

BEFORE THE ELECTION COMMISSION OF PAKISTAN

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

Case No.F.5(1)/2023-O/o-DD-Law
Case No. F.3(10)/2002-Confid (Vol-III)

Subject: PETITION FOR CONDUCT OF FRESH INTRA PARTY ELECTION
OF POLITICAL PARTY NAMEDLY PAKISTAN TEHREEK-E-INSAF

HEARING IN CONNECTION WITH THE INTRA PARTY
ELECTIONS OF PAKISTAN TEHREEK-E-INSAF

1. Raja Tahir Nawaz Abbasi S/o Raja Haq Nawaz Resident of Mohallah Tikka Khan, Bhahakahu, Islamabad.
2. Akbar S. Babar, H.No.10, St., 77, E-11/2 (F.E.C.H.S.), Islamabad
3. Noreen Farooq Khan D/o Farooq Muhammad Khan, House No.2, Street No. 84 Sector G-6/4 Embassy Road Islamabad.
4. Mehmood Ahmed khan S/o Wali Ullah Khan, House No. 43-A Orchard Farm, Murree Road Islamabad.
5. Sabah Zahid, Advocate High Court C/o Ladies Bar Room District Courts, Quetta.
6. Raja Hamid Zaman Kiani S/o Raja Lehrasab Khan, Resident of Pind Barhi, Post Office Bharakahu, Kot Hathyal, Barakhu Tehsil and District Islamabad.
7. Muhammad Shah Fahad S/o Muhammad Saeed R/o Kohat Road Civil Colony Post office Technical College House No. V-I Peshawar.
8. Muhammad Muzammil Sandhu S/o Muhammad Shareef Sandhu, Chak No.312, GB, District Toba Tek Singh
9. Yousaf Ali s/o Abdul Sher
10. Bilal Azhar Rana S/o AzharIlahi Rana, Wah Cantt, Taxila
11. Jehangir Khan S/o Bahadar Khan, R/o Post office Charsadda, Mirzagan, District, Charsadda.
12. Sardar Niaz Ahmad S/o Sardar Muhammad Hassan, Former District Vice President Pakistan Tehreek E Insaf Welfare wing, Abbottabad R/o Near Cantt Rest house, Kala Bagh, District Abbotabad.
13. Talib Hussain alias Ch. Tanveer S/o Barkat Hussain Resident of House # a 925 street # 4 Mohallah Sadaqabad service road Rawalpindi.
14. Shahid yaqoob s/o Muhammad Yaqoob, Resident of Kocha Doctoran, House No. S-30-B-11-20, Mohallah Machine No. 3, Jhelum.
15. Niazullah Khan Niazi CEC Pakistan Tehreek-e-Insaf, Pakistan.

Petitioners

VERSUS

The Chief Election Commissioner, PTI, Office at Plot No. A-1, Street number 32, G-8/4, Islamabad



2. UmerAyub S/o Gohar Ayub, Secretary General, PTI resident of House No 206, Rehana, Haripur, Presently House No. 320, Street No. 58 Sector F-10/3, Islamabad.
3. Barrister Gohar Khan, Chairman PTI, presently Office at Plot No. A-1, Street Number 32, G-8/4, Islamabad.
4. Niazullah Niazi S/o Abdul Sattar Niazi, Chairman, PTI Intra Party Election organizing Committee, 2023
5. Muneer Ahmed Baloch, President PTI Balochistan
6. Haleem Adil Sheikh, President PTI Sindh
7. Ali Ameen Ganda Pur, President PTI KPK
8. Dr. Yasmeen Rashid, President PTI Punjab
9. Sardar Masroof Khan, Returning Officer, Central Secretariat, Plot No. A-1, Street Number 32, G-8/4, Islamabad.
10. Ansar Mehmood Kiani, Returning Officer KPK, Central Secretariat, Plot No. A-1, Street Number 32, G-8/4, Islamabad.

