

[Supreme Court]

Judges: Honorable Justice Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan



SUNNI ITTEHAD COUNCIL

versus

ELECTION COMMISSION OF PAKISTAN

**ALLOCATION OF RESERVED SEATS FOR WOMEN AND NON-MUSLIMS IN NATIONAL AND PROVINCIAL ASSEMBLIES; ELIGIBILITY OF POLITICAL PARTIES AND CONSEQUENCES OF DENIAL OF ELECTION SYMBOL.**

Civil Appeal No. 333 of 2024, Civil Appeal No. 334 of 2024, Civil Misc. Application No. 2920 of 2024, Civil Misc. Application No. 5913 of 2024, Civil Petition No. 1612 of 2024, Civil Petition No. 1613 of 2024, Civil Petition No. 1614 of 2024, Civil Petition No. 1615 of 2024, Civil Petition No. 1616 of 2024, Civil Petition No. 1617 of 2024, Civil Misc. Application No. 3554 of 2024

decided on 12th July, 2024.

(a) Constitution of Pakistan---S.Art. 51(6)(d), S.Art. 51(6)(e), S.Art. 106(3)(c), S.Art. 63, S.Art. 218, S.Art. 187(1), S.Art. 17(2), S.Art. 19, S.Art. 185, S.Art. 175, S.Art. 63A(2), S.Art. 10A, S.Art. 189, S.Art. 224(6); Elections Act, 2017---S.S. 66, S.S. 67, S.S. 98, S.S. 104, S.S. 104-A, S.S. 209, S.S. 210, S.S. 215(5), S.S. 57, S.S. 206; Election Rules, 2017---S.R. 92, S.R. 94, S.R. 94, Explanation, S.R. 95(2), S.Form-33, S.Form-45, S.Form-66---Allocation of reserved seats for women and non-Muslims in National and Provincial Assemblies; eligibility of political parties and consequences of denial of election symbol.---

A political party's ineligibility for an election symbol under S. 215(5) of the Elections Act only curtails the symbol and does not affect other constitutional or statutory rights; such parties retain the right to contest elections through nominated candidates, and deprivation of this right contravenes Article 17(2). For allocation of reserved seats, only those political parties are entitled which have contested and won general seats, and their share includes seats gained by independent candidates joining them within the prescribed period. SIC, having not contested nor won general seats nor submitted a list for reserved seats, is not entitled to reserved seats. PTI, despite denial of a symbol, fulfilled the conditions for allocation of reserved seats based on its affiliated returned candidates.

The right to form or join a political party includes the right to participate in elections through its nominees, which cannot be extinguished solely due to the loss of an election symbol. Statutory and constitutional provisions must be strictly construed regarding penal consequences; only political parties that have contested and won general seats, and submitted lists for reserved seats, are entitled to proportional allocation. Unlawful acts or omissions of election authorities prejudicing such rights must be remedied to restore the party and electorate to their position had the violation not occurred.

Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416 rel.; Benazir Bhutto v. Federation of Pakistan PLD 1989 SC 66 rel.; Nawaz Sharif v. President of Pakistan PLD 1993 SC 473 rel.; Muhammad Ali v. State Bank of Pakistan 1973 SCMR 140 rel.; F. B. Ali v. State PLD 1975 SC 506 rel.; M.B. Abbasi v. State 2009 SCMR 808 rel.; Zahid Rehman v. State PLD 2015 SC 77 rel.; Tahir Naqash v. State PLD 2022 SC 385 rel.; PIA Corporation v. Labour Court PLD 1978 SC 239 rel.; Federal Land Commission v. Ghulam Qadir 1983 SCMR 867 rel.; Siddique Khan v. Abdul Shakur PLD 1984 SC 289 rel.; UBL v. Yousuf Dhadhi 1988 SCMR 82 rel.; Wukala Mahaz v. Federation of Pakistan PLD 1998 SC 1263 rel.; B.I.S.E. v. Rizwan Rashid 2005 SCMR 728 rel.; Tahir Hussain v. Liaqat Ali 2014 SCMR 637 rel.; State Bank of Pakistan v. S.E.C.P. PLD 2018 SC 52 rel.; Dossani Travels v. Travels Shop PLD 2014 SC 1 rel.; Saddaqat Khan v. Collector Land Acquisition PLD 2010 SC 878 rel.; Martin Dow Marker Ltd. v. Asadullah Khan 2020 SCMR 2147 rel.; State v. Alif Rehman 2021 SCMR 503 rel.

Morton v. Galway [1875] 3 O.M. & H. 19 ref.; Aldridge v. Hurst [1876] L.R. 1 C.P. 410 ref.; Sreenivasan v. Election Tribunal [1955] 11 E.L.R. 278 ref.;

Inamati Basappa v. Desai Ayyappa AIR 1958 SC 698 ref.; Mohinder Singh v. Chief Election Commissioner AIR 1978 SC 851 ref.; Dilshad Khan v. Arshad Ali 1999 MLD 2874 ref.; Irshad Hussain v. Ashraf Nagra 2003 YLR 812 ref.; Maxwell on the Interpretation of Statutes (12th ed.) pp. 238-240 ref.; Bennion on Statutory Interpretation (7th ed.) pp. 715-717 ref.; Crawford on Statutory Construction ref.

Faisal Siddiqui, Advocate Supreme Court, Ammar Rafique, Advocate, Ajmal Ghaffar Toor, Advocate Supreme Court, Haider Bin Masud, Advocate, Sahibzada M. Hamid Raza (Appellant in person) for Appellant.

Sikandar Bashir Mohmand, Advocate Supreme Court, Abdullah Noor, Advocate, Hamza Azmat, Advocate, M. Arshad, D.G. (Law) ECP, Ms. Saima Tariq Janjua, D.D. Law (ECP), Farooq H. Naek, Senior Advocate Supreme Court, Asad Mehmood Abbasi, Advocate Supreme Court, Sheraz Shaukat Rajpar, Advocate, Syed Qaim Shah, Advocate, Haris Azmat, Advocate Supreme Court, Ms. Faiza Asad, Advocate, Ch. Akhtar Ali, Advocate-on-Record, M. Siddique Awan, Advocate Supreme Court, Syed Rifaqat Hussain Shah, Advocate Supreme Court/Advocate-on-Record, Kamran Murtaza, Senior Advocate Supreme Court, M. Makhdoom Ali Khan, Senior Advocate Supreme Court, Sarmad Hani, Advocate Supreme Court, Saad Mumtaz Hashmi, Advocate Supreme Court, Zarar Qadir Shoro, Advocate, Yawar Mukhtar, Advocate, Zulfikar Khalid Maluka, Advocate Supreme Court, M. Shahzad Shaukat, Advocate Supreme Court, Raza ur Rehman, Advocate for Respondent.

Mansoor Usman Awan, Attorney-General for Pakistan, Ms. Maryam Ali Abbasi, Advocate, Malik Javed Iqbal Wains, AAGP, Raja M. Shafqat Abbasi, D.A.G., Ms. Maryam Rasheed, Advocate, Khalid Ishaq, Advocate-General, Punjab, Sanaullah Zahid, Additional Advocate-General, Punjab, Shah Faisal Utmankhail, Advocate-General, KP, Shah Faisal Ilyas, Additional Advocate-General, KP, Miran Muhammad Shah, Addl. A.G., Sindh, Muhammad Asif Reki, Advocate-General, Balochistan, M. Ayaz Swati, Addl. A.G., Tahir Iqbal Khattak, Additional Advocate-General, Balochistan, Muhammad Ayyaz Shaukat, A.G., Islamabad for Department.

**(b) Constitution of Pakistan---S.Art. 51(6)(d), S.Art. 51(6)(e), S.Art. 106(3)(c), S.Art. 63A(2)---Eligibility of Political Party for Reserved Seats—Status of Returned Candidates Joining another Party---**

A political party can only obtain reserved seats if it contests and wins at least one general seat. SIC, having not contested or won in the General Election 2024, and not having submitted priority lists as required, was not entitled to the allocation of reserved seats for women and non-Muslims; the joining of independent returned candidates does not create such entitlement in a party that did not otherwise qualify.

The legal right to reserved seats is strictly contingent upon a party's own electoral success (winning a general seat) and compliance with nomination and procedural requirements. The joining of independents is only counted once these threshold conditions are met.

Faisal Siddiqui, Advocate Supreme Court, Ammar Rafique, Advocate, Ajmal Ghaffar Toor, Advocate Supreme Court, Haider Bin Masud, Advocate, Sahibzada M. Hamid Raza (Appellant in person) for Appellant.

Sikandar Bashir Mohmand, Advocate Supreme Court, Abdullah Noor, Advocate, Hamza Azmat, Advocate, M. Arshad, D.G. (Law) ECP, Ms. Saima Tariq Janjua, D.D. Law (ECP), Farooq H. Naek, Senior Advocate Supreme Court, Asad Mehmood Abbasi, Advocate Supreme Court, Sheraz Shaukat Rajpar, Advocate, Syed Qaim Shah, Advocate, Haris Azmat, Advocate Supreme Court, Ms. Faiza Asad, Advocate, Ch. Akhtar Ali, Advocate-on-Record, M. Siddique Awan, Advocate Supreme Court, Syed Rifaqat Hussain Shah, Advocate Supreme Court/Advocate-on-Record, Kamran Murtaza, Senior Advocate Supreme Court, M. Makhdoom Ali Khan, Senior Advocate Supreme Court, Sarmad Hani, Advocate Supreme Court, Saad Mumtaz Hashmi, Advocate Supreme Court, Zarar Qadir Shoro, Advocate, Yawar Mukhtar, Advocate, Zulfikar Khalid Maluka, Advocate Supreme Court, M. Shahzad Shaukat, Advocate Supreme Court, Raza ur Rehman, Advocate for Respondent.

Mansoor Usman Awan, Attorney-General for Pakistan, Ms. Maryam Ali Abbasi, Advocate, Malik Javed Iqbal Wains, AAGP, Raja M. Shafqat Abbasi, D.A.G., Ms. Maryam Rasheed, Advocate, Khalid Ishaq, Advocate-General, Punjab, Sanaullah Zahid, Additional Advocate-General, Punjab, Shah Faisal Utmankhail, Advocate-General, KP, Shah Faisal Ilyas, Additional Advocate-General, KP, Miran Muhammad Shah, Addl. A.G., Sindh, Muhammad Asif Reki, Advocate-General, Balochistan, M. Ayaz Swati, Addl. A.G., Tahir Iqbal Khattak, Additional Advocate-General, Balochistan, Muhammad Ayyaz Shaukat, A.G., Islamabad for Department.

By majority, the appeals are allowed in part: SIC's claim for reserved seats is dismissed; PTI is declared entitled to allocation of reserved seats in proportion to the general seats won (including certain independents), with the ECP ordered to recalculate and reallocate such seats in accordance with the law and the Constitution. Minority and dissenting opinions would dismiss the appeals and uphold the Peshawar High Court judgment.

Date of hearing: 9th July, 2024.

**ORDER\***

Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan, JJ.: For detailed reasons to be recorded later and subject to what is set out therein by way of amplification and/or explanation or otherwise, these appeals are decided in the following terms:

1. The impugned judgment dated 25.03.2024 of the learned Full Bench of the High Court is set aside to the extent it is or may be inconsistent with this Order or the detailed reasons.
2. The order of the Election Commission of Pakistan ("Commission") dated 01.03.2024 ("Impugned Order") is declared to be ultra vires the Constitution, without lawful authority and of no legal effect.
3. The notifications (of various dates) whereby the persons respectively mentioned therein (being the persons identified in the Commission's notification No.F.5(1)/2024-Cord. dated 13.05.2024) have been declared to be returned candidates for reserved seats for women and minorities in the National and Provincial Assemblies are declared to be ultra vires the Constitution, without lawful authority and of no legal effect, and are quashed from 06.05.2024 onwards, being the date an interim order was made by the Court in CPLA Nos. 1328-9 of 2024, the leave petitions out of which the instant appeals arise.
4. It is declared that the lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in an election (whether general or bye) and to field candidates

and the Commission is under a constitutional duty to act, and construe and apply all statutory provisions, accordingly.

5. It is declared that for the purposes, and within the meaning, of paragraphs (d) and (e) of clause (6) of Article 51 ("Article 51 Provisions") and paragraph (c) of clause (3) of Article 106 ("Article 106 Provisions") of the Constitution, the Pakistan Tehreek e Insaf ("PTI") was and is a political party, which secured or won (the two terms being interchangeable) general seats in the National and Provincial Assemblies in the General Elections of 2024 as herein after provided.
6. During the course of the hearing of the instant appeals, on 27.06.2024, learned counsel for the Commission placed before the Court a list ("the List") of 80 returned candidates for the National Assembly (now MNAs), setting out in tabular form particulars relating to their election. Learned counsel made a categorical statement that the Commission stood by the data so provided to the Court. In particular, the List contained three columns marked as follows: (i) "Statement (on nomination form) given in declaration and oath by the person nominated (i.e., 'I belong to')"; (ii) "Certificate of party affiliation under Section 66 of the Elections Act, 2017"; and (iii) "Statutory Declaration/ affidavit accompanying section 66 certificate".
7. In the peculiar facts and circumstances of the General Election of 2024, it is declared that out of the aforesaid 80 returned candidates (now MNAs) those (being 39 in all and whose particulars are set out in Annex A to this Order) in respect of whom the Commission has shown "PTI" in any one of the aforesaid columns in the List, were and are the returned candidates whose seats were and have been secured by the PTI within the meaning, and for purposes of, para 5 above in relation to the Article 51 Provisions.
8. In the peculiar facts and circumstances of the General Election of 2024, it is further ordered that any of the remaining 41 returned candidates out of the aforesaid 80 (whose particulars are set out in Annex B to this Order) may, within 15 working days of this Order file a statement duly signed and notarized stating that he or she contested the General Election as a candidate of the political party specified therein. If any such statement(s) is/are filed, the Commission shall forthwith but in any case within 7 days thereafter give notice to the political party concerned to file, within 15

working days, a confirmation that the candidate contested the General Election as its candidate. A political party may in any case, at any time after the filing of a statement as aforesaid, of its own motion file its confirmation. If such a statement is filed, and is confirmed by the political party concerned, then the seat secured by such candidate shall be forthwith deemed to be a seat secured by that political party for the purposes of para 5 above in relation to the Article 51 Provisions. The Commission shall also forthwith issue, and post on its website, a list of the returned candidates (now MNAs) and seats to which this para applies within 7 days after the last date on which a political party may file its confirmation and shall simultaneously file a compliance report in the Court.

9. For the purposes of para 5 of this Order in relation to the Article 51 Provisions, the number of general seats secured by PTI shall be the total of the seats declared in terms of para 7 and those, if any, to which para 8 applies. The PTI shall be entitled to reserved seats for women and minorities in the National Assembly accordingly. PTI shall, within 15 working days of this Order file its lists of candidates for the said reserved seats and the provisions of the Elections Act, 2017 ("Act") (including in particular section 104) and the Elections Rules, 2017 ("Rules") shall be applied to such lists in such manner as gives effect to this Order in full measure. The Commission shall, out of the reserved seats for women and minorities in the National Assembly to which para 3 of this Order applies, notify as elected in terms of the Article 51 Provisions, that number of candidates from the lists filed (or, as the case may be, to be filed) by the PTI as is proportionate to the general seats secured by it in terms of paras 7 and 8 of this Order.
10. The foregoing paras shall apply mutatis mutandis for purposes of the Article 106 Provisions in relation to PTI (as set out in para 5 herein above) for the reserved seats for women and minorities in the Khyber Pakhtunkwa, Punjab and Sindh Provincial Assemblies to which para 3 of this Order applies. In case the Commission or PTI need any clarification or order so as to give effect to this para in full measure, it shall forthwith apply to the Court by making an appropriate application, which shall be put up before the Judges constituting the majority in chambers for such orders and directions as may be deemed appropriate.

Judge Judge

Sd/- Sd/-

Judge Judge

Sd/- Sd/-

Judge Judge

Sd/- Sd/-

Judge Judge

Islamabad, the

12th of July, 2024

**Annexure-A**

(Names of Candidates Affiliated with the Pakistan Tehreek-e-Insaf

as per the list verified from the data provided by ECP1)

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
1.	NA-2 (Swat-I)	Amjad Ali Khan
2.	NA-3 (Swat-II)	Saleem Rehman
3.	NA-4 (Swat-III)	Sohail Sultan
4.	NA-6 (Lower Dir-I)	Muhammad Bashir Khan
5.	NA-7 (Lower Dir-II)	Mehboob Shah

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
6.	NA-9 (Malakand)	Junaid Akbar
7.	NA-17 (Abbottabad-II)	Ali Khan Jadoon
8.	NA-19 (Swabi-I)	Asad Qaiser
9.	NA-20 (Swabi-II)	Shahram Khan
10.	NA-21 (Mardan-I)	Mujahid Ali
11.	NA-24 (Charsadda-I)	Anwar Taj
12.	NA-25 (Charsadda-II)	Fazal Muhammad Khan
13.	NA-29 (Peshawar-II)	Arbab Amir Ayub
14.	NA-30 (Peshawar-III)	Shandana Gulzar Khan
15.	NA-31 (Peshawar-IV)	Sher Ali Arbab
16.	NA-32 (Peshawar-V)	Asif Khan
17.	NA-33 (Nowshera-I)	Syed Shah Ahad Ali Shah
18.	NA-38 (Karak)	Shahid Ahmad
19.	NA-39 (Bannu)	Nasim Ali Shah
20.	NA-41 (Lakki Marwat)	Sher Afzal Khan
21.	NA-83 (Sargodha-II)	Usama Ahmed Mela
22.	NA-84 (Sargodha-III)	Shafqat Abbas
23.	NA-95 (Faisalabad-I)	Ali Afzal Sahi

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
24.	NA-96 (Faisalabad-II)	Rai Haider Ali Khan
25.	NA-100 (Faisalabad-VI)	Nisar Ahmed
26.	NA-101 (Faisalabad-VII)	Rana Atif
27.	NA-102 (Faisalabad-VIII)	Changaze Ahmad Khan
28.	NA-103 (Faisalabad-IX)	Muhammad Ali Sarfraz
29.	NA-115 (Sheikhupura-III)	Khurram Shahzad Virk
30.	NA-122 (Lahore-VI)	Sardar Muhammad Latif Khan Khosa
31.	NA-143 (Sahiwal-III)	Rai Hassan Nawaz Khan
32.	NA-149 (Multan-II)	Malik Muhammad Aamir Dogar
33.	NA-150 (Multan-III)	Makhdoom Zain Hussain Qureshi
34.	NA-154 (Lodhran-I)	Rana Muhammad Faraz Noon
35.	NA-171 (Rahim Yar Khan-III)	Mumtaz Mustafa
36.	NA-179 (Kot Addu-I)	Muhammad Shabbir Ali Qureshi
37.	NA-181 (Layyah-I)	Umber Majeed
38.	NA-182 (Layyah-II)	Awais Haider Jakhar
39.	NA-185 (D.G. Khan-II)	Zartaj Gul

## Annexure-B

(Names of Independent Candidates)

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
1.	NA-1 (Chitral Upper-cum- Chitral Lower)	Abdul Latif
2.	NA-5 (Upper Dir)	Sahibzada Sibghatullah
3.	NA-13 (Battagram)	Muhammad Nawaz Khan
4.	NA-22 (Mardan-II)	Muhammad Atif
5.	NA-23 (Mardan-III)	Ali Muhammad
6.	NA-26 (Mohmand)	Sajid Khan
7.	NA-27 (Khyber)	Muhammad Iqbal Khan
8.	NA-34 (Nowshera-II)	Zulfiqar Ali
9.	NA-35 (Kohat)	Shehryar Afridi
10.	NA-36 (Hangu-cum-Orakzai)	Yousaf Khan
11.	NA-42 (South Waziristan Upper-cum- South Waziristan Lower)	Zubair Khan
12.	NA-66 (Wazirabad)	Mohammad Ahmed Chattha
13.	NA-67 (Hafizabad)	Aniqa Mehdi
14.	NA-68 (Mandi Bahauddin-I)	Haji Imtiaz Ahmed Choudhry

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
15.	NA-78 (Gujranwala-II)	Muhammad Mobeen Arif
16.	NA-79 (Gujranwala-III)	Ihsan Ullah Virk
17.	NA-181 (Gujranwala-V)	Ch. Bilal Ejaz
18.	NA-86 (Sargodha-V)	Muhammad Miqdad Ali Khan
19.	NA-89 (Mianwali-I)	Muhammad Jamal Ahsan Khan
20.	NA-90 (Mianwali-II)	Umair Khan Niazi
21.	NA-91 (Bhakkar-I)	M. Sana Ullah Khan Mastikhel
22.	NA-93 (Chiniot-I)	Ghulam Muhammad
23.	NA-97 (Faisalabad-III)	Muhammad Saad Ullah
24.	NA-99 (Faisalabad-V)	Umar Farooq
25.	NA-105 (Toba Tek Singh-I)	Usama Hamza
26.	NA-107 (Toba Tek Singh-III)	Mohammad Riaz Khan
27.	NA-108 (Jhang-I)	Muhammad Mahbob Sultan
28.	NA-109 (Jhang-II)	Waqas Akram
29.	NA-110 (Jhang-III)	Muhammad Ameer Sultan
30.	NA-111 (Nankana Sahib-I)	Muhammad Arshad Sahi

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
31.	NA-116 (Sheikhupura-IV)	Khurram Munawar Manj
32.	NA-129 (Lahore-XIII)	Mian Muhammad Azhar
33.	NA-133 (Kasur-III)	Azim Uddin Zahid
34.	NA-137 (Okara-III)	Syed Raza Ali Gillani
35.	NA-156 (Vehari-I)	Ayesha Nazir
36.	NA-170 (Rahim Yar Khan-II)	Mian Ghous Muhammad
37.	NA-172 (Rahim Yar Khan-IV)	Javaid Iqbal
38.	NA-175 (Muzaffargarh-I)	Jamshaid Ahmad
39.	NA-177 (Muzaffargarh-III)	Muhammad Moazzam Ali Khan
40.	NA-180 (Kot Addu-II)	Fiaz Hussain
41.	NA-183 (Taunsa)	Khawaja Sheraz Mehmood

YAHYA AFRIDI, J.\*---For reasons to be recorded later, Civil Appeals Nos. 333 and 334 of 2024, C.M.A. No. 2920 of 2024 in Civil Appeal No. 333 of 2024, Civil Petitions Nos. 1612, 1613, 1614, 1615, 1616 and 1617 of 2024 and C.M.A. No. 3554 of 2024 in C.P. Nil of 2024 are dismissed in terms that:

1. Sunni Ittehad Council does not fulfil the conditions prescribed for a political party under the enabling provisions of the Constitution of Islamic Republic of Pakistan ("Constitution") and the law to be allowed/allocated reserved seats for women and non-Muslims in the National Assembly or the Provincial Assemblies.

2. Pakistan Tehreek-e-Insaf ("PTI") fulfils the conditions prescribed for a political party under the enabling provisions of the Constitution and the law to be allowed/allocated reserved seats for women and non-Muslims, in terms that:

- i. A candidate for a seat in the National Assembly or the Provincial Assembly, who in his/her nomination paper has declared on oath to belong to PTI and duly submitted a certificate of the same political party confirming that he/she is the nominated candidate of PTI for the respective constituency, shall remain so, and cannot be declared independent, unless he/she submitted a written declaration to the Election Commission of Pakistan or Returning Officer to be treated as the candidate of another political party or as an independent candidate;
- ii. A returned candidate to the National Assembly or the Provincial Assembly, who in his/her nomination paper has declared on oath to belong to PTI and duly submitted a certificate of the same political party confirming that he/she is the nominated candidate of PTI for the respective constituency, shall remain so, and this consistent position maintained by a returned candidate throughout the electoral process should be legally recognized by the Election Commission of Pakistan and such returned candidate cannot be treated as the returned candidate of another political party or as an independent returned candidate, and thus, the reserved seats for women and non-Muslims are to be allowed/ allocated to PTI, accordingly;
- iii. A candidate nominated by PTI for a constituency of the National Assembly or the Provincial Assembly who, after being declared returned, joined another political party or sought to be treated as independent, raises serious concerns about disregarding the trust reposed in him/her by the voters, thus undermining the will of the people; and
- iv. The legal implications, effects and consequences of the determinations made above in paragraphs 2(ii) and 2(iii), as well as the actions or inactions of the Election Commission of Pakistan thereon, although deeply concerning, have not been challenged in the present appeals and petitions; and the persons who would be affected or aggrieved are not parties before this Court. Therefore, issuing definitive directions to the Election Commission of Pakistan qua the allocation of specific number of reserved seats for women and non-Muslims to a political party in the National Assembly and the Provincial Assemblies would not be legally appropriate.

3. Accordingly, the Election Commission of Pakistan is directed to decide the allocation of reserved seats for women and non-Muslims to political parties in

the National Assembly and the Provincial Assemblies in the light of the determinations made hereinabove after providing an opportunity of hearing to the parties concerned, and if required revisit its earlier decisions on the matter. The needful be done within seven days of the receipt of this order.

Sd/-

Judge

Islamabad

Arif

12th July, 2024.

Order\*

in

Civil Appeal No.333/2024, Civil Miscellaneous Application No. 2920/ 2024 in Civil Appeal No.333/2024, Civil Appeal No.334/ 2024, Civil Petitions Nos. 1612 to 1617/2024 and Civil Miscellaneous Application No.3554/2024 in Civil Petition Nil/ 2024.

Sunni Ittehad Council through its Chairman,

Faisalabad and others Appellants/Petitioners

Versus

Election Commission of Pakistan through its

Secretary, Islamabad and others Respondents

---

Justice Amin-ud-Din Khan

Justice Naeem Akhtar Afghan

For reasons to be recorded later, we dismiss the appeals, petition as well as CMAs and the judgment of the Peshawar High Court is upheld.

Sd/- Sd/-

Judge Judge

Islamabad: 12th July, 2024.

Order of the Court

By a majority of 8 (comprising Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan, JJ) the instant appeals are decided in terms of the short order of the majority of even date (and the other petitions including leave petitions and C.M.As are decided accordingly).

I agree with the short order authored by Justice Jamal Khan Mandokhail.

Justice Qazi Faez Isa, CJ.

Justice Syed Mansoor Ali Shah, J.

Justice Munib Akhtar, J.

With utmost respect I differ. My short order is appended herewith.

Justice Yahya Afridi, J.

I have attached my separate short order dismissing all the appeals, petitions and applications and uphold the impugned judgment of the Peshawar H.C.

Justice Amin-ud-Din Khan, J.

I have appended my separate order.

Justice Jamal Khan Mandokhail, J.

Justice Muhammad Ali Mazhar, J.

Justice Ayesha A. Malik, J.

Justice Athar Minallah, J.

Justice Syed Hasan Azhar Rizvi, J.

Justice Shahid Waheed, J.

Justice Irfan Saadat Khan, J.

I agree with the short order passed by J. Amin-ud-Din Khan.

Justice Naeem Akhtar Afghan, J.

Announced.

Islamabad,

12 July, 2024.

Approved for reporting.

**ORDER\***

**JAMAL KHAN MANDOKHAIL, J.**---For reasons to be recorded later, we dispose of these appeals, petitions and miscellaneous applications through a short order as under:

1. These matters involve a controversy regarding the allocation of seats reserved for women and non-Muslims. The Sunni Itehad Council ("SIC") did not contest the General Elections of the year 2024. SIC, which demands allocation of reserved seats on account of inclusion of independent parliamentarians in it, did not secure a single seat in the National Assembly or any of the Provincial Assemblies nor submitted a list of its candidates for seats reserved for women and non-Muslims. Thus, it is not entitled to any of the reserved seats in the National Assembly and in the Provincial

Assemblies. The impugned judgment and the order dated 1 March 2024 of the Election Commission of Pakistan ("ECP") to such extent is upheld.

2. Under Article 51(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), the total number of seats in the National Assembly shall be 326, out of which 60 seats are reserved for women and 10 seats for non-Muslims. Such right of women and non-Muslims has been guaranteed by the Constitution. They shall be elected in accordance with the 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 and the Provincial Assemblies, as provided by Article 51(6) (d) and (e) of the Constitution. Therefore, they cannot be deprived of this right of theirs by leaving these seats vacant, and all reserved seats must be filled in, as provided by Article 224(6) of the Constitution.
3. The impugned judgment of the High Court and the said order of the ECP to the extent of the proportional representation distribution of seats amongst the political parties which won and secured seats is also maintained, however, since the ECP calculated and allocated the seats to the parties by the exclusion of the Pakistan Tehreek-e-Insaf ("PTI") candidates, therefore, to such extent, the impugned judgment of the High Court and the order of the ECP are set aside.
4. During the hearing, it transpired that a number of candidates had submitted their nomination papers declaring on Oath that they belonged to PTI supported by an affiliation certificate of the said party, though some did not submit affiliation certificates of PTI, however, since they stated on Oath that they belonged to PTI, and did not contradict themselves, they should be considered to be members of PTI in the National and the Provincial Assemblies. The ECP by misinterpreting the judgment of this Court dated 13 January 2024, which was regarding non-holding intra-party elections in PTI, wrongly mentioned the said candidates of the PTI as independents in Form 33 of the Election Rules. The ECP had no authority to declare validly nominated candidates of a political party to be independent candidates. Similarly, a candidate once declared himself/herself as a candidate of a political party, could not subsequently resile from his/her candidature of a particular party, after the last date of withdrawal of the nomination papers.

5. It is important to mention here that neither the PTI nor any candidate affiliated with PTI approached either this Court before or during the hearing of these proceedings, or the High Court to challenge the decision of the ECP, declaring them as independents. However, in view of the fact that the appeal and the petition are a continuation of election proceedings before the ECP, we can look into the vires of the decision of the ECP in the light of the provisions of Article 51(1)(d) and (e) of the Constitution read with sections 66, 67 and 104 of the Elections Act, 2017 to safeguard the interest of women and non-Muslims. As a consequence whereof, the candidates who had submitted their nomination papers declaring that they belonged to PTI and had not filed a document showing affiliation with another political party before the last date of withdrawal of the nomination papers, should have been treated as the Parliamentary Party of PTI, but the needful was not done by the ECP. Consequently, the PTI as a Parliamentary Party is entitled to the reserved seats. The ECP should recalculate and reallocate the reserved seats amongst the political parties, including the PTI, as provided by Article 51(6)(d) and (e) of the Constitution.
6. The candidates who had submitted their nomination papers by 24 December 2023, which was the last date of submission of nomi-nation papers, and had declared themselves either as independent candidates or had left blank the relevant column in the nomination papers/declaration and were elected shall be considered to be independents. SIC is a registered political party and every independent member of the National Assembly and of the Provincial Assemblies has a right to join it. All those who joined the SIC are presumed to have done so out of their own free will. None of them claimed to have joined SIC because of any misunderstanding of any judgment, the law, compulsion, coercion or undue influence and it is not for this Court to presume otherwise.
7. We must ensure that words are not read into the Constitution nor to ascribe artificial meaning to commonly understood words. We must also abide by validly enacted laws and must not do anything either to hinder or facilitate a political party by ignoring the laws mandate.

Chief Justice

Judge

Announced in open Court on 12th July, 2024.

at Islamabad Judge

## **JUDGMENT**

DETAILED REASONS OF THE SHORT ORDER ANNOUNCED ON 12.7.2024 IN CIVIL APPEAL NO. 333/2024, CMA NO. 2920/2024 IN CIVIL APPEAL NO.333/2024, CIVIL APPEAL NO. 334/2024, CIVIL PETITIONS NOS. 1612 TO 1617 OF 2024 AND CMA NO.3554 OF 2024 IN C.P. NIL OF 2024.

AMIN-UD-DIN KHAN, J.

NAEEM AKHTAR AFGHAN, J.

The matter in issue relates to seats reserved for women and non-Muslims in the National Assembly as well as Provincial Assemblies in accordance with Articles 51 and 106 of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution') after the general elections which were held on 08.02.2024. After the elections, Sunni Ittehad Council ('SIC')<sup>1</sup> wrote four letters, all dated 21.2.2024 to the Election Commission of Pakistan ('ECP') claiming that after the General Elections held on 8.2.2024, independent candidates whose notifications as returned candidates to the National Assembly/or any one of three Provincial Assemblies i.e. Punjab, KPK and Sindh were issued by the ECP on different dates, joined SIC as a Political Party, accordingly their consent forms/affidavits were filed by the SIC and received in the Commission vide receipt diary numbers mentioned in the letters. The last paragraph of the letters states as follows:

"we look forward to hearing from you at your earliest convenience so that we may submit our priority list to the Commission for notifications of our MNAs (MPAs) on these reserved seats".

These four letters are scanned here for convenience and to consider the admitted position between the parties to the lis with regard to joining of independent returned candidates to SIC.

2. A significant fact and an admitted position is that SIC did

not participate in the said General Elections as a political party. Not a single candidate participated as a party candidate and even the Chairman of SIC/appellant No.2 participated as an independent candidate in the general

elections and was declared a returned candidate as such. For the distribution of reserved seats for women and non-Muslims claimed by various political parties on the basis of

proportional representation system of political parties, list of candidates, the matter was fixed by the ECP for hearing before the Full Election Commission comprising of the Chairman as well as four members and was heard and decided by the Commission through its order announced on 1.3.2024. They held that SIC was not

entitled to claim the quota for reserved seats for women and non-Muslims. The said order was challenged by the appellants through two Writ Petitions bearing Nos. 1272-P of 2024 and 1339-P of 2024. Both the writ petitions were heard and dismissed vide the consolidated judgment announced on 14.3.2024 as well as the judgment prepared and signed on 25.3.2024. Against the said judgment, two petitions for leave to appeal i.e. C.P. No. 1328 of 2024 as well as C.P.No.1329 of 2024

were filed, which were fixed before the learned three member bench of this Court on 6.5.2024 in which leave was granted as well as it was referred to the Committee constituted under section 4 of the Supreme Court (Practice and Procedure) Act, 2023 for constitution of a larger bench to hear the appeals which were ordered to be fixed for hearing on 03.06.2024.

