

YAHYA AFRIDI, J. – Sunni Ittehad Council ("**SIC**"), a registered political party, along with its Chairman, Sahibzada Muhammad Hamid Raza, moved the constitutional jurisdiction of the Peshawar High Court¹ seeking, *inter alia*, to challenge the refusal of the Election Commission of Pakistan ("**ECP**") to allocate reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies to SIC, and to question the allocation of these reserved seats by ECP to other political parties in terms of Notification No. F.5(1)/2024-Cord and Notification No. F.5(4)/2024-Cord both dated 04.03.2024 ("**Impugned Notifications**"), and to declare Section 104 of the Elections Act, 2017 ("**Act**") to be *ultra vires* to the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**").

Impugned Judgment

2. A Full Bench of five worthy Judges of the Peshawar High Court dismissed the petition in terms: that SIC did not fulfill the condition precedent provided under Article 51(6)(d) and (e) of the Constitution to be allocated reserved seats for women and non-Muslims; that Section 104 of the Act was *intra vires*; that there was no basis to question the status of Pakistan Tehreek-e-Insaf ("**PTI**") as a political party; and that PTI-backed independent candidates were returned to the Assemblies on the manifesto of PTI, however, nothing was produced before the High Court to show that ECP had declined the request of these candidates to contest elections on the ticket of PTI; and that the returned PTI-backed independent candidates were neither impleaded nor did they file any application before the High Court to be made a party to the petition pending before it.

¹ Writ Petition No. 1339-P of 2024.

Contentions of the Parties

3. Learned counsel for the appellants, at the very outset, submitted that he would not challenge the *vires* of Section 104 of the Act, since the stance taken by the appellants was supported by the constitutional provisions contained in Article 51 and Article 106 of the Constitution, and restricted the challenge to the findings recorded in the impugned judgment only to the entitlement of SIC to reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies. The main thrust of the learned counsel for SIC was that Article 51(6)(d)² and (e)³ and Article 106(3)(c)⁴ of the Constitution did not expressly mandate that a political party was to contest General Elections to become entitled to reserved seats. Nor was it necessary, according to the learned counsel, to submit a list for reserved seats before the General Elections or within the period fixed by ECP for submission of nomination papers for the purpose of election to reserved seats to be entitled to reserved seats as the same could be allowed to be done by a political party even later. This, the learned counsel asserted, was the spirit of Article 51(6)(d) and (e) and Article 106(3)(c) of the Constitution. Finally, the learned counsel drew our attention to the Impugned Notifications, to show that reserved seats allocated to some of the political parties far exceeded their due share of reserved seats on the basis of their numerical strength in the respective assemblies. This, the learned counsel argued, was a blatant violation of the principle of proportional representation enshrined in Article 51(6)(d) and (e) and Article 106(3)(c) of the Constitution. Hence, the Impugned Notifications

² Reserved seats for women in National Assembly

³ Reserved seats for non-Muslim in National Assembly

⁴ Reserved seats for women and non-Muslim in Provincial Assemblies

warranted annulment and SIC was to be allowed reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies, as mandated under Article 51(6)(d) and (e) and Article 106(3)(c) of the Constitution.

4. The stance taken by the appellants before us was opposed by the Federation, ECP, women and non-Muslims elected to reserved seats in the National Assembly and Provincial Assemblies beyond the share of their parties based on numerical strength in respective houses, Pakistan Muslim League (N), Muttahida Qaumi Movement (Pakistan), Pakistan Peoples Party Parliamentarians, and Jamiat Ulem-e-Islam Pakistan.

Issue for Determination

5. The core controversy requiring resolution relates to the allocation of reserved seats for women and non-Muslims to political parties in the National Assembly and Provincial Assemblies in accordance with Article 51(6)(d) and (e) and Article 106(3)(c) of the Constitution, respectively. It will be appropriate to first review and discuss the legal provisions regarding the reserved seats for women in the National Assembly, as this will provide a foundation for understanding the allocation of other reserved seats provided under the Constitution.

