Form No: HCJD/C-121.

JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 2998 OF 2022

Pakistan Tehreek-e-Insaf (PTI) through its Additional Secretary General Mr. Omer Ayub Khan

Vs

Election Commission of Pakistan and another

PETITIONER BY:	Mr. Anwar Mansoor Khan, Sr. ASC, Mr. Shah Khawar, Sr. ASC, Barrister Umaimah Khan, ASC, Mr. Naveed Anjum Mumtaz Advocate, Mr. Muhammad Azhar Siddique, ASC, Mr. Waheed Shahzad Butt, Advocate, Syed Mahfooz-ul-Hassan and Ms. Alia Bano, Advocate.
RESPONDENT No.1 BY:	Barrister Ahmed Pervez.
RESPONDENT No.2 BY:	Syed Ahmed Hassan Shah, ASC and Chaudhry Badar Iqbal, Advocate. Mr. Munawar Iqbal Duggal, Additional Attorney General and Mr. Azmat Bashir Tarar, Assistant Attorney General. Mr. M. Arshad, Director General (Law) and Mr. Zaigham Anees, Law Officer, Election Commission of Pakistan.
DATE OF HEARING:	11.01.2023.

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BABAR SATTAR, J.- The petitioner has impugned the Fact Finding Report dated 02.08.2022 **("Fact Finding Report")** issued by Election Commission of Pakistan **("ECP"**) for being in excess of authority and jurisdiction for making a declaration insinuating that Pakistan Tehreek-e-Insaf **("PTI")** is liable to be declared a foreign-aided political party under section 2(c)(iii) of the Political Parties Order, 2002 **("PPO")** and further holding

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that Chairman, PTI has failed to discharge his obligation under Article 13(2) of the PPO to file a truthful statement certifying that the party did not receive any funds from any prohibited sources.

2. Mr. Anwar Mansoor Khan, Sr. ASC, learned counsel for the petitioner, took the court through the factual background of the matter culminating in the Fact Finding Report. He initially sought to impugn the findings of fact included in the Fact Finding Report with a view to establish that such findings were perverse and incorrect. But he subsequently submitted that the ECP had issued a show-cause notice to PTI pursuant to the Fact Finding Report in terms of Rule 6 of the Political Parties Rules, 2002 **("Political Parties Rules")**, to explain as to why prohibited contributions and donations ought not be confiscated in favour of the State. And the objections as to the factual observations made in the Fact Finding Report would be raised within such show-cause proceedings. He submitted that it would still remain for this Court to decide two questions. One, whether ECP exceeded its jurisdiction by making a declaration in the Fact Finding Report that the matter fell within the scope of Article 2(c)(iii) of PPO and thereafter forwarding the case to the Federal Government. And two, whether ECP exceeded its jurisdiction when it held that Chairman PTI had failed to discharge his obligation in terms of Article 13(2) of PPO. He submitted that in view of Article 15 of the PPO read together with Article 17 of the Constitution, the authority and jurisdiction to declare that a political party was a foreign-aided political party, as defined under section 2(c)(iii) of the PPO, fell within the domain of the

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Federal Government subject to scrutiny by the august Supreme Court, as had been held by the Apex Court in ***Muhammad Hanif Abbasi Vs. Imran Khan Niazi and 3 others*** ***(PLD 2018 SC 189)***. He submitted that the scrutiny of funds that formed the subject-matter of the Fact Finding Report related to a period prior to the promulgation of Elections Act, 2017. And while section 212 of the Elections Act, 2017, vested authority in the ECP to make a reference to the Federal Government against a political party on the basis that it is a foreign-aided political party, no such power was vested in the ECP under the PPO. Consequently, ECP's finding that the matter fell within the domain of section 2(c)(iii) and the direction to refer the matter to the Federal Government was liable to be expunged. In relation to question No.2, he submitted that the question of whether or not PTI had received prohibited funds was the subject-matter of show-cause proceedings, which were pending before ECP. Therefore, no declaration for purposes of determination with regard to Article 6(3) and 6(4) as well as Article 13(2) of PPO could be made against PTI and Chairman PTI, respectively, without affording the party and its Chairman an opportunity to be heard. Consequently, the declaration with regard to lack of truthfulness of the certification made by Chairman PTI or his failure to abide by his obligations under PPO was liable to be expunged.