3. A larger bench of 13 members was constituted by the Committee and the matter was heard by the learned 13 members bench on

various dates i.e. 03.06.2024, 04.06.2024, 24.06.2024, 25.06.2024, 27.06.2024, 01.07.2024, 02.07.2024 and the last hearing was on 09.7.2024. The short order was announced on 12.07.2024, the majority's order is reproduced:

"Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan, JJ.: For detailed reasons to be recorded later and subject to

what is set out therein by way of amplification and/or explanation or otherwise, these appeals are decided in the following terms:

1. The impugned judgment dated 25.03.2024 of the learned Full Bench of the High Court is set aside to the extent it is or may be inconsistent with this Order or the detailed reasons.

2. The order of the Election Commission of Pakistan ("Commission") dated 01.03.2024 ("Impugned Order") is declared to be ultra vires the Constitution, without lawful authority and of no legal effect.
3. The notifications (of various dates) whereby the persons respectively mentioned therein (being the persons identified in the Commission's notification No.F.5(1)/2024-Cord. dated 13.05.2024) have been declared to be returned candidates for reserved seats for women and minorities in the National and Provincial Assemblies are declared to be ultra vires the Constitution, without lawful authority and of no legal effect, and are quashed from 06.05.2024 onwards, being the date an

interim order was made by the Court in CPLA Nos. 1328-9

of 2024, the leave petitions out of which the instant appeals arise.

4. It is declared that the lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in an election (whether general or bye) and to field candidates and the Commission is under a constitutional duty to act, and construe and apply all statutory provisions, accordingly.
5. It is declared that for the purposes, and within the meaning, of paragraphs (d) and (e) of clause (6) of Article 51 ("Article 51 Provisions") and paragraph (c) of clause (3) of Article 106 ("Article 106 Provisions") of the Constitution, the Pakistan Tehreek e Insaf ("PTI") was and is a political party, which secured or won (the two terms being interchangeable) general seats in the National and Provincial Assemblies in the General Elections of 2024 as herein after provided.
6. During the course of the hearing of the instant appeals, on 27.06.2024, learned counsel for the Commission placed before the Court a list ("the List") of 80 returned candidates for the National Assembly (now MNAs), setting out in tabular form particulars relating to their election. Learned counsel made a categorical statement that the Commission stood by the data so provided to the Court. In particular, the List contained three columns marked as follows: (i) "Statement (on nomination form) given in declaration and oath by the person nominated (i.e., 'I belong to')"; (ii)

"Certificate of party affiliation under Section 66 of the Elections Act, 2017"; and (iii) "Statutory Declaration/ affidavit accompanying section 66 certificate".

7. In the peculiar facts and circumstances of the General Election of 2024, it is declared that out of the aforesaid 80 returned candidates (now MNAs) those (being 39 in all and whose particulars are set out in Annex A to this Order) in respect of whom the Commission has shown "PTI" in any one of the aforesaid columns in the List, were and are the returned candidates whose seats were and have been secured by the PTI within the meaning, and for purposes of, para 5 above in relation to the Article 51 Provisions.
8. In the peculiar facts and circumstances of the General Election of 2024, it is further ordered that any of the remaining 41 returned candidates out of the aforesaid 80 (whose particulars are set out in Annex B to this Order) may, within 15 working days of this Order file a statement duly signed and notarized stating that he or she contested the General Election as a candidate of the political party specified therein. If any such statement(s) is/are filed, the Commission shall forthwith but in any case within 7 days thereafter give notice to the political party concerned to file, within 15 working days, a confirmation that the candidate contested the General Election as its candidate. A political party may in any case, at any time after the filing of a statement as aforesaid, of its own motion file its confirmation. If such a statement is filed, and is confirmed by the political party concerned, then the seat secured by such candidate shall be forthwith deemed to be a seat secured by that political party for the purposes of para 5 above in relation to the Article 51 Provisions. The Commission shall also forthwith issue, and post on its website, a list of the retuned candidates (now MNAs) and seats to which this para applies within 7 days after the last date on which a political party may file its confirmation and shall simultaneously file a compliance report in the Court.
9. For the purposes of para 5 of this Order in relation to the Article 51 Provisions, the number of general seats secured by PTI shall be the total of the seats declared in terms of para 7 and those, if any, to which para 8 applies. The PTI shall be entitled to reserved seats for women and minorities in the National Assembly accordingly. PTI shall, within 15 working days of this Order file its lists of candidates for the said reserved seats and the provisions of the Elections Act, 2017 ("Act") (including in particular section 104) and the Elections Rules, 2017 ("Rules") shall be

applied to such lists in such manner as gives effect to this Order in full measure. The Commission shall, out of the reserved seats for women and minorities in the National Assembly to which para 3 of this Order applies, notify as elected in terms of the Article 51 Provisions, that number of candidates from the lists filed (or, as the case may be, to be filed) by the PTI as is proportionate to the general seats secured by it in terms of paras 7 and 8 of this Order.

10. The foregoing paras shall apply mutatis mutandis for purposes of the Article 106 Provisions in relation to PTI (as set out in para 5 herein above) for the reserved seats for women and minorities in the Khyber Pakhtunkhwa, Punjab and Sindh Provincial Assemblies to which para 3 of this Order applies. In case the Commission or PTI need any clarification or order so as to give effect to this para in full measure, it shall forthwith apply to the Court by making an appropriate application, which shall be put up before the Judges constituting the majority in chambers for such orders and directions as may be deemed appropriate.

#### Annexure-A

(Names of Candidates Affiliated with the Pakistan Tehreek-e-Insaf

as per the list verified from the data provided by ECP1)

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
1.	NA-2 (Swat-I)	Amjad Ali Khan
2.	NA-3 (Swat-II)	Saleem Rehman
3.	NA-4 (Swat-III)	Sohail Sultan
4.	NA-6 (Lower Dir-I)	Muhammad Bashir Khan
5.	NA-7 (Lower Dir-II)	Mehboob Shah
6.	NA-9 (Malakand)	Junaid Akbar

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
7.	NA-17 (Abbottabad-II)	Ali Khan Jadoon
8.	NA-19 (Swabi-I)	Asad Qaiser
9.	NA-20 (Swabi-II)	Shahram Khan
10.	NA-21 (Mardan-I)	Mujahid Ali
11.	NA-24 (Charsadda-I)	Anwar Taj
12.	NA-25 (Charsadda-II)	Fazal Muhammad Khan
13.	NA-29 (Peshawar-II)	Arbab Amir Ayub
14.	NA-30 (Peshawar-III)	Shandana Gulzar Khan
15.	NA-31 (Peshawar-IV)	Sher Ali Arbab
16.	NA-32 (Peshawar-V)	Asif Khan
17.	NA-33 (Nowshera-I)	Syed Shah Ahad Ali Shah
18.	NA-38 (Karak)	Shahid Ahmad
19.	NA-39 (Bannu)	Nasim Ali Shah
20.	NA-41 (Lakki Marwat)	Sher Afzal Khan
21.	NA-83 (Sargodha-II)	Usama Ahmed Mela
22.	NA-84 (Sargodha-III)	Shafqat Abbas
23.	NA-95 (Faisalabad-I)	Ali Afzal Sahi
24.	NA-96 (Faisalabad-II)	Rai Haider Ali Khan

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
25.	NA-100 (Faisalabad-VI)	Nisar Ahmed
26.	NA- 101 (Faisalabad-VII)	Rana Atif
27.	NA-102 (Faisalabad-VIII)	Changaze Ahmad Khan
28.	NA-103 (Faisalabad-IX)	Muhammad Ali Sarfraz
29.	NA-115 (Sheikhupura-III)	Khurram Shahzad Virk
30.	NA-122 (Lahore-VI)	Sardar Muhammad Latif Khan Khosa
31.	NA-143 (Sahiwal-III)	Rai Hassan Nawaz Khan
32.	NA-149 (Multan-II)	Malik Muhammad Aamir Dogar
33.	NA-150 (Multan-III)	Makhdoom Zain Hussain Qureshi
34.	NA-154 (Lodhran-I)	Rana Muhammad Faraz Noon
35.	NA-171 (Rahim Yar Khan-III)	Mumtaz Mustafa
36.	NA-179 (Kot Addu-I)	Muhammad Shabbir Ali Qureshi
37.	NA-181 (Layyah-I)	Umber Majeed
38.	NA-182 (Layyah-II)	Awais Haider Jakhar
39.	NA-185 (D.G. Khan-II)	Zartaj Gul

(Names of Independent Candidates)

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
1.	NA-1 (Chitral Upper-cum-Chitral Lower)	Abdul Latif
2.	NA-5 (Upper Dir)	Sahibzada Sibghatullah
3.	NA-13 (Battagram)	Muhammad Nawaz Khan
4.	NA-22 (Mardan-II)	Muhammad Atif
5.	NA-23 (Mardan-III)	Ali Muhammad
6.	NA-26 (Mohmand)	Sajid Khan
7.	NA-27 (Khyber)	Muhammad Iqbal Khan
8.	NA-34 (Nowshera-II)	Zulfiqar Ali
9.	NA-35 (Kohat)	Shehryar Afridi
10.	NA-36 (Hangu-cum-Orakzai)	Yousaf Khan
11.	NA-42 (South Waziristan Upper-cum-South Waziristan Lower)	Zubair Khan
12.	NA-66 (Wazirabad)	Mohammad Ahmed Chattha
13.	NA-67 (Hafizabad)	Aniqa Mehdi
14.	NA-68 (Mandi Bahauddin-I)	Haji Imtiaz Ahmed Choudhry
15.	NA-78 (Gujranwala-II)	Muhammad Mobeen Arif

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
16.	NA-79 (Gujranwala-III)	Ihsan Ullah Virk
17.	NA-181 (Gujranwala-V)	Ch. Bilal Ejaz
18.	NA-86 (Sargodha-V)	Muhammad Miqdad Ali Khan
19.	NA-89 (Mianwali-I)	Muhammad Jamal Ahsan Khan
20.	NA-90 (Mianwali-II)	Umair Khan Niazi
21.	NA-91 (Bhakkar-I)	M. Sana Ullah Khan Mastikhel
22.	NA-93 (Chiniot-I)	Ghulam Muhammad
23.	NA-97 (Faisalabad-III)	Muhammad Saad Ullah
24.	NA-99 (Faisalabad-V)	Umar Farooq
25.	NA-105 (Toba Tek Singh-I)	Usama Hamza
26.	NA-107 (Toba Tek Singh-III)	Mohammad Riaz Khan
27.	NA-108 (Jhang-I)	Muhammad Mahbob Sultan
28.	NA-109 (Jhang-II)	Waqas Akram
29.	NA-110 (Jhang-III)	Muhammad Ameer Sultan
30.	NA-111 (Nankana Sahib-I)	Muhammad Arshad Sahi
31.	NA-116 (Sheikhupura-IV)	Khurram Munawar Manj

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
32.	NA-129 (Lahore-XIII)	Mian Muhammad Azhar
33.	NA-133 (Kasur-III)	Azim Uddin Zahid
34.	NA-137 (Okara-III)	Syed Raza Ali Gillani
35.	NA-156 (Vehari-I)	Ayesha Nazir
36.	NA-170 (Rahim Yar Khan-II)	Mian Ghous Muhammad
37.	NA-172 (Rahim Yar Khan-IV)	Javaid Iqbal
38.	NA-175 (Muzaffargarh-I)	Jamshaid Ahmad
39.	NA-177 (Muzaffargarh-III)	Muhammad Moazzam Ali Khan
40.	NA-180 (Kot Addu-II)	Fiaz Hussain
41.	NA-183 (Taunsa)	Khawaja Sheraz Mehmood

4. Therefore, the majority's order, which became the Order of the Court was noted as under:

#### Order of the Court

By a majority of 8 (comprising Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan, JJ) the instant appeals are decided in terms of the short order of the majority of even date (and the other petitions including leave petitions and C.M.As are decided accordingly).

I agree with the short order authored by Justice Jamal Khan Mandokhail.

Justice Qazi Faez Isa, CJ.

Justice Syed Mansoor Ali Shah, J.

Justice Munib Akhtar, J.

With utmost respect I differ. My short order is appended herewith.

Justice Yahya Afridi, J.

I have attached my separate short order dismissing all the appeals, petitions and applications and uphold the impugned judgment of the Peshawar H.C.

Justice Amin-ud-Din Khan, J.

I have appended my separate order.

Justice Jamal Khan Mandokhail, J.

Justice Muhammad Ali Mazhar, J.

Justice Ayesha A. Malik, J.

Justice Athar Minallah, J.

Justice Syed Hasan Azhar Rizvi, J.

Justice Shahid Waheed, J.

Justice Irfan Saadat Khan, J.

I agree with the short order passed by J. Amin-ud-Din Khan.

Justice Naeem Akhtar Afghan, J.

5. The detailed majority judgment has not yet come to surface, despite the expiry of the 15 days mentioned therein. The delay may render infructuous, the review petition filed against the order of the court. Therefore, on the

basis of the short order we have been compelled to record our findings, which are in two parts. The first part states why we are unable to agree with the majority decision and the second part states our decision on the appeals based on the merits of the case.

6. The admitted position is that the subject matter in the instant litigation before this Court was petitions filed under Article 185(3) of the Constitution against the judgment of the five member bench of the Peshawar High Court whereby writ petitions filed by the appellants were dismissed. Leave was granted by this Court vide order dated 6.5.2024, which is reproduced:

"Learned counsel for the petitioners submits that allocation of the reserved seats for women and non-Muslims to the political parties other than the petitioner, Sunni Ittehad Council ("SIC"), is in violation of Article 51(6) (d) & (e) of the Constitution of the Islamic Republic of Pakistan ("Constitution") which provides for proportional representation system on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly. Once a political party has been allocated the reserved seats on the basis of proportional representation system, the remaining seats cannot be re-allocated to the same political party. As per Letter issued by the Election Commission of Pakistan dated 25.04.2024, he submits, it has been acknowledged that SIC is a parliamentary party having 82 general seats in the National Assembly. Therefore, SIC is entitled to reserved seats as per the proportional representation system in terms of Articles 51(6) (d) & (e) and 106(2) (c) (sic) of the Constitution.

2. On the other hand, Mr. Sikandar Bashir Mohmand, learned counsel for the Election Commission of Pakistan ("ECP"), submits that according to Articles 51 and 106 of the Constitution the reserved seats have to be allocated on the proportional representation system only to those political parties who have contested the general elections and won atleast one seat in the said elections. Since SIC did not contest the elections and did not win even a single seat in the general elections, it cannot be considered as a political party in terms of Articles 51(6) (d) and (e) and 106(2)(c) (sic) of the Constitution, for the purpose of allocating the reserved seats. Learned Attorney-General for Pakistan ("AGP") supports the contentions of the learned counsel for the ECP. Both the learned counsel for ECP and the learned AGP frankly concede that this is a case of first impression involving questions of constitutional law that have not been addressed by the Court earlier.

3. The above questions of allocation of reserved seats in the National and Provincial Assemblies touch upon the foundational constitutional concept of a parliamentary democracy that the voice of the electorate is truly reflected in the composition of the assemblies. Democratic mandate necessitates that the allocation of reserved seats enhances the representativeness of the electorate in the assemblies and upholds the principles of fairness and transparency in the electoral process. It is paramount to prioritize the integrity of the elections so that the Parliament remains a true reflection of the will of the people.
4. Therefore, leave to appeal is granted to consider, amongst others, the said questions. The appeals are to be posted for hearing on 03.06.2024. The appeal arising out of these petitions will be heard on the basis of available record; however, both sides are at liberty to file any additional documents, which were part of the record before the fora below but have not been filed with instant petitions.
5. Notices under Order XXVII-A, C.P.C. be issued to the learned AGP as well as the Advocates-General of the Provinces.

C.M.A. 2920 of 2024:

6. Notice for the same date. In the meanwhile, operation of the impugned judgment of the Peshawar High Court dated 25.03.2024, as well as, the order of the Election Commission of Pakistan dated 01.03.2024 is suspended. It is, however, clarified that this interim order relates to the disputed seats only, i.e.,

the reserved seats allocated over and above the initially

allocated reserved seats to the political parties. It is also

clarified that this order is to operate prospectively, w.e.f., from today.

C.M.A. 3554/2024:

7. Notice. To be heard along with CPLA No.1328/2024 on 03.06.2024.

8. Since the questions under consideration require constitutional interpretation, the matter be placed before the Committee

under Section 4 of the Supreme Court (Practice and Procedure) Act, 2023 for constitution of a larger bench to hear the appeals."

7. The independent returned candidates joined the appellant, and their joining was duly processed, accepted and notified by the ECP with regard to the National Assembly as well as the three Provincial Assemblies. None has ever disputed the joining to SIC of the 39 and 41 persons mentioned in Annexures A & B of the majority short order within three days, as prescribed by the Constitution. Notifications as the returned independent candidates in the general elections were issued and their submitting affidavit and requisite documents etc. for joining SIC. The other contesting political parties, who were parties before the ECP as well as the High Court and before this Court also did not dispute their joining SIC. SIC does not dispute their joining SIC. The said persons have also never disputed their joining the SIC. Furthermore, PTI was not a party to these proceedings starting from the ECP, then before the High Court nor before this Court. Even at the time of the announcement of the short order neither any person from PTI nor PTI joined the proceedings. Not a single one of said 80 persons, mentioned in the short order, were parties before this Court collectively or in their individual capacity. They were never heard. The claim of the SIC before the ECP was that SIC was entitled to the reserved seats on the basis of the said persons joining SIC.
8. To appreciate the arguments advanced before the Court and for giving clear picture and understanding to a person reading this judgment, it will be appropriate that most relevant portions of Articles of the Constitution i.e. Article 51(6) (d) & (e) and Article 106 and section 104 of the Elections Act, 2017 are reproduced:

"Article 51

(1). -----

(2). -----

(3). -----

(4). -----

(5). -----

(6) For the purpose of election to the National

Assembly,--

(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 paragraph 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 paragraph 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

(1) -----

(2) -----

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

(a) -----

(b) -----

(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 the 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."

and

"Section 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 to 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 subsection (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 subsections (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 subsection (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."

9. During the hearing of the appeals before this Court on the above-said eight dates of hearing by the thirteen member Bench of this Court, most of the time was consumed by the queries made by various members of the Bench to the learned counsel for the appellant as well as to Mr. Salman Akram Raja, who moved C.M.A. No. 3554 of 2024 on behalf of Kanwal Shauzab for permission to file CPLA, and in paragraph No. 2 of C.P.L.A. No.NIL of 2024 it was pleaded that:

"the petitioner expected to be considered, and to be nominated as candidate of the Sunni Ittehad Council for seats reserved for women in the Khyber Pakhtunkhwa Provincial Assembly as well as the National Assembly of Pakistan."

She also sought leave against the judgment of the five member bench

of the Peshawar High Court (wrongly mentioned as Division Bench).

On query by some members of the Bench, whether the reserved seats can be given to PTI in the peculiar circumstances of this case, none of the counsels agreed to this, though the suggestion was made by some of the members of the Bench repeatedly to the learned counsel for the appellant as well as to Mr. Salman Akram Raja. I recall that Mr. Salman Akram Raja replied that he will not press that the seats be given to PTI, but the Court has the power to do so. In these circumstances, we have thoroughly considered the hurdles before us which forced us to disagree with the majority decision and these are listed hereunder:

- i. PTI was not before this Court nor before the High Court nor even before the ECP;
- ii. The joining of 80 independent returned candidates to SIC was never disputed by anyone;
- iii. The said 39 plus 41 persons as mentioned in the majority's short order did not come before this Court nor were they heard. The majority short order decides about their rights or lack thereof without their consent or even hearing them. Their joining of SIC has been undone without such prayer of anyone before this Court, or before the High Court.
- iv. Not only the appeals filed by the SIC have been dismissed by the majority order, as no relief has been granted to SIC but independent members who joined the SIC have also been snatched from the SIC and that too without hearing the above said 39 plus 41 persons.

v. Unless Articles 51, 106 and 63 of Constitution are suspended and in their place new articles in consonance with the relief granted through the majority order are inserted in the Constitution, the relief which has been granted to the PTI cannot be granted.

vi. Article 175 of the Constitution has been ignored.

vii. The constitutional limits of jurisdiction under Article 185 of the Constitution have been ignored.

viii. All substantive as well as procedural law with regard to parties to lis have been ignored.

ix. The relief granted to PTI will be self-created and has been carved out relief by the majority, as none has claimed this relief in these proceedings.

x. Not only SIC has not been granted relief claimed by it but all those who have joined it have been taken off and for the rest of the tenure of the National as well as Provincial assemblies SIC has been kicked out from the assemblies.

xi. For a specific date i.e. 6.5.2024 the notification of returned candidates for special seats has been quashed, however before that date their notification and acts are held to be valid. It is incomprehensible how can this be done, as it is without any backing of Constitution.

xii. The majority judgment virtually declares that said 80 persons are not honest and ameen in accordance with Article 62 (1) (f) of the Constitution.

xiii. All the returned candidates for the reserved seats of other parties who have been notified were not issued notices and provided an opportunity of hearing.

xiv. 41 candidates mentioned in Annexure-B have been given the choice of joining any other Political Party.

xv. The issue was simply the matter of post general elections directly related to the reserved seats for both women and non-Muslims on the basis of proportional representation system of political parties' lists of candidates under Articles 51 and 106 of the Constitution. The majority's short order in effect created a new parliamentary party in the National Assembly and three Provincial Assemblies and since this related to the pre election process, it is clearly and unequivocally not an

issue before this Court. In the process of the general elections all events are scheduled and time-bound and the same cannot be reversed.

xvi. The judgment of the full Bench of the Peshawar High Court has been set aside by the majority's short order to the extent, that it is or may be inconsistent of the majority's short order. This is incomprehensible as none of the rights which have now been created in favour of PTI by the majority's short order were in issue before the High Court, nor had been adjudicated upon. The High Court had simply dismissed SIC's claim to the reserved seats, which was the lis before the High Court.

In conclusion, it is clear that the superstructure created by the majority's short order, does not in any way come within the ambit of the jurisdiction vested in this Court or in the Constitution.

10. Vires of section 104 of the Elections Act, 2017 was initially challenged before the High Court. Even in the pleadings before this Court the vires was challenged, but at the time of the hearing by the thirteen member bench, the learned counsel for the appellant categorically stated more than once before the Court and when the court inquired from him whether the appellants still press their challenge to the vires of section 104 of the Act and the learned counsel categorically stated that he does not challenge the vires of section 104 and he will instead submit his arguments with regard to the interpretation of section 104 of the Elections Act, 2017. Unless Section 104 as well as the relevant rules are also suspended and new sections/rules are substituted, the majority order cannot be passed.
11. We are always conscious of our jurisdiction before hearing a matter fixed before us whether as a Judge of the High Court or that of this Court. In the instant matter, we are conscious that we are sitting in a jurisdiction vested in this Court under Article 185 of the Constitution and can exercise jurisdiction under Article 175 of the Constitution, but cannot exercise any other jurisdiction as this is not conferred upon this Court, therefore, it cannot be exercised. In this matter only the appellate jurisdiction of the Court was invoked by filing petitions under Article 185(3) of the Constitution whereafter leave was granted. The matters alien to the jurisdiction vested in this Court cannot be considered nor decided by this Court. The majority judgment ignores all rules of procedure, substantive provisions of law and the Constitution. Relief cannot be granted to the PTI as PTI was not before the Court nor tried to become a party before the ECP, High Court and before this Court nor was claiming the reserved seats,

which were in issue in the instant litigation. If the said 39 plus 41 persons take any step on the basis of this judgment which is not in accordance with the Constitution they may lose their seats as returned candidates on the basis of violation of the Constitution. We are also of the firm view that any other constitutional body cannot be asked to take any steps or decisions which are not permissible under the Constitution. If the said 80 persons change their stance on the basis of the majority judgment, they will be guilty of violating their oath, which is provided under Article 65 (Third Schedule), being the Oath for the members of the National Assembly. The first paragraph is relevant, which is reproduced and which is similar to the Provincial Assembly oath with some modification:

"That, as a member of the National Assembly (or Senate), I will perform my functions honestly, to the best of my ability, faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan, and the law, and the rules of the Assembly (or Senate), and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan."

(bold and underlying by us)

12. For creating and carving out relief in these proceedings for PTI, we would have to travel beyond the jurisdiction conferred by Articles 175 and 185 of the Constitution and would also have to suspend Articles 51, 106 and 63 of the Constitution and section 104 of the Elections Act, 2017 along with the relevant rules. We would also have to insert instead of Articles 51, 106 and section 104 (mentioned supra). Such articles and sections therein in substitution and in consonance with the relief granted through the majority judgment. Previously there was a term used which was "reading in to the Constitution" or "reading down the Constitution" but now a new phrase has been introduced that of "inserting new Articles in consonance with the relief to be granted in the peculiar circumstances of the case" in the Constitution. We do not have the courage to go to such an extent to give relief to a party who is not before the Court or who did not join the proceedings and pray for such relief. All the rules of procedures of proceedings before the Supreme Court and the Supreme Court Rules, 1980 would also have to be ignored as neither any party before the Court asked in writing nor orally for the relief which has been granted to PTI.
  
13. Regarding joining of 80 persons no one has denied that they have joined SIC, ECP does not deny this nor any other contesting party denies it. Even

PTI does not deny this, who then are we to undo all these things and reverse the same and create a new process plus create a new and arbitrary time limit for joining any party of their choice by disregarding the mandate of the Constitution. In our view neither Articles 62(2), 63 and 63-A have been suspended nor can be suspended, therefore, any affidavit contrary to the provisions of the affidavits already filed will entail the penal consequences of non-seating such members of National Assembly and Provincial Assemblies if he/she files a fresh affidavit in contradiction to his/her previous affidavit and joins any other party. Any order of the Court which is not in consonance with the constitutional provisions is not binding upon any other constitutional organ of the State.

14. Now we proceed to record some more facts, arguments and our reasons for dismissing the appeals, petitions and the applications.
15. We heard thorough arguments of learned counsel for the appellants Mr. Asad Jan Durrani, ASC KPK along with Malik Khawas, Assistant Law Officer, KPK Assembly, Mr. Salman Akram Raja, ASC (who moved C.M.A. No. 3554 of 2024 in C.P. No. NIL of 2024), Mr. Makhdoom Ali Khan, ASC, who represented respondent Nos.15 to 19, 21 and 22, who were the returned candidates for the reserved seats belonging to PML(N), JUI(P), PPPP and Mr. Sikandar Bashir Mohmand, learned counsel for ECP. Learned counsel for JUI adopted the arguments of learned counsel for ECP. Learned counsel for PML(N), Mr. Shehzad Shaukat adopted the arguments of Mr. Makhdoom Ali Khan and, learned counsel for respondent No.20 adopted the arguments of ECP. Maulvi Iqbal Haider also adopted the arguments of learned counsel for ECP. We have also heard the learned Attorney- General for Pakistan Mr. Mansoor Usman Awan, who submitted the formula for entitlement of reserved seats proportionately for the Political Parties with reference to his written submissions submitted through CMA No.5911 of 2024. Learned counsel for the parties produced record through CMAs as well as their written submissions and the case law also. There were four major counsels/set of counsels who pleaded the case before this Court. On one side there was counsel for the appellants who gets support from the learned Advocate General, KPK as well as learned Mr. Salman Akram Raja. On the other side was the learned Attorney-General as well as the learned counsel for the ECP and learned Mr. Makhdoom Ali Khan, representing the returned candidates for the reserved seats of various Political Parties. The appellant side attacked the order of the ECP as well as that of the learned five member Bench of the Peshawar High Court, and argued that the

reserved seats for women and non-Muslims in accordance with the proportionate representation are the right of SIC. Whereas the learned Attorney- General for Pakistan as well as the learned counsel for ECP and the learned Mr. Makhdoom Ali Khan have supported the decision of the ECP to be absolutely correct and in accordance with the Constitution and the law. Learned Mr. Makhdoom Ali Khan has argued with reference to Section 57 of the Elections Act, 2017 as well as its section 206 and Rule 94 of the Election Rules and Article 226 of the Constitution. Rule 94 with regard to powers of the Commission to declare seats won by each Political Party and supported the judgment of the High Court and prayed for dismissal of the appeals.

16. The premise of the arguments of learned counsel for the appellants seems to be on the questions, mainly question No.3 and question No.4 as framed by the learned counsel for the appellant submitted through CMA No. 5273 of 2024, Part 2, which are reproduced:

"3. Whether any Political Party could be allocated reserved seats disproportionate to their representation based on the total number of general seats secured by them?

4. Whether there is constitutional absence or silence about a situation, in which there are left over reserved seats which cannot be allocated to any party either because of disentitlement or disproportionality? If so, how can this be resolved?"

The arguments of the learned counsel for the appellant mainly revolved upon these two questions and the stance of the learned counsel was that on the basis of interpretation, as per the understanding of the learned counsel for the appellant, when a Political Party is a listed party in the ECP even if that party has not participated in the General Elections and after the notification of the independent returned candidates the joining of independent candidates makes the political party eligible for the reserved seats for women and non-Muslims, we are afraid that this interpretation is absolutely against the wording of Article 51 and of Article 106 of the Constitution. By interpretation no one can read into nor read down the Constitution. It is clearly mentioned that the political party which won in the General Elections and the independent candidates joining such political party can enhance the proportion of such party. We are clear in our mind that if an independent candidate joins a party, though it may be listed as a political party with ECP, does not make that party entitled for the reserved seats. The joining of independent candidates only enhances the proportion of right in the reserved

seats of that party if that party has won seats. By the joining of independent candidates with any political party does not create a right in favour of that political party to become eligible for reserved seats only on the basis of the joining of independent candidates. Question Nos.3 and 4 noted supra are absolutely misconceived. There is no question of disproportionate allocation of reserved seats as the seats are for the political parties entitled to the same. A political party which is not entitled for the same cannot claim proportionate allocation in the reserved seats, therefore, there is no question of disproportionate allocation of seats to political parties not entitled for the seats, in accordance with the formula of distribution of seats presented by the learned Attorney-General. The seats were given to the political parties which were entitled for the same. The formula of the distribution has not been specifically challenged by the appellants. If the appellants are not entitled to the special seats then the formula presented by the learned Attorney-General for Pakistan remains undisputed. Even the majority judgment of this Court as well as our other learned brothers are unanimous on the point that SIC is not entitled to the reserved seats.

17. Mr. Faisal Siddiqi further argued on the basis of what he stated was the doctrine of progressive interpretation of the Constitution and on the basis of said interpretation has tried to analyze Article 51(6)(d)&(e) and Article 106(3) (c) of the Constitution as well as section 104 of the Elections Act, 2017 and rules 92 and 96 of the Election Rules, 2017. We absolutely do not agree with the understanding of learned counsel for the appellants with regard to the said doctrine of progressive interpretation of the Constitution and of the provisions of Elections Act, 2017 and the Rules as his understanding is absolutely misconceived, that there is a constitutional absence or silence about the situation or with regard to disentitlement or disproportionately. There is absolutely no silence about the situation in the Constitution. The Constitution is absolutely clear and which has rightly been held so by the learned five member Bench of the Peshawar High Court through the impugned judgment.
18. As we have noted, by the majority's order virtually all the persons who joined the SIC and their joining of SIC has been undone. Further positions in the process of working of the proportional representation system of political parties is affected through the majority's order. For instance, at Sr.No.39 of Annexure-A Ms. Zartaj Gul from NA-185 (D.G.Khan-II) was appointed by the SIC as the Party Leader of SIC in the National Assembly, and her notification was

issued by the Secretary General of the Assembly bearing No.F.1(1)/ 2024-N.O, Islamabad dated 23 June 2024, which was produced by the learned counsel for the appellants in CMA No. 5944 at Page 7. By the majority judgment her position and the other positions given to the SIC also go.

19. As we have noted in the start of this order that the matter of the allocation of reserved seats for women and non-Muslims on the basis of proportional representation system of political parties arose before the ECP when the appellant informed the ECP that the independent candidates from National Assembly as well as Provincial Assemblies have joined them, and by stating that they did not participate in the General Elections as a political party, even though SIC was a registered political party in the List of Political Parties maintained by the ECP. The valid joining of the independent members was recognized by the ECP as well as by the other contesting parties who also joined the proceedings, when all the concerned matters were fixed for hearing before the ECP comprising of the entire Commission, of the Chairman and the four Members. Para-1 of the order of ECP dated 1.3.2024 is reproduced to correctly appreciate the undisputed factual position:

"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."

20. The ECP on the basis of admitted facts and in accordance with Article 51(6) (d) and Article 106(3) allocated seats in accordance with law through the proportional representation system of political parties' lists of candidates on the

basis of the total number of seats secured by each political party. Admittedly, the SIC did not participate in the elections as a political party and, therefore, it did not file any list of candidates in accordance with section 104 of the Elections Act, 2017. None of the parties before the court or anyone else disputed the election program issued by the ECP for the elections held on 8.2.2024. Learned counsel for the SIC wants to take benefit of the proviso to Clause (d) of sub-clause (6) of Article 51 that the interpretation that even when a party has not participated in the elections and has not won a single seat, if the independent candidates join it then such party is entitled to the reserved seats for women and non-Muslims, we are afraid that by no stretch of the imagination this interpretation of the proviso can be as learned counsel for the appellants wants the interpretation to be. The proviso only enables adding to the seats won by a political party in the elections as is clearly mentioned, that 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. Such political party means a party which has won seats and is in parliament and not a party who has not participated in the elections and filed not a single nomination paper by any candidate of the said party. Even if all the independent candidates join the said party they would

not be entitled to reserved seats. In this view of the matter, the view taken by the ECP as well as by the learned five member bench of the Peshawar High Court is absolutely correct and in accordance with the Constitution. Even none of us i.e. thirteen members, has given relief to SIC who challenged the judgment of the Peshawar High Court, claim of the SIC has been discarded including the majority judgment.

21. In view of what has been discussed above, the learned High Court had rightly dismissed the writ petitions filed by the appellants, and the appeals are liable to be dismissed as there is no defect in the impugned judgment. These are the detailed reasons for dismissing the appeals. In the connected CPs leave has been sought against the judgment passed by the Peshawar High Court, however, as the

appeals have been dismissed on merits, therefore, there is no need to further dilate upon the said CPs and the CMAs and the same are also dismissed.

