

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

CONSTITUTION PETITION NO. 22 OF 2022

(Against the ruling of Deputy Speaker Punjab
Assembly dated 22.07.2022)

Ch. Parvez Elahi

...Petitioner

VERSUS

The Deputy Speaker Provincial Assembly of Punjab, Lahore, etc.

...Respondents

For the petitioner(s):

Syed Ali Zafar, ASC
Mr. Imtiaz Rashid Siddiqui, ASC
Mr. Amir Saeed Rawn, ASC
Mr. Safdar Shaheen Peerzada, ASC
Mr. Ahmad Awais, ASC
Syed Mushtaq Ahmad Zaidi, AOR
Mr. Azhar Siddique, ASC
Rai Shahid Saleem, ASC

For respondent No.1:

Mr. Irfan Qadir, ASC

For respondent No.2:

Mr. Mansoor Usman, ASC
Mr. Khalid Ishaq, ASC

For respondent No.3:

Mr. Shahzad Shaukat, AG Punjab
Ch. M. Jawwad Yaqoob, Addl. A.G.
Mr. Kamran Ali Afzal, Chief Secretary
Mr. Nasir Ali Chohan, Addl. A.G. Punjab

On notice:

Ch. Amir Rehman, Addl. Att. General
Mr. Tahir Mehmood Ahmad Khokhar,
DAG along with Malik Muhammad
Abbas Farooq, Adv.

Date of hearing:

23.07.2022 at 02:30 P.M.

ORDER

Our hearing today in this matter was held in two sessions. In the first session, we issued notices to the respondents. The operative part of that order is reproduced below:-

"3. Learned Counsel for the Petitioner has read to us from Article 63-A (1)(b) of the Constitution of the Islamic Republic of Pakistan, 1973 to submit that the direction to members is to be issued by the parliamentary party to which they, in this case MPAs, belong. He has read from para 3 of our judgment dated 17.05.2022 to submit that the direction has to, and can only, be given by the parliamentary party itself. On the other hand, the impugned Deputy Speaker's ruling dated 22.07.2022, accepts that the head of the political party can issue such a direction. The question therefore is whether our judgment takes the view that appears to be expressed in the Deputy Speaker's ruling dated 22.07.2022. We require his assistance in the matter. Accordingly, notice is issued to him. Notice shall also be issued to Respondents No.2 & 3 as questions of constitutional import, mainly in relating to Article 63-A(1)(b) read with our judgment dated 17.05.2022, arise for determination. We would also issue notice under Order XXVII, CPC to the Attorney General for Pakistan and the Advocate General, Punjab."

2. In answer to our notices all three respondents namely, the Deputy Speaker Provincial Assembly, Mr. Hamza Shahbaz and the Province of Punjab are represented through their respective counsel and the Advocate General, Punjab along with Chief Secretary, Punjab. We invited the Advocate General to answer our query as to which part of our short judgment dated 17.05.2022 passed in Presidential Reference No.1 of 2022 is relied on by the Deputy Speaker for his impugned Ruling dated 22.07.2022 to treat the direction by the Party Head, namely, Chaudhary Shujaat Hussain to abstain for the election of Chief Minister to be binding on the Members of the Parliamentary Party who had voted in favour of Chaudhary Parvez Elahi in the election for the Chief Minister Punjab held on 22.07.2022. In this regard attention of the learned Advocate General and the counsel for the other respondents was drawn to paragraph-3 of our short judgment dated 17.05.2022 which is to the following effect:-

"3. Turning to the second question and keeping in mind the answer to the first, it is our view that the vote of any member (including a deemed member) of a Parliamentary Party in a House that is cast contrary to any direction issued by the latter in terms of para (b) of clause (1) of Article 63A cannot be counted and must be disregarded, and this is so regardless of whether the Party Head, subsequent to such vote, proceeds to take, or refrains from taking action that would result in a declaration of defection. The second question referred to this Court stands answered in the foregoing terms."

3. In addition, we invited their attention to the provisions of the Article 63A (1)(b) of the Constitution which provides as follows:

63A (1)

.....

