

BEFORE THE ELECTION COMMISSION OF PAKISTAN ISLAMABAD

PRESENT:

MR. SIKANKAR SULTAN RAJA, CHAIRMAN
MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MOHAMMAD JATOI, MEMBER

Case No.13(1)/2022-Law

In subject: **DECLARATION FOR DISQUALIFICATION ON GROUNDS OF DEFECTION UNDER ARTICLE 63A(b)(i) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN.**

Mr. Imran Ahmed Khan Chairman Pakistan Tehreek-e-Insaf (Party Head)

.....Petitioner

Versus

Raja Sagheer Ahmed, MPA & 24 others

.....Respondents

For the Petitioner : Barrister Ali Zafar ASC, Faisal Farid Chaudhry ASC, Amir Saeed Rawan ASC, Safdar Shaheen Pirzada ASC, Syed Ali Bukhari ASC, Malika Bukhari, Ch. Tanveer Hussain, Qamar Inayat Raja and Muhammad Aqif Advocates for the Petitioner (Pakistan Tehreek-e-Insaf (PTI))

For the Respondents :

Si. No.	Name	Constituency	Counsel
1.	Raja Sagheer Ahmed MPA	PP-7, Rawalpindi-II.	Khalid Ishaq ASC and Usman Ghuman Advocate.
2.	Malik Ghulam Rasool Sangha MPA	MPA, PP-83 Khushab-II.	Shahzad Shaukat ASC
3.	Mr. Saeed Akbar Khan MPA	MPA, PP-90 Bhakkar-II.	Shahzad Shaukat ASC
4.	Mr. Muhammad Ajmal MPA	MPA, PP-97, Faisalabad-I.	Shahzad Shaukat ASC
5.	Mr. Abdul Aleem Khan MPA	MPA, PP-158, Lahore-XV.	Muhammad Salman Akram Raja ASC
6.	Mr. Nazir Ahmed Chohan MPA	MPA, PP-167 (Lahore-XXIV)	Khalid Ishaq ASC and Usman Ghuman Advocate.
7.	Mr. Muhammad Amin Zulqarnain MPA	MPA PP-170 Lahore-XXVII.	Shahzad Shaukat ASC
8.	Malik Nauman Langrial MPA	MPA, PP-202 Sahiwal-VII.	Shahzad Shaukat ASC
9.	Mr. Muhammad Salman MPA	MPA, PP-217 Multan-VII.	Shahzad Shaukat ASC
10.	Mr. Zawar Hussain Warraich MPA	MPA, PP-224, Lodhran-I.	Shahzad Shaukat ASC

Election Commission of Pakistan
Attested
Certified to be true copy
1
Deputy Director (LAW)
20-5-2022

11.	Mr. Nazir Ahmed Khan MPA	MPA PP-228 Lodhran-V.	Shahzad Shaukat ASC
12.	Mr. Fida Hussain, MPA	PP-237 Bahawalnagar-I.	Khalid Ishaq ASC and Usman Ghuman Advocate.
13.	Ms. Zahra Batool MPA	MPA PP-272 Muzaffargarh-V.	Haseeb Shakoor Paracha
14.	Mr. Muhammad Tahir, MPA	PP-282 Layyah-III.	Shahzad Shaukat ASC
15.	Ms. Aisha Nawaz, MPA	W-322.	Shahzad Shaukat ASC
16.	Ms. Sajida Yousaf, MPA	W-327.	Khalid Ishaq ASC and Usman Ghuman Advocate.
17.	Mr. Harron Imran Gill, MPA	NM-364.	Khalid Ishaq ASC and Usman Ghuman Advocate.
18.	Ms. Uzma Kardar, MPA	W-311.	Shahzad Shaukat ASC
19.	Malik Asad Ali MPA,	PP-168 Lahore-XXV.	Khalid Ishaq ASC and Usman Ghuman Advocate.
20.	Mr. Ijaz Masih	MPA NM-365.	Khalid Ishaq ASC and Usman Ghuman Advocate.
21.	Mr. Muhammad Sabtain Raza MPA	MPA PP-273 Muzaffargarh-VI.	Khalid Ishaq ASC and Usman Ghuman Advocate.
22.	Mr. Mohsin Atta Khan Khosa MPA	MPA PP-288 DG Khan-IV.	Khalid Ishaq ASC and Usman Ghuman Advocate.
23.	Mian Khalid Mehmood MPA	MPA PP-140 Sheikhupura-VI.	Khalid Ishaq ASC and Usman Ghuman Advocate.
24.	Mehar Muhammad Aslam MPA	MPA PP-127 Jhang- IV.	Khalid Ishaq ASC and Usman Ghuman Advocate.
25.	Mr. Faisal Hayat, MPA	PP-125, Jhang-II.	Shahzad Shaukat ASC

For the Provincial Assembly : Samiullah Tarar, Law Officer,
Muhammad Aqif, Law Officer Provincial
Assembly Punjab along with Malik Khalil
Deputy Director Law Provincial
Assembly Punjab

Date of hearings : 06-05-2022, 10-05-2022, 13-05-2022,
16-05-2022 & 17-05-2022

ORDER

Mr. Sikankar Sultan Raja, Chairman— The subject declarations are referred by the Presiding Officer (Speaker) Provincial Assembly, Punjab against the respondents in terms of article 63A (3) of the Constitution of Islamic republic of Pakistan (hereinafter referred to as the "Constitution"). The declarations involve identical grounds of alleged defection under clause (b)(i) of Article 63-A and common question of law and facts, we therefore propose to decide the same through this common order.

Facts in brief forming background of the subject declarations necessary for decision are as such that the respondents contested elections on the platform of



Pakistan Tehreek-e-Insaf (a political party) and were elected and notified as Members of Provincial Assembly Punjab.

3. The events culminating in the subject declaration are that the Chief Minister Punjab resigned from his office resulting in the election of the Chief Minister. The Petitioner Pakistan Tehreek-e-Insaf nominated Mr. Pervaiz Elahi, Speaker Provincial Assembly Punjab, as their candidate for the slot of Chief Minister being their coalition partner. The opposition parties jointly nominated Mr. Hamza Shahbaz Sharif as their candidate for Chief Minister. The Pakistan Tehreek-e-Insaf and its coalition partners initially decided to participate in the election of the Chief Minister. However, on reconsidering their earlier decision they decided to boycott the election. Resultantly the election of the Chief Minister was held without opposing candidate and on securing the required majority, Mr. Hamza Shahbaz Sharif was elected as Chief Minister Punjab.