22. These are the reasons of our short order dated 12.7.2024 which is also reproduced:

"For reasons to be recorded later, we dismiss the appeals, petitions as well as

CMAs and the judgment of the Peshawar High Court is upheld."

Sd/-

Judge

Sd/-

Judge

3rd August, 2024

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

In Chambers:\*

Justice Syed Mansoor Ali Shah

Justice Munib Akhtar

Justice Muhammad Ali Mazhar

Justice Ayesha A. Malik

Justice Athar Minallah

Justice Syed Hasan Azhar Rizvi

Justice Shahid Waheed

Justice Irfan Saadat Khan

C.M.A. No. 7540 of 2024 in C.As. 333 and 334 of 2024 etc.

(Filed on behalf of ECP, seeking guidance on certain legal and factual issues)

**AND**

**C.M.A. No. 8139 of 2024 in C.As. 333 and 334 of 2024 etc.**

**(Reply to the CMA 7540/24 on behalf of PTI)**

**Sunni Ittehad Council through its Chairman,**

**Faisalabad and another .. Appellants**

**Versus**

**Election Commission of Pakistan through its**

**Secretary, Islamabad and others ... Respondents**

**ORDER**

**Through C.M.A. 7540/2024, and in terms of the short order dated 12.07.2024 whereby these appeals were decided by majority ("Short Order") the Election Commission of Pakistan ("Commission") purports to seek guidance on the point that "[i]n absence of a valid organizational structure of Pakistan Tehreek-i-Insaf (PTI), who will confirm the political affiliation of the returned candidates (MNAs and MPAs) on behalf of PTI, who have filed their statements in light of the Supreme Court Order [dated 12 July 2024]."** We may note that other than a copy of the Short Order the application is bereft of any other documentation.

2. In reply to the above application, the PTI has filed C.M.A. 8139/2024, to which have been annexed a number of documents, including correspondence between the PTI and the Commission. We have considered the material that has been placed before us.
  
3. By way of brief recapitulation, in paragraphs 4 and 5 of the Short Order it has been categorically declared that the lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in an election (whether general or bye) and to field candidates, and that for the purposes, and within the meaning, of paragraphs (d) and (e) of clause (6) of Article 51 and paragraph (c) of clause (3) of Article 106 of the Constitution of the Islamic Republic of Pakistan, PTI

was and is a political party, which secured or won (the two terms being interchangeable) general seats in the National and Provincial Assemblies in the General Elections of 2024 as provided in that Order. These paragraphs, and the preceding paragraph 3 of the Short Order, sound on the constitutional plane, being the proper interpretation and understanding of the relevant constitutional provisions. The other paragraphs of the Short Order, including in particular paragraphs 8 and 10, are consequential upon what has been held and declared in the paragraphs just noted, and flow and emanate from, and give effect to, constitutional conclusions. All of these

points will be explicated in the detailed reasons for the decision of the majority (i.e., the Short Order), which is the binding judgment of the Court.

4. Turning now to the specific clarification purportedly sought, the PTI in its reply has annexed a number of notices issued by the Commission to the PTI through Barrister Gohar Ali Khan, in which it has itself identified the latter as the Chairman of PTI. Furthermore, the certifications required to be issued by a political party (here the PTI) and filed with the Commission in terms of paragraphs 8 and 10 of the Short Order have, as per the record placed before us in relation to the returned candidates (now respectively MNAs and MPAs) in the National and the Sindh, Punjab and Khyber Pakhtunkhwa Provincial Assemblies, been issued under the signatures of Barrister Gohar Ali Khan and Mr. Omar Ayub Khan, who are identified therein as being, respectively, the Chairman and Secretary General of the PTI. These certifications are dated 18.07.2024, 24.07.2024 and 25.07.2024 and list, in each case, the particulars of the relevant returned candidate (now MNA or MPA as the case may be) and in particular the dates on which the declaration required of the candidate (again, in terms of paragraphs 8 and 10 of the Short Order) was filed with the Commission. These dates obviously all precede the respective dates of certification.
5. Putting together the record placed before us, and considering the same in the light of the Short Order, leaves in little doubt that the clarification sought by the Commission in terms of the CMA 7540/2024 is nothing more than a contrived device and the adoption of dilatory tactics, adopted to delay, defeat and obstruct implementation of the decision of the Court. This cannot be countenanced. Even on the application of elementary principles of law, the application filed by the Commission is misconceived. Having itself recognized Barrister Gohar Ali Khan as the Chairman of PTI, the

Commission cannot now turn around and purport to seek guidance from the Court with regard to how the certifications are to be dealt with. The Commission cannot approve and reprobate, taking whatever (shifting) stance as it desires and as may seem to suit its immediate purposes for the moment. Furthermore, the Commission, even if one were to consider the application in the most sympathetic light, has apparently forgotten the well known de facto doctrine or rule, in terms of which the acts of a person who holds an office are protected even if there may be (and no such conclusion is reached here in relation to the PTI) any issue with the position de jure. It sufficed and the Commission was duty bound in terms of the Constitution to keep in mind that the admitted position (as stated before the Court during the hearing of the appeals) is that the PTI was, and is, an enlisted political party. This position was not only accepted and relied upon by us (eight Judges) but also by our three learned colleagues in minority (Hon'ble the Chief Justice, Justice Yahya Afridi and Justice Jamal Khan Mandokhail). Their lordship appear to have also accepted the validity of the party certificates (party tickets) issued by Barrister Gohar Ali Khan and thus his capacity to act for PTI as its Chairman. Furthermore, having itself issued notices to the PTI through Barrister Gohar Ali Khan as its Chairman, the Commission gave recognition to both the

party and the office holder. That sufficed absolutely for purposes of the Short Order. It would be completely illogical to assume that a political party, a juristic person, is fully functional yet there are no natural persons who are either de facto or de jure performing its functions or running its affairs. Saying (as the Commission now in effect does through C.M.A. 7540/2024) that a political party is an enlisted political party, fully functional for the purposes of its formation, yet there is no one that can perform its functions and run its affairs, amounts to blowing hot and cold in the same breath or, as noted, approving and reprobating one and the same fact. There could have been no conceivable doubt that the certifications referred to above were correct and valid in terms of the Short Order and the continued denial and refusal of the Commission to accept the same, as and when filed, is constitutionally and legally incorrect and may expose the Commission to such further or other action as may be warranted in terms of the Constitution and the law.

6. But there is another, and more fundamental, aspect that must also be alluded to. It was categorically declared in paragraph 8 of the Short Order that on filing the requisite statement and its confirmation by the political party concerned, the seat secured by such candidate shall be forthwith deemed to be a seat secured by that political party. Therefore, upon

submission of the declarations and certifications referred to above, the position of the returned candidates (now respectively MNAs and MPAs) immediately and ipso facto stood determined and fixed as a matter of law as on those dates and no subsequent act can alter what became, on the respective dates, past and closed transactions. As per the position so determined, the said returned candidates were and are the returned candidates of PTI and thus members of the parliamentary party of PTI in the National Assembly and Provincial Assemblies concerned, for all constitutional and legal purposes. The attempt by the Commission to confuse and cloud what is otherwise absolutely clear as a matter of the Constitution and the law must therefore be strongly deprecated. The list required to be issued by the Commission in terms of paragraph 8 (read with paragraph 10) of the Short Order is nothing more than a ministerial act, for the information and convenience of all concerned, and has no substantive effect. Nonetheless, the continued failure of, and refusal by, the Commission to perform this legally binding obligation may, as noted, have consequences. This obligation must be discharged forthwith.

7. With the above clarifications, the present application is disposed of. Office shall dispatch a copy of this order to the respective parties.

Sd/-

Justice Syed Mansoor Ali Shah

Sd/-

Justice Munir Akhtar

Sd/-

Justice Muhammad Ali Mazhar

Sd/-

Justice Ayesha A. Malik

Sd/-

Justice Athar Minallah

Sd/-

Justice Syed Hasan Azhar Rizvi

Sd/-

Justice Shahid Waheed

Sd/-

Justice Irfan Saadat Khan

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## **JUDGMENT**

### **SYED MANSOOR ALI SHAH J.---**

#### Preface

At the core of our democratic Constitution lies the will of the people of Pakistan, with free and fair elections being fundamental to democracy. The principle that 'the most important political office is that of the private citizen'<sup>1</sup> underscores the crucial role of the people, whose right to vote is the lifeblood of democratic governance. Democracy thrives on the belief that authority inherently resides in the people, a principle enshrined in the Constitution of every democratic nation, including ours. Our Constitution is not merely a governmental blueprint but a covenant affirming the supreme role of the people in shaping their destiny.

2. Under our Constitution, while the sovereignty of the entire Universe belongs to Almighty Allah alone, the authority is to be exercised by the people of Pakistan as a "sacred trust" within the limits prescribed by Him. It posits that people are entrusted with the responsibility of governance, which is to be exercised through their chosen representatives. The notion of a "sacred trust" elevates the responsibility of both the government and the judiciary in our Islamic republic. It embeds a moral dimension into the practice of democracy, where the fidelity to this trust is seen as paramount. In the context of elections, this "sacred trust" implies that all the actors in the electoral process must adhere to a higher standard of fair and honest conduct ensuring electoral integrity.
  
3. Election authorities, as "electoral management bodies", are the "guarantor institutions" of democratic processes and are critical to democratic governance, akin to a "fourth branch of government". Their constitutional role is to ensure the conduct of elections by providing an equal and fair competitive field for all political entities and protect citizens' rights to vote. As an impartial steward of the electoral process, the Election Commission of Pakistan is not only an administrative body but also a guardian of electoral integrity and democracy's legitimacy. When election authorities engage in actions that undermine these principles, such as unlawfully denying the

recognition of a major political party and treating its nominated candidates as independents, they not only compromise the rights of these candidates but also significantly infringe upon the rights of the electorate and corrode their own institutional legitimacy.

4. Political parties play a crucial role in representative democracies, acting as intermediaries between the state and its citizens. They are uniquely positioned to shape and structure electoral choices, organize public opinion, and integrate diverse interests into coherent platforms, thereby making electoral decisions meaningful and ensuring the proper functioning of democracy.<sup>2</sup> Moreover, political parties contribute to stable governance by facilitating consistent lawmaking and ensuring regular accountability. As such, they are essential to electoral competition and are key to the legitimacy, efficiency, and accountability of state institutions. This central role of political parties in the constitutional process is referred to as "constitutional partocracy", meaning a system in which political parties serve as the primary foundation of governance.<sup>3</sup> For democracy to endure, political parties must be supported and strengthened, not eliminated. A democracy without political parties is unlikely to sustain itself for long.
5. When the Election Commission errs or makes significant mistakes impacting the electoral process, judicial intervention becomes necessary to rectify them and ensure electoral justice. The judiciary, tasked with ensuring electoral justice, must foremost preserve the will of the people. Election disputes are viewed through this lens, emphasizing electoral integrity and democracy's legitimacy to maintain public confidence in governance. Electoral justice is vital to protecting political and electoral rights and is intertwined with electoral integrity. The role of the Supreme Court of Pakistan in overseeing electoral integrity is crucial for sustaining public trust in the democratic process, and the Court's power to do "complete justice" is a critical tool in the constitutional arsenal of this Court, enabling it to prevent democratic backsliding,<sup>4</sup> and protect democracy effectively with a focus on the electorate's rights. Denying electoral justice and compromising electoral integrity would undermine the very legitimacy of democracy.
6. When static interpretation fails to preserve the vitality of the Constitution's text and principles, judges have typically rejected it in favor of constitutional fidelity.<sup>5</sup> Constitutional fidelity as a concept embodies that to be faithful to the Constitution is to interpret its words and to apply its

principles in ways that preserve the Constitution's meaning and democratic legitimacy over time. Constitutional fidelity and legitimacy both are framed in a means-end relationship; legitimacy as the end and constitutional fidelity as a means to that end.<sup>6</sup> We must remember that Constitutions are not ephemeral enactments, designed to meet passing situations but are 'designed to approach immortality as nearly as human institutions can approach it.'<sup>7</sup>

7. With this understanding of the importance of the will of the people, fair conduct of elections, role of the Election Commission as a guarantor institution, centrality of political parties to the electoral process, electoral justice, electoral integrity and rights of the electorate in a democracy, we approach this case.

#### Nature of election disputes and responsibility of courts

8. Before proceeding to the relevant facts of the case and the issues arising therefrom, it is necessary to underscore the nature of election disputes and the responsibility of courts and other judicial and quasi-judicial bodies in adjudicating such disputes. During the hearing of these appeals, when certain facts and points of law were questioned by some members of the Bench, the learned counsel for the respondents submitted that those facts were not in the pleadings and that those points of law did not arise from the facts presented in the pleadings. They contended that in exercising its appellate jurisdiction under Article 185 of the Constitution, this Court cannot go beyond the pleadings. We are afraid, this contention is misconceived. It results from a misunderstanding of treating election disputes as mere civil disputes between two private parties, similar to other civil disputes.
9. Such a contention based on analogizing a petition on an election dispute to a civil suit was repelled by Morris J. as far back as 1875 in the Tipperary Election Case,<sup>8</sup> with the observation:

I consider this is a fallacious analogy, because a petition [on an election dispute] is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested.

This legal position was further elucidated the next year in 1876 by Grove J. in Aldridge<sup>9</sup> as follows:

Numerous provisions of the Act have reference not merely to the individual interests or rights of petitioners or respondents, but to rights of electors, of constituencies, and of the public, in purity of election and in having the member seated who is duly returned by a majority of proper votes. ...

This English jurisprudence on the nature of election disputes was adopted in India and Pakistan. In Sreenivasan,<sup>10</sup> Aiyar J. of the Madras High Court also repelled such a contention of treating an election petition similar to a civil suit. He elaborated on the difference in the nature of proceedings of a civil suit and an election petition and eloquently enunciated the legal position thus:

This view proceeds principally on the basis that an election petition is in all essential respects similar to an ordinary civil suit; but that is not quite so. An election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process. The citizens at large have an interest in seeing and they are justified in insisting that all elections are fair and free and not vitiated by corrupt or illegal practices. ... In view of the manifest difference between a civil suit and an election petition it will not be right, it seems to me, to press the analogy founded on the basis of a civil suit very far when we have to deal with an election petition.

Similarly, speaking for the Supreme Court of India in Inamati,<sup>11</sup> Bhagwati J. observed:

It is this interest of the constituency as a whole which invests the proceedings before the Election Tribunals with a characteristic of their own and differentiates them from ordinary civil proceedings.

An election contest as aforesaid would result in the declaration of the properly qualified candidate as duly elected and the maintenance of the purity of the elections in which the constituency as a whole is vitally interested and no person would get elected by flagrant breaches of the election law or by corrupt practices.

Again, in Mohinder Singh,<sup>12</sup> Krishna Iyer J. adeptly rearticulated the legal position as follows:

[A]n election dispute is not like an ordinary lis between private parties. The entire electorate is vicariously, not inertly, before the court. ... We may, perhaps, call this species of cases collective litigation where judicial activism assures justice to the constituency, guardians the purity of the system and decides the rights of the candidates. ... Therefore, it is essential that courts, adjudicating upon election controversies, must play a verily active role, conscious all the time that every decision rendered by the Judge transcends private rights and defends the constituency and the democracy of the country.

In his inimitable style, he underscored the duty of courts to exercise "vigilant monitoring" of the election process, to call to order "lawless behaviour", and to function as "the bodyguards of the People against bumptious power, official or other" in election disputes thus:

[T]he periodical process of free and fair elections, uninfluenced by the caprice, cowardices or partisanship of hierarchical authority holding it and unintimidated by the threat, tantrum or vandalism of strong-arm tactics, exacts the embarrassing price of vigilant monitoring. Democracy digs its grave where passions, tensions and violence, on an overpowering spree, upset results of peaceful polls, and the law of elections is guilty of sharp practice if it hastens to legitimate the fruits of lawlessness. The judicial branch has a sensitive responsibility here to call to order lawless behaviour. Forensic non-action may boomerang, for the court and the law are functionally the bodyguards of the People against bumptious power, official or other.

In Pakistan, the above legal position was reiterated by Syed Jamshed Ali, J. in Dilshad Khan<sup>13</sup> and Irshad Hussain,<sup>14</sup> respectively, as follows:

An election dispute is not *stricto sensu* a dispute inter-parties because it affects the entire constituency, who have a right to insist that they are represented by a person who commands the will of the majority of electorate. Therefore, it is in the public interest that the election disputes are expeditiously resolved and parties are not put to a protracted trial.

[A]n election dispute is not necessarily a lis *inter se* parties because it involves the entire constituency, therefore, all efforts are required to be made to expeditiously dispose of an election petition and an election petition is not to be treated like a civil suit.

We may respectfully say that the above cases correctly enunciate the nature of election disputes and the responsibility of courts and other judicial and quasi-judicial bodies in adjudicating such disputes. While we agree with these

statements and principles of law, we think it would also be apposite to summarise our understanding as well.

10. Elections are a crucial part of the democratic process, and the public has a major stake in ensuring that they are held free and fair, unmarred by corrupt or illegal practices. Therefore, unlike ordinary civil cases, election cases involve substantial public interest. An election dispute is fundamentally different from other civil disputes, as it is not solely a dispute between two contesting parties but a proceeding where the constituency itself is the principal interested party. These cases involve not just the rights of the contesting candidates or political parties but also the rights of the voters, constituencies and the public. Election cases aim to fill public offices by properly qualified and duly elected candidates and to maintain the purity of elections, ensuring that no one takes charge of a public office through flagrant breaches of election laws or corrupt practices. The proceedings in election cases thus have unique characteristics because they serve the interests of the entire constituency, differentiating them from ordinary civil proceedings. This distinction clearly demonstrates the flaw in treating an election case as an ordinary civil case and limiting the judicial inquiry to the pleadings of the parties as it is in adversarial proceedings.
11. Since election cases are a species of collective or public interest litigation, the proceedings therein are inquisitorial in nature. In these cases, any judicial intervention is to ensure justice for the constituency and to safeguard the integrity of the electoral system. The process of free and fair elections requires vigilant judicial monitoring to check the influence of any capricious or partisan election or executive authority. In this regard, courts have a critical responsibility to address lawless behaviour in the electoral process, as their inaction or delay could undermine the legitimacy and credibility of the whole election. In adjudicating election controversies, courts must therefore play an active role in an inquisitorial manner, defending the rights of the constituency and the values and principles of democracy. They must act as guardians of the fundamental rights of the people against any misuse of power or illegal action in the electoral process.
12. In handling election disputes, the primary obligation of courts is to protect the electorate's right to fair representation, ensuring that only candidates who have legitimately won the support of the electorate through fair processes assume office. Courts must rise above political biases and interests, focusing solely on legal and evidential matters to safeguard the

electorate's interests. Their approach to election disputes reflects the judiciary's overarching responsibility to uphold the integrity of the electoral process. As the highest court in the judicial hierarchy, this Court bears a profound duty to prioritize and protect the rights of the electorate, ensuring that their voice and representation in elected bodies are not compromised by procedural failings or errors in the electoral process. This duty underscores the Court's unique and expansive constitutional mandate to oversee the electoral cycle comprehensively. Such a judicial approach not only reinforces the legitimacy of the electoral system but also strengthens the foundations of democratic governance by ensuring that the will of the electorate is accurately and fairly represented.

13. Unfortunately, the above legal position regarding the nature of election disputes and the responsibility of courts was not brought to the notice of the Bench by the learned counsel for the parties while making their arguments. However, eleven members of the Bench, being themselves aware of the above legal position, proceeded to inquire into the facts and points of law that were not presented before the court below, that is, the Peshawar High Court. Although these eleven members of the Bench disagreed to some extent on granting the eventual relief, their awareness of the true legal position as to the nature of election disputes and the responsibility of courts led them to a broader and more comprehensive judicial inquiry into all the relevant facts and law points concerning the election dispute involved in the present case, as set out next.

#### Relevant facts of the case

14. On 15 December 2023, the Election Commission of Pakistan ("Commission") announced the election programme for the General Elections-2024 to the National Assembly and Provincial Assemblies. According to this programme, the last date for candidates to file nomination papers with the Returning Officers was 22 December 2023, which was extended on that day to 24 December 2023. On 22 December 2023, the Commission also decided the then-pending matter of intraparty elections of the political party, Pakistan Tehreek-e-Insaf ("PTI"). The Commission determined that PTI had not conducted its intra-party elections in accordance with its constitution and election laws. As a result, the Commission declined to recognize PTI's intra-party elections and declared PTI ineligible to obtain its election symbol. Although this decision was initially suspended on 26 December 2023 and subsequently set aside on 10 January 2024 by the Peshawar High Court,

this Court restored the Commission's decision on 13 January 2024. PTI candidates were thus not allotted the party symbol of PTI but instead were allotted various different symbols that had been prescribed by the Commission for independent candidates.

15. In the course of the election programme, when the Returning Officers published the lists of contesting candidates (Form-33)<sup>15</sup>, they mentioned PTI candidates as independent candidates. One of the PTI candidates, Mr. Salman Akram Raja, challenged this action by the Returning Officer of his constituency before the Commission. By its order dated 2 February 2024, the Commission rejected his challenge and declared him an independent candidate. The poll for the elections was then held on 8 February 2024, and PTI candidates were notified by the Commission as independent returned candidates in the notification published in the official Gazette under Section 98 of the Elections Act 2017 ("Section-98 Notification").
16. After the publication of Section-98 Notification, a substantial number of independent returned candidates (86 for the National Assembly; 107 for the Punjab Assembly; 90 for the Khyber Pakhtunkhwa Assembly; and 9 for the Sindh Assembly) joined a political party, Sunni Ittehad Council ("SIC"), to obtain the share of proportional representation in the seats reserved for women and non-Muslims in the National Assembly and the Provincial Assemblies of Khyber Pakhtunkhwa, Punjab and Sindh. SIC then informed the Commission of the joining of these returned candidates and requested the Commission, through four separate applications (letters) dated 21 February 2024, to allocate to it its due share in the seats reserved for women and non-Muslims in the National Assembly and the said three Provincial Assemblies.
17. Certain other political parties, such as Pakistan Muslim League (Nawaz) (PML(N)) and Muttahida Qaumi Movement (Pakistan) (MQM(P)), filed applications opposing SIC's request for reserved seats and prayed for the allocation of the reserved seats to them and other eligible political parties. Some individuals also filed applications opposing the SIC's request and praying that SIC should not be treated as a parliamentary party. The political party, Pakistan People's Party Parliamentarians (PPP), appeared before the Commission as a proforma respondent in the application filed by MQM(P), while the political parties, Jamiat Ulema-e-Islam Pakistan (JUIP)

and Pakistan Muslim League (PML), appeared in response to the Commission's notice and opposed SIC's request.

18. By its order dated 1 March 2024, the Commission rejected SIC's applications and decided that the reserved seats for women and non-Muslims, which had been requested by SIC but declined, would be allocated to other political parties as per the proportional representation system of political parties. Accordingly, those reserved seats (19 for women and 3 for non-Muslims in the National Assembly; 21 for women and 4 for non-Muslims in the Khyber Pakhtunkhwa Assembly; 24 for women and 3 for non-Muslims in the Punjab Assembly; and 2 for women and 1 for non-Muslims in the Sindh Assembly - 78 in total - hereinafter referred to as the "disputed reserved seats") were allocated to other political parties. SIC challenged the Commission's order before the Peshawar High Court in writ jurisdiction. By its judgment dated 25 March 2024 ("impugned judgment"), the Peshawar High Court dismissed the SIC's challenge and upheld the Commission's order. Hence, these appeals were filed by SIC with leave of the Court.

PTI's application for impleadment (CMA No. 5913 of 2024)

19. During the pendency of these appeals, PTI filed an application seeking its impleadment in these appeals and submitting therein the facts and circumstances under which its returned candidates joined SIC. PTI submitted in its application, *inter alia*, that PTI issued party tickets to its candidates, which were to be filed with the respective Returning Officers by 4 pm on 13 January 2024, the day fixed for the allotment of election symbols. The Supreme Court took up the Commission's appeal against the judgment of the Peshawar High Court in the matter of PTI's intra-party elections and its election symbol on 12 January 2024 for hearing, which continued until late evening on 13 January 2024.

19.1. Faced with the possibility of an adverse decision by the Supreme Court after 4 pm that day, PTI entered into an arrangement with another political party, PTI-Nazriati, under which party tickets were issued to PTI candidates by that party to obtain a common symbol for PTI candidates to prevent the disenfranchisement of a large part of the electorate. However, the same day, the Chairman of PTI-Nazriati appeared on national television channels and disavowed the tickets issued. At about the same time, the Commission also issued an order dated 13 January 2024 directing the Returning Officers not to accept a political party's tickets for candidates who belonged to another political party. Therefore, most of PTI

candidates withdrew the tickets of PTI-Nazriati and presented PTI's tickets to the Returning Officers. Some of the Returning Officers placed the same on file while others refused to receive the same pending the decision of the Supreme Court.

19.2. Awaiting the decision of the Supreme Court, the Commission extended the time for submitting the party tickets and the allotment of election symbols till 12 pm that day. The Supreme Court announced its short order at about 11 pm on 13 January 2024, whereupon the Returning Officers rejected PTI's tickets and, by treating PTI candidates as independent candidates, allotted them different election symbols. The poll was held on 8 February 2024, and PTI candidates won a large number of seats in the National and Provincial Assemblies. These candidates were notified as independent returned candidates by the Commission by relying upon Rule 94 of the Elections Rules 2017 and the judgment of the Supreme Court dated 13 January 2024.

19.3. The Commission had earlier accepted in 2018 a political party, Balochistan Awami Party, which had not contested for general seats, eligible for the allocation of reserved seats. Therefore, PTI-backed returned candidates joined SIC, with which PTI had an ongoing alliance/ relationship, within three days of being so notified, in order to become entitled to the allocation of the reserved seats. In its application, PTI also made the following contentions:

A primary purpose of [Articles 51(6)(d) & (e) and 106(3)(c) of] the Constitution is the establishment of a representative National Assembly and representative Provincial Assemblies. Denial of reserved seats to PTI would create an entirely unrepresented National Assembly as well as Provincial Assemblies that do not reflect the will of the people.

[T]he denial of reserved seats to SIC/PTI and the allocation of a disproportionate number of reserved seats to other political parties would deepen the denial of the will of the people.

As per these contentions and the arguments made during the hearing, PTI claimed the allocation of the disputed reserved seats either to SIC or to itself (PTI).

#### Claim for allocating reserved seats to SIC or to PTI

20. It may also be pertinent to mention here that in the course of his arguments, the learned counsel for SIC also attempted to explain the above circumstances under which the returned candidates, who according to him were PTI candidates, joined SIC. However, some honourable members of the Bench reproved him, questioning how he could make conflicting arguments as he was supposed to plead the case of SIC, not of PTI. With respect, we say that both

SIC and PTI took the same stance on the peculiar circumstances that led the returned candidates to join SIC; in no way did they make any conflicting assertions. Both emphasized that it is the right of the people who had voted for the returned candidates that their mandate should be reflected in allocating the disputed reserved seats to SIC or to PTI.

#### Questions of law

21. On the above facts and the contentions made by learned counsel for the parties, the following questions of law fall for determination:

- i. What is the consequence of declaring a political party ineligible to obtain an election symbol under Section 215(5) of the Elections Act 2017? Does such a declaration affect the political party's other constitutional and statutory rights?
- ii. Can a candidate nominated by a political party ineligible to obtain an election symbol be mentioned as an independent candidate in the list of contesting candidates (Form 33), and can such a returned candidate be notified as an independent returned candidate in the Section-98 Notification?
- iii. Do Articles 51(6) (d) & (e) and 106(3) (c) of the Constitution refer to political parties that have contested for and won general seats or to all enlisted political parties? and
- iv. How is the proportional representation of a political party to be calculated for the allocation of reserved seats under Articles 51(6) (d) & (e) and 106(3) (c) of the Constitution?

We shall discuss and decide the above questions *seriatim*. However, before doing so, we want to briefly state the scope of the fundamental right guaranteed by Articles 17(2) and 19 of the Constitution, as the whole case hinges upon it and the answer of all the above questions are rooted in it.

#### Scope of fundamental right guaranteed by Article 17(2) of the Constitution

22. The provisions of Article 17(2) of the Constitution are cited here for ease of reference and reading:

#### Article 17(2) of the Constitution:

Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by

law in the interest of the sovereignty or integrity of Pakistan, and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court, whose decision on such reference shall be final.

A bare reading of the provisions of Article 17(2) of the Constitution shows that it guarantees to every citizen of Pakistan who is not in the service of Pakistan, the right to form or be a member of a political party. As per this Article, any reasonable restrictions can be imposed on this right by law only in the interest of sovereignty or integrity of Pakistan. This right has been regarded so important by the constitution makers that the adjudication of the matter of its restriction on the specified two grounds has been entrusted to the apex court of the country—the Supreme Court of Pakistan—and not to any other court. The protection of this right is so essential for ensuring democracy and representative government that its significance cannot be overstated. Although all courts and tribunals are mandated to enforce the right guaranteed by this Article, this Court (the Supreme Court of Pakistan) is the ultimate guardian of it. Therefore, it is also because of the constitutional obligation of this Court to protect the right guaranteed by this Article, as specifically entrusted to it, that we decided to make a broader and comprehensive judicial inquiry into all the relevant facts and law points concerning enforcement of the fundamental rights of both the voters and the political parties.

23. As held by this Court in Nawaz Sharif,<sup>16</sup> the fundamental rights guaranteed by the Constitution, an organic instrument, are not capable of precise or permanent definition delineating their meaning and scope for all times to come. With the passage of time, changes occur in the political, social and economic conditions of the society, which requires re-evaluation of their meaning and scope in consonance with the changed conditions. Therefore, keeping in view the prevailing socio-economic and politico-cultural values and ideals of the society, the courts construe the fundamental rights guaranteed by the Constitution with a progressive, liberal and dynamic approach. This approach ensures that the fundamental rights remain a vibrant and effective guarantee of citizens' rights, liberties and freedoms, adapting to the evolving needs and aspirations of society. With this approach, the courts expound the fundamental rights to give them "life and substance"<sup>17</sup> that are true to the reality of the changing times.

24. In view of the above principles of interpreting fundamental rights, this Court has expounded in several cases the scope of the "right to form or be a member of a political party" guaranteed by Article 17(2) and held that it includes the right to function and operate as a political party,<sup>18</sup> the right to participate in and contest an election as a political party,<sup>19</sup> the right to form the Government and complete the prescribed tenure if the members of the political party constitute the requisite majority,<sup>20</sup> the right to contest an election in his individual capacity or as a member of a political party,<sup>21</sup> the right to be governed by chosen representatives<sup>22</sup> and the right to vote.<sup>23</sup> This bouquet of political fundamental rights ensures a functional and a workable democracy and a representative government. It is underlined that 'representation in fact is democracy'.<sup>24</sup> Therefore, the right guaranteed by Article 17(2) is essential for actualizing the constitutional objective of establishing an order wherein the State exercises its powers and authority through the chosen representatives of the people.<sup>25</sup>

Right to vote and the freedom of expression guaranteed under Article 19

25. Furthermore, as a form of expression, the right to vote is part of the fundamental right to freedom of expression guaranteed by Article 19 of the Constitution,<sup>26</sup> which is cited here for ease of reference:

Article 19: Every citizen shall have the right to freedom of speech and expression... subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security, or defence of Pakistan or any part thereof, friendly relations with foreign states, public order, decency, morality, or in relation to contempt of court, commission of or incitement to an offence.

The right to freedom of speech and expression is considered "preservative of all rights".<sup>27</sup> The act of voting for a candidate of a political party or an independent candidate is a form of expression and an inherent concept within the Constitution, fundamental to the democratic legitimacy and validity of the legislature. When individuals cast their votes, they express their opinions on how they believe their society should be governed, who should govern it, and what policies should be prioritized. This form of expression is crucial because it encapsulates the will of the electorate, conveying messages about public preferences.

26. In a democratic context, freedom of expression extends beyond individual speech to encompass the collective expression of a community's or nation's political will through their elected representatives. In essence, freedom of expression and representativeness are deeply interlinked, each reinforcing

the other. A truly representative government not only exemplifies the collective expression of its people but also ensures that this expression influences governance. The right to form political parties, the right to contest elections and the right to vote are therefore pivotal extensions of representativeness and freedom of expression, essential for cultivating a socially just environment.

27. The fundamental rights enshrined in Articles 17(2) and 19 of the Constitution thus underscore the significance of political participation and freedom of expression, both of which are essential to the functioning of a representative democracy. Article 17(2) guarantees the right to form or join political parties, highlighting the vital role of political participation in safeguarding democracy, while Article 19 upholds the freedom of expression, which is integral to the electorate's ability to influence the formation of government by expressing their choices through their votes. Together, these Articles emphasize the importance of electoral integrity and political justice, ensuring that every citizen's voice and choice are heard and represented in the political process.
28. Having so briefly stated the scope of the rights guaranteed by Articles 17(2) and 19 of the Constitution, we will next discuss the questions and examine the implications of this right further.
  - (i) What is the consequence of declaring a political party ineligible to obtain an election symbol under Section 215(5) of the Elections Act 2017? Does such a declaration affect the political party's other constitutional and statutory rights?
29. The fundamental right to form a political party guaranteed by Article 17(2) of the Constitution is regulated by the Elections Act 2017 ("Elections Act"). Section 2(xxviii) of the Elections Act defines a "political party" to mean 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. Chapter XI of the Elections Act, comprising Sections 200 to 213, contains the detailed provisions, *inter alia*, on the subjects of formation, enlistment, membership, functioning, intra-party elections, sources of funds, and dissolution of political parties, etc.