3. Barrister Ahsan Pervez, learned counsel for ECP, submitted that the petition seeking judicial review of the Fact Finding Report was premature. The ECP had rendered the Fact Finding Report pursuant to powers vested in it under the PPO, which

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endowed ECP with the duty to scrutinize the sources of funding of political parties. Pursuant to findings recorded in such Fact Finding Report a decision had been reached to issue a show-cause notice to PTI pursuant to the scheme prescribed under Article 6 of the PPO read together with Rule 6 of Political Parties Rules. He submitted that ECP would afford PTI an opportunity to show cause as to why prohibited funds ought not be confiscated in favour of the State as contemplated under Rule 6 of the Political Parties Rules. During such proceedings PTI would have the opportunity to contest the factual determinations recorded in the Fact Finding Report. However, ECP had no authority to review its decision and consequently as part of the show-cause proceedings ECP would not sit in review of the impugned Fact Finding Report. However, to the extent that PTI were to succeed in establishing that contributions and donations received were not from prohibited sources, such contributions and donations would be excluded from the list of funding determined by ECP to be from prohibited sources as reflected in the Fact Finding Report and the show-cause notice.

4. Syed Ahmed Hassan Shah, ASC, appeared on behalf of respondent No.2, who had been impleaded pursuant to the order of this Court dated 28.09.2022 as a respondent. He supported the right of PTI to be afforded a fair opportunity to confront findings rendered by the ECP in the Fact Finding Report. And to the extent that PTI succeeded in convincing the ECP that the funding was received from sources which were not prohibited under PPO, there would be no charge remaining against PTI and no question of confiscation of any fund would arise. He submitted

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that as the Fact Finding Report only resulted in issuance of the show-cause notice contemplated under Rule 6 of Political Parties Rules read together with Article 6(3) and 6(4) of PPO, the instant petition seeking judicial review of the Fact Finding Report was premature.

5. We have been asked to undertake judicial review of the Fact Finding Report on the basis that declarations that form part of the Fact Finding Report are without jurisdiction for not being backed by law. Before we address the arguments of the learned counsel for the parties, let us consider the legal framework within which the reporting and scrutiny of finances of political parties is undertaken by the ECP.

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6. Article 17 of the Constitution guarantees the freedom of association as a fundamental right of citizens and Article 17(3) states that, *"every political party shall account for the source of its funds in accordance with law."* For purposes of the time period that forms the subject-matter of the instant petition, the law referred to in the said Article is the PPO, which has been succeeded by the Elections Act, 2017.

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7. Before we move to provisions of the PPO, let us note that Article 219 of the Constitution identifies the duties of ECP and includes within such duties such functions as may be prescribed by an Act of Parliament. The scope of the authority vested in the ECP in relation to the PPO came before the august Supreme Court in ***Muhammad Hanif Abbasi Vs. Imran Khan Niazi and 3 others (PLD 2018 SC 189)***, which held that *"the law envisaged by sub-Articles (2) and (3) of Article 17 of the*

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Constitution, is the PPO which stipulates the reasonable restrictions to be complied by political parties, the sources of prohibited funding and the process available to the Federal Government when a political party is formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan or is a foreign aided political party." The august Supreme Court further held that while the PPO was promulgated as the Chief Executive's Order No. 18 of 2002, it fell within the protection of Article 270AA(2) of the Constitution and has the status of law in the context of functions to be performed by the ECP pursuant to Article 219(e) of the Constitution.

8. The PPO provides for regulation of political parties including, *inter alia*, their finances. Article 2(c)(iii) of PPO includes within the definition of 'foreign-aided political party' a party that *"receives any aid, financial or otherwise, … or any portion of its funds from foreign nationals."* Article 3(4) of PPO identifies the restrictions imposed on political parties. One such restriction is that a political party must not be a foreign-aided political party. Article 4 of the PPO creates an obligation for each political party to formulate its constitution and include within such constitution the *"criteria for receipt and collection of funds for the party."* Article 6 of the PPO regulates the membership fee and contributions received by parties and relevant for our present purposes are Article 6(3) and 6(4), which state the following:

> *6(3). Any contribution made, directly or indirectly, by any foreign government, multinational or domestically incorporated public or private company, firm, trade or professional*

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association shall be prohibited and the parties may accept contributions and donations only from individuals.

