ELECTION COMMISSION OF PAKISTAN

*****

MR. SIKANDAR SULTAN RAJA,	CHAIRMAN
MR. NISAR AHMED DURRANI,	MEMBER
MR. SHAH MUHAMMAD JATOI,	MEMBER
MR. BABAR HASSAN BHARWANA,	MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN,	MEMBER

CASE No.F.6 (14)/2024-Law-II

Subject: **APPLICATIONS FILED BY SUNNI ITTEHAD COUNCIL FOR ALLOCATION OF RESERVED SEATS IN NA, PP, PS AND PK.**

Sahibzada Muhammad Hamid Raza

Petitioner…..

CASE No.F.6 (12)/2024-Law-II

Subject: **PETITINER UNDER SECTION 3, 4, 8, 15 AND 104 OF THE ELECTIONS ACT, 2017 & READ WITH ARTICLE 51 AND 218(3) OF THE CONSTITUTION ALONG WITH ALL ENABLING PROVISIONS AND APPLICATION UNDER ORDER 1 RULE 10 CPC READ WITH SECTION 3, 4 AND 15 OF THE ELECTIONS ACT, 2017 FOR IMPLEDMENT OF PARTY.**

Muttahida Qaumi Movement (Pakistan)

Petitioner…..

Versus

Sunni Ittehad Council (SIC) Pakistan
&
Pakistan People's Party Parliamentarian

Respondent…..

CASE NO, F. 3 3(4)/2024-AD-Law-III

Subject: **PETITION UNDER SECTION 3,4,8,15 AND 104 OF THE ELECTIONS ACT, 2017 READ WITH ARTICLE 51 AND 218(3) OF THE CONSTITUTION ALONG WITH ALL OTHER ENABLING PROVISIONS OF LAW.**

Pakistan Muslim League (N)

Petitioner…..

Versus

Sunni Ittehad Council (SIC) Pakistan

Respondent…..

CASE NO 6(13)/2024-O/O-DD-LAW

Subject: **REPRESENTATION ON BEHALF OF KANZ-US-SAADAT SIDDIQUEADVOCATE SUPREME COURT OF PAKISTAN REGISTERED VOTER PML (N) TO SAVE GUARD THE VESTED INTEREST OF THE PETITIONER/ APPLICANT AS SHE HAS FILED NOMINATION PAPER FROM PML (N) FOR RESERVED SEAT FROM PROVINCE OF PUNJAB**

IN NATIONAL ASSEMBLY AS SHE IS EXPECTED TO BE GIVEN PRIORITY BY THE PARTY IN THE SECOND LIST.

Kanz-Us-Saadat Siddique

Petitioner.....

Versus

Sunni Ittehad Council (SIC) Pakistan

Respondent.....

CASE NO 7(567)/2024-LAW-III (GE)

Subject: **REPRESENTATION ON BEHALF OF TAMKEEN AKHTAR NIAZI REGISTERED VOTER PML(N) TO SAVE GUARD THE VESTED INTEREST OF THE PETITIONER ACCORDED THROUGH THE PRIORITY LIST SUBMITTED BY THE PML(N) FOR WOMEN RESERVED SEAT IN NATIONAL ASSEMBLY WHEREIN THE PETITIONERS NAME APPEARS AT SR. NO.20 FOR PUNJAB N.A.**

Tamkeen Akhtar Niazi

Petitioner.....

Versus

Sunni Ittehad Council (SIC) Pakistan

Respondent.....

CASE NO. 7 (574)/2024-LAW.III(GE)

Subject: **PETITION FOR RESTRAINING THE POLITICAL PARTY SUNNI ITTEHAD COUNCIL BEING TREATED AS PARLIAMENTARY PARTY AND FROM ACCEPTANCE THE SUCCEEDED INDEPENDENT CANDIDATES WHO JOIN THE SUNNI ITTEHAD COUNCIL AS POLITICAL PARTY WHICH IS NOT A PARLIAMENTARY PARTY**

Ahmed Raza S/o Riaz Ahmed

Petitioner.....

Versus

Sunni Ittehad Council

Respondent.....

CASE NO. 3 (34)/2024.AD-LAW-I

Subject: **PETITION FOR RESTRAINING THE POLITICAL PARTY SUNNI ITTEHAD COUNCIL BEING TREATED AS PARLIAMENTARY PARTY AND FROM ACCEPTANCE THE SUCCEEDED INDEPENDENT CANDIDATES WHO JOINED THE SUNNIT ITTEHAD COUNCIL AS POLITICAL PARTY.**

Malik Abdullah

Petitioner.....

Versus

The Federation Of Pakistan and Another

Respondent.....

CASE NO. 1(7)/2024-O/o-DD-LAW.

Subject: **PETITION FOR RESTRAINING THE POLITICAL PARTY SUNNI ITEHAD COUNCIL BEING TREATED AS PARLIAMENTARY PARTY AND FROM ACCEPTANCE SUCCEDED INDEPENDENT CANDIDATES WHO JOIN THE SUNNIT ITTEHAD COUNCIL AS POLITICAL PARTY WHICH IS NOT A PARLIAMENTARY PARTY**

Moulvi Iqbal Haider

Petitioner.....

Versus

Sunni Ittehad Council

Respondent.....

CASE NO. 21(4)/2024-Cord. (P/F-3).

Subject: **REQUEST TO ISSUE CERTIFIED COPIES OF ALLIANCE/ MERGER BETWEEN PAKISTAN TEHREEK-E-INSAF & SUNNI ITEHAD COUNCIL & THE AFFIDAVITS SUBMITTED IN FAVOUR OF SUNNI ITEHAD COUNCIL BY PTI SUPPORTED INDEPENDENTLY ELECTED MEMBERS OF NATIONAL PROVINCIAL ASSEMBLY OF PAKISTAN**

Mehmood Ahmed Khan

Petitioner.....

Versus

Sunni Ittehad Council

Respondent.....

ON COMMISSIONS NOTICE.

