

ELECTION COMMISSION OF PAKISTAN

PRESENT

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

CASE No. F. 23(304)/2022-Law

&

CASE No. F. 2(4)/2004-Confid.

Subject: APPLICATION UNDER SECTION 4 READ WITH SECTION 208(4) OF THE ELECTIONS ACT, 2017 READ WITH RULE 157 OF ELECTION RULE 2017

Chaudhary Shujat Hussain, President Pakistan Muslim League, House 9,
 Street 72, F-8 3, Islamabad

..... Petitioner

Vs.

1. Chairman Central Election Commission, Pakistan Muslim League, House No 33, Devis Road Lahore.
2. Ch. Pervaiz Elahi , President Pakistan Muslim League, Punjab, 30- C, Zahoor Elahi Road, Gulberg, Lahore
3. Kamal Ali Agha, Central Secretary, Pakistan Muslim League, House No, 33 Devis Road, Lahore

..... Respondents

For the petitioner:

Barrister Umer Aslam, Advocate Supreme Court
 along with Mr. Hunain Tariq Advocate and Mr.
 Khuzair Raheem, Advocate

For the respondent No.1: Mr. Arshad Jahangir Jhoja, Advocate

For the respondent No.2: Mr. Ishtiaq Gohar

For the respondent No. 3: Imdad Hussain Chandio



Date of hearing: 18.08.2022

ORDER

Sikandar Sultan Raja, Chairman- The instant petition has been heard today by the Commission. Brief facts which gave rise to the instant petition are that Mr. Shujat Hussain, President of Pakistan Muslim League invoked jurisdiction of this Commission under section 4 read with section 208(4) of the Elections Act, 2017, further read with Rule 157 of the Election Rules, 2017, whereby he had impugned the proceedings i.e. resolution passed by the alleged Central Working Committee of the Pakistan Muslim League in its meeting held on 28.07.2022. This petition was followed by a letter from the Petitioner received in the Commission on 4th August, 2022, with the similar contentions and for the similar relief sought through the instant petition which was also taken-up for hearing along with the instant petition.

2. The matter was argued by the learned counsel for the petitioner on the preliminary date. According to the learned counsel for the petitioner, the petitioner was removed from the Party's presidency on account of his ailing health and the Secretary General was also removed from his position and the so-called Committee had proposed to hold elections for the said seats on 10th August, 2022, pursuant to the above referred resolution. The learned counsel also made reference to Articles 43 & 44 of the Party's Constitution, whereby Central Working Committee has been formed/constituted. He maintained that in the Party's Constitution, the President can only be elected through the Central Working Committee through elections and last Intra-Party-Election of the Party including election for the President was held on 16.01.2021 and the Petitioner was elected as President un-opposed. He added that the said election remained unchallenged till date even the present respondents accepted it without any hesitation and agitation. The counsel while referring to the judgment passed by the august Supreme Court reported in 2014 SCMR 1573 argued that the august Court has categorically observed and held that the doctrine of acceptance by silence can be invoked if the removal and supersession is not challenged by the



person so removed. He further added that the Central Working Committee was never formed for the election of the President nor its Members were notified in terms of Article 43 of the Party's Constitution. The Committee consists of 200 Members out of which 150 are elected by the PML's Council and 50 are selected by the President. He elaborated that the President has never nominated or selected 50 members for the constitution of the Central Working Committee. Since, no central Working Committee has ever been formed, therefore the proceedings carried out by the so-called Members by personation on 28.07.2022; by participating therein and signing the proceedings are without lawful authority and illegal. On Commission's query, the learned Counsel had apprised the Commission that in the Constitution of the Party, the President can be removed only by death or resignation. In order to support his arguments, he relied on case law reported as PLD 2018 Islamabad 300. Moreover, the learned counsel had also made reference to sections 208 & 209 of the Elections Act, 2017, for maintaining that any change in the Party's formation is required to be sent to the Commission for information and up-dating of record. However, no such change was ever made and communicated to the Commission as per record. The learned counsel had further maintained that the Election Commission has ample jurisdiction to entertain the instant matter and take cognizance of the matter pursuant to the provisions of the Elections Act, 2017. He had relied on case law reported as PLD 2018 SC 366, PLD 2018 SC 189 and 2018 SCMR 1166 and made reference to section 208 of the Elections Act, 2017 and Rule 157 & 158 of the Election Rules, 2017. At the end, the learned counsel had prayed that action may be taken against all the individuals who participated in the above referred illegal exercise and also prayed for injunctive order to the effect that the respondent No. 1 be restrained from taking any further proceedings or action pursuant to the resolution in question.

3. After hearing preliminary arguments on 05.08.2022, status quo was ordered by the Commission to be maintained by the parties with observation that any action taken in the intervening period shall have no effect pursuant to



the instant order. Notices of the hearing were also issued to the parties for 16.08.2022 on which date parties were partly heard and on subsequent date i.e. 18.08.2022, matter was finally heard.