Total Number of Reserved Seats for Women in the National Assembly

6. Clause 3 of Article 51 of the Constitution specifies the total number of seats in the National Assembly, including those reserved for women in each province, in terms that:

“(3) The seats in the National Assembly referred to in clause (1), except the seats mentioned in clause (4), shall be allocated to each Province and the Federal Capital as under: —

	General Seats	Women Seats	Total Seats
Balochistan	16	4	20
Khyber Pakhtunkhwa	45	10	55
Punjab	141	32	173
Sindh	61	14	75
Federal Capital	3	-	3
Total	266	60	326

Election for Reserved Seats for Women in the National Assembly

7. As for the election on reserved seats for women in the National Assembly, the numerical strength for each province has been set out in Article 51(3) (*supra*); the manner of allocation of the said reserved seats to the political parties is provided in clause (d) of sub-Article (6) of Article 51 of the Constitution. It provides in terms that:

- “(d) members to the seats reserved for women which are allocated to a Province under clause (3) shall be elected in accordance with law through proportional representation system of political parties’ lists of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly:
- Provided that for the purpose of this paragraph the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates; and”

A careful reading of the above provision provides that for a political party to be allocated reserved seats for women, the following are the crucial issues to be considered:

i) Election in accordance with law:

The allocation of reserved seats for women has to pass through an electoral process; not only are the political parties mandated to take steps, but their nominee candidates are also to do so. And all this is to proceed in

“accordance with the law”⁵ – the Constitution, the Act and the Election Rules, 2018 (“**Rules**”).

With the essentials provided in Article 51 of the Constitution, Section 104 of the Act sets out the mode and manner of allocation of the reserved seats to political parties in the National Assembly, in terms that:

104. Party lists for reserved seats. —

(1) For the purpose of election to seats reserved for women and non-Muslims in an Assembly, the political parties contesting election for such seats shall, within the period fixed by the Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Commission or, as it may direct, with the Provincial Election Commissioner or other authorized officer of the Commission, who shall forthwith cause such lists to be published for information of the public:

Provided that the list submitted by a political party shall not be subject to change or alteration either in the order of priority or through addition of new names in the list or omission of any name after expiry of the date of submission of nomination papers.

(2) The parties’ lists referred to in sub-section (1) may contain as many names of additional candidates as a political party may deem necessary for contesting seats reserved for women and non-Muslims, to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seats during the term of an Assembly.

(3) A candidate to a seat reserved for women or non-Muslims shall file the nomination papers on the Form on or before the last date fixed for filing of nomination papers for the election and the nomination papers shall, as nearly as possible, be scrutinized in the same manner as nomination papers of candidates on general seats are scrutinized under Section 62.

(4) If, at any time, the party list is exhausted, the political party may submit a name for any vacancy which may occur thereafter and the provisions of sub-sections (1), (2) and (3) shall, as nearly as possible, apply to fill such vacancy.

(5) Where a seat reserved for women or non-Muslims in an Assembly falls vacant as a result of death, resignation or disqualification of a Member, it shall be filled in by the next person in order of precedence from the party’s list of candidates submitted to the Commission under sub-section (1).

(6) Before notifying the name of the next person in order of priority from the party list, such person shall

⁵ Article 222 of the Constitution empowers the Parliament to legislate, leading to enacting of the Elections Act, 2017; and Section 239 of the Elections Act, 2017 led to the framing of the Election Rules, 2018.

submit a declaration on oath that since the filing of his nomination paper, he has not become subject to any disqualification contained in Article 63.

(7) A candidate contesting election on a seat reserved for women or non-Muslims shall, along with the nomination papers and its annexures, submit to the Returning Officer appointed by the Commission in this behalf—

- (a) a copy of the party list of the candidate's political party for such seats;
- (b) declarations and statements in support of the nomination; and
- (c) proof of deposit of the fee required for filing nomination papers.

(8) Where there is equality of share on a reserved seat between two or more political parties, the Returning Officer shall declare the returned candidate by drawing of lots.

To further clarify, and elucidate the above procedure, we have Rule 92 of the Rules, framed under Section 239 of the Act. The said Rule reads:

92. Election to seats reserved for women and non-Muslims.— (1) Election to the seats reserved for women and non-Muslims in the National Assembly and Provincial Assemblies shall be held on the basis of proportional representation system of political parties' lists of candidates in accordance with the provisions of these Rules and the Act.

(2) The Members to fill seats reserved for women in the National Assembly allocated to a Province shall be elected through proportional representation system of political parties' lists of candidates submitted to the Commission on the basis of total number of general seats won by each political party from the Province concerned in the National Assembly.

(3) The Members to fill seats reserved for women allocated to a Province shall be elected through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the Provincial Assembly.