4. According to the declarations/references, the respondents/Members participated in the election of Chief Minister Punjab against the policy of the party and voted contrary to the party direction in favour of opposing candidate. That show cause notices were issued to the respondents MPA(s) on 07-04-2022 and 16-04-2022 and they were also directed to Show Cause as to why a declarations in terms of Article 63-A(b)(i) may not be made against them within 24 hours.

5. The Chairman (Party Head) of Pakistan Tehreek-e-Insaf forwarded the subject declarations to the Speaker (Presiding Officer) Punjab Assembly. The presiding Officer referred the same to the Chief Election Commissioner in terms of Article 63-A(3) of the constitution.

6. The declarations/references were received by the Chief Election Commissioner office on 20-04-2022 which were laid before the Commission as required under Article 63-A(3) of the Constitution.

7. After examining the declarations, the Commission decided to fix the declarations/references for hearing with notices to the Petitioner and the alleged defectors/respondents for 06-05-2022.



8. On 06-05-2022 the petitioner appeared through Mr Faisal Fareed Chaudhry ASC and Mr. Azhar Saddiqu ASC. The respondents appeared through their respective counsels. The counsel for the respondents sought time for submission of written replies. The request was acceded to and the matter was adjourned to 10-05-2022. On 10-05-2022, the counsel for the respondents submitted written replies on behalf of the respondents denying the allegations contained in the declarations as being baseless. Copies of the replies were handed over to the counsel for the petitioner/party head who sought time for submission of rejoinders and for arguments. His request was allowed and the matter was adjourned to 13-05-2022. On the said date, the counsel on behalf of the petitioner submitted the copies of unsigned rejoinders against the replies of all the respondents on which the counsel for the respondents raised objection that rejoinders are not duly signed by the party head and no affidavit is attached with them. They also raised objection that neither unsigned copies be taken on record by the Commission as evidence nor the petitioner can rely upon them. They also questioned the authenticity of the documents annexed with the rejoinders. In response to the objections raised by the respondents, petitioner's counsel sought time to submit the signed rejoinders and requested for permission to continue their oral submissions. He also requested that till the finalization of their arguments, the signed rejoinders will be submitted before the Commission. Barrister Ali Zafar, ASC, appeared on behalf of the petitioner and advanced his legal arguments on Article 63-A. Upon completion of oral/legal submissions of the learned counsel for the petitioner extra time was allowed for submission of rejoinders which could not be submitted after lapse of given time so the Commission adjourned the matter for 16-05-2022. On 16-05-2022, signed rejoinders were submitted by the counsel for the petitioner, however, serious objection was raised by the counsels for the respondents that the rejoinders submitted today i.e. 17-05-2022 are different from the earlier unsigned rejoinders submitted on 13-05-2022 and the party head has also not provided his own affidavit in support of the rejoinders and the affidavits of Mr. Asad Umar and Muhammad Sabtain Khan MPA are not admissible. They requested the Commission to retain and accept one of the rejoinders and discard the other one.

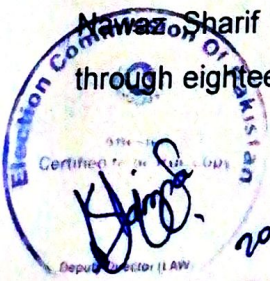
9. After hearing the learned counsel for the parties, the Commission decided the objections and held that the earlier rejoinders submitted by the petitioner



are not considered and the subsequent rejoinders were allowed to be taken on record and copies whereof were provided to the counsel for the respondents for their perusal. Partial arguments were heard on 16-05-2022 and the matter was adjourned to 17-05-2022 for remaining arguments and rebuttal.

ARGUMENTS ON BEHALF OF PETITIONER

10. Today, Mr. Barrister Ali Zafar, ASC, representing as lead counsel on behalf of the petitioner party argued on legal issues. At the very outset of his arguments, he submitted that the interpretation of Article 63-A qua Article 62 (1) (f) of the Constitution is under consideration in a presidential reference, therefore, he will not advance any arguments on the far reaching consequences of defections and confine his submissions to the defection as it exists in the Constitution and its consequences are provided in clause 4 of Article 63-A. He while elaborating the interpretation of Article 63-A submitted that there are four main ingredients constituting defection i.e.(1) resignation or joining of another parliamentary party (2) Voting or abstaining from voting in the election of Prime Minister or Chief Ministers (3) A vote of confidence or no confidence and (4)Voting or abstain from voting a money bill or a constitutional amendment bill. He argued that actus reus is complete to attract defection under Article 63-A(b)(i). He further argued that for making a declaration under Article 63-A(1)(b)(i), it is the requirement that directions have been issued by the party head and secondly that directions are relating to the election of Chief Minister and thirdly the vote has been casted against the party decision or not. He argued that before making a declaration, the party head is required to issue a show cause notice with an opportunity of hearing to the defector. He elaborated that the issuance of show cause notice and provision of opportunity of hearing are the internal affairs of the party and the Commission has no jurisdiction to dilate upon them. During the course of his arguments, he referred the legislative history of defection and argued that through Article 96 in the original constitution of 1973 the Parliament added the provision that the votes of defectors were not to be counted. Expanding his arguments, he contended that Article 63-A was inserted in the Constitution through fourteenth amendment during the regime of Mian Muhammad Nawaz Sharif as Prime Minister. He submitted that Article 63-A was amended through eighteenth amendment. He emphasized that the entire nation, political party