4. Today the matter has finally been argued. The petitioner has once again repeated his arguments. The crux of the petitioner's arguments is as under: -

- a. Since no election for Pakistan Muslim League Council was ever held for appointment of 150 members and no nomination was ever made by the Central Working Committee, existence of so-called Central Working Committee is out of question and any proceedings i.e. session/meeting by it is void ab-initio.
- b. As Central Working Committee does not exist, as such Central Election Commission and its members as per Article 119 of the constitution of the PML have neither been appointed nor notified;
- c. Subsequent change in the party constitution as per section 208(4) of the Elections Act, 2017 have never been notified and communicated to the Election Commission for updation of record;
- d. Since, no provision in the PML's constitution exists for removal of the President therefore the procedure adopted by the respondents is null and void and has no legal effect.
- e. The petitioner was elected as President PML un-opposed on 16.01.2021, up-till next party elections and the same was accepted by all office bearers without any objection. Therefore, doctrine of acceptance attracts and proceedings carried out by the respondents have no force and out rightly illegal.

5. The petitioner's other contentions with regard to the jurisdiction of this Commission and factual grounds provide the following:-



- i. The Election Commission is an Administrative Authority in terms of Article 17(3) of the Constitution and it is the forum to which all parties are obliged to and accounted for their respective affairs;
- ii. As per Section 208 (4) of the Elections Act, 2017, a political party is mandatorily required to publish an updated list of its central office bearers by whatever name called on its website and is required to notify and inform the Commission of any subsequent change in it. The Petitioner has verified and re-verified from the Commission, wherein, it has been confirmed that no such change has ever been notified to it. Also, no resolution has been brought on record before this Commission, which reflects the alleged act as being a media gimmick.
- iii. The Central Working Committee of the PML has never been elected as per Article 43 of the Constitution of PML which requires election of 150 members by the PML Council, whereas, the remaining 50 members are to be nominated by the President. Apart from the fact that no election was held for the said purposes, even the President has not nominated 50 remaining members. When there exists no central working committee then what emergent meeting was called for and what decisions were made. The answer only reveals itself in impersonation, since the alleged attendees had only been impersonating themselves as members, because they were neither elected nor nominated.
- iv. The Election Commission in exercise of its powers under Section 4 of the Elections Act 2017 may requisition the "signed requisition request" wherein, purportedly the impersonating members had called for the emergent meeting of non-existent CWC to be held, so as to take strict action against them for impersonating themselves as members of the non-existent Central Working Committee.



- v. The alleged acts of calling of meeting of a non-existent Committee followed by issuance of press release and statements qua removal of two most important party positions i.e. Party President and Secretary General has caused confusion amongst the members of PML and has destroyed party discipline for which action has been initiated against the delinquents/respondents.
- vi. That the action of publishing of the election schedule is without any basis especially in light of the fact that the petitioner is currently holding the respective office along with the Secretary General and shall continue to do the same till fresh elections.

6. The petitioner has made reference to a judgment passed by the Hon'ble Islamabad High Court reported as PLD 2018 Islamabad 300 which according to the petitioner deals with the similar subject and proposition. In this judgment according to the petitioner, it has been held and affirmed that the Election Commission has jurisdiction to adjudicate upon affairs of the political parties particularly entertaining the petitions regarding change of party head.

7. Conversely, the learned counsel for the respondent No. 3, who is the only contesting respondent in this case, has mainly attacked the jurisdiction of the Commission on factual cum legal grounds without addressing arguments on merits of the case. The crux of the arguments of the respondent is as under: -

- i. Election Commission has no jurisdiction under the law to hear the factual and legal point involved in the petition, therefore, it is coram-non-judice;
- ii. The petition has been preferred under section 4 of the Elections Act, 2017, which is an enabling provision only providing the Commission powers necessary for performance of its functions and



duties and is not a provision which gives jurisdiction to the Commission to interfere into the elections within a political party;

- iii. There is a restriction on jurisdiction under Section 208 of the Act of 2017 which provides that election within a political party have to be done in accordance with the party's Constitution.
- iv. Only one express provision exists in the Elections Act, 2017 i.e. section 208 which only stipulate that elections within a political party have to be conducted in accordance with the Party's Constitution and there is no space for further implication of the Election Commission to interfere within a political party's internal matter.
- v. That it has been held in various judgments of the august Supreme Court of Pakistan that when a duty is cast on an Authority, it must strictly use it only to achieve the object enumerated in the enactment in view of case law reported as 2013 SCMR 1124, PLD 2002 SC 25 & 1997 SCMR 1670. Neither Elections Act, 2017 nor Article 219 of the Constitution of Islamic Republic of Pakistan entrust the Commission with the function/duty of the election within a political party, the Commission cannot interfere in such matter in the absence of any express provision of law.
- vi. The removal of the petitioner has been done by the Central Working Committee, validly, under the provision of the Party Constitution, which removal is an appealable matter under the Party's Constitution, therefore, the jurisdiction of the Commission cannot be invoked until the remedy provided under the Party Constitution is exhausted.
- vii. The petitioner on one hand is claiming to be the President of the Party, who cannot be elected under the Party Constitution without



the involvement of the Central Working Committee and on other hand, is denying the existence of the Central Working Committee. So the petitioner cannot be allowed to be approbated and reprobate in the same breath and allowed to keep on benefitting from the action of the Central Working Committee and at the same time denying the existence of Central Working Committee if it takes any action against the applicant in accordance with the Party Constitution.

8. An intervener application has also been filed by one Rai Mansab Ali Khan, Vice President Punjab, Pakistan Muslim League for impleadment in the instant petition as respondent. We have briefly heard the said applicant who also supports the arguments of the respondents and seeks dismissal of the instant petition on same facts and grounds.

