

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

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Amin-ud-Din Khan  
Justice Jamal Khan Mandokhail  
Justice Naeem Akhtar Afghan  
Justice Aqeel Ahmed Abbasi

**Civil Appeal Nos. 842 and 843 of 2024**

*(On appeal from the judgment dated 29.05.2024 of the Lahore High Court, Lahore passed in Writ Petitions No. 28985 and 31120 of 2024)*

**AND**

**C.M. Application Nos.5387 & 5388/24**

*[Stay Applications]*

*Election Commission of Pakistan through  
Chief Election Commissioner, Islamabad.* ... *(In both cases)*  
*Appellant*

*Versus*

*Salman Akram Raja and others.*  
*(In CA. 842/2024)*

*Rao Omar Hashim Khan and others.* ... *Respondents*  
*(In CA. 843/2024)*

**AND**

**Case Under Objection No. 72 of 2024**

**IN**

**Constitution Petition NIL/2024**

*Muhammad Shabbir Awan and others.* ... *Petitioners*  
*Versus*

*Election Commission of Pakistan through Chief Election  
Commissioner, Islamabad and others.* ... *Respondents*

**AND**

**Civil Review Petition No. 318 of 2024**

*[For review of the order dated 04.07.2024 passed by this Court]*

**IN**

**Civil Appeal No. 842 of 2024**

*Salman Akram Raja.* ... *Petitioner*  
*Versus*

*Election Commission of Pakistan through Chief Election  
Commissioner, Islamabad and others.* ... *Respondents*

For the Appellant: Mr. Sikandar Bashir Mohmand, ASC.  
*(In CAs. 842 & 843/24)* Assisted by  
Abdullah Noor, Hamza Azmat, Khizar Hayat  
and Imran Khan, Advocates.

Mr. Muhammad Arshad,  
Special Secretary, ECP.  
Mr. Khurram Shahzad, Addl. DG.  
Mr. Falak Sher, A.D.

For the Petitioners:  
(In CUO.72/24)

Mr. Sameer Khosa, ASC.

For the Petitioner:  
(In CRP. 318/24)

Mr. Salman Akram Raja, In-person.

**In CA. 842/24:**

Respondent No. 1:

Mr. Salman Akram Raja, In-person.

Respondents No. 4:

Mr. Shoukat Mahmood, In-person.

For Respondent No. 5:

Mr. Anwar Mansoor Khan, Sr. ASC.

For Respondent No. 6:

Nemo.

For Respondent No. 7:

Mr. Salman Akram Raja, ASC.

For Respondent No. 9:

Mr. Uzair Karamat Bhandari, ASC.  
Assisted by Momal Malik, Advocate

For Respondent No. 12:

Mr. Abid S. Zuberi, ASC.  
Assisted by Hira Fatima and Arif Ansari, Adv.

**In CA. 843/24:**

For Respondent No. 1:

Mr. Sameer Khosa, ASC.

For the Federation:

Mr. Mansoor Usman Awan,  
Attorney-General for Pakistan.  
Ch. Aamir Rehman,  
Additional Attorney-General for Pakistan.

Date of Hearing:

24.09.2024.

**JUDGMENT**

**Qazi Faez Isa, CJ.**

1. Mr. Salman Akram Raja who represented himself and was also an advocate for another respondent submitted when these cases came up for hearing before a two-member Bench that since they required the interpretation of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**'), therefore, they be placed before the Committee constituted under section 2 of the Supreme Court (Practice and Procedure) Act, 2023 for the constitution of a larger Bench under its section 4. Therefore, the matter was placed before the Committee which constituted this five-

member Bench to hear these appeals. Notice under Order XXVII-A of the Code of Civil Procedure, 1908 was also issued to the Attorney-General for Pakistan.

2. Learned Mr. Sikandar Bashir Mohmand represents the Election Commission of Pakistan (**'the ECP'**), the appellant, and the appeals assail a common judgment dated 29 May 2024 of the Lahore High Court passed in two writ petitions filed by two individuals who respectively are respondent No. 1 in each appeal. The writ petitions had challenged the authority of the ECP to appoint Election Tribunals and contended that the Chief Justice of the Lahore High Court has primacy in the consultation process. The learned single Judge interpreted the Constitution and the Elections Act, 2017 (**'the Elections Act'**) with reference to the decisions in the cases of *Al-Jehad Trust v Federation of Pakistan* (PLD 1996 Supreme Court 324) and *Riaz-ul-Haq v Federation of Pakistan* (PLD 2013 Supreme Court 501) and held that the Election Tribunals are to be appointed on the recommendation of the Chief Justice of the Lahore High Court.

