

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, CJ
Mr. Justice Amin-ud-Din Khan
Mr. 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. 32/23)

Mr. Abid S. Zuberi, ASC.
assisted by Miss Amna Khalili, Adv.
Mr. Muqtadir Akhtar Shabbir, ASC.
Ms. Bushra Qamar, ASC.
Mr. Saleem Akhtar Warraich, ASC.
Mr. M. Sharif Janjua, AOR.

For the Petitioner:
(In Const.P. 36/23)

Mr. Anwar Mansoor Khan, Sr. ASC.
(Through video-link from Karachi)

For the Appellant:
(In CM Appeal 118/23)

Syed Ali Zafar, ASC.
(Through video-link from Lahore)

For the Appellant:
(In CM Appeal 119/23)

Mr. Ibad-ur-Rehman Lodhi, ASC.

For the Respondents:

Not represented.

Date of Hearing:

23.10.2023.

ORDER

1. Constitution Petition No. 32 of 2023 has been filed by the Supreme Court Bar Association of Pakistan through its Secretary and three Members on 16 August 2023. Constitution Petition No. 36 of 2023 has been filed by Mr. Munir Ahmed, an Advocate of the High Court on 13 September 2023. We enquired from learned Mr. Abid S. Zuberi representing the petitioners in Constitution Petition No. 32/2023 and learned Mr. Anwar Mansoor Khan representing the petitioner in Constitution Petition No. 36/2023 as to why applications seeking urgent fixation of these petitions were not filed, particularly since they were time sensitive, but received no answer.

2. Civil Miscellaneous Appeal No. 118 of 2023 has been filed by Pakistan Tehreek-e-Insaf (**'PTI'**) through its Secretary General, Mr. Omer Ayub on 28 August 2023. And, Civil Miscellaneous Appeal No. 119 of 2023 has been filed by Mr. Ibad-ur-Rehman Lodhi, an Advocate of the Supreme Court. Both the said Appeals were filed against the orders of the office which had questioned the maintainability of the petitions, including on the ground that the President of the Islamic Republic of Pakistan enjoys immunity in terms of Article 248 of the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**), and while the incumbent, Dr. Arif Alvi, holds the office of the President an order cannot be passed against him. The ordinary procedure stipulates that an appeal filed against office objections is heard by a Judge-in-Chambers. However, since two petitions seeking apparently similar relief are fixed in Court today both the said Appeals were fixed in Court today.

3. The learned counsel for the petitioners and the petitioner representing himself, who is also an Advocate of the Supreme Court, commenced their submissions by stating that the general elections are being delayed because the '7th Population and Housing Census, 2023', held pursuant to section 31 of the General Statistics (Re-organization) Act, 2011, was conducted belatedly. It is submitted that the Council of Common Interest (**'CCI'**), pursuant to Article 154(1) of the Constitution read with

entry nine of Part-II of the Federal Legislative List¹ is empowered to approve the census, which it did on 5 August 2023.² Reference was also made to the proviso to Article 51(5) of the Constitution, which reads as under:

‘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.’

4. It had taken the CCI about four years to approve the ‘6th Population and Housing Census, 2017’ which was finally approved on 12 April 2021, as under:

‘The CCI decided to approve the Final Results of the 6th 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 Census should start as early as possible according to international best practices by using latest technology.’

5. Presumably, pursuant to the abovementioned CCI decision of 12 April 2021, the 7th Population and Housing Census, 2023 was carried out. It is submitted that the CCI could not have approved the 7th Population and Housing Census, 2023 because two provinces, respectively Punjab and Khyber Pakhtunkhwa, could not legally participate in the CCI meeting. We enquired whether, if for the sake of argument, it be assumed that the said two provinces did not vote to approve the said census would it negate its approval by the other members of the CCI. Another question which arose was, if for the sake of argument, the 7th Population and Housing Census, 2023 was to be disregarded, could the general elections be held pursuant to the 6th Population and Housing Census, 2017, when the proviso to Article 51(5) of the Constitution had categorized it as ‘*provisional*’ and restricted its scope to the ‘*general elections to be held in 2018 and bye-elections related thereto*’.

6. We note that Article 222(b) of the Constitution empowers Parliament to make laws providing for ‘*delimitation of constituencies*’. Consequently, *Delimitation of Constituencies* was provided in chapter III of the Elections Act, 2017, and the Election Commission of Pakistan (**ECP**) issued

¹ Constitution of the Islamic Republic of Pakistan, Fourth Schedule.

² Notification, S.R.O 1012(I)/2023, published in the Gazette of Pakistan, Extraordinary, on 7 August 2023.

notification dated 17 August 2023³ setting out the '*schedule for carrying out of delimitation of constituencies afresh in accordance with the official result of 7th Population and Housing Census, 2023*'. As per this notification the first action to be taken was on 17 August 2023 and the last action, that is, the '*Final Publication of Delimitation*' would take place on 14 December 2023; we are informed that the notification was amended on 1 September 2023 and had brought forward the date of '*Final Publication of Delimitation*' to 30 November 2023.

7. It is further submitted that the Constitution mandates that the elections be held within ninety days of the date of dissolution of the National and provincial assemblies, but if credence is given to the 7th Population and Housing Census, 2023 and its approval by CCI and delimitation is to take place, then elections cannot be held within ninety days. Reference was also made to section 57 of the Elections Act, 2017 and we are told that the minimum period required (after delimitation) would commence after '*seven days of the announcement under sub-section (1)*' of section 57, and would require a minimum period of 54 days.

8. We enquired from the learned counsel and the petitioner representing himself whose obligation it was to announce the date of elections, and received contradictory answers. Some stated that it was the President and the others that it was the ECP. However, all unanimously stated that it was no longer possible to hold elections within ninety days of the dissolution of the assemblies. Learned Syed Ali Zafar referred to Article 254 of the Constitution and stated that if a particular period is prescribed in the Constitution and something cannot be done within such period, which in the instant petitions would be the holding of general elections, it would not render invalid or ineffective the elections that will be held. Article 254 of the Constitution provides that:

'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.'

9. Three out of the four petitions have arrayed the President as a respondent. Constitution Petition No. 36/2023 attaches a purported message of the President, conveyed through social media (X, formerly

³ No.F.9(1)/2021-Elec-I.

Twitter) which simply calls for the views of the ECP. If the said message was of the President, it leads to the question of whether the country can be run on the basis of such messaging on social media. Copy of a legal notice dated 12 August 2023 has also been attached whereby the petitioner's counsel, Mr. Mohammad Azhar Siddique, writes to the President calling upon him to announce the date of elections and issue notification in this regard. However, learned Mr. Anwar Mansoor Khan who represents the same petitioner (in Constitution Petition No. 36/2023) does not assign blame, let alone hold the President responsible for not announcing the date for holding elections.

10. We pointed out that if matters other than holding of elections are to be taken up, they would require constitutional interpretation and as such would attract section 4 of the Supreme Court (Practice and Procedure) Act, 2023, and a larger bench in terms thereof will have to be constituted. Thereupon, all the learned counsel and the petitioner who represents himself stated that they restrict their prayers in the petitions only to the holding of the general elections, and that they have no objection to this three-member bench hearing the petitions.

10. Therefore, to ascertain when general elections are to be held, issue **notice** to the Election Commission of Pakistan. Notice be also issued to the Federation of Pakistan. Copy of the order passed today to accompany the notices. To come up on **Thursday, 2 November 2023 at 11.30 am.**

Chief Justice

Judge

Judge

Islamabad:
23.10.2023
(M. Tauseef)