9. After hearing the learned counsel for the parties and perusal of record, the following core issues and questions arise for the determination of this Commission: -

- a. Whether the Commission has jurisdiction to entertain and adjudicate upon the internal affairs of a political party and look into factual controversies which is subject matter of the instant petition?
- b. If above question is in affirmative, whether removal of the Petitioner from his post has taken place in accordance with the Party's Constitution, rules and law?
- c. Whether Central Working Committee was constituted/elected as per procedure prescribed in the PML's Constitution and proceedings carried out by it are in accordance with it?



- d. Whether in light of remedy of Appeal provided under Article 50(d) of the Constitution of PML, jurisdiction of this Commission can be invoked by the petitioner?

10. We propose to decide the framed questions one by one. This Commission is constituted under Article 218(2) of the Constitution of Islamic Republic of Pakistan and under Article 218(3) has been mandated to hold elections and to make such arrangements as are necessary to ensure that election is conducted honestly, justly, fairly and in accordance with law and corrupt practices are guarded against. Under Article 219, the following duties have been assigned to this Commission: -

“Duties of Commission

219. The Commission shall be charged with the duty of—

- (a) preparing electoral rolls for election to the National Assembly and the Provincial Assemblies, and revising such rolls annually;
- (b) organizing and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly; and
- (c) appointing Election Tribunals
- (d) the holding of general elections to the National Assembly, Provincial Assemblies and the local governments; and
- (e) such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament)**

[Provided that till such time as the members of the Commission are first appointed in accordance with the provisions of paragraph (b) of clause (2) of Article 218 pursuant to the Constitution (Eighteenth Amendment) Act, 2010, and enter upon their office, the Commissioner shall remain charged with the duties enumerated in paragraphs (a), (b) and (c) of this Article.]

[emphasis added]



11. The Elections Act, 2017, enacted by the Majlis-e-Shoora (Parliament) describes certain functions, duties and powers of the Election Commission. Pursuant to section 239 of the Act *ibid*, this Commission has framed Election Rules, 2017, for carrying out the purposes of the Act *ibid*. Chapters XI & XII (Sections 200 to 218 of the Act *ibid*) deal with the affairs of the political parties. Sections relevant for the present purposes provide the following:-

"201. Constitution of political parties. –(1) A political party shall formulate its constitution, by whatever name called, which shall include—

- (a) the aims and objectives of the political party;
- (b) organizational structure of the political party at the Federal, Provincial and local levels, whichever is applicable;
- (c) membership fee to be paid by the members, where applicable;
- (d) designation and tenure of the office-bearers of the political party;
- (e) criteria for receipt and collection of funds for the political party; and
- (f) procedure for —
 - (i) election of office-bearers;
 - (ii) powers and functions of office-bearers including financial decision-making;
 - (iii) selection or nomination of party candidates for election to public offices and legislative bodies;
 - (iv) resolution of disputes between members and political party, including issues relating to suspension and expulsion of members; and
 - (v) method and manner of amendments in the constitution of the political party.

(2) Every political party shall provide a printed copy of its constitution to the Commission.



(3) Any change in the constitution of a political party shall be communicated to the Commission within fifteen days of incorporation of the change and the Commission shall maintain updated record of the constitutions of all the political parties.

202. Enlistment of political parties.—(1) A political party formed after the commencement of this Act shall, within thirty days of its formation, apply to the Commission for enlistment of the political party.

(2) The application for enlistment shall be accompanied by a copy of the constitution of the political party, the certificate and the information required to be submitted under section 201 and section 209, a copy of consolidated statement of its accounts under section 210, a list of at least two thousand members with their signatures or thumb impressions along with copies of their National Identity Cards, and proof of deposit of two hundred thousand rupees in favour of the Commission in the Government Treasury as enlistment fee.

(3) The Commission shall enlist a political party applying for enlistment under sub-section (1) if the Commission is satisfied that the political party fulfills the requirements specified in sub-section (2).

(4) A political party enlisted by the Commission before the commencement of this Act shall be deemed to have been enlisted under this Act provided it has filed with the Commission the documents mentioned in sub-section (2) and if not, it shall submit the documents within sixty days from the commencement of the Act.

(5) If an enlisted political party fails to file the documents under



Sub-section (2) within the time stipulated under sub-section (4), the Commission shall cancel the enlistment of the political party after affording an opportunity of being heard to that political party.

(6) A political party which has been refused enlistment or whose Enlistment has been cancelled under this section may, within thirty days of the refusal or cancellation of enlistment, file an appeal before the Supreme Court.

(7) Where the Government declares that a political party has been formed or is operating in a manner prejudicial to the sovereignty, or integrity of Pakistan, it shall within fifteen days of such declaration refer the matter to the Supreme Court.

205. Suspension or expulsion of a member. – (1) A member of a political party may be suspended or expelled from the political party's membership in accordance with the procedure provided in the constitution of the political party.

(2) Before making an order for suspension or expulsion of a member from the political party, such member shall be provided with a reasonable opportunity of being heard and of showing cause against the action proposed.

206. Selection for elective offices. – A political party shall make the selection of candidates for elective offices, including membership of the Majlis-e-Shoora (Parliament) and Provincial Assemblies, through a transparent and democratic procedure and while making the selection of candidates on general seats shall ensure at least five per cent representation of women candidates.