3. The learned Mr. Sikandar Bashir Mohmand had submitted that the impugned judgment does not accord with Articles 219(c), 222(d) and its proviso, 225 of the Constitution and sections 140(1) and (3) and 151 of the Elections Act. The referred provisions are reproduced hereunder:

Constitution:

'219. The Commission shall be charged with the duty of'

'(c) appointing Election Tribunals;'

'222. Subject to the Constitution, Majlis-e-Shoora (Parliament) may by law provide for'

'(d) the conduct of elections and election petitions the decision of doubts and disputes arising in connection with elections;'

'but no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or the Election Commission under this Part.'

'225. No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament).'

Elections Act:

'140. Appointment of Election Tribunals. (1) For the trial of election petitions under this Act, the Commission shall appoint as many Election Tribunals as may be necessary for swift disposal of election petitions.

(2) An Election Tribunal shall comprise

- (a) in the case of an election to an Assembly or the Senate, a person who is a Judge of a High Court; and
- (b) in the case of an election to a local government, a District and Sessions Judge or an Additional District and Sessions Judge.

(3) The Commission shall appoint a sitting judge as Election Tribunal in consultation with the Chief Justice of the High Court concerned.'

'151. Power to transfer petition. The Commission may at any stage, on its own motion or on an application of a party and for reasons to be recorded, transfer an election petition from one Election Tribunal to another Election Tribunal and the Election Tribunal to which the election petition is transferred

- (a) shall proceed with the trial of the election petition from the stage from which it is transferred; and
- (b) may, if it deems fit, recall and examine any witness who has already been examined.'

4. The ECP by relying upon the aforesaid provisions grants to the ECP power to appoint Election Tribunals contended the learned counsel representing ECP. The learned counsel submitted that since the said provisions are abundantly clear they did not require any interpretation and the interpretation of the learned Judge of the High Court is, with respect, incorrect. He further submitted that the judgments relied upon by the learned Judge respectively were in respect of the appointment of Judges (prior to the amendment to the Constitution) and with regard to the appointment of chairpersons and members of administrative tribunals, and neither was applicable to the appointment of the Elections Tribunals. He further contended that writ petitions were not maintainable for the reason that a writ petition does not lie in respect of an administrative order of the Chief Justice; that the matter was between a constitutional body, the ECP,

and a constitutional office holder, the Chief Justice, with regard to which the petitioners before the High Court had no concern and that neither of them were *aggrieved person* or *aggrieved party* under Article 199 of the Constitution.

5. Mr. Salman Akram Raja who was one of the petitioners before the High Court, stated that he is also the Advocate of another respondent in the appeals. He stated that the writ petitions filed in the High Court were maintainable because only two Election Tribunals were constituted, which were insufficient for the province of Punjab, and that the ECP had not complied with its constitutional and legal duty. He further stated that though the ECP is a constitutional body it is not judicially empowered to appoint Election Tribunals and that judicial power exclusively vests in the High Court. And, that meaningful consultation with the Chief Justice of the Lahore High Court was required for appointment of Election Tribunals but since this was not done by the ECP, therefore, the Election Tribunals could not be constituted by the ECP. He concluded by stating that the petitioners before the High Court had contested elections and wanted their election petitions promptly decided, which brought them within the ambit of *aggrieved persons*.

6. We were informed that no disagreement occurred nor problem was encountered with regard to the appointment of the Election Tribunals in other provinces, and the ECP pursuant to this Court's direction had filed documents in this regard. However, the present dispute is only with regard to the Punjab, therefore, we need not concern ourselves with the appointments made in the other areas of Pakistan. It transpired that the ECP had written letters dated 14 February 2024 to the Registrars of all the High Courts, seeking names of the Judges for appointment as Election Tribunals. The Registrar of the Lahore High Court (hereinafter '**the Registrar**') responded *vide* letter dated 20 February 2024 and provided the names of two Hon'ble Judges of the Lahore High Court, in respect of whom requisite Notification was issued by the ECP on the same day (20 February 2024), and subsequently the ECP also notified their respective territorial jurisdictions. The Registrar had not specified the territorial jurisdiction of these two Hon'ble Judges. The Registrar after forty-five days wrote another letter dated 4 April 2024 to the ECP through which another six Hon'ble Judges were nominated as Election Tribunals, however, this time their respective territorial jurisdictions were also stated; three for Lahore and one

each for Bahawalpur, Multan and Rawalpindi. The ECP, however, issued Notification dated 26 April 2024 and nominated only two of the Hon'ble Judges whose names were sent by the Registrar and also mentioned their respective territorial jurisdictions. On the same day (26 April 2024) the ECP wrote to the Registrar stating that, '*...humbly requested to provide the panel of Hon'ble sitting judges to the Election Commission of Pakistan for their appointment as Election Tribunal for the trial and disposal of Election Petitions pertaining to National/Provincial Assembly Constituencies of the Rawalpindi and Bahawalpur Divisions*'.

