

# IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

**Mr. Justice Umar Ata Bandial, CJ**

**Mr. Justice Ijaz ul Ahsan**

**Mr. Justice Jamal Khan Mandokhail**

**Civil Petition No.2242 of 2022**

Against a short order of the Lahore High Court,  
Lahore dated 30.06.2022 passed in Writ Petitions  
No.30456 of 2022, etc.

Mohammad Sibtain Khan and others **...Petitioner(s)**

**Versus**

Province of Punjab through its Chief **...Respondent(s)**  
Secretary, Lahore and others

For the Petitioner(s) : Dr. Babar Awan, Sr.ASC  
Mr. M. Azhar Siddique, ASC  
Ch. Faisal Fareed, ASC  
Mr. Imtiaz Rashid Siddiqui, ASC  
*(via video link from Lahore)*  
Syed Muhammad Ali Bukhari, ASC  
Mr. Amir Saeed Rawn, ASC  
Mr. Mazhar Siddique, ASC  
Mr. Shehryar Kasuri, ASC  
*(via video link from Lahore)*  
Mr. Imdad Hussain Chandio, Adv.  
Barrister Abdullah Babar Awan, Adv.  
Mr. Rai Muhammad Ali, Adv.

On Court's Call : Mr. Shahzad Shaukat, AG Punjab.  
*(via video link from Lahore)*  
Barrister Qasim Ali Chohan, Addl. AG  
Ch. Pervaiz Ellahi, Speaker Punjab Assembly  
*(via video link from Lahore)*  
Mr. Hamza Shehbaz Sharif, CM Punjab  
*(via video link from Lahore)*

For Respondent#5 : Mr. Mansoor Usman Awan, ASC  
Mr. Khalid Ishaq, ASC  
*(via video link from Lahore)*

Date of Hearing : 01.07.2022

**ORDER**

**IJAZ UL AHSAN, J-**. The petitioners seek leave to  
appeal against an order of the Lahore High Court, Lahore  
dated 30.06.2022 ("impugned order"). Through the impugned

order passed by a majority of four (04) to one (01), writ petitions filed by some of the petitioners have partly been allowed and it has been directed that a session of the Punjab Assembly be resumed on 01.07.2022 (*Friday at 4:00 pm*) to hold a poll in terms of Article 130(4) of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution"). All the functionaries under the Constitution and the law have been directed to act jointly and severally to implement the directions of the High Court. It has observed that "for clarity it is explained that Hamza Shehbaz shall cease to be Chief Minister, if he loses the required majority after exclusion of 25 votes by Presiding Officer and the communication of his being elected candidate under Rule 21 alongwith Notification dated 30.04.2022 shall deem to have been quashed. Accordingly, it is directed that the Assembly session so resumed shall not be prorogued till the election process is completed and the Presiding Officer (Deputy Speaker) intimates the result of the elected Chief Minister to the Governor under Rule 21 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1997". It has further been directed that the Presiding Officer shall recount votes after excluding 25 votes (cast by defecting members of Pakistan Tehreek-e-Insaf) already cast in the election held on 16.04.2022. After excluding the said votes, if a majority under Article 130(4) of the Constitution is not secured by any candidate, the Provincial Assembly shall proceed for a second poll for completing the process of the election as required under Article 130(4) of the Constitution.

2. It may be noted that the Respondents have not challenged the impugned order of the High Court. It is only the petitioners who have approached this Court through this petition *inter alia* praying that the impugned order dated 30.06.2022 may be amended/modified to the extent of provision of adequate and sufficient time to hold a session of the Punjab Assembly enabling the members to participate in the proceedings by issuance and proper service of notice upon the members of the Provincial Assembly so that they may exercise their right to vote for the election of the Chief Minister, Punjab in a fair and transparent manner. It has also been prayed that the Chief Minister, Punjab may be removed pending the election process due to absence of a valid notification of his appointment and that the Court may grant such time and issue such directions that free and fair election to the office of the Chief Minister, Punjab takes place with the participation of duly constituted Assembly in accordance with democratic norms of the Constitution. By way of interim relief, it has been prayed that during pendency of this petition, the election process may be suspended.