(4) The Members to fill seats reserved for non-Muslims in the National Assembly and the Provincial Assemblies shall be elected through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the National Assembly, or, as the case may be, in the Provincial Assembly.

(5) If, at any time, the party list is exhausted, the political party may submit a name for any vacancy which may occur thereafter and the provisions of sub-section (1) and subsection (2) of Section 104 shall, as nearly as possible, apply to fill such vacancy.

(6) For the purpose of this Rule, the expression "total number of general seats won by political party" shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates:

Provided that if the independent candidate applies to the leader of a political party for joining his party then the leader of that political party will forthwith inform the Commission of joining of such candidate through a letter to be delivered to the Commission along with consent of that candidate duly attested by a Notary appointed under the Notaries Ordinance, 1961 (XIX of 1961) or an Oath Commissioner appointed under the Oaths Act, 1873 (X of 1873) or a Government servant in basic pay scale 17 and above:

Provided that the consent of the independent candidate so delivered to the Commission shall, in no circumstances, be open to recall or cancellation.

(7) The political parties' lists of candidates to be submitted under this Rule to the Commission in connection with election to the reserved seats for women or non-Muslims in an assembly shall be on Form-66.

A combined reading of the above provisions of the Constitution, the Act and the Rules indicates that a political party seeking reserved seats for women in the National Assembly has to take the following concerted steps in order that its nominees be eligible to be elected as members of the National Assembly on the seats reserved for women:

Step No. 1

A political party desirous of contesting election for reserved seats has to submit before ECP, the list of its candidates, and that too, in order of priority. Such list is to be published for information of the public forthwith. But once the time fixed by ECP for filing of nomination papers has expired, the political party is prohibited from making any modifications to the submitted list. This includes changes to the order of candidates, adding new names, or removing existing ones.

Step No. 2

The listed nominee candidates of a political party, in turn, have to file their nomination papers along with all the requisite documents for contesting election on

the reserved seats, and that too, within the prescribed time. The nomination papers of the said candidates are filed before the Returning Officer appointed by ECP. The scrutiny thereof shall, as nearly as possible, be in the same manner, as that of nomination papers of candidates on general seats under Section 62 of the Act, including the right to challenge any findings made by the Returning Officer appointed by ECP.

What is strikingly significant in the above stated procedure for election of reserved seats is that each step required of a political party and its listed nominee candidates is time bound.

ii) **Basis of Allocation of Reserved Seats**

For allocation of reserved seats, there has to be election not amongst the individual nominee candidates but between the political parties, who field their candidates, as per the list they submit to ECP; and that too, through proportional representation system of political parties' lists of candidates on the basis of total number of general seats secured by each political party from the provinces concerned in the National Assembly.

Forms of Elections under the Constitution - Proportional Representation System

There are under the Constitution, three distinct forms of elections: firstly, we have single member territorial constituencies for the general seats in the National Assembly and Provincial Assemblies and the members to fill such seats are to be elected by direct and free vote in accordance with

law⁶; secondly, there is single transferable vote or proportional ranked choice voting system for the elections to the Senate; and finally, we have proportional representation system of political parties' lists for the elections for the reserved seats for women and the non-Muslims. It follows that a first-past-the-post system is used for general seats in the National and Provincial Assemblies, while a proportional representation system based on single transferable vote is used for Senate elections, and a proportional representation system based on political parties' lists is used for reserved seats in the National and Provincial Assemblies.

As for the concept of the proportional representation system, it must be understood that it manifests in different ways across various jurisdictions globally. To better understand and appreciate the various systems, and in particular, the one applicable for reserved seats for women and non-Muslims, it would be appropriate to have an overview of some of the different systems of 'proportional representation'. Proportional representation systems are of following two basic types:

Single Transferable Vote or Proportional Ranked Choice Voting

Single Transferable Vote or Proportional Ranked Choice Voting is provided under clause (2) of Article 59 of the Constitution for elections to the Senate. It is a multi-winner electoral system, where each voter casts a single vote in the form of ranked-choice ballot. Voters have the option to rank candidates, and their

⁶ Section 98 of the Elections Act 2017 provides that the candidate who has received the highest number of votes shall be declared elected from the constituency.

votes may be transferred according to alternate preferences, if their preferred candidate is eliminated or elected with surplus votes, so that their votes are used to elect someone they prefer over others in the running.