6(4). Any contribution or donation which is prohibited under this Order shall be confiscated in favour of the State in the manner as may be prescribed.

9. Articles 10, 11 and 12 of PPO regulate functioning of political parties, including convening of intra-party elections. Article 13 creates an obligation for every political party to submit to the ECP within 60 days of closure of each financial year, a consolidated statement of accounts audited by a Chartered Accountant which is to include the sources of its funds. Article 13(2) obliges the party head of the political party to certify that the statement of accounts contains an accurate financial position of the party and that the party has not received any funds from sources prohibited under the PPO. Article 14 renders the entitlement of a political party to be granted an election symbol contingent on its compliance with the requirement to convene intra-party elections and to furnish financial statements on an annual basis, in compliance with the requirements of Article 12 and Article 13 of PPO, respectively. Article 15 then deals with the dissolution of a political party and vests in the Federal Government the authority to declare that a political party is a foreign-aided political party or is otherwise operating in a manner prejudicial to the sovereignty or integrity of Pakistan. Such declaration is required to be referred to the Supreme Court for approval within 15 days of its making. Article 19 of the PPO delegates to the ECP the authority to enact rules for purposes of the Act, to be exercised subject to the approval of the President.

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10. In exercise of authority under Article 19 of PPO, Political Parties Rules, 2002, were enacted. Rule 4 provides for submission of the statement of accounts in a prescribed form. Such statement is to include, *inter alia*, sources of funds received by the party. Rule 6, which is pertinent in view of the subject-matter of the instant petition, provides the machinery provisions for confiscation of prohibited funds and states that, *"where the Election Commission decides that the contributions or donations, as the case may be, accepted by the political parties are prohibited under clause (3) of Article 6, it shall, subject to notice to the political party concerned and after giving an opportunity of being heard, direct the same to be confiscated in favour of the State …"*

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11. The scope of ECP's authority under the PPO and Political Parties Rules was considered by the august Supreme Court in ***Muhammad Hanif Abbasi*** and it was declared that *"the ECP itself is a supervisory body which exercises regulatory and administrative powers under the Constitution and the law".* And further that *"in exercise of its powers under Article 6 of the PPO read with Rule 6, the ECP has all the necessary authority to ask for and collect the requisite information and facts that enable it to decide and determine whether the contributions or donations accepted by a political party are prohibited under Article 6(3) ..."* It was further clarified that the *"power of the ECP under Article 6 of the PPO read with Rule 6 is in our view a continuous supervisory power which may be exercised at any time by the ECP."* On the question of when a declaration can be issued against a party head under Article 62(1)(f) of the Constitution

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for having filed a false affidavit under Article 13(2) of the PPO, the Apex Court held that *"before any finding by a Court of law can be given as to whether a certificate issued by a head of a political party under Article 13(2) of the PPO is false or not, the question whether that political party has either received contributions or donations prohibited under Article 6(3) supra or is a foreign-aided political party in terms of Article 2(c) supra must respectively be addressed and determined by the competent forum. Subject to an adverse finding and corresponding penal action taken under the PPO, the issue of the falsity of the certificate under Article 13(2) would then be ascertainable as a secondary fact by a competent Court of law."* It was further noted that *"the ECP is duly empowered under the PPO and the Rules to proceed of its own motion to determine the question of receipt of contributions or donations from prohibited sources by a political party."*

12. In view of provisions of the Constitution, the PPO and the Political Parties Rules, as enumerated by the august Supreme Court in ***Muhammad Hanif Abbasi***, it is evident that the PPO is the law that regulates the manner in which political parties are to discharge their reporting requirements in connection with receipt of funds. And it is the ECP that has regulatory and supervisory control over such information and the duty to scrutinize it to ensure compliance with provisions of the PPO. The Political Parties Rules endow the ECP with an obligation to afford a political party an opportunity to be heard prior to taking any penal action against such party, once it forms a tentative view based on statement of accounts filed by such party that funding

