IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:
Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Munib Akhtar

CIVIL MISC. APPLICATION NO.2600 OF 2023
IN
CONSTITUTION PETITION NO.5 of 2023
(Re: Implementation of Court order dated 04.04.2023 passed in Constitution Petition No. 5 of 2023).

Mohammad Sibtain Khan and others **... Applicant(s)/ Petitioner(s)**

Versus

Election Commission of Pakistan through Chief Election Commissioner Islamabad and others **... Respondents**

In attendance:

Mr. Mansoor Usman Awan, Attorney General for Pakistan
Ms. Sima Kamil, Acting Governor SBP
Mr. Inayat Hussain Ch. Deputy Governor SBP
Mr. Qader Bakhsh, Director SBP
Mr. Awais Manzur Sumra, Special Secretary Finance
Mr. Amer Mehmood, Addl. Secretary
Mr. Tanveer Butt, Addl. Secretary
Mr. Omer Hamid Khan, Secretary ECP
Mr. Muhammad Arshad, DG Law ECP
Mr. Zafar Iqbal, Special Secretary ECP
Mr. Tafakhur Ali Asdi, ADG Budget

Date of Hearing : 14.04.2023

O R D E R

Pursuant to the notice dated 11.04.2023 issued by the Court with regard to the report received from the Election Commission of Pakistan ("**Commission**") the respective officials from the State Bank of Pakistan, the Ministry of

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Finance/Finance Division and the Commission, as well as the learned Attorney General are in attendance. In compliance with our direction, the Acting Governor, State Bank of Pakistan ("**State Bank**") presented to the Court a statement setting out the funds and monies of the Federation/Federal Government which are under the custody, control and management of the State Bank. This statement is to the following effect:

"State Bank of Pakistan
FEDERAL GOVERNMENT BALANCES AS ON CLOSE OF APRIL 12, 2023

Sr.#	**Account Number and Title**	**Balance** (Amount in Rupees)
1	Account I (Non-Food).	1,392,657,303,742.80
2	Account II (Food).	313,127,525.00
3	Account V (Saudi Arab Spl. Loan)	4,124,000.00
4	Account VIII (Zakat)	4,325,797,446.00
5	Account X (Pakistan Baitul Mal Fund)	5,948.87
6	Account XVI (Fata Zakat Fund)	0.00
7	Account XII (Govt. Deposit (Escrow A/c)	5,276,000.00
8	Account XIV (UN Reimbursement)	3,778,458,304.00
9	Account XV Special Transfer Account.	10,592,210.34
10	Account XIX (Pakistan Development Fund Limited	0.00
11	Account III (Pakistan Railways Scrap & others)	449,636,509.19
12	Account XI (Pakistan Railways Pay)	140,346,378.00
13	Account XVII (Railways – Pension)	1,048,954,076.55
14	Account XVIII (Railways – PSDP)	6,558,091,558.71
15	Account XX (Pakistan Railways – Deposit Works)	657,607,308.00
16	Account XXI (Pakistan Railways – GP Fund)	11,140,890.00
17	Account XXIV (Pension Payment Account - PPOD)	0.00
Total		**1,409,960461,897.46**

The Acting Governor explained that these amounts constituted the Federal Consolidated Fund ("Fund"). The amount lying in Account No.I *(Non-Food)* ("**Account I**") constitutes by far the largest component of the Fund (being 98.77% thereof as of the date for which the data was provided). It was further explained that the amount lying in Account I is not designated for any particular or special usage whatsoever. Furthermore, the funds therein are not static

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inasmuch as there are regular (it seems almost daily) inflows into, and outflows therefrom, as Government receipts flow in, and monies are released to meet Government expenditures. The Acting Governor stated that other than Account I, the other 16 accounts were for special and designated purposes, carrying different amounts as set out in the table above.

2. It was explained to the Acting Governor that as per para 5 of the order dated 04.04.2023 made in Constitution Petition No.5 of 2023 ("**Order**"), a sum of Rs.21 Billion was required for the purposes of general elections to the Punjab and Khyber Pakhtunkhwa Assemblies and it was queried as to whether this sum could be made available from the funds aforementioned of the Federal Government lying with and under the custody, control and management of the State Bank, with particular reference to Account I. The Acting Governor confirmed that this would be done if the Court so directed and ordered. The State Bank further confirmed that the necessary transaction for the transfer of funds to the Commission, so that Rs.21 Billion become immediately available and utilizable for the latter, could be done within the shortest possible time, and at the latest by the close of business on Monday i.e. 17.04.2023.

3. The team from the Ministry of Finance/Finance Division ("**Finance**") was led by the Special Secretary, Mr.Awais Manzur Sumra. The Secretary, with the assistance of the learned Attorney General, also gave a presentation to

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the Court, in broad terms, with regard to the financial position of the Government of Pakistan, with particular reference also to the present and/or pending international obligations to the IMF. From the figures presented to the Court, of which even the smallest ran to several hundreds of Billions of Rupees, it became clear that the disbursement of Rs.21 Billion for fulfilling the constitutional mandate of holding the general elections would, at most, amount to a minuscule increase in the obligations of the Federal Government. Indeed, viewed from certain financial perspectives and contexts, which were stated by the team from Finance, the amount would be so insignificant as to not even amount to a rounding off error. The team from Finance also informed the Court that the Federal Government regularly went into the bond markets to borrow and raise funds which in the aggregate in any given financial year ran into trillions of Rupees. It was stated that in this regard Treasury bills were issued by the State Bank on behalf of the Federal Government on a regular and ongoing basis and that, even in this perspective, taking the amount now under consideration into account would not have any meaningful impact or effect. It was also confirmed by Finance that if the Court so ordered and directed the process of making the funds to the tune of Rs. 21 Billion available to the Commission on an immediately utilizable basis would be concluded rapidly, and by the close of business on 17.04.2023.