1. **Maulana Fazal-ur-Rehman**
   Ameer Jamat Ulam-e-Islam Pakistan
2. **Pir Sibghatullah shah Pir Pagara**
   Grand Democratic Alliance
3. **Abdul Aleem Khan**
   Chairman Istehkam-e-Pakistan party
4. **Ch. Shujaat Hussain**
   Chairman Pakistan Muslim League

For the petitioner No.1:	Barrister Ali Zafar, Sr. ASC, Hamid Khan, Sr. ASC along with Ajmal Ghaffar Toor, ASC, Gohar Ali Khan, ASC, & Barrister Abdullah N. Malik.
For the petitioner No.2;	Dr. Farugh Naseem, ASC
For the petitioner No. 3:	Farooq H. Naik, Sr. ASC
For the petitioner No.4;	Azam Nazir Tarar, ASC along with Barrister Haris Azmat
For the petitioner No.5	Muhammad Siddique Awan, ASC
For the petitioner No.6	Malik Qamar Afzal, ASC
For the petitioner No.7	Ghulam Murtaza Khan, Advocate
For the petitioner No.8	In-person
For the petitioner No.9	In-person
For the petitioner No.10	In-person

ON COMMISSION'S NOTICE

For the respondent No. 1	Kamran Murtaza, Sr. ASC
For the respondent No. 2	Nemo
For the respondent No. 3	Nemo
For the respondent No. 4	Barrister Umar Aslam, ASC

Date of hearing: **28-02-2024**

ORDER

Sikandar Sultan Raja, Chairman- Brief facts of the matter are that all the above mentioned petitioners have filed petitions before the Commission in respect of the allocation of reserved seats for women and non-Muslims in the National and Provincial Assemblies constituted as a result of General Elections 2024, held on 08.02.2024. The Commission issued notification in which the independent candidates were notified as Returned Candidates in the National and Provincial Assemblies. Subsequent to the notifications some of the independent candidates joined Political Party Sunni Ittehad Council (SIC) and their affidavits were forwarded to the Commission by the said Political Party in respect of National Assembly, Provincial Assembly Punjab and Provincial Assembly KP and Provincial Assembly of Sindh Sunni Ittehad Council requested for allocation of share in the seats reserved for women and non-Muslim in the National Assembly and three Provincial Assemblies mentioned above. Different applications were filed by the major Political Parties including MQM-P, PPPP and PML (N) and also some individuals for allocation of reserved seats as per their share in the Assemblies. The petitioners also agitated that Sunni Ittehad Council is not eligible to obtain the quota/ share in reserved seats for women and non-Muslim. Matters were placed in the meetings of the Commission and decided to fix the same for hearing before full Commission.

02. Notices were issued to Sunni Ittehad Council and all the respective petitioners for appearance before the Commission on 27.02.2024.

03. On 27.02.2024 all the petitions were clubbed and notices were issued to the Political Parties who had already submitted their priority lists for the reserved seats of women and non-Muslims i.e. Respondent Nos. 1-4, and the matter was adjourned to 28.02.2024. Copies of the petitions were handed over to all the parties for preparation of their arguments.

04. Mr. Ali Zafar, Sr. ASC appeared on behalf of Sunni Ittehad Council (SIC) and submitted that the party has submitted three letters/ applications dated 21.02.2024 for allocation of share of reserved seats in the National Assembly, Provincial Assembly Punjab, Provincial Assembly Sindh and Provincial Assembly KP. He submitted that there are three major points involved in respect of applications filed by the petitioners upon which he will assist the

Commission. He referred to the proceedings before the August Supreme Court of Pakistan in the matter regarding Intra Party Election of Pakistan Tehreek-e-Insaf and allocation of symbol "Bat". He argued that in National Assembly 86 MNAs have joined SIC, similarly, in Sindh 9 MPAs, in Punjab 107 MPAs and in KP 87 MPAs have joined SIC. He further added that SIC is a registered Political Party with election symbol "Horse". He argued that the word Political Party is defined under Section 2(XXVIII) of the Elections Act, 2017 and the procedure for enlistment of the Political Party is given under Section 200 of the Act *Ibid.* He further contended that elections mean election to the National Assembly, Provincial Assembly, Senate or Local Government. He pointed out that eligibility to get a symbol for the election is provided under Section 215 of the Elections Act, 2017. He further argued that the rights of the Political Party are defined under Article 17(2) of the Constitution and to form a Political Party is a fundamental right of every citizen. He referred to Benazir Bhutto's case reported in PLD 1988 SC 416 at page numbers 515, 520, 531, 566, 567 & 620. He also referred another judgment of Benazir Bhutto's case reported in PLD 1989 SC 66 at page number 73, 74 & 75 and contended that right to contest elections cannot be taken away as allocation of symbol is a right of the Political Party. In support of his arguments he also referred the judgment reported in PLD 2023 SC 42 at para 56 & PLD 1993 SC 473 at 572 para number 82. He argued that other petitioners have raised the objection over that Sunni Ittehad Council (SIC) is not a parliamentary party, therefore not entitled to have any share in reserved seats, in response to it the counsel argued that after joining of the independent Returned Candidates the party has become Parliamentary Party. He referred to the Election of the President under Article 41 of the Constitution read with second schedule of the Constitution and stated that procedure/ doctrine has been provided for the Election of President, similarly, Article 51 of the Constitution provides a doctrine for the allocation of seats reserved for women and non-Muslims. He further stated that it is right of the Political Parties to get the reserved seats for women and non-Muslims and as such SIC could not be deprived of from its share of Proportional representation. He argued that the meaning of Proportional representation is that every Political Party gets the share of reserved seats for women and non-Muslims on the basis of General seats obtained in the election. He pointed out that the concept of allocation of seats of one Political Party to another is incorrect which every Political Party has to get the share of reserved seats in accordance with the General seats won by that Political Party. He referred to the Proviso of Article 51(d) of the Constitution and stated that after joining of independent candidates to a Political Party the number of seats can be increased as independent candidates are part of Parliament. He also pointed out that it is no where mentioned in the Constitution that the independent candidates could join a Political Party which has already some members in the