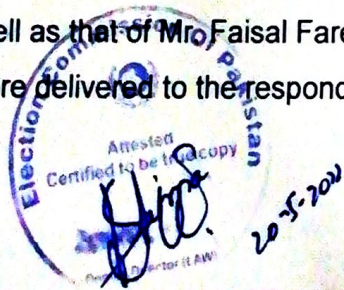


concerned and the constitution itself expects loyalty from the public representatives. If a Member of a parliamentary party votes against the policy and directions of the party he should know the consequences of being de-seated. He while drawing distinction submitted that the case of the present respondents cannot be equated with the case of members National Assembly recently decided by the Commission because in the instance case the respondents have actually casted their votes against the party directions. He argued that pre-requisite of issuing directions, show cause notices have been proved through documentary evidences which were also aired on electronic media and the voting by the respondents has resulted in regime change. He further added that defection is a constitutional violation and entails serious penal consequences. The Commission has nothing to do with the fulfilment of formalities in view of the dictum laid down by the august Supreme Court in the case of Wukala Mahaz Barai Tahafaz Dastoor Vs federation of Pakistan reported in PLD 1998 SC 1263. He urged that the respondents alleged act of defection is covered by clause (b)(i) of Article 63-A of the constitution as despite knowing well that the petitioner's party was boycotting the election of Chief minister, they participated in the election and admittedly casted their votes in favour of opposing candidate. He further contended that before making the subject declarations all the formalities had been complied with, and if for the sake of arguments and without conceding it is presumed that show cause notices were not served to the respondents or absence of any written directions of the party, the participation of respondents in the election of Chief minister and casting their votes against the party's policy attracts defection ipso facto and the declaration is not dependent upon strict compliance of written directions etc. He elaborated that the policy of the petitioner's party regarding election of the Chief Minister had been widely publicized in print media and also aired on electronic media and it was sufficient notice to the respondents. The party policy and boycott of election was in the knowledge of the respondents. Learned Counsel further placed reliance on the case of Khawaja Ahmad Tariq Rahim Vs the Federation of Pakistan reported in PLD 1992 SC 646 and 1999 CLC Quetta 1 "Sardar Fateh Ali Khan Umrani Vs. Chief Election Commissioner and three others" and PLD 1995 SC 66 "Pir Sabir Shah Vs. Shad Muhammad and others". While concluding his arguments he requested that the subject declarations may be confirmed and the respondents be de-notified.

Election Commission of Pakistan
Attested
Certified to be true copy
20-5-2022

11. Mr. Faisal Fareed Chaudhry ASC adopted legal arguments of the lead counsel Barrister Ali Zafar ASC. In his additional submission, he contended that the election of Chief Minister was scheduled on 03-04-2022 and meeting of the petitioner's party was held on 01-04-2022 in which Mr. Pervaiz Elahi of PMLQ, a coalition partner of the petitioner's party was nominated as Pakistan Tehreek-e-Insaf's candidate for the slot of Chief Minister. He submitted that minutes of the meeting were recorded and the same are enclosed with the rejoinders. He argued that all the Members including the respondents were requested to vote for Mr. Pervaiz Elahi. While further elaborating his arguments, he submitted that the election for the Chief Minister Punjab was scheduled for 3rd April, 2022, which was rescheduled for 6th April, 2022 and again postponed to 16th April, 2022. He argued that Mr. Imran Khan, Chairman of PTI visited Lahore and again convened party meeting on 5th April, 2022 at Governor House and issued wide scale directions which were flashed on media. Continuing his arguments, he stated that mock voting was held on 6th April, 2022 at Flatees Hotel by opponent parties of the petitioner which was attended by the respondents as well. He argued that the footage was available with them and if allowed can be produced to be viewed by the Hon'ble Commission. He contended that Show Cause Notices were issued on 7th April, 2022 and sent at the home addresses of the respondents. He also submitted that second show cause notices were also issued to the defectors on 16-04-2022. He also stated that voting record is available in the Provincial Assembly Secretariat, copies of which are enclosed with the declarations and further stated that the Hon'ble Commission may requisition the original record if so required. He elaborated his arguments and contended that the respondents have taken oath of their office as provided in Article 65 of the constitution and by violating the party policy they have clearly violated their oath of office. He submitted that the defection has been established and the declarations cannot be thrown away on basis of technicalities. While concluding his arguments he prayed that the defection against the respondents in terms of Article 63-A(b)(i) is established and the declarations may be confirmed and the respondents may be de-notified.

12. Mr. Amir Saeed Rawn Advocate while adopting the arguments of the lead counsel as well as that of Mr. Faisal Fareed Chaudhry, ASC, contended that the party directions were delivered to the respondents at their home addresses. Besides,



the directions were also conveyed through twitter and were also widely publicized through newspapers on 06-04-2022. He further elaborated that receipts of the show cause notices and record from the Punjab Assembly has been enclosed and Mr. Aleem Khan respondent has also admitted that the documents were received by him.

ARGUMENTS OF MR. SALMAN AKRAM RAJA, ASC, ON BEHALF OF RESPONDENT NO.5 (MR. ABDUL ALEEM KHAN MPA, PP-158 LAHORE-XV).

13. Learned counsel for the respondent No. 5 strongly opposed the submissions made by the learned counsel for the petitioner and stated that issuance of formal directions by the petitioner party is one of the pre-requisites for making a declaration under clause (b) (i) of Article 63-A. He urged that issuance of directions before making a declaration is mandatory and not directory. He submitted that there is a distinction between the party head and the parliamentary party. Party head denotes a single member while parliamentary Party constitutes number of members of the party. He clarified that the directions are required to be issued by the parliamentary party and not by the party head. He elaborated that in the subject matter no directions of the parliamentary party with respect to the election of Chief Minister were issued. He also denied any communication of decision of the parliamentary party or party head. He also raised objections in respect of meeting and submitted that no meeting was arranged nor communicated to the respondent No. 5 even the circular dated 04-04-2022 was issued by Mr. Asad Umar and no evidence in this respect has been produced or available on the record. He further argued that the reference/declaration forwarded by the Presiding Officer (Speaker) pertains to casting of votes only and does not reflect issuance of any direction or other pre-requisites. He contended that the Supreme Court in the case titled "Wukala Mahaz Barai Tahafaz Dastoor Vs. Federation of Pakistan and others" reported in PLD 1998 1263 has held that Article 63-A entails penal consequences of de-seating Members of the Parliament/Assembly(s), therefore, it shall be strictly construed and implemented. He argued that petitioner's party after withdrawing from the election of Chief Minister had not issued any directions requiring any of the respondents to refrain from attending the session of the assembly. He further argued that defection under Article 63-A (b)(i) is not automatic and is dependent upon fulfilment of