Proportional Representation System of Political Parties' Lists

Proportional representation system of political parties' lists is a system for election for the reserved seats for women and the non-Muslims in the National Assembly and Provincial Assemblies, as provided under Articles 51 and 106 of the Constitution. This system has its unique characteristics and modalities, as it provides each political party to 'showcase' to the public their listed candidates for the voters to make their valued choice at the time of casting their votes for the other candidates of the political party in the General Elections. In essence, it is to provide individual voters valuable information, about the political party and the candidates it is to field for elections, at the time they cast their vote, helping them make a more informed decision.

There is no cavil to the proposition that, all proportional representational systems, are neither intended to nor are to be applied in a disproportionate manner. But for a political party to avail any benefit thereof, it has to first fulfill the condition precedent set for first entering the electoral system. In the case of the proportional representation system of political parties' lists, used for electing reserved seats for women and non-Muslims in the National Assembly and

Provincial Assemblies, as outlined in Articles 51 and 106 of the Constitution, the political party has to cross the defined legal threshold; firstly, by filing the list of candidates within the period set by ECP, and secondly, by fielding their nominee candidates by submitting their nomination papers within the time set by ECP.

iii) **Total number of General Seats secured by a Political Party**

Article 51(6)(d) of the Constitution mandates that reserved seats for women in the National Assembly are to be allocated based on the total number of general seats secured by each political party from the province concerned in the National Assembly. Thus, the constituency for reserved seats for women is each of the four provinces. On the other hand, Article 51(6)(e) of the Constitution provides for reserved seats for non-Muslims in the National Assembly are to be allocated based on the total number of general seats won by each political party in the National Assembly. Here the constituency is not restricted to the provinces but is, in fact, the whole country. Similarly, for the reserved seats for women and non-Muslims in the Provincial Assembly, the constituency is the whole province.

A fundamental prerequisite for a political party to qualify for reserved seats is the winning of at least one general seat. This is evident from the *proviso* allowing independent candidates to join a political party within three days of election results, a process contingent on the existence of a political party with at least one elected member. The *proviso* to Article 51(6)(d) and (e) and Article 106(3)(c) provides that the total number of general seats won by a political party

shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates. Notably, the *proviso* to the above-mentioned Articles is not a proviso in the strict sense of the term, since it neither creates an exception to the main provision nor qualifies it. Instead, it serves as an explanation that supplements the main provision by clarifying that independent returned candidates, who join a political party within three days of the publication of the names of the returned candidates are to be counted as part of the total number of general seats won by that party for the purpose of allocating reserved seats. It is but necessary that a candidate can only join a political party, if that political party already has a presence in the house - it already has secured or won a general seat. If the political party has not secured or won a general seat, it does not have any returned candidate in the house, for an independent returned candidate or candidates to join it. It shows that it is necessary that a political party at least wins one general seat to become entitled to reserved seats. Consequently, the entitlement of a political party to reserved seats is inextricably linked to its success on at least one general seat.

The word 'secured' used in Article 51(6)(d) and the word 'won' in Article 51(6)(e), have in essence, the same meaning and can be applied interchangeably. However, one can understand that by employing two different words having the same meaning was to highlight the constituencies of the reserved seats for women and the non-Muslims: for the

former, a direct reference has been made to the seats *secured* from each province in the National Assembly; and for the latter, there is the stipulation of the total strength of the political party based on its returned candidates, who have *won* the elections in the National Assembly.

Even otherwise, one must be aware that the word “secured” is employed in the main provision of the above constitutional provision, while the inclusion of the independents being provided in the *proviso* to the said provision, and that being an explanation to the general statement of the law in the main provision, cannot be applied to those independents being referred to in the *proviso*. Moreso, when the two categories of returned candidates; one who belongs to a political party referred to in the main part of the provision, while the other being the independents joining the same political party stated in the *proviso*; are separately referred to in Article 51(6)(d) and cannot be considered as one category. And thus, are to be legally considered separately, each in accord with the letter of the law, as stated therein.

As for the contention of the learned counsel supporting the stance taken by SIC that this Court ought to render a progressive approach and endeavor to understand the intent behind the constitutional provision and not restrict the meaning of the words implied in a statute in a manner, so as to ‘*make a fortress out of the dictionary*’, I am afraid the approach of the learned counsel is rather miscued in the circumstances of the present case. In fact, when the letter of the statute is simple in meaning and does not lead to an absurd or unreasonable situation or for that matter,

contradicts or come in conflict with any other provision of the Constitution, Courts are to read the letter of the law, and need not to surgically search for another meaning by taking refuge of the intent of the law-makers.

