IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Qazi Faez Isa, CJ
Justice Muhammad Ali Mazhar
Justice Musarrat Hilali

Civil Petition No. 42/2024
(On appeal against the judgment dated 10.01.2024 passed by Peshawar High Court, Peshawar, in WP No. 6173-P/2023)

Election Commission of Pakistan through Special Secretary, Islamabad ...Petitioner

Versus

Pakistan Tehreek-e-Insaf, Islamabad through its authorized person and others ...Respondents

For the Petitioner:	Mr. M. Makhdoom Ali Khan, Sr. ASC Mr. Sikandar Bashir Mohmand, ASC Mr. Saad Mumtaz Hashmi, ASC Mr. Arshad Khan, DG (Law) ECP Mr. Masood Sherwani, DG (P/F) ECP Mr. Khurram Shehzad, Addl. DG (Law) ECP
For the Federation:	Ch. Aamir Rehman, Addl. AGP
For Respondents 1,2 & 4:	Mr. Hamid Khan, Sr. ASC Syed Ali Zafar, ASC Mr. Gohar Ali Khan, ASC and Mr. Ajmal Ghaffar Toor, ASC Mr. Niazullah Khan Niazi, ASC Mr. M. Sharif Janjua, AOR assisted by Mr. Abdullah Malik, Advocate High Court
For Respondent 10:	Syed Ahmed Hassan Shah, ASC assisted by Mr. Badar Chaudhry, Advocate a/w Mr. Akbar S. Babar
For Respondents 3, 5 to 9, 13 to 15, 19 to 22:	N.R.
For Respondent 11:	Ms. Noureen Farooq Khan
For Respondent 12:	Mr. Mehmood Ahmed Khan
For Respondent 16:	Mr. M. Muzammil Sandhu
For Respondent 17:	Mr. Yousaf Ali
For Respondent 18:	Mr. Bilal Azhar Rana
Date of Hearing:	13.01.2024

Kismat Khan Zimri

Watermarkly

ORDER

Qazi Faez Isa, CJ. The Election Commission of Pakistan ('**ECP**') had issued a notice on 24 May 2021 to Pakistan Tehreek-e-Insaf ('**PTI**') to hold intra party elections, which was followed by a show cause notice stating that section 208 of Elections Act, 2017 ('**the Act**') mandates that intra party elections in PTI must be held and it had been five years since the last one was held, and ECP stipulated the consequences, mentioned in the Act, which would follow if elections were not held. PTI did not dispute that elections had not been held but submitted that because of Covid-19 the time for holding its intra party elections may be extended by one year. Time was granted and PTI was directed to hold intra party elections no later than 13 June 2022 and told that '*no further extension will be granted*'.

2. Intra party elections are stated to have been conducted by PTI on 8 June 2022, however, the ECP *vide* its order dated 13 September 2023 held that PTI had '*failed to hold transparent, just and fair intra party elections*' and that, instead of invoking the provisions of section 215(5) of the Act, '*a lenient view has been taken with direction to the respondent party to hold its intra party elections strictly in accordance with the prevailing party constitution, within twenty days positively*' failing which it '*would be ineligible to obtain an election symbol for elections.*' PTI assailed ECP's order before the Lahore High Court ('**LHC**') in Writ Petition No. 81171/2023, which was initially heard by a Single Judge, but on PTI's request for constitution of a Full Bench it was listed for hearing before a five-member Bench together with WP No. 332/2023. While both these petitions were pending adjudication before the LHC, PTI contended that it had conducted its intra party elections on 2 December 2023, but it did not withdraw WP No. 81171/2023.

3. A number of complaints were received by ECP alleging that intra party elections were not held in PTI and the ECP issued notice to PTI, upon receipt whereof WP No. 5791/2023 was filed before the Peshawar High Court ('**PHC**'), and an ad interim order was obtained against the ECP that it should not pass a final order till the determination of WP No. 5791/2023. Subsequently, WP No. 5791/2023 was disposed of by the PHC by directing the ECP to decide the matter by 22 December 2023. The ECP passed order dated 22 December 2023 in which it held

Kismat Khan Zimri

Watermarkly

that PTI had not complied with the directions issued by the ECP, and had failed to hold intra party elections in accordance with PTI's constitution, the Act and the Election Rules, 2017 with the consequence that section 215(5) of the Act would be attracted pursuant to which PTI was '*declared ineligible to obtain the Election Symbol*' which it had applied for.

4. The order of ECP dated 22 December 2023 was assailed before the PHC in WP No. 6173-P/2023, which was allowed *vide* short order dated 10 January 2024, detailed reasons whereof were given subsequently.