30. Section 202 makes it obligatory for the Commission to enlist a political party if the application for its enlistment is accompanied by (i) a copy of the constitution of the political party, (ii) the certificate and the information required to be submitted under Sections 201 and 209, (iii) a copy of consolidated statement of its accounts under Section 210, (iv) a list of at least two thousand members with their signatures or thumb impressions along with copies of their National Identity Cards, and (v) the deposit of two hundred thousand rupees in favour of the Commission in the Government Treasury as enlistment fee. A political party which has been refused enlistment by the Commission can file an appeal before the Supreme Court. This provision aligns with the constitutional mandate entrusted to the Supreme Court under Article 17(2) of the Constitution as the ultimate guardian of the right guaranteed by that Article. It is also notable that a political party once enlisted under the Elections Act cannot be delisted; the Commission's power to cancel the enlistment of a political party under subsection (5) of Section 202 relates only to the political parties enlisted before the commencement of the Elections Act, i.e., under earlier law. Whereas Section 212 contains the provisions on the matter of dissolution of political parties, which are similar to those contained in Article 17(2) of the Constitution.

31. The provisions that are more relevant to the present case are those contained in Sections 208 and 209, concerning the intra-party elections of political parties. As per Section 208, the office-bearers of a political party are to be elected periodically in accordance with the constitution of the political party, provided that a period, not exceeding five years, intervenes between any two elections. Once the intra-party elections are conducted, the political party concerned is to publish the updated list of its central office-bearers on its website and also to send such list to the Commission. Similarly, under Section 209, within seven days from completion of its intra-party elections, a political party is to submit a certificate signed by an office-bearer authorized by the Party Head, to the Commission to the effect that the elections were held in accordance with the constitution of the political party. Such certificate should contain the following information: (a) the date of the last intra-party elections; (b) the names, designations, and addresses of office-bearers elected at the Federal, Provincial, and local levels, wherever applicable; (c) the election results; and (d) a copy of the political party's notifications declaring the results of the election. Within seven days from the receipt of such certificate of a political party, the Commission is to publish the certificate on its website. It is notable that

under Section 208(5), where a political party fails to conduct intra-party elections as per the given time frame in its constitution (but not exceeding the statutory period of five years) despite a notice issued by the Commission to do so, then the Commission can impose a fine which may extend to two hundred thousand rupees but not be less than one hundred thousand rupees. While the consequence of failure to comply with the provisions of Section 209, which relates to the submission of a certificate containing the specified information and signed by an office-bearer authorized by the Party Head, to the effect that the elections were held in accordance with the constitution of the political party, is provided in Section 215(5).

32. Section 215(5)<sup>28</sup> of the Elections Act provides that if a political party fails to comply with the provisions of Section 209 (regarding intraparty elections) or Section 210 (regarding sources of the party's funds), the Commission may, after affording it an opportunity of being heard, declare it ineligible to obtain an election symbol for election to Majlis-e-Shoora (Parliament), Provincial Assembly or a local government, and shall not allocate an election symbol to such political party in subsequent elections. The word "may" in Section 215(5) indicates the discretion of the Commission in making the declaration, which discretion, like all other discretionary powers vested in public functionaries, is to be exercised justly, fairly and reasonably, considering the peculiar facts and circumstances of each case. However, the consequence of making such a declaration is clearly specified and is not left to the discretion of the Commission. As stipulated in Section 215(5), the consequence of making the declaration is that the Commission is not to allocate an election symbol to such political party in subsequent elections.

Principle of strict construction of statutes providing penal consequence or curtailing fundamental rights

33. It is a cardinal principle of the construction of statutes that any provision entailing penal consequence, whether of criminal law<sup>29</sup> or of civil law,<sup>30</sup> must be construed strictly. This principle of strict construction of penal statutes is also called the principle against doubtful penalisation. It stresses that a person should not be penalised except under clear law and if, in construing the relevant provisions, there appears any reasonable doubt or ambiguity, it should be resolved in favour of the person who would be liable to the penalty. No penalty or penal consequence can be added to

the one specified in law by inference or assumption. Penal actions can only be taken on the basis of express and clear provisions of law. The act attracting the penal consequence and the person responsible for it must fairly and squarely fall within the plain words of the law. Courts are not to strain or stretch the meaning of the words to bring the act or the subject within the ambit of penal provisions; in other words, the scope of penal provisions is not to be extended through liberal construction. Furthermore, if a penal provision is susceptible to two reasonable constructions, the one that does not extend the penalty is to be adopted. Any reasonable doubt or ambiguity is to be resolved in favour of the person who would be liable to the penalty, and the construction that avoids the penalty is to be adopted.<sup>31</sup>

34. Another well-established principle of constitutional and statutory construction is that while the fundamental rights guaranteed in the Constitution are to be construed progressively and liberally,<sup>32</sup> provisions in the Constitution or in any law that curtail the fundamental rights are to be construed restrictively and narrowly.<sup>33</sup> This principle owes its genesis to the broader principle of strict construction of statutes encroaching on rights, which applies to all fundamental rights recognized by common law, whether or not guaranteed in the Constitution. As per this principle, statutes that encroach on such rights of the subject are also subject to strict construction. They are to be construed, if possible, to protect such rights, and if there is any ambiguity, the construction that saves the right should be adopted.<sup>34</sup> In a constitutional democracy, laws are solicitous of the individual rights and liberties of citizens and interfere with them as little as possible in the public interest. By adopting a liberal and expansive interpretation of such laws, individual rights and liberties cannot be curtailed more than expressly provided by the legislature in the public interest. Therefore, laws that curtail individual rights and liberties, particularly the fundamental rights guaranteed in the Constitution, are to be construed strictly.<sup>35</sup>
35. These principles of statutory construction guide our analysis and interpretation of the provisions of Section 215(5) of the Elections Act. It is unequivocal that Section 215(5) prescribes a penal consequence for a political party's failure to comply with the provisions of Section 209 (regarding intra-party elections) or Section 210 (regarding the sources of the party's funds). The specified penalty of non-allocation of an election symbol curtails the political party's fundamental right to function and operate as a

political party a right implicit in the right to form a political party guaranteed by Article 17(2) of the Constitution.<sup>36</sup> Therefore, Section 215(5) must be construed strictly. No further penalty or consequence beyond the specified non-allocation of an election symbol can be inferred or assumed from Section 215(5). Additionally, no other constitutional or statutory right of the political party can be denied on the basis of the non-allocation of an election symbol under this provision. Any interpretation of Section 215(5) that would impose further penalties beyond the expressly stipulated contravenes the principle of strict construction of laws that entail penal consequences or curtail fundamental rights. Thus, the scope of the penalty provided by Section 215(5) must remain confined to its express terms, ensuring that no other constitutional or statutory right of the political party is affected.

#### Answer to question (i) and its applicability to PTI

36. In light of the foregoing interpretation, we determine question (i) in the terms that the sole consequence of declaring a political party ineligible to obtain an election symbol under Section 215(5) of the Elections Act for failing to comply with the provisions of Section 209 regarding intra-party elections is the non-allocation of an election symbol to that party in subsequent elections-nothing more, nothing less. Furthermore, such a declaration does not affect the political party's other constitutional and statutory rights.
37. This was the effect of the Commission's order dated 22 December 2023 (upheld by this Court vide its order dated 13 January 2024), declaring PTI ineligible to obtain its election symbol under Section 215(5) of the Elections Act; other constitutional and statutory rights of PTI to function and operate as a political party were not thereby affected. With respect, it is observed that had this Court clarified this legal position in its order dated 13 January 2024, or had the Commission clarified it in its order dated 22 December 2023 or order dated 13 January 2024, the entire confusion regarding the status of PTI candidates or PTI's right to reserved seats would not have occurred.
38. We feel constrained to observe here that we have some doubts about whether the Commission has the power to reject the certificate of intra-party elections submitted by a political party under Section 209, and

whether the Commission exercised its discretion under Section 215(5) justly, fairly and reasonably in PTI's case, particularly when the election programme had already been announced and the fundamental right of citizens to vote for the political party of their choice was at stake. Similarly, we have certain reservations about how the matter of intraparty elections-a matter of internal governance of party-can trump the fundamental rights of citizens to vote and of political parties to effectively participate in and contest elections through obtaining a common symbol for their candidates, guaranteed under Articles 17(2) and 19 of the Constitution. However, since these questions are sub judice in the review petition filed by PTI against this Court's judgment dated 13 January 2024, we abstain from examining and expressing our definitive view on them. (One of us, Justice Muhammed Ali Mazhar, does not want to make the observations made in this paragraph because review petition against this Court's judgment dated 13 January 2024 is pending. He also wishes to make clear that nothing in this paragraph is intended to or will impact upon the hearing of the review petition).

Explanation to Rule 94 of the Elections Rules 2017 is ultra vires the Elections Act and the Constitution

39. The discussion under this question would, however, be incomplete without determining the legal status of the Explanation to Rule 94 of the Election Rules 2017 ("Election Rules"). It is pertinent to mention that the Election Rules have been made by the Commission in the exercise of its rule-making power under Section 239 of the Elections Act, which authorises the Commission to make rules for carrying out the purposes of the Act.
40. Rule 9437 provides the procedure for the calculation, allocation and notification of the share of proportional representation of political parties in the seats reserved for women and non-Muslims. Its Explanation stipulates that '[f]or the purpose of this rule, the expression "political party" means a political party to which a symbol has been allocated by the Commission.' By defining a political party in this manner, the Explanation excludes a political party that has not been allotted a symbol by the Commission from being allocated a share of proportional representation in the reserved seats. No such exclusion of a political party, as created by the Explanation to Rule 94, is provided in Articles 51(6) (d) & (e) and 106(3) (c) of the Constitution, nor is any such consequence of non-allocation of the election symbol provided in Section 215(5) or any other provision of the Elections Act. In

effect, it has introduced an additional penal consequence of declaring a political party ineligible to obtain an election symbol under Section 215(5) of the Elections Act, and it has also infringed the constitutional right of a political party, conferred by Articles 51(6) (d) & (e) and 106(3) (c) of the Constitution, to have its due share of proportional representation in the seats reserved for women and non-Muslims on the basis of general seats secured by such a political party. This Explanation has thus clearly gone beyond and against the provisions of the Elections Act and the Constitution.

41. It is an established principle of law that rules made under the rule-making authority conferred by an Act ("parent statute") can neither enlarge nor go beyond the scope of the parent statute, nor can they override or conflict with its provisions. If the rules are repugnant to or inconsistent with the provisions of the parent statute, they are ultra vires and invalid. The rule-making authority is conferred to give effect to the provisions of the parent statute, not to neutralise or contradict them. The primary purpose of the rules is to provide procedural details for carrying out the purposes of the parent statute. They cannot militate against the substantive provisions of the parent statute.<sup>38</sup> Moreover, just as a provision in the parent statute that is inconsistent with any provision of the Constitution is ultra vires the Constitution and thus invalid,<sup>39</sup> so too are the rules made under its authority: the rules that are inconsistent with any provision of the Constitution are also ultra vires the Constitution and thus invalid. What cannot be done directly in the parent statute through primary legislation cannot be done indirectly in the rules through delegated legislation.
42. In view of the above, the Explanation to Rule 94 of the Election Rules, being beyond the scope of Section 215(5) of the Elections Act and inconsistent with the provisions of Articles 51(6) (d) & (e) and 106(3) (c) of the Constitution, is declared ultra vires the Elections Act and the Constitution, thus void and invalid.

(ii) Can a candidate nominated by a political party ineligible to obtain an election symbol be mentioned as an independent candidate in the list of contesting candidates (Form-33), and can such a returned candidate be notified as an independent returned candidate in the Section-98 Notification?

43. The answer to question (i) above, has made it easier to address this question. The only point that requires some discussion here is whether a political party

has a constitutional and/or statutory right to nominate its candidates for an election to Majlis-e-Shoora (Parliament), Provincial Assembly or a local government. Fortunately, we need not grapple much with this point as it has already been discussed at some length and decided authoritatively by the Full Court Benches of this Court in the two cases of Benazir Bhutto decided in 1988.<sup>40</sup> Instead of burdening this judgment with extracts from those cases, we find it appropriate to state summarily what was decided therein on the point under consideration, with which we respectfully agree.

Right to contest elections as a political party through its nominated candidates is a fundamental right under Article 17(2) of the Constitution

44. Article 17(2) of the Constitution guarantees the right to form or be a member of a political party. Because the formation of a political party necessarily implies the carrying on of all its activities, the right to form a political party extends to its functioning and operation. The functioning is implicit in the formation of a political party. Without the right to its functioning, the right to form a political party would be meaningless and of no avail. To participate in an election to Parliament or a Provincial Assembly and to nominate or put up candidates at any such election are the principal activities (functions) of a political party. Depriving a political party of these activities destroys the political existence of the party and is tantamount to its political extermination and virtual dissolution, which cannot be done otherwise than by the procedure and on the grounds provided in Article 17(2) of the Constitution. The right to participate in and contest an election as a political party is included in the right to form or be a member of a political party. Any provision of election law that fails to recognize the rights of political parties to participate in the elections is, therefore, ultra vires Article 17(2) of the Constitution.
45. The Nawaz Sharif case<sup>41</sup> decided in 1993 by a Full Court Bench of this Court not only endorsed the above scope of the right guaranteed by Article 17(2) of the Constitution but also advanced it further. The Court held that the right to form or be a member of a political party guaranteed by Article 17(2) includes not only the right to participate in and contest elections as a political party, as held in the Benazir Bhutto cases, but also the right to form the Government and complete the prescribed tenure if the members of the political party constitute the requisite majority.

46. Being in complete agreement with the above three decisions of the Full Court Benches of this Court on the scope of Article 17(2), we hold that the right to participate in and contest elections as a political party through its nominated candidates is a fundamental right guaranteed by Article 17(2) of the Constitution. The various sections of the Elections Act, including Sections 66 and 67, merely serve to give effect to this right as machinery provisions. This right is not, nor can it be, extinguished by any provision of the Elections Act, including Section 215(5) thereof. Depriving a political party of participating in and contesting elections through its nominated candidates, it is reiterated, destroys the political existence of the party and is tantamount to its political extermination and virtual dissolution, which cannot be done except by the procedure and on the grounds provided in Article 17(2) of the Constitution. Similar would be the position if the candidates nominated by a political party are denied the status of being the candidates of that political party and are mentioned as independent candidates in the list of contesting candidates (Form-33), or such returned candidates are notified as independent returned candidates in the Section-98 Notification. Such actions of the Returning Officers and the Commission would also be ultra vires Article 17(2) of the Constitution, as they effectively nullify the party's right to participate in and contest elections.

The order of the Commission, dated 2 February 2024, made on the application of Mr. Salman Akram Raja (a PTI candidate) was both unconstitutional and unlawful.

47. As the Commission's order dated 2 February 2024, passed on the application of Mr. Salman Akram Raja ("Mr. Raja"), a PTI candidate, pertains to question (ii) under discussion, we deem it necessary to examine the legality of that order alongside answering this question, in order to ensure a comprehensive understanding of the matter. As noted above, when the Returning Officers published the lists of contesting candidates (Form-33), PTI candidates were mentioned therein as independent candidates. Mr. Raja, one of such candidates, challenged this entry in the list of contesting candidates (Form-33) before the Commission. However, the Commission, by its order dated 2 February 2024, rejected his challenge and declared him an independent candidate. In its order, the Commission reasoned:

Notwithstanding, the affiliation of the petitioner with PTI and alleged party ticket including entries of party affiliation in the nomination papers of the petitioner, he cannot be treated as nominee of PTI nor his party (PTI) can be reflected in column 5 of Form 33 in absence of party symbol.

The petitioner has been allotted symbol from the chart available for independent candidates as the party to which he claims affiliation has not been allocated Election Symbol by the Commission. Allowing any entry in absence of party symbol in column 5 of Form 33 and entry [of] applicant's name as Candidate of PTI will contradict the symbol and identity of Party as the petitioner is declared as an independent candidate.

(Emphasis supplied)

To further support its decision, the Commission also relied upon the following observation of this Court made in its order dated 13 January 2024:

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.

(Emphasis supplied)

From the cited extracts of the Commission's order, it appears that the Commission rejected Mr. Raja's claim primarily because he had been allotted a symbol from the chart of symbols prescribed for independent candidates, and the party (PTI) whose candidature he sought to be mentioned in Form-33 had not been allocated an election symbol. The Commission's reliance on the cited observation of this Court indicates that it understood a political party's capacity to nominate candidates for an election as one of "the benefits accruing pursuant to the holding of [intra-party] elections."

48. In defending the Commission's order and the Returning Officers' act of mentioning PTI candidates as independent candidates in Form-33, the learned counsel for the Commission took pains to explain the provisions of Section 6742 of the Elections Act. According to him, Section 67 classifies candidates for symbol allocation into two categories: (i) candidates nominated by a political party that has been allocated a symbol by the Commission under Chapter XII, who are allotted the party symbol under subsection (2) of Section 67, and (ii) candidates not nominated by any political party, who are treated as independent candidates and are allotted one of the symbols not allocated to any political party. He emphasised that Section 67 does not recognise any third category of candidates, such as

candidates who are nominated by a political party (like PTI) that has not been allocated a symbol by the Commission under Chapter XII of the Elections Act.

49. We have given careful consideration to his arguments. We find that his focus has been solely on the express words of subsections (2) of Section 67, while overlooking its necessary implication. This necessary implication becomes clear when we invert the statement made in subsection (2) of Section 67. This subsection states that "[a] candidate nominated by a political party at an election in any constituency shall be allotted the symbol allocated by the Commission to that political party under the provisions of Chapter XII and no other symbol." By inverting this statement, we find as a necessary implication that a candidate nominated by a political party that has not been allocated a symbol by the Commission shall not be allotted the symbol declined by the Commission to that political party under Chapter XII, but rather any other symbol. Since any other symbol is allotted to candidates under subsection (3) of Section 67, a candidate nominated by a political party (such as PTI) that has not been allocated a symbol by the Commission is to be allotted, under that subsection, one of the symbols not allocated to any political party. However, the allocation of a symbol under subsection (3) does not alter the candidate's status as a nominee of the political party, which is determined under Section 66 on the basis of his declaration and the party certificate (party ticket) issued in his favour.
50. The construction of subsections (2) and (3) of Section 67 proposed by the learned counsel for the Commission, if accepted, would extinguish the fundamental right guaranteed by Article 17(2) of the Constitution to participate in and contest elections as a political party through its nominated candidates. As held above, the various sections of the Elections Act, including Sections 66 and 67, merely serve to give effect to this fundamental right as machinery provisions, which cannot be extinguished by any provision of the Elections Act, including Section 215(5) thereof.
51. In view of the above, the Commission's order dated 2 February 2024 and the Returning Officers' act of mentioning PTI candidates as independent candidates in Form-33 were both unconstitutional and unlawful, and they are hereby declared as such. It would also be appropriate to clarify that the Commission's reliance on the cited observation of this Court made in paragraph 1143 of its order dated 13 January 2024 was misconceived and

misplaced, as that observation pertained to Section 215(5) and not to Sections 66 and 67 of the Elections Act.

Difference between "interpretation" and "construction" of statutes

52. To explain how we have determined and declared the above legal position, despite it not being explicitly stated in subsections (2) and (3) of Section 67, as argued by the learned counsel for the Commission, we may underline a subtle difference between "interpretation" and "construction" of statutes. 'Strictly speaking, construction and interpretation are not the same', as Crawford wrote and this Court approvingly cited it in Haider Zaidi,<sup>44</sup> 'although the two terms are often used interchangeably. Construction, however, to be technically correct, is the drawing of conclusions with respect to subjects that are beyond the direct expression of the text, from elements known and given in the text, while interpretation is the process of discovering the true meaning of the language used. ... The process to be used in any given case will depend upon the nature of the problem presented. And, as is apparent, both processes may be used in seeking the legislative intent in a given statute. If the legislative intent is not clear after the completion of interpretation, then the court will proceed to subject the statute to construction.'<sup>45</sup>

We have thus drawn the above conclusion by construction from

the "elements known and given in the text" of the provisions of Sections 66, 67 and 215(5) of the Elections Act as a necessary implication thereof.

53. It may however be clarified, as Crawford also did, that since for most practical purposes it is sufficient to designate the whole process of ascertaining the legislative intent as either interpretation or construction, the said distinction between the two processes has little importance so far as the courts are concerned and is usually relegated to the realm of academic discussion. But, as Crawford emphasised and so we do for our present purpose, 'by breaking the process of finding the legislative intent into these two processes whose characters depend upon whether the court, strictly speaking, interprets or constructs the legislative enactment at hand, some light is shed upon how the courts exercise the judicial function of ascertaining the legislative intention.'<sup>46</sup>

Answer to question (ii) and its applicability to PTI

54. In view of the above, we answer question (ii) as follows: notwithstanding that a political party has been declared ineligible to obtain an election

symbol, its nominated candidates cannot be mentioned as independent candidates in the list of contesting candidates (Form 33), despite allotment of different election symbols to them under Section 67(3) of the Elections Act, nor can they be notified as independent returned candidates in the Section 98 Notification.

55. Therefore, PTI's nominated candidates were wrongly shown independent candidates in the list of contesting candidates (Form 33) by the Returning Officers and were also wrongly notified as independent returned candidates in the Section-98 Notification by the Commission.

#### Validity of party tickets issued by Mr. Gohar Ali Khan as Chairman PTI

56. Before parting with this part of the judgment, it is necessary to address an ancillary point stated by the Commission in its order dated 2 February 2024 in rejecting Mr. Raja's claim. The Commission maintained that since the election of Mr. Gohar Ali Khan as Chairman of PTI had not been accepted by the Commission, he could not have issued the party ticket to Mr. Raja. We find that the Commission failed to recognise that its order dated 22 December 2023 regarding the intra-party elections of PTI was not in force from 26 December 2023 (when the Peshawar High Court suspended the Commission's order) to 13 January 2024 (when this Court restored the Commission's order). During this period, Mr. Gohar Ali Khan was holding the office of Chairman of PTI and had, therefore, validly issued party tickets to PTI candidates, including Mr. Raja.
57. We may also underline here that, notwithstanding a political party's failure to comply with the provisions of Section 209 of the Elections Act relating to its intra-party elections, the political party remains an enlisted political party, fully functional for the purposes of its formation, i.e., '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.'<sup>47</sup> The only consequence of not complying with the said provisions of the Elections Act, as aforementioned, is that such a political party is not to be allocated an election symbol. It would be completely illogical to assume that a political party, a juristic person, is fully functional yet there are no natural persons who are either de facto or de jure performing its functions and running its affairs. We all know that juristic persons act through natural persons. An enlisted political party is a

juristic person, and like other juristic persons, it acts through natural persons. Saying that a political party is an enlisted political party, fully functional for the purposes of its formation, yet there is no one that can perform its functions and run its affairs, amounts to blowing hot and cold in the same breath or approbating and reprobating one and the same fact. Therefore, after the intra-party elections (which were not later accepted by the Commission), Mr. Gohar Ali Khan had assumed at least de facto charge of PTI's functions and affairs as its Chairman. Consequently, the acts performed by him on behalf of PTI before 13 January 2024, when this Court restored the Commission's order dated 22 December 2023 declining to accept the intra-party elections, were fully valid and effective.

58. It is further clarified that when the office-bearers of a political party are elected under Section 208 of the Elections Act, in accordance with the party's constitution, and a certificate to that effect is submitted to the Commission under Section 209, the newly elected office-bearers de facto assume the functions of the party until the Commission accepts or rejects the elections. Upon acceptance, they also assume the functions of the party de jure. In the case of rejection of the intra-party elections, the previous office-bearers are reinstated, for no political party, as held above, can exist without either de facto or de jure office-bearers to perform its functions and manage its affairs. In this regard, the clarification dated 14 September 2024, passed by us on an application of the Commission, shall also be read as part of this judgment and is reproduced hereunder for the completion of the record:

Through C.M.A. 7540/2024, and in terms [para 10] of the short order dated 12.07.2024 whereby these appeals were decided by majority ("Short Order") the Election Commission of Pakistan ("Commission") purports to seek guidance on the point that "[i]n absence of a valid organizational structure of Pakistan Tehreek-i-Insaf (PTI), who will confirm the political affiliation of the returned candidates (MNAs and MPAs) on behalf of PTI, who have filed their statements in light of the Supreme Court Order [dated 12 July 2024]." We may note that other than a copy of the Short Order the application is bereft of any other documentation.

2. In reply to the above application, the PTI has filed C.M.A. 8139/2024, to which have been annexed a number of documents, including correspondence between the PTI and the Commission. We have considered the material that has been placed before us.

3. By way of brief recapitulation, in paragraphs 4 and 5 of the Short Order it has been categorically declared that the lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in an election (whether general or bye) and to field candidates, and that for the purposes, and within the meaning, of paragraphs (d) and (e) of clause (6) of Article 51 and paragraph (c) of clause (3) of Article 106 of the Constitution of the Islamic Republic of Pakistan, PTI was and is a political party, which secured or won (the two terms being interchangeable) general seats in the National and Provincial Assemblies in the General Elections of 2024 as provided in that Order. These paragraphs, and the preceding paragraph 3 of the Short Order, sound on the constitutional plane, being the proper interpretation and understanding of the relevant constitutional provisions. The other paragraphs of the Short Order, including in particular paragraphs 8 and 10, are consequential upon what has been held and declared in the paragraphs just noted, and flow and emanate from, and give effect to, constitutional conclusions. All of these points will be explicated in the detailed reasons for the decision of the majority (i.e., the Short Order), which is the binding judgment of the Court.
4. Turning now to the specific clarification purportedly sought, the PTI in its reply has annexed a number of notices issued by the Commission to the PTI through Barrister Gohar Ali Khan, in which it has itself identified the latter as the Chairman of PTI. Furthermore, the certifications required to be issued by a political party (here the PTI) and filed with the Commission in terms of paragraphs 8 and 10 of the Short Order have, as per the record placed before us in relation to the returned candidates (now respectively MNAs and MPAs) in the National and the Sindh, Punjab and Khyber Pakhtunkhwa Provincial Assemblies, been issued under the signatures of Barrister Gohar Ali Khan and Mr. Omar Ayub Khan, who are identified therein as being, respectively, the Chairman and Secretary General of the PTI. These certifications are dated 18.07.2024, 24.07.2024 and 25.07.2024 and list, in each case, the particulars of the relevant returned candidate (now MNA or MPA as the case may be) and in particular the dates on which the declaration required of the candidate (again, in terms of paragraphs 8 and 10 of the Short Order) was filed with the Commission. These dates obviously all precede the respective dates of certification.
5. Putting together the record placed before us, and considering the same in the light of the Short Order, leaves in little doubt that the clarification sought by the Commission in terms of the C.M.A. 7540/2024 is nothing

more than a contrived device and the adoption of dilatory tactics, adopted to delay, defeat and obstruct implementation of the decision of the Court. This cannot be countenanced. Even on the application of elementary principles of law, the application filed by the Commission is misconceived. Having itself recognized Barrister Gohar Ali Khan as the Chairman of PTI, the Commission cannot now turn around and purport to seek guidance from the Court with regard to how the certifications are to be dealt with. The Commission cannot approbate and reprobate, taking whatever (shifting) stance as it desires and as may seem to suit its immediate purposes for the moment. Furthermore, the Commission, even if one were to consider the application in the most sympathetic light, has apparently forgotten the well known de facto doctrine or rule, in terms of which the acts of a person who holds an office are protected even if there may be (and no such conclusion is reached here in relation to the PTI) any issue with the position de jure. It sufficed and the Commission was duty bound in terms of the Constitution to keep in mind that the admitted position (as stated before the Court during the hearing of the appeals) is that the PTI was, and is, an enlisted political party. This position was not only accepted and relied upon by us (eight Judges) but also by our three learned colleagues in minority (Hon'ble the Chief Justice, Justice Yahya Afridi and Justice Jamal Khan Mandokhail). Their lordship appear to have also accepted the validity of the party certificates (party tickets) issued by Barrister Gohar Ali Khan and thus his capacity to act for PTI as its Chairman. Furthermore, having itself issued notices to the PTI through Barrister Gohar Ali Khan as its Chairman, the Commission gave recognition to both the party and the office holder. That sufficed absolutely for purposes of the Short Order. It would be completely illogical to assume that a political party, a juristic person, is fully functional yet there are no natural persons who are either de facto or de jure performing its functions or running its affairs. Saying (as the Commission now in effect does through CMA 7540/2024) that a political party is an enlisted political party, fully functional for the purposes of its formation, yet there is no one that can perform its functions and run its affairs, amounts to blowing hot and cold in the same breath or, as noted, approbating and reprobating one and the same fact. There could have been no conceivable doubt that the certifications referred to above were correct and valid in terms of the Short Order and the continued denial and refusal of the Commission to accept the same, as and when filed, is constitutionally and legally incorrect and may expose the Commission to such further or other action as may be warranted in terms of the Constitution and the law.

6. But there is another, and more fundamental, aspect that must also be alluded to. It was categorically declared in paragraph 8 of the Short Order that on filing the requisite statement and its confirmation by the political party concerned, the seat secured by such candidate shall be forthwith deemed to be a seat secured by that political party. Therefore, upon submission of the declarations and certifications referred to above, the position of the returned candidates (now respectively MNAs and MPAs) immediately and ipso facto stood determined and fixed as a matter of law as on those dates and no subsequent act can alter what became, on the respective dates, past and closed transactions. As per the position so determined, the said returned candidates were and are the returned candidates of PTI and thus members of the parliamentary party of PTI in the National Assembly and Provincial Assemblies concerned, for all constitutional and legal purposes. The attempt by the Commission to confuse and cloud what is otherwise absolutely clear as a matter of the Constitution and the law must therefore be strongly deprecated. The list required to be issued by the Commission in terms of paragraph 8 (read with paragraph 10) of the Short Order is nothing more than a ministerial act, for the information and convenience of all concerned, and has no substantive effect. Nonetheless, the continued failure of, and refusal by, the Commission to perform this legally binding obligation may, as noted, have consequences. This obligation must be discharged forthwith.

7. With the above clarifications, the present application is disposed of. Office shall dispatch a copy of this order to the respective parties.

We may underline here that, as the Commission sought clarification of our short order dated 12 July 2024 in order to give effect to it, in terms of para 10 thereof, there was no legal requirement, nor did we find it necessary, to hear the parties before clarifying our own order on the point regarding which the Commission was unclear. Thus, we provided the above clarification without issuing notice to, or hearing, the parties on the Commission's application.

(iii) Do Articles 51(6)(d) & (e) and 106(3)(c) of the Constitution refer to political parties that have contested for and won general seats or to all enlisted political parties?

59. This question was much debated during the arguments presented by the learned counsel for the parties. It arises from their two rival contentions.

The learned counsel for SIC contended that Articles 51(6) (d) & (e) and 106(3)(c) of the Constitution refer to all enlisted political parties that have "secured" general seats, either directly through their nominated candidates or through the joining of independent returned candidates. Conversely, the learned counsel for the Commission and other respondents argued that Articles 51(6) (d) & (e) and 106(3) (c) of the Constitution refer only to those political parties that have contested and won one or more general seats directly through their nominated candidates.

60. The provisions of Articles 51(6) (d) & (e) and 106(3) (c) of the Constitution are identical in their wording; the only difference is in their application. Article 51(6) (d) & (e) relates and applies to the seats reserved for women and non-Muslims in the National Assembly, while Article 106(3)(c) relates and applies to such seats in the Provincial Assemblies. Therefore, we shall discuss and determine the meaning of the provisions of Article 51(6) (d) & (e), which shall also apply mutatis mutandis to Article 106(3) (c) of the Constitution. The provisions of Articles 51(6) (d) & (e), along with other relevant clauses of the same Article, are reproduced here for reading and reference:

61. (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) .....

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

	<b>General Seats</b>	<b>Women Seats</b>	<b>Total Seats</b>
Balochistan	16	4	20
Khyber Pakhtunkhwa	45	10	55
Punjab	141	32	173

	General Seats	Women Seats	Total Seats
Sindh	61	14	75
Federal Capital	3	-	3
Total	266	60	326

(3A) .....

(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) .....

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

(a) .....

(b) each Province shall be a single constituency for all seats reserved for women which are allocated to the respective Provinces under clause (3);

(c) the constituency for all seats reserved for non-Muslims shall be the whole country;

(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 paragraph 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 paragraph 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.

(Emphasis added)

A plain, literal reading of the above provisions of Article 51 of the Constitution shows that there are three hundred and thirty-six (336) seats for members in the National Assembly, including sixty (60) seats reserved for women and ten (10) for non-Muslims. Each Province is a single and separate constituency for all seats reserved for women allocated to that Province in the National Assembly, while the constituency for all seats reserved for non-Muslims is the whole country. Members for both the seats reserved for women and non-Muslims are elected in accordance with the law through a proportional representation system of political parties from the lists of their candidates. However, because of the said difference in constituencies, members to the seats reserved for women are elected on the basis of the total number of general seats secured by each political party in the National Assembly from the Province concerned, while members to the seats reserved for non-Muslims are elected on the basis of the total number of general seats won by each political party in the whole National Assembly irrespective of the Province from which it wins such general seats. The total number of general seats won by a political party, for the purpose of determining its share in the proportional representation system, includes independent returned candidate(s) who may duly join such political party within three days of the publication of the names of the returned candidates in the official Gazette.

61. In support of his contention, the learned counsel for SIC argued that the proviso to Article 51(6) (d), which allows independent returned candidates to join a political party, makes it possible for a political party that has not contested and won any general seats directly through its nominated candidates to "secure" some general seats from the Province concerned through the joining of independent returned candidates. He emphasised the use of the word "secured" in Article 51(6) (d) rather than the word "won".
62. We have observed that the main provisions of paragraph (e) of Article 51(6) and the proviso thereof, which pertains to seats reserved for non-Muslims, both use the word "won" instead of "secured". This paragraph is to be interpreted in conjunction with paragraph (d) of Article 51(6), which relates

to seats reserved for women, as no argument was presented to us from any of the learned counsel for the parties suggesting that paragraph (e) should be interpreted differently from paragraph (d). Nor do we find any reason or logic to interpret them differently. The only difference between them, as noted above, is with regard to the constituencies: for the election of members to seats reserved for women, each Province is a single and separate constituency, while for the election of members to seats reserved for non-Muslims, the whole country is the constituency. Furthermore, the term "won" is used in the provisos to both paragraphs (d) and (e) of Article 51(6). Considering both these closely related provisions conjunctively and harmoniously, we find that the words "secured" and "won" have been used interchangeably. Thus, nothing turns on the use of the word "secured" in paragraph (d) of Article 51(6).

