

IN THE SUPREME COURT OF PAKISTAN

(Original/Review Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MR. JUSTICE GULZAR AHMED

MR. JUSTICE SH. AZMAT SAEED

CIVIL MISC. APPLICATION NO.64 OF 2013

IN

CONSTITUTION PETITION NO.87 OF 2011

(For Implementation of this Courts judgment
dated 08.06.2012 passed in Const. P.No.87/2011)

AND

**CIVIL REVIEW PETITION NO.191 OF 2012 IN
CONSTITUTION PETITION NO.87 OF 2011.**

Workers Party and others.

... Petitioner (s)
(in both cases)

VERSUS

Federation of Pakistan and others.

... Respondent (s)
(in both cases)

For the petitioner (s):

Mr. Abid Hassan Minto, Sr. ASC
Mr. Bilal Hassan Minto, ASC
Mr. Mehmood A. Sheikh, AOR

On Court's Call:

Mr. Irfan Qadir,
Attorney General for Pakistan

For Election Commission of
Pakistan:

Mr. Muhammad Munir, Paracha,
Sr. ASC

Mr. Abdul Rehman,
Addl. DG (Elections)

Date of hearing:

15.01.2013

ORDER

This Court in the case of Workers' Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others Vs. Federation of Pakistan and 2 others (PLD 2012 SC 681) pronounced on 8th June, 2012, issued various directions to the Election Commission of Pakistan, to organize and conduct the elections and to make such arrangements as are necessary to ensure that the elections are conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against in terms of Article 218(3) of the Constitution of the Islamic Republic of Pakistan, 1973, as the National and Provincial Assemblies are about to complete their tenure, therefore, the learned counsel for the petitioners submitted an application stating therein non-implementation of the judgment so far. A comprehensive reply (CMA No.175 of 2013) has been submitted by the Election Commission of Pakistan, *inter alia*, stating therein that:

“The ECP has made all necessary preparations that are required to be in place for conducting a free, fair and transparent election in the country and is ready to hold elections in accordance with the provisions of the Constitution and the law.”

2. The learned Attorney General for Pakistan, during hearing of the case was asked to point out the stand of the Federal Government to hold General Elections, which are round the corner as previously on 20th February, 2008, elections were held and in

terms of Article 52, the National Assembly is about to complete its term of five years from the day of its first meeting, as is commanded by Article 52 read with Article 224 (1) and (2). He filed a statement under his signature on behalf of the Federation, which reads as under:

**“STATEMENT OF ATTORNEY GENERAL
FOR PAKISTAN”**

*Upon receipt of instructions on telephone
from the Prime Minister of Pakistan, I state as
follows:*

*“That the Federal Government desires that free
and fair elections be held in the country on time
in accordance with the Law and the
Constitution”.*

On receipt of instructions on telephone from the Prime Minister, the learned Attorney General for Pakistan stated that the Federal Government desires that free and fair elections be held in the country on time in accordance with the law and the Constitution. It is to be noted that as the Federal Government is itself desirous of conducting/holding free and fair elections in the country in accordance with the law and the Constitution, therefore, the Election Commission of Pakistan, is directed to gear up to hold the forthcoming elections in accordance with the Constitution, particularly, meeting the requirements of holding free and fair elections.

3. In the reply, which has been filed by the Election Commission of Pakistan, statements have been made to implement the judgment stepwise. The learned counsel for the petitioner is required to go through the same. Similarly, learned Attorney General for Pakistan, after having gone through the reply, shall assist this Court, on the issues raised in the judgment as well as the implementation report, which has been filed today. The learned Attorney General may undertake an exercise to fulfill the directions of this Court in respect of directions mentioned in para 81 (l), (m) and (n), which for reference are reproduced herein below:

“(l) The Election Commission is obliged to ensure that all elections witness a substantial participation of the electorate, therefore, all necessary steps must be taken to make voting compulsory in Pakistan as early as possible;

(m) In the ‘First Past the Post’ system of election, the winning candidate does not necessarily receive an absolute majority of all votes cast, therefore, such a candidate does not command the majority of the votes polled. As such, the system of ‘First Past the Post’ violates the principle of majority. The Election Commission may explore ways and means to introduce appropriate system of election including ‘run off election’ and ‘none of the above options’, in the light of the discussion made hereinabove, to ensure true representation of the people and rule of the majority; and

(n) The Election Commission is empowered to frame rules to ensure that the elections are conducted justly, fairly, honestly and in accordance with law and that corrupt practices are guarded against. There is unanimity of views on various suggested courses of action.

Therefore, we directed the Election Commission to frame rules and issue instructions to provide legal sanction to these measures and implement the same to achieve the ultimate objective of fair, free, just and honest election.”

4. Mr. Bilal Hassan Minto, learned counsel stated that the object noted hereinabove can be achieved, provided Rules under Section 107 of the Representation of the People Act, 1976, are framed to achieve the object and purpose of Section 28, which provides that:

“An election under this Act shall be decided by secret ballot and, subject to the provisions of section 29 every elector shall cast his vote by inserting in accordance with the provisions of this Act, in the ballot box, a ballot paper in the prescribed form.”

He further stated that the object of the compulsory voting, if achieved, would fulfill the requirement of the Constitution incorporated in Article 2A, according to which, “the State shall exercise its powers and authority through the chosen representatives of the people”.

5. Let this case be adjourned for 16th January, 2013 and be fixed at Serial No.1.

Chief Justice

Judge

Islamabad, the
15th January, 2013.

Judge