207. Functioning of a political party. – (1) A political party shall have an elected general council at the Federal, Provincial and local



levels, wherever applicable, and by whatever name it may be referred.

(2) A political party shall, at least once in a year, convene a general meeting at the Federal, Provincial and local level of a political party, wherever applicable, and shall invite the members of the political party or their delegates to participate in the general meeting.

208. Elections within a political party. – (1) The office-bearers of a political party at the Federal, Provincial and local levels, wherever applicable, shall be elected periodically in accordance with the constitution of the political party:

Provided that a period, not exceeding five years, shall intervene between any two elections.

(2) A member of a political party shall, subject to the provisions of the constitution of the political party, be provided with an equal opportunity of contesting election for any political party office.

(3) All members of the political party at the Federal, Provincial and local levels shall constitute the electoral-college for election of the party general council at the respective levels.

(4) The political party shall publish the updated list of its central office bearers and Executive Committee members, by whatever name called, on its website and send the list, and any subsequent change in it, to the Commission.

209. Certification by the political party. – (1) A political party shall, within seven days from completion of the intra-party elections, 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 and



this Act to elect the office-bearers at the Federal, Provincial and local levels, wherever applicable.

(2) The certificate under sub-section (1) shall 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) copy of the political party's notifications declaring the results of the election.

(3) The Commission shall, within seven days from the receipt of the certificate of a political party under sub-section (1), publish the certificate on its website."

12. Likewise, the relevant Rules for the purposes of present controversy are Rules 157 and 158 of the Elections Rules, 2017 which provide as follows:-

"157. Scrutiny of political parties' constitution and information, etc. - Where the Commission is of the opinion that the constitution, other documents and information submitted by a political party is not in conformity with the Act, it shall return the same with specific observations to the concerned political party for resubmission in accordance with the provisions of the Act.

158. Submission of certificate to the commission regarding intra-party elections. - (1) The Party Leader of each political party under his signature shall, within seven days of the completion of intra-party elections, submit a certificate to the Commission in Form-65 specifying that the intra-party elections have been held in accordance with the constitution of the party and the provisions of the Act.



(2) The Commission shall, after satisfying itself that the certificate fulfills the requirements of sections 208 and 209, publish the certificate including the details of election in the official Gazette."

13. From the perusal of the above relevant provisions, it is crystal clear that every political party is required to be registered with the Election Commission and is bound to provide the Election Commission necessary documentation and information as required by law i.e. the Elections Act, 2017 and are also answerable to the Election Commission to this effect. Pursuant to sub-section (1) of section 201, a political party is required to provide in the party's Constitution, *inter alia*, procure for (1) **selection or nomination of party candidates for election to public offices and legislative bodies;** (2) **resolution of disputes between members and political party, including issues relating to suspension and expulsion of members;** and (3) **method and manner of amendments in the constitution of the political party.** Pursuant to sub-section (3) of section 201 of the Act, any change in the constitution of the political party is required to be communicated to the Election Commission within a period of fifteen days of incorporation of the change and the Election Commission is required to maintain updated record of the constitution of the political party. In terms of sub-section (1) of section 205 of the Act *ibid*, a member of a political party may be suspended or expelled from the political party's membership in accordance with the procedure provided in the constitution of the political party and before such suspension or expulsion, such member shall be provided an opportunity of being heard and of showing him cause against the action proposed. In terms of section 206, selection of candidates for elective offices is required to be made through a transparent and democratic procedure. In terms of section 209(1) of the Act *ibid*, a political is required to submit a certificate signed by an office-bearer authorized by the Party Head, to the Election Commission to the effect that the elections were held in accordance with the constitution of the political party and the Elections Act to elect the office-bearers at the Federal, Provincial and local levels,



wherever applicable. Such certificate is required to be submitted by a political party within seven days from completion of the intra-party elections.

14. The learned counsel for the respondents mainly raised point/objection qua jurisdiction of the Election Commission to entertain such matters being internal affair of the political party i.e. PML. We have perused the case law i.e. 'PLD 2018 Islamabad 300' Dr. Farooq Sattar versus Election Commission of Pakistan' relied upon by the petitioner in order to support the instant petition. In this case, Dr. Farooq Sattar, former convener and party leader of Muttahida Qaumi Movement Pakistan (MQM-P) was removed from his position as convener/party leader on 11.02.2018 in a meeting of the Central Coordination Committee of MQM-P. The said removal was confirmed by the Election Commission order dated 26.03.2018, by turning down the application of Dr. Farooq Sattar qua jurisdiction of the Election Commission. The matter was agitated by Dr. Farooq Sattar before the Hon'ble Islamabad High Court by invoking writ jurisdiction whereby he, inter alia, had contended that the Election Commission of Pakistan/respondent No.1 has no jurisdiction to decide the internal dispute amongst the party members; that the jurisdiction of respondent No.1 as provided in Articles 218 to 220 of the Constitution as well as sections 200-213 of the Elections Act, 2017 do not envisage the decision of Intra-Party Disputes. It was further contended that the contentions raised in the applications filed by the respondents before the Election Commission involved factual controversies which could not have been adjudicated by the Election Commission in light of settled law of the august Supreme Court in Sumaira Malik's case as well as Dr. Raja Aamer Zaman's case. He had further contended that applications filed by respondents before the Election Commission pertained to intra-party disputes were put forward before the Election Commission which was beyond its jurisdiction as under the constitution of the party (MQM-P) i.e. Article 17 procedure is provided for resolution of the party disputes in view of case law reported as 'Sardar Behadur Khan Bangulzai and others v. Sardar Attaullah Khan Mengal and another (1999 SCMR 1921) inbuilt organizational structural disputes of the political party are not to be adjudicated by the Election Commission. The Hon'ble Islamabad High