Parliament. The counsel referred to Article 106 of the Constitution which deals with the Provincial Assembly and stated that the same analogy of the National Assembly seats will be applied under Article 51 of the Constitution. He referred judgments reported as PLD 2023 SC 42 and PLD 2023 SC 539 and stated that Parliamentary leader is authorized to make decisions. Therefore, he concluded his arguments by stating that independent candidates may join any Political Party and such Political Party has the right to get quota for reserved seats. He mentioned that all the independent candidates of the National and three Provincial Assemblies i.e. (Punjab, Sindh and KP) have joined SIC within three days of the notification of Returned Candidate by the Commission. He stated that another point raised by the petitioners in their petition is that SIC has not provided list of reserved seats. He argued that there is no bar for providing list of reserved seats for women and non-Muslims before election as the "list" is mentioned in law and every time the list is provided the Commission shall give its schedule for nomination papers. He further contended that the present situation does not come under the definition of Section 104 of the Elections Act, 2017 as it is the case of first impression for which law and Constitution is not specific. He further stated that the word exhaust given in Section 104 of the Act also includes fresh list from the Political Party. He elaborated his arguments and submitted that the Commission has the power under Article 218 & 219 of the Constitution read with Section 4 of the Elections Act, 2017 to make decisions in respect of subject situations. He contended that the Commission has to interpret the law and should allocate quota for reserved seats to SIC. The learned counsel for the petitioner also mentioned that the Commission earlier in the case of Balochistan Awami Party (BAP) allowed them for reserved seats even the party had, his no seat in the Provincial Assembly of KP. The counsel also referred Article 224(6) of the Constitution and stated that reserved seats for women and non-Muslims may be allocated to SIC. He while concluding his arguments referred to a judgment of divisional bench in writ petition No. 222851/2018 titled as Mahinder Pall Singh Vs. PEC & Others before the Hon'ble Lahore High Court, Lahore in which fresh party list for reserved seats was accepted and petitioner was declared eligible candidate as the court observed that the reserved seats are not transferable. He further argued that in case the seats are not allocated to SIC, there should not be allocated to the other Political Parties.

05. Mr. Farooq H. Naik, Sr. ASC appeared on behalf of Pakistan People's Party Parliamentarian (PPPP) and submitted that the whole issue revolves around a question that whether SIC is entitled for reserved seats as the party did not contest elections as a Political Party and did not even won any seat in any Assembly. He stated that the list for the reserved seats is very important and Clause (d) of Article 51 Sub-Clause 6 of the Constitution provides that the

seats reserved for women which are allocated to a Province under Clause (3) shall be in accordance with law through proportional representation system of Political Parties, list of Candidates on the basis of total number of General seats secured by each Political Party from the Province concerned in the National Assembly. He further stated that the law mentioned under Article 51(6) of the Constitution is not set-aside by any court of law and is still in field. He argued that the judgments referred by the counsel for the petitioner No. 1 are prior to the Elections Act, 2017 and one judgment is after 2017 which is not applicable in the present case. He submitted that Article 51 of the Constitution deals with the reserved seats for National Assembly and Article 106 deals with the reserved seats for Provincial Assembly. He pointed out that petitioner No. 1 has cited Article 17(2) of the Constitution but it is subject to any reasonable restrictions imposed by law which is Section 104 of the Elections Act, 2017. He argued that Section 104 of the Elections Act, 2017 provides that there are four basic requirements for allocation of reserved seats to a Political Party. He stated that the first requirement is the word "Political Party" is used with the proposition "contesting election for such seats "shall" "within a period fixed by the Commission" "for submission of nomination papers." He argued that in the present case schedule for submission of Nomination Papers for reserved seats was issued by the Commission and time period was fixed for its submission and scrutiny. He contended that SIC did not submit its priority list within the time period specified by the Commission. He further argued that once the list is submitted by a Political Party it is not subject to any change/ alteration after expiry of date of submission by a Political Party. He stated that the law provides the relaxation only in the situation when already provided list is exhausted by way of death, resignation or disqualification of the Candidates. He submitted that the Commission under Section 4 of the Elections Act, 2017 cannot issue directions for making change in the law. He while concluding his arguments placed reliance upon PLD 2008 Lahore 196, PLD 2008 SC 609, PLD 2022 Lahore 635 and 2017 MLD 930. He submitted that SIC cannot submit his priority list at such a belated stage and quota in the reserved seats cannot be allocated to them.

06. Mr. Farough Naseem, Sr. ASC appeared on behalf of Petitioner No. 3 MQM-P and stated that MQM-P is the third largest Political Party of Pakistan and further stated that in the recent General Elections, Petitioner No. 3 has won 17 General seats in the National Assembly and 28 General seats in the Provincial Assembly of Sindh. He argued that the Petitioner party has a legitimate right to secure proportionate representation of reserved seats in the legislative assemblies. He further submitted that Petitioner No. 1 (Respondent In Petition of MQM-P) requested for allocation of reserved seats, however, he mentioned that in terms of Section 104(1) of the Elections Act, 2017 only a Political Party contesting election, is entitled for

allocation of reserved seats. He further argued that Petitioner No. 1 never contested election for General and reserved seats and also did not submit any priority list for women and non-Muslims at the time of General Elections-2024. He elaborated that the Petitioner No.1 is lacking the essential criteria of contesting elections for reserved seats under Section 104(1) of the Elections Act, 2017. He further contended that the Election Commission of Pakistan has issued schedule/ cut of date regarding filing of nomination papers on 15.12.2023, 22.12.2023 and 29.12.2023, however, Petitioner No. 1/ Respondent did not file any priority list in this respect. He submitted that there is a proper procedure for filing of nomination papers of reserved seats for women and non-Muslims and its scrutiny under Section 104(3) of the Act *Ibid*, however, the procedure for filing of nomination papers and its scrutiny was not carried out in case of Petitioner No. 1/ Respondent. The learned counsel also stated that it is mandatory for the independent Returned Candidates to join a Political Party within three days of the publication in the official gazette the names of independent Returned Candidates. He elaborated that the Commission has issued notification of the independent Returned Candidates and they have not joined the Political Party within the given time therefore he prayed that they cannot be treated as part and parcel of SIC. He extended his arguments and submitted that the Commission cannot interpret the Law and the Constitution as the matter for filing of list has become past and close transaction therefore, the Commission cannot allow submission of list for reserved seats afresh. He in support of his arguments relied upon the case laws reported in 1989 SCMR 353 and Shohaib Shaheen's case reported in PLD 2017 SC 231 and submitted that the if a Political Party fulfills the prerequisites provided under Article 51(6) of the Constitution read with Section 104 of the Elections Act, 2017, then the right for allocation of reserved seats will accrue.

