

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

In Chambers:

Justice Syed Mansoor Ali Shah
Justice Munib Akhtar
Justice Muhammad Ali Mazhar
Justice Ayesha A. Malik
Justice Athar Minallah
Justice Syed Hasan Azhar Rizvi
Justice Shahid Waheed
Justice Irfan Saadat Khan

CMA No. 7540 of 2024 in CAs. 333 & 334 of 2024 etc.

(Filed on behalf of ECP, seeking guidance on certain legal and factual issues)

AND

CMA No. 8139 of 2024 in CAs. 333 & 334 of 2024 etc.

(Reply to the CMA 7540/24 on behalf of PTI)

Sunni Ittehad Council through its Chairman, ... *Appellants*
Faisalabad and another

vs

Election Commission of Pakistan through its ... *Respondents*
Secretary, Islamabad and others

ORDER

Through CMA 7540/2024, and in terms of the short order dated 12.07.2024 whereby these appeals were decided by majority (“Short Order”) the Election Commission of Pakistan (“Commission”) purports to seek guidance on the point that “[i]n absence of a valid organizational structure of Pakistan Tehreek-i-Insaf (PTI), who will confirm the political affiliation of the returned candidates (MNAs and MPAs) on behalf of PTI, who have filed their statements in light of the Supreme Court Order [dated 12 July 2024].” We may note that other than a copy of the Short Order the application is bereft of any other documentation.

2. In reply to the above application, the PTI has filed CMA 8139/2024, to which have been annexed a number of documents, including correspondence between the PTI and the Commission. We have considered the material that has been placed before us.

3. By way of brief recapitulation, in paragraphs 4 and 5 of the Short Order it has been categorically declared that the lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in an election (whether general or bye) and to field candidates, and that for the purposes, and within the meaning, of

paragraphs (d) and (e) of clause (6) of Article 51 and paragraph (c) of clause (3) of Article 106 of the Constitution of the Islamic Republic of Pakistan, PTI was and is a political party, which secured or won (the two terms being interchangeable) general seats in the National and Provincial Assemblies in the General Elections of 2024 as provided in that Order. These paragraphs, and the preceding paragraph 3 of the Short Order, sound on the constitutional plane, being the proper interpretation and understanding of the relevant constitutional provisions. The other paragraphs of the Short Order, including in particular paragraphs 8 and 10, are consequential upon what has been held and declared in the paragraphs just noted, and flow and emanate from, and give effect to, constitutional conclusions. All of these points will be explicated in the detailed reasons for the decision of the majority (i.e., the Short Order), which is the binding judgment of the Court.

4. Turning now to the specific clarification purportedly sought, the PTI in its reply has annexed a number of notices issued by the Commission to the PTI through Barrister Gohar Ali Khan, in which it has itself identified the latter as the Chairman of PTI. Furthermore, the certifications required to be issued by a political party (here the PTI) and filed with the Commission in terms of paragraphs 8 and 10 of the Short Order have, as per the record placed before us in relation to the returned candidates (now respectively MNAs and MPAs) in the National and the Sindh, Punjab and Khyber Pakhtunkhwa Provincial Assemblies, been issued under the signatures of Barrister Gohar Ali Khan and Mr. Omar Ayub Khan, who are identified therein as being, respectively, the Chairman and Secretary General of the PTI. These certifications are dated 18.07.2024, 24.07.2024 and 25.07.2024 and list, in each case, the particulars of the relevant returned candidate (now MNA or MPA as the case may be) and in particular the dates on which the declaration required of the candidate (again, in terms of paragraphs 8 and 10 of the Short Order) was filed with the Commission. These dates obviously all precede the respective dates of certification.

5. Putting together the record placed before us, and considering the same in the light of the Short Order, leaves in little doubt that the clarification sought by the Commission in terms of the CMA 7540/2024 is nothing more than a contrived device and the adoption of dilatory tactics, adopted to delay, defeat and obstruct implementation of the decision of the Court. This cannot be countenanced. Even on the application of elementary principles of law, the application filed by the Commission is misconceived. Having itself

recognized Barrister Gohar Ali Khan as the Chairman of PTI, the Commission cannot now turn around and purport to seek guidance from the Court with regard to how the certifications are to be dealt with. The Commission cannot approbate and reprobate, taking whatever (shifting) stance as it desires and as may seem to suit its immediate purposes for the moment. Furthermore, the Commission, even if one were to consider the application in the most sympathetic light, has apparently forgotten the well known *de facto* doctrine or rule, in terms of which the acts of a person who holds an office are protected even if there may be (and no such conclusion is reached here in relation to the PTI) any issue with the position *de jure*. It sufficed and the Commission was duty bound in terms of the Constitution to keep in mind that the admitted position (as stated before the Court during the hearing of the appeals) is that the PTI was, and is, an enlisted political party. This position was not only accepted and relied upon by us (eight Judges) but also by our three learned colleagues in minority (Hon'ble the Chief Justice, Justice Yahya Afridi and Justice Jamal Khan Mandokhail). Their lordship appear to have also accepted the validity of the party certificates (party tickets) issued by Barrister Gohar Ali Khan and thus his capacity to act for PTI as its Chairman. Furthermore, having itself issued notices to the PTI through Barrister Gohar Ali Khan as its Chairman, the Commission gave recognition to both the party and the office holder. That sufficed absolutely for purposes of the Short Order. It would be completely illogical to assume that a political party, a juristic person, is fully functional yet there are no natural persons who are either *de facto* or *de jure* performing its functions or running its affairs. Saying (as the Commission now in effect does through CMA 7540/2024) that a political party is an enlisted political party, fully functional for the purposes of its formation, yet there is no one that can perform its functions and run its affairs, amounts to blowing hot and cold in the same breath or, as noted, approbating and reprobating one and the same fact. There could have been no conceivable doubt that the certifications referred to above were correct and valid in terms of the Short Order and the continued denial and refusal of the Commission to accept the same, as and when filed, is constitutionally and legally incorrect and may expose the Commission to such further or other action as may be warranted in terms of the Constitution and the law.

6. But there is another, and more fundamental, aspect that must also be alluded to. It was categorically declared in paragraph 8 of the Short Order that on filing the requisite statement and its confirmation by the political

party concerned, the seat secured by such candidate shall be forthwith deemed to be a seat secured by that political party. Therefore, upon submission of the declarations and certifications referred to above, the position of the returned candidates (now respectively MNAs and MPAs) immediately and *ipso facto* stood determined and fixed as a matter of law as on those dates and no subsequent act can alter what became, on the respective dates, past and closed transactions. As per the position so determined, the said returned candidates were and are the returned candidates of PTI and thus members of the parliamentary party of PTI in the National Assembly and Provincial Assemblies concerned, for all constitutional and legal purposes. The attempt by the Commission to confuse and cloud what is otherwise absolutely clear as a matter of the Constitution and the law must therefore be strongly deprecated. The list required to be issued by the Commission in terms of paragraph 8 (read with paragraph 10) of the Short Order is nothing more than a ministerial act, for the information and convenience of all concerned, and has no substantive effect. Nonetheless, the continued failure of, and refusal by, the Commission to perform this legally binding obligation may, as noted, have consequences. This obligation must be discharged forthwith.

7. With the above clarifications, the present application is disposed of. Office shall dispatch a copy of this order to the respective parties.

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

Dated 14th September 2024.