3. We have heard learned counsel for the parties at considerable length and gone through the material available on record.

4. During the course of hearing, we directed personal appearance of Mr. Muhammad Hamza Shehbaz Sharif ("Mr.Sharif") who had secured 197 votes in the election held on 16.04.2022 and has since been notified as the Chief

Minister, Punjab vide notification No.SO(CAB-II)2-12/2018(Vol-I) dated 30.04.2022 and Ch.Parvez Ellahi ("Mr.Ellahi"), who is presently the Speaker, Punjab Assembly and was also a contesting candidate for the office of Chief Minister, Punjab in the election held on 16.04.2022.

5. When Mr. Ellahi appeared before us he stated that some of the members who support him were out of the country for the performance of Hajj or for other reasons and would not be able to participate in the election process. Five (05) members on reserved seats who represent the minorities and women and also support him have not so far been notified by the Election Commission of Pakistan ("ECP") despite orders passed by the Hon'ble Lahore High Court will also not be able to vote. Further, the seats of 20 members of the Provincial Assembly who had been de-seated on account of defection are vacant and bye-elections to such seats have been announced for 17<sup>th</sup> of July, 2022. He therefore maintained that presently the House was not complete and it would be in the spirit of the Constitution as well as democratic norms that the election of the Chief Minister, Punjab be held when the House is complete and all eligible members are given an opportunity to cast their votes in accordance with law.

6. On our query, he initially took the position that till the time that the Chief Minister, Punjab is duly elected in accordance with law and the Constitution, the notification of Mr. Sharif may be set aside, he may be removed from the

office of the Chief Minister, Punjab and some alternate and impartial arrangement may be made to ensure that the election is conducted in a free, fair and transparent manner.

7. On the other hand, Mr. Sharif took the stance that he had no objection if the fresh election for the position of the Chief Minister, Punjab was held after 17<sup>th</sup> of July, 2022. However, he submitted that he still held a numerical majority in the House and could show such majority if the second poll in terms of Article 130(4) of the Constitution is held today as directed by the High Court. He further submitted that if he is allowed to continue as the Chief Minister, Punjab till the fresh poll is held, he would have no objection to the arrangement proposed by Mr. Ellahi.

8. The parties before us and their respective learned counsel were given time to confer and seek instructions from the top leadership of their respective parties. An agreement was reached between them for a political solution with the consensus of their respective political parties involved in the instant election process, namely, Pakistan Muslim League (N), Pakistan Muslim League (Q) and PTI who are before us.

9. Mr. Babar Awan, learned ASC, who represents the Leader of the Opposition in the Punjab Assembly earlier took a different stance but subsequently after consultation with the Leader of the Parliamentary Party of PTI in the Punjab Assembly as well as the Party Head agreed to the consensus which was earlier arrived at between Mr. Sharif of PML(N) and

Mr.Ellahi who represents PML(Q), the coalition partner of PTI in the Provincial Assembly but without prejudice to their respective legal and constitutional positions in the interest of resolving the present constitutional impasse.

10. Based on the unqualified consent of all parties before this Court and the assurances obtained by the Court from Mr. Sharif, the following order is passed which would amend and modify and to that extent override the impugned order of the Lahore High Court dated 30.06.2022:

- i) The second poll for election of the Chief Minister, Punjab in terms of the proviso to Article 130(4) of the Constitution shall be held on Friday, 22.07.2022 at 4:00 pm in the Punjab Assembly Building as suggested by Mr. Ellahi, the Speaker, Punjab Assembly and consented to by Mr. Sharif as well as Mr. Babar Awan, learned ASC representing the Leader of the Opposition in the Punjab Provincial Assembly. The session in which such poll takes place will be chaired by the Deputy Speaker of the Assembly. The Speaker/Deputy Speaker shall issue a formal notification convening the session in this regard after fulfilling all legal and procedural formalities within one week from today;
- ii) Till such time that the poll as directed above is held in accordance with the Constitution, Mr. Sharif has undertaken before the Court that he and his Cabinet shall exercise the powers and function their offices strictly in fiduciary capacity as envisaged by the Constitution and the law to support the

process of bye-election in the Province to be conducted in a free, fair and transparent manner by the Election Commission of Pakistan. That such commitment to act as trustees is meant to fulfil the duty of care towards citizens of Punjab so that they are not deprived of due representation and governance, and to avoid any constitutional vacuum, anomaly or complication. However, such entrustment shall continue only till 22.07.2022 when a second poll takes place in terms of Article 130(4) of the Constitution;

- iii) The Lahore High Court shall issue its detailed reasons for the order dated 27.05.2022 passed in W.P.No.34654 of 2022 in this regard within one week from today which shall be implemented by ECP forthwith by issuing the notification of the names of the candidates against reserved seats in accordance with the directions issued by the Lahore High Court. If any person is aggrieved of any such notification, he/she shall have the right to agitate such grievance before the appropriate forum in accordance with law;
- iv) Bye-election (due to be held on 17.07.2022) against the seats which had become vacant on account of defection of members of PTI shall be held in a free, fair and transparent manner. The process shall be completed as per the schedule already announced by the ECP. The final result(s) and notification(s) shall also be issued accordingly. Any and all disputes arising out of or relating to such bye-election shall be dealt with by the relevant *fora*, in accordance with law;

- v) The ECP as well as all relevant State functionaries including members of the Parliament and the Provincial Assemblies, Ministers, Advisors, etc shall ensure that all parties follow the election laws as well as the Code of Conduct issued by the ECP in their letter and spirit and refrain from any interference, inducement or influence in the affairs of the executive, the local administration, the ECP, etc or indulge in corrupt and illegal practices, the use of State machinery in the process of bye-elections, harassment, intimidation or use of law enforcement agencies against opponents/ candidates or their supporters, etc except to restore law and order.
- vi) No transfers or postings of officials of the local administration, police, Provincial Election Commission, etc shall be undertaken in order to ensure fairness and transparency of the election except in accordance with specific provisions of the Election Act, 2017 and the Code of Conduct to meet emergency situations. Further, no fresh development schemes and/or financial allocations shall be made in the constituencies where the bye-election is to be held till finalization of the bye-election. In the event of violation of the provisions of the Election Act, relevant rules framed thereunder or the Code of Conduct, the ECP shall take appropriate action in accordance with law; and
- vii) The Speaker, Punjab Assembly has given a categoric assurance that all matters relating to the business of the Assembly shall be handled and dealt with peacefully,



impartially and transparently within the Assembly Chambers and its relevant offices in accordance with the Constitution, the law and the rules. In addition, all parties including Mr. Sharif have categorically assured and stated that a peaceful and congenial atmosphere will be maintained not only during the poll but also in the proceedings in the Provincial Assembly held thereafter until announcement of the result. We expect that such undertakings and assurances shall be honoured and implemented.

- viii) It is unreservedly and categorically agreed and undertaken by all parties before us that it is the constitutional, legal and moral responsibility of all political parties and their members/candidates involved in bye-elections and the subsequent voting in the Provincial Assembly to abide by the ECP Code of Conduct and the Rules of Procedure of the Provincial Assembly and the norms/conventions of the parliamentary conduct.

11. Before parting with this order, we wish to record our appreciation regarding the positive and constructive attitude adopted and the role played not only by the top leadership of three political parties involved in the dispute but also by the respective learned counsel.

12. This petition is accordingly disposed of and the impugned order of the Lahore High Court, Lahore dated

30.06.2022 is modified and amended in the aforementioned terms.

**Chief Justice**

**Judge**

**Judge**

**ISLAMABAD, THE**

01.07.2022

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Not Approved For Reporting