7. The Registrar through an undated letter, bearing No. 06/RHC, objected to the ECP unilaterally deciding to accept only certain Judges and that it had also specified their respective territorial jurisdictions. The ECP responded *vide* letter dated 6 May 2024 and followed it by issuing Notification dated 9 May 2024. The Registrar responded *vide* letter dated 10 May 2024 to which the ECP sent reply dated 16 May 2024.

8. In view of the fact that there were insufficient Election Tribunals and as election petitions are to be expeditiously decided two contesting candidates had invoked the constitutional jurisdiction of the Lahore High Court, Lahore by filing the said writ petitions, which were decided through the impugned judgment dated 29 May 2024. Pursuant to the impugned judgment the Lahore High Court, Lahore itself issued 'Notification' No. 17/RHC dated 12 June 2024.

9. On 4 July 2024 we had enquired from the learned Advocate of the ECP whether the ECP or its Chief Election Commissioner had met with the Chief Justice of the Lahore High Court and whether there had been a meaningful consultation between them. He stated that no meeting had taken place and *consultation* was through the referred correspondence. He, however, referred to letter dated 27 June 2024 of the ECP written to the Registrar, which is reproduced hereunder:

'Subject: Appointment of Election Tribunal(s) for General Elections-2024 under Article 225 of the Constitution read with section 140 of the Elections Act, 2017.

Dear Sir,

In continuation of this Commission's letter of even number dated 16<sup>th</sup> May, 2024, on the captioned Subject. I am directed to convey that on behalf of

Election Commission of Pakistan, Chief Election Commissioner of Pakistan intends to meet Hon'ble Chief Justice of Lahore High Court, Lahore on the issue of appointment of Election Tribunals.

2. An early response in this regard shall be appreciated.'

10. The ECP is a constitutional body and the Hon'ble Chief Justice is a constitutional office holder. Both are deserving of the highest respect. Therefore, we had expressed our confidence that if there had been a face to face meeting and a meaningful consultation ensued the matter could have been amicably resolved. The learned Attorney-General for Pakistan agreed and stated that consultation should be meaningful. Therefore, without advertent to the merits of the case we had directed the ECP/Chief Election Commissioner to meet with the Hon'ble Chief Justice of the Lahore High Court, in an atmosphere of meaningful consultation with regard to the subject matter. And, with a view to enable this the ECP's letter dated 26 April 2024, ECP's notification dated 26 April 2024, the Registrar's undated letter No. 06/RHC, the impugned judgment dated 29 May 2024 and the Lahore High Court's Notification dated 12 June 2014 were suspended. It was further observed that the said meeting should be held in the office of Chief Justice of the Lahore High Court in deference to such office.

11. The learned counsel representing the ECP states that the said meeting and meaningful consultation took place with the Hon'ble Chief Justice of the Lahore High Court and a consensus emerged. We have also received 'Report' dated 18 July 2024 (which has been numbered as CMA No. 8039/2024) from the Registrar which confirms that the matter was amicably resolved between the Hon'ble Chief Justice of the Lahore High Court and the ECP. And, we are informed that sufficient number of Election Tribunals will be appointed/constituted immediately.

12. Since the matter has been amicably resolved there is no need to decide these cases. We want to record our appreciation that the Hon'ble Chief Justice of the Lahore High Court, who holds an important constitutional office, and the ECP, which is a constitutional body, have amicably settled the matter. Undoubtedly, they realized their respective constitutional and legal responsibilities and rose to the occasion to do the needful.

13. If the learned Judge whose judgment is impugned herein had realized that a face-to-face meeting had not taken place by the ECP/Chief Election Commissioner with the Hon'ble Chief Justice we are sure he would not have passed the impugned judgment. Moreover, whenever a party to a dispute/disagreement is a constitutional body or constitutional office holder a cautious approach should be adopted and it must be ensured that adjudication is resorted to as a last resort and when necessitated. The people, who we all eventually serve, expect nothing less. Therefore, since the matter has been amicably resolved to the satisfaction of the Hon'ble Chief Justice of the Lahore High Court and the ECP adjudication was not called for, resultantly, the impugned judgment is set aside and also the notification dated 12 June 2024 issued pursuant thereto. Moreover, though we do not expect, however, since such a dispute may one day have to be adjudicated upon we hold that anything stated in the impugned judgment should not be referred to before any court.

14. Resultantly, these appeals are allowed in the aforesaid terms and the listed applications, the Civil Review Petition and the Case Under Objection are disposed of.

Chief Justice

Judge

Judge

I concur with the findings, however, I have appended my additional note.