None can dispute the fundamental right of an independent member of a house to join a political party, as is ordained under Article 17 of the Constitution, but for this inclusion of an independent returned member of the house to strengthen the political party to seek the allotment of reserved seats, I am afraid the said right is conditional on the fulfillment of the legal requirements within the contemplation of Articles 51 and 106 of the Constitution. These conditions precedent – to contest and win at least a general seat and to submit the list of candidates for the reserved seats, whose antecedents have passed through the scrutiny provided under the law – have to be fulfilled by SIC.

iv) **Inclusion of Independent Candidates – joining a Political Party**

The general principle laid down in the substantive part of Article 51(6)(d) of the Constitution mandates the political party to be entitled to reserved seats, based on the total number of general seats secured by it from the province concerned in the National Assembly.

The *proviso* contained in Article 51(6)(d) of the Constitution vests an independent returned candidate, the right to join a political party of his choice, and none can take away this right from him. To render legal effect to the act of an independent returned candidate of joining a political party,

requires the leader of the said political party⁷ to intimate ECP in writing regarding joining of that political party by the independent returned candidate. This written intimation has to be accompanied by the written consent of the independent returned candidate. ECP on receipt of the said intimation accompanied by the written consent of the independent returned candidate, has no authority under the law to object to any independent returned candidate joining a political party within the stipulated period of three days. However, for independent candidates to contribute to the overall seat count of a political party for the purpose of its entitlement to reserved seats, the *proviso* mandates that these candidates must join *such* party that has already *won* at least one general seat. In essence, a political party must win a general seat to benefit from the inclusion of independent candidates, so as to become a part of its numerical strength for the purpose of allocation of reserved seats.

Candidates for election - National Assembly and Provincial Assemblies

What is crucial to note is that the Act read with the Rules envisages three different kinds of returned candidates, contesting elections for the National Assembly and Provincial Assemblies:

Firstly, we have the candidates, who have submitted their nomination papers declaring themselves, as candidates belonging to a political party duly accompanied by a certificate from the said party, declaring the candidates to be

⁷ Sub-Rule (6) of Rule 92 of the Election Rules, 2017.

their official candidates for election in the respective constituencies. Such a candidate cannot be denied the right to be a candidate of a political party. And similarly, in case the said candidate has won the seat of National Assembly or a Provincial Assembly in the General Elections and has been notified as returned candidate by ECP he would remain a member of the house, representing the said political party, and ECP has no authority under the law to declare him an independent or belonging to another political party or otherwise. The only exception to this principle is when the candidate of a political party contesting election for the National Assembly or Provincial Assembly submits a written declaration to ECP or the returning officer under his signatures stating that he is withdrawing from his position, as a candidate of a political party. Politics is not for the weak or fickle. Once a declaration has been rendered by a candidate to represent a political party, withdrawing the same, and that too, in writing would be estopped to revert back to his earlier stance of representing the said political party.

Secondly, we have candidates who submitted their nomination papers as candidates on the list of the political parties for reserved seats for women and non-Muslims.

Finally, we have those, who submitted their nomination papers, as independent candidates.

Reserved seats - Non-Muslims (National Assembly) Women & Non-Muslims (Provincial Assemblies)

Given the above legal position provided under the law for allocation of reserved seats for women in the National

Assembly, we note that the same principles would also apply to allocation of reserved seats for non-Muslims in the National Assembly provided under Article 51(6)(e), and that of women and non-Muslims in the Provincial Assemblies under Article 106(3)(c) of the Constitution. Though there is a marked distinction between the reserved seats for women in the National Assembly and that of other reserved seats. It is notable that the constituency for the reserved seats for the non-Muslims in the National Assembly is the whole country and the reserved seats are to be allocated on the basis of the total number of seats secured by a political party in the National Assembly. Similarly, as far as the reserved seats for women and non-Muslims in the Provincial Assemblies are concerned, the constituency for the same is each province and the reserved seats are to be allocated on the basis of the total number of returned candidates of the political party in such Provincial Assembly. The mode and manner for a political party to avail the reserved seats remains the same in all cases.