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received by such party includes funding from prohibited sources. It is in this context that we need to determine the scope of the show-cause proceedings pending before the ECP. The position taken by the learned counsel for ECP in this regard, while being assisted by Director General (Law) ECP, appeared to us to be contradictory. On the one hand it was submitted on behalf of ECP that the petition was premature as the question of receipt of prohibited funds by PTI was pending adjudication before the ECP and final decision for purposes of Article 6(3) and 6(4) was to be rendered upon culmination of the show-cause proceedings. But on the other hand it was also submitted that the ECP had no authority to review its own decision and the Fact Finding Report included a decision to issue a show-cause notice to PTI, reaching which was a requirement of Rule 6 preceding the issuance of show-cause notice which could not be reviewed. And thus while PTI would be afforded a fair opportunity of hearing, the scope of such hearing would be limited to that prescribed by Rule 6 of the Political Parties Rules.

13. It is the requirement of Article 4 of the Constitution that for an action of an administrative body or tribunal to be clothed with legality the public authority must not have exceeded its statutory power. There was a time when within the jurisprudence on administrative law a distinction was drawn between errors of law that did not create a jurisdictional defect versus errors of law that did. The distinction has however been discarded over time. In English Law, for example, since ***Anisminic Ltd. vs. Foreign Compensation Commission (1969) 1 ER 208***, the distinction between errors of law committed by tribunals that go to their

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jurisdiction and errors of law within their jurisdiction has largely dissipated. It is now understood that an error of law made by tribunal is an illegality that renders the decision a nullity. This principle was reiterated in ***Utility Stores Corporation of Pakistan Ltd. Vs. Punjab Labour Appellate Tribunal*** ***(PLD 1987 SC 447)***, wherein it was held that, *"it is not right to say that the Tribunal, which is invested with the jurisdiction to decide a particular matter, has the jurisdiction to decide it "rightly or wrongly" because the condition of the grant of jurisdiction is that it should decide the matter in accordance with the law. When the Tribunal goes wrong in law, it goes outside the jurisdiction conferred on it because the Tribunal has the jurisdiction to decide rightly but not the jurisdiction to decide wrongly. Accordingly, when the tribunal makes an error of law in deciding the matter before it, it goes outside its jurisdiction …"*

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14. The right to be heard as part of requirements of natural justice is well entrenched in our jurisprudence. It has now been etched within our fundamental law by virtue of inclusion of Article 10A, which guarantees the right of every person to a fair trial prior to determination of his civil rights and obligations or imposition of any penalty.

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15. The scope of the right to be heard came before the august Supreme Court in ***University of Dacca Vs. Zakir Ahmed*** ***(PLD 1965 SC 90)***, wherein it was declared that *"from a careful review of the decisions cited before us it appears that wherever any person or body of persons is empowered to take decisions after ex post facto investigation into facts which would result in*

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consequences affecting the person, property or other right of another person, then in the absence of any express words in the enactment giving such power excluding the application of the principles of natural justice, the Courts of law are inclined generally to imply that the power so given is coupled with the duty to act in accordance with such principles of natural justice as may be applicable in the facts and circumstances of a given case."

16. In ***Rahim Shah Vs. Chief Election Commissioner (PLD 1973 SC 24)*** it was clarified that "*under Article 201 certiorari will issue to any person performing in the Province functions in connection with the affairs of the Centre, Province or Local authority. It is not necessary that the `person' acts in a judicial or quasi-judicial capacity. High Court will interfere if the act done or the proceedings undertaken is in violation of law or any established principle of law…"*

17. Further section 24A of the General Clauses, 1897, imposes a duty on every public authority to act in a fair, just and reasonable manner. The scope of section 24A of the General Clauses Act, 1897, was clarified by the august Supreme Court in ***Messrs Airport Support Services Vs. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others (1998 SCMR 2268)*** wherein it was observed that the said section of law "*is founded on the premise that public functionaries, deriving authority from or under law, are obligated to act justly, fairly equitably, reasonably, without any element of discrimination and squarely within the parameters of law, as*

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applicable in a given situation. Deviations, if of substance, can be corrected through appropriate orders under Article 199 of the Constitution."