Election Commission of Punjab
Attested
Certified to be true copy
20-5-2022

mandatory conditions as laid down in the Article *ibid*. While expanding his arguments, he urged that in the absence of any directions, the alleged defection against the respondents is not covered by clause (b)(i) of Article 63-A. In support of his arguments, he placed reliance on AIR 2016 KER 70, 2002 SCMR 92, 2019 SCMR 924, PLD 2013 SC 255, PLD 2018 Peshawar 179, 2001 CLC 2019, PLD 1971 SC 550, PLD 1990 SC 1092 2018 SCMR 1043, PLD 2018 SC 97. He contended that the august Supreme Court has held in unequivocal words that issuance of formal directions followed by Show Cause Notice and opportunity of hearing is mandatory pre-requisite before making of a declaration under Article 63-A. He urged that the affidavits filed with the rejoinders alongwith minutes of meeting do not constitute evidence in terms of Article 76 of Qanun-e-Shahadat Order 1984 and the Commission cannot admit or rely upon them. He argued that in the absence of directions from the parliamentary party, the respondent was not bound to vote for Mr. Pervaiz Elahi and no such directions were issued not to vote for any other candidate. The show cause notice was never issued to the answering respondent and nothing is available on record about the service of show cause notice to the respondent. He while referring the TCS receipts attached with the rejoinder submitted that all the addresses mentioned thereon are written as "Khans's MPA". He submitted that in absence of show cause notices all other proceedings encompassing the subsequent declarations are of no avail. He stated that the voting continued till 07:00 P.M on 16-04-2022 where the respondent was asked to show cause on 18-04-2022, and it was Saturday on 16-04-2022 followed by Sunday and that service is not effected on Sunday. He elaborated that reasonable time was not given for reply and hearing to the respondent. He referred to the minutes of meeting produced by the petitioner alongwith rejoinders and stated that they are not properly drafted and cannot be taken as evidence, no attendance sheet and notices for attendance of members of the party are attached with them. These documents may be ignored. He also added that a valid meeting of the parliamentary party should have been arranged before the 04-04-2022. All the pre-requisites mentioned in Article 63-A regarding issuance of directions, issuance of show cause notices and followed by personal hearing are not mere technicalities but an important right of the respondent. While concluding his arguments, he submitted that no valid notices were issued to the respondent and the party head cannot delegate his powers to any other person which he is constitutionally bound to do himself. The factum of defection has not been

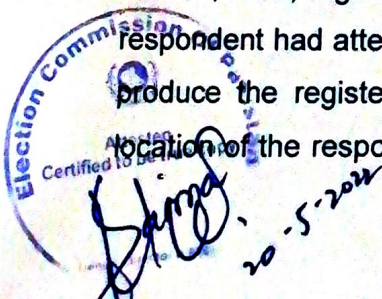
Election Commi
Certified to be
20-5-2022

established as required under Article 63-A of the Constitution and the declarations may be declined and dismissed.

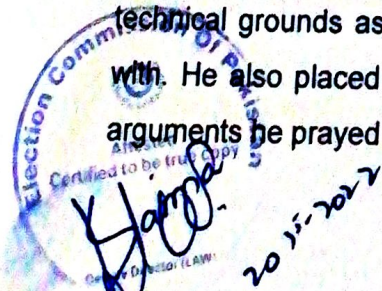
ARGUMENTS OF MR. SHAHZAD SHOUKAT ASC ON BEHALF OF RESPONDENTS NO. 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 18 AND 25.

14. At the very outset, learned counsel representing respondents took the case of Ms. Uzma Kardar and argued that her case is distinguishable from the other respondents. He vociferously objected to the reference against her and submitted that Ms Kardar was expelled by the petitioner from Pakistan Tehreek-e-Insaf on 04-07-2020. The matter of expulsion was referred to the Speaker Provincial Assembly who did not confirm the same. Elaborating her case, he argued that it is the fundamental requirement of Article of 63-A that the defector shall be a member of the parliamentary party. The party head was not competent to make a declaration against her in terms of Article 63-A. He argued that the petitioner is not being acknowledged as member by the petitioner's party after her expulsion and dismissal of her appeal. He further contended that that the petitioner's party has not responded to the reply regarding her expulsion from the party. He argued that the respondent was not bound to abstain from or casting her vote in favor of any candidate of her choice. While concluding his arguments, he prayed that the reference against respondent Ms Uzma Kardar is not sustainable and be declined.

15. Learned counsel Mr. Shahzad Shoukat, ASC, while defending other respondents mentioned above, has adopted the arguments of the learned counsel Mr. Salman Akram Raja, ASC. In his additional submissions, he contended that no proof of alleged meeting of the petitioner's party, issuance of alleged show cause notices and other documents were enclosed with the declarations. He further argued that the filing of the documents at belated stage is an afterthought and fabrication. He submitted that the documents attached with the rejoinders shall not to be considered as the same have been fabricated to cover the mandatory deficiencies. He urged that defection is not attracted in the subject case due to non-fulfilment of the mandatory pre-requisites. He while referring to the arguments of Mr. Faisal Fareed, ASC, regarding meeting in the Governor House contended that none of the respondent had attended the meeting as no meeting was convened and that he can produce the register of visitors of the Governor House. He also stated that the location of the respondents can be ascertained through geo fencing as was done in



