

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
[JUDICIAL DEPARTMENT]

Amended WP No. 5260-P/2023 with IR
with CM No. 2579-P/2023

Muhammad Muazzam Butt

versus

President of Pakistan and others

Date of hearing: 18.12.2023.

Date of Announcement: 25th January, 2024.

*Muhammad Muazzam Butt, Advocate,
petitioner in person.*

*M/S Aamir Javed, Advocate General, Khyber
Pakhtunkhwa and Sana Ullah, Deputy Attorney
General, Mohsin Kamran, Advocate, for the
respondents.*

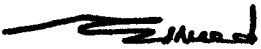
JUDGMENT

SHAKEEL AHMAD, J.- By filing this writ
petition under Article 199 of the
Constitution of the Islamic Republic of
Pakistan, 1973, petitioner, who is a
practicing advocate of the august
Supreme Court of Pakistan, seeks
enforcement of fundamental rights,
political rights, political justice and

fundamental duties of the people and electorate citizen of Pakistan under various statutory provisions.

2. In the writ petition, it is further prayed that the forthcoming election in Khyber Pakhtunkhwa Province may be conducted under the supervision of the Judicial Officers in line with the mechanism provided in the Election Act, 2017, restraining the Election Commission of Pakistan from making interference in the entire election process, offending provisions of Article 218 (3), preamble and Article 2-A and other provisions of the Constitution of Pakistan. It is also prayed that appropriate mechanism may be streamlined to ensure observance of fairness and transparency in the process of election.

3. During pendency of *lis*, the election schedule was announced thereby issuing notifications for appointment of District Returning Officers, Returning Officers and Assistant Returning Officers, selecting from the list of officers provided by the Government and Provincial Government in terms of Section 50 (1) (b) of the Elections Act, 2017, for the conduct of General Elections to National Assembly and the Provincial Assembly of the Khyber Pakhtunkhwa. Therefore, on 15.12.2023, during arguments, the petitioner made an oral request for amendment to include a challenge to those notifications, whereby and whereunder, the District Returning Officers, Returning Officers and Assistant Returning Officers have been appointed in Khyber Pakhtunkhwa. The amendment was allowed. In pursuance thereof, he



submitted an amended petition, seeking
the following relief: -

***"It is, therefore, very humbly
prayed that appropriate writ may
be granted as follows:-***

i. Declare that the enforcement of fundamental rights of citizens of Pakistan should be ensured and for the true spirit of democracy, the citizens may be allowed to freely choose their representatives through election process which is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against and that whereas, to achieve such objectives it would be fair and lawful that the entire election process in the province of KP may be performed under the watch and supervision of the judiciary and the election process may be directed to be conducted through judicial officers in line with the mechanism provided in Election Act and Rules made thereunder.

ii. Consequently, the impugned notifications dated 11th of December, 2023 issued by the election commission appointing local and district administration as Returning officers and District



Returning Officers and District Returning Officers in the province of KP may please be set at naught dismissed and set aside.

iii. And the election commission of Pakistan, the started interim government of the province and the Governor KP may be directed to be refrained from any interference in the entire election process adversely affect the essence of Article 218(3), Preamble and Article 2-A of the Constitution of Pakistan and that other provision of the Constitution of Pakistan.

iv. The appropriate mechanism may please be streamlined to ensure the election is conducted is honestly, justly fairly and in accordance with law and corrupt process are guarded against.

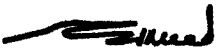
v. Any other relief which though has not been specifically prayed for but is found appropriate may also be granted to the petitioner.

4. The factual background, filtering out unnecessary details are that, the petitioner is a practicing lawyer of the august

Supreme Court of Pakistan, and is the Secretary General of Insaf Lawyers Forum, Pakistan. It is averred in the petition that vide Notification dated 03.11.2023, the Election Commission of Pakistan announced the General Elections to the National Assembly of Pakistan and Provincial Assemblies of Punjab, Sindh, Khyber Pakhtunkhwa and Baluchistan to be held on 8th February 2024. It is also averred in the petition that it is the duty of the Election Commission to organize and conduct the election, and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and the corrupt practices are guarded against, however, the conduct of Election Commission reveals that organizing and conducting the election and to make the



necessary arrangements, as stated above, is not to be possible and the corrupt practices would prevail. He seeks enforcement of fundamental rights, political rights, political justice and fundamental duties of the people and electorate citizens of Pakistan under various statutory provisions. He prayed that the forthcoming election in Khyber Pakhtunkhwa Province may be conducted under the supervision of the Judicial Officers in line with the mechanism provided in the Election Act, 2017, restraining the Election Commission of Pakistan from making interference in the entire election process, which could offend provisions of Article 218 (3), Preamble and Article 2-A and other provisions of the Constitution of Pakistan. Hence, the instant petition.



