

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Munib Akhtar
Mr. Justice Amin-ud-Din Khan
Mr. Justice Jamal Khan Mandokhail

CONSTITUTION PETITION NO.5 OF 2023

(Re: setting aside order dated 22.03.2023 passed by the Election Commission of Pakistan being ultra vires the Constitution)

Mohammad Sibtain Khan & others **...Petitioner(s)**

Versus

Election Commission of Pakistan
thr. Chief Election Commissioner,
Islamabad and others **...Respondent(s)**

For the Petitioner(s) : Syed Ali Zafar, ASC.
Mr. Gohar Ali Khan, ASC.

For the Federation : Ch. Aamir Rehman, Addl. AGP.

Date of hearing : 27.03.2023.

ORDER

Learned counsel for the petitioners submits that the order dated 22.03.2023 issued by the Election Commission of Pakistan (**ECP**) annuls the polling date fixed by the President of Pakistan in exercise of his power under Section 57(1) of the Elections Act, 2017 read with Article 112 of the Constitution of Islamic Republic of

Pakistan, 1973 (**Constitution**). It is, *inter alia*, contended that the ECP does not have any power under the law and the Constitution to pass such an order. It appears that the ECP has in the said order taken refuge behind Article 254 of the Constitution. The interpretation of that provision of the Constitution by this Court, *inter alia*, in **Presidential Reference No.1 of 1988** (PLD 1989 SC 75), **Rashid Ahmed vs. Government of Punjab** (PLD 2010 SC 573) and **Pakistan Peoples Party Parliamentarians vs. Federal of Pakistan** (PLD 2022 SC 574) envisages *post facto* protection of the validity of the acts performed beyond the time fixed therefor by the Constitution. The said Article of the Constitution does not confer the prior authorization of delay in the execution of obligations required to be performed within a specified time prescribed by the Constitution. He further urges that the grounds given for extending the date of poll to 08.10.2023 have no backing of law or the Constitution. Such grounds may be available in several situations. In the past General Elections have been held notwithstanding that such factors were present at the time of the elections, for instance in 1988 and 2008.

2. Timely General Elections held "honestly, justly, fairly and in accordance with law" are crucial for the

democratic system of government mandated by our Constitution. Any flaw, deficiency or failing in the holding of General Elections is, *prima facie*, a matter of public importance that affects the fundamental rights of the voting public.

3. In the first instance, therefore, notice is issued to the Respondents in this petition. The ECP shall come prepared to assist on the legal questions and the factual points raised in the petition.

4. To come up tomorrow i.e. 28.03.2023 at 11:30 am for further hearing.

**Sd/-
Chief Justice**

**Sd/-
Judge**

**Sd-
Judge**

**Sd/-
Judge**

Maintainability of this petition also requires consideration.

**Sd/-
Judge**

Islamabad
27.03.2023.