Court after hearing the parties and perusing the case law on the subject, was pleased to observe in paragraph 17 of the judgment as under: -

"The functions of ECP are also laid down with brevity by the august apex Court in case reported as Watan Party v. Federation of Pakistan (PLD 2012 SC 681). In the referred judgment, the Hon'ble Supreme Court held that ECP enjoys broad powers not only to take pre-emptive actions but also to pass any order necessary to ensure that standards of honesty, justness, and fairness mentioned in Article 218(3) are met. In the Election Commissioner v. P. Kakkan (Writ Appeals Nos. 327 and 345 of 1970) the High Court of Madras held that with respect to a recognized political party it is the function of Election Commission to find out which of the two groups is the legitimate one for the purpose of issuance of tickets. It was further observed that Election Commission is to decide the matter tentatively as to which of the rival groups represent the political organization. It cannot abdicate its function and drive the parties to court of law and continue the status quo till decision by the court. In Baba (Pt.) Nand Kishore Mishra and others v. Dinesh Chandra Tyagi and others [CS (OS) 745/2014] Delhi High Court observed as follows:-

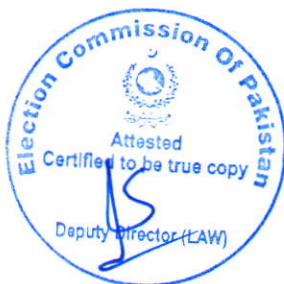
"10. ABHM as aforesaid is not a recognized political party. Though the term "recognized political party" is not defined in the Act but the Explanation to Section 52 thereof provides that "recognized political party" means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The said Order vide Clause 15 thereof empowers the ECI, when there are rival sections or groups of a political party each of whom claims to be that party, to after taking into account all the available facts and circumstances and hearing representatives of the sections or groups, decide which of such rival section or group is that recognized political party; such decision of ECI is made binding on all such rival sections or groups."

Under sections 208 and 209 of the Elections Act, 2017 read with Rule 158 of the Elections Rules, 2017, it is incumbent upon political parties to inform the ECP regarding any change with respect to the office bearer of the political parties. Since the meeting of CCC had resolved to remove the petitioner and appoint respondent No.2 as a convener, therefore, applications were filed for informing the ECP about the change. It was incumbent upon ECP that while deciding



the matter to satisfy itself regarding the fact that the change is in accordance with the law and the party constitution. The word satisfaction has been explained in various judgments. In *Sohail Butt v. DIG* (2011 SCMR 698), it was observed that the word satisfied means existence of mental persuasion much higher than mere opinion; a mind not troubled with doubt; a mind which has reached on clear conclusion. In *Ahmed Fahim Mughal v. Muhammad Saleem Khan* (PLD 1990 Karachi 474) the Hon'ble Division Bench of Sindh High Court held that satisfaction has to be objective in nature and not subjective of such nature to allow authorities to act on whims and caprices without there being material before them in support of grounds of detention. What High Court is concerned with is to see that executive or administrative authority had before it, sufficient material upon which a reasonable person could have come to the conclusion that requirement of law has been satisfied. Hence on the basis of the above mentioned provisions of law as well as case law discussed, Election Commission of Pakistan had jurisdiction to entertain the applications regarding change of the party head. The only exception which has been created in decision of the Balochistan High Court as well as the Hon'ble Supreme Court of Pakistan in *Attaullah Mengal v. Chief Election Commissioner* (1999 CLC 1460) and *Bahadur Khan Bangulzai v. Attaullah Khan Mengal* (1999 SCMR 1921) supra is that where there is any inbuilt organizational structural dispute, the matter is to be referred to the Court of plenary jurisdiction. The august apex Court in the latter judgment also observed that where plea is raised regarding organizational structural dispute, bona fide of the same is to be examined by the Election Commissioner (who was then competent to hear such matters) as it would be convenient for anyone to dispute the party head who makes reference before the Election Commissioner.

18. The petitioner in replies to the applications filed by respondents Nos.2 and 3 has contradicted facts as such but no specific denial has been made. It has been submitted in reply that CCC did not have 2/3rd majority and meeting was not convened in accordance with the constitution of the party. The referred pleas could not be regarded as inbuilt organizational structural dispute inasmuch as it can be examined by the ECP especially while exercising authority under Rule 158 ibid to satisfy itself regarding application for certification filed before it. The ECP while holding inquiry is to satisfy itself and while doing so can adopt procedure which is fair and just to both the parties. In view of the foregoing, the ECP had jurisdiction to entertain applications filed by the



respondents Nos. 2 and 3 and decide the same.”

15. In light of above observations of the Hon'ble Islamabad High Court we have no hesitation to hold that this Commission has competence and ample jurisdiction to entertain the instant application and look into the affairs of the political parties pursuant to the Elections Act, 2017 and the Rules.