5. In their parawise comments, the respondent No.4 & 5 raised many legal and factual objections.

6. Heard both sides and record perused.

7. There is no denial of the fact that Pakistan is an Islamic Republic State with a form of government without a monarchy.

It was stated in the objective resolution that the sovereignty over the entire Universe belongs to Allah Almighty and it will be exercised in Pakistan by the people as His Sacred Trust, which clearly indicates that supreme power vested with the people and is exercised through their elected representatives, thus, democracy is the part of the basic structure of Constitution and rule of law, and free and fair elections are basic feature of democracy .

8. To maintain the purity of elections and in particular to bring transparency in the process of elections, an Election Commission was constituted under Article 218 of the Constitution, and to conduct election is exclusive function of the Commission. Elections are thus essential to maintain the democratic process and public trust in the political system of this country. Elections play a key role in upholding the principles of democracy, ensuring that the will of the people is respected and that leadership is answerable and accountable to the people. As and when election programme or schedule is announced, it is essential for any litigation or legal challenges related to election to be resolved in earliest. Delay in holding election or prolonging the election disputes can

undermine public confidence in the electoral process and the democratic system as a whole, which may lead to uncertainty and destabilization of political set up of the country. The whole controversy as set forth in the petition revolves around the decision of the Election Commission of Pakistan, whereby and whereunder, it was decided to utilize services of the officers from executive as DROs, ROs and AROs in terms of section 50(i)(b) of the Elections Act, 2017, and in pursuance thereof, impugned notifications were issued. It was pleaded by the learned counsel for the Commission that through various letters, the Registrar of this Court was requested to provide list of Judicial Officers to be appointed as DROs, ROs and AROs, but, it was responded that being a policy matter, it was directed

by the Hon'ble Chief Justice to consult/approach the National Judicial Policy Making Committee to decide the form of help to be extended in the conduct of the elections, whereafter, the impugned notifications were issued, whereunder, officers of the Government/Provincial Government were appointed as DROs, ROs and AROs in terms of Section 50(1)(b) of the Act of 2017. It was vehemently pleaded by the petitioner that 771 cases were registered under Section 3 MPO against the political workers of the PTI by the Deputy Commissioners of different districts, which were declared as illegal, without lawful authority, without jurisdiction and void ab-initio by this Court. In support of his contention, he produced copies of the judgments rendered in Constitutional Petition No. 1783-P of


2023 and 2224-P of 2023. In this respect, he produced the detail of the cases presented before the Principal Seat and Circuit Benches of Peshawar High Court, which is reproduced as under:-

Benches	Instituted	Disposed of	Pending
Principal Seat	404	390	14
Mingora Bench	246	233	12
Abbottabad	72	71	01
Bannu Bench	38	17	21
D.I.Khan	11	02	09
Total	771	713	57

Districts	Instituted	Disposed of	Pending
Bajaur	4	4	-
Bannu	1	1	-
Buner	3	3	-
Charsadda	6	6	-
Chitral	1	1	-
D.I.Khan	1	1	-
Hangu	47	46	1
Haripur	1	1	-
Karak	6	4	2
Khyber	3	2	1
Kohat	24	24	-
Kurram	1	1	-
Lakki	7	7	-
Malakand	2	2	-
Mansehra	1	1	-
Mardan	68	67	1
Nowshera	15	14	1
Orakzai	7	7	-
Peshawar	148	142	6
Shangla	4	4	-
South Waziristan	1	1	-

Swabi	24	22	2
Swat	7	7	-
Upper Dir	22	22	-
Total	404	390	14

He concluded his arguments by saying that under these circumstances, free, fair and transparent election through the Officers of the Government / Provincial Government i.e. Deputy Commissioners / Assistant Commissioners as DROs, ROs and AROs is not expected.