Daska's elections case. He argued that the letter of Chief Whip dated 02-04-2022 does not disclose the date of meeting, agenda etc. He further submitted that Mr. Usman Buzdar the then Chief Minister had tendered resignation on 28-03-2022 which was accepted on 01-04-2022 and he could not chair or arrange any meeting in Chief Minister House. He further argued that attendance of the members of PML(Q) has been shown by the petitioner's party in purported meeting dated 03-04-2022 which shows that it was not a meeting of parliamentary party of PTI and it could be a meeting in connection with some other agenda. He stated that the decision taken in any meeting was not that of parliamentary party of PTI. He submitted that the alleged directions did not stop the members from participation in the elections of Chief Minister nor any directions were issued for not voting in respect of any candidate. He placed his reliance on the case of Ayesha Gulali reported in 2018 SCMR 1043 and stated that in the absence of directions from the parliamentary party, no declaration could be made and on this score, the Commission had declined declaration which was affirmed by the Supreme Court. He argued that the Speaker is required to forward the declaration without commenting on the merits of the same as required under Article 63-A(3) of the Constitution. However, in the instant matter the Presiding Officer (Speaker) has referred the declaration with his note stating, "that I am in complete agreement for what has been stated." which demonstrates biasness of the Presiding Officer. He also referred to Section 206 of the Elections Act, 2017 and stated that the democratic procedure mentioned in the section ibid has not been followed by the petitioner. He argued that election for Chief Minister was scheduled on 03-04-2022 and purported show cause notices were issued on 02-04-2022 in pursuance of alleged directions which could not be delivered on 03-02-2022. Another notice/letter was purportedly issued by Mr. Asad Umer which was also not clear about the meeting of parliamentary party and the minutes of meeting were only allegedly forwarded to Subtain Khan which shows that the minutes were not circulated to all the respondents. He while relaying on PLD 2022 SC 99 stated that no party can lead evidence beyond its pleadings. Hence the documents enclosed with the rejoinders cannot be admitted in to evidence nor relied upon. He also placed reliance on PLD 2018 SC 97 and stated that the declaration was not confirmed on technical grounds as the pre-requisites provided in Article 63-A were not complied with. He also placed reliance on 2000 MLD 709 (Peshawar). While concluding his arguments he prayed that the declaration may not be confirmed and dismissed.



ARGUMENTS OF MR. KHALID ISHAQUE, ASC, ON BEHALF OF RESPONDENTS NO. 1, 6, 12, 16, 17, 19, 20, 21, 22, 23 AND 24.

16. Mr. Khalid Ishaque Learned counsel while arguing in support of his case submitted that neither notices nor the agenda of the meeting was conveyed to the respondents. He further argued that respondents Nazir Chouhan and Faisal Chaudhry received show cause notices dated 07-04-2022 and the replies were sent accordingly. He contended that no other show cause notices were received after 07-04-2022 and 16-04-2022. He argued that no evidence is available with the petitioner till date that any show cause notice was sent to the respondents after 16-04-2022. Elaborating his arguments, he submitted that the declaration had also to be forwarded to the alleged defectors which has not been done in the instant case. He further argued that if an opportunity of hearing had been provided to the respondents they could have contradicted the allegations against them. He argued that no directions have been issued by the parliamentary party as required under Article 63-A(b)(i). He also submitted that quorum of the parliamentary party is required for such meeting and issuance of directions as per constitution of the petitioner party. He contended that parties are bound by their pleadings and cannot go outside the scope of the pleadings. He submitted that withholding of documents and its submission at a subsequent stage with the rejoinders are fabrication and afterthought. He argued that the alleged directions were to vote for Mr. Pervaiz Elahi and no directions were issued to the members to abstain from voting as per tweet. He further elaborated that the election was subsequently boycotted and the direction for vote for Mr. Pervaiz Elahi became redundant. He submitted that Article 63-A cannot be read in isolation and shall be read with Article 4 and 10-A. He submitted that in the light of Supreme Court judgments reported in 2018 SCMR 1043 "Imran Khan Niazi Vs. Ayesha Gulalai" and P L D 2018 Supreme Court 97 "Sardar Sher Bahadar Khan and others Vs. Election Commission of Pakistan through Secretary, Election Commission, Islamabad and others", concrete evidence is required for establishing the factum of issuance of directions. While relying on a case reported in 2018 CLD page 177 submitted that penal provision is to be strictly construed. He argued that every word in the constitution has a meaning and is to be read in totality and no word or provision is to be declared redundant. He further stated that the petitioner's contention that the Mr. Pervaiz Elahi lost election due to none abidance of the

Election Commission of Pakistan
Attested
Certified to be true copy
20-5-2022

directions of the party by the respondents, is not supported by the voting record as he secured zero votes which establishes that PTI boycotted the elections. While concluding his arguments he has adopted the remaining arguments of Mr. Salman Akram Raja, ASC, and Mr. Shahzad Shaukat ASC. He placed reliance on PLD 2015 SC 380, 2015 SCMR 1040, PLD 2020 SC 581, PLD 2013 SC 1289, PLD 2018 SC 538, 2017 SCMR 172 and 2020 CLC 780.

17. Mr. Malik Javed Iqbal Wains has appeared on behalf of Ayesha Nawaz, MPA and has adopted the arguments advanced by the learned counsels for the other respondents. In addition, he argued that no other documents can be produced after issuance of declaration and the documents attached with the rejoinders cannot be relied upon as they were not confronted to the respondents. He submitted that Article 63-A provides a complete mechanism to decide or issue a declaration. He contended that the entire exercise has been undertaken by the speaker whereas role of the Speaker is that of a post office. He argued that the reference is not maintainable on the ground that at the relevant time Mr. Pervaiz Elahi was not the Presiding Officer. He further argued that non-compliance of prerequisite of Article 63-A(b)(i) is not merely a technicality. He submitted that all the documents relied upon by the petitioner are photostat copies which are not admissible in the light of dictum of the august Supreme Court reported in 2017 SCMR 172, 2022 CLC 577. He further placed reliance on 2018 SCMR 1043, PLD 2018 SC 97 and 2020 CLC 780.

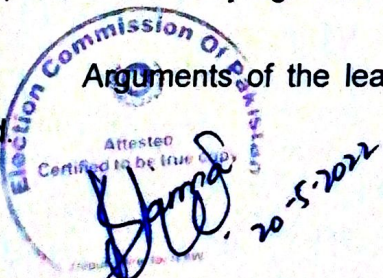
18. Mr. Haseeb Shakoor Parach, ASC, representing Zahra Batool respondent No. 13 whiling adopting the arguments of the other learned counsels for the respondents submitted that no documents can be brought on record at a subsequent stage. He argued that the petitioner was bound to enclose all the available evidence with declarations. He also submitted that new case cannot be allowed to be built up in the wake of rejoinders. He submitted that no opportunity of hearing was provided to the respondent before making a declaration. He submitted that this act is against the spirit of Article 10-A of the Constitution.