Judge

Note: I concur with the disposal of these Civil Appeals in the above terms in view of settlement reached between the parties pursuant to Report dt. 18.7.2024 (CMA No. 8039/2024) however fully endorse the opinion and reasoning of J. Jamal Khan Mandokhail, whereas, setting aside the judgment of Lahore High Court will not render the same as illegal in view of the fact that no finding has been rendered as to merits of the case.

Judge

Islamabad:  
(M. Tauseef)

Announced in open Court on 30 September 2024 at Islamabad.

Chief Justice

Approved for reporting



## Civil Appeals No. 842 & 843 of 2024

*Election Commission of Pakistan*

v.

*Rao Omar Hashim Khan & others AND  
Salman Akram Raja & others*

I have had the privilege of going through the judgment authored by the Hon'ble Chief Justice. I concur with the findings rendered and conclusion drawn therein. However, I feel it appropriate to append my own opinion and reasoning to the points in issue involved in these appeals.

### **Power to Appoint Election Tribunal:**

2. The Election Commission of Pakistan ('**Commission**') is constituted under Article 213 of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**') and under sub-paragraph of the said Article, the Commission shall have such powers and functions as are conferred on it by the Constitution and law. Under Article 218(3) of the Constitution, it is the duty of the Commission to organize and conduct the election and to make arrangements as necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against. According to Article 219 of the Constitution, the Commission is exclusively charged with a duty to appoint as many Election Tribunals ('**Tribunal**') as may be necessary for swift disposal of elections petitions.

### **Procedure for Appointment:**

3. The Constitution does not provide the procedure, qualification and manner of appointment of Tribunal, however, Article 213(3) of the Constitution provides that the Commission shall have powers and functions as are conferred on it by the Constitution and law. To regulate the power and function of the Commission with regard to appointment of Tribunal, procedure has been provided by section 140 of the Elections Act, 2017 ('**the Act**'), which is reproduced herein below:

**140. Appointment of Election Tribunals.** (1) *For the trial of election petitions under this Act, the Commission shall appoint as many Election Tribunals as may be necessary for swift disposal of election petitions.*

(2) *An Election Tribunal shall comprise----*

*(a) in the case of an election to an Assembly or the Senate, a person who is a Judge of a High Court; and*

*(b) in the case of an election to a local government, a District and Sessions Judge or an Additional District and Sessions Judge.*

(3) *The Commission shall appoint a sitting Judge as Election Tribunal in consultation with the Chief Justice of the High Court concerned.*

4. No doubt, the power to appoint Tribunals rests only with the Commission, but in order to ensure free and fair election, an independent machinery is necessary. In such view of the matter, the power to adjudicate such delicate task, has been assigned to the judiciary. Therefore, in case of appointing a sitting Judge of a High Court, consultation with the Chief Justice of the High Court concerned by the Commission is a condition precedent. The purpose of consultation is because of the realization that the Chief Justice is not only the administrative head of the High Court but also is in best position to know and assess the suitability and availability of the Judges. As several Judges are performing their functions in different Benches, therefore, while nominating Judges, it will be convenient for the Chief Justice to consider availability of Judges at relevant Benches. In this way, the determination of territorial jurisdiction can also be resolved suitably. Once the Chief Justice nominates Judges for the purpose of appointment as Tribunals, the Commission is bound to accept the names and notify them accordingly, unless, there are cogent reasons, which must be communicated to the Chief Justice. If the Chief Justice is satisfied with the reasons advanced by the Commission, he may substitute a Judge accordingly.

#### **Panel of Judges:**

5. The Constitution and section 140 of the Act do not provide for any provision, enabling the Commission to request for a panel of Judges for the purpose of appointment as Tribunals. The intention of the Legislature is evident of the fact that they did not assign power to the Commission to

ask for a panel of Judges and pick and choose a Judge of its own choice amongst them. The Commission must have a faith in every Judge and can only ask a Judge against each Tribunal. The primacy, therefore, lies in the final opinion of the Chief Justice.

6. Even otherwise, the Commission is a constitutional body and the Chief Justice and Judges are holding constitutional posts. It is expected that members of both the institutions must respect each other and in case of any issue, they are supposed to have a meaningful consultation as has been provided by the Act. In the case in hand, earlier there was no meeting between the two institutions, therefore, there was no proper consultation, which has resulted into litigation. During the pendency of these appeals, when the Hon'ble Chief Justice and the Commission decided to have a meaningful consultation, the result is before us that consensus has developed between them. I hope that now the Commission will take all necessary steps immediately, enabling the Tribunals to start functioning and to conclude the proceedings upon the petitions within the stipulated period of time, accordingly.

(Jamal Khan Mandokhail  
Judge

*Islamabad*  
*K.anees and Waqas Ahmad, LC*  
**APPROVED FOR REPORTING**