Presumption that same words used in a statute carry same meaning and different words different meanings, is not absolute.

63. Although it is reasonable to presume that the same meaning is implied by the use of the same word in every part of a statute or a section thereof and that a change of word denotes a change in meaning, the presumption is neither absolute nor determinative in all cases. The context takes precedence over this presumption in ascertaining the meaning of words used in a statute, as even the statutory definitions of the words and expressions are subject to this consideration. Therefore, it is quite possible that the same word may be used in different meanings in a statute or in a section of the statute, or, conversely, different words may be used for the same meaning. The causes for this may be various, as pointed out by Maxwell and Bennion, including that the statute is a consolidating enactment where the words are derived from two or more earlier enactments, or the statute is compiled from different sources, or the statute is the product of many minds jointly, or the statute undergoes alterations and additions from various hands in the process of its enactment in the Legislature, etc.<sup>48</sup>

Words "secured" and "won" carry the same meaning in paragraph (d) of Article 51(6) and have been used interchangeably in its main provisions and proviso.

64. We find that a similar circumstance might have caused the use of different words in the main provisions of Article 51(6) (d) and the proviso thereto for the same meaning-the word "secured" in the main provisions of paragraph (d) of Article 51(6) and the word "won" in the proviso thereto-either because both have been compiled from different sources or because different minds

produced each of them. The legislative intention to mean "won" by both expressions is explicitly evident from the use of the word "won" both in the main provisions of the closely related paragraph (e) of Article 51(6) as well as in the proviso thereto. Even the drafter of the proviso to paragraph (d) of Article 51(6) appears to have assumed that the word "won" had been used in the main provisions, as he referred to them as such in the proviso.

Therefore, it can be concluded with reasonable certainty that the words "secured" and "won" carry the same meaning in paragraph (d) of Article 51(6) and have been used interchangeably in its main provisions and proviso.

65. Once we have concluded that the words "secured" and "won" carry the same meaning in paragraph (d) of Article 51(6) and have been used interchangeably in its main provisions and proviso, the word "won" being specific and clearer than the word "secured" must be our guide in construing the provisions of the said Article. Because when a statute, or any other instrument, uses two different words for the same meaning and any ambiguity arises as to the meaning of one of those words, the word which is specific and clearer should guide the interpretation of the general and obscure word, not vice versa. So read, the main provisions of paragraph (d) of Article 51(6) clearly refer to political parties that have "won" general seats in the National Assembly from the Province concerned. The consequential point, which hardly requires extensive supporting arguments, emerges inevitably that political parties win general seats by contesting for such seats through their nominated candidates.
66. Learned counsel for SIC did not dispute that political parties win general seats by contesting for such seats through their nominated candidates. His argument was that the proviso equates a political party that secures general seats by the joining of independent returned candidates with one that wins such seats directly through its nominated candidates as mentioned in the main provisions of paragraph (d) of Article 51(d). We are not impressed by this argument as it misconceives the subject and object of the proviso.

#### The subject and object of the proviso to Article 51(6)(d)

67. The subject and focus of the proviso, as we understand it, is on the "general seats" i.e., "general seats won (secured) by a political party", and not on the political party winning (securing) such seats. Its object is to prescribe how the "total number of general seats won (secured) by a political party" is to be

determined for the purpose of the paragraph, not to define or explain political parties for the purpose of the paragraph. Had the proviso stated that, for the purpose of this paragraph, the political party winning general seats shall include a political party securing general seats by the joining of independent returned candidates, the argument would have had some weight. But the language of the proviso is not to this effect. The proviso does not in any way extend or explain the meaning of the expression "political party" as used in the main provisions of the paragraph.

The proviso to Article 51(6)(d) is not a true proviso

68. A true proviso, as is well established, serves as an exception to the main provisions to which it is added. It excepts a particular case from the rule stated in the main provisions by limiting or qualifying the applicability of the main provisions. Its effect is generally described as being that, but for the proviso, the main provisions would have included the subject matter of the proviso.<sup>49</sup> However, since it is not the form but the substance that matters, the clear language of both the main provisions and the proviso may establish, as held by this Court in Hamdard Dawakhana,<sup>50</sup> that the proviso is not a limiting or qualifying clause of the main provisions but is, in itself, a substantive provision. Therefore, the best principle is that irrespective of the label, the contents of the main provisions and the proviso are to be read and construed together to ascertain the intention of the Legislature.
69. For determining the true character of the proviso presently under consideration, we find the Privy Council's case of Atwill<sup>51</sup> very enlightening. In that case, their Lordships of the Privy Council overturned the decision of the High Court of Australia, which had treated the proviso in its classic meaning, i.e., limiting or qualifying what precedes it. Their Lordships of the Privy Council did not agree and remarked:

While in many cases that is the function of a proviso, it is the substance and content of the enactment, not its form, which has to be considered, and that which is expressed to be a proviso may itself add to and not merely limit or qualify that which precedes it.

In a strict sense the use of the words "Provided that" in section 102(a) may also be disregarded as inapt. The meaning of that provision and the proviso would be the same if instead of the words "Provided that" there had appeared the word "and" ... and to ascertain the true effect of the provision, the second part, that is to say, the proviso, is complementary and necessary in order to ascertain the full intention of the Legislature.

To strengthen their opinion, their Lordships cited the following observation of Lord Loreburn, L.C., made in the case of Taff Vale Railway Company:<sup>52</sup>

But it is also true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that which goes before.

Their Lordships also cited extensively similar observations made by Viscount Maugham and Lord Wright in the case of Jennings,<sup>53</sup> on determining the true meaning of a proviso.

70. We find that the observations made by their Lordships of the Privy Council in Atwill fully apply to the proviso presently under consideration. In our opinion, the meaning of the main provisions of paragraph (d) of Article 51(6) and the proviso thereto would be the same if instead of the words "Provided that", there had appeared the word "and". In our considered opinion, to determine the true effect of the main provisions as per the intention of the Legislature, the second part, i.e., the proviso, is to be read as complementary to, not limiting or qualifying, the first part, i.e., the main provisions. This approach is also consistent with the principle stated above that irrespective of the label, the contents of the main provisions and the proviso are to be read and construed together to ascertain the intention of the Legislature.

71. We have determined above that the main provisions of para-graph (d) of Article 51(6) refer to political parties that have won general seats in the National Assembly from the Province concerned through their nominated candidates. The proviso stipulates that for the purpose of this paragraph, the total number of general seats won by a political party shall include any independent returned candidate or candidates who may duly join such political party. Without the proviso, the general seats won by independent returned candidates could not be considered as seats won by a political party. Therefore, the proviso, in the words of Lord Loreburn, 'is in

substance a fresh enactment, adding to and not merely [limiting or qualifying that which goes before' in the main provisions. Since the proviso does not except anything from the main provisions of paragraph (d) of Article 51(6) by limiting or qualifying them but rather adds to them, it is not a true proviso but a substantive provision that enacts a matter which would not otherwise have been covered by the main provisions of the paragraph.

72. However, the latter part of the proviso is, in the true sense, a proviso as it qualifies that which goes before, i.e., including the seats of independent returned candidates in the seats won by the political party to which they join, for the purpose of the paragraph. According to this part, for the joining to have the stipulated effect, it must occur within three days of the publication of the names of the returned candidates in the official Gazette. It thus excludes any joining of independent returned candidates made beyond that period from having effect for the purpose of the paragraph.

The effect of the use of the word "such" with "political party" in the latter part of the proviso

73. It is also a general rule of literal construction of statutes that 'a qualifying or relative word, phrase, or clause, such as "which", "said" and "such", is to be construed as applying to the word, phrase or clause next preceding, or as is frequently stated, to the next preceding antecedent, and not as extending to or including others more remote, unless a contrary intention appears.'<sup>54</sup>

74. The latter part of the proviso uses the qualifying term "such political party", to which the independent returned candidate or candidates may duly join. When we apply the above general rule to this qualifying term, it becomes evident that it refers to the term "a political party" next preceding, where the noun "political party" has

been used to denote a political party that has won general seats. It thus inevitably follows that for the purpose of paragraph (d) of Article 51(6) and within the scope of the proviso, the independent returned candidate or candidates may duly join, or be allowed to join, only such a political party that has won one or more general seats through its nominated candidates in the National Assembly from the Province concerned.

## Harmonious reading of Article 51(6(d) with Article 63A(2)

75. A constitution, as defined by Cooley, is 'the fundamental law of a state, containing the principles upon which the government is founded, regulating the division of the sovereign powers, and directing to what persons each of these powers is to be confined, and the manner in which it is to be exercised.'<sup>55</sup> Therefore, it is a fundamental principle of constitutional construction, well entrenched in our constitutional jurisprudence, that a constitution must be construed as an organic whole, harmonising its various parts, particularly those closely interlinked, and trying to give due effect to all of them, so as to make it an effective and efficacious instrument for the smooth and good governance of the state—one of the ultimate objectives sought to be achieved by it.<sup>56</sup>

76. In view of this principle of constitutional construction, the learned Attorney-General for Pakistan drew our attention to the provisions of clause (2) of Article 63A, which defines a member of a Parliamentary Party and also sheds light on how a political party constitutes a Parliamentary Party. Relying upon these provisions of Article 63A, he argued that only a political party whose nominated candidates become members of a House constitutes a Parliamentary Party. Therefore, he contended, the same meaning ought to be given to the expression 'political party' in clause (d) of Article 51(6), to harmonise both provisions with each other.

77. We have given anxious consideration to his contention and found it very persuasive and harmonious with the view which we are inclined to take on the meaning of the term "political party" used in Article 51(6)(d). The provisions of clause (2) of Article 63A are reproduced here for ready reference:

(2) A member of a House shall be deemed to be a member of a Parliamentary Party if he, having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of a declaration in writing.

A bare reading of the above provisions shows that a member of a House becomes a member of a Parliamentary Party in two cases: (i) if he has been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party, he automatically becomes a member of such Parliamentary Party, or (ii) if he, having been elected as an independent candidate (i.e., otherwise than as a candidate or nominee of a political party), joins such Parliamentary Party by means of a declaration in writing.

78. The qualifying term "such Parliamentary Party", as discussed above, refers to the term "Parliamentary Party" next preceding, where the noun "Parliamentary Party" has been used to denote a political party whose candidate or nominee has been elected as a member of a House. It is thus evident that in the first case, one action of becoming a member of a House as a candidate or nominee of a political party produces two results: (i) it makes a political party, whose candidate or nominee is elected as a member of a House, a Parliamentary Party, and (ii) it makes that member of a House, a member of such Parliamentary Party. A member of a House elected as an independent candidate can become a member of a Parliamentary Party by joining only such a political party that constitutes a Parliamentary Party, not a political party that does not constitute a Parliamentary Party. Notwithstanding joining a political party of latter type, a member of a House shall not become a member of a Parliamentary Party and shall remain an independent member of a House for the purpose of all parliamentary proceedings.

Answer to question (iii) and its applicability to SIC and PTI

79. Thus, both the standalone reading of the provisions of Articles 51(6) (d) and (e), as well as their conjunctive and harmonious reading with the provisions of Article 63A(2), lead to one and only irresistible conclusion in terms of which this question is answered: Article 51(6) (d) of the Constitution refers to political parties that have contested for and won one or more general seats in the National Assembly from the Province concerned, not to all enlisted political parties. Similarly, Article 51(6) (e) of the Constitution refers to political parties that have contested for and won one or more general seats in the National Assembly from the whole country, i.e., from any of the Provinces or the Federal Capital.

80. Since SIC has not contested for and won one or more general seats in the National Assembly from the Provinces concerned or from anywhere in the country, it is not such a political party to which any of the independent returned candidates can join, for the purposes of paragraphs (d) and (e) of

Article 51(6) of the Constitution. Therefore, the act of joining it by some returned candidates has not produced any result, and the legal status of such returned candidates remains the same as it was before such an act. As SIC has not won general seats, it is not entitled to allocation of the disputed reserved seats. However, as shall be mentioned later in detail, it has been determined by eleven members of the Bench with varying figures that PTI has contested for and won some general seats in the National Assembly from the Provinces concerned, and it is a political party entitled to allocation of the disputed reserved seats under paragraphs (d) and (e) of Article 51(6) of the Constitution.

(iv) How is the proportional representation of a political party to be calculated for the allocation of reserved seats under Articles 51(6)(d) & (e) and 106(3)(c) of the Constitution?

81. This was perhaps the most debated and, if we may say so, the most challenging question involved in the case. Because of the illegal mentioning of contesting candidates of a political party (PTI) in the list of contesting candidates (Form-33) and its returned candidates as independent returned candidates in the Section-98 Notification, as held above, an unusual situation has arisen in a parliamentary democracy. This situation seemingly pits one of the fundamental principles of democracy—that the voice of the electorate should be truly reflected in the composition of the legislative bodies—against the constitutional objective of ensuring adequate representation of women and minorities (non-Muslims) in such bodies.<sup>57</sup> However, with the answers provided to questions (i), (ii) and (iii) above, it has become evident that this conflict does not actually arise.

Position of political parties and independent members of Parliament in a parliamentary democracy

82. Our Constitution, as held by this Court in Benazir Bhutto,<sup>58</sup> establishes a parliamentary democracy with a cabinet form of government, which is primarily composed of the representatives of the political party in majority. Therefore, the cabinet form of government is essentially a government of the political party in majority, or of political parties in the case of a coalition government. The political party or parties that form the Government are the connecting link between the Government (Executive) and the people, and between the Parliament (Legislature) and the people. They are the effective instrumentalities by which the will of the people is made vocal, and the enactment of laws and the governance of the country in accordance therewith made possible. Political parties form the bedrock of

representation in a parliamentary democracy and are fundamental, constitutive components of representation, not mere accessories.<sup>59</sup>

83. In the usual course of a parliamentary democracy, competing political parties, advocating for different manifestos, make the parliamentary election meaningful by giving voters a choice. They convert the results of a parliamentary election into a government. The party or parties in the majority form the Government, while the party or parties in the minority serve as a fervent opposition. The opposition criticises the policies and actions of the Government and thus calls the Government to justify its policies and actions, thereby making it accountable to the people. Therefore, political parties are institutions of great importance in a parliamentary democracy and a vital feature of a representative government.<sup>60</sup>
84. On the other hand, persons elected as members of a House of Parliament (Legislature) in their personal capacities, as independent candidates, in the words of Nasim Hassan Shah, J., 'just toss around on the political scene, rudderless and without a destination'.<sup>61</sup> It is only when they join a political party that they become a force capable of exercising some influence through their activities for the welfare of the constituencies and the public they represent in Parliament. They, as members of a political party, and not as independent members of Parliament, can best achieve the objective of effectively representing their constituencies in Parliament---whether in legislative business and forming executive policies or taking executive actions if they become part of a party in government, or by holding the Government accountable for its policies and actions if they are part of a party in opposition.
85. The above position of political parties and that of the independent members of Parliament in a parliamentary democracy, such as ours, guides our understanding of the procedure prescribed for the allocation of the reserved seats.
86. As evident from the above-cited provisions of Article 51 of the Constitution, clause (3) thereof allocates the specific number of seats reserved for women to each Province and clause (6) (d) provides the procedure for electing the members to those seats. A joint reading of both clauses makes it clear that the members to all the reserved seats allocated to a Province under clause

(3) are to be elected under clause (6) (d) of Article 51 as per the proportional representation system of political parties from the lists of their candidates on the basis of total number of general seats won by each political party, and no reserved seat shall ordinarily remain vacant. Although the arguments before us presented divergent contentions on the meaning of the expression "political party" used in clause (6)(d), none disputed the proposition that only political parties, not independent returned candidates, are entitled to the allocation of the reserved seats. Independent returned candidates can only be counted towards the proportional representation if they act in accordance with the proviso and join a political party, in which case their seats shall be counted as the seats of the political parties to which they join for the purpose of determining the proportional representation of political parties.

Proportional representation system of political parties is a composite expression

87. A composite expression, as Bennion writes,<sup>62</sup> must be construed as a whole. While a certain meaning can be collected by taking each word in turn and then combining their several meanings, but it does not follow that this is the true meaning of the whole phrase. Each word in the phrase may modify the meaning of the others, giving the whole its own meaning. It, therefore, certainly is not a satisfactory method of arriving at the meaning of a compound phrase to sever it into several parts, as observed by Lord Halsbury,<sup>63</sup> and to construe it by the separate meaning of each of such parts when severed. The intention of the Legislature is to be discovered by taking the words as they occur---in the combination in which they are placed---not by breaking up a compound expression and weighing the words separately.<sup>64</sup> If a composite expression is comprehensive, it is unnecessary to determine the dividing line between different terms used in the expression.
88. The provisions of paragraph (d) of Article 51(6), when read in light of the above principles of interpreting a composite expression, remove the confusion that dwelled in the minds of some of us regarding the meaning and scope of the "proportional representation system" envisaged by that paragraph. The complete and composite expression used in the said paragraph is "proportional representation system of political parties". The expression "lists of candidates", annexed to it with an apostrophe, only provides the mechanism for electing members to the reserved seats from the lists of candidates of the political parties. So read, the provisions of

paragraph (d) of Article 51(6) become consistent with the above-stated legal position that the members to all the reserved seats allocated to a Province under clause (3) are to be elected under clause (6) (d) of Article 51 as per the proportional representation system of political parties from the lists of their candidates on the basis of total number of general seats won by each political party, ensuring that no reserved seat ordinarily remains vacant.

Constitutional objective of providing seats reserved for women and non-Muslims

89. The Principles of Policy provided in Chapter 2 of Part II of the Constitution, often referred to as the conscience of the Constitution,<sup>65</sup> require that steps be taken to ensure the full participation of women in all spheres of national life and to safeguard the legitimate rights and interests of minorities (non-Muslims), including their due representation in the Federal and Provincial services.<sup>66</sup> To actualise this constitutional objective, a certain number of seats have been reserved in the National Assembly and Provincial Assemblies for women and non-Muslims (minorities). This constitutional affirmative action aims to promote gender and minority-inclusive representation in the legislative bodies, allowing for the voices of various segments of society to be heard and considered in the law-making process. It ensures that the legislative bodies reflect the diverse perspectives and interests of the population.
90. The principle of proportional representation of political parties, according to which the members to the reserved seats are elected, aims to reflect the electoral support for political parties in the composition of the legislative bodies. By distributing the reserved seats among political parties based on the general seats won by them, the legislative bodies remain representative of the electorate's choice. Adopting an interpretation of paragraphs (d) and (e) of Article 51(6) that would result in holding certain reserved seats vacant would lead to a form of disenfranchisement, where the electorate's mandate is not fully realised in terms of gender and minority representation, and thus frustrate the constitutional objective of providing for such reserved seats.
91. Rule 95(2) of the Elections Rules, which provides that the seats won by independent candidates, other than those who join a political party, shall be excluded for the purpose of determining the share of each political party, is thus found consistent with the constitutional provisions, as it ensures

the constitutional objective that no reserved seat should ordinarily remain vacant.

Answer to question (iv), and its applicability to PTI and other political parties

92. In view of the above, question (iv) is answered as follows: for the purpose of allocating reserved seats under Articles 51(6) (d) & (e), the proportional representation of political parties is to be calculated on the basis of total number of general seats won by each political party, including the seats of independent returned candidates who join it, but excluding the seats of other independent returned candidates. The Commission is to calculate the share of proportional representation of PTI and other political parties in the reserved seats accordingly.

Denial of due share of proportional representation in the reserved seats violates the fundamental rights of the political party and the electorate guaranteed by Articles 17(2) and 19 of the Constitution.

93. Before parting with this part of the judgment, we want to underline that the aforementioned principle of holistic and harmonious reading of closely interlinked provisions of the Constitution requires that the provisions of paragraphs (d) and (e) of Article 51 are to be read not only in conjunction with Article 63A(2) but also with Article 17(2) of the Constitution, which is also closely related thereto. As aforementioned, this Court has held in the cases of Benazir Bhutto and Nawaz Sharif that the right to form a political party guaranteed by Article 17(2) includes the right to participate in and contest elections as a political party, and the right to form the Government and complete the prescribed tenure if the members of the political party constitute the requisite majority. We find that the right to so many of the reserved seats that are proportionate to the general seats won by a political party is also an integral part of the right to form a political party, as this right also gives the "life and substance" to the said named fundamental right. Therefore, denial of the right to reserved seats proportionate to the general seats won by it would violate the fundamental rights of a political party guaranteed by Article 17(2) as well as the fundamental right to vote of the electorate that have voted for such political party guaranteed by Article 19 of the Constitution.

What relief would serve the ends of justice?

94. Having thus answered the questions of law, we shall now examine what relief would serve the ends of justice in the peculiar facts and circumstances of this

case. When we speak of justice, we have the intuitive sense of putting things aright and in their appropriate place, of re-establishing a lost harmony and equilibrium, of remaining true to the nature of things, of giving each his due.<sup>67</sup> In this regard, we are also guided by the following golden words of Kaikaus, J., written in Imtiaz Ahmad:<sup>68</sup>

Any [justice] system, which by giving effect to the form and not to the substance defeats substantive rights, is defective to that extent. The ideal must always be a [justice] system that gives to every person what is his.

His lordship further observed:

I am unable to place the mistakes committed by the Administration [public functionaries] on the same footing as mere accidents. The difference is that in one case the harm caused to a party being the result of a mistake committed by the Administration there is an obligation on our part to undo it as far as that is possible. ... In relation to Courts there is a well-known saying that the act of Court will not prejudice anybody. I do not see why the principle of this maxim does not apply to the whole machinery of the Administration [public functionaries] of which the Courts are only a part. No mistake committed by this machinery should prejudice any person as far as that can be helped. If the mistake of the election authorities is like a misfortune why are elections set aside on the ground of irregularities committed by the officers who conduct the elections? Why does not the law regard these irregularities like events, which have happened and cannot be helped? It cannot be the intention of the law that rights of persons should be affected by the mistakes committed by public officers. ... We must put the parties in the same position, as they would have been if no mistake had been committed by the administration as long as we can do that.

(Emphasis added)

The above principle of law, though enunciated by his Lordship in a dissenting judgment, has appealed "to the brooding spirit of the law, to the intelligence of a future day" and has now become well established and well entrenched in our jurisprudence.<sup>69</sup>

95. We find that the said principle is not only premised on two maxims: (i) *actus curiae neminem gravabit* (an act of court [public functionary] shall prejudice no one) and (ii) *ex debito justitiae* (as a debt of justice), but are also rooted in the constitutional provisions of Article 4 of the Constitution. Under Article 4, it is an inalienable right of every citizen, and of every other person for the time being within Pakistan, to enjoy the protection of law and to be treated in accordance

with law. This constitutional inalienable right casts a corresponding constitutional inalienable duty on all public functionaries of Pakistan to treat every citizen and every other person for the time being within Pakistan in accordance with law. From this constitutional right and the corresponding constitutional obligation, the principle emerges, in our opinion, that no person should be made to suffer or be prejudiced by an unlawful act or omission of public functionaries. If any person suffers the loss of any right or benefit because of an unlawful act or omission of a public functionary, he is entitled, by reason of an obligation of justice, to be restored to that right or benefit and put in the same position, insofar as is possible, as he would have been if such unlawful act or omission had not been made by the public functionary.

Unlawful acts and omissions of the Returning Officers and the Commission that caused prejudice to PTI

96. In the present case, as discussed and determined above, the unlawful acts and omissions of the Returning Officers and the Commission, which have caused confusion and prejudice to PTI, its candidates and the electorate who voted for PTI, are numerous and include the following:

- (i) the wrong omission to clarify in its order dated 22 December 2023 by the Commission that PTI is an enlisted and functioning political party notwithstanding the rejection of its intra-party elections and non-allocation an election symbol;
- (ii) the wrong omission to clarify in its order dated 13 January 2024 by the Commission that PTI is an enlisted and functioning political party notwithstanding that it has not been allocated an election symbol, and that the candidates nominated by it are to be treated and mentioned as PTI candidates, not as independent candidates in the whole election process;
- (ii)(sic) the wrong mentioning of the status of PTI candidates by the Returning Officers as independent candidates in the list of contesting candidates (Form-33);
- (iii) the wrong decision on the application of a PTI candidate (Mr. Raja) by the Commission in rejecting his claim to be mentioned as a PTI candidate in the list of contesting candidates (Form-33);
- (iv) the wrong mentioning of PTI returned candidates by the Commission as independent returned candidates in the Section 98 Notification; and

(v) the wrong acceptance of the joining of some returned candidates to SIC by the Commission, despite that it was not such a political party to which an independent returned candidate could join under the proviso to paragraphs (d) & (e) of Article 51(6) and paragraph (c) of Article 106(3), or under clause (2) of Article 63A of the Constitution.

In addition to the above, the making of an unconstitutional rule, i.e., the Explanation to Rule 94 of the Elections Rules, by the Commission which disentitles a political party to which an election symbol is not allotted from the allocation of reserved seats despite its winning the general seats, also contributed to causing confusion and prejudice to PTI, its candidates and the electorate. Further, it is observed with respect, the decision by this Court on 13 January 2024 in the matter of intra-party elections of PTI on the very day that was fixed for submission of party certificates (party tickets) and allotment of the election symbols as per the Election Programme, and that too without clarifying that the said decision did not affect the electoral status of PTI and its candidates, also contributed in causing confusing and prejudice to PTI, its candidates and the electorate.

The scope of powers of the Commission under Article 218(3) and of the Supreme Court under Article 187(1) of the Constitution.

97. In view of the principle stated above, PTI, its candidates and the electorate should not be made to suffer or be prejudiced by the unlawful acts or omissions of public functionaries, namely the Returning Officers and the Commission. Given that they have been deprived of their constitutional right to proportional representation in the reserved seats due to these unlawful acts and omissions, they are entitled, by virtue of an obligation of justice (*ex debito justitiae*), to be restored to that right and placed, insofar as possible, in the same position they would have been if such unlawful acts and omissions had not occurred. However, there is no specific provision in the Constitution or the Elections Act to address this situation and rectify the wrong.

98. Since the Legislature, while enacting a law on a subject, cannot foresee and cover all unforeseen matters or issues that may arise in the administration of such law in practice, it often enacts a provision that confers upon a specified authority the general power to address such unforeseen matters or issues. In the Elections Act, such a general

power is conferred upon the Commission by Sections 4 and 8(c).<sup>70</sup>

These statutory general powers are conferred upon the Commission, in addition to the similar constitutional general power vested in it

under Article 218(3)<sup>71</sup> of the Constitution. Both these statutory and constitutional general powers are to be invoked and exercised by the Commission, as held by this Court in Zulfiqar Bhatti,<sup>72</sup> when there is no specific provision of law on the matter or issue that needs to be addressed.

99. Similar is the scope of the constitutional general power of the Supreme Court under Article 187(1)<sup>73</sup> of the Constitution: it is to be invoked and exercised by the Court to do complete justice in any case when there is no specific provision of law that covers or addresses the matter or issue involved.<sup>74</sup> While exercising such general powers, the Commission or the Court must, however, make an endeavour to

adhere to the spirit and substance of the provisions of law that, although not covering the matter or issue, are closely related to it, so that the legislative intent may be given effect to the maximum extent possible.

100. In order to invoke and exercise the general power vested in this Court under Article 187(1) of the Constitution to address the matter involved in the present case, we have also been guided by the observations made by a six-member larger Bench of this Court in Saddaqat Khan.<sup>75</sup> After a detailed analysis of several previous cases, the larger Bench reached and announced the following conclusion:

The ultimate goal sought to be achieved by the courts was thus to do complete justice between the parties and to ensure that the rights were delivered to those to whom they belonged and no hurdles were ever considered strong enough to detract the Courts from reaching the said end. Incorporation of provisions such as section 151, C.P.C.; section 561-A in the Cr.P.C.; revisional powers of wide amplitude exercisable even suo-motu under section 115 of the C.P.C. and section 439 of the Cr.P.C.; various provisions of the like contained in Order XLI, rule 4 and Order XLI, rule 33 of the C.P.C.; the provisions of Order XXXIII, rule 5 of the Supreme Court Rules of 1980; suo motu powers exercisable under Article 184(3) of the Constitution and provisions of Article 187 of the Constitution, are some of the examples which could be quoted as having been made available to the Courts at all levels to surmount any impediments which a Court might confront in the path of doing complete justice.

The ultimate objective sought to be achieved by laws, the courts and the justice system, as observed by Kaikaus, J., and as declared by the larger Bench, is to dispense justice by ensuring that rights are delivered to those to whom they belong; let justice be done, though the heavens fall (fiat justitia, ruat caelum). Thus, the power under Article 187(1) of the Constitution is focused on achieving and prioritizing fairness to ensure complete justice in any case.

#### Point of divergence between eight Judges and three Judges

101. Up to this point, in invoking and exercising the general power of this Court vested in Article 187(1) of the Constitution, we (the eight Judges) and the three Judges (Hon'ble the Chief Justice, Justice Yahya Afridi, and Justice Jamal Khan Mandokhail) were largely aligned. Unfortunately, from this point onward, despite several mutual discussions on various aspects of the matter, we could not reach a consensus on what ultimate relief would be "necessary for doing complete justice" in the present case.
102. We may underscore here what Chief Justice Dickson said about the working of the Supreme Court of Canada: "The people of Canada are not entitled to nine separate votes [of the nine Supreme Court Justices]. They are entitled to nine votes after each Justice has listened to and sincerely considered the views of the other eight."<sup>76</sup> Similarly, we believe, the people of Pakistan are entitled to a decision from a Bench of this Court after each Judge on the Bench has listened to and sincerely considered the views of the others. Judges need not always see eye to eye and may ultimately disagree, but the possibility of disagreement does not absolve them from engaging in a free and frank discussion before rendering their final opinion. Their professional responsibility to deliver a well-considered decision requires them to lay out both their own position and the defects they see in their colleagues' positions with utter frankness. Egos may be bruised, tempers tempted, yet all must pursue the process with respect and civility.
103. Guided by the above principle, we, in fulfilling our professional responsibility to deliver a well-considered decision on the matter involved in the present case, laid out both our own position and, with respect, the defects we saw in our colleagues' positions. We did listen to and sincerely consider their views as well. Unfortunately, neither could we convince them of our view, nor could we bring ourselves to agree with theirs.

104. We all (us eight and our three colleagues) agreed that due to unlawful acts and omissions of the Returning Officers and the Commission, PTI, its candidates and the electorate have suffered the loss of some of their constitutional and statutory rights, particularly their right to proportional representation in the reserved seats. However, we differed on how we could, by virtue of an obligation of justice (ex debito justitiae), restore them to that right and place them, insofar as possible, in the same position they would have been if such unlawful acts and omissions had not occurred.

105. Our learned colleagues (Hon'ble the Chief Justice and Justice Jamal Khan Mandokhail) have formed the opinion that "the candidates who had submitted their nomination papers declaring that they belonged to PTI and had not filed a document showing affiliation with another political party before the last date of withdrawal of the nomination papers, should have been treated<sup>77</sup>" as PTI returned candidates. Whereas our learned colleague (Justice Yahya Afridi) is of the view that "[a] candidate for a seat in the National Assembly or the Provincial Assembly, who in his/her nomination paper has declared on oath to belong to PTI and duly submitted a certificate of the same political party confirming that he/she is the nominated candidate of PTI for the respective constituency, shall remain so ,... unless he/she submitted a written declaration to the Election Commission of Pakistan or Returning Officer to be treated as the candidate of another political party or as an independent candidate<sup>78</sup>". We respect their opinions but disagree.

106. '[T]he logic of words should yield to the logic of realities'.<sup>79</sup> With great respect, our learned colleagues have assumed and accepted that PTI candidates filed declarations of their affiliation with another political party (PTI-Nazriati), which were not even accepted by the Returning Officers under the order of the Commission, by their own free will uninfluenced by any constraint of the circumstances. Our conscience and understanding of the realities of the case do not allow us to assume and accept this position. We are completely at a loss to understand the logic, other than the constraint of the circumstances, as to why a candidate of a national-level political party (PTI), which had once formed the Federal Government and two Provincial Governments, would supersede his candidature of that party (PTI) with a party (PTI-Nazriati) whose name had not even been heard by most of the electorate, or why he would leave the candidature of that party (PTI) and become an independent candidate, by his own free will. Had it been a case of one or two candidates, we might have imagined some

plausibility of free will in their actions. However, we cannot assume by any stretch of the imagination that hundreds of candidates for the National Assembly and the Provincial Assemblies would act in such a manner by their own free will, not under the constraints of the circumstances created by the unlawful acts and omissions of the public functionaries---the Returning Officers and the Commission. Therefore, we have found that notwithstanding their subsequent filing of a declaration to be treated as candidates of PTI-Nazriati or as independent candidates, 39 returned candidates, out of the list of 80 submitted by the Commission, who had either filed party certificates (party tickets) of PTI or declared their affiliation with PTI in their nomination forms or statutory declarations/ affidavits, are the returned candidates of PTI.

107. Similar is the position of those candidates whom our learned colleagues have treated as independent returned candidates because they had not mentioned themselves as belonging to PTI in their nomination papers. In respect of these candidates, who are 41 according to the record produced by the Commission, our learned colleagues have presumed that they were independent candidates, and that none of them has appeared before the Court to rebut that presumption.
108. We must say that we tried hard to understand how, in a parliamentary democracy based on a political parties system, as underlined by this Court in Benazir Bhutto, such a large number of candidates to the seats in the National Assembly and the Provincial Assemblies could inspire and win the confidence of the electorate as independents. No satisfactory answer to this query was presented before us on behalf of the Commission and other respondents. The assertion of SIC and PTI that they were also PTI candidates and the electorate voted for them for their being PTI candidates though appears satisfactory but is not supported by the record presently before us. Therefore, it is the most challenging matter involved in the case where the scales of the requirements of law and of justice are to be justly, fairly and reasonably balanced.
109. We do not find any force in the argument that those returned candidates have not appeared before us to rebut the presumption accepted by our learned colleagues, because we find that they are before us speaking through SIC. What SIC says on facts is the version of those returned candidates---SIC speaks for them before us. Both SIC and PTI have narrated the same facts and circumstances that led to the mentioning of

their status as independent candidates in the nomination papers. Both have claimed that they were also PTI candidates and that the electorate voted for them for being PTI candidates; they, in their individual capacities, did not have such voting support of the electorate.