16. Now we advert to the question that whether the proceedings carried out by the respondents against the petitioner for his removal are well within the parameter and mechanism provided in the party's Constitution as law to this effect is very much clear which stipulates that a member of a political party may be suspended or expelled from the political party's membership in accordance with the procedure provided in the constitution of the political party and before such suspension or expulsion, such member shall be provided an opportunity of being heard and of showing him cause against the action proposed. Now we see what procedure and mechanism has been provided in the PML's constitution for election of the President of the party and his removal. Under Article 8 of the PML's constitution, President of the party is one of the office-bearer of the PML amongst others. Said article provides as under:-

“Office-Bearers

8. There shall be the following office-bearers of the Pakistan Muslim League:

- “a. President.....1;
- b. Senior Vice Presidentas may be necessary;
- c. Vice Presidentsas may be necessary;
- d. Secretary General1;
- e. Additional Secretary General5;
- f. Finance Secretary1;
- g. Information Secretary.....1;
- h. Joint Secretariesas may be necessary”.

Provided that President of the Pakistan Muslim League may increase the number of existing posts as and when required.



Articles 10 to 15 of the PML's constitution, relevant for the present purposes, provide the following:-

"Eligibility for elections

10. Every member of the Pakistan Muslim League shall, subject to provisions of this constitution, be provided with an equal opportunity of contesting election for any party office including that of party leader.

Eligibility for Re-election.

11. All office Bearers of the Pakistan Muslim League shall hold office till the next election and shall be eligible for re-election.

Resignation

12. An office-bearer may resign from his office and such resignation may be addressed to the President or Secretary General of the Pakistan Muslim League.

Powers of the President.

13. The President of Pakistan Muslim League shall be the Head of the entire organization, shall exercise all the power inherent in his office and shall see that the office bearers and organizations work in consonance with the constitution of the Pakistan Muslim League, any rules and bye-laws adopted under the Constitution.

Acting President.

14. During the temporary absence or illness of the President, the President may nominate one of the Senior Vice Presidents/ Vice Presidents to perform his functions for the period. Acting President will only exercise the powers delegated to him by the President.

Vacancy of the Office of President.

15. If the office of the President falls vacant due to death or resignation before the expiry of the term of his office, it shall be duty of the Secretary General to convene within seven days a meeting of the Central Working Committee to elect an acting, President and fix a date for the meeting of the Council of PML within 45 days of the occurrence of the vacancy to elect the President."



Article 28 of the PML's constitution provides formation of a Council in the following terms:-

"The Council

28. All members of Pakistan Muslim League at the Federal, Provincial and Local Levels shall constitute the Electoral College for election of the general council as the respective level.

The Council of the Pakistan Muslim League shall consist of (1500) fifteen Hundred Members as follows:-

- a. 708 members elected from Punjab.
- b. 300 members elected from Sindh.
- c. 275 members elected from NWFP.
- d. 115 members elected from Balochistan.
- e. 55 members elected from Islamabad Capital Territory.
- f. 35 members elected from Northern Areas.
- g. 12 members elected from FATA.
- h. The President and General-Secretaries of the Provincial Muslim leagues and the Islamabad Federal Capital Territory Muslim League.
- i. The Office-Bearers of the Pakistan Muslim League, including President and General Secretaries of Specialized Wings at the federal and provincial levels".

Article 41 of the PML's constitution provides functions of the PML's Council in the following terms:-

"Functions of the Council

41. The Pakistan Muslim League Council shall perform the following functions:



- i. To elect the President and all the office bearers of Pakistan Muslim League.
- ii. To amend the Constitution of the Pakistan Muslim League;
- iii. To consider and pass resolutions with regard to all matters, arising from time to time, relating to the aims and objects of the Pakistan Muslim League; and
- iv. To affiliate, suspend, dissolve or disaffiliate a Provincial Muslim League, Islamabad Federal Capital Muslim League, FATA Muslim League, Northern Area Muslim League or an Overseas Branch.”

The constitution of Central Working Committee, its functions and powers has been provided in Articles 43 to 50 of the PML’s constitution which provide as under:-

“THE CENTRAL WORKING COMMITTEE

43. The Working Committee of the Pakistan Muslim League shall consist of Two Hundred (200) Members. One hundred and fifty (150) shall be elected by the Pakistan Muslim League Council and fifty (50) shall be nominated by the President of Pakistan Muslim League. The President may increase the number of members of central working committee as and when required. He may invite any person as special invitee to attend the meeting.

Provided the President has Power to fill in the vacancy occurred during the Tenure.

44. All office-bearers of the Pakistan Muslim League along with the Presidents and General Secretaries of Provincial Muslim Leagues, Islamabad Federal Capital Muslim League, FATA, Northern Areas Muslim Leagues and specialized wings shall be ex-officio members of the Working Committee.

45. A person who ceases to be a member of the Pakistan Muslim League Council shall cease to be a member of the Working Committee.