(b) votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relation to—

(i) election of the Prime Minister or the Chief Minister; or

(ii) a vote of confidence or a vote of no-confidence; or

(iii) a Money Bill or a Constitution (Amendment) Bill;

4. To our mind both the Constitutional provisions and our interpretation thereof in paragraph-3 of the short judgment, reproduced above, are clear in treating the direction of the Parliamentary Party to be binding on members of the Parliamentary Party in the case where vote is to be cast, *inter alia*, for election to the office of Chief Minister. On the other hand, as noted above, the impugned Deputy Speaker Ruling dated 22.07.2022 treats the direction by the Party Head to be binding on the legislators in the case of an election of Chief Minister in terms of Article 63A of the Constitution.

5. Learned Advocate General did not respond to our query but referred us to certain appeals filed against the decision of the Election Commission of Pakistan (ECP) dated 20.05.2022 by which statedly certain MPAs in the Punjab Provincial Assembly belonging to PTI had been held to have violated the direction of the Party Head in

the election of the Chief Minister and were declared as defectors, their votes were not counted, they ceased to be members of the House and their seats became vacant as provided in Article 63A(4) of the Constitution. He requests that the present petition may be heard along with the appeals filed in the Supreme Court against the said decision of the ECP.

6. Learned counsel for the Deputy Speaker was also unable to defend the impugned Ruling in terms of Article 63A (1)(b) of the Constitution and our short judgment dated 17.05.2022. However, he stated that he had been engaged only two hours ago and needed further instructions to prepare his brief. He prayed that time may be granted to file a concise statement. The learned counsel for the Chief Minister did not come forward to answer the query either.

7. The learned counsel for the petitioners submits that the matter is urgent in nature because the Constitutional governance of the Province is under dispute and, therefore, the matter may be taken up tomorrow i.e. Sunday for hearing.

8. After hearing the learned counsel for the parties we find that the respondents need time to articulate their response further. However, we note that at present they are unable to justify the impugned Ruling of the Deputy Speaker before us. As a result the status of the Chief Minister elect/respondent No.2 is under a cloud. In such a situation he cannot be deemed to be invested with the status of a duly elected Chief Minister under the Constitution. This is much like the situation in the earlier round of litigation between the parties culminating in our order dated 01.07.2022. By that order he acknowledged that the Constitution does not envisage the governance of Province without a Chief Minister and a Cabinet. Accordingly, our

order dated 01.07.2022 was passed with consent of the parties whereby respondent No.2 was designated as a Trustee holding the office of Chief Minister with his powers being curtailed in a manner that he could not advance the political interest of his party or his supporters through his administrative actions amongst others by conferring benefits, privileges and protection including by making appointments and taking police action.

9. We proposed to the learned counsel for the parties that in the circumstances of the case the Court was inclined to allow the respondent No.2 to perform the duties and functions of his office under the afore-noted constraints. In this respect neither the Advocate General nor the other counsel representing the respondents raised any objections. In fact, it was evident that they understood and appreciated the nature of the controversy and the need for appropriate measures to reflect the gravity of the dispute on the basis of the alleged constitutional violation and the need for harmony, peace and order to prevail in the governance of the Province. We have been assured that till the decision of this matter respondent No.2 and his cabinet shall exercise the powers and functions of their offices strictly in a fiduciary capacity as envisaged by the Constitution and the law and that such commitment to act as Trustees is meant to fulfil the duty of care towards people of Punjab so that they are not deprived of due representation and governance and to avoid any Constitutional vacuum or complication.

10. As a result, we grant the respondents time to file their concise statements and documents, if any, from the record of the Provincial Assembly in respect of the impugned Ruling of the Deputy Speaker dated 22.07.2022 by 11:00 A.M. on 25.07.2022 for hearing of

the petition at 01:00 P.M. on that date. Learned counsel for the Deputy Speaker shall ensure that the relevant record summoned by the Court in particular the letter by the Party Head of PML-Q on the basis of which the impugned Ruling has been passed shall be filed on record in this petition.

Lahore, the
23rd July of 2022
A. Khokhar