07. Mr. Azam Nazir Tarar, ASC along with Barrister Haris Azmat, ASC appeared on behalf of Respondent No. 4 and submitted that PML (N) is the largest Political Party of Pakistan and has contested General Elections 2024 with winning of majority of seats in the Assemblies therefore, have a legitimate right to secure proportionate representation of reserved seats in the legislative Assemblies. The counsel argued that SIC has no right to claim for allocation of reserved seats for women and non-Muslims because they have never submitted the priority list nor filed nomination papers for the said seats within time/ deadline given by the Election Commission of Pakistan. He submitted that SIC has lost its right for filing of nomination papers and claiming of reserved seats for women and non-Muslims which was mandatory under the Law within a specified time. He stated that the word shall has been used with the preposition "in accordance with law" in Article 51(6)(d) of the Constitution read with Section 104 of the Elections Act, 2017 and the distribution of the seats shall be made on the basis of proportional

representation. He argued that SIC did not contest General Elections-2024 nor won any seat in the Assembly. He further argued that it is right of a Political Party contesting elections to claim for reserved seats in the Assembly. He submitted that in the present case different facts are involved and once a list is submitted by a Political Party under Section 104 of the Elections act, 2017 it cannot be changed, altered and amended however, the names can be given afresh after the list exhausts due to death resignation or disqualification of the candidates. He submitted that after the date fixed for submission of list, fresh list for reserved seats cannot be given by the Political Party. In support of his arguments he referred the judgments of Apex Courts reported in 2017 MLD 930, PLD 2008 SC 609, PLD 2022 Lahore 635, 2021 SCMR 305 and 2022 SCMR 1333.

08. Mr. Kamran Murtaza, ASC appeared on Commission's Notice and stated that Article 51, Article 106 and Article 224 of the Constitution is involved in the subject matter. He submitted that number of seats shall be allocated by way of proportional representation on the basis of General seats won by a Political Party. He further submitted that the independent candidates have no right to claim for the reserved seats that's why they have to join a Political Party. He in support of his arguments gave an example that for General seats time is specified by the Commission for submission of nomination papers and if a person fails to submit the papers within that time he cannot claim after election at belated stage to allow him for submission of nomination papers and the Commission cannot give a fresh schedule for that person as his right and consequently the opposite candidate will be elected unopposed. He pointed out towards Section 104 of the Act and Rule 92 of the Election Rules, 2017 and argued that the time for submission of list and nomination papers for reserved seats was specified by the Commission in shape of an election programme dated 15.12.2023, 22.12.2023 and 29.12.2023. He while referring Article 51, 224 of the Constitution & Section 104 of the Act read with Rule 92 of the Election Rules, 2017, argued that it is no-where mentioned in the Constitution and Law that if the priority list is not submitted within time that can be provided at a later stage. He submitted that fresh names in the list can only be provided if the already provided list exhausts and the Commission cannot accommodate the party at the later stage. He concluded his arguments while giving reference to a Civil Petition No. 245/2024 Titled Pesu Mal vs. ECP & Others and prayed that SIC cannot be allocated reserved seats in the present situation when the party has not contested General Election and even do not have a single seat in the Assembly.

09. Barrister Umer Aslam, ASC appeared on behalf of Respondent NO. 4 PML-Q which was on Commission's notice and stated that he is adopting the arguments advance by Mr. Farooq H. Naek on behalf of PPPP and Mr. Azam Nazir Tarar representing PML (N).

10. Counsel for Petitioner No. 5 appeared on behalf of applicant namely Kanz-us-Saadat and adopted the arguments advance by the Senior Counsels for JUI-P and PPPP.

11. Mr. Qamar Afzal, ASC appeared for Petitioner No.6 namely Tamkeen Akhtar Niazi and submitted that his client is at Serial No. 20 of the priority list submitted by PML (N) and has a vested right to protect her candidature. He argued that the allocation of reserved seats to a Political Party will be carried out on the basis of proportional representation system and in case the seats are allocated to SIC on the basis of newly added independent members the petitioner shall be deprived of her eligible claim of reserved seat. He further argued that the procedure for submission of nomination papers and its scrutiny within the time specified by the Commission has been provided under Rule 94 of the Election Rules, 2017. He further submitted that the Rule 92 will be read with Clause 6 of Article 51 of the Constitution in support of his arguments he referred to the judgments of Apex Courts reported in 2017 MLD 930, PLD 2024 SC 267, 2021 PLC(C.S) 1, 2018 CLC 1657 and PLD 2014 Lahore 221.

12. Counsel for Mr. Ahmed Raza, Petitioner No. 7 appeared and submitted that the word "shall" has been used in Article 51 of the Constitution which makes it mandatory for the independent candidates to join a Political Party within three days of the notification of Returned Candidates and in the subject case the independent candidates have failed to join Political Party within prescribed period of three days. He further argued that the independent candidates do not come under the definition of Article 63-A of the Constitution and it is clear discrimination and violation of Article 25 of the Constitution. He requested the Commission that SIC did not contest General Elections as a Political Party and also did not win a seat in the Assembly therefore; the said party may not be allocated reserved seats for women and non-Muslims.

13. Counsel for Petitioner No. 8 appeared and adopted the arguments advanced by the Senior Counsels representing PML (N), PPPP, MQM-P and JUI-P.