46. The Working Committee shall normally meet once a quarter or as often as the President desires.

47. Forty members excluding the office-bearers shall form a quorum for a meeting of Working Committee.

48. All resolutions of Working Committee shall be placed before the Pakistan Moslim League Council for Information.

Functions of the Working Committee

49. The Working Committee shall be the principal executive organ of the Pakistan Muslim League and shall perform the following functions:

- (i) to consider and pass resolutions and to take necessary steps with regard to matters arising from time to time relating to objective of the Pakistan Muslim League and to ensure that these are not inconsistent or at variance with the aims and objects of the Pakistan Muslim League or any resolution passed by the convention or the Council of Pakistan Muslim-League;
- ii. to take all necessary steps for giving effect to resolutions passed at a session of the convention or a meeting of the Council or of the Working Committee;
- iii. to appoint from time to time and supervise the activities of sub-committees or subsidiary bodies for carrying out such duties and functions as may be entrusted to them, such as to deal with the affairs connected with the finances and organization of the Pakistan Muslim League, its affiliated branches and its various wings, advancement of the party's aims and objectives and attend to the political challenges faced by Pakistan Muslim League;



- iv. to approve the annual budget and to authorize payments accordance with it and to appoint auditors;
- (v) to sanction all payments not included in the Budget;
- (vi) to employ and dismiss staff and to determine their emoluments;
- (vii) to collect and consider all information necessary and useful with reference to the aims and objects of the Pakistan Muslim League;
- (viii) to ensure that Muslim League Parliamentarian Parties are established to function actively in various legislatures of the country; and
- (ix) to perform such other functions as the Convention or the Council may empower it to perform.

Powers of the Working Committee

50. The Working Committee shall have the power:

- (a) To control, direct, and regulate all activities of the various Provincial Muslim Leagues,, Islamabad Federal Capital Muslim League, Northern Areas, FATA Muslim League and Overseas Branches of Muslim League and specialized wings-in-consonance with the alms, objects, rules and declared policy of the Pakistan Muslim League;
- (b) To take disciplinary action against any member of the Pakistan Muslim League who violates the decisions of the Pakistan Muslim League or acts in contravention of its aims and objects, and also to hear appeals against the decisions of any other subsidiary body;
- (c) To suspend, dissolve or disaffiliate any Provincial, Islamabad Federal Capital Muslim League, FATA, Northern area Muslim League, Oversees Branches, District or City Muslim League which fails in its duties or ignores the decisions or directions of the Working Committee or the Pakistan Muslim League Council or acts in contravention of such decisions or directions of hinders the progress of the Pakistan Muslim League in any



manner whatsoever subject to a right of appeal to the Council of Pakistan Muslim League;

- (d) To take disciplinary action against any office-bearer or wing or organization affiliated to or forming part of the Pakistan Muslim League which falls in its duties, ignores the decisions or directions of the working committee or the Pakistan Council or acts in a manner prejudicial to the interest of the Pakistan Muslim League, subject to a right of appeal to the Pakistan Muslim Leagues Council; and
- (e) To appoint a Central Election Commission to organize and conduct elections in accordance with the relevant provisions in Part-V. The Commission shall consist of five members.

The procedure with regard to amendment in the PML's constitution as well as tenure of office bearers has been prescribed in Articles 136 & 140, which provide as under:-

"Amendments of Constitution"

136. The Constitution of Pakistan Muslim League shall be amended by the Council of Pakistan Muslim League by at least two-third majority of the members present.

"Office Bearers to Hold Office till Election"

140. If the term of an office-bearer, a member of a committee or any other Body of PML expires, he shall continue to perform his duties as such till his successor in office is elected, or as the case may be, nominated by the competent authority.

The Constitution of Central Election Commission has been provided in Articles 118 & 119 of the PML's constitution in the following manner:-

"Central Election Commission"



118. Elections of Office-bearers of the Pakistan Muslim League at the national level shall be organized and conducted by the Central Election Commission.

119. The Central Election Commission shall consist of five members appointed by the CWC prior to each election.”

Likewise, the provisions with regard to Electoral College, Bye-Elections and Settlement of Election Disputes are contained in Articles 122 to 126 of the PML’s constitution providing the following:-

“Electoral College

122. The President and all the office bearers shall be elected by the Councen of Pakistan Muslim League. The President and office bearers of the Provincial Muslim League shall be elected by the council of Pakistan Muslim League of the respective provinces.

Bye-Elections

123. All casual vacancies arising in the ranks of the office-bearers shall be filled in by the concerned working committee or the President subject to confirmation by the working committee of respective Muslim League.

Settlement of Election Disputes

124. The Working Committee concerned shall appoint an Election Tribunal for hearing of appeals and petitions against election to the respective organizations of Muslim League.

125. Each Election Tribunal shall consist of one Chairman and two members. 126. A Tribunal shall regulate its own procedure for hearing and disposal of appeals and petitions relating to election as expeditiously as possible.”



17. We have minutely perused the above provisions. As per Article 14 of the PML's constitution, it is discretion of the President to nominate one of the Senior Vice Presidents/Vice Presidents to perform his functions for the period during his absence or illness. Likewise, if office of the President falls vacant due to death or resignation before the expiry of the term of his office, Secretary General is required to convene a meeting within seven days of the Central Working Committee to elect an acting President and fix a date for the meeting of the Council of PML within 45 days of the occurrence of the vacancy to elect the President. As per Article 41 of the PML's constitution reproduced above, PML's Council has authority to elect the President and all the office bearers of the PML. As per Article 118 above, Central Election Commission is mandated to organize and conduct elections of office-bearers of PML at the national level which consists of five members appointed by the Central Working Committee prior to each election. The Central Working Committee as per Article 43 of the PML's constitution consists of 200 members out of which 150 are required to be elected by the PML's Council and fifty are required to be nominated by the President of PML and the President has authority to increase the number of members of Central Working Committee as and when required. As per Article 47 of the PML's constitution, forty members excluding the office-bearers shall form a quorum for a meeting of Working Committee and it has to meet normally once a quarter or as often as the President desires.