REBUTTAL BY THE PETITIONER

19. Mr. Barrister Ali Zafar, ASC, while responding in rebuttal contended that the defence of the respondents is like a sleep-walker by denying everything. He stated that it is the easiest way to escape from the consequences. He submitted that Article 63-A in no way defines parliamentary party nor does it speak about the formalities to be strictly fulfilled. He submitted that the parliamentary party can decide the mode as per their own arrangements. He argued that clear directions were given in the party meeting held on 01-04-2022 and 02-04-2022. Expanding his arguments, he contended that the affidavit of the parliamentary leader in the Provincial Assembly and Affidavit of Chief Whip are relevant evidences. While referring to the minutes of the meeting recorded in the party meeting on 01-04-2022 is to be treated as decision of the party. He argued that the letter dated 02-04-2022 was circulated to all the Members via media and the respondents cannot claim that they had no knowledge about the party's decision. He further elaborated that the letter from Mr. Asad Umar Secretary General PTI was circulated for information to all the parliamentary party members. He submitted that participation of the respondents in the mock election at Flatee's Hotel, establishes the violation of the party policy. He also made reference to the minutes dated 05-04-2022 and show cause notices issued by Mr. Asad Umer Secretary General PTI dated 07-04-2022. He argued that none of the respondents denied nor contradicted the same till 07-04-2022. He argued that all the respondents voted on 16-04-2022 against the party policy/directions. He further elaborated that there was no boycott of elections and in fact members of the petitioner's party were not allowed to vote. He submitted that the respondents have not replied the show cause notices thereby acquiescing to the charge of defection. He argued that the entire record has been placed before the Commission and strict compliance of effecting service of show cause notices is not sine qua non for making declaration. He also submitted that no denial has been made by any of the respondent for casting of vote in favour of Mr. Hamza Shahbaz Sharif opposite candidate and they have clearly admitted the stance of the party head which attracts defection under Article 63-A (1)(b)(i). He submitted that hearing is not a sacrosanct principle and in this respect, relied on a judgment reported in PLD 2010 SC 483.

20. Arguments of the learned counsels for the parties heard and record perused.



21. The subject declarations are made under Article 63-A of the Constitution and the entire case revolves around Article *ibid*, therefore, same is reproduced for the ease of reference;

63A Disqualification on grounds of defection, etc. (1) If a member of a Parliamentary Party composed of a single political party in a House-

- a. resigns from membership of his political party or joins another Parliamentary Party; or
- b. votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relations to-
 - i. election of the Prime Minister or the Chief Minister; or
 - ii. a vote of confidence or a vote of no-confidence; or
 - iii. a Money Bill or a Constitution (Amendment) Bill;

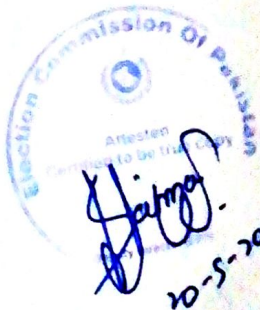
he may be declared in writing by the Party Head to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer, and shall similarly forward a copy thereof to the member concerned:

Provided that before making the declaration, the Party Head shall provide such member with an opportunity to show cause as to why such declaration may not be made against him.

Explanation: "Party Head" means any person, by whatever name called, declared as such by the Party

(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.

(3) Upon receipt of the declaration under clause (1), the Presiding Officer of the House shall within two days refer the declaration to the Chief Election Commissioner who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner.



(4) Where the Election Commission confirms the declaration, the member referred to in clause (1) shall cease to be a member of the House and his seat shall become vacant.

(5) Any party aggrieved by the decision of the Election Commission may within thirty days, prefer an appeal to the Supreme Court which shall decide the matter within ninety days from the date of the filing of the appeal.

(6) Nothing contained in this Article shall apply to the Chairman or Speaker of a House.

(7) For the purpose of this Article -

a. "House" means the National Assembly or the Senate in relation to the Federation and a Provincial Assembly in relation to the Province, as the case may be.

b. "Presiding Officer" means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be.

8. Article 63A substituted as aforesaid shall come into effect from the next general elections to be held after the commencement of the Constitution (Eighteenth Amendment) Act, 2010:

Provided that till Article 63A substituted as aforesaid comes into effect the provisions of existing Article 63A shall remain operative."

22. The following questions emerge from the declarations, replies of the respondents and rejoinders of the petitioner;

QUESTIONS

- i. Whether the case of respondent No. 18 Ms. Uzma Kardar MPA W-327 is covered by the provisions of Article 63-A after her alleged expulsion from the party much before the subject declaration against her?
- ii. Whether issuance of directions in terms of article 63-A(b)(i) by parliamentary party is one of the mandatory requirement and defection is dependent upon observance of such directions and other pre-requisite? If so, it's extent, mode and effect.
- iii. What is the consequence of participation of the respondents in the election of Chief Minister, casting of their votes despite party policy?



20-5-2022

20-5-2022

23. Our question wise discussion is as follows:

QUESTION NO. I

24. In response to this question, it is argued on behalf of Ms. Uzma Kardar that she has been expelled from the membership of petitioner's party on 04-07-2020 and she did not fall within the ambit of Article 63-A of the constitution. However, on the other side in her reply she has also contested the contentions and declarations of the party head which shows that she still presumes herself as a member of the petitioner's party. The respondent has submitted her written reply without enclosing any supporting documents to substantiate her case set forth therein. The Commission has so far not received any reference from the petitioner for her denotification after the alleged expulsion. The stance of respondent is self-contradictory as on one hand, she claims that she has been expelled from the party and on the other hand claims that she has neither resigned nor has joined any other party. In the absence of any evidence of expulsion and non-confirmation of the same by the petitioner and self-contradictory statements contained in reply and supported by affidavit, it cannot be safely concluded that the respondent No. 18 is not member of the parliamentary party. Hence her case is covered by Article 63-A of the Constitution.