14. Petitioner No. 9 Moulvi Iqbal Haider, Advocate appeared in person and submitted that the independent Returned Candidates did not join the Political Party within specified time period of three days therefore; they have no right to sit in the Assemblies. He further argued that SIC did not even win a single seat in the National Assembly therefore, that party is not a Parliamentary Party and is not eligible to obtain reserved seats quota. He submitted that the joining of successful independent candidates, are un-lawful, un-fair, illegal and not sustainable under the Law. He in support of his arguments referred to the judgment of august Supreme Court reported in PLD 2015 SC 40 and stated that SIC has no right for allocation of reserved seats.

15. Petitioner No. 10 namely Mehmood Ahmed Khan appeared in person and submitted that he requires the copies of affidavits for joining a Political Party, SIC, for filing of proper representation. He stated that the independent candidates do not have right to claim for quota in the reserved seats for women and non-Muslims.

16. In rebuttal Barrister Ali Zafar, Sr. ASC appeared and submitted that all the Senior Counsels appeared before the Commission have attempted to confuse the Commission. He submitted that if the seats reserved for women and non-Muslims are not allocated to SIC, the same cannot be allocated to the other Political Parties and shall remain vacant till the time amendment in the Constitution is made by the Parliament.

17. Arguments heard and record perused.

18. The relevant provisions of the Constitution and Law are reproduced below for easy reference:-

THE CONSTITUTION

Article-51

51. ***National Assembly:***

(1) *There shall be [three hundred and thirty-six] seats for members in the National Assembly, including seats reserved for women and non-Muslims.*

(2) *A person shall be entitled to vote if-*

- *(a)* *he is a citizen of Pakistan;*
- *(b)* *he is not less than eighteen years of age;*
- *(c)* *his name appears on the electoral roll; and*
- *(d)* *he is not declared by a competent court to be of unsound mind;*

(3) ***The seats in the National Assembly referred to in clause (1), except as provided in clause (4), shall be allocated to each Province and the Federal Capital as under-***

Province	*General Seats*	*Women Seats*	*Total Seats*
Balochistan	*16*	*4*	*20*
Khyber Pakhtunkhwa	*45*	*10*	*55*
Punjab	*141*	*32*	*173*
Sindh	*61*	*14*	*75*
Federal Capital	*3*	*-*	*3*
Total	*266*	*60*	*326*

(3A) ***Notwithstanding anything contained in clause (l) or any other law for the time being in force, the members of the National Assembly from the Federally Administered Tribal Areas to be elected in the general elections, 2018 shall continue till dissolution of the National Assembly and thereafter this clause shall stand omitted.***

(4) ***In addition to the number of seats referred to in clause (3), there shall be, in the National Assembly, ten seats reserved for non-Muslims.***

(5) ***The seats in the National Assembly shall be allocated to each province and the Federal Capital on the basis of population in accordance with the last preceding census official***

published:
Provided that for purposes of the next general elections to be held in 2018 and bye-elections related thereto, the allocation shall be made on the basis of provisional results of the 2017 census which shall be published by the Federal Government.

(6) ***For the purpose of election to the National Assemly,-***

(a) .....

(b) .....

(c) .....

(d) *members to the seats reserved for women which are allocated to a Province under clause (3) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly:*
Provided *that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates; and*

(e) *members to the seats reserved for non-Muslims shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the National Assembly:*
Provided *that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates.*

Article 106

106. ***Constitution of Provincial Assemblies:***

(1) *Each Provincial Assembly shall consist of general seats and seats reserved for women and non-Muslims as specified herein below:-*

	General seats	*Women*	*Non-Muslims*	*Total*
Balochistan	*51*	*11*	*3*	*65*
Khyber Pakhtunkhwa	*115*	*26*	*4*	*145*
Punjab	*297*	*66*	*8*	*371*
Sindh	*130*	*29*	*9*	*168*

(1A) ***The seats for the Province of Khyber Pakhtunkhwa, referred to in clause (1), include sixteen general seats, four seats for women and one seat for non-Muslims in respect of the Federally Administered Tribal Areas: Provided that elections to the aforesaid seats shall be held within one year after the general elections, 2018.***

(1B) *After elections to seats referred to in clause (1A), both clause (1A) and this clause shall stand omitted.*

(2) *A person shall be entitled to vote if-*

(a) *he is a citizen of Pakistan;*

(b) *he is not less than eighteen years of age;*

(c) *his name appears on the electoral roll; and*

(d) *he is not declared by a competent court to be of unsound mind.*

(3) *For the purpose of election to the Provincial Assembly,-*

(a) *the constituencies for the general seats shall be single member territorial constituencies and the members to fill such seats shall be elected by direct and free vote;*

(b) *each Province shall be a single constituency for all seats reserved for women and non-Muslims allocated to the respective Provinces under clause (3);*

(c) *the members to fill seats reserved for women and non-Muslims allocated to a Province under clause (1) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats secured by each political party in the Provincial Assembly:*

***Provided** that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates.*

Article 224

224 ***Time of election and by-election.***

(1) *A general election to the National Assembly or a Provincial Assembly shall be held within a period of sixty days immediately following the day on which the day on which the term of the Assembly is due to expire, unless the Assembly has been sooner dissolved, and the results of the election shall be declared not later than fourteen days before that day.*

(1A) .....

(1B) .....

(2) .....

(3) .....

(4) .....

(5) .....

(6) *When a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant, on account of death, resignation or disqualification of a member, it shall be filled by the next person in order of precedence from the party list of the candidates to be submitted to the Election Commission by the political party whose member has vacated such seat.*

*[**Provided** that if at any time the party list is exhausted, the concerned political party may submit a name for any vacancy which may occur thereafter.]*

The Elections Act, 2017

Section 104 of the Elections Act, 2017

***104. Party lists for reserved seats**.—(1) For the purpose of election to seats reserved for women and non-Muslims in an Assembly, the political parties contesting election for such seats shall, within the period fixed by the Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Commission or, as it may direct, with the Provincial Election Commissioner or other authorized officer of the Commission, who shall forthwith cause such lists to be published for information of the public: Provided that the list submitted by a political party shall not be subject to change or alteration either in the order of priority or through addition of new names in the list or omission of any name after expiry of the date of submission of nomination papers.*

(2) The parties' lists referred to in sub-section (1) may contain as many names of additional candidates as a political party may deem necessary for contesting seats reserved for women and non-Muslims, to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seats during the term of an Assembly.

