

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Mian Saqib Nisar, HCJ

Mr. Justice Umar Ata Bandial

Mr. Justice Ijaz ul Ahsan

Constitution Petitions No.37 to 45, 47 to 51 & 54 of 2017

And

Civil Miscellaneous Appeal No.244 of 2017

UNDER ARTICLE 184(3) OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

Zulfiqar Ahmed Bhutta	Petitioner <i>(in CP#37/17)</i>
Sheikh Rasheed Ahmed	Petitioner <i>(in CP#38/17)</i>
All Pakistan Aam Admi Party through its Chairman, Ch. Nasir Mehmood	Petitioner <i>(in CP#39/17)</i>
Pakistan Justice Party through its Chairman Muhammad Munsif Malik.	Petitioner <i>(in CP#40/17)</i>
Muhammad Dawood Ghaznavi	Petitioner <i>(in CP#41/17)</i>
Abdul Wadood Qureshi	Petitioner <i>(in CP#42/17)</i>
Sheikh Ahsan ud Din	Petitioner <i>(in CP#43/17)</i>
Pakistan Peoples Party through its Secretary General	Petitioner <i>(in CP#44/17)</i>
Jamshed Ahmed Khan Dasti	Petitioner <i>(in CP#45/17)</i>
National Party	Petitioner <i>(in CP#47/17)</i>
Malik Shah Muhammad Wazir	Petitioner <i>(in CP#48/17)</i>
Imran Khan	Petitioner <i>(in CP#49/17)</i>
Ishtiaq Ahmad Ch	Petitioner <i>(in CP#50/17)</i>
Gohar Nawaz Sindhu	Petitioner <i>(in CP#51/17)</i>
Amna Malik	Petitioner <i>(in CP#54/17)</i>
Istiqlal Party through its Chairman & others.	Appellant <i>(in CMA#244/17)</i>

VERSUS

Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs and others	Respondents <i>(in CP#38-44, 47-50&54/17)</i>
Federation of Pakistan through Secretary Cabinet Division and others	Respondents <i>(in CP#45 &37/17)</i>
Prime Minister of Pakistan through Principal Secretary Cabinet Division, Islamabad and others	Respondents <i>(in CP#51/17)</i>

Federation of Pakistan through its Secretary, **Respondents**
Civil Secretariat, Islamabad. *(in CMA#244/17)*

For the Petitioner(s): In person.
(in CP#37, 39, 41, 43, 50&51/17)

Dr. Farough Naseem, ASC
Mr. Faisal Farid Chaudhry, ASC.
Syed Razaqat H. Shah, AOR
(in CP#38/17)

Mr. M. Ikram Chaudhry, Sr. ASC
(in CP#40/17)

Sardar M. Latif Khan Khosa, Sr.ASC
Ch. Akhtar Ali, AOR
Assisted by Sardar Shahbaz Ali Khosa,
Barrister Afzal Hussain, Malik Javed
Iqbal, Syed Naz Gul Shah, Sardar Imran
Rafique, Mr. Arshad Binyamin,
Advocates.
(in CP#44/17)

Mr. Saeed Khurshid Ahmed, ASC
(in CP#45/17)

Mr. Khalid Abbas Khan, ASC
Mr. Mehmood A. Sheikh, AOR
(in CP#47/17)

Dr. Babar Awan, Sr. ASC
(in CP#48 & 49/17)

Mr. Azhar Siddique, ASC.
Ch. Akhtar Ali, AOR
(in CP#50 & 54/17)

Malik Munsif Awan, ASC
(in C.M.Appeal#244/17)

For the Respondent(s): Mr. Salman Akram Raja, ASC.
Raja Zafar-ul-Haq, Chairman PML(N)
Assisted by Mr. Asad Ladha and Malik
Ghulam Sabir, Advocates.
[On behalf of PML(N)]

Nemo.
*(On behalf of Respondent No.4 in CP#38 & 39/17,
Respondent No.7 in CP#42/17, Respondent No.5 in
CP#43/17, Respondent No.2 in CP#44/17 and
Respondent No.3 in CP#50/17)*

Mr. Kamran Murtaza, Sr.ASC
Muhammad Usman Ansari,
Deputy Secretary (Litigation)
National Assembly.

On Court's Notice: Mr. M. Waqar Rana,
Additional Attorney General for Pakistan
Muhammad Arshad, DG (Law),

Election Commission of Pakistan.

Date of Hearing: 21.02.2018

SHORT ORDER

MIAN SAQIB NISAR, CJ-. The Preamble to the Constitution of the Islamic Republic of Pakistan, 1973 (***the Constitution***) provides that, “sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust”; “wherein the State shall exercise its powers and authority through the chosen representatives of the people; wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed”; “wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality”.

2. Article 17 of the Constitution grants to every citizen the fundamental right to form associations subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order and / or morality.

3. An elected Parliament, adorned with the chosen representatives of people on the one hand and the rule of law on the other hand are the foundations of democracy under the Constitution. Articles 62, 63 and 63-A of the Constitution create an integrated framework for ensuring that business of the Parliament is conducted by persons of probity, integrity and high moral character. These conditions are enforced by Articles 62 & 63 of the Constitution by prescribing qualifications and disqualifications for membership to the Parliament.

4. All laws pertaining to the election to Parliament and to participation in the proceedings thereof are to be read subject to such constitutional provisions in the exercise of the rights guaranteed by Article 17 of the Constitution.

5. Under Article 63-A of the Constitution, the position of a Party Head of a political party that has representation in, *inter alia*, the Parliament has a central role in the performance of duties by the Members of the Parliament. For rendering such a role, a Party Head must necessarily possess the qualifications and be free of the disqualifications contemplated in Articles 62 & 63 of the Constitution.

6. The Election Act, 2017 empowers a Party Head to perform multifarious functions that have direct nexus with the process of elections to the Parliament and to matters relating to the affairs of political parties having parliamentary presence.

7. Therefore for detailed reasons to be recorded later, these Constitutional Petitions are allowed. It is held and declared that provisions of Sections 203 and 232 of the Election Act, 2017 are liable to be read, construed and interpreted subject to the provisions of Articles 62, 63 and 63-A of the Constitution.

8. As a consequence, it is declared that any person who suffers from lack of qualification under Article 62 or disqualification under Article 63 of the Constitution is debarred from holding the position of 'Party Head' by whatever name called and prohibited from exercising any of the powers provided in Article 63-A of the Constitution, as 'Party Head' or any other power in the said capacity under any law, rule, regulation, statute, instrument or document of any political party. Such bar and prohibition shall commence from the date of disqualification and

continue till such time that the lack of qualification/disqualification of such person continues in terms of the provisions of Articles 62 and 63 of the Constitution.

9. As a result of the above declaration, all steps taken, orders passed, directions given and documents issued by Respondent No.4 as Party Head after his disqualification on 28.07.2017 are also declared to have never been taken, passed, given or issued in the eyes of the law. The Election Commission of Pakistan is accordingly directed to remove the name of Respondent No.4 (Mian Muhammad Nawaz Sharif) as President/Party Head of Respondent No.3 (Pakistan Muslim League (N) from all relevant record(s).

Chief Justice

Judge

Judge

ISLAMABAD, THE
21st of February 2018.
ZR/*
APPROVED FOR REPORTING