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4. In our view, on an assessment of the presentations made by the State Bank and the Finance Ministry/Division, there can be no doubt that the Rs.21 Billion required by the Commission and ordered to be made available in terms of para 5 of the Order can be done immediately and within a matter of a day. As to the exact mechanism for the transfer, the team from the Commission, ably led by the Secretary Mr. Omar Hamid Khan explained that the funds made available to and utilized by the Commission lay with AGPR. That agency had allocated an ID number (bearing No.2826) for the funds available to the Commission. To this ID number there is associated a ceiling determined by the Finance Division and within that ceiling the funds allocated to the aforesaid ID number are readily and immediately available to and utilizable by the Commission. Of course, as expected and confirmed by the Election Commission, any utilization of any funds whatsoever would be for the specific and properly assigned purpose (here the holding of general elections to the Punjab and KP Assemblies) and always in terms of the applicable accounting rules and procedure, and ultimately subject also to proper audit. It was further confirmed to the Court by all the officials and teams that on its order, the State Bank would send an appropriate communication to the Finance Division to the effect that Rs.21 Billion from Account I stood allocated to the Commission for purposes of the general elections as aforesaid and that the Finance Division would then immediately send an appropriate communication

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(on the same day) to the AGPR directing it to raise the ceiling of the limit associated with ID No.2826 by Rs. 21 Billion. In this way the Election Commission would immediately have access to, and be able to utilize, the said funds for purposes of the general elections.

5. With the assistance of the learned Attorney General and the team from the Finance, the Court also examined the relevant provisions of the Constitution relating to the allocation of these funds. It was confirmed by the officials of the Finance Ministry that in terms of Article 84 of the Constitution, the Federal Government was fully authorized to make expenditures from the Federal Consolidated Fund for, inter alia, "expenditure upon some new service not included in the Annual Budget Statement" for the relevant financial year here being the year ending on 30.06.2023. For such expenditure the Federal Government obtains *ex post facto* approval and authorization from the National Assembly in terms of the procedure laid down in the Articles of the Constitution immediately preceding Article 84. On a consideration of all of the foregoing it is our view that there is absolutely no difficulty or hitch, either financially or procedurally or in terms of the relevant authorization by and under the Constitution, for the immediate release of Rs.21 Billion to the Election Commission for fulfilling its constitutional mandate for the holding of general elections to the Punjab and KP Assemblies.

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6. In view of the foregoing, it is hereby ordered and directed as follows:

i) The State Bank of Pakistan shall from Account I lying under its control and management (and which constitutes the principal component of the Federal Consolidated Fund) forthwith allocate and release Rs. 21 Billion for purposes of the general elections to the Punjab and KP Assemblies. The State Bank shall in this regard immediately send an appropriate communication to the Finance Ministry/ Division. The said Ministry/ Division shall forthwith and immediately issue a proper direction to the AGPR to increase the limit of the ceiling with respect to the Election Commission's ID No.2826 by the said sum of Rs.21 Billion. This position shall also immediately be confirmed to the Election Commission by the said Ministry/ Division which shall also ensure that AGPR also forthwith gives proper intimation and confirmation to the Election Commission. All this must be done at the earliest and at the absolute latest not later than the close of business on Monday i.e. 17.04.2023. In this manner, the sum of Rs.21 Billion shall be

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and become available to and with the Election Commission in immediately releasable and utilizable funds for the purposes of holding the general elections to the Punjab and KP Assemblies. All the entities mentioned above i.e. the State Bank, Finance Ministry/Division, AGPR and the Election Commission must act together and coordinate fully so that the order and direction of the Court is implemented within the stipulated timeframe.

ii) The State Bank and the Finance Ministry/ Division shall by 18.04.2023 file compliance reports with this Court to the effect that order of the Court has been complied with, and the report of the Finance Ministry/ Division shall also include a confirmation in relation to AGPR. Likewise, the Election Commission shall on 18.04.2023 file a report with this Court confirming that Rs.21 Billion have become available to it in terms as stated above. We may also note that this order shall be deemed sufficient authority for all purposes for the authorization of expenditure on the Federal Consolidated Fund and the Federal Government shall thereupon obtain the *ex post facto* approval

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and sanction from the National Assembly for authorisation of this expenditure in terms of Article 84 and other applicable provisions of the Constitution.

7. We would like to record our appreciation for the assistance that was provided to the Court by each of the officials that appeared today and the respective teams led by them. This matter stands adjourned for the purposes of para 5 of the Order but should any need arise it will be taken up again in such terms as deemed appropriate by the Court. Insofar as the matters identified in paras 6 and 7 of the Order, those matters will be taken up once the report required to be filed by the Federal Government in terms of para 6 thereof has been filed and considered by the Election Commission.

Sd/-
Chief Justice

Sd/-
Judge

Sd/-
Judge

Islamabad, the
14th of April, 2023

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