(3) A candidate to a seat reserved for women or non-Muslims shall file the nomination papers on the Form on or before the last date fixed for filing of nomination papers for the election and the nomination papers shall, as nearly as possible, be scrutinized in the same manner as nomination papers of candidates on general seats are scrutinized under section 62.

(4) If, at any time, the party list is exhausted, the political party may submit a name for any vacancy which may occur thereafter and the provisions of sub-sections (1), (2) and (3) shall, as nearly as possible, apply to fill such vacancy.

(5) Where a seat reserved for women or non-Muslims in an Assembly falls vacant as a result of death, resignation or disqualification of a Member, it shall be filled in by the next person in order of precedence from the party's list of candidates submitted to the Commission under sub-section (1).

(6) Before notifying the name of the next person in order of priority from the party list, such person shall submit a declaration on oath that since the filing of his nomination paper, he has not become subject to any disqualification contained in Article 63.

(7) A candidate contesting election on a seat reserved for women or non-Muslims shall, along with the nomination papers and its annexures, submit to the Returning Officer appointed by the Commission in this behalf— (a) a copy of the party list of the candidate's political party for such seats; (b) declarations and statements in support of the nomination; and (c) proof of deposit of the fee required for filing nomination papers.

(8) Where there is equality of share on a reserved seat between two or more political parties, the Returning Officer shall declare the returned candidate by drawing of lots.

The Election Rules, 2017

Rule 92 of the Election Rules, 2017

92. Election to seats reserved for women and non-Muslims. *— (1) Election to the seats reserved for women and non-Muslims in the National Assembly and Provincial Assemblies shall be held on the basis of proportional representation system of political parties' lists of candidates in accordance with the provisions of these Rules and the Act.*

(2) The Members to fill seats reserved for women in the National Assembly allocated to a Province shall be elected through proportional representation system of political parties' lists of candidates submitted to the Commission on the basis of total number of general seats won by each political party from the Province concerned in the National Assembly.

(3) The Members to fill seats reserved for women allocated to a Province shall be elected through proportional representation system of political parties 'lists of candidates on the basis of total number of general seats won by each political party in the Provincial Assembly.

(4) The Members to fill seats reserved for non-Muslims in the National Assembly and the Provincial Assemblies shall be elected through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the National Assembly, or, as the case may be, in the Provincial Assembly.

(5) If, at any time, the party list is exhausted, the political party may submit a name for any vacancy which may occur thereafter and the provisions of sub-section (1) and sub-section (2) of section 104 shall, as nearly as possible, apply to fill such vacancy.

(6) For the purpose of this rule, the expression —total number of general seats won by political party| shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates: Provided that if the independent candidate applies to the leader of a political party for joining his party then the leader of that political party will forthwith inform the Commission of joining of such candidate through a letter to be delivered to the Commission along with consent of that candidate duly attested by a Notary appointed under the Notaries Ordinance, 1961 (XIX of 1961) or an Oath Commissioner appointed under the Oaths Act, 1873 (X of 1873) or a Government servant in basic pay scale 17 and above: Provided that the consent of the independent candidate so delivered to the Commission shall, in no circumstances, be open to recall or cancellation. 1

[(7) The political parties lists of candidates to be submitted under this rule to the Commission in connection with election to the reserved seats for women or non-Muslims in an assembly shall be on Form-66.]

Rule 94 of the Election Rules, 2017

94. Commission to declare seats won by each Political party. *— (1) The Commission shall, by notification in the official Gazette, declare the total number of reserved seats won by each political party in the National Assembly and the Provincial Assemblies respectively.*

(2) The per centum share of each political party shall be worked out with reference to total number of general seats in the National Assembly, or, as the case may be, the respective Provincial Assembly.

(3) In calculating the number of seats, the highest fraction shall be taken as one seat till the allocation of total reserved seats in the concerned Assembly is completed.

(4) The seats reserved for non-Muslims and women shall be divided among the political parties on the basis of their per centum share as worked out in sub-rule (2) and in order of priority of the names of candidates mentioned in the party list: Provided that the list submitted by a political party shall not be subject to change or alteration, either in the order of priority or through addition of new names or subtraction of old names after expiry of the date of submission of nomination papers: Explanation.— For the purpose of this rule, the expression —political party| means a political party to which a symbol has been allocated by the Commission.

19. The Commission issued Election Program for the General Elections-2024 on 15.12.2023 with different activities along with their timelines. The said Election Program was revised on 22.12.2023. In both the notifications the time line for submission of nomination

papers and priority list by the Political Party for reserved seats for women and non-Muslims were also given in following terms:-

> *"The above mentioned election program shall also apply to the seats reserved for women and non-Muslims in the National Assembly and Provincial Assemblies of Punjab, Sindh, KPK and Balochistan. Last date of filing of separate priority list for seats reserved for women and non-Muslims before the Returning Officer is 22. 12.2023."*

20. The above mentioned date for filing of nomination papers and list for the reserved seats was extended by the Commission on 22.12.2023 to 24.12.2023 (during office hours). All the Political Parties who were participating in the General Election 2024 submitted their priority lists for reserved seats within time specified by the Commission. It is also mentioned here that the time for scrutiny of the nomination papers and other activities i.e. filing of appeal, decision of appeals, publication of revised list of candidates, withdrawal of candidature and issuance of list of contesting candidates was extended from 13.01.2024 to 23.01.2024 on account of pendency of writ petition No. 6173-P/2023 before the Hon'ble Peshawar High Court, Peshawar. After the poll date i.e. 08.02.2024 the Returned independent Candidates joined SIC (Political Party) registered with the Commission. The record reveals that SIC did not submit priority list for the reserved seats for women and non-Muslims and even did not file nomination papers for the same before the date fixed by the Commission i.e. 24.12.2024. After joining of Returned independent Candidates the said Political Party requested the Commission through four different letters with even dated 21.02.2024 for allocation of reserved seats for women and non-Muslims in the National Assembly, Provincial Assembly Punjab, Provincial Assembly Sindh and Provincial Assembly KP. It is also checked from the record that SIC did not contest election for any seat in the National or the Provincial Assemblies even the nominated candidates of SIC and the Chairman contested election as independent candidates despite having their own election symbol "Horse". The said Political Party *vide* its letter dated 26.02.2024 confirmed that they have contested election as independents candidates and provisions of Section 206 of the Elections Act, 2017 do not attract upon them.

