

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Syed Mansoor Ali Shah
Justice Munib Akhtar
Justice Yahya Afridi
Justice Amin-ud-Din Khan
Justice Jamal Khan Mandokhail
Justice Muhammad Ali Mazhar
Justice Ayesha A. Malik
Justice Athar Minallah
Justice Syed Hasan Azhar Rizvi
Justice Shahid Waheed
Justice Irfan Saadat Khan
Justice Naeem Akhtar Afghan

Civil Appeals No. 333 and 334 of 2024
AND
Civil Misc. Application No.2920 of 2024
[Stay application]

*Sunni Ittehad Council through its Chairman,
Faisalabad and another.*
(In both cases)

... Appellants

Versus

*Election Commission of Pakistan through its
Secretary, Islamabad and others.*
(In both cases)

... Respondents

AND

Civil Petitions No. 1612 to 1617 of 2024
AND
C.M.A. No.3554 of 2024 in CP NIL/2024
[For permission to file and argue]

*The Speaker Provincial Assembly of Khyber Pakhtunkhwa,
Peshawar and others.*
(In CPs.1612 to 1614/24)

*Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar and others.*
(In CPs.1615 to 1617/24)

Kanwal Shauzab.
(In CMA.3554/24)

...Petitioners/Applicant

Versus

Shazia Tehmas Khan and others.
(in CPs.1612 and 1616/24)

Aiman Jalil Jan and others.
(in CP. 1613 and 1617/24)

Mehr Sultana and others.
(in CPs.1614 and 1615/24)

*Election Commission of Pakistan, through its Secretary,
ECP House, Islamabad and others.*
(in CMA.3554/24)

... Respondents

In Civil Appeals
For the Appellants
(In both Appeals)

: Mr. Faisal Siddiqui, ASC
Assisted by Mr. Ammar Rafique, Adv.
a/w Mr. Ajmal Ghaffar Toor, ASC
Mr. Haider Bin Masud, Adv.
And Mr. Sahibzada M. Hamid Raza
(appellant)

For Respondent No. 1-ECP
(In both Appeals)

Mr. Sikandar Bashir Mohmand, ASC
Assisted by Mr. Abdullah Noor
And Hamza Azmat, Advocates
a/w Mr. M. Arshad, D.G (Law) ECP.
Ms. Saima Tariq Janjua, D.D. Law (ECP)

For PPPP
(In both Appeals)

Mr. Farooq H. Naek, Sr. ASC
Asstt. by Mr. Asad Mehmood Abbasi, ASC
Mr. Sheraz Shaukat Rajpar, Adv.
Syed Qaim Shah, Adv.

For PML(N)
(In CA. 333/24)

Mr. Haris Azmat, ASC.
Assisted by Ms. Faiza Asad, Adv.
Ch. Akhtar Ali, AOR.

For MQM
For Respondent No. 5
(In CA. 333/24)

Nemo.
Mr. M. Siddique Awan, ASC.

For Respondent No. 9
(In CA. 333/24)

Syed Rifaqat Hussain Shah, ASC/AOR.

For Respondent No. 11
(In CA. 333/24)

Mr. Kamran Murtaza, Sr. ASC

For Respondents No.
15 to 19, 21-22:
(In CA. 333/24)

Mr. M. Makhdoom Ali Khan, Sr. ASC.
Mr. Sarmad Hani, ASC.
Mr. Saad Mumtaz Hashmi, ASC
Asst. by Zarar Qadir Shoro, Adv
a/w Yawar Mukhtar, Adv.

For Respondent No. 20
(In CA. 333/24)

Mr. Zulfikar Khalid Maluka, ASC.

For Respondent No. 9
(In CA. 334/24)

Mr. M. Shahzad Shaukat, ASC.

In Civil Petitions

For the Petitioners
(In CPs.1612-1614/24)

For the Petitioners
(In CPs.1615-1617/24)

For Respondent No. 1
(In CPs.1612 & 1616/24)

For R-6(in CP 1612/24)
and For R-2 to 5 (in CP
1616/24)

For Respondent No.1 to 6
(In CP.1613 and 1617/24)

For Respondents No.1,2,3,
8
(In CP.1614/24)

For the Applicant
(In CMA. 3554/24)

On Court Notice:
For the Federation

For Govt. of Punjab

For Govt. of
Khyber Pakhtunkhwa

For Govt. of Sindh

For Govt. of Balochistan :

Asstt. By Raza ur Rehman, Adv.

Mr. Asad Jan Durrani, ASC.
a/w
Malik Khawas, Asst. Law Officer, KPK
Assembly

Mr. Shah Faisal Utmankhail,
Advocate-General, KP.
Mr. Kausar Ali Shah, AAG, KPK
Mr. Zahid Yousaf, AOR
Mr. Amir Javed, ASC

Mr. Shah Khawar, ASC

Mr. Kamran Murtaza, Sr. ASC
Qari Abdul Rasheed, ASC

Mr. Imran Khan, ASC

Mr. Salman Akram Raja, ASC.

Assisted by:
Mr. Sameer Khosa, ASC
Malik Ghulam Sabir, Adv.
Ramsa Banuri, Samreen Qureshi, and
Hamad Amin advocates.

Mr. Mansoor Usman Awan,
Attorney-General for Pakistan.
(Assisted by: Ms. Maryam Ali Abbasi, Adv.)
a/w Malik Javed Iqbal Wains, AAGP
Raja M. Shafqat Abbasi, DAG
Ms. Maryam Rasheed, Adv
Mr. Khalid Ishaq,
Advocate-General, Punjab.
Mr. Sanaullah Zahid, Additional Advocate-
General, Punjab.

Mr. Shah Faisal Utmankhail, Advocate-
General, KP.

Mr. Shah Faisal Ilyas,
Additional Advocate-General, KP.

Mr. Miran Muhammad Shah, Addl. A.G.
Sindh (through video-link from Karachi)

Mr. Muhammad Asif Reki,
Advocate-General, Balochistan.
(Through video-link from Quetta)
Mr. M. Ayaz Swati, Addl. AG

Mr. Tahir Iqbal Khattak,
Additional Advocate-General, Balochistan.
(At Islamabad)

For ICT

Mr. Muhammad Ayyaz Shaukat, A.G.
Islamabad

Date of Hearing

09.07.2024

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 s. 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

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Islamabad, the
___ of July, 2024
Approved for reporting

Annexure-A

(Names of Candidates Affiliated with the Pakistan Tehreek-e-Insaf as per the list verified from the data provided by ECP¹)

Sr. No.	Number and Name of the Constituency	Name of the Candidate
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
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
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

¹ CMA No.5924 of 2024 consists of Volume (I-VI).

Annexure-B
(Names of Independent Candidates)

Sr. No.	Number and Name of the Constituency	Name of the Candidate
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
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
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)	Javid 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