18. Clauses (3) and (4) of Article 6 of PPO are penal provisions as they call for confiscation of property vested in a political party in favour of the State. It is thus that Rule 6 of PPO obliges the ECP to issue notice to the political party concerned and give such political party an opportunity to be heard before any final determination is made as to whether any contributions or donations accepted by the political party qualify as prohibited funds and are liable to be confiscated. The requirements of fair trial and due process include the right of a party upon whom punishment can be inflicted to know the case against it and to correct or contradict the material or evidence on the basis of which any preliminary view has been formed that such party has rendered itself liable to a punishment prescribed by law. The right further obliges the adjudicator endowed with the responsibility to make such determination to act in good faith and afford the party a fair opportunity to defend itself. The right to a fair trial and due process in an administrative proceeding does not necessarily mean that the party is to be administered an oath or is to be provided an opportunity to cross-examine witnesses converting such proceedings into a trial with all its formalities. But what it does mean is that the adjudicator has a basic obligation to extend fair treatment to the party and an opportunity to enable it to correct or contradict the findings or allegations prejudicial to such party. The adjudicator therefore must sit with an independent and open mind without any bias.

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This means that a just adjudicator must shut its eyes to all considerations extraneous to the particular case and must have no interest in the outcome of the case that is to be decided. And the outcome must flow from the merits of the case.

19. In view of these requirements of natural justice and right to fair trial and due process guaranteed by Article 10A of the Constitution, the obvious conclusion with regard to the status of the Fact Finding Report is that it constitutes tentative findings by ECP and not a decision that has been crystalized and formalized at this point. Given that the ECP has issued a show-cause notice to enable PTI to correct or contradict the findings in the Fact Finding Report, in the event that ECP sits with a decided mind it would be acting in breach of its obligations as an adjudicator and would be denying PTI the right to fair trial and due process. Forming a tentative view that a political party has received prohibited funds is a pre-requisite for the issuance of a show-cause notice. There would thus be no occasion for the ECP to issue a show-cause notice unless it forms such tentative or *prima facie* view. But the formation of such *prima facie* view does not make it a final decision. And any correction of such view during show-cause proceedings would not amount to a review of a prior decision. Any tentative view on the basis of which a show-cause notice is issued merges with the final decision rendered at the end of the show-cause proceedings. And any correction or revision of the view formed as a preliminary matter does not qualify as a review of the prior decision. A contrary understanding of how the adjudicatory process works would create a chicken and egg problem. As no

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show-cause notice could be issued by a public authority unless it forms a tentative view and has some basis to drag a party through show-cause proceeding under a threat of penalty. And if such tentative view were to be treated as a final decision, it would render the show-cause proceedings redundant and undermine the party's due process right under Article 10A of the Constitution. This question came before the august Supreme Court in ***Suo Motu Case No. 04 of 2010*** ***(PLD 2012 SC 553)*** where one of the objections raised by the recipient of the show-cause notice under the Contempt of Court Ordinance, 2003, was that the judges who had decided that the show-cause notice ought to be issued ought not sit in judgment over the matter as that would fall foul of the right of the accused guaranteed under Article 10A of the Constitution. While rejecting the objection a seven-member bench of the august Supreme Court clarified the connection between the right to due process in the context of issuance of a show-cause notice and the rendering of the subsequent decision as follows:

> *"[A] Judge applies his mind before issuing notice to the respondent and later is to form a prima facie opinion after preliminary hearing whether or not to frame a charge and proceed with the trial. If it is held that a Judge holding a trial after having formed a prima facie or tentative opinion on merits of a case violates a litigant's fundamental right guaranteed under Article 10A, it would lead to striking down a number of procedural laws and well established practices, and may land our judicial system into confusion and chaos; a Judge, who frames a charge in every criminal case, will stand debarred from holding trial of the accused; a Judge hearing a bail matter and forming a tentative opinion of the prosecution case would then be disqualified to try the accused; a Judge*

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expressing a prima facie opinion while deciding a prayer for grant of injunction would become incompetent to try the suit."