9. Be all that as it may, it is an admitted fact that under similar circumstances.  Barrister Umair Khan Niazi, Advocate, Additional Secretary General of Pakistan, Tehreek-e-Insaaf and a focal person on legal affairs to the Chairman/Party filed Constitutional Petition No.80828/2023 before the Hon'ble Lahore High Court, Lahore, for the following relief: -

"In view of the grounds and facts explicated, it is most respectfully prayed that the instant Petition may

kindly be allowed and impugned Sections 50(1)(b) and 51 (1) of Elections Act 2017 may kindly be declared unconstitutional void without lawful authority and of no legal effect Alternatively, it is prayed that Section 50(1)(b) of the Elections Act 2017 to the extent of the expression list of officers provided by the Government or a Provincial Government" therein may kindly be declared unconstitutional, void, without lawful authority and of no legal effect. Further, direct the Election Commission of Pakistan to initiate the consultation under Sections 50 and 51 of the Elections Act 2017. Moreover, it may be declared that in General Elections cannot be conducted in fair, transparent, free, impartial and independent manner in presence of District Returning Officers and Returning Officers from the executive branch of state".



10. After providing right of audience to the learned counsel for the parties, on 13.12.2023, the Hon'ble Lahore High Court passed the following order: -

4. Legally under challenged section 50(1)(b) and section 51(1) although empower the Election Commission of Pakistan to appoint District Returning Officers and Returning Officers "by selection from a list of officers provided by the Government or Provincial

Government and Assistant Returning Officer" from amongst its own officers, officers of any Government or Corporation, autonomous or semi-autonomous bodies controlled by any Government....." mentioned in the CONDUCT OF ELECTIONS (Chapter-V) whereas Article 218(3) of the Constitution casts a "sacred duty of the Election Commission of Pakistan to organize and conduct the elections and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against". For this the Election Commission of Pakistan is charged with the duty to organize and conduct the elections by making all necessary arrangements in anticipation of and adherence to the standards of justness, fairness and honesty. To lend greater credibility to the election process in the country by ensuring the compliance of Constitutional requirement of Article 218(3), the Election Commission can take pre-emptive steps. Chief Election Commissioner is independent constitutional authority without traces of subservience and executive authorities are bound to assist him in organizing or holding elections.

5. On factual ground, the apparent absence of a level playing field for the political party of the petitioner is visible to all and has also been seriously noted by many independent groups. With top political leadership locked inside the jail or gone underground the electioneering by his political party would be a big question

mark. The apprehension of the petitioner of avoiding fair and free elections by the Election Commission of Pakistan appears to be well founded as some District Returning Officer, Returning Officers and Assistant Returning Officers are appointed from the presently posted members of Administration throughout the country with whom the petitioner's political party does not inspire any confidence.

6. Undoubtedly, the holding of General Elections costs this poor nation billions which may be wasted if the election results are not accepted by major political parties. The intention of the Election Commission to conduct free, fair, impartial election is yet to be transformed into reality by providing equal opportunities to the candidates for conveyancing and voters to vote with their choice without fear of anyone. In the present scenario general elections may not give the desired results which may undermine the future of democracy in our country.


7. Keeping in view the importance of the legal interpretation of the constitutional provisions having legal effect deeply connected to the raised national issue, office is directed to place this file before the Hon'ble Chief Justice for the constitution of a Larger Bench.

C.M. No.1/2023.

8. Notice. Meanwhile, the Notification No.F.6(1)/2024-Coord, Notification No.F.2(2)/2023-Coord-Vol-VIII(1), Notification No.F.2(2)/2023-Coord-Vol-VIII(2), Notification

No.F.2(2)/2023-Coord-Vol-VIII(3), dated 11.12.2023 issued by the Election Commission of Pakistan appointing the District Returning Officers, Returning Officers, Assistant Returning Officers from Executive shall remain suspended”.

11. Being aggrieved of the same, the Election Commission of Pakistan filed CP No. 4365 of 2023 before the Hon'ble Supreme Court of Pakistan. After hearing the learned counsel for the petitioner, the Hon'ble Apex Court passed the following order:-



“6. We have noted that the total number of DROs, ROs, and AROs under the notification is 2,753 whose working has been stopped by the High Court thereby derailing the process of elections with a stroke of pen. The High Court also did not appreciate that the officers that have been appointed were to perform functions throughout Pakistan and in passing the impugned order it acted well beyond its territorial jurisdiction. Further, the very opening words of Article 199 of the Constitution were apparently disregarded by the High Court insofar as availing of the alternate adequate remedy available to the

petitioner. We are informed that section 55(3) of the Act was such a remedy if respondent No. 1 had grievance against the conduct of any particular officer. We enquired from the petitioners whether any application or objection was submitted before the ECP under section 55(3) of the Act, that is, availing of the alternate adequate remedy and were told that this was not done. The respondent No. 1 is stated to be an office holder of the very same political party, that is, PTI which was before this Court when the said judgment was passed and no such concern was expressed at that time.


