

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

CONSTITUTION PETITION NO.22 OF 2022

AGAINST THE RULING OF DEPUTY SPEAKER, PUNJAB ASSEMBLY
DATED 22.07.2022

Chaudhry Parvez Elahi

Petitioner(s)

Versus

Deputy Speaker, Provincial Assembly of Punjab,
Lahore and others

Respondent(s)

For the petitioner(s):

Mr. Ali Zafar, ASC
Mr. Imtiaz Rashid Siddiqui, ASC
Mr. Aamir Saeed Rana, ASC
Mr. M. Safdar Shaheen Pirzada, ASC
Dr. Babar Awan, ASC
Ch. Faisal Fareed, ASC
Mr. Ahmed Owais, ASC
Mr. Azhar Siddiqui, ASC *(via video link at Lahore)*
Syed M. Ali Bukhari, ASC
Assisted by
Mr. Sabeel Tariq, Advocate
Mr. Hamza Sheikh, Advocate
Mr. Abdullah Babar, Advocate
Mr. Fayaz Kandwal, Advocate

For Respondent No.1:

Mr. Irfan Qadir, ASC

For Respondent No.2:

Mr. Mansoor Usman Awan, ASC
Mr. Khalid Ishaq, ASC

For Punjab Govt:

Mr. Qasim Ali Chohan, Addl.AG.
Ch. M. Jawad Yaqub, Addl.AG
(via video link from Lahore)

For the Federation:

Ch. Aamir Rehman, Addl.AGP
Mr. Sohail Mehmood, Addl.AGP
Assisted by
Mr. Usama Rauf, Advocate
Malik Abbas Farooq, Advocate

For PPPP:

Mr. Farooq H. Naek, Sr.ASC
Syed Razaqat H. Shah, AOR
Assisted by
Mr. Sheraz Shaukat Rajpar, Advocate

For PML-Q President: Mr. Salahuddin Ahmed, ASC
Mr. Mohsin Qadir Shahwani, ASC

Date of Hearing: 26.07.2022

ORDER

UMAR ATA BANDIAL, CJ. A Full Bench of the learned High Court vide judgment dated 30.06.2022 partly allowed certain writ petitions, *inter alia*, directing that the Session of the Punjab Assembly be resumed on 01.07.2022 (Friday) at 4:00 pm to hold poll in terms of Article 130 (4) of the Constitution of the Islamic Republic of the Pakistan, 1973 ("**Constitution**"). The said election was the runoff in terms of the proviso to Article 130(4) *ibid* for the post of Chief Minister, Punjab to be held between the respondent No.2, Hamza Shahbaz Sharif PML(N) and the petitioner PML(Q). A petition filed before this Court against the said order dated 30.06.2022 was disposed of on 01.07.2022 by a consent order. It was agreed by and between the petitioner and the respondent No.2 as well as the coalition partner of the petitioner (PTI) that the runoff election would be held on 22.07.2022 after the bye-elections on the 20 general seats in the Punjab Assembly vacated by the PTI members whom the ECP had declared as defectors. Both the petitioner and the respondent No.2 agreed to the continued functioning of the respondent No.2 as the Chief Minister of the Province in a fiduciary capacity until holding of the runoff election. It was further agreed that the election would be held under the charge and supervision of the Election Act and the Code of Conduct of the ECP. It was further directed

that the election process would be completed in accordance with the schedule announced by the ECP which would issue notification of the final result accordingly.

2. At the runoff election held on 22.07.2022 the petitioner secured 186 votes whilst the respondent No.2 got 179 votes which is recorded in the impugned ruling of the Deputy Speaker dated 22.07.2022. However, the Deputy Speaker excluded 10 votes in favour of the petitioner from count as a result of which he announced the winning candidate for the slot of Chief Minister to the respondent No.2. The votes were excluded on the basis that 10 members of the PML(Q) had failed to follow the direction under Article 63A(1)(b) of the Constitution given by the party head to the members of the Parliamentary Party of PML(Q).

3. As a result the winning candidate who had received 186 votes lost the election by 03 votes. The Deputy Speaker's ruling was challenged before this Court on 23.07.2022. After the preliminary hearing the matter has been heard at Principal seat on 25.07.2022 and on 26.07.2022.

4. We have arrived at the conclusions that follow after hearing the learned counsel for the petitioner and the learned counsel for the respondents No. 1 to 3 at Islamabad. It may be mentioned that the learned counsel for the respondents raised an objection to the hearing of the matter by a three Member Bench of this Court and sought the referral thereof to the Full Court. However, while explaining the grounds for making this

request the learned counsel for the respondents No.1 and 2 also laid out their case on the merits of the dispute which essentially concerns a question of law touching the formation of the Provincial Government allegedly in violation of the provisions of the Constitution, in particular, Article 63A read with Article 130(4) thereof.