20. The principle explained by the august Supreme Court in the aforementioned case is squarely applicable to the show-cause proceedings pending before the ECP as well. The formation of a tentative view with regard to an infraction that a political party may be liable for is a pre-requisite for the issuance of a show-cause notice. It was such tentative view that was formed by the ECP as recorded in the Fact Finding Report leading to the issuance of the show-cause notice. However, in the event that such Fact Finding Report is deemed to be a final decision with regard to the said infraction, the ECP would be disabled from adjudicating the show-cause proceedings. And to the extent that the Fact Finding Report holds PTI culpable for breach of provisions of the PPO without putting to the party the exact case against it, it would amount to a breach of PTI's right to due process. Therefore we find that the show-cause proceedings have been triggered by a tentative view formed by the ECP with regard to PTI's compliance with requirements of PPO and through the show-cause proceedings PTI is now being provided a fair opportunity to correct or contradict the tentative findings recorded in the Fact Finding Report.

21. The two other related questions that arise are (i) whether the petitioner can raise jurisdictional objections in relation to the Fact Finding Report before the ECP during the show-cause proceedings, and (ii) whether it would be desirable for this Court to exercise judicial review in relation to the Fact Finding Report

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when the findings contained therein may change as a result of what transpires during the show-cause proceedings.

22. In ***R (Pro Life Alliance) Vs. BBC and others*** **(2003) 2 All ER 977**, Lord Hoffmann opined that *"in a society based upon rule of law and the separation of powers, it is necessary to decide which branch of government has in any particular instance the decision-making power and what the legal limits of that power are. That is a question of law and must therefore be decided by the courts…. This means that the courts themselves often have to decide the limits of their own decision-making power…"*

23. In ***Jamal Shah Vs Election Commission*** ***(PLD 1966 SC 1)***, it was observed by Kaikaus, J. that proceedings before the High Court in its constitutional jurisdiction are collateral proceedings as they are not in continuation of the same proceedings like an appeal or revision where the case is reheard.

24. The scope of judicial review in relation to a decision rendered by an administrative tribunal that has been vested with the authority to decide such matter by the Constitution itself has limited scope. When a constitutional court in recognition of the scheme of separation of powers prescribed by the Constitution exercises self-restraint in relation to decision of another constitutional body, such deference is rooted in giving effect to the will of the Constitution. While even in such cases it remains for the constitutional court to decide the legal limits of the power being exercised by another constitutional body, as the interpretive function has been conferred by the Constitution on

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the Judiciary within our scheme of separation of powers, judicial review of the actual decision of another constitutional body is undertaken on a deferential basis. Even as a practical matter, courts defer to the evaluation of facts by administrative agencies, as in exercise of judicial review powers courts cannot second-guess factual determinations made by administrative agencies when the law and the Constitution empower them to make such determinations. This, however, does not mean that the court never exercises judicial review powers when it comes to the decisions of constitutional bodies such as the ECP. The jurisdiction to do so is well settled. The court exercises its discretionary jurisdiction hesitantly, while applying a deferential scope of review to correct errors of law, and does so at the appropriate time.

25. Another question before us is whether the petitioner can raise its jurisdictional objections to the findings recorded in the Fact Finding Report before the ECP itself during the show-cause proceedings. Justice Fazal Karim in his *Treatise Judicial Review of Public Actions* (Pakistan Law House; 2018 (Second Edition), Vol. 1, PP 591) has noted that objections to the jurisdiction of a tribunal can take multiple forms. And one such form is where it is argued that the subject-matter is outside the field in which the tribunal is competent to act. Another possible jurisdictional defect could be that the order is erroneous in law in view of the manner in which the conclusions have been drawn and such error goes to the jurisdiction of the ECP. In ***Pir Sabir Shah Vs. Shad Muhammad Khan Shad Muhammad Khan, Member Provincial Assembly (PLD 1995 SC 66),*** the question of

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competence of ECP to decide the matter of vires of section 8-B of the Political Parties Act, 1962, came before the august Supreme Court. Justice Fazal Karim, who wrote one of the majority opinions, held that the ECP could decide the question of vires given that the appeal against the decision of the ECP was subject to the appellate jurisdiction of the Supreme Court, and it was therefore preferable that the question of vires be decided by the ECP itself subject to the judicial oversight provided by the Supreme Court as opposed to forcing the parties to take the route of initiating judicial review proceedings before the High Court.