110. As held above, while exercising their general powers under Article 218(3) and Article 187(1) of the Constitution respectively, the Commission and this Court must endeavour to adhere to the spirit and substance of the provisions of law that, although not explicitly covering the matter or issue, are closely related to it, so that the legislative intent may be given effect to the maximum extent possible. According to Section 66 of the Elections Act, two elements make a person the candidate of a political party: (i) the candidate's own declaration that he belongs to that party, and (ii) the party's certificate (party ticket) nominating him as its candidate. It is thus a matter between the candidate and the party to which he claims affiliation. No consent or authorisation from any third person or authority is required to establish their relationship and the candidate's status. This is the substance and spirit of Section 66 of the Elections Act.
111. Therefore, we find it more just, fair and reasonable that this fact should be verified and then acted upon by adhering to the substance and spirit of Section 66 of the Elections Act so that the legislative intent may be given effect to the maximum extent possible. Instead of deciding such an important matter, which essentially relates to the right and value of the votes of millions of voters, merely on assumptions, presumptions or oral statements, this fact should be determined with certain and concrete material: (i) the written statement (declaration) by the returned candidate concerned, and (ii) its written confirmation (certificate) by PTI. Upon submission of written statements by the returned candidates and written confirmations by PTI through its de facto or de jure Chairman, the status of the 41 returned candidates shall immediately and ipso facto stand determined as a matter of law, with no subsequent act altering what, upon submission of the statements and confirmations, will become a past and closed transaction. Neither the returned candidates nor PTI can later resile from this position. It is also emphasized that this verification process is solely to determine whether the said 41 returned candidates were indeed the returned candidates of PTI, and in no way does it amount to accepting them as independent returned candidates and granting them another opportunity to join a political party under the provisos to paragraphs (d) and (e) of Article 51(6) of the Constitution. Once their status is determined

upon submission of the requisite statements and confirmations, they shall be deemed returned candidates of PTI from the date of the publication of their names as returned candidates in the official Gazette. Consequently, they will be considered members of the parliamentary party of PTI in the National Assembly from the date they took the oath of office as Members of the National Assembly (MNAs), for all constitutional and legal purposes.

112. As above held, the general power of the Commission under Article 218(3) of the Constitution read with Sections 4 and 8 of the Elections Act is similar to the general power of this Court under Article 187(1) of the Constitution. Therefore, in the present case the Commission should have, by the impugned order, in the words of Section 4(1), "issue[d] such directions or orders as may be necessary for the performance of its functions and duties, including an order for doing complete justice in any matter pending before it"; or, in the words of Section 8(c), "issue[d] such instructions, exercise[d] such powers and ma[d]e such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly"; or, in the words of Article 218(3), "ma[d]e such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly". The Commission, however, again made an unlawful omission by failing to exercise its aforementioned general powers to undo the effects of its earlier unlawful acts and omissions and to restore PTI to its constitutional right as a Parliamentary Party and its entitlement to reserved seats proportionate to the won general seats, thereby placing PTI, insofar as possible, in the same position it would have been in if the said unlawful acts and omissions had not occurred. The previous unlawful acts and omissions, as well as the said unlawful omission, render the impugned order of the Commission ultra vires the Constitution, without lawful authority and of no legal effect.

The Commission has failed to perform its role as a "guarantor institution" of democratic processes

113. We find it important to emphasize that the Commission, as a constitutional "electoral management body", is not merely an administrative entity but a fundamental "guarantor institution" of democratic processes, with a constitutional status akin to a "fourth branch of government".<sup>80</sup> The Commission must therefore fully recognize its constitutional position and the critical role it plays in a democracy while performing its duty to conduct free and fair elections. As a central pillar of democratic electoral processes, the Commission, in its role as a guarantor institution and impartial

steward, is tasked with ensuring the transparency and fairness of elections to maintain public trust in the electoral system. This is essential for the legitimacy of elected representatives and the stability of the political system. The Commission must uphold democratic principles and the integrity of electoral processes by ensuring that elections truly reflect the will of the people, thereby preserving the democratic fabric of the nation. Unfortunately, the circumstances of the present case indicate that the Commission has failed to fulfill this role in the General Elections of 2024.

114. Another matter that has surprised us during the proceedings of these appeals is the way the Commission participated in and contested the matter before us as a primary contesting party against SIC and PTI. We are cognizant that the Commission's prime function, under Article 218(3) of the Constitution, is 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 that corrupt practices are guarded against'. This function of the Commission, 'to organize and conduct the election', as held by this Court in *Aam Log Itehad*,<sup>81</sup> is primarily executive, not judicial or quasi-judicial. However, as found in the said case, the Commission also performs some quasi-judicial functions. In the present case, several political parties made counterclaims regarding their right to the disputed reserved seats, and the Commission decided these counterclaims as an adjudicatory body. The function performed by the Commission in the present case was, therefore, quasi-judicial. And, as held by this Court in *Wafaqi Mohtasib*<sup>82</sup> and *A. Rahim Foods*,<sup>83</sup> a body performing its quasi-judicial function in a matter between two rival parties cannot be treated as an aggrieved person if its decision is set aside or modified by a higher forum or by a court of competent jurisdiction. Such a body, therefore, does not have locus standi to challenge the decision of that higher forum or court. Nor, we may add, can such a body contest an appeal filed against its quasi-judicial decision by one of the rival parties as a primary contesting party. In the present case, the Commission was a proper party to assist the Court in effectually and completely adjudicating upon and settling all the questions involved in the case. It should have acted in this manner, not as a primary contesting party.

115. As for the impugned judgment of the Peshawar High Court, we know, as held by this Court in *Dossani Travels*,<sup>84</sup> that the ambit and scope of the power of the High Courts under Article 199 of the Constitution is not as

wide as of the Supreme Court under Article 187 of the Constitution to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it. Nor do the High Courts possess such general constitutional power which the Commission has under Article 218(3) to ensure that elections are conducted honestly, justly and fairly. Therefore, without PTI's petition, the High Court could not have passed an order like the one we have, or the one that the Commission could have passed, for doing complete justice and ensuring that the election is conducted honestly, justly and fairly. However, what the Peshawar High Court could have done, but failed to do, in the present case is to remand the matter to the Commission with a direction to do what the Commission was required to do under Article 218(3) of the Constitution, read with Sections 4 and 8 of the Elections Act.

116. So far as the proceedings in the National Assembly and the Provincial Assemblies, wherein members elected on the disputed reserved seats under the impugned order of the Commission participated, are concerned, the same are protected under Articles 67 and 127 of the Constitution,<sup>85</sup> cannot be disputed in these collateral proceedings when no one has pointed out to us any proceedings of the National Assembly or Provincial Assemblies that could not have been successfully conducted if the members elected on the disputed reserved seats had not participated therein. Further, as held by this Court in Raja Amer,<sup>86</sup> acts done in accordance with the legal position prevailing at the time of their doing are generally protected under the doctrine of past and closed transactions. Therefore, to protect such acts and proceedings of the National Assembly and Provincial Assemblies concerned, which could have been successfully conducted even if the members elected on the disputed reserved seats had not participated, the notifications of the Commission declaring such members as returned candidates on the disputed reserved seats are quashed with effect from 6 May 2024, the date on which this Court suspended the impugned order of the Commission.

PTI is before the Court

117. Lastly, we want to say a few words to clarify that PTI, which has been granted relief in the present case, is before us with an application for its impleadment as a party to the case. In the normal course of procedure for civil cases, the application for impleadment is first decided and the applicant formally made a party to the case, before granting him any relief in the case. This case, as

explained in the opening part of this judgment, is not an ordinary civil case but a lis of the highest order, where democracy---a salient feature of the Constitution---and the fundamental right of the people (the electorate) to choose their representatives for the legislative and executive organs of the State is to be preserved, protected and defended. The procedural formality of first accepting PTI's application and then granting it the relief does not carry much weight where the Court's concern is the protection

of the right of vote of the people (the electorate) guaranteed under Articles 17(2) and 19 of the Constitution, more than the right of any political party-whether it be SIC or PTI or any other party. Indeed, more particularly for this kind of cases, where the rights of people are involved, not only of the parties before the Court, the words of Kaikaus, J., resound that 'the proper place of procedure in any system of administration of justice is to help and not thwart the grant to the

people of their rights.'<sup>87</sup> Even otherwise, as held by this Court in

several cases,<sup>88</sup> while doing complete justice in the exercise of its general power under Article 187(1) of the Constitution, this Court is not handicapped by any technicality or rule of practice or procedure, nor is the exercise of this power by the Court dependent on an application by a party.

118. So far as the application (C.M.A. 3554/2024) of Ms. Kanwal Shauzab, who claims to be a PTI candidate for the seats reserved for women in the National Assembly, is concerned, it also has little significance in the perspective we have approached and dealt with the present case. We may clarify that although we heard her counsel in the interest of justice, as important questions of interpretation of constitutional provisions were involved, she is not a necessary party to the case. We are of the considered view that a contesting candidate or a returned candidate to the seats reserved for women or non-Muslims is not a necessary party to a dispute where the matter to be decided is which political party and in what proportion is entitled to the reserved seats. The persons nominated by a political party for reserved seats or elected to such seats do not have a personal right to such seats. It is the right of the electorate guaranteed under Articles 17(2) and 19 of the Constitution, exercisable through political parties, to have proportional representation in the reserved seats, not of the person nominated for or elected to such seats.

Relief granted; short order reproduced

119. These are the detailed reasons for our short order dated 12 July 2024, which is reproduced here for completion of the record:

## ORDER

Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan, JJ.: For detailed reasons to be recorded later and subject to

what is set out therein by way of amplification and/or explanation or otherwise, these appeals are decided in the following terms:

1. The impugned judgment dated 25.03.2024 of the learned Full Bench of the High Court is set aside to the extent it is or may be inconsistent with this Order or the detailed reasons.
2. The order of the Election Commission of Pakistan ("Commission") dated 01.03.2024 ("Impugned Order") is declared to be ultra vires the Constitution, without lawful authority and of no legal effect.
3. The notifications (of various dates) whereby the persons respectively mentioned therein (being the persons identified in the Commission's notification No.F.5(1)/2024-Cord. dated 13.05.2024) have been declared to be returned candidates for reserved seats for women and minorities in the National and Provincial Assemblies are declared to be ultra vires

the Constitution, without lawful authority and of no legal

effect, and are quashed from 06.05.2024 onwards, being the date an interim order was made by the Court in CPLA Nos. 1328-9 of 2024, the leave petitions out of which the instant appeals arise.

4. It is declared that the lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in an election (whether general or bye) and to field candidates and the Commission is under a constitutional duty to act, and construe and apply all statutory provisions, accordingly.
5. It is declared that for the purposes, and within the meaning, of paragraphs (d) and (e) of clause (6) of Article 51 ("Article 51 Provisions") and paragraph (c) of clause (3) of Article 106 ("Article 106 Provisions") of the Constitution,

the Pakistan Tehreek e Insaf ("PTI") was and is a political party, which secured or won (the two terms being interchangeable) general seats in the National and Provincial Assemblies in the General Elections of 2024 as herein after provided.

6. During the course of the hearing of the instant appeals, on 27.06.2024, learned counsel for the Commission placed

before the Court a list ("the List") of 80 returned candidates

for the National Assembly (now MNAs), setting out in

tabular form particulars relating to their election. Learned counsel made a categorical statement that the Commission stood by the data so provided to the Court. In particular, the List contained three columns marked as follows: (i) "Statement (on nomination form) given in declaration and oath by the person nominated (i.e., 'I belong to')"; (ii) "Certificate of party affiliation under Section 66 of the Elections Act, 2017"; and (iii) "Statutory Declaration/affidavit accompanying section 66 certificate".

7. In the peculiar facts and circumstances of the General Election of 2024, it is declared that out of the aforesaid 80 returned candidates (now MNAs) those (being 39 in all and whose particulars are set out in Annex A to this Order) in respect of whom the Commission has shown "PTI" in any one of the aforesaid columns in the List, were and are the returned candidates whose seats were and have been secured by the PTI within the meaning, and for purposes of, para 5 above in relation to the Article 51 Provisions.
8. In the peculiar facts and circumstances of the General Election of 2024, it is further ordered that any of the remaining 41 returned candidates out of the aforesaid 80 (whose particulars are set out in Annex B to this Order) may, within 15 working days of this Order file a statement duly signed and notarized stating that he or she contested the General Election as a candidate of the political party specified therein. If any such statement(s) is/are filed, the Commission shall forthwith but in any case within 7 days thereafter give notice to the political party concerned to file, within 15 working days, a confirmation that the candidate contested the General Election as its candidate. A political party may in any case, at any time after the filing of a statement as aforesaid, of its own motion file its

confirmation. If such a statement is filed, and is confirmed by the political party concerned, then the seat secured by such candidate shall be forthwith deemed to be a seat secured by that political party for the purposes of para 5 above in relation to the Article 51 Provisions. The Commission shall also forthwith issue, and post on its website, a list of the retuned candidates (now MNAs) and seats to which this para applies within 7 days after the last date on which a political party may file its confirmation and shall simultaneously file a compliance report in the Court.

9. For the purposes of para 5 of this Order in relation to the Article 51 Provisions, the number of general seats secured by PTI shall be the total of the seats declared in terms of para 7 and those, if any, to which para 8 applies. The PTI shall be entitled to reserved seats for women and minorities in the National Assembly accordingly. PTI shall, within 15 working days of this Order file its lists of candidates for the said reserved seats and the provisions of the Elections Act, 2017 ("Act") (including in particular section 104) and the Elections Rules, 2017 ("Rules") shall be applied to such lists in such manner as gives effect to this Order in full measure. The Commission shall, out of the reserved seats for women and minorities in the National Assembly to which para 3 of this Order applies, notify as elected in terms of the Article 51 Provisions, that number of candidates from the lists filed (or, as the case may be, to be filed) by the PTI as is proportionate to the general seats secured by it in terms of paras 7 and 8 of this Order.
10. The foregoing paras shall apply mutatis mutandis for purposes of the Article 106 Provisions in relation to PTI (as set out in para 5 herein above) for the reserved seats for women and minorities in the Khyber Pakhtunkhwa, Punjab and Sindh Provincial Assemblies to which para 3 of this Order applies. In case the Commission or PTI need any clarification or order so as to give effect to this para in full measure, it shall forthwith apply to the Court by making an appropriate application, which shall be put up before the Judges constituting the majority in chambers for such orders and directions as may be deemed appropriate.

#### Annexure-A

(Names of Candidates Affiliated with the Pakistan Tehreek-e-Insaf

as per the list verified from the data provided by ECP89)

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
1.	NA-2 (Swat-I)	Amjad Ali Khan
2.	NA-3 (Swat-II)	Saleem Rehman
3.	NA-4 (Swat-III)	Sohail Sultan
4.	NA-6 (Lower Dir-I)	Muhammad Bashir Khan
5.	NA-7 (Lower Dir-II)	Mehboob Shah
6.	NA-9 (Malakand)	Junaid Akbar
7.	NA-17 (Abbottabad-II)	Ali Khan Jadoon
8.	NA-19 (Swabi-I)	Asad Qaiser
9.	NA-20 (Swabi-II)	Shahram Khan
10.	NA-21 (Mardan-I)	Mujahid Ali
11.	NA-24 (Charsadda-I)	Anwar Taj
12.	NA-25 (Charsadda-II)	Fazal Muhammad Khan
13.	NA-29 (Peshawar-II)	Arbab Amir Ayub
14.	NA-30 (Peshawar-III)	Shandana Gulzar Khan
15.	NA-31 (Peshawar-IV)	Sher Ali Arbab
16.	NA-32 (Peshawar-V)	Asif Khan
17.	NA-33 (Nowshera-I)	Syed Shah Ahad Ali Shah

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
18.	NA-38 (Karak)	Shahid Ahmad
19.	NA-39 (Bannu)	Nasim Ali Shah
20.	NA-41 (Lakki Marwat)	Sher Afzal Khan
21.	NA-83 (Sargodha-II)	Usama Ahmed Mela
22.	NA-84 (Sargodha-III)	Shafqat Abbas
23.	NA-95 (Faisalabad-I)	Ali Afzal Sahi
24.	NA-96 (Faisalabad-II)	Rai Haider Ali Khan
25.	NA-100 (Faisalabad-VI)	Nisar Ahmed
26.	NA-101 (Faisalabad-VII)	Rana Atif
27.	NA-102 (Faisalabad-VIII)	Changaze Ahmad Khan
28.	NA-103 (Faisalabad-IX)	Muhammad Ali Sarfraz
29.	NA-115 (Sheikhupura-III)	Khurram Shahzad Virk
30.	NA-122 (Lahore-VI)	Sardar Muhammad Latif Khan Khosa
31.	NA-143 (Sahiwal-III)	Rai Hassan Nawaz Khan
32.	NA-149 (Multan-II)	Malik Muhammad Aamir Dogar
33.	NA-150 (Multan-III)	Makhdoom Zain Hussain Qureshi
34.	NA-154 (Lodhran-I)	Rana Muhammad Faraz Noon

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
35.	NA-171 (Rahim Yar Khan-III)	Mumtaz Mustafa
36.	NA-179 (Kot Addu-I)	Muhammad Shabbir Ali Qureshi
37.	NA-181 (Layyah-I)	Umber Majeed
38.	NA-182 (Layyah-II)	Awais Haider Jakhar
39.	NA-185 (D.G. Khan-II)	Zartaj Gul

#### Annexure-B

(Names of Independent Candidates

[whom PTI claims as its candidates])

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
1.	NA-1 (Chitral Upper-cum- Chitral Lower)	Abdul Latif
2.	NA-5 (Upper Dir)	Sahibzada Sibghatullah
3.	NA-13 (Battagram)	Muhammad Nawaz Khan
4.	NA-22 (Mardan-II)	Muhammad Atif
5.	NA-23 (Mardan-III)	Ali Muhammad
6.	NA-26 (Mohmand)	Sajid Khan
7.	NA-27 (Khyber)	Muhammad Iqbal Khan

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
8.	NA-34 (Nowshera-II)	Zulfiqar Ali
9.	NA-35 (Kohat)	Shehryar Afridi
10.	NA-36 (Hangu-cum-Orakzai)	Yousaf Khan
11.	NA-42 (South Waziristan Upper-cum-South Waziristan Lower)	Zubair Khan
12.	NA-66 (Wazirabad)	Mohammad Ahmed Chattha
13.	NA-67 (Hafizabad)	Aniqa Mehdi
14.	NA-68 (Mandi Bahauddin-I)	Haji Imtiaz Ahmed Choudhry
15.	NA-78 (Gujranwala-II)	Muhammad Mobeen Arif
16.	NA-79 (Gujranwala-III)	Ihsan Ullah Virk
17.	NA-181 (Gujranwala-V)	Ch. Bilal Ejaz
18.	NA-86 (Sargodha-V)	Muhammad Miqdad Ali Khan
19.	NA-89 (Mianwali-I)	Muhammad Jamal Ahsan Khan
20.	NA-90 (Mianwali-II)	Umair Khan Niazi
21.	NA-91 (Bhakkar-I)	M. Sana Ullah Khan Mastikhel
22.	NA-93 (Chiniot-I)	Ghulam Muhammad
23.	NA-97 (Faisalabad-III)	Muhammad Saad Ullah

<b>Sr. No.</b>	<b>Number and Name of the Constituency</b>	<b>Name of the Candidate</b>
24.	NA-99 (Faisalabad-V)	Umar Farooq
25.	NA-105 (Toba Tek Singh-I)	Usama Hamza
26.	NA-107 (Toba Tek Singh-III)	Mohammad Riaz Khan
27.	NA-108 (Jhang-I)	Muhammad Mahbob Sultan
28.	NA-109 (Jhang-II)	Waqas Akram
29.	NA-110 (Jhang-III)	Muhammad Ameer Sultan
30.	NA-111 (Nankana Sahib-I)	Muhammad Arshad Sahi
31.	NA-116 (Sheikhupura-IV)	Khurram Munawar Manj
32.	NA-129 (Lahore-XIII)	Mian Muhammad Azhar
33.	NA-133 (Kasur-III)	Azim Uddin Zahid
34.	NA-137 (Okara-III)	Syed Raza Ali Gillani
35.	NA-156 (Vehari-I)	Ayesha Nazir
36.	NA-170 (Rahim Yar Khan-II)	Mian Ghous Muhammad
37.	NA-172 (Rahim Yar Khan-IV)	Javaid Iqbal
38.	NA-175 (Muzaffargarh-I)	Jamshaid Ahmad
39.	NA-177 (Muzaffargarh-III)	Muhammad Moazzam Ali Khan

Sr. No.	Number and Name of the Constituency	Name of the Candidate
40.	NA-180 (Kot Addu-II)	Fiaz Hussain
41.	NA-183 (Taunsa)	Khawaja Sheraz Mehmood

120. Before parting with the judgment, we feel constrained to observe, with a heavy heart, that our two learned colleagues in the minority (Justice Amin-ud-Din Khan and Justice Naeem Akhtar Afghan) have made certain observations in their dissenting judgment dated 3 August 2024, which do not behove Judges of the Supreme Court of Pakistan, the highest court of the land. After expressing their view that the order we passed on 12 July 2024 is not in accordance with the Constitution and that we ignored and disregarded its mandate, they observed that "[i]f the said 39 plus 41 persons take any step on the basis of this judgment which is not in accordance with the Constitution, they may lose their seats as returned candidates on the basis of violation of the Constitution",<sup>90</sup> and that "[a]ny order of the Court which is not in consonance with the constitutional provisions is not binding upon any other constitutional organ of the State."<sup>91</sup>

121. We take no issue with their having and expressing the view that, in their understanding, our order dated 12 July 2024 is not in accordance with the Constitution, as Members of a Bench of this Court, or any court, can legitimately differ on issues of fact and law. They may strongly express divergent opinions and make comments on each other's views, highlighting reasons why they believe other Members have erred. However, the manner in which they have expressed their disagreement falls short of the courtesy and restraint required of Judges of the Superior Courts. What is more disquieting is that, through the said observations, they appear to have gone beyond the parameters of propriety by warning the 39 plus 41 (80) returned candidates and urging the Commission not to comply with the majority order, which is the decision of a thirteen-member Full Court Bench of this Court. Such observations undermine the integrity of the highest institution of justice in the country and seem to constitute an attempt to obstruct the process of the Court and the administration of justice.

122. Considering the public importance of this judgment, the office is directed to ensure translation of this judgment into Urdu in order to enhance public access to its information, in accordance with Article 19A read with Article 251 of the Constitution. The Urdu version of the judgment shall be placed on the record of the case, uploaded on the Court's website and reported in the law journals alongside this official English version of the judgment.

Sd/- Sd/-

Judge Judge

Sd/- Sd/-

Judge Judge

Sd/- Sd/-

Judge Judge

Sd/- Sd/-

Judge Judge

Delivered at Islamabad

On 23rd September, 2024

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

In Chambers at Islamabad and Karachi\*

Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar

Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik

Mr. Justice Athar Minallah

Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed

Mr. Justice Irfan Saadat Khan

C.M.A. No. 10247 of 2024 in Civil Appeals Nos. 333 and 334 of 2024 (Filed by ECP, seeking clarification)

AND

C.M.A. No. 10088 of 2024 in Civil Appeals Nos. 333 and 334 of 2024 (Filed by PTI, seeking clarification)

#### Clarification

In terms of paragraph 10 of this Court's order dated 12 July 2024 ("Short Order") passed in the Civil Appeals Nos. 333 and 334 of 2024, both the Election Commission of Pakistan ("Commission"), through CMA 10247/2024, and Pakistan Tehreek-e-Insaf ("PTI"), through CMA 10088/2024, seek clarification regarding the effect of the Elections (Second Amendment) Act, 2024 ("Amendment Act") on the Short

Order.

2. The ECP in its CMA, has submitted that the Short Order was based on the law which has since been altered by the amendments made to Sections 66 and 104 of the Elections Act, 2017 ("Elections Act") and a new Section, namely 104-A, has also been inserted with retrospective effect from the date of the commencement of the Elections Act.
3. On the other hand, PTI has submitted in its CMA that the Short Order passed by this Court is based on the interpretation and enforcement of constitutional provisions, therefore the amendments cannot supplant the effect of the Short Order.
4. We had already issued clarification before releasing the detailed reasons and the first clarification issued pursuant to the Short Order was also merged in our detailed reasons. The option given by us to seek clarification

in the Short Order was in fact an intermediary window till the detailed reasons were assigned, so in case there arises any misunderstanding as to the spirit or implementation of the Short Order before the release of the detailed judgment, the parties may seek clarification. The detailed reasons have already been released and all legal and constitutional issues raised and argued by the parties have been dealt with eloquently and answered, therefore, no further clarification is required to be issued. The judgment of this Court has binding effect in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973, and should have been implemented.

5. Since the Commission and PTI both have asked for a second clarification, we want to simply clarify and reiterate the well-settled exposition of law that the effect of the amendment made in the Elections Act cannot undo our judgment with retrospective effect. The Court granted the relief in the Short Order to enforce the right of the electorate through political parties to have proportional representation in the reserved seats under paragraphs (d) and (e) of clause (6) of Article 51 and paragraph (c) of clause (3) of Article 106 of the Constitution, therefore, the amendments made in the Elections Act after the release of our Short Order will have no bearing and the Commission is bound to implement the judgment passed by the Supreme Court of Pakistan, in its letter and spirit, without seeking any further clarification.
6. Office is directed to send this clarification to the Commission and the representative of PTI who filed the application for clarification and also upload this clarification on the Supreme Court website. Both the Civil Misc. Applications are disposed of

accordingly.

Sd/- Sd/-

Judge Judge

Sd/- Sd/-

Judge Judge

Sd/- Sd/-

Judge Judge

Sd/- Sd/-

Judge Judge

Dated 18th October, 2024.

**YAHYA AFRIDI, J.**---Sunni Ittehad Council ("SIC"), a registered political party, along with its Chairman, Sahibzada Muhammad Hamid Raza, moved the constitutional jurisdiction of the Peshawar High Court seeking, inter alia, to challenge the refusal of the Election Commission of Pakistan ("ECP") to allocate reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies to SIC, and to question the allocation of these reserved seats by ECP to other political parties in terms of Notification No. F.5(1)/2024-Cord and Notification No. F.5(4)/2024-Cord both dated 04.03.2024 ("Impugned Notifications"), and to declare Section 104 of the Elections Act, 2017 ("Act") to be ultra vires to the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution").

#### **Impugned Judgment**

2. A Full Bench of five worthy Judges of the Peshawar High Court dismissed the petition in terms: that SIC did not fulfill the condition precedent provided under Article 51(6) (d) and (e) of the Constitution to be allocated reserved seats for women and non-Muslims; that Section 104 of the Act was intra vires; that there was no basis to question the status of Pakistan Tehreek-e-Insaf ("PTI") as a political party; and that PTI-backed independent candidates were returned to the Assemblies on the manifesto of PTI, however, nothing was produced before the High Court to show that ECP had declined the request of these candidates to contest elections on the ticket of PTI; and that the returned PTI-backed independent candidates were neither impleaded nor did they file any application before the High Court to be made a party to the petition pending before it.

#### **Contentions of the Parties**

3. Learned counsel for the appellants, at the very outset, submitted that he would not challenge the vires of Section 104 of the Act, since the stance taken by the

appellants was supported by the constitutional provisions contained in Article 51 and Article 106 of the Constitution, and restricted the challenge to the findings recorded in the impugned judgment only to the entitlement of SIC to reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies. The main thrust of the learned counsel for SIC was that Article 51(6)(d)2 and (e)3 and Article 106(3)(c)4 of the Constitution did not expressly mandate that a political party was to contest General Elections to become entitled to reserved seats. Nor was it necessary, according to the learned counsel, to submit a list for reserved seats before the General Elections or within the period fixed by ECP for submission of nomination papers for the purpose of election to reserved seats to be entitled to reserved seats as the same could be allowed to be done by a political party even later. This, the learned counsel asserted, was the spirit of Article 51(6)(d)

and (e) and Article 106(3)(c) of the Constitution. Finally, the learned counsel drew our attention to the Impugned Notifications, to show that reserved seats allocated to some of the political parties far exceeded their due share of reserved seats on the basis of their numerical strength in the respective assemblies. This, the learned counsel argued, was a blatant violation of the principle of proportional representation enshrined in Article 51(6)(d) and (e) and Article 106(3)(c) of the Constitution. Hence, the Impugned Notifications warranted annulment and SIC was to be allowed reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies, as mandated under Article 51(6) (d) and (e) and Article 106(3)(c) of the Constitution.

#### 4. The stance taken by the appellants before us was opposed

by the Federation, ECP, women and non-Muslims elected to reserved seats in the National Assembly and Provincial Assemblies beyond the share of their parties based on numerical strength in respective houses, Pakistan Muslim League (N), Muttahida Qaumi Movement (Pakistan), Pakistan Peoples Party Parliamentarians, and Jamiat Ulem-e-Islam Pakistan.

#### Issue for Determination

#### 5. The core controversy requiring resolution relates to the allocation of reserved seats for women and non-Muslims to political parties in the National Assembly and Provincial Assemblies in accordance with Article 51(6) (d) and (e) and Article 106(3)(c) of the Constitution, respectively. It will be appropriate to first review and discuss the legal provisions regarding the reserved seats for women in the National Assembly, as this will provide a foundation for understanding the allocation of other reserved seats provided under the Constitution.

Total Number of Reserved Seats for Women in the National Assembly

6. Clause 3 of Article 51 of the Constitution specifies the total number of seats in the National Assembly, including those reserved for women in each province, in terms that:

"(3) The seats in the National Assembly referred to in clause (1), except the seats mentioned in clause (4), shall

be allocated to each Province and the Federal Capital as

under: -

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

Election for Reserved Seats for Women in the National Assembly

7. As for the election on reserved seats for women in the

National Assembly, the numerical strength for each province has

been set out in Article 51(3) (supra); the manner of allocation of the

said reserved seats to the political parties is provided in clause (d) of sub-Article (6) of Article 51 of the Constitution. It provides in terms that:

"(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 paragraph 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"

A careful reading of the above provision provides that for a political party to be allocated reserved seats for women, the following are the crucial issues to be considered:

i) Election in accordance with law:

The allocation of reserved seats for women has to pass through an electoral process; not only are the political parties mandated to take steps, but their nominee candidates are also to do so. And all this is to proceed in "accordance with the law"5 - the Constitution, the Act and the Election Rules, 2017 ("Rules").

With the essentials provided in Article 51 of the Constitution, Section 104 of the Act sets out the mode and manner of allocation of the reserved seats to political parties in the National Assembly, in terms that:

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 subsection (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 subsections (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 subsection (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.

To further clarify, and elucidate the above procedure, we have Rule 92 of the Rules, framed under Section 239 of the Act. The said Rule reads:

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 subsection (1) and subsection (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.

(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.

A combined reading of the above provisions of the Constitution, the Act and the Rules indicates that a political party seeking reserved seats for women in the National Assembly has to take the following concerted steps in order that its nominees be eligible to be elected as members of the National Assembly on the seats reserved for women:

#### Step No. 1

A political party desirous of contesting election for reserved seats has to submit before ECP, the list of its candidates, and that too, in order of priority. Such list is to be published for information of the public forthwith. But once the time fixed by ECP for filing of nomination papers has expired, the political party is prohibited from making any modifications to the submitted list. This includes changes to the order of candidates, adding new names, or removing existing ones.

#### Step No. 2

The listed nominee candidates of a political party, in turn, have to file their nomination papers along with all the requisite documents for contesting election on the reserved seats, and that too, within the prescribed time. The nomination papers of the said candidates are filed before the Returning Officer appointed by ECP. The scrutiny thereof shall, as nearly as possible, be in the same manner, as that of nomination papers of candidates on general seats under Section 62 of the Act, including the right to challenge any findings made by the Returning Officer appointed by ECP.

What is strikingly significant in the above stated procedure for election of reserved seats is that each step required of a political party and its listed nominee candidates is time bound.

## ii) Basis of Allocation of Reserved Seats

For allocation of reserved seats, there has to be election not amongst the individual nominee candidates but between the political parties, who field their candidates, as per the list they submit to ECP; and that too, 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 provinces concerned in the National Assembly.

## Forms of Elections under the Constitution - Proportional Representation System

There are under the Constitution, three distinct forms of elections: firstly, we have single member territorial constituencies for the general seats in the National Assembly and Provincial Assemblies and the members to fill such seats are to be elected by direct and free vote in accordance with law6; secondly, there is single transferable vote or proportional

ranked choice voting system for the elections to the Senate; and finally, we have proportional representation system of political parties' lists for the elections for the reserved seats for women and the non-Muslims. It follows that a first-past-the-post system is used for general seats in the National and Provincial Assemblies, while a proportional representation system based on single transferable vote is used for Senate elections, and a proportional representation system based on political parties' lists is used for reserved seats in the National and Provincial Assemblies.

As for the concept of the proportional representation system, it must be understood that it manifests in different ways across various jurisdictions globally. To better understand and appreciate the various systems, and in particular, the one applicable for reserved seats for women and non-Muslims, it would be appropriate to have an overview of some of the different systems of 'proportional representation'. Proportional representation systems are of following two basic types:

### Single Transferable Vote or Proportional Ranked Choice Voting

Single Transferable Vote or Proportional Ranked Choice Voting is provided under clause (2) of Article 59 of the Constitution for elections to the Senate. It is a multi-winner electoral system, where each voter casts a single vote in the form of ranked-choice ballot. Voters have the option to rank candidates, and their votes may be transferred according to alternate preferences, if their preferred candidate is eliminated or elected with surplus votes, so that their votes are used to elect someone they prefer over others in the running.