5. Although elaborate submissions were made in terms as above yesterday i.e. 25.07.2022, requests were made by the learned counsel for the respondents/interveners for further time to make additional submissions, if any, and seek instructions. We accordingly adjourned the matter for today i.e. 26.07.2022 at 11:30 am to give the learned counsel for the respondents/interveners a further opportunity to add to their submissions on the merits of the case if deemed appropriate by them. However, when the matter was taken up at 11:30 am, the learned counsel for the respondents as well as interveners one by one stepped forward and informed the Court that their respective clients had instructed them not to participate further in the proceedings in this case. However, in the first session which continued for about one hour and forty-five minutes, they did not withdraw from the Court room and observed further proceedings in the matter during which we heard further arguments of the learned counsel for the petitioner specially in relation to submissions that had been made by the learned counsel for the respondent/interveners on the previous date, and the reliance placed by them on the following judgments of this Court:

District Bar Association, Rawalpindi vs. Federation of Pakistan (PLD 2015 SC 401), **Sardar Sher Bahadar Khan vs. Election Commission of Pakistan** (PLD 2018 SC 97) and **Zulfiqar Ahmed Bhutta vs. Federation of Pakistan** (PLD 2018 SC 370).

6. While we will deal with these decisions in our detailed reasons in support of this short order, it would not be out of place to say something here with regard to the first of the aforementioned judgments.

7. Much emphasis has been laid upon the judgment of the Full Court delivered in the case of **District Bar Association** (*supra*) both on the merits and as a ground for placing the present petition for hearing before the Full Court. The said judgment adjudicated, as presently relevant, the vires of the 18th Amendment to the Constitution. By majority the 18th Constitutional Amendment was upheld. In the said majority one judgment authored by Justice Sheikh Azmat Saeed was agreed to by 7 other Judges. However, it is to be noted that since the matter was heard by a Full Court of 17 Judges, the majority for the purposes of determining the *ratio decidendi* of the Court had to have the concurrence of at least 9 Judges.

8. The respondents/intervenors have relied in particular on paragraph 112 of the judgment of Justice Sheikh Azmat Saeed to contend that it has been laid down therein that “decision of the party as to how to vote has been conferred upon the Party Head” and basing themselves on these words they

submitted that the ruling of the Deputy Speaker dated 22.07.2022 was correct. In our view the judgment in the **District Bar Association** case (*supra*) requires consideration on two planes. Firstly, as to whether it constitutes a binding precedent such as would constrain this Bench and require us to follow the same in preference over the short order dated 17.05.2022 as regards Article 63A of the Constitution on the proscribed action and the consequences that such conduct would attract. Paragraph 112 referred to above and in particular the above quoted words relied upon do not form part of the *ratio decidendi* of the Court since (subject to what is said below) they did not constitute the views of the majority of the Judges on the Full Court. Other than the 8 Judges, who signed the judgment authored by Justice Sheikh Azmat Saeed, 6 other Judges also gave judgments dismissing the challenges to the 18th Constitutional Amendment. Learned counsel for the petitioner has taken us through each of the judgments to submit that none of those other Judges have dealt with this particular point which is as to whether the Party Head can give any directions as contemplated by Article 63A(1)(b). Therefore, on this point the judgment being relied upon does not constitute binding precedent. The other aspect with regard to this paragraph read with paragraph 113 which was also made part of the submissions by learned counsel for the respondents/ intervenors was that one of us (Umar Ata Bandial, CJ) was also one of the 8 Judges who signed the judgment authored by

Justice Sheikh Azmat Saeed. It was suggested that, therefore, this was yet another reason as to why the petition before us ought to be placed before the Full Court.

9. We have very carefully considered this aspect of the matter, since it relates not just to a question of law but also that of propriety. In the end, we have come to the conclusion that the submissions made in this regard cannot be accepted. This is so for multiple reasons which will be elaborated upon in the detailed reasons. At present it suffices to note that the observations in paragraphs 112 and 113 of the judgment have no relation with the question of vires of Article 63A of the Constitution that was under consideration, as set out in paragraph 105 of the judgment. The said question is squarely dealt with and answered in paragraph 111 of the judgment with reference to the *ratio decidendi* in the Wukala Mahaz Barai Tahafaz Dastoor Vs. Federation of Pakistan (PLD 1998 SC 1263). Secondly, the observations in the judgment being relied upon with respect to Article 63A are discordant with the actual provisions thereof on the subject of issuance of direction to the members of the Parliamentary Party. In that sense, the observations even if they had had binding effect would have been *per incuriam*. In the above situation the observations in paragraphs 112 and 113 of the judgment are passing remarks not bearing relevance to the matter of vires nor explicating the actual or true words of the Constitution. Thirdly, if a Judge has unconsciously followed an incorrect view of the law, he has by