7. The DROs, ROs and AROs were appointed pursuant to four notifications while one of these notifications pertain to the officers of the ECP whereas the remaining three notifications pertain to government officers who have already been holding their respective positions and have not been put in place for the purpose of elections or on any one's behest. Initially the ECP had pursuant to sections 50(c) and 51(1) of the Act written to the Chief Justices of the five High Courts and requested them to provide judicial officers for the upcoming elections and not a single one of the Chief Justices is stated to have agreed to do so. In reply thereof a letter issued by the Lahore High Court specifically stated that no judicial officer can be spared because about 1.3 million cases require adjudication and

provision of such judicial officers would result in the increase of pendency of which the ultimate sufferers would be the litigants. Under such circumstances, insistence upon the provision of judicial officers to be appointed as DROs, ROs and AROs would effectively mean that a writ has to be issued against the High Court which is not permissible under Article 199(5) of the Constitution as held in Gul Taiz Khan Marwat v Registrar, Peshawar High Civil Petition No. 4365/2023 etc. 5 Court (PLD 2021 Supreme Court 391) which is a judgment of five-member Bench of this Court. It has been held therein that against an order passed by the High court on the administrative side the remedy lay before the Supreme Court under Article 184(3) of the Constitution.

8. Points noted require consideration, therefore, leave to appeal is granted. Notice be issued to the respondent No. 1 and to the Federation of Pakistan. Notice under Order XXVIIA of the Code of Civil Procedure, 1908 be also issued to the Attorney-General for Pakistan and all the Advocate Generals of the Provinces and Islamabad Capital Territory. To come up immediately after winter vacations.

9. Civil Misc. Application No. 10612/2023: Ordinarily this Court does not suspend orders without issuing of notice but in view of the fact that the impugned order


in the present case has come into direct conflict with the judgment of this Court and the writ petition prima facie appears not to be maintainable, we are doing so. Further the impugned order also comes in the way of the ECP to proceed with its constitutional duty and responsibility for the holding of the elections as mandated under the Constitution. In the given circumstances and considering the constitutional and legal stipulation as well as the judgment of this Court on the same matter, the operation of the impugned order is suspended and further proceedings before the High Court are stayed.



10. We are informed that the Election Programme which was supposed to be issued today but in view of the impugned order has not been done. However, the impugned order now stands suspended, therefore, the ECP shall issue Elections Programme today. In this regard the ECP has given an undertaking that the same will be issued today. Since the impugned order is suspended the learned counsel for ECP stated that the notification No. F.2(2)/2023-Coord-Vol-VIII dated 14 December 2023 and letter No. F.23(1)/2021-GE-(TRG-PADRM-Vol-II) dated 14 December 2023 issued by the ECP pursuant to the impugned order will be withdrawn.

11. The respondent No. 1 is stated to be a barrister and as

such expected to be well-conversant with the Constitution and to have read the judgment of this Court which had clearly stipulated that, 'no one should be allowed to put forward any pretext to derail democracy'. However, one individual Civil Petition No. 4365/2023 etc. 6 appears to have just done that and it is indeed a matter of considerable regret that he claims to belong to a political party and we are told that he has served as an Additional Advocate-General, Punjab when the said political party was in Government. In view of the conduct of the respondent No. 1 we call upon him to submit an explanation why action for contempt of court should not be initiated against him under the Contempt of Court Ordinance, 2003 read with Article 204 of the Constitution".

 12. In view of the above, we are of the view that Hon'ble Supreme Court has already taken cognizance of the matter, in which, final judgment is yet to be passed, therefore, we lay our hands off in this matter.

13. For the foregoing reasons, we, without commenting upon merits of the

case, conclude that this petition, on the face of it, is factually and legally not maintainable, therefore, the same is hereby dismissed in *limine*. No order as to costs.


CHIEF JUSTICE
JUDGE

Announced on:
25-01-2024

(DB) Hon'ble Mr. Justice Mohammad Ibrahim Khan, CJ
Hon'ble Mr. Justice Shakeel Ahmad

Noor Shah