### Proportional Representation System of Political Parties' Lists

Proportional representation system of political parties' lists is a system for election for the reserved seats for women and the non-Muslims in the National Assembly and Provincial Assemblies, as provided under Articles 51 and 106 of the Constitution. This system has its unique characteristics and modalities, as it provides each political party to 'showcase' to the public their listed candidates for the voters to make their valued choice at the time of casting their votes for the other candidates of the political party in the General Elections. In essence, it is to provide individual voters valuable information, about the political party and the candidates it is to field for elections, at the time they cast their vote, helping them make a more informed decision.

There is no cavil to the proposition that, all proportional representational systems, are neither intended to nor are to be applied in a disproportionate manner. But for a political party to avail any benefit thereof, it has to first fulfill the condition precedent set for first entering the electoral system. In the case of the proportional representation system of political parties' lists, used for electing reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies, as outlined in Articles 51 and 106 of the Constitution, the political party has to cross the defined legal threshold; firstly, by filing the list of candidates within the period set by ECP, and secondly, by fielding their nominee candidates by submitting their nomination papers within the time set by ECP.

#### iii) Total number of General Seats secured by a Political Party

#### Article 51(6) (d) of the Constitution mandates that reserved

seats for women in the National Assembly are to be allocated based on the total number of general seats secured by each political party from the province concerned in the National Assembly. Thus, the constituency for reserved seats for women is each of the four provinces. On the other hand, Article 51(6) (e) of the Constitution provides for reserved seats for non-Muslims in the National Assembly are to be allocated based on the total number of general seats won by each

political party in the National Assembly. Here the constituency is not restricted to the provinces but is, in fact, the whole country. Similarly, for the reserved seats for women and non-Muslims in the Provincial Assembly, the constituency is the whole province.

A fundamental prerequisite for a political party to qualify for reserved seats is the winning of at least one general seat. This is evident from the proviso allowing independent candidates to join a political party within three days of election results, a process contingent on the existence of a political party with at least one elected member. The proviso to Article 51(6) (d) and (e) and Article 106(3) (c) provides that 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. Notably, the proviso to the above-mentioned Articles is not a proviso in the strict sense of the term, since it neither creates an exception to the main provision nor qualifies it. Instead, it serves as an explanation that supplements the main provision by clarifying that independent returned candidates, who join a political party within three days of the publication of the names of the returned candidates are to be counted as part of the total number of general seats won by that party for the purpose of allocating reserved seats. It is but necessary that a candidate can only join a political party, if that political party already has a presence in the house - it already has secured or won a general seat. If the political party has not secured or won a general seat, it does not have any returned candidate in the house, for an independent returned candidate or candidates to join it. It shows that it is necessary that a political party at least wins one general seat to become entitled to reserved seats. Consequently, the entitlement of a political party to reserved seats is inextricably linked to its success on at least one general seat.

The word 'secured' used in Article 51(6) (d) and the word 'won' in Article 51(6) (e), have in essence, the same meaning and

can be applied interchangeably. However, one can understand that by employing two different words having the same meaning was to highlight the constituencies of the reserved seats for women and the non-Muslims: for the former, a direct reference has been made to the seats secured from each province in the National Assembly; and for the latter, there is the stipulation of the total strength of the political party based on its returned candidates, who have won the elections in the National Assembly.

Even otherwise, one must be aware that the word "secured" is employed in the main provision of the above constitutional provision, while the inclusion of the independents being provided in the proviso to the said provision, and that being

an explanation to the general statement of the law in the main provision, cannot be applied to those independents being referred to in the proviso. Moreso, when the two categories of returned candidates; one who belongs to a political party referred to in the main part of the provision, while the other being the independents joining the same political party stated in the proviso; are separately referred to in Article 51(6) (d) and cannot be considered as one category. And thus, are to be legally considered separately, each in accord with the letter of the law, as stated therein.

As for the contention of the learned counsel supporting the stance taken by SIC that this Court ought to render a progressive approach and endeavor to understand the intent behind the constitutional provision and not restrict the meaning of the words implied in a statute in a manner, so as to 'make a fortress out of the dictionary', I am afraid the approach of the learned counsel is rather miscued in the circumstances of the present case. In fact, when the letter of the statute is simple in meaning and does not lead to an absurd or unreasonable situation or for that matter, contradicts or come in conflict with any other provision of the Constitution, Courts are to read the letter of the law, and need not to surgically search for another meaning by taking refuge of the intent of the law-makers.

None can dispute the fundamental right of an independent member of a house to join a political party, as is ordained under Article 17 of the Constitution, but for this inclusion of an independent returned member of the house to strengthen the political party to seek the allotment of reserved seats, I am afraid the said right is conditional on the fulfillment of the legal requirements within the contemplation of Articles 51 and 106 of the Constitution. These conditions precedent - to contest and win at least a general seat and to submit the list of candidates for the reserved seats, whose antecedents have passed through the scrutiny provided under the law - have to be fulfilled by SIC.

#### iv) Inclusion of Independent Candidates - joining a Political Party

The general principle laid down in the substantive part of Article 51(6) (d) of the Constitution mandates the political party to be entitled to reserved seats, based on the total number of general seats secured by it from the province concerned in the National Assembly.

The proviso contained in Article 51(6) (d) of the Constitution vests an independent returned candidate, the right to join a political party of his choice, and none can take away this right from him. To render legal effect to the act of an independent returned candidate of joining a political party, requires the leader of the said political party<sup>7</sup> to intimate ECP in writing regarding joining of that political party

by the independent returned candidate. This written intimation has to be accompanied by the written consent of the independent returned candidate. ECP on receipt of the said intimation accompanied by the written consent of the independent returned candidate, has no authority under the law to object to any independent returned candidate joining a political party within the stipulated period of three days. However, for independent candidates to contribute to the overall seat count of a political party for the purpose of its entitlement to reserved seats, the proviso mandates that these candidates must join such party that has already won at least one general seat. In essence, a political party must win a general seat to benefit from the inclusion of independent candidates, so as to become a part of its numerical strength for the purpose of allocation of reserved seats.

#### Candidates for election - National Assembly and Provincial Assemblies

What is crucial to note is that the Act read with the Rules envisages three different kinds of returned candidates, contesting elections for the National Assembly and Provincial Assemblies:

Firstly, we have the candidates, who have submitted their nomination papers declaring themselves, as candidates belonging to a political party duly accompanied by a certificate from the said party, declaring the candidates to be their official candidates for election in the respective constituencies. Such a candidate cannot be denied the right to be a candidate of a political party. And similarly, in case the said candidate has won the seat of National Assembly or a Provincial Assembly in the General Elections and has been notified as returned candidate by ECP he would remain a member of the house, representing the said political party, and ECP has no authority under the law to declare him an independent or belonging to another political party or otherwise. The only exception to this principle is when the candidate of a political party contesting election for the National Assembly or Provincial Assembly submits a written declaration to ECP or the returning officer under his signatures stating that he is withdrawing from his position, as a candidate of a political party. Politics is not for the weak or fickle. Once a declaration has been rendered by a candidate to represent a political party, withdrawing the same, and that too, in writing would be estopped to revert back to his earlier stance of representing the said political party.

Secondly, we have candidates who submitted their nomination papers as candidates on the list of the political parties for reserved seats for women and non-Muslims.

Finally, we have those, who submitted their nomination papers, as independent candidates.

#### Reserved seats - Non-Muslims (National Assembly) Women and Non-Muslims (Provincial Assemblies)

Given the above legal position provided under the law for allocation of reserved seats for women in the National Assembly, we note that the same principles would also apply to allocation of reserved seats for non-Muslims in the National Assembly provided under Article 51(6) (e), and that of women and non-Muslims in the Provincial Assemblies under Article 106(3)(c) of the Constitution. Though there is a marked distinction between the reserved seats for women in the National Assembly and that of other reserved seats. It is notable that the constituency for the reserved seats for the non-Muslims in the National Assembly is the whole country and the reserved seats are to be allocated on the basis of the total number of seats secured by a political party in the National Assembly. Similarly, as far as the reserved seats for women and non-Muslims in the Provincial Assemblies are concerned, the constituency for the same is each province and the reserved seats are to be allocated on the basis of the total number of returned candidates of the political party in such Provincial Assembly. The mode and manner for a political party to avail the reserved seats remains the same in all cases.

A political party has to not only file the list of candidates for the reserved seats but also ensure that its nominee candidates have filed their nomination papers for election to the reserved seats within the time set by ECP. Failure on the part of a political party to fulfill any one of the two conditions stated above, and that too, within the prescribed time fixed by ECP under the law would disentitle them to be allocated the reserved seats within the enabling provisions of Articles 51 and 106 of the Constitution.

#### Case of Sunni Ittehad Council

8. Given the above exposition of the mandate of law, it is necessary to carefully examine the stance of the appellants, who seek reserved seats for women and non-Muslims in the National and Provincial Assemblies for SIC.
  
9. SIC is a registered political party, but it did not field any candidate for a seat in the National Assembly or Provincial Assemblies in the General Election, 2024. Thus, having won no seat in the houses, it cannot seek to include the independent returned members of the respective houses to enhance its strength for the allocation of reserved seats within the

contemplation of Articles 51 and 106 of the Constitution. Further, SIC had not submitted any list of candidates for reserved seats for women or for non-Muslims within the period fixed by ECP, as reflected in the Schedule of Election notified in the official gazette. In fact, the Court was informed during the hearing of the present case that SIC had till the date of decision of the present appeal not submitted the requisite list of candidates.

Needless to mention, the law mandates that with the filing of the list of candidates of the political party for the reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies, the nominee candidates have to also file their nomination papers for scrutiny,

as any other candidate contesting election for the general seat.

Given the above legal infirmities and inactions in taking the requisite steps by SIC, the joining of independent returned candidates would be of no legal avail in respect of enhancing its numerical strength for allocation of reserved seats for women and non-Muslims in the National Assembly and Provincial Assemblies under Articles 51 and 106 of the Constitution.

Sahibzada Muhammad Hamid Raza - Chairman of SIC

10. Sahibzada Muhammad Hamid Raza (appellant No.2) contested the election for a seat in the National Assembly (NA-104, Faisalabad). The nomination papers he submitted before the Returning Officer were neither clear nor consistent with his stance taken in the present appeal before this Court. During the proceeding of the present case, the Court was provided copies of the nomination papers and the requests in writing submitted by Sahibzada Muhammad Hamid Raza to the Returning Officer and ECP, and a perusal thereof unfolded the inconsistent position he had taken, as regards his affiliation with a political party. Succinctly, his affiliation swayed from belonging to SIC (alliance with PTI) and finally to Pakistan Tehreek-e-Insaf Nazriati (PTI-N). To make the matter more complicated for the appellants, he submitted to the Returning Officer, a certificate of PTI, as its official candidate for elections to the seat of the National Assembly. With such wavering political position taken by Sahibzada Muhammad Hamid Raza, it would not be legally correct to declare him a returned candidate of SIC.
  
11. Since SIC does not fulfil the conditions prescribed for a political party under the enabling provisions of the Constitution and the law to be allocated reserved seats for women and non-Muslims in the National

Assembly and Provincial Assemblies, therefore, the appeals filed by SIC and its Chairman are dismissed.

Mst. Kanwal Shauzab

12. Mst. Kanwal Shauzab, purporting to be the President of women wing of PTI and also a nominated candidate of PTI in the list submitted by the PTI for reserved seats for women in the National Assembly, who was not a party before the Peshawar High Court, has moved a petition challenging the impugned judgment of the Peshawar High Court, Peshawar. The said petition was not numbered; however, the Court allowed the learned counsel to make his submissions on behalf of Mst Kanwal Shauzab challenging the impugned judgment.
13. As the main appeal filed by SIC (C.A. No. 333 of 2024) has been dismissed and the findings so recorded by the Peshawar High Court, Peshawar have been maintained, it would not be appropriate to pass any findings on locus standi of Mst. Kanwal Shauzab in agitating her grievance in support of SIC, lest it may prejudice her right to be elected as a member of the National Assembly, being on the list of candidates submitted by PTI for the reserved seats for women in the National Assembly.

Pakistan Tehreek-e-Insaf (PTI)

14. PTI, a registered political party, fielded its candidates for seats in the National Assembly and Provincial Assemblies in the General Elections, 2024. But none was allowed or recognized by ECP to contest elections for the general or the reserved seats, as the candidate of PTI. And yet, for reasons not known, the matter has not been agitated by PTI before this Court. In fact, at the very end of the proceedings of the present appeals, that spanned over a month with eight long hearings commencing from the 3rd June, 2024 to the 12th July, 2024; to be precise on 26th June, 2024, an application (CMA No. 5913 of 2024) was filed by PTI and Barrister Gohar Ali Khan for their impleadment, as interveners, and that too, to assist this Court in the present appeals. Interestingly, there was no specific prayer for a definite declaration in favour of PTI for allotment of reserved seats for women and non-Muslims. In essence, the application so made challenged the assertions of ECP with respect to PTI, seeking reserved seats for women

and non-Muslims for both SIC and PTI, while contesting the allocation of these seats to other political parties.

15. Upon examining the record relating to the General Election, 2024 submitted by ECP, I found its actions and inactions deeply concerning. Regarding the issue raised in the present appeals, it is important to note that four candidates, namely; Mr. Gohar Ali Khan (NA-10), Mr. Umer Ayub (NA-12), Mr. Ali Asghar Khan (NA-16), and Shahzada Gastasab Khan (NA-15) not only declared themselves to be candidates representing PTI but also submitted certificates of PTI nominating them, as its candidates in their respective constituencies. It was also noted that they had not filed any application to ECP or their respective Returning Officers to be declared independent candidates or otherwise. Despite this, and for reasons known only to ECP, these four PTI candidates were not notified as returned candidates representing PTI. The Act and the Rules do not grant ECP the authority to declare such returned candidates, as independent candidates. Similarly, another list provided by ECP revealed returned candidates who, in their nomination papers, declared themselves to represent PTI, duly accompanied by certificates of the said party nominating them as their candidates for election of the respective constituencies. They did not file any application with ECP or the Returning Officer to be declared as independent candidates. Among these returned candidates, six were particularly notable: Mr. Sohail Sultan (NA4), Mr. Arbab Amir Ayub (NA-29), Mr. Sher Ali Arbab (NA-31), Mr. Naseem Ali Shah (NA-39), Mr. Rana Atif (NA-101) and Mr. Mumtaz Mustafa (NA-171). These returned candidates also fulfilled the condition of making declaration in their nomination forms and submitting certificates from PTI nominating them as their official candidates for election in their respective constituencies. Without there being any written declaration on their part to be declared as independent candidates, ECP had no authority under the law to declare them other than returned candidates representing PTI in the National Assembly.
16. At this stage, it is pertinent to mention, without naming them, certain candidates nominated by PTI for constituencies in the National or Provincial Assemblies who, after being declared returned, joined another political party or sought to be treated as independent. This behavior on their part, raises serious concerns about disregarding the trust reposed in such returned candidates by the voters, thus undermining the will of the people.

17. Articles 218 and 219 of the Constitution mandate ECP to conduct elections in a manner that ensures they are conducted honestly, justly, fairly, and in accordance with the law. The material which was brought to the attention of the Court during the proceedings of the present case, in particular, the manner in which returned candidates of PTI were declared independent, clearly demonstrates that ECP was unable to perform its constitutional duty as mandated under the law. However, passing any definite finding regarding the exact number of seats won by PTI in the National Assembly and Provincial Assemblies in the General Election, 2024 would not be legally appropriate for the reasons that:

Firstly, PTI has not approached this Court for any such direction. Passing a definite finding by this Court would amount to invoking suo motu jurisdiction under Article 184(3) of the Constitution, which in the circumstances of the present case, would be contrary to the ratio of the judgment rendered by this Court in SMC No.4/2021 ([PLD 2022 SC 306](#)), as partially modified by Section 3 of the Supreme Court (Practice and Procedure) Act, 2023.

Secondly, the information and record provided to the Court did not include the particulars of returned candidates in the four Provincial Assemblies. Similarly, with regard to the election results of the National Assembly, a thorough scrutiny is required before passing any definite finding that could deprive a returned candidate of their fundamental right of being member of a political party. Furthermore, passing such a finding on the conduct of returned candidates may expose them to adverse consequences under the law. Legal propriety demands that this matter be left to the returned candidates, their respective political parties, the Speakers of the National Assembly and the Provincial Assemblies, and ECP to address in accordance with the law. Any finding at this stage would prejudice their case, especially without affording them the right to a hearing.

Finally, while the undeniable power of this Court to do complete justice under Article 187 of the Constitution is recognized, exercising this power in the absence of an aggrieved party directly approaching the Court could set a dangerous and far-reaching precedent. Such a course risks undermining the principles of due process and judicial restraint, potentially leading to an overreach of judicial authority. The exercise of this power must, therefore, be reserved for exceptional circumstances, where there is a clear and compelling need to intervene to bolster the rights of the aggrieved petitioner, and prevent a miscarriage of justice. In the present case, however, the matters before the Court do not meet this threshold. Nevertheless, based on what has been presented before this Court, the role of ECP has fallen short of the constitutional obligations entrusted to it. However, the remedy for such shortcomings lies in the processes provided within the legal

framework, not in judicial pronouncement of the apex Court, and that too, without providing hearing to all concerned parties. It is imperative to uphold the fundamental principle of due process and the sanctity of the due judicial process. This Court must, therefore, exercise caution to preserve the integrity of judicial proceedings and ensure that justice is administered within the boundaries set by the Constitution.

## Conclusion

18. In all fairness, without disturbing the impugned judgment, ECP is directed to revisit its notification of returned candidates, keeping in view that a returned candidate, who declared himself to represent a political party and submitted the certificate of that political party, nominating the said candidate to be its official candidate for election for the respective constituency and has not withdrawn his declaration by any written intimation, has to be declared a returned candidate representing the said political party and not otherwise. The needful be done within seven days, if not earlier, after providing an opportunity of hearing to any affected party and, thus, the reserved seats for woman and non-Muslims are to be allotted to all deserving political parties, accordingly.
19. Consequently, civil appeals filed by SIC and its Chairman are dismissed in the above terms. As these appeals have been dismissed on merits, the connected civil petitions challenging the impugned judgment are also dismissed.
20. The above are the reasons for the short order dated 12th July, 2024 which read:

"For reasons to be recorded later, Civil Appeals Nos. 333 and 334 of 2024, C.M.A. No. 2920 of 2024 in Civil Appeal No. 333 of 2024, Civil Petitions Nos. 1612, 1613, 1614, 1615, 1616 and 1617 of 2024 and C.M.A. No. 3554 of 2024 in C.P. Nil of 2024 are dismissed in terms that:

1. Sunni Ittehad Council does not fulfil the conditions prescribed for a political party under the enabling provisions of the Constitution of Islamic Republic of Pakistan ("Constitution") and the law to be allowed/allocated reserved seats for women and non-Muslims in the National Assembly or the Provincial Assemblies.

2. Pakistan Tehreek-e-Insaf ("PTI") fulfils the conditions prescribed for a political party under the enabling provisions of the Constitution and the law to be allowed/allocated reserved seats for women and non-Muslims, in terms that:

- i. A candidate for a seat in the National Assembly or the Provincial Assembly, who in his/her nomination paper has declared on oath to belong to PTI and duly submitted a certificate of the same political party confirming that he/she is the nominated candidate of PTI for the respective constituency, shall remain so, and cannot be declared independent, unless he/ she submitted a written declaration to the Election Commission of Pakistan or Returning Officer to be treated as the candidate of another political party or as an independent candidate;
- ii. A returned candidate to the National Assembly or the Provincial Assembly, who in his/her nomination paper has declared on oath to belong to PTI and duly submitted a certificate of the same political party confirming that he/she is the nominated candidate of PTI for the respective constituency, shall remain so, and this consistent position maintained by a returned candidate throughout the electoral process should be legally recognized by the Election Commission of Pakistan and such returned candidate cannot be treated as the returned candidate of another political party or as an independent returned candidate, and thus, the reserved seats for women and nonMuslims are to be allowed/allocated to PTI, accordingly;
- iii. A candidate nominated by PTI for a constituency of the National Assembly or the Provincial Assembly who, after being declared returned, joined another political party or sought to be treated as independent, raises serious concerns about disregarding the trust reposed in him/her by the voters, thus undermining the will of the people; and
- iv. The legal implications, effects and consequences of the determinations made above in paragraphs 2(ii) and 2(iii), as well as the actions or inactions of the Election Commission of Pakistan thereon, although deeply concerning, have not been challenged in the present appeals and petitions; and the persons who would be affected or aggrieved are not parties before this Court. Therefore, issuing definitive directions to the Election Commission of Pakistan qua the allocation of specific number of reserved seats for women and non-Muslims to a political party in the National Assembly and the Provincial Assemblies would not be legally appropriate.

3. Accordingly, the Election Commission of Pakistan is directed to decide the allocation of reserved seats for women and non-Muslims to political parties in

the National Assembly and the Provincial Assemblies in the light of the determinations made hereinabove after providing an opportunity of hearing to the parties concerned, and if required revisit its earlier decisions on the matter. The needful be done within seven days of the receipt of this order."

Sd/-

Judge

Islamabad.

Dated: 13th August, 2024.

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**JAMAL KHAN MANDOKHAIL, J.**---We respectfully do not agree with the findings of the majority judgment with regard to providing an option to members of National and Provincial Assemblies to join Pakistan Tehreek-e-Insaf ("PTI") within a period of fifteen days. These are the reasons for our short order dated 12.07.2024.

#### Conduct of Election:

2. Under Article 218 of the Constitution of the Islamic Republic of Pakistan, 1973 ('Constitution'), it shall be the duty of the Election Commission of Pakistan ('ECP') to organize and conduct the elections honestly, justly, fairly and in accordance with law. Under section 66 of the Elections Act, 2017 ('the Act'), any person contesting elections from the platform of a particular political party, shall file a declaration in writing before the concerned Returning Officer ('RO') about his affiliation with a particular political party, if any, along with a certificate (commonly known as party ticket) from the political party showing

that he is that party's candidate from the constituency. According to section 67(3) of the Act, a candidate not nominated by any political party, shall be called as "independent candidate". Thus, to be a nominated candidate of a particular political party, a declaration of affiliation from a candidate and a certificate from that party, showing his nomination is a condition precedent.

#### Role of ROs:

3. The role of ROs is the most significant. The Act assigns them the duty of receiving nomination papers, scrutinizing and deciding fate of them. The ROs have to allot symbols to contesting candidates, and thereafter, shall publish their names as provided by section 68(1) of the Act. The list shall contain name of the candidates, symbols allotted to them, their party affiliation, if any, according to their declarations. The ROs shall supply a copy of the list to each candidate and to exhibit it at a prominent place at each polling station on the day of the poll and to send a copy thereof to the ECP, which shall upload it for display on its website enabling each candidate and the general public to know

about the detail mentioned in the list. According to rule 56(1) of the Election Rules, 2017 ('the Rules'), the list of contesting candidates shall be drawn up in Form 33, that has a set template. The ROs have no other option, but to fill-in the form on the basis of information given by a candidate in his nomination papers and declaration, in the following format:

Under section 90(10) of the Act, after close of poll, every Presiding Officer shall prepare a Result of the Count of votes in Form 45, as provided by rule 81 of the Rules. The ROs shall forthwith prepare and announce the provisional Consolidated Statement of Result of the Count in accordance with section 92 of the Act. The ROs shall prepare a final consolidated result in terms of section 95 of the Act, on the basis whereof, the ECP shall notify results of returned candidates of every constituency.

#### Election to Seats Reserved for Women and non-Muslims:

4. In order to ensure full participation of women and non-Muslims in all spheres of national life, Articles 51(3) and 4 and Article 106(3) of the Constitution has determined their due representation in National and Provincial Assemblies, respectively. Article 51(6)(d) of the Constitution provides a procedure and a formula for election to the seats reserved for women in National Assembly as under:

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

(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:

Article 51(6) (e) of the Constitution provides a procedure and a formula for election to the seats reserved for non-Muslims in National Assembly as under:

(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:

Article 106(3)(c) of the Constitution provides with the procedure and a formula for election to the seats reserved for women and non-Muslims in Provincial Assemblies as under:

"106. (1)

(2) .....

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

(a) .....

(b) .....

(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' list of candidates on the basis of the total number of general seats secured by each political party in the Provincial Assembly."

Procedure to Contest Election to the Reserved Seats:

5. According to the above provisions of the Constitution, members to the seats reserved for women and non-Muslims shall be elected in accordance with law, through proportional representation system of political parties' lists of candidates. All matters relating to the conduct of election and matters connected therewith or ancillary thereto are enshrined in the Act. Section 104 thereof provides a complete procedure for the conduct of election to the reserved seats as under:

6. 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 subsection (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) ---

(5) ---

(6) ---

(7) ---"

Since Article 51(6)(d)&(e) and Article 106(3)(b)&(c) of the Constitution provide that members to the seats reserved for women and non-Muslims shall be elected in accordance with law, therefore, the procedure and method provided by the above provision of the Act must be acted upon in its letter and spirit, as it is a command of the Constitution. If a law requires an act has to be done in a particular manner, that is how it should be done. Thus, no party is entitled to file list of its candidates to the reserved seats contrary to the provisions of section 104 of the Act, after the period fixed by the ECP for submission of nomination papers.

## Determination of Reserved Seats:

6. In the context of Article 51(6)(d)&(e) of the Constitution, a political party means a party that has won/secured at least a general seat in the National Assembly, and in the context of Article 106(3)(c) of the Constitution, a political party means a party that has won/ secured at least a general seat in a Provincial Assembly. The provisos to these Articles fixes three days' time for the independent returned candidates to join any political party, which won general seats in the election. After expiry of three days, the ECP shall publish a list of total number of general seats won by each political party, including the independent returned candidates, who joined that party. The seats reserved for women and non-Muslims shall be allocated through proportional representation system of political parties' lists of candidates on the basis of the total number of general seats secured by each political party.
7. A proportion is an equation in which two ratios are set equal to each other. There is no fixed number or ratio of general seats in the said provisions of the Constitution for the purpose of allocation of reserved seats. The only basis for allocation of reserved seats depends upon the total number of general seats secured by a political party, after induction of independent returned candidates, if any. In general elections, the number of the general seats won by political parties' nominated candidates and independents vary. It is for this reason, the ECP in every election sums up total general seats secured by all the political parties including the independents joining political party(ies) and thereafter divides them in the case of women by sixty seats reserved for women in order to determine the ratio on the basis whereof the reserved seats are to be allocated. This procedure has further been elaborated by rule 94 of the Rules. In this way, the share of each political party out of the seats reserved for women is determined. The same procedure is to be followed for the allocation of seats reserved for non-Muslims in the National Assembly. This formula also applies for the allocation of reserved seats in the Provincial Assemblies, keeping in view total number of general seats fixed by the Constitution for each Provincial Assembly.

## Whether Reserved Seats can be left Vacant:

8. In the general elections of 2024, a large number of independent candidates won. As a result, the number of general seats won by political parties in the

recent election is less than it was in previous elections. It was alternatively argued that after allocation of share of each political party on the basis of general seats won by each political party, rest of the reserved seats may be left vacant. A question arises whether seats reserved for women and non-Muslims in National and Provincial Assemblies can be left vacant? According to Article 34 of the Constitution steps shall be taken to ensure full participation of women in all spheres of national life. The Constitution allocated a specific number of seats for women and non-Muslims in Parliament and each Provincial Assembly. However, they can also contest on general seats, thereby enabling them to contribute in the process of legislation and policy making. It is the constitutional responsibility of every organ and authority of the State and each person performing functions on behalf of an authority of the State, every political party and every citizen to act in accordance with the provisions of the Constitution and the law. The seats reserved for women and non-Muslims is their constitutional right, as such, they cannot be deprived from their such fundamental right by leaving any reserved seat vacant. Similarly, no formula other than provided by the above provisions of the Constitution can be applied for allocation of reserved seats to political parties.

#### Facts of the Case:

9. The ECP had notified the Election Program for the election of National Assembly and all Provincial Assemblies through a Schedule ('Schedule') on 15 December 2023, which prescribed a specific period for submission, scrutiny and withdrawal of nomination papers for general seats and for seats reserved for women and non-Muslims. A number of candidates contested election to National and Provincial Assemblies independently, out of whom, eighty (80) returned candidates joined Sunni Ittehad Council ('SIC'), within three days of their notifications, as prescribed by the Constitution. SIC is an enlisted political party and Sahibzada Hamid Raza being its Chairman, requested the ECP for submission of his party's list of candidates and allocation of seats reserved for women and non-Muslims to SIC on the basis of total number of independent candidates, who joined it. The request of the appellant was declined by the ECP vide order dated 01.03.2024, which was assailed before the Peshawar High Court, but failed<sup>p1</sup>, hence these appeals.
10. The learned counsel for the appellant stated that after the independent candidates joined SIC, in a way, it secured general seats, therefore, SIC was entitled for its share in the seats reserved for women and non-Muslims in

National and Provincial Assemblies, respectively. The learned counsel stated that though SIC did not win general seats in National or any Provincial Assembly, but because of joining independent candidates, SIC has secured general seats. He suggested that after securing general seats, a purposive and progressive interpretation of Article 51(6) (d)&(e) and Article 106(3) (c) of the Constitution is required in order to consider SIC as a political party for the purpose of allocation of reserved seats. He made a reference to PLD 2024 SC 6982.

Findings:

11. The Supreme Court ('SC') can interpret the Constitution, but it must ensure that words are not read into it nor should it ascribe artificial meaning to commonly understood words. Article 51(6) (d) & (e) and Article 106(3)(c) of the Constitution are clear enough to understand. The said provisions state that election to the seats reserved for women and non-Muslims shall be conducted in accordance with the law, which is the Act. Its section 104 provides that political parties shall within the period fixed by the ECP for submission of nomination papers, file separate lists of their candidates with the ECP to seats reserved for women and non-Muslims; and the listed candidates shall file nomination papers by or before the last date fixed for filing of nomination papers for general seats as prescribed by the Schedule. The nomination papers filed for reserved seats shall be scrutinized in the same manner as nomination papers of candidates on general seats are scrutinized under section 62 of the Act.
12. Admittedly, the appellant (SIC) did not nominate any candidate for general seats nor filed its list of candidates and their nomination papers before the ECP within the stipulated period, which is a condition precedent to elect candidates to the seats reserved for women and non-Muslims. Although SIC is an enlisted political party and the independent elected members have a constitutional right to join it, but it does not mean that it fulfils the criteria necessary for allocation of seats reserved for women and non-Muslims. As SIC did not contest election, therefore, in the context of Article 51(6)(d)&(e) and Article 106(3)(b)&(c) of the Constitution, it cannot be termed as a political party. Merely because a large number of independent returned candidates joined SIC does not entitle it to file its list of candidates for reserved seats, and that too after the conduct of election. All the Hon'ble members of the Bench have unanimously held that the appellant is not

entitled to file its list of candidates for the seats reserved for women and non-Muslims.

13. As far as the judgment relied upon by the learned counsel for the appellant ([PLD 2024 SC 698](#)) with regard to purposive and progressive interpretation of the Constitution is concerned, relevant portion whereof is reproduced as under:

In absence of express words or an enactment, preventing the Council from inquiring into the matter upon resignation or retirement of a judge, jurisdiction of the Council cannot be abolished, ousted or terminated. Since there is no express provision in the Constitution, nor is there any enactment, preventing the Council from continuing its proceedings of inquiry in a situation where a judge is retired or resigns before conclusion of the inquiry, it is the constitutional obligation of the Council to conclude the inquiry initiated against a judge and form an opinion regarding his conduct.

In the referred case, Article 209 of the Constitution was under discussion, which assigns power to the Supreme Judicial Council ('SJC') to initiate an inquiry against a judge of Supreme Court, Federal Shariat Court or a High Court. The Constitution does not provide for automatic termination of an inquiry already initiated against a sitting judge, upon his resignation or retirement. It was for this reason that this Court held that once the SJC initiates the inquiry against a sitting Judge, it shall be taken to its logical conclusion. Had the provision of Article 209 of the Constitution been interpreted progressively or purposively, in a manner that upon retirement or resignation of a judge, the inquiry initiated by a constitutional body shall stand terminated, it would have amounted to adding these words into the Constitution, which is beyond the domain of this Court. The referred judgment in the circumstances is of no assistance to the appellant, rather it strengthens the view that the Constitution has to be interpreted rigidly and to be implemented in its letter and spirit. As has been discussed above that the appellant does not qualify for reserved seats, therefore, we cannot mould the Constitution in a manner to facilitate SIC. The appeals to such extent failed.

#### Status of Returned Candidates who joined SIC:

14. In order to ascertain the status of 80 returned candidates, who joined SIC, the learned counsel for the ECP on our directions, produced their nomination papers. Perusal whereof would reveal that out of the 80 returned candidates, 39 returned candidates had filed declarations about their affiliation with PTI. Despite such fact, the ROs while publishing list of the contesting candidates in Form 33, showed them as independents, on the basis whereof, they contested

election and were subsequently notified as independent returned candidates by the ECP. The ROs did not fill Forms 33 of these 39 candidates in consonance with their declarations. The learned counsel for the ECP admitted the fact that those 39 candidates filed declarations about their affiliation with PTI, but because of refusal of symbol by the ECP, endorsed by this Court on 13 January 2024 in the case of Election Commission of Pakistan<sup>3</sup>, PTI was not considered as a political party for the purpose of election. He relied upon the Explanation to rule 94 of the Rules, which is reproduced as under:

'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."

The learned counsel for the ECP stated that on account of non-allocation of symbol to PTI, the declarations of the candidates and their nomination by PTI were not accepted. According to him, all of them were independent returned candidates, who contested election on different election symbols. They had exercised their constitutional right by joining SIC out of their free will and consent.