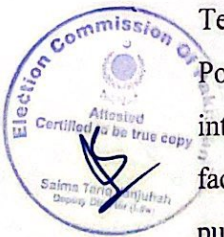
.....Respondents

For the petitioner No.1, 5 & 6:	Syed Aziz ud Din Kakkhel, Adv
For the Petitioner No.2:	In Person along with Syed Ahmed Hassan, ASC
For the petitioner No. 3:	In person along with Syed Ahmed Hassan, ASC
For the petitioner No. 4:	In person along with Syed Ahmed Hassan, ASC
For the petitioner No. 7:	In Person along with Naveed Akhtar, Adv
For the petitioner No. 8:	In person
For the petitioner No. 9:	In person along with Syed Ahmed Hassan, ASC
For the petitioner No. 10:	In person
For the petitioner No. 11:	In Person along with Naveed Akhtar, Adv.
For the petitioner No. 12:	In person alongwith Fida Bahadur, ASC
For the petitioner No. 13:	M. Salman Munir, Adv &Naba Bakhtiar, Adv
For the petitioner No. 14:	Nemo
For the Petitioner No. 15:	in person
For the respondents:	Barrister Ali Zafar & Barrister Gohar Ali

Date of hearing : 18-12-2023
Date of hearing : 19-12-2023

ORDER

Justice (R) Ikram Ullah Khan, Member.— Through the instant single consolidated order, we intend to decide and dispose of the core issue of intra party election of Pakistan Tehreek Insaf (PTI), which has been challenged by the petitioners herein on one hand and Political Finance Wing of this Commission has also raised numerous objections over the intra party election of PTI allegedly held on 02/12/2023 on other hand. Briefly stated facts leading to filing of instant complaints filed by petitioners are that the PTI in pursuance of Order of this Commission, dated 23.11.2023 allegedly held intra party



election on 02.12.2023. The allegedly newly elected Chairman of PTI submitted the intra party election related documents, the Certificate regarding intra party election and Form-65 before the Commission. The Political Finance Wing of the Commission raised various objections over the documents submitted by the PTI before the Commission. All the objections raised by the Political Finance Wing was placed before the Commission and it was decided by the Commission that notices be issued to PTI in order to explain, clarify and satisfy the Commission with regard to the objections raised on the intra party election documents submitted in the office of Political Finance Wing. On other hand, thereafter the alleged intra party election of PTI, petitioners also filed various petitions in the shape of complaints whereby they have raised serious objection over the alleged intra party election and all have raised a common objections that the PTI has not conducted its intra party election in accordance with the provisions of PTI Constitution, 2019 but have held the election in a clandestine and secret manner. No member was afforded an opportunity to contest the election; that neither any nomination forms were issued nor available with any office of PTI; that no notice in respect thereto holding of intra party election was ever published in any daily newspapers or displayed on Notice Board of the main Secretariat Office of PTI. All the petitioners have common prayers that the PTI has not conducted its intra party election and the documents submitted before the Commission are not based on reality, however made by some interested person to avoid consequences of Section 215 of Election Act, 2107 and to get the election symbol, that the directions rendered by this Commission vide its Order, dated 23.11.2023 is not complied with in its letter and spirit therefore the alleged intra party election of PTI be declared null and void and PTI be once again directed to hold intra party election strictly in accordance with PTI constitution, 2019.

2. The political Finance Wing during the course of hearing handed over a comprehensive Questionnaire, which covered all the objections raised over the intra party election of PTI. The Questionnaire is annexed with this Order as "Annexure-A"

3. It would not be out of context to refer to the previous elections allegedly held by the PTI on 10.06.2022 (however, the said date was not confirmed). The said election was declared void and not accepted by this Commission vide Order, dated 23.11.2023 and passed direction in paragraph 34 of the Order, which reads as under:-

"34. Keeping in view the afore stated reasons, we are confirmed in our views, that the Respondent Party failed to hold, transparent just and fair b-- r intra party election in accordance with its prevailing Constitution,