QUESTIONS NO (ii) & (iii)

25. Both the questions are interlinked therefore, taken together.

26. Brief facts culminating in the subject declarations are as such that after the resignation of the Chief Minister, Punjab Mr. Usman Buzdar, the process of election of new Chief Minister commenced. The petitioner party decided to contest the election. The allegations against the respondents as contained in the subject declarations are that they have participated in the election of Chief Minister Punjab and casted their votes against the directions and policy of the petitioner (Party's Head). Participation in the election of Chief Minister Punjab and casting of votes by the respondents is an admitted fact. The question that arises is as to whether the participation of respondents in the election and casting of votes attract defection ipso facto or is dependent upon issuance of clear directions by the party and in the



absence of directions, the declarations of defection suffers from inherent and incurable defect. It has been seriously argued on behalf of the respondents that issuance of directions by the parliamentary party as required under Article 63-A(b)(i) of the Constitution is one of the mandatory requirement of the Constitution. On the other hand, it has been alleged by the petitioner that directions as required has been issued during party meetings and also circulated to the members via twitter, print and electronic media and the documents have also been annexed with the rejoinders. Similarly, the petitioners have alleged issuance of show cause notices. The respondents have denied issuance of any direction by the parliamentary party and have also denied receipt of any show cause notice. The learned counsel for the respondents while relying on the judgment of the august Supreme Court reported in PLD 2018 SC 97 "Sardar Sher Bahadar Khan and others Vs. Election Commission of Pakistan through Secretary, Election Commission, Islamabad and others" and 2018 SCMR 1043 "Imran Khan Niazi VS. Ayesha Gulalai" contended that before making a declaration the parliamentary party and party head is required to fulfil the pre-requisite as provided.

27. The provisions of Article 63-A entails serious penal consequences of de-seating of members of parliament and provincial assembly(s) as held by the august Supreme Court in its judgment reported in PLD 1998 SC 1263 "Wukala Mahaz Barai Tahafaz Dastoor Vs Federation of Pakistan" in the following words:

"We are unable to agree with the submission of the learned Attorney-General, Ch. Muhammad Farooq and Mr. S. Sharifuddin Pirzada, learned senior counsel for the Federation, that paragraph (a) to Explanation to clause (1) of Article 63A of the Constitution would also include the conduct of a member of the Parliament outside the House. The view, which I am inclined to take is also in conformity with the well-settled principle of interpretation that a penal provision should be construed strictly and its scope should not be extended unless it is so required by the clear language used therein or by necessary intentment. A member cannot be disqualified under Article 63A on the ground of his alleged misconduct committed outside the precinct of the Parliament, and I for that an action is to be taken according to the party constitution and not under Article 63A which regulates the conduct and behaviour of the members within the House of Parliament."

28.

The making of declarations under Article 63-A and its pre-requisite are provided in the Article itself. The subject issue is confined to the defection under clause (b)(i) of Article 63-A. The clause (b)(i) says that if a member of a



parliamentary party votes or abstain from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relation to election of the Prime minister or the Chief minister. The vires of Article 63-A was challenged before the Supreme Court in Wukala Mahaz Case reported in PLD 1998 SC 1263 and the august Court held that Article 63-A is intra vires to the Constitution. The august Court also held that in order to avoid future litigation and resolve the controversy, a line of distinction between defection inside the precinct of the Parliament and outside the Parliament has been drawn in the following words:

"A member cannot be disqualified under Article 63A on the ground of his alleged misconduct committed outside the precinct of the Parliament, and for that an action is to be taken according to the party constitution and not under Article 63A which regulates the conduct and behaviour of the members within a the House of Parliament."

"The upshot of the above discussion is that the above impugned Article is not violative of any provision. of the Constitution. However, in order to avoid future unnecessary litigation and to provide guideline, we may clarify the following points:

(i) That paragraph (a) is to be read in conjunction with paragraphs (b) and (c) to Explanation to clause (1) of Article 63-A of the Constitution. It must therefore, follow as a corollary that a Member of a House can be disqualified for a breach of party discipline in terms of above paragraph (a) when the alleged breach relates to the matters covered by aforesaid paragraphs (b) and (c) to the above Explanation clause (1) of the aforementioned Article and that the breach complained of occurred within the House.

29. In view of the observations of the apex court, factum of defection outside the parliament and inside the precinct of parliament have different consequences. The mode of proof to establish defection under clause (1)(a) of Article 63-A is different from the mode of proof required for defection under clause (b)(i). The defection under clause (a) requires proof of formal resignation or joining another political party, whereas defection under clause (b)(i) requires proof of voting or abstaining from voting against the party's directions. The case in hand is distinguishable from the cases of MNAs recently decided under clause (a) of Article 63-A. The cases under clause (1) (a) of Article and clause (b)(i) of Article 63-A cannot be adjudged on the same yardstick. In the cases of MNAs no concrete evidence was produced before the Commission to establish the factum of resignation or joining any other political party to attract defection.



30. A question arises as to whether issuance of any formal direction to the respondents would still be required in defection cases where wide publicity of decision of the party was talk of the town and aired through different news channels and also flashed on print, electronic and social media. The declarations seeking defections varies on case to case basis. The act of defection has been seriously viewed and denounced by the august Supreme Court in a number of pronouncements few of which are reproduced as under:

"Defection of elected members has many vice. In the first place, if the member has been elected on the basis of a manifesto, or on account of his affiliation with a political party, or on account of his particular stand on a question of public importance, his defection amounts to a clear breach of confidence reposed in him by the electorate. If his conscience dictates to him so, or he considers it expedient, the only course open to him is to resign to shed off his representative character which he no longer represents and to fight a re-election. This will make him honourable politics clean, and emergence of principled leadership possible. The .second, and more important, the political sovereign is rendered helpless by such betrayal of its own representative. In the normal course, the elector has to wait for years, till new elections take place, to repudiate such a person. In the meantime, the defector flourishes and continues to enjoy all the wordly gains. The third is that it destroys the normative moorings of the Constitution of an Islamic State." (P L D 1992 Supreme Court 646)

"This Court in number of its judgments described the Act of defection by elected members of the Assemblies as an immoral practice. The defection by members of political parties after their election as members of Assemblies led to the dissolution of more than one elected Assemblies in the past. There was strong condemnation by the public of the immoral practice of floor-crossing and defection by elected representatives of political parties after their election on party ticket as members of Assemblies. There was consensus amongst the political parties to eradicate the vice from the body politics of the country to restore the confidence of people in the political process. In this back set stringent legislative measures were needed to curb this immoral practice to keep the political process pure and clean." (P L D 1998 Supreme Court 1263)

"Defection on political parlance, as stated in Sabir Shah's case, means an act of political opportunism to obtain immoral gains and worldly advantages by exploiting one's representative and political status. However, while enacting laws or introducing amendments in the Constitution with the object of eradicating the vice of defection, the Legislature was not bound to provide the same meaning to the word 'defection' as given in dictionary or it is understood in common



parlance. The Legislature, therefore, while introducing Article 63A in the Constitution could give its own meaning to the word 'defection' provided it bore reasonable nexus to meaning given in the dictionary or as it is understood commonly. The definition of 'defection' provided under the Explanation appended to Article 63A, in my opinion, bears reasonable nexus to its dictionary meaning and as this word is understood in common parlance.