21. The number of General seats in the National and Provincial Assemblies and reserved seats for the women and non-Muslims are provided under Article 51 of the Constitution of Islamic Republic of Pakistan, 1973. Sub-Clause 6(d) of the Article 51 provides that the members to the reserved seats for women are allocated to a Province under Clause 3 in accordance with law through proportional representation system of the Political Parties' list of candidates on the basis of total number of General seats secured by each Political Party from the

Province concerned in the National Assembly. It is further provided that for this purpose total number of seats won by a Political Party shall include the independent Returned Candidate or Candidates who may duly join such Political Party within three days of publication in the official gazette of the names of Returned Candidates. Similarly, Article 51(6) (e) provides the mechanism for allocation of reserved seats for non-Muslims through proportional representation system of Political Parties' list of candidates on the basis of total number of General seats won by each Political Party in the National Assembly.

22. In Article 51 of the Constitution it is clear that such Political Parties who have representation in the National Assembly by way of winning seats, would be eligible for allocation of reserved seats for women and non-Muslims through proportional representation system. The definition of Political Parties is provided under Section 2 (XXVIII) of the Elections Act, 2017 which is reproduced below:-

> *"Political Party means an association of citizens or a combination or group of such associations formed with a view to propagating or influencing political opinion and participating in elections for any elective public office or for membership of a legislative body, including an Assembly, the Senate, or local government."*

23. Article 51 read with Section 2 (XXVIII) of the Elections Act, 2017 is clear that a Political Party is an association which participates in the election for the public offices and for the Assemblies. In the present case admittedly SIC is a registered Political Party with the Commission having their own symbol, however, the said Political Party did not participate in the election as registered Political Party. Moreover, specific time was given by the Commission for submission of priority list by the Political Party for reserved seats. SIC did not submit any priority list to the Commission which means the party was not interested in contesting General Elections 2024 as a Political Party nor they wanted to get seats reserved for women and non-Muslims. Every Political Party while taking any decision in respect of any vital steps in respect of matters of the Political Party which are required under law should be aware of the consequences which they can face in the future. There is a famous maxim that "law is with the vigilant and not with the indolent"

24. Section 104 of the Elections Act, 2017 stipulates that for the purpose of allocation of the reserved seats for women and non-Muslims in an Assembly, the Political Party contesting for such seats shall within the period fixed by the Commission for submission of nomination papers will file separate list of their candidates in order of priority with the Commission or with the Provincial Election Commissioner or other authorized officer of the Commission who shall

forthwith cause such list to be published for information of the public. Proviso of Section 104 also clarifies that the list submitted by the Political Party within specified time fixed by the Commission cannot be altered or changed or modified by the Political Parties. The same Proviso also clears that no addition, deletion or omission can be made in the list submitted by the Political Parties within specified time in form of schedule issued by the Commission. Above mentioned facts clearly show the importance of list of Political Parties and their timely submission. The Proviso of Section 104(1) of the Elections Act, 2017is reproduced here below:-

> *"Provided that the list submitted by a political party shall not be subject to change or alteration either in the order of priority or through addition of new names in the list or omission of any name after expiry of the date of submission of nomination papers."*

25. In addition to above mentioned proviso, Sub-Section 4 & 5 of Section 104 defines that if at any time the party list is exhausted the Political Party may submit fresh names for any vacancy which may occur thereafter due to the death, resignation or disqualification of the members in the parties list submitted to the Commission by the Political Party. Except that Party list cannot be changed or can be submitted a fresh after the cut-off date fixed by the Commission. Had there any intention of the legislature for submission of fresh list it could have addressed it the way issue of exhaustion of list has been addressed.

26. The Hon'ble Supreme Court of Pakistan in case titled "Amir Gill Vs. ECP & Others." reported in "PLD 2008 SC 609" while dilating upon Section 104 of the Elections Act, 2017 held that no change/ alteration can be made in the priority list or the list cannot be submitted a fresh after the expiry of period which is given in the election schedule. The operative part of the judgment is reproduced here below:-

> *"Till the date fixed for filing of nomination papers i.e. 26-11-2007 the name of petitioner did not appear in the list of the candidates filed in pursuance of Article 8-F of the Order and section 47-A of the Act. After expiry of this date no changes/addition or alteration could have been made in the aforesaid list of candidates and therefore his application dated 1-12-2007, which he claimed to be an application for correction of the name as the name of his father Peter Gill was wrongly and inadvertently mentioned in the list instead of his name, was in effect an application for addition/substitution of his name in place of the name of Peter Gill was not maintainable and the Returning Officer rightly rejected the same. The Election Tribunal did not take into consideration the material facts for deciding the issue involved and fell in error in holding that the above was a case of correction/rectification and not a case of substitution/inclusion of the name of the petitioner. The High Court rightly set aside the order of the Election Tribunal holding that it was a case of substitution/addition of the name in the separate list of candidates for reserved seats for non-Muslim and the same could not have been done after 26-11-2007."*

27. The Hon'ble Lahore High Court, Lahore in its judgment reported in PLD 2008 Lahore 198 titled as Khalil Tahir Sindhu vs. Election Commission Punjab & Others has held and bound the Political Parties that the priority list must be filed by the Political Parties within the time fixed for filing of nomination papers and that list cannot be altered/ amended after filing the same. The relevant para of the judgment is reproduced here below:-