26. In the instant matter, the jurisdictional objections are not such that they question legal existence of ECP or the manner in which it has been constituted. The objections to the jurisdiction relate to the manner in which findings have been recorded in the Fact Finding Report, and how while doing so the ECP had acted in excess of power. Such jurisdictional objections can certainly be raised before ECP during the show-cause proceedings. We have already held that the Fact Finding Report is a tentative report and is yet to be formalized. In the event that any error of law pointed out by the petitioner during the show-cause proceedings is not addressed or corrected by the ECP in its final order rendered after conclusion of the show-cause proceedings, the petitioner will always have the option to seek judicial review of such final decision by a constitutional court.

27. There is another reason why exercising judicial review in relation to the Fact Finding Report is uncalled for at this stage.

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In *Judicial Review of Public Actions* (Vol.3, PP 1565) the doctrine of ripeness has been mentioned and the *Treatise on Constitutional Law* by Ronald D. Rotunda and John E. Nowak (Vol. I., P172) has been cited which notes that, *"just as a case can be brought too late … it can be brought too soon, so that it is not yet ripe for adjudication."*

28. The august Supreme Court in ***A.F Ferguson Vs. Sind Labour Court (PLD 1985 SC 429)*** held that the *"constitutional jurisdiction of the High Court should not normally be exercised in cases where the entire case will not be completely disposed of. This Court and even the Privy Council, has not favored piecemeal and fragmentary decisions of causes."*

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29. The ripeness doctrine is well recognized across common law jurisdictions as a ground for a constitutional court to refuse to engage with the controversy as is evident from the dicta that follow:

(i) In ***Abbot Laboratories Vs. Joh W. Gardner 387 U.S 136 (1967)*** it was held that, *"the basic rationale of the ripeness doctrine is to prevent the courts, through evidence of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effect felt in a concrete way by challenging parties."*

(ii) In ***Chanan Singh Vs. Registrar Cooperative Societies (AIR 1976 SC 1821)*** the Indian Supreme

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Court held that a show-cause notice to reinitiate disciplinary proceedings, could not be challenged in writ jurisdiction as the action was 'premature' as no punitive action had been taken and there existed no "present grievance" which could be "reinitiated in court"

(iii) It was held in ***Union of India and another Vs. Kunisettay Satyanarayana*** ***(AIR 2007 SC 906)*** that *"a mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established… It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."*

30. The doctrine of ripeness was also enumerated in ***Mughal-e-Azam Banquet Complex Vs. Federation of Pakistan*** ***(2011 PTD 2260)*** in which it was held that, *"laying challenge to a show cause notice is therefore no different from filing a petition on the basis of an apprehension or a speculation. Such petition is premature and not ripe for adjudication."*

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31. In view of the above, we find that this petition is premature and not yet ripe for adjudication. The petitioner has been issued a show-cause notice to answer the tentative findings re breach of law recorded in the Fact Finding Report. The petitioner has a statutory right under Rule 6 of Political Parties Rules to be afforded an opportunity to be heard as part of its right to due process. The right to be heard cannot be deemed to be a circumscribed or limited right as has already been explained above. The petitioner will therefore have a right to raise all its objections to seek the correction and/or reversal of findings recorded in the Fact Finding Report, including by raising any jurisdictional objections before the ECP during the show-cause proceedings with regard to findings recorded in excess of its authority. And as a fair adjudicator and public authority bound to act in a just, fair and reasonable manner, the ECP would be under an obligation to consider all factual and legal assertions with an open mind and decide the same through a reasoned order in accordance with law and without being interested in reaffirming the findings in the Fact Finding Report or otherwise seeking to produce any predetermined outcome.

32. Once we have found that the findings in the Fact Finding Report are tentative and will only be formalized after the show-cause proceedings affording PTI a fair opportunity to be heard, we are not inclined to judicially review the preliminary findings regarding the truthfulness of the certificate furnished by Chairman PTI in terms of Article 13(2) of the PPO. The tentative findings of ECP with regard to the truthfulness of such certification would be informed by what is submitted by PTI

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before the ECP in response to the show-cause notice. And it is within the realm of possibilities that the show-cause notice may even be withdrawn if PTI satisfies ECP that it received no prohibited funding. In such event the question of falsity of the certification by Chairman PT would simply wither away in view of ECP's conclusive findings in the aftermath of the show-cause proceedings. As there exist no definitive findings with regard to the truth or falsity of the certification made by the Chairman PTI pursuant to Article 13(2) of PPO at this stage, there is no reason for us to set-aside ECP's tentative findings.

