

Athar Minallah, J.- The arguments advanced today by the counsel on behalf of the Election Commission of Pakistan (**'Commission'**) have raised profound questions of public importance, having far reaching consequences in the context of fundamental rights, particularly the representative character implicit and embedded in the scheme of the Constitution. The questions are rooted in the legitimacy of the electoral process. The counsel has unequivocally argued that one of the major enlisted political parties was purportedly disqualified from the competitive electoral process on the basis of the Commission's interpretation of the judgment of this Court. Prima facie, the interpretation was flawed and the judgment could not have been construed as having the effect of disqualifying a major political party from the general elections. The counsel has argued that it was on this basis that the Commission had declared the candidates nominated by Pakistan Tehrik-e-Insaaf ('PTI') as independents. This undisputed fact is evident from the orders passed by the Commission, which have been placed on record. The counsel attempted to shift the burden of declaring the candidates of PTI as independents on the Returning Officers. The record placed before us showed, prima facie, that the circumstances were unusual and extra ordinary because the candidates of the purportedly disqualified enlisted political party were desperately endeavouring to maintain their status, as far as the voters were concerned, as a political entity.

2. The arguments advanced by the counsel on behalf of the Commission have raised grave questions regarding the integrity of the electoral process and the role of a constitutional body vested with the onerous duty of conducting credible and genuine electoral contests. The exclusion of a major political party from the general elections by the Commission, on the basis of its flawed interpretation of the judgment of this Court, definitely has the consequence of the

disenfranchisement of voters and thus deprivation of the reserved seats. The fundamental mechanism for giving effect to the political representation implicitly entrenched in the scheme of the Constitution is solely based on ensuring a genuine and credible electoral process. The pivotal factor in determining the electoral process to be genuine and credible is solely the public trust in the electoral institution entrusted with the constitutional obligation to conduct the elections i.e the Commission. The legitimacy of governance, future policies, legislation and public trust in the representative institutions exclusively depends on the integrity of the electoral process and the electoral institutions. The buck stops with the Commission. The onus is on the Commission to satisfy this Court that a major political party was justifiably excluded from the political and electoral process and that conditions were not created for depriving it of the legitimate right to claim its share of reserved seats. The failure of the Commission to discharge this onus would definitely raise grave questions regarding the fulfilment of the constitutional duty to conduct elections in accordance with the mandate of the Constitution. The matter before us has a direct nexus with the purported disqualification of one of the major political parties from the electoral process on the basis of a flawed interpretation of the judgment of this Court.

3. This Court is the custodian of the rights of the people and the right to vote is one of the most important fundamental rights. All other rights become illusory and the constitution is gravely violated when voters are disenfranchised because the Commission fails in its duty to conduct the elections in accordance with the mandate of the Constitution. The Constitution has vested the exclusive extraordinary jurisdiction under Article 184(3) in addition to doing complete justice in the exercise of the duty conferred under Article 187 of the Constitution. This Court cannot be a slave to technicalities in a matter

of such public importance that affects every citizen and the future governance of the country. There are petitions pending before this Court raising questions regarding the integrity of the electoral process during the general elections and the alleged violations of fundamental rights of the voters and political workers. This court cannot turn a blind eye by ignoring the grave allegations regarding the integrity of the electoral process as doing so would have profound consequences regarding the matter in hand. This Court cannot and must not be seen as ignoring the elephant in the room. It cannot be perceived as being complicit in the alleged failures of the Commission to conduct genuine and credible elections as mandated under the Constitution. It is the onerous duty of this Court to ensure that no voter is disenfranchised and the questions regarding integrity of the electoral process are not ignored.

4. As a member of this Bench I had, therefore, directed the Commission, through the counsel who had appeared before us, to place on record the nature of complaints received prior to, during and after the general elections held on February 8, 2024, and to satisfy this Court that each political player was dealt with in accordance with the command of the Constitution by providing a level playing field to all of them. The question of the reserved seats before us cannot be decided in isolation nor on the basis of technicalities and pleadings of the parties. The larger issue involves the most fundamental democratic and constitutional right of the real stake holders; the people of Pakistan. They are not before us and, as the highest Court vested with jurisdictions under Articles 184(3) and 187 of the Constitution, the approach ought to be inquisitorial. It is reiterated that the buck stops with the Commission to satisfy this Court that each political party had a level playing field in the electoral process and that no stone was left

untuned to discharge the onerous constitutional duties under the Constitution.

5. The Commission is, therefore, directed to submit its concise statement in the light of the above observations, particularly satisfying this Court that the PTI, as a political party, was excluded from the electoral process legitimately and thus it cannot claim any reserved seat. It is also for the Commission to satisfy this Court that a level playing field was provided and ensured before, during and after the general elections to all the political parties, including PTI. I am also of the opinion that the petitions pending before this Court raising questions regarding the integrity of the election process be fixed and heard with the petitions in hand.

(Justice Athar Minallah)