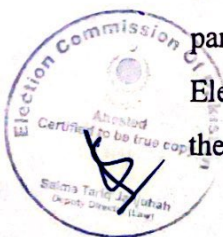


2019 allegedly held on 10-06-2022, which is highly disputed/objectionable, which could not be accepted at all, therefore it is held that respondent party is failed to hold its intra party election within the extended period of one year, till 13-06-2022, but we instead of taking the final step to invoke the provision of section 215(5) of the Election Act, 2017, a lenient view is taken with direction to the respondent party to hold its intra party election strictly in accordance with the prevailing party constitution, within 20 days positively and its result along with all the required documents, including form 65 shall be submitted thereafter the election within 7 days before the Commission. In case, the respondent party failed to comply with direction of the Commission and failed to hold its intra party election within the prescribed 20 days which will run from today, the date on which this order is announced, in such eventuality the respondent will suffer the penal consequences of Section 215(5) of Election Act, 2017 accordingly and would be ineligible to obtain an election symbol for election to Majlis-e-Shoora (Parliament) etc”

4. Pakistan, being a democratic country, run under Constitution of Islamic Republic of Pakistan, 1973 (the Constitution, 1973), whereby Article 17 of the Constitution, 1973 confers rights upon every citizen to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. Likewise, every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and every such political party is bound under the Constitution to account for the source of its funds in accordance with law.

5. The Election Commission of Pakistan, being a constitutional body, constituted in term of Article 218 of the Constitution, 1973 charged with the duties, pertaining thereto, elections etc and such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament). In order to regulate, monitor, hold and conduct election of Assemblies, Senate and Local Government as well as to regulate political parties including their formation, enlistment and intra party elections, the parliament is in acted, the Election Act, 2017.

6. Every political party so formed shall enlist itself with Election Commission of Pakistan, and bound to submit its constitution, the certificate in Form-65 in regard to intra party election as well as all the relevant information required under Section 209 of the Elections Act, 2017, a copy of consolidated statement of its accounts under section 210 of the Act and list of 2000 members, etc.



7. It is mandatory requirement of law envisaged thereunder Section 201 of the Election Act, 2017 for all political parties to formulate its constitution, by whatever name is called but such constitution of political party shall include organizational structure of the party at the Federal, provincial and local level, whichever is applicable along with specific designation and tenure of the office bearers with clear procedure for elections of office bearers, their powers and functions including financial decision making bodies.

8. The PTI had submitted before the Commission its constitution with the name of PTI constitution 2019, which had approved by the concerned party body, i.e. National Council on 01.05.2019. According to the list provided to the Commission at the occasion of previous election held in 2017 the following office bears were elected:-

- | | | |
|----|-------------------------------|-------------------|
| 1) | Mr. Muhammad Imran Khan Niazi | Chairman |
| 2) | Mr. Shah Mahmood Qureshi | Vice Chairman |
| 3) | Mr. Jehangir Khan Tareen | Secretary General |
| 4) | etc | |

9. Likewise office bearers were elected at provincial and local level seats. However, somewhere in the year 2018 or 2019, the Secretary General mentioned above was replaced by the party Chairman and Mr. Asad Omar was elected thereafter as Secretary General. In the previous election allegedly held on 10.06.2022 the list provided to the Commission reveals that one Mr. Asad Omar allegedly elected as Secretary General of the party, however, that intra party election was declared void by this Commission.

10. According to Article IV of the 2019 constitution of PTI there shall be the following organization, which reads as under:-

"1. A 'Primary Organization' consisting a Census Block Code (A Census block Code or simply called a Block Code is an area defined by the revenue department comprising an average of 300 households. One voters-list contains the voters of the households within one block code.

2. A local organization shall consist of an area of the lowest local government organization as delisted by the Election Commission of Pakistan in accordance with each Provincial Local Government Law.

3. A 'Tehsil/Taulka Organization' shall consist of a Tehsil/Taulka in a District, excluding any urban areas having the status of Municipal Committee or cantonment boards as defined by the provincial Local Government Law. Such a Municipal Committee or Cantonment Board area shall comprise a separate 'City/Cantonment' organization at the same level.

4. A 'District Organization' shall consist of a District excluding any urban areas having the status of a Municipal Corporation. Such a Municipal



Corporation area shall comprise a separate 'City District' organization at the same level.

5