18. The proceedings i.e. resolution undated impugned before us have been carried out by the alleged Central Working Committee on 28th July, 2022, wherein as per the respondents, 83 members of the PML participated on the request of 40 members of the Central Working Committee. This resolution is followed by a schedule for election for the post of President and Secretary General, to be held on 10.08.2022 which is also undated. Another resolution dated 29th July, 2022, is available on record which mentions about the removal of the President and Secretary General from their positions as well as conduct of elections for the said posts on 10th August, 2022. All the three pages are available at pages 62 to 65 of



the file. It is noted with concern that quorum for a meeting of the Central Working Committee is 40 excluding the office-bearers. However, from the documents available at pages 62 to 65 of the file, it is a mystery how many members attended/participated in the meeting of the Working Committee. The respondents till date have also failed to produce list of attendees of the meeting. We have also thoroughly gone through the PML's constitution and found no mechanism/procedure for removal of the President of PML except through the procedure provided in Article 15 i.e. due to death or resignation. As per section 205(1) and (2) of the Elections Act, 2017, suspension or expelling of a member of a political party can only be done in accordance with the procedure provided in the constitution of the political party and it is also mandatory that before making an order for suspension or expulsion of a member from the political party, such member shall be provided with a reasonable opportunity of being heard and of showing cause against the action proposed. The reasons of petitioner's removal as mentioned in the resolutions referred to above (impugned before us), is his deteriorating health and mental incapacity to perform functions as President of the party. To the contrary, as per Article 14 of the PML's constitution, it is discretion of the President to nominate one of the Senior Vice Presidents/Vice Presidents to perform his functions for the period during his absence or illness and not of the Central Working Committee. The petitioner as per record was elected as President of the PML unopposed in last intra-party elections notified on 16.01.2021 and had to remain the President till the next elections as per Article 140 of the PML's constitution which stipulates that "if the term of an office-bearer, a member of a committee or any other body of PML expires, he shall continue to perform his duties as such till his successor in office is elected, or as the case may be, nominated by the competent authority." The election of the President electing him unopposed remained unchallenged till the impugned proceedings. Therefore, doctrine of acceptance by silence is attracted. The record also reveals that Central Working Committee which has carried out the impugned proceedings was not constituted in accordance with Article 43 of the constitution of PML's constitution as 50 members out of 200 were required to be



nominated by the President which according to the petitioner were never nominated. There is also no rebuttal from the respondent's side to this effect. It is also evident from this fact that nothing to this effect has been communicated to this Commission to give effect to the provisions of section 208(4) which stipulates that "political party shall publish the updated list of its central office-bearers and Executive Committee members, by whatever name called, on its website and send the list, and any subsequent change in to the Commission." Moreover, nothing is available on record or placed by the respondents to show that the Central Working Committee was elected in accordance with the procedure laid down in the PML's constitution (Article 43) as 150 members were to be elected by the PML's council and 50 were to be nominated by the President which is not the case here. Moreover, in terms of section 205 (1) and (2) of the Elections Act, 2017, opportunity of hearing and show cause has not been provided to the petitioner as record is silent about it and respondents have also failed to highlight any such evidence. It is also settled law that no one should be condemned unheard.

19. The august Supreme Court of Pakistan in a landmark judgment rendered in Workers Party case reported as PLD 2012 Supreme Court 681, has held the following:-


"42. The Parliament has framed different laws to effectuate the above constitutional provision and to regulate elections to the National and Provincial Assemblies. ROPA reiterates and further vests the Election Commission with the responsibilities and powers to, inter alia, regulate and check intra-party affairs and actions taken by candidates and parties in anticipation of and on Election Day, resolve all election disputes, declare the election void and to award punishments for violating relevant election laws. In appreciation of the arduousness of its task, section 5(2) of ROPA further empowers the Election Commission to "require any person or authority to perform such functions or render such assistance for the purposes of this Act as...it may direct". The Election Commission may, under section 103(c) of ROPA also "issue such instructions and exercise such

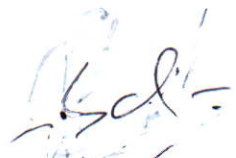



powers, and make such consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provisions of this Act and the rules". Article 220 of the Constitution also directs the Federal and Provincial machinery to assist the Election Commission in fulfilling its constitutional responsibilities. The law, therefore, entrusts the Election Commission with exclusive, broad and extensive powers to attend to all issues related directly and ancillary to the election process."

20. The above discussion has lead us to the conclusion that the proceedings carried out by the so called Central Working Committee of PML, which have been impugned before us qua removal of the petitioner from the post of President and issuing election schedule for the said post, have no legal sanctity in the eyes of law having been carried out beyond the constitution of the PML. We therefore set-aside the same.
21. The instant matter stands disposed of accordingly.


Sikandar Sultan Raja
Chairman


Nisar Ahmed Durrani
Member


Shah Muhammad Jatoi
Member


Babar Ahsan Bharwana
Member


Justice (R) IkramUllah Khan
Member

Announced on 31st January, 2023