"that disloyalty, treachery and corruption from the rank and file of the elected members to both the Houses Defection, horse-trading or floor-crossing by the members elected on a party ticket is the odious type of corruption So, on the principle that Courts should not lean to maintain ill-gotten gains may not exercise discretion in favour of those who on one pretext or the other indulged in floor-crossing. As such on this count too, we are not inclined to exercise discretion in favour of petitioner". **(P L D 1995 Supreme Court 66)**

"20. We may observe that the approach of the learned Chief Election Commissioner should be that the above Article 63-A of the Constitution which is intended to eliminate cancerous vice of defection which has brought bad name to our country and also political instability should not be rendered ineffective on account of raising of frivolous pleas before him. If we were to hold that the Chief Election Commissioner has no power to examine the above plea, it would render the above Article 63-A ineffective as it will be very easy for a member who has defected to challenge the status of the head of the political party involved before the Chief Election Commissioner and then to compel initiation of a civil proceeding which could not have been the intention of the framer of above Article 63-A of the Constitution. It also runs counter to clause (2) of Article 63, thereof, which is to be read in conjunction with above Article 63-A." **(1999 S C M R 1921)**


31. Admittedly, Article 63-A has in built mechanism for making a declaration and effectuating defection. In the instant cases there are two main challenges before us to be answered. One is implementation of pre-requisites provided in Article 63-A and the other is to decide the issue of participation of the respondents in the election of Chief minister and casting their votes in favor of a die-hard opponent of the petitioner party, which is evident from the record of the Provincial Assembly and the admission made by the respondents. There are diverse claims with regard to fulfilment of pre-requisites of Article 63-A. On the one hand allegedly fulfilled by the petitioner and on the other hand outright denial by the respondents. The august Supreme Court in a Case reported in 2018 SCMR 215 "Sardar Fateh Ali Khan Umrani Vs. Chief Election Commissioner of Pakistan" while referring to the judgment of full bench has held as under:

"Lastly as observed in PLD 1995 SC 66 that disloyalty, treachery and corruption from the rank and file of the elected members to both the Houses Defection, horse-trading or floor-crossing by the members elected on a party ticket is the odious type of corruption So, on the principle that Courts should not lean to maintain ill-gotten gains may not exercise discretion in favour of those who on one pretext or the other indulged in floor-crossing. As such on this count too, we are not inclined to exercise discretion in favour of petitioner."

32. It has been held by the Hon'ble Supreme Court in a case reported in 1999 SCMR 1921 as under:

"20. We may observe that the approach of the learned Chief Election Commissioner should be that the above Article 63-A of the Constitution which is intended to eliminate cancerous vice of defection which has brought bad name to our country and also political instability should not be rendered ineffective on account of raising of frivolous pleas before him. If we were to hold that the Chief Election Commissioner has no power to examine the above plea, it would render the above Article 63-A ineffective as it will be very easy for a member who has defected to challenge the status of the head of the political party involved before the Chief Election Commissioner and then to compel initiation of a civil proceeding which could not have been the intention of the framer of above Article 63-A of the Constitution. It also runs counter to clause (2) of Article 63, thereof, which is to be read in conjunction with above Article 63-A." (1999 S C M R 1921)

33. The observance of the pre-requisites before making a declaration is provided in Article 63-A. We hold that issuance of directions followed by show cause notices and opportunity of hearing are the mandatory pre-requisites for making a declaration by the party head against a member of a parliamentary party as held in the case of Sardar Sher Bahadar Khan Vs. Chief Election Commissioner of Pakistan, Islamabad and others reported in PLD 2018 SC 97 and Imran Khan Niazi Vs. Ayesha Gulalai Reported in 2018 SCMR 1043. Each case has its own facts and circumstances and requires decision on the basis of material available on record. In the instant cases, directions were allegedly issued which were followed by show cause notices. However, the same are being out rightly denied by the respondents. In today's vibrant electronic, print and social media, it can be hardly believed that despite the party's policy being flashed on electronic, print and social media, the respondents had no notice of the same. Besides, the issue of election of the Chief Minister, Punjab had also been agitated before the worthy Lahore High Court,

Attested
Certified to be true by

20-5-2024

Lahore by the political parties and the same had been widely publicized and discussed on the print, electronic and social media.

34. There are two options before us, one is to ignore the completion of actus reus (casting of vote in favour of opposing candidate) on the ground of non-fulfilment of pre-requisites as mentioned in Article 63-A and decline the declarations. The other is to hold that casting of vote in favour of opposing candidate against party's policy being a serious matter as observed by the Hon'ble Supreme Court in its judgment referred hereinabove.

Keeping in view the above, we are of the view that the casting of votes by the respondent in favour of opposing candidate is a serious issue and worst form of betraying the electorate and party's policy. Therefore, we hold that the defection in the subject cases shall not depend upon strict proof of observance of pre-requisites as provided in Article 63-A. Questions are decided accordingly.

In the light of our question wise findings, we have arrived at the conclusion that participation of the respondents in the election of Chief Minister Punjab and casting their votes in favour of opposing candidate has established the factum of defection on the basis of the subject declarations against all the respondents. The declarations are confirmed and the respondents cease to be members of Punjab assembly and their seats become vacant.

Sd/-
(SIKANDAR SULTAN RAJA)
Chief Election Commissioner/
Chairman

Sd/-
(NISAR AHMED DURRANI)
Member

Sd/-
(SHAH MOHAMMAD Jatoi)
Member

Announced
20th May 2022.