A political party has to not only file the list of candidates for the reserved seats but also ensure that its nominee candidates have filed their nomination papers for election to the reserved seats within the time set by ECP. Failure on the part of a political party to fulfill any one of the two conditions stated above, and that too, within the prescribed time fixed by ECP under the law would disentitle them to be allocated the reserved seats within the enabling provisions of Articles 51 and 106 of the Constitution.

Case of Sunni Ittehad Council

8. Given the above exposition of the mandate of law, it is necessary to carefully examine the stance of the appellants, who seek reserved seats for women and non-Muslims in the National and Provincial Assemblies for SIC.

9. SIC is a registered political party, but it did not field any candidate for a seat in the National Assembly or Provincial Assemblies in the General Election, 2024. Thus, having won no seat in the houses, it cannot seek to include the independent returned members of the respective houses to enhance its strength for the allocation of reserved seats within the contemplation of Articles 51 and 106 of the Constitution. Further, SIC had not submitted any list of candidates for reserved seats for women or for non-Muslims within the period fixed by ECP, as reflected in the Schedule of Election notified in the official gazette. In fact, the Court was informed during the hearing of the present case that SIC had till the date of decision of the present appeal not submitted the requisite list of candidates. Needless to mention, the law mandates that with the filing of the list of candidates of the political party for the reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies, the nominee candidates have to also file their nomination papers for scrutiny, as any other candidate contesting election for the general seat. Given the above legal infirmities and inactions in taking the requisite steps by SIC, the joining of independent returned candidates would be of no legal avail in respect of enhancing its numerical strength for allocation of reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies under Articles 51 and 106 of the Constitution.

Sahibzada Muhammad Hamid Raza – Chairman of SIC

10. Sahibzada Muhammad Hamid Raza (appellant No.2) contested the election for a seat in the National Assembly (NA-104, Faisalabad). The nomination papers he submitted before the Returning Officer were neither clear nor consistent with his stance taken in the present appeal before this Court. During the proceeding of the present case, the Court was provided copies of the nomination papers and the requests in writing submitted by Sahibzada Muhammad Hamid Raza to the Returning Officer and ECP, and a perusal thereof unfolded the inconsistent position he had taken, as regards his affiliation with a political party. Succinctly, his affiliation swayed from belonging to SIC (alliance with PTI) and finally to Pakistan Tehreek-e-Insaf Nazriati (PTI-N). To make the matter more complicated for the appellants, he submitted to the Returning Officer, a certificate of PTI, as its official candidate for elections to the seat of the National Assembly. With such wavering political position taken by Sahibzada Muhammad Hamid Raza, it would not be legally correct to declare him a returned candidate of SIC.

11. Since SIC does not fulfil the conditions prescribed for a political party under the enabling provisions of the Constitution and the law to be allocated reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies, therefore, the appeals filed by SIC and its Chairman are dismissed.

Mst Kanwal Shauzab

12. Mst Kanwal Shauzab, purporting to be the President of women wing of PTI and also a nominated candidate of PTI in the list submitted by the PTI for reserved seats for women in the National Assembly, who was not a party before the Peshawar High

Court, has moved a petition challenging the impugned judgment of the Peshawar High Court, Peshawar. The said petition was not numbered; however, the Court allowed the learned counsel to make his submissions on behalf of Mst Kanwal Shauzab challenging the impugned judgment.

13. As the main appeal filed by SIC (C.A. No. 333 of 2024) has been dismissed and the findings so recorded by the Peshawar High Court, Peshawar have been maintained, it would not be appropriate to pass any findings on *locus standi* of Mst Kanwal Shauzab in agitating her grievance in support of SIC, lest it may prejudice her right to be elected as a member of the National Assembly, being on the list of candidates submitted by PTI for the reserved seats for women in the National Assembly.

Pakistan Tehreek-e-Insaf (PTI)

14. PTI, a registered political party, fielded its candidates for seats in the National Assembly and Provincial Assemblies in the General Elections, 2024. But none was allowed or recognized by ECP to contest elections for the general or the reserved seats, as the candidate of PTI. And yet, for reasons not known, the matter has not been agitated by PTI before this Court. In fact, at the very end of the proceedings of the present appeals, that spanned over a month with eight long hearings commencing from the 3rd June, 2024 to the 12th July, 2024; to be precise on 26th June, 2024, an application (CMA No. 5913 of 2024) was filed by PTI and Barrister Gohar Ali Khan for their impleadment, as *interveners*, and that too, to assist this Court in the present appeals. Interestingly, there was no specific prayer for a definite declaration in favour of PTI for allotment of reserved seats for women and non-Muslims. In essence, the application so made challenged the assertions of ECP

with respect to PTI, seeking reserved seats for women and non-Muslims for both SIC and PTI, while contesting the allocation of these seats to other political parties.