conscious application of mind the freedom to adopt the correct view of the law subsequently. Fourthly, in the said case the concerned member of this Bench (Umar Ata Bandial, CJ) wrote a separate opinion in which other constitutional provisions that were under challenge were treated at length but no notice at all was taken of Article 63A or the 18th Constitutional Amendment. This reflects the insignificance of the said Constitutional provision as evidenced also by the opinions of Chief Justice Nasir-ul-Mulk, Justice Asif Saeed Khan Khosa and Justice Ejaz Afzal Khan which also did not consider Article 63A of the Constitution.

10. As a last resort, learned counsel for the respondents/intervenors also relied upon the judgments in Sardar Sher Bahadur Khan (*supra*) and Zulfiqar Ahmed Bhutta (*supra*) to support their contention that the Party Head is the relevant person who has to issue a direction to the members of the Parliamentary Party under Article 63A(1)(b) of the Constitution. However, none of the cited cases substantiate this claim.

11. In view of the foregoing and for detailed reasons to be recorded later and such elaboration and amplification as may be necessary, the titled constitutional petition is allowed. The sole question of public importance with reference to enforcement of fundamental rights involved in this petition is whether the understanding and implementation of the short judgment of this Court dated 17.05.2022 passed in Presidential

Reference No.1 of 2022 read with Article 63A(1)(b) of the Constitution of Islamic Republic of Pakistan, 1973 (*“the Constitution”*) was correct. We find that the understanding and implementation of the said short judgment as well as the provisions of Article 63A(1)(b) of the Constitution by the Deputy Speaker, Provincial Assembly of Punjab, Lahore (*Respondent No.1*) was patently incorrect and erroneous and cannot be sustained. The governance of the Province of Punjab in accordance with the Constitution has been subverted whereby the fundamental rights of the people have been seriously infringed. As a result, the Ruling dated 22.07.2022 issued by Respondent No.1, Deputy Speaker, Punjab Assembly is set aside and declared to be void, without lawful authority and of no legal effect.

12. In consequence of the above, having admittedly secured 186 votes as against 179 votes obtained by Mr.Hamza Shehbaz Sharif (*Respondent No.2*) in the runoff election of Chief Minister, Punjab held on 22.07.2022 pursuant to the consent order of this Court dated 01.07.2022 passed in Civil Petition No.2242 of 2022, Chaudhry Parvez Elahi (*the petitioner*) is declared as the duly elected Chief Minister, Punjab.

13. We direct the Chief Secretary, Punjab (*Respondent No.3*) to immediately and forthwith and on announcement of this short order issue the requisite notification declaring the petitioner as the duly elected Chief Minister, Punjab.

14. In consequence of the foregoing, it is declared that Respondent No.2 not being the duly elected Chief Minister, the oath of office administered to him was and is without lawful authority and of no legal effect. Likewise all acts, deeds and things attendant and consequent upon such oath including but not limited to the notification of Respondent No.2 and the formation and swearing in of the Cabinet on his advice is also declared to be without lawful authority and of no legal effect.

15. All Advisors, Special Advisors and Special Assistants etc (if any) by whatever name called appointed by, on behalf or under orders/advice of Respondent No.2 shall immediately and forthwith cease to hold office, their appointment is declared illegal and without lawful authority and the respondent No.2, the persons appointed as Ministers on his advice and the aforementioned persons are relieved of their offices/posts with immediate effect.

16. We direct the Governor, Punjab to arrange and administer oath of office to the petitioner as the duly elected Chief Minister, Punjab in accordance with law and the Constitution not later than 11:30 pm tonight i.e. 26.07.2022. In case, the Governor, Punjab is unable or unwilling to administer such oath, the President of Pakistan may forthwith administer oath of office to the petitioner as Chief Minister, Punjab.

17. All acts, deeds and things lawfully done or purported to be done by Respondent No.2 and or any Member of the Provincial Cabinet in accordance with the Constitution and the

law under colour of office are hereby saved and protected under the *de facto* doctrine subject to all just and legal exceptions and such review, modification, reversal or withdrawal as may be deemed appropriate by the incoming Chief Minister, Punjab and any member of the Cabinet or other officer appointed by him in accordance with law.

18. The office shall immediately communicate/ transmit a copy of this order to the Governor Punjab, Respondent No.1 (*Deputy Speaker, Provincial Assembly of Punjab, Lahore*) as well as Respondent No.3 (*Chief Secretary, Punjab*) for implementation and compliance of the same.

Chief Justice

Judge

Judge

ISLAMABAD.

26.07.2022.

ZR/*

'Approved For Reporting'