5. Two representatives of PTI had filed another writ petition in the LHC bearing No. 287/2024 against the ECP which was disposed of by learned Single Judge *vide* order dated 3 January 2024, holding that the prayer sought therein could only be granted if section 215(5) of the Act was declared *ultra vires* the Constitution but since the same was not challenged the relief sought could not be granted. It was also mentioned that a petition was pending in the PHC. An intra-court appeal was filed against the order of the learned Single Judge, however, a Divisional Bench of the LHC upheld the order of the learned Single Judge.

6. WP No. 81171/2023 and 332/2023 remain pending in LHC. WP No. 6173-P/2023 filed in the PHC did not disclose that WP No. 81171/2023 was pending adjudication before a five-member Bench of the LHC, even though it pertained to the very same matter, that is, the holding of intra party elections in PTI. WP No. 6173-P/2023, filed before the PHC, was not maintainable because the same issue, of intra party elections, had already been assailed by PTI before the LHC. If two and more courts have concurrent jurisdiction, while a petitioner may elect to avail of his remedy before either court, but having chosen a particular court the same dispute cannot then be taken to the other court.

7. ECP has been calling upon PTI to hold its intra party elections since 24 May 2021; at that time the PTI was in the Federal Government and in some provinces. Therefore, it cannot be stated that ECP was victimizing PTI. Nonetheless, we wanted to satisfy ourselves that the ECP had not acted *mala fide* or for ulterior reasons or that PTI was discriminated against. It transpired that ECP had passed orders

Kismat Khan Zimri

Watermarkly

against thirteen other registered political parties which were far more severe than the order passed against PTI; one such case, of All Pakistan Muslim League, came before this Court on 12 January 2024 and the order of the ECP, delisting the said political party, was upheld.

8. ECP wanted to ensure that PTI holds intra party elections. The mere production of a certificate stating that such elections were held would not suffice to establish that intra party elections had been held when a challenge was thrown to such an assertion. Nor, in our opinion, should ECP concern itself with minor irregularities in the holding of a political party's elections. However, in the instant case not even prima facie evidence was produced to show that a semblance of elections had been held. Fourteen PTI members, with stated credentials, had complained to ECP that elections had not been held. These complaints were brushed aside in the writ petition by simply asserting that they were not members of PTI and thus not entitled to contest elections, but this bare denial was insufficient, particularly when they had credibly established their long association with PTI. And, if any member of a political party is expelled it must be done in accordance with section 205 of the Act, but no evidence in this regard was forthcoming.

9. Democracy founded Pakistan, a fundamental aspect of which is the ability to put oneself forward as a candidate and to be able to vote, both within a political party and in general elections. Anything less would give rise to authoritarianism which may lead to dictatorship.

10. The ECP is a constitutional body and amongst its duties are those mentioned in the Constitution of the Islamic Republic of Pakistan ('**the Constitution**'), Article 219(e) of which stipulates that ECP must also undertake such functions as prescribed by law, which would include those mentioned in the Act. Section 208 of the Act mandates that political parties must hold intra party elections periodically, and that a period not exceeding five years elapse within two elections. It further stipulates that every member of a political party '*be provided with an equal opportunity of contesting election for any political party office.*' Members of PTI were not provided nomination papers when they went to get them nor were any intra party elections held. Incidentally, the notice issued by the PTI Secretariat stated that the elections were to be held in Peshawar but

Kismat Khan Zamri

Watermarkly

did not mention the venue, and then the venue was shifted to Chamkani, which is a village adjacent to Peshawar.

11. Neither before the LHC nor before the PHC any provision of the Act, including section 215(5), was challenged. The observation of the learned Judges that the provision of the law was *absurd* was uncalled for, particularly when no provision thereof was declared to be unconstitutional. Surprisingly, no declaration was sought, nor given, that intra party elections were held in PTI, let alone that the same were held in accordance with the law. If it had been established that elections had been held then ECP would have to justify if any legal benefit to such a political party was being withheld, but if intra party elections were not held the benefits accruing pursuant to the holding of elections could not be claimed.

12. We also do not agree with the learned Judges that the ECP did not have '*any jurisdiction to question or adjudicate the Intra Party Elections of a political party.*' If such an interpretation is accepted it would render all provisions in the Act requiring the holding of intra party elections illusory and of no consequence and be redundant.

13. Therefore, for the aforesaid and detailed reasons to follow, this petition is converted into an appeal and allowed by setting aside the impugned order and judgment of the PHC, passed in WP No. 6173-P/2023; resultantly, the order of the ECP dated 22 December 2023 is upheld.

Chief Justice

Judge

Judge

ISLAMABAD
13.01.2024
(Farrukh)

Approved for Reporting

Kismat Khan Zimri

Watermarkly