15. Upon examining the record relating to the General Election, 2024 submitted by ECP, I found its actions and inactions deeply concerning. Regarding the issue raised in the present appeals, it is important to note that four candidates, namely; Mr. Gohar Ali Khan (NA-10), Mr. Umer Ayub (NA-12), Mr. Ali Asghar Khan (NA-16), and Shahzada Gastasab Khan (NA-15) not only declared themselves to be candidates representing PTI but also submitted certificates of PTI nominating them, as its candidates in their respective constituencies. It was also noted that they had not filed any application to ECP or their respective Returning Officers to be declared independent candidates or otherwise. Despite this, and for reasons known only to ECP, these four PTI candidates were not notified as returned candidates representing PTI. The Act and the Rules do not grant ECP the authority to declare such returned candidates, as independent candidates. Similarly, another list provided by ECP revealed returned candidates who, in their nomination papers, declared themselves to represent PTI, duly accompanied by certificates of the said party nominating them as their candidates for election of the respective constituencies. They did not file any application with ECP or the Returning Officer to be declared as independent candidates. Among these returned candidates, six were particularly notable: Mr. Sohail Sultan (NA-4), Mr. Arbab Amir Ayub (NA-29), Mr. Sher Ali Arbab (NA-31), Mr. Naseem Ali Shah (NA-39), Mr. Rana Atif (NA-101) and Mr. Mumtaz Mustafa (NA-171). These returned candidates also fulfilled the condition of making declaration in their nomination forms and

submitting certificates from PTI nominating them as their official candidates for election in their respective constituencies. Without there being any written declaration on their part to be declared as independent candidates, ECP had no authority under the law to declare them other than returned candidates representing PTI in the National Assembly.

16. At this stage, it is pertinent to mention, without naming them, certain candidates nominated by PTI for constituencies in the National or Provincial Assemblies who, after being declared returned, joined another political party or sought to be treated as independent. This behavior on their part, raises serious concerns about disregarding the trust reposed in such returned candidates by the voters, thus undermining the *will of the people*.

17. Articles 218 and 219 of the Constitution mandate ECP to conduct elections in a manner that ensures they are conducted honestly, justly, fairly, and in accordance with the law. The material which was brought to the attention of the Court during the proceedings of the present case, in particular, the manner in which returned candidates of PTI were declared independent, clearly demonstrates that ECP was unable to perform its constitutional duty as mandated under the law. However, passing any definite finding regarding the exact number of seats won by PTI in the National Assembly and Provincial Assemblies in the General Election, 2024 would not be legally appropriate for the reasons that:

Firstly, PTI has not approached this Court for any such direction. Passing a definite finding by this Court would amount to invoking *suo motu* jurisdiction under Article 184(3) of the Constitution,

which in the circumstances of the present case, would be contrary to the ratio of the judgment rendered by this Court in **SMC No.4/2021 (PLD 2022 SC 306)**, as partially modified by Section 3 of the **Supreme Court (Practice and Procedure) Act, 2023**.

Secondly, the information and record provided to the Court did not include the particulars of returned candidates in the four Provincial Assemblies. Similarly, with regard to the election results of the National Assembly, a thorough scrutiny is required before passing any definite finding that could deprive a returned candidate of their fundamental right of being member of a political party. Furthermore, passing such a finding on the conduct of returned candidates may expose them to adverse consequences under the law. Legal propriety demands that this matter be left to the returned candidates, their respective political parties, the Speakers of the National Assembly and the Provincial Assemblies, and ECP to address in accordance with the law. Any finding at this stage would prejudice their case, especially without affording them the right to a hearing.

Finally, while the undeniable power of this Court to do complete justice under Article 187 of the Constitution is recognized, exercising this power in the absence of an aggrieved party directly approaching the Court could set a dangerous and far-reaching precedent. Such a course risks undermining the principles of *due process* and *judicial restraint*, potentially leading to an *overreach of judicial authority*. The exercise of this power must, therefore, be reserved for exceptional circumstances, where there is a clear and compelling need to intervene to bolster the rights of the aggrieved petitioner, and prevent a miscarriage of justice. In the present case, however, the matters before the Court do not meet this

threshold. Nevertheless, based on what has been presented before this Court, the role of ECP has fallen short of the constitutional obligations entrusted to it. However, the remedy for such shortcomings lies in the processes provided within the legal framework, not in judicial pronouncement of the apex Court, and that too, without providing hearing to all concerned parties. It is imperative to uphold the fundamental principle of *due process* and the sanctity of the *due judicial process*. This Court must, therefore, exercise caution to preserve the integrity of judicial proceedings and ensure that justice is administered within the boundaries set by the Constitution.

