

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Naeem Akhtar Afghan

Civil Petitions No. 2522 and 2523 of 2024

*Election Commission of Pakistan through
Chief Election Commissioner, Islamabad.*
(In both cases)

... *Petitioner*

Versus

Salman Akram Raja and others.
(In CP. 2522/24)

Omar Hashim Khan and others.
(In CP. 2523/24)

... *Respondents*

For the Petitioner:
(In both cases)

Mr. Sikandar Bashir Mohmand, ASC.
Mr. Muhammad Arshad,
Director-General (Law), ECP.

Respondent No. 1:
(In CP. 2522/24)

Mr. Salman Akram Raja (in-person).

Respondent No. 1:
(In CP. 2523/24)

Rao Omar Hashim Khan (in-person).

For the Applicants:
(In CMA. 5816/24)

Mr. Niazullah Khan Niazi, ASC.

Date of Hearing:

20.06.2024.

ORDER

Civil Petitions No. 2522 and 2523 of 2024: Learned Mr. Sikandar Bashir Mohmand representing the Election Commission of Pakistan ('**Commission**'), the petitioner in both petitions, states that these two civil petitions for leave to appeal assail a common judgment dated 29 May 2024 passed by a learned single Judge of the Lahore High Court in two writ petitions filed by the respondent No. 1 in each of the petitions. The writ petitions had primarily challenged the authority of the Commission to appoint Election Tribunals and asserted that the Chief Justice of the Lahore High Court has primacy in the consultation process. The learned single Judge interpreted the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') and the Elections Act, 2017 by relying upon the decisions in the cases of *Al-Jehad Trust v Federation of Pakistan* (PLD 1996 Supreme Court 324) and *Riaz-ul-Haq v Federation of Pakistan* (PLD

2013 Supreme Court 501) and held that the Election Tribunals are to be appointed by the Chief Justice of the Lahore High Court.

2. The learned Mr. Sikandar Bashir Mohmand submits that the interpretation of the learned single Judge does not accord with Articles 219(c), 222(d) and its proviso, 225 of the Constitution and sections 140(1) and (3) and 151 of the Elections Act. It would be appropriate to reproduce the referred provisions, as under:

Constitution:

‘219. The Commission shall be charged with the duty of—’

‘(c) appointing Election Tribunals;’

‘222. Subject to the Constitution, Majlis-e-Shoora (Parliament) may by law provide for—’

‘(d) the conduct of elections and election petitions the decision of doubts and disputes arising in connection with elections;’

‘but no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or the Election Commission under this Part.’

‘225. No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament).’

Elections Act, 2017:

‘140. **Appointment of Election Tribunals.** (1) For the trial of election petitions under this Act, the Commission shall appoint as many Election Tribunals as may be necessary for swift disposal of election petitions.

(2) An Election Tribunal shall comprise—

(a) in the case of an election to an Assembly or the Senate, a person who is a Judge of a High Court; and

(b) in the case of an election to a local government, a District and Sessions Judge or an Additional District and Sessions Judge.

(3) The Commission shall appoint a sitting judge as Election Tribunal in consultation with the Chief Justice of the High Court concerned.’

‘151. Power to transfer petition.—The Commission may at any stage, on its own motion or on an application of a party and for reasons to be recorded, transfer an election petition from one Election Tribunal to another Election Tribunal and the Election Tribunal to which the election petition is transferred—

- (a) shall proceed with the trial of the election petition from the stage from which it is transferred; and
- (b) may, if it deems fit, recall and examine any witness who has already been examined.’

The learned counsel relies upon the aforesaid provisions which he submits attended to the matter of appointment of Election Tribunals and were abundantly clear and did not require interpretation. And, that the judgments relied upon by the learned Judge, which respectively were in respect of the appointment of Judges (prior to the amendment to the Constitution) and with regard to the appointment of chairpersons and members of administrative tribunals and were not applicable to the appointment of the Elections Tribunals. He further contends that the writ petitions were not maintainable for the reason that a writ petition does not lie in respect of an administrative order of the Chief Justice; that the matter was between a constitutional body, the Commission, and a constitutional office holder, the Chief Justice, and the petitioners before the High Court had no concern therewith, and that they were not *aggrieved party* in terms of Article 199 of the Constitution.