> *7. A reading of clause 2 shows that there is no provisions for amendment of the list at any later time and the political parties have been cautioned that the list may contain as many names of additional candidates keeping in view the fact that some candidates may be disqualified during the scrutiny of the nomination papers or a seat falling vacant for any reason during the term of the Provincial Assembly. Clause (3) provides the manner in which a seat so falling vacant for any reason is to be filled and this is to be filled in by the next person in order of precedent from the party's list. Clause (4) makes it incumbent upon a candidate contesting election on such a seat to file a copy of the party's list of the candidates for such seats. We have already noted above that the admitted list is Annexure `C' which does not contain the name of the petitioner. We do not find any provision authorizing a political party to amend the list at any time after its filing. It will be seen that the political party has to file the list within time fixed for filing of the nomination papers i.e. in the present case up to 26-11-2007.*

28. The counsel for the petitioner No. 1 during the course of arguments emphasized that in light with the Article 224(6) of the Constitution of Islamic Republic of Pakistan, 1973 fresh list can be submitted by a Political Party after expiry of cut-off date by the Commission. Article 224(6) has been minutely studied and it is observed that the Article is clear and transpires that if the reserved seats for women and non-Muslims in the National or Provincial Assembly falls vacant on account of death, resignation or disqualification of a member it shall be filled by the next person in order of priority from the list of the candidate to be submitted to the Election Commission of Pakistan by the Political Party whose members have vacated such seats. It further means that the members can be elected from already submitted list by the Political Party which is the requirement in the case of vacancy. Furthermore, the proviso of Sub-Article 6 of Article 224 also explains that in case the list is exhausted the concerned Political Party may submit a name for such vacancy. The language of Article 224(6) and Section 104(4) and (5) of the Elections Act, 2017 is not ambiguous in respect of importance of submission of priority list by a Political Party within specified time and before the conduct of election. No fresh list can be submitted at belated stage by any Political Party and even the list cannot be entertained by the Commission. Both Article 224(6) & Section 104 of the Act, 2017 are clear and need no further interpretation in the Constitution and Law. It also clarifies that non submission of the priority list is a non curable defect and cannot be cured/ relaxed in any situation. There is no provision under the

Constitution and the Law which allows submission of fresh priority list for reserved seats for women and non-Muslims after expiry of the period specified in election schedule. Article 224(6) of the Constitution and 104(4) of the Act, 2017 have preserved the sanctity of the priority list submitted by the Political Parties without making any change in it.

29. The learned counsel for the petitioner No. 1 (SIC) during his arguments submitted an example of BAP in respect of allocation of reserved seats in the KP Assembly in 2019 but on the query for provisions of any order of the Commission or any document in support of his arguments, the counsel did not provide any material evidence or order or document to assist the Commission.

30. Though in the instant case the independent Returned Candidates have joined SIC after issuance of notification by the Commission, however, due to non curable procedural and legal defects and violations of mandatory provisions of the Constitution and Law the said Political Party cannot claim the quota/ share in the reserved seats for the women and non-Muslims. The word Political Party contesting elections is specifically provided under Article 51(6) read with Section 104(1) of the Elections Act, 2017 for claiming the seats reserved for women and non-Muslims. Similarly, mere joining/ inclusion of a Political Party by the independent Returned Candidates cannot accrue the right to claim for the quota for the reserved seats for women and non-Muslims while having violations of mandatory provisions of Constitution and Law.

31. The learned counsel for the petitioner No. 1 also contended that the formula for the reserved seats will be applicable in the case that the seats will remain vacant if not allocated to the SIC. Article 51(6) of the Constitution read with Rule 94(2) of the Election Rules, 2017 provides the procedure for allocation of reserved seats to the Political Parties. It is clearly stated in Article 51(6) of the Constitution that the seats will be allocated to the Political Parties who contested Election and won/ secured General seats in the Assembly and the seats reserved for women and non-Muslims will be allocated on the basis of proportional representation system. Similarly, Rule 94 of the Election Rules, 2017 specifies the procedure by stating that the Commission by notification in the official gazette, declare the total number reserved seats won by any Political Party in the National Assembly and Provincial Assembly respectively. It is further stated that the per centum share of each Political Party shall be worked out with reference to total number of general seats in the National Assembly and the Provincial Assembly. The same formula is provided for the reserved seats for non-Muslims.

32. The Hon'ble Supreme Court of Pakistan in its judgment reported as SCMR 2022 1333 clearly emphasized that negative language used in a statute where it imposes a statutory duty on a public official means that the provision is mandatory even if no penalty is prescribed for it.

33. Therefore, the Commission is of the view that in light of clear provisions of Article 51(6) of the Constitution read with Section 104 of the Elections Act, 2017 and Rule 92 and 94 of the Election Rules, 2017, SIC is not entitled to claim for the quota for reserved seats for women and non-Muslims due to having non curable legal defects and violation of mandatory provision of submission of party list for reserved seats which is the requirement of law. The request of Petitioner No. 1 is rejected and all the other petitions from Serial Number 2-10 are partially accepted. The seats in the National Assembly shall not remain vacant and will be allocated by Proportional representation process of Political Parties on the basis of seats won by Political Parties. Office is directed to calculate the quota accordingly.

Sikandar Sultan Raja
Chairman

Nisar Ahmed Durrani
Member

Shah Muhammad Jatoi
Member

Babar Hassan Bharwana
Member

Justice (R) IkramUllah Khan
Member

Dated: **01.03.2024**

I have added my separate dissenting note which is attached on the next page.

1.3.24

PTO.

DISSENTING NOTE

With due regard I am partially agreeing with my learned brother Members to the extent that the reserved seats cannot be allocated to SIC, as priority list has not been submitted in time by the said political party which is the basic requirement of Law and it cannot be submitted at later stage after conduct of election.

However, I have dissenting views with regard to allocation of seats by way of Proportional representation to the other Political Parties. In my opinion Article 51(6-d), and Article 106(3-c) of the Constitution clearly states that reserved seats will be allocated to the Political Parties on the basis of total number of General Seats secured by each Political Party from the Province concerned in the National Assembly or such reserved seats secured by each Political Party in the Provincial Assembly.

Hence, these seats shall remain vacant till the time any such amendment in Article 51 and 106 of the Constitution is made by the Parliament.

Sd/-

(Babar Hassan Bharwana)
Member