Conclusion

18. In all fairness, without disturbing the impugned judgment, ECP is directed to revisit its notification of returned candidates, keeping in view that a returned candidate, who declared himself to represent a political party and submitted the certificate of that political party, nominating the said candidate to be its official candidate for election for the respective constituency and has not withdrawn his declaration by any written intimation, has to be declared a returned candidate representing the said political party and not otherwise. The needful be done within seven days, if not earlier, after providing an opportunity of hearing to any affected party and, thus, the reserved seats for woman and non-Muslims are to be allotted to all deserving political parties, accordingly.

19. Consequently, civil appeals filed by SIC and its Chairman are dismissed in the above terms. As these appeals have been dismissed on merits, the connected civil petitions challenging the impugned judgment are also dismissed.

20. The above are the reasons for the short order dated 12th July, 2024 which read:

"For reasons to be recorded later, Civil Appeals No. 333 & 334 of 2024, C.M.A. No. 2920 of 2024 in Civil Appeal No. 333 of 2024, Civil Petitions No. 1612, 1613, 1614, 1615, 1616 & 1617 of 2024 and C.M.A. No. 3554 of 2024 in C.P. Nil of 2024 are dismissed in terms that:

1. Sunni Ittehad Council does not fulfil the conditions prescribed for a political party under the enabling provisions of the Constitution of Islamic Republic of Pakistan ("**Constitution**") and the law to be allowed/allocated reserved seats for women and non-Muslims in the National Assembly or the Provincial Assemblies.
2. Pakistan Tehreek-e-Insaf ("**PTI**") fulfils the conditions prescribed for a political party under the enabling provisions of the Constitution and the law to be allowed/allocated reserved seats for women and non-Muslims, in terms that:
 - i. A candidate for a seat in the National Assembly or the Provincial Assembly, who in his/her nomination paper has declared on oath to belong to PTI and duly submitted a certificate of the same political party confirming that he/she is the nominated candidate of PTI for the respective constituency, shall remain so, and cannot be declared independent, unless he/she submitted a written declaration to the Election Commission of Pakistan or Returning Officer to be treated as the candidate of another political party or as an independent candidate;
 - ii. A returned candidate to the National Assembly or the Provincial Assembly, who in his/her nomination paper has declared on oath to belong to PTI and duly submitted a certificate of the same political party confirming that he/she is the nominated candidate of PTI for the respective constituency, shall remain so, and this consistent position maintained by a returned candidate throughout the electoral process should be legally recognized by the Election Commission of Pakistan and such returned candidate cannot be treated as the returned candidate of another political party or as an independent returned candidate, and thus, the reserved seats for women and non-Muslims are to be allowed/allocated to PTI, accordingly;
 - iii. A candidate nominated by PTI for a constituency of the National Assembly or the Provincial Assembly who, after being declared returned, joined another political party or sought to be treated as independent, raises serious concerns about disregarding the trust reposed in him/her by the voters, thus undermining the *will of the people*; and
 - iv. The legal implications, effects and consequences of the determinations made above in paragraphs 2(ii) and 2(iii), as well as the actions or inactions of the Election Commission

of Pakistan thereon, although deeply concerning, have not been challenged in the present appeals and petitions; and the persons who would be affected or aggrieved are not parties before this Court. Therefore, issuing definitive directions to the Election Commission of Pakistan qua the allocation of specific number of reserved seats for women and non-Muslims to a political party in the National Assembly and the Provincial Assemblies would not be legally appropriate.

3. Accordingly, the Election Commission of Pakistan is directed to decide the allocation of reserved seats for women and non-Muslims to political parties in the National Assembly and the Provincial Assemblies in the light of the determinations made hereinabove after providing an opportunity of hearing to the parties concerned, and if required revisit its earlier decisions on the matter. The needful be done within seven days of the receipt of this order."

Judge

Islamabad.
Dated: 13th August, 2024