

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Maqbool Baqar
Mr. Justice Faisal Arab

CONSTITUTION PETITION NO. 18 OF 2019

(Transfer of cases from Sindh High Court, Karachi and
Lahore High Court, Lahore to Islamabad High Court)

Altaf Ibrahim Qureshi and another

... *Petitioner(s)*

VERSUS

Aam Log Ittehad & others

... *Respondent(s)*

For the petitioner(s) : Mian Abdul Rauf, ASC.

Respondent No.2 : In-person

Date of hearing : 26.09.2019

O R D E R

UMAR ATA BANDIAL, J. This petition under Article 186A of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**") seeks the transfer, *inter alia*, of a petition bearing Constitution Petition No.D-444 of 2019, titled Aam Loeg Ittehad and another vs. The Election Commission of Pakistan and others from the Sindh High Court where it is pending to the Islamabad High Court. The said petition prays for the disqualification of four Members of the Election Commission of Pakistan ("**ECP**") including the two petitioners. It is claimed therein that the petitioners'

appointment as Members of the ECP was made contrary to Article 207(2) of the Constitution prior to the expiry of two years after they ceased to hold the office of a Judge of the High Court. Learned counsel for the petitioners objects that one of the requirements for entertaining such a challenge to the qualification to an incumbent of public office under Article 199(1)(b)(ii) of the Constitution is that the disputed office holder should be a person available within the territorial jurisdiction of the Court. As the petitioners work at the principal office of the ECP in Islamabad, therefore, the learned Sindh High Court is claimed to lack jurisdiction in the matter.

2. The Constitution Petition No.D-444 of 2019 was filed in the Sindh High Court on 29.12.2018. Notices to the petitioners, who are impleaded as respondents No.3 & 4 therein, were issued and on 23.04.2019. Ms. Rohaila Nazar, Advocate filed *Waqalat Nama* of Mian Abdul Rauf, ASC, Islamabad on behalf of the respondent No.4, who is petitioner No.1 before us. On 07.05.2019 Mr. Safdar, Advocate filed his *Waqalat Nama* on behalf of the respondent No.3 who is petitioner No.2 before us. Thereafter, Mr. Safdar, Advocate appeared in the High Court on 28.05.2019 on behalf of both the petitioners before us. However, on 10.06.2019 and the subsequent dates of hearing, Ms. Rohaila Nazar, Advocate appeared for respondent No.3 & 4 whilst holding the brief for Mian Abdul Rauf, ASC.

3. At one stage of the proceedings, arguments of the petitioners were concluded on 27.06.2019 by the learned counsel for the petitioners in Constitution Petition No.D-444 of 2019 but on 28.06.2019, the matter was adjourned to 19.08.2019 after the vacations. Thereafter, the matter was fixed before another learned Bench and arguments by the learned counsel for the petitioners in Constitution Petition No.D-444 of 2019 were addressed again on 19.08.2019, 27.08.2019 and 28.08.2019. On all these dates of hearing, the petitioners before us (respondents No.3 and 4 in Constitution Petition No.D-444 of 2019) were not represented by their appointed counsel but by his proxy, Ms. Rohaila Nazar, Advocate, who did not hold a *Waqalat Nama* of either of the petitioners before us. We are informed by the respondent No.2 that the submissions by counsel for the two other challenged members of ECP were addressed on 28.06.2019 and 02.09.2019 when Ms. Rohaila Nazar, Advocate adopted those arguments on behalf of the petitioners before us. At the end of the arguments on 02.09.2019, the learned Bench of the High Court reserved their judgment in the matter.

4. Learned counsel for the petitioners urges that the judgment in the case has been reserved without grant of hearing to the petitioners. The respondent No.2 has responded that notwithstanding a clear direction that the arguments in the matter shall be heard, the learned counsel for the petitioners did not show up even once throughout the

proceedings and he was represented by a person holding his brief. It is in the said circumstances that the learned counsel for the petitioners pleads for the Constitution Petition No.D-444 of 2019 pending before the Sindh High Court be transferred to the Islamabad High Court.

5. Although comments by the petitioners were filed in the Constitution Petition No.D-444 of 2019, however, it is apparent that their counsel never attended such proceedings on their behalf. In the ordinary course, the learned High Court Bench would have in such a situation, issued a direction to the learned counsel to attend the proceedings to argue his case failing which the matter would be decided in his absence. This was not done; instead, it appears that the Bench treated Ms. Rohaila Nazar, Advocate as the counsel for the petitioners and closed the hearing after her statement adopting the arguments by the counsel for the respondents No.2 & 5. These respondents are the two other members of the ECP who are disputed in Constitution Petition No.D-444 of 2019. On that basis the hearing was closed and the judgment was reserved.

6. We notice that the present petition is filed to overcome the consequence of default in appearance by the learned counsel for the petitioners before the Sindh High Court. Otherwise, the petitioners' objection to the alleged lack of jurisdiction of the Sindh High Court in Constitution Petition No.D-444 of 2019 has already been taken in their pleadings/comments filed in the Court. That objection has also

been argued on behalf of the two other disputed Members of the ECP. Therefore, it is premature and inappropriate for us to hear that objection presently because the High Court seized of the matter shall soon be pronouncing its judgment thereon. However, such judgment when delivered shall lack the attribute of being passed after grant of an opportunity of a hearing to the petitioners. The absence of an opportunity being granted expressly is a deficiency that would seriously impair the effectiveness of the judgment. The right of hearing of a party to a *lis* is one of the fundamental principles of our jurisprudence which is guaranteed by Article 10A of the Constitution in its assurance of a "fair trial and due process" to a litigant. Accordingly, on the one hand, for the lack of an express opportunity of exercising such a right being expressly granted to the petitioners before us (respondents No.3 & 4 in the proceedings of Constitution Petition No.D-444 of 2019) and on the other hand, for the default of the petitioners to produce their counsel for making submissions before the Sindh High Court, we observe that it would suffice if the learned High Court Bench that has reserved the judgment may whilst writing the same take into consideration written submissions that are filed on behalf of the petitioners on or before 30.09.2019. These written submissions shall not include any new material or plea. In case the petitioners do not file their submissions on or before such date in the office of the Registrar of the High Court of Sindh (for their placement on

the case file of Constitution Petition No.D-444 of 2019), the learned High Court Bench that has heard the matter may forthwith proceed to announce its judgment at an early date.

This petition stands disposed of in above terms.

JUDGE

JUDGE

Islamabad,
26.09.2019.
*Irshad Hussain /**

JUDGE

NOT APPROVED FOR REPORTING.