3. Mr. Salman Akram Raja, the respondent No. 1 in Civil Petition No. 2522 of 2024 has entered appearance. He states that he will argue the case himself. Rao Omar Hashim Khan, respondent No. 1 in Civil Petition No. 2523 of 2024, states that he will be adopting the submissions of Mr. Salman Akram Raja as his counsel is abroad, but will be in attendance on the next date of hearing.

4. Mr. Salman Akram Raja states that the writ petitions filed in the High Court were maintainable because sufficient Election Tribunals had not been appointed; only two were appointed and that too belatedly, and the Commission had not complied with its constitutional and legal duty. He further states that the Commission, though a constitutional body, is not a judicial body empowered to appoint Election Tribunals and that judicial power vests in the High Court, which, therefore, required meaningful consultation with the Chief Justice of the Lahore High Court, but when this

was not done, both the petitioners (respondents No. 1 herein) who had contested elections, were aggrieved parties. He next submits that the Commission should have challenged the impugned judgment by filing intra-court appeals before the High Court under section 3 of the Law Reforms Ordinance, 1972, instead of filing the said petitions directly before this Court. He concludes by stating that there is no precedent of this Court on the subject matter and these petitions require interpretation of the Constitution, therefore, the same be placed before the Committee constituted under section 4 of the Supreme Court (Practice and Procedure) Act, 2023 for the constitution of a larger Bench.

5. Civil Misc. Application No. 5816 of 2024: Learned Mr. Niazullah Khan Niazi states that through this application nine applicants who support the contentions of the respondent No. 1 in both cases want to be impleaded as respondents hereto. The learned counsel representing the Commission states that he has already raised objection to the maintainability of the writ petitions filed by the respondents No. 1, however, leaving that aside, none of the applicants had filed a petition before the Lahore High Court nor had sought to be arrayed as parties in the said writ petitions, and that they are neither necessary nor proper parties as the matter pertains to the powers of the Commission *viz-a-viz* those of the Chief Justice which is purely constitutional and legal matter, therefore, he cannot concede to the grant of the application.

6. Since the petitioner and the contesting respondents have raised substantial constitutional and legal points and state that there is no precedent of this Court on the subject matter, therefore, it would be appropriate to grant leave to consider, amongst others, the aforesaid points. Leave stage paper books be prepared on the basis of the available record, however, if any document filed in the High Court has not been attached the same may be brought on record. Since these cases involve interpretation of the Constitution and the Elections Act, 2017, which is a Federal law, notice under Order XXVII-A of the Code of Civil Procedure, 1908 be issued to the learned Attorney-General for Pakistan.

7. Subject to all just and legal exceptions and subject to the submissions made by learned Mr. Sikandar Bashir Mohmand CMA No. 5816/2024 is allowed and the applicants be impleaded as respondents; amended title be filed within seven days.

8. Both sides want an early decision and are in attendance, including the applicants, on whose behalf learned Mr. Niazullah Niazi has waived notice, therefore, the office need not issue notices to them.

Civil Misc. Applications No. 5387 and 5388/2024: Notice, which is waived by the contesting respondents and the abovementioned applicants.

9. During the hearing we were informed that no disagreement occurred nor problem was encountered with regard to the appointments of the Election Tribunals in the other provinces. Therefore, the Commission is directed to file the relevant correspondence, notifications, etc. with regard to the appointment of Election Tribunals in the other provinces.

10. The office is directed to place these cases before the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023 for soliciting requisite orders thereunder.

Chief Justice

Judge

Islamabad:
20.06.2024
(M. Tauseef)