Political Party:

15. Under Article 17(2) of the Constitution "Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality." A political party means a group of persons organized to acquire and exercise political power. Section 2(xxviii) of the Act defines a political party as under:

"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;

The definition in the Act is so clear that the Parliamentarians did not consider the need of further explanation. To the contrary, rule 94 of the Rules provides an explanation to the definition of a political party. It is a settled proposition of law that rules framed under a Statute must remain within its domain and cannot transgress the limits and parameters of the statute<sup>4</sup>. The explanation to rule 94 of the Rules is, therefore, beyond the scope of the definition of a political party, hence, amounts to transgressing the limits and parameters provided by section 2(xxviii) of the Act. The Constitution has recognized the right of formation of a political party, subject to any reasonable restrictions imposed by law in the

interest of sovereignty and integrity of Pakistan, public order and morality. After complying with the provisions of sections 200 and 201 of the Act, a political party shall be enlisted with the ECP in a manner as provided by section 202 of the Act. Under section 215 of the Act, a political party enlisted under the Act shall be eligible to obtain an election symbol for contesting election for National and Provincial Assemblies as well as local governments. However, under section 215(5) of the Act, if a political party fails to comply with the provisions

of section 209 or 210 of the Act, and fails to conduct its intraparty election, the ECP shall not allocate an election symbol to such political party or combination of political parties in subsequent election. This is the reasonable restriction imposed upon a political party in the circumstances.

16. Primarily, the purpose of allocation of a symbol to political parties is to facilitate their voters in identifying, recognizing and remembering the party's nominated candidates. If an election symbol of a political party is revoked for any reason, there is no penal consequence in the Act, except losing the right of having a common election symbol. Thus, refusing symbol to any political party does not affect its existence nor does it lose the rest of its rights available to it under the Constitution and the Act. Non-allocation of symbol to a political party, in no way prevents a candidate from filing a declaration about his affiliation with that political party, nor does it prevent such political party from nominating a candidate to contest an election. Once a political party is enlisted, it has a right under section 206 of the Act to nominate candidates for election to the National and Provincial Assemblies. If a candidate is nominated by a political party having no common symbol, under section 67(1) of the Act, he shall be allotted one of the prescribed symbols not allocated to any political party. Such political party can still propagate and influence political opinion and agenda in order to promote its nominated candidates. The primary role of a political party is to place a political agenda and policies to persuade people. To achieve its goal, a political party contests election by putting up candidates, and voters choose the party's nominated candidates on the basis of its manifesto, policies and programs. The party which wins majority seats in the election, forms a government and the parties which win less number of seats in the election, form an opposition. In any case, an enlisted political party shall exist and has a right to exercise its political power by participating in election, unless the Supreme Court upholds the declaration made against a political party by the Federal Government under section 212 of the Act, that such political party shall stand dissolved forthwith.

Status of PTI:

17. It is important to mention here that on account of not-conducting of intra-party election, the ECP had declined to allot symbol to PTI, because this is what section 215(5) of the Act stipulates. However, this did not mean that affiliation of the candidates with PTI stopped or that PTI stopped being a political party to contest election. Candidates from different constituencies from National and Provincial Assemblies filed nomination papers and declarations showing their affiliation with PTI, but the ROs while issuing list of contesting candidates drawn up in Form 33, declared them as independents. The decision of the ROs was solely based upon the explanation to rule 94 of the Rules and on account of the decision of the ECP, revoking symbol of PTI. The election authorities did not properly apply the relevant provisions of the Constitution and the Act. The PTI's affiliated candidates had submitted their declarations by 24 December 2023, much earlier than the judgment passed by this Court on 13 January 2024. The contention of the learned counsel for the ECP that the decision of declaring PTI's affiliated candidates as independents, were pursuant to the judgment of this Court, is unfounded. There was no restraining order either from the ECP or in the judgment of this Court, preventing PTI from nominating candidates and participating in election, but, the ROs and the ECP misinterpreted the said judgment, which created an anomaly.

18. Admittedly, a large number of renowned lawyers are members of PTI and many of them contested election of the year 2024 for the general seats in National and Provincial Assemblies, filing declarations about their affiliation with PTI. Surprisingly, none of them had challenged the order of the ROs, declaring them as independent candidates and their notifications being independent returned candidates issued by the ECP. It is not known as to what had prevented them to do so? The learned counsel for the appellant and the PTI were unable to assign any reason in this behalf. Though, a PTI candidate, Mr. Salman Akram Raja, challenged the order of the RO but did so only to the extent of declaring him as an independent candidate, but surprisingly he did not take the matter to its logical conclusion. His petition was objected to by the Registrar, against which, a chamber appeal was provided by the Supreme Court Rules, 1980 but he did not avail such remedy, for the reason best known to him. We must say that the administration of PTI and its nominated candidates for National and Provincial Assemblies, were equally responsible for misinterpreting the judgment of this Court by presuming the PTI's nominated candidates as

independents. They were negligent in failing to challenge the orders of the ROs and the ECP.

Entitlement of PTI for the Reserved Seats:

19. In the case in hand, the matter pending before this Court pertains to administrative responsibility of the ROs and the ECP with regard to allocation of seats reserved for women and non-Muslims, as provided by the Constitution and the Act. They have committed an illegality by declaring PTI's affiliated candidates as independents. These appeals pending before us is a continuation of the original matter of publishing list of contesting candidates drawn up in Form 33 by the ROs and notifications of returned candidates issued by the ECP in their administrative capacities. Since right of the electorate and of candidates for the seats reserved for women and non-Muslims is involved, they cannot be penalized because of the act of the ROs, the ECP, the PTI's administration and of those 39 candidates, who did not agitate their grievances. To protect and preserve their constitutional right, we can take notice of the matter.
20. Choosing a candidate for general seats and the seats reserved for women and non-Muslims is one of the fundamental rights of an electorate, guaranteed by the Constitution and the law. It is therefore, not a matter solely of the PTI, rather it involves a constitutional right of an electorate and legitimate interests of women and non-Muslims, which has to be provided to them on the basis of general seats secured/won by PTI. Protecting their constitutional rights and interests should have been the prime consideration of the ROs and the ECP, but the needful was not done and they acted contrary to the command of the Constitution and the law. We do not agree with the reasons which prevailed upon the ROs and the ECP, declaring PTI's 39 affiliated returned candidates as independents. The electorate voted for them in their such capacity. The act of the ROs and the ECP, declaring them as independent returned candidates amounts to depriving them from their constitutional right of forming a Parliamentary Party of PTI in National and Provincial Assemblies. Similarly, it has also deprived the PTI's women and non-Muslims candidates from their legitimate fundamental right to participate in national life, and to promote agenda and policies of the political party, to which they were affiliated. Consequently, the members to the seats reserved for women and non-Muslims shall be

elected in accordance with law on the basis of general seats won/secured, including the said 39 returned candidates.

Independents:

21. We have perused the nomination papers of 80 candidates, who joined SIC, out of whom, 41 candidates in clear terms declared themselves as independents, while filing their declarations without there being a certificate (ticket) from any party, including PTI. The date for submission of nomination papers as per the Schedule was with effect from 20 December 2023 till 24 December 2023. Admittedly, none of the candidates or the leadership of PTI came forward to claim that the candidates who declared themselves as independents, were actually the party's nominated candidates. There is nothing on the record to suggest that these 41 candidates were compelled, coerced, pressurized, misinterpreted the law or judgment of this Court or was there any other peculiar circumstance beyond their control, to declare their status as independents. In the given circumstances, there is no reason, why they should be considered as PTI's nominated candidates. Judges decide cases in accordance with the Constitution and law, based upon the material available before them. Any such contention must be supported by the record, which is lacking in this case, therefore, these 41 candidates were independents. In this behalf, observations made by the Hon'ble eight Members of the Bench in Paragraph 108 of the majority judgment as under:
22. ...The assertion of SIC and PTI that they were also PTI candidates and the electorate voted for them for their being PTI candidates though appears satisfactory but is not supported by the record presently before us. Therefore, it is the most challenging matter involved in the case where the scales of the requirements of law and of justice are to be justly, fairly and reasonably balanced.
23. According to section 67(3) of the Act, 'A candidate not nominated by any political party (hereinafter called as 'independent candidate')'. In Paragraph 110 of the judgment, authored by our learned brother Syed Mansoor Ali Shah, J., it is stated that, according to section 66 of the Election Act, two elements make a person the candidate of a political party: (i) the candidate's own declaration that he belongs to that party, and (ii) the party's certificate (party ticket) nominating him as its candidate'. We agree

with these findings and in the light thereof, there is no dispute that these 41 candidates did not file declarations about their affiliation with PTI, nor is there party's certificate (party ticket) nominating them as its candidates. This establishes the fact that at the time of submission of nomination papers, none of them had filed declarations about their affiliation with PTI, nor had a certificate (ticket) from the said party. All these candidates after being notified as independently elected candidates had an option to join PTI, instead they by exercising their constitutional right, joined SIC with free will and consent, and stated so in the affidavits filed by them. It is important to mention here that Mr. Salman Akram Raja, Advocate Supreme Court, appearing on behalf of PTI, surprisingly supported the stance of all those who joined SIC. The declarations in the nomination papers of 41 candidates were stated as independents, which were also accepted by this Court unanimously. It is for this reason, the Hon'ble

majority Members gave the 41 independent candidates an option that they may join PTI by submitting declarations about their affiliation with PTI and to obtain certificates of their nomination by PTI, within a period of fifteen days. With great respect, we do not agree with the decision of majority members with regard to providing opportunity to 41 independently returned candidates, who have already joined SIC, by exercising their constitutional right. They are now members

of SIC. Neither the Constitution nor the Act permits us to issue direction or provide an opportunity or additional avenue to them to join another political party and that too, within a period of fifteen days.

23. These are the reasons for our short order dated 12 July 2024, which is reproduced here under:

For reasons to be recorded later, we dispose of these appeals, petitions and miscellaneous applications through a short order as under:

1. These matters involve a controversy regarding the allocation of seats reserved for women and non-Muslims. The Sunni Itehad Council ("SIC") did not contest the General Elections of the year 2024. SIC, which demands allocation of reserved seats on account of inclusion of independent parliamentarians in it, did not secure a single seat in the National Assembly

or any of the Provincial Assemblies nor submitted a list

of its candidates for seats reserved for women and non-Muslims. Thus, it is not entitled to any of the reserved seats in the National Assembly and in the Provincial Assemblies. The impugned judgment and the order dated 1 March 2024 of the Election Commission of Pakistan ("ECP") to such extent is upheld.

2. Under Article 51(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), the total number of seats in the National Assembly shall be 326, out of which 60 seats are reserved for women and 10 seats for non-Muslims. Such right of women and non-Muslims has been guaranteed by the Constitution. They shall be elected in accordance with

the 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 and the Provincial Assemblies, as provided by Article 51(6) (d) and (e) of the Constitution. Therefore, they cannot be deprived of this right of theirs by leaving these seats vacant, and all reserved seats must be filled in, as provided by Article 224(6) of the Constitution.

3. The impugned judgment of the High Court and the said order of the ECP to the extent of the proportional representation distribution of seats amongst the political parties which won and secured seats is also maintained, however, since the ECP calculated and allocated the seats to the parties by the exclusion of the Pakistan Tehreek-e-Insaf ("PTI") candidates, therefore, to such extent, the impugned judgment of the High Court and the order of the ECP are set aside.
4. During the hearing, it transpired that a number of candidates had submitted their nomination papers declaring on Oath that they belonged to PTI supported by an affiliation certificate of the said party, though some did not submit affiliation certificates of PTI, however, since they stated on Oath that they belonged to PTI, and did not contradict themselves, they should be considered to be members of PTI in the National and the Provincial Assemblies. The ECP by misinterpreting the judgment of this Court dated 13 January 2024, which was regarding non-holding intra-party elections in PTI, wrongly mentioned the said candidates of the PTI as independents in Form 33 of the Election Rules. The ECP had no authority to declare validly nominated candidates of a political party to be independent candidates. Similarly, a candidate once declared himself/herself as a candidate of a

political party, could not subsequently resile from his/her candidature of a particular party, after the last date of withdrawal of the nomination papers.

5. It is important to mention here that neither the PTI nor any candidate affiliated with PTI approached either this Court before or during the hearing of these proceedings, or the High Court to challenge the decision of the ECP, declaring them as independents. However, in view of the fact that the appeal and the petition are a continuation of election proceedings before the ECP, we can look into the vires of the decision of the ECP in the light of the provisions of Article 51(1)(d) and (e) of the Constitution read with sections 66, 67 and 104 of the Elections Act, 2017 to safeguard the interest of women and non-Muslims. As a consequence whereof, the candidates who had submitted their nomination papers declaring that they belonged to PTI and had not filed a document showing affiliation with another political party before the last date of withdrawal of the nomi-nation papers, should have been treated as the Parliamentary Party of PTI, but the needful was not done by the ECP. Consequently, the PTI as a Parliamentary Party is entitled

to the reserved seats. The ECP should recalculate and reallocate the reserved seats amongst the political parties, including

the PTI, as provided by Article 51(6)(d) and (e) of the Constitution.

6. The candidates who had submitted their nomination papers by 24 December 2023, which was the last date of submission of nomination papers, and had declared themselves either as independent candidates or had left blank the relevant column in the nomination papers/declaration and were elected shall be considered to be independents. SIC is a registered political party and every independent member of the National Assembly and of the Provincial Assemblies has a right to join it. All those who joined the SIC are presumed to have done so out of their own free will. None of them claimed to have joined SIC because of any misunderstanding of any judgment, the law, compulsion, coercion or undue influence and it is not for this Court to presume otherwise.

We must ensure that words are not read into the Constitution nor to ascribe artificial meaning to commonly understood words. We must also abide by validly enacted laws and must not do anything either to hinder or facilitate a political party by ignoring the laws mandate.

Sd/-

(Qazi Faez Isa)

CJ

Sd/-

(Jamal Khan Mandokhail)

**Judge**

**Qazi Faez Isa, CJ.** I agreed with the short order dated 12 July 2024 authored by Justice Jamal Khan Mandokhail and agree with his detailed reasons thereof which have been issued today.

2. However, I consider it my duty to point out the constitutional violations and illegalities in the majority's short order of 12 July 2024, and the majority's detailed judgment of 23 September 2024, the order/ clarification of 14 September 2024 and the Clarification of 18 October 2024 (respectively 'the majority's short order', 'the majority's judgment', 'the majority's order/clarification' and 'the majority's Clarification'). I do hope and expect that my distinguished colleagues in the majority<sup>1</sup> will reflect and correct their mistakes and ensure that Pakistan is governed in accordance with the Constitution of the Islamic Republic of Pakistan ('the Constitution'). Unfortunately, the review petitions against the majority short order could not be heard because my Hon'ble colleagues (Justice Syed Mansoor Ali Shah and Justice Munib Akhtar) outvoted me on the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023; attached is my separate note to the minutes of the meeting held on 18 July 2024.
  
3. These appeals were heard by a thirteen-member Bench of this Court, comprising of all judges of the Supreme Court.<sup>2</sup> The majority's short order concluded by permitting the Election Commission of Pakistan ('ECP') and Pakistan Tehreek-i-Insaf ('PTI') to, 'apply to the Court by making an appropriate application, which shall be put up before the Judges constituting the majority in chambers for such orders and directions as may be deemed appropriate'. This deviated from how courts have always functioned, was novel and unprecedented.

4. The majority of eight judges decided to part ways with the Court, comprising of thirteen judges, which had heard the appeals. The majority set up its own virtual court, permitted the making of 'an appropriate application' by the ECP and PTI, and directed that such appropriate application would only be heard by them whilst cloistered in Chambers. In doing this the majority of the Hon'ble Judges effectively legislated, because neither the Constitution nor any law permits what they did. Incidentally no party or counsel during the hearing ever suggested the course of action which the majority adopted, and neither the majority's short order nor the majority's judgment offers an explanation to justify it. In effectively legislating the Hon'ble Judges in the majority also contradicted themselves. They stated that the ECP and the PTI may 'apply to the Court' but then proceeded to state that only the 'judges constituting the majority' would hear the 'appropriate application'. This was not the only contradiction. It has been settled by the Supreme Court that a hearing of a case after it has been decided (which would be a review petition) should be by the same Bench and by the same number of Judges as had earlier heard the case:<sup>3</sup>

'Needless to mention that the dissenting Judges on the Bench that heard the case, subject to their availability, are necessary members of the Bench constituted to hear review petition filed against the majority judgment, i.e., judgment of the Court,.... .'

'10. As the judgment of the Court is considered to be the judgment of all the members of that Bench, irrespective of its being majority judgment or unanimous judgment, there can be no difference in judicial powers of the members .... Hence, there can be no fetters on the exercise of his judicial power as that would offend the fundamental constitutional value of independence of the judiciary.'

5. The majority disregarded the precedents of this Court, including the above. They not only carved out a separate eight-member 'court' from the thirteen-member Court, but also innovated further by not finally concluding the hearing of the appeals, because they permitted appropriate application to be filed, introduced timelines and changed what the Constitution provided.
6. The timelines that were introduced were as under:

- (i) 41 returned candidates to file a statement within 15 days;

(ii) Upon receipt of the above statements the ECP to give notice to the political party concerned;

(iii) Then within 15 days the political party to submit its 'confirmation that the candidates contesting the General Elections as its candidates'; and

(iv) The ECP within 7 days to issue and post on its website 'the list of candidates now MNAs'.

7. Judges may decide or dispose of a case as per their understanding of the Constitution and the law but it is critical that the case must be decided or disposed of. Permitting appropriate application to be filed by the ECP or the PTI meant that the case was not decided or disposed of. This coupled with the stated timelines effectively kept the appeals pending. In civil cases after a judgment is pronounced the decree follows. In constitutional cases too a judgment can be executed, provided it is finally and conclusively decided. The majority's short order and the majority's judgment did not conclude the appeals. The well trodden legal path was abandoned by the majority which created unnecessary and avoidable problems. Since the appeals were not finally decided there was no decision which could be stated to be binding, in terms of Article 189 of the Constitution. Similarly, contempt of court proceedings for any non-compliance of the 'order of the Court', under Article 204 of the Constitution, cannot be initiated. The right of review, which Article 188 of the Constitution grants, was also effectively negated.

8. The majority's short order was announced on 12 July 2024, following which the Hon'ble Judges had to issue their detailed reasons for the same. Instead something inexplicable happened. A purported 'order' was uploaded on the Supreme Court's website on 14 September 2024, and this was done without informing the Chief Justice, the other Judges (in the minority), and bypassing the Registrar and the office of the Supreme Court. And, this was done on a Saturday, after the Registrar had left. The Deputy Registrar who was still in the premises of the Supreme Court submitted the following note to (me) the Chief Justice, after 8 pm on Saturday, 14 September 2024:

'I bring it to your kind notice that a news is floating on the media that Supreme Court of Pakistan has issued clarification of order dated 12.07.2024 passed in C.A. No. 333/2024 (Election - National Assembly / Reserved Seats). However, neither cause list was issued, nor notices were issued to the parties by the office

and the order has still not been received in office till 8.00pm and was uploaded on the website.

Submitted for information, please.'

9. In view of the unusual happenings (mentioned above) I sought the following information from the Registrar; my questions and the answers from the Registrar are mentioned below:

<b>Questions by the Chief Justice</b>	<b>Answers by the Registrar</b>
1) When were the said applications filed?	The application of the ECP was received in the office of the Registrar on 26 August 2024.
2) Why were the said applications not fixed before the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023?	These applications were not placed before the Committee in view of the majority's short order as directed by them to hear it in Chambers.
3) How were the said applications fixed for hearing and how was this done without issuance of cause list disclosing their fixation?	These applications were not fixed for hearing rather were placed before the majority Judges in Chambers. As such no cause list was issued.
4) Did the office issue notices to the parties and to the Attorney-General for Pakistan?	Notices were not issued to the parties nor to the Attorney-General for Pakistan.
5) In which courtroom/ chamber were the applications heard, and by whom?	No hearing took place on these applications as the applications were placed before the majority Judges in Chambers.
6) Why was a cause list not issued for announcement of the said order?	As the matter was placed before the majority Judges in Chambers and no hearing took place on the applications, therefore, the cause list for announcement of the said order was not issued.

**Questions by the  
Chief Justice**

**Answers by the Registrar**

7) Why was the said order not fixed for announcement?	Neither any hearing took place on the applications nor the judgment/order was reserved, rather the same was decided by the majority Judges in Chambers.
8) Without first depositing the original file and the said order in the Supreme Court's office how was the said order uploaded on the website?	Webmaster of IT Directorate uploads orders on the official website of this Court and did so on the directions of the Hon'ble Judges.
9) Who directed the uploading of the said order on the Supreme Court's website?	As reported, the Webmaster of IT Directorate uploaded the said order on the official website of this court on 14 September 2024 on the direction of Mr. Sadaqat Hussain, Sr. PS to Justice Syed Mansoor Ali Shah (HJ-1). As also reported, he received the said order via Whatsapp from Mr. Sadaqat Hussain at 4:32 pm on 14 September 2024 along with the Tagline.

10. The majority's order/clarification was admittedly passed without first listing the cases, without issuing notices to the parties and without issuance of the requisite notice to the Attorney-General for Pakistan. The title of the 'order' stated - 'In Chambers'. However, not all of the said eight Hon'ble Judges were in the Supreme Court premises and some were not even in Islamabad. By not issuing notices, not granting an opportunity of hearing, and not conducting the hearing in open

Court, the well established rules of natural justice were transgressed, and Article 10A of the Constitution, which gives protection to procedural fairness and has elevated due process and fair trial to the status of a Fundamental Right, was contravened. A nine-member Bench of this Court had recently rendered the following unanimous opinion:

'The proceedings of the trial by the Lahore High Court and of the appeal by the Supreme Court of Pakistan do not meet the requirements of the Fundamental Right to a fair trial and due process enshrined in Articles 4 and 9 of the Constitution and later guaranteed as a separate and independent Fundamental Right under Article 10A of the Constitution.'<sup>4</sup>

11. The majority's order/ clarification was incorporated into the majority's judgment (in its paragraph 58), however, the title of the 'order' was changed to 'clarification'. The Hon'ble Judges may have realized their non-compliance with Article 10A of the Constitution, therefore, in the majority's judgment they stated that, 'there was no legal requirement nor did we find it necessary to hear the parties before clarifying our own order'. However, it was acknowledged that the same was done 'without issuing notice to or hearing the parties'. With respect, to say that there was no legal requirement to hear the parties disregarded innumerable judgments of this Court. 'It has been laid down as principle of law by the superior courts that in every statute, principle of natural justice of hearing a person... shall be deemed to have been embodied.'<sup>5</sup> It is a '...principle of natural justice that an order affecting the rights of a party cannot be passed without an opportunity of hearing.'<sup>6</sup> '...the appellant shall have the right of being heard.'<sup>7</sup> By not hearing the parties to the appeals the Hon'ble Judges also effaced several millennia of jurisprudence.<sup>8</sup> No provision of the Constitution, law or precedent was cited to support that there was 'no legal requirement' to hear the parties. The mandatory requirement of openness and transparency were also transgressed. Secrecy and one-sided determinations are the harbingers of suspicion and mistrust, and undermine the trustworthiness and standing of courts.

12. The majority's order/ clarification was followed by yet another; the majority's Clarification which, like the earlier one of 14 September 2024, was uploaded on the website of the Supreme Court in similar manner. This was done on Friday, 18 October 2024 at 3.59 pm. This time too the cause list was not issued, parties were not informed, and an opportunity of hearing was not provided. Where and when the Hon'ble Judges had met also remains a mystery. The title of the majority's Clarification is baffling, it stated, 'In Chambers at Islamabad and Karachi', that is, simultaneously in two cities. The majority's judgment (in paragraph 120) had stated that they were 'parting with the judgment', but almost a month later (on 18 October 2024) in the majority's Clarification they invalidated their own parting.

13. In my 46 years association with the law, I have not come across such novel methodology (as mentioned above), nor learnt of such practice being in vogue in any other country governed by the rule of law. In Chittaranjan Cotton Mills Ltd. v. Staff Union<sup>9</sup> this Court had (over four decades ago) stated the consequences of an improperly constituted court:

'Where the Court is not properly constituted at all the proceedings must be held to be coram non judice and, therefore, non-existent in the eye of law. There can also be no doubt that in such circumstances "it would never be too late to admit and give effect to the plea that the order was a nullity", as was observed by the Privy Council in the case of Chief Kwame Asante, Tredahone v. Chief Kwame Tawia (9 DLR 686 (PC)).'

The majority's order/clarification and the majority's Clarification cannot be stated to have been issued by a 'Court'; the forum which issued them was coram non judice. Moreover, such forum did not comply with the rudimentary principles of natural justice, of due process and of fair trial. Therefore, with great respect, the same do not constitute legal orders, and are of no legal effect. They also cannot be categorized as a 'decision' of the Supreme Court (in terms of Article 189 of the Constitution), resultantly, they need not be followed or acted upon.

14. Another significant departure from the Constitution by the majority's short order was to repeatedly refer to minorities therein. Minorities are neither mentioned in Article 51 nor in Article 106, and instead both provisions state 'non-Muslims'. Muslims and non-Muslims denote religious status; without reducing either's citizenship rights. To designate non-Muslims as minorities is suggestive of a reduced citizenship status. Minorities in the context of the Constitution could be any number of groups, such as, those with disabilities, the illiterate, racial or ethnic minorities, and may also include religious minorities (a sect within the same religion or of another religion). Substituting non-Muslims with minorities and disregarding the placement of these two words in the Constitution is neither linguistically nor textually correct.
15. The word minorities is used in the Constitution three times; in its Preamble and in the Principles of Policy.<sup>10</sup> Non-Muslims is used fifteen times in the Constitution.<sup>11</sup> Everyone who considers the Constitution, particularly Judges, must adhere to its language and not lift anything from one place and superimpose it on another provision. An eleven-member Bench of this Court in Benazir Bhutto v. Federation of Pakistan<sup>12</sup> held that:

'In construing constitutional provisions the expression used in one provision cannot be lifted and superimposed on the other provision which is not only against the canons of interpretation but also makes the reading of the provisions as a whole discordant.'

16. Articles 51 and 106 of the Constitution were under consideration in the appeals, however, the majority's short order and the majority's judgment not only disregarded their texts but effectively amended the Constitution. The Constitution can only be amended in the manner as stipulated therein (Articles 238 and 239), and judges have no role in amending it. In *Hamza Rasheed Khan v. Election Commission of Pakistan*<sup>13</sup> six judges of this Court categorically stated the obvious, which was that no court, including the Supreme Court, could confer jurisdiction upon itself:<sup>14</sup>

'12. Any court, including this Court, cannot by a judicial

order confer jurisdiction on itself or any other court, tribunal

or authority. The power to confer jurisdiction is legislative

in character; only the legislature possesses it. No court can create or enlarge its own jurisdiction or any other court's jurisdiction. Nor any court has any inherent or plenary jurisdiction.

Because of the constitutional command in Article 175(2) of the Constitution, the courts in Pakistan do not possess any inherent jurisdiction on the basis of some principles of common law, equity or good conscience and only have that jurisdiction which is conferred on them by the Constitution or by or under any law.'

'26. ...conferring the jurisdiction, vesting the right of action, specifying the acts and providing the procedure would clearly amount to legislating rather than interpreting law.'

17. The majority's short order did not state that an implementation Bench had been constituted. However, even if it is assumed (for the sake of argument alone) that this is what the majority had done, even then the majority's order/clarification and the majority's Clarification could not be issued by such a purported implementation Bench. In *Adnan A. Khawaja v. State*<sup>15</sup> a five-member Bench of this Court held, that:

'It goes without saying that an implementation Bench cannot go behind a concluded and final judgment or revisit the same.'

18. This Court is empowered to call others to account, therefore, it must all the more be self-accountable, as was expressed by a nine-member Bench of this Court in *Liaquat Hussain v. Federation of Pakistan*:<sup>16</sup>

'It may be seen that independence of Judiciary and its

separation from Executive as mandated by the Constitution does not make its authority absolute but require its regulation within the four corners of laws, rules and procedure. Its normal functioning should be transparent and inspire confidence amongst general public. It is bound to exercise jurisdiction and authority within the prescribed domain so that it remains self-accountable.'

'...so long as the Parliament acts within the parameters of the Constitution, there is no restriction or prohibition to legislate on any subjects ... .'

19. Justice Syed Mansoor Ali Shah had disagreed with the then Chief Justice Umar Ata Bandial and Justice Ijaz ul Ahsan, and had dismissed the constitution petitions challenging the amendments made to the National Accountability Ordinance, 1999, stating that:

'...the majority judgment through a long winding conjectural path of far-fetched "in turn" effects has tried hard to "ultimately" reach an apprehended violation of the fundamental rights. The majority judgment has also fallen short to appreciate that what Parliament has done, Parliament can undo; the legislative power of the Parliament is never exhausted. If the Parliament can enact the NAB law, it can also repeal the entire law or amend the same.'

The five-member Bench of this Court in its decision (in the Intra Court Appeals<sup>17</sup> arising out of the above petitions), agreed with Justice Shah, and also agreed with him that the courts must not be influenced by politics and should preserve the future of democracy:

'Courts must rise above the 'hooting throng' and keep their eyes set on the future of democracy, undeterred by the changing politics of today. Courts unlike political parties don't have to win popular support. Courts are to decide according to the Constitution and the law even if the public sentiment is against them.'

20. Justice Syed Mansoor Ali Shah (in stating the above) had departed from his earlier decision in *Jurist Foundation v. Federation and Pakistan*<sup>18</sup> wherein a challenge to the appointment of General Qamar Javed Bajwa as the Chief of the Army Staff was made. The Government of the then Prime Minister Mr. Imran Khan, the then Law Minister Mr. Muhammad Farogh Naseem and the then Attorney-General Mr. Anwar Mansoor Khan wanted General Bajwa to continue as the Chief of the Army Staff. Mr. Muhammad Farogh Naseem even resigned from his position of Federal Law Minister to represent General Bajwa in Court. He was assisted by the learned Mr. Abid Shahid Zuberi. Within two days of the

filings of the petition the petition was decided. The petition was neither allowed nor dismissed; instead what the respondents<sup>19</sup> wanted was given. The Court extended the tenure of General Bajwa by six months; which constituted legislating, and this is demonstrable from the judgment authored by Justice Syed Mansoor Ali Shah:

'Continuity of Incumbent COAS for Six Months

48. ...the tenure of a COAS and in the light of the assurance given by the Federal Government to address these issues through fresh legislation within six months, we ... find it appropriate to allow the current status of the COAS to continue for a period of six months, whereafter the new legislation (Act of the Parliament) shall determine his tenure and other terms of his service.' (p. 44)

The Constitution must never be made subservient to personal ambition, and those who do so, as well as their abettors and facilitators, should be made to face the consequences of their actions.

21. These appeals arise out of two civil petitions for leave to appeal<sup>20</sup> ('the said CPLAs') which had assailed the unanimous judgment dated 25 March 2024 of a five-member Bench of the Peshawar High Court by a political party, the Sunni Ittehad Council, which stated that the designated independent candidates in the National Assembly, who had joined it within the prescribed three days, as stipulated in the provisos to sub-clauses (d) and (e) of clause (1) of Article 51 of the Constitution, were their candidates, therefore, the Sunni Ittehad Council be given proportional representation from the seats reserved for women and non-Muslims, and the same be done in respect of the Provincial Assemblies, under sub-clause (c) of clause (1) of Article 106.
22. The said CPLAs came up for hearing before a three-member Bench<sup>21</sup> of this Court on 6 May 2024 when leave to appeal was granted, and on the very same day, the impugned judgment of the Peshawar High Court and ECP's order dated 1 March 2024 were suspended. The Court then stated that since the interpretation of the Constitution was required, therefore, the cases be placed before the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023 for the constitution of a larger Bench. The appeals (emanating from the said CPLAs), however, were ordered to be fixed on 3 June 2024, which was after almost a month.

23. I as Chief Justice, heading the Committee, proposed that these appeals should not be heard by those who may be considered to be the beneficiaries or affectees of the constitutional amendment which was then being discussed; to consider making the office of the Chief Justice a tenured three year post. The potential beneficiaries/affectees would have been the Chief Justice and five Judges,<sup>22</sup> and they would have been excluded from the Bench. However, the majority (Justice Syed Mansoor Ali Shah and Justice Munib Akhtar) did not agree. Therefore, I next proposed that the Full Court should hear these appeals.

24. The issue in these appeals was straightforward, which was to consider certain provisions of Articles 51 and 106 of the Constitution. However, these provisions were attended to in the majority's judgment cursorily. The first 58 paragraphs of the majority's judgment are devoted to a general discourse on elections, political parties, Articles 17 and 19 of the Constitution, certain provisions of the Elections Act of 2017, the rules made thereunder, the majority's short order and the majority's order/clarification. Reference was also made to an application (CMA No. 5913 of 2024, filed on 26 June 2024) on behalf of the PTI and Mr. Gohar Khan, but neither had signed it; the application was signed by an Advocateon-Record of this Court. The application states that the applicants 'may kindly be allowed to assist this August Court as interveners.' The majority's judgment also refers to eight articles, seven books mentioned fourteen times, fourteen foreign cases and two excerpts from speeches, but without stating their relevance to our Constitution, the Elections Act and the rules made thereunder.

25. Pakistan has a written constitution. The language used in the Constitution is easily understandable. Unlike the constitutions of some countries our Constitution is not centuries old nor does it use archaic words requiring extrapolating meaning therefrom. The majority's judgment, with respect, lost sight of the basics. The people of Pakistan are governed by the Constitution and by the laws enacted by their elected representatives, they do not want to be told how to govern themselves or made to encounter foreign doctrines, like the one expounded by the Austrian jurist and philosopher Hans Kelsen which was misapplied by the Supreme Court, and had caused untold misery to Pakistanis. In a rule based system like ours the applicable rules have to be applied, irrespective of one's own personal preferences. It is best not to interpolate one country's constitution with that of another. For instance, our Constitution requires that those wanting to

contest elections must be a minimum twenty-five years of age, but in the United Kingdom the minimum age is eighteen years, and the minimum prescribed age for the President of Pakistan is forty years, but in the United States of America the age is thirty-five years. Just because in the United Kingdom or in the United State of America the stated age is different does not mean that it is correct or better, let alone that we should adopt it. We should do what our Constitution states.

26. The applicable provisions of our constitution are clear and self-evident, and it is best not to look for meaning which does not exist in the Constitution of the Islamic Republic of Pakistan.

Sd/-

(Qazi Faez Isa)

CJ

MWA/S-34/SC Order accordingly.