33. With regard to the referral of information by ECP to the Federal Government on the basis of its tentative findings that the case relates to foreign-aided political party within the meaning of Article 2(c)(iii) of PPO, we find that ECP's reference to the said provision or the sharing of the information with the Federal Government does not suffer from any illegality, irrationality or procedural impropriety. The scheme of PPO has already been discussed. The obligation to scrutinize statement of accounts of a political party falls within the domain of ECP pursuant to Articles 6 and 13 of PPO as has already been explained. It is quite possible that while scrutinizing the sources of funding of political parties, ECP comes to the conclusion that a party has received funding from such prohibited sources that could possibly attract the characterization of the party as a foreign-aided political party. However, the power to determine whether or not a party is a foreign-aided political party falls within the domain of Federal Government and not the ECP as provided under Article 15 of PPO. In such circumstances,

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common sense would dictate that ECP, as the regulator of political parties, would share any actionable information with the Federal Government to enable it to consider whether such information ought to be a trigger for action under Article 15 of PPO.

34. While such sharing of information with regard to sources of funding of political parties by the ECP with the Federal Government is implicit within the scheme of PPO, it has now been explicitly provided under section 212 of the Elections Act, 2017. Section 212 provides that the ECP may file a reference with the Federal Government for purpose of dissolution of a political party if it believes that a party may be a foreign-aided political party or otherwise working in a manner prejudicial to the sovereignty or integrity of Pakistan. It was clarified by the august Supreme Court in ***Muhammad Hanif Abbasi*** that the authority to determine whether or not a political party is a foreign-aided political party and further whether a political party is liable to be dissolved falls within the domain of Federal Government. And such determination would need to be made by the Federal Cabinet in a just, fair and reasonable manner while upholding the right of the political party to due process. The Fact Finding Report is a public document. Whether or not the ECP had chosen to share it with the Federal Government on the basis of its tentative opinion that the sources of funding of PTI are such that the definition of foreign-aided political party under Article 2(c)(iii) is attracted, the Federal Government could have taken cognizance of the report on its own accord. Further ECP's tentative finding is also not binding on the Federal Government

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and the Federal Government, which is under an independent obligation to apply its mind and make its own determination with regard to a foreign-aided political party and whether or not such party is liable to be dissolved in view of Article 15 of PPO read together with Article 17(2) of the Constitution. The view formed by the Federal Government and any declaration issued is then subject to approval by the Supreme Court.

35. We therefore find that the decision of the ECP to refer its tentative findings in relation to Article 2(c)(iii) of PPO to the Federal Government as part of the Fact Finding Report is of no consequence. In the event that the Federal Government chooses to act on such tentative findings, it would need to do so with an independent mind after affording PTI an opportunity to be heard. We have not been informed by any of the parties before us that the Federal Government has chosen to act on the findings that form part of the Fact Finding Report for purposes of Article 15 of the PPO. We are therefore not minded to expunge any part of the Fact Finding Report on the basis of the petitioner's apprehension that such tentative findings might provide a basis to the Federal Government to take adverse action against PTI in breach of its due process rights.

36. For the aforementioned reasons, we are not inclined to judicially review the Fact Finding Report at this stage as we find the petition to be premature. We are confident that as repositories of public authority in a country sustained by rule of law the ECP and the Federal Government will not act in disregard of the rights of PTI and Chairman PTI as guaranteed by the law

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and the Constitution. In the even that PTI is aggrieved by the final decision rendered by ECP after conclusion of the show-cause proceedings, the petitioner will be at liberty to avail appropriate remedies under law, including the remedy of seeking judicial review before a constitutional court, if so advised. We **dismiss** the instant petition accordingly for being premature.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)
JUDGE

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(BABAR SATTAR)
JUDGE

Announced in the open Court on **02.02.2023**.

(CHIEF JUSTICE)

JUDGE

KISMAT KHAN

JUDGE

Saeed

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