliberation, there was an agreement to announce the date of Thursday, 8<sup>th</sup> February, 2024 for holding General Elections'*. The ECP has also filed documents,<sup>7</sup> including the minutes signed by the Chief Election Commissioner and the four Members of the ECP, which state, *'The Commission and the Honourable President during meeting in the President House agreed to appoint 8<sup>th</sup> February, 2024 as a poll date for General Election 2024.'* The ECP has also issued a notification dated 3 November 2023, which states that 8 February 2024 is *the poll date* for general election to the National Assembly and the provincial assemblies. The learned Attorney-General, on behalf of the Federal Government, and the respective law officers, on behalf of the four provinces and the Islamabad Capital Territory, have also expressed their concurrence for the holding of general election on the said date.

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<sup>6</sup> President Sectt. (Public)'s u.o. No. 7/3/2023/FA&PA dated 3<sup>rd</sup> November, 2023.

<sup>7</sup> CMA No. 9391/2023.

18. The President of Pakistan and the ECP have announced the date for holding of general election to the National Assembly and to the provincial assemblies. The Federal Government, the Provincial Governments and the Islamabad Capital Territory have concurred. The matter of the holding of general election on 8 February 2024 stands resolved. No one should now put forward any pretext to derail democracy.

19. The higher the constitutional office or body the greater is the responsibility. Obedience to the Constitution and law is an inviolable obligation of every citizen,<sup>8</sup> however, an added responsibility and obligation is placed on all those who assume their office by taking an oath.<sup>9</sup> The President takes the prescribed oath<sup>10</sup> and so too the Chief Election Commissioner and Members of the ECP.<sup>11</sup> The Constitution has subsisted for fifty years; there is no longer any excuse to remain ignorant of the Constitution. Incidentally, on this very day (3 November 2007) a grave constitutional transgression took place sixteen years ago, and like it every constitutional deviation has long lasting effects. We must abide by the Constitution and realise mistakes which have had a calamitous effect on the people and the territory of Pakistan. It is about time that courts cease to be involved in political disputes, which take up considerable court time; time which would be better spent doing what this Court is required to do.

20. This President had earlier *dissolved* the National Assembly when the Prime Minister faced a vote of no confidence. Despite the fact that the Constitution clearly mandated that once the requisite number of members had given a notice of a resolution for a vote of no confidence in the National Assembly, the power to advise dissolution of the National Assembly no longer remained with the Prime Minister. Therefore, the President could not dissolve the National Assembly. But the Constitution was disregarded, triggering a constitutional crisis, which then had to be redressed by this Court, in the case reported as *Pakistan Peoples Party Parliamentarians v Federation of Pakistan*.<sup>12</sup> It was pointed out by the Chief Justice and four Judges of this Court what was manifestly clear, that a Prime Minister facing a vote of no confidence could not advise the dissolution of the National Assembly. The purported dissolution of the National Assembly was declared unconstitutional and held to be of no legal effect. One of the

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<sup>8</sup> Constitution of the Islamic Republic of Pakistan, Article 5.

<sup>9</sup> *Ibid.*, Third Schedule.

<sup>10</sup> *Ibid.*, Article 42.

<sup>11</sup> *Ibid.*, Article 214.

<sup>12</sup> PLD 2022 Supreme Court 574.



learned Judges opined that there should be consequences for such a blatant transgression of the Constitution:

'... the Constitution opens by stating that the exercise of authority "is a sacred trust" and can only be exercised through "the chosen representatives of the people." However, this sacred trust was violated amongst others by the President, PM, the Speaker, the Deputy Speaker and the Law Minister as the elected representatives of the people were prevented from voting on the resolution and for such blatant transgression of the Constitution there must be consequences and the law must take its course.'<sup>13</sup>

And that for such an unconstitutional act Article 6 of the Constitution may be invoked:

'... acts attract Article 6 of the Constitution is also left open to be determined by the Parliamentarians as to whether they leave open the doors for such unconstitutional acts or take suitable measures to stop such like mess in future.'

21. On that occasion (3 April 2022) the President had *dissolved* the National Assembly by using a power not vesting in him, while in the present case he did not use a power which he did possess. Constitutional office holders must adhere to the Constitution; fulfil the duties assigned to them as a *sacred trust*, and divest themselves from all that is outside their constitutional domain; only then do they serve the people of Pakistan. Pakistan was established democratically, is a democracy and must remain one. When general elections are due they have to be held. We are humbled in facilitating the President and the ECP to do right by the people of Pakistan.

22. In conclusion, we want to acknowledge the role of the media. Article 19 of the Constitution decrees that: '*there shall be freedom of the press*', subject to the stated *reasonable restrictions*. But some have construed this freedom as a license to disinform and build a false narrative, and do so to undermine democracy. The Pakistan Electronic Media Regulatory Authority ('PEMRA') prohibits content which '*incites or condones dislodgment of democratic setup against the command of the Constitution of Pakistan, provided that discussions on improvement of democracy shall constitute a fair comment*'.<sup>14</sup>

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<sup>13</sup> Ibid., per Mazhar Alam Khan Miankhel, J.

<sup>14</sup> PEMRA's Electronic Media Code of Conduct 2015, section 3(1).

23. A decreased confidence in democracy diminishes people's engagement with it and suppresses voter turnout. A study conducted by the European Parliament found, that:

'Disinformation also has far-reaching implications for human rights and democratic norms worldwide. It threatens freedom of thought, the right to privacy and the right to democratic participation, as well as endangering a range of economic, social and cultural rights. It also diminishes broader indicators of democratic quality, unsettling citizens' faith in democratic institutions not only by distorting free and fair elections, but also fomenting digital violence and repression.'<sup>15</sup>

However, this Court appreciates those in the media who perform their duties professionally and truthfully.

24. We would like to commend the learned Attorney-General for Pakistan, the learned law officers and the learned counsel for their positive assistance and facilitation for the quick disposal of these cases.<sup>16</sup>

25. These matters are allowed in the aforesaid terms.

26. In view of the public importance of this matter, this judgment is to be translated into Urdu. However, the English version shall be treated as this Court's decision.

Chief Justice

Judge

Judge

Islamabad:  
03.11.2023  
(M. Tauseef)

Approved for Reporting

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<sup>15</sup> 'The impact of disinformation on democratic processes and human rights in the world' Carne Colomina, Hector Sanchez Margalef, Richard Youngs, European Parliament, Directorate-General for External Policies.

<sup>16</sup> These cases were fixed for hearing in Court on 23 October, heard on 2 and 3 November and decided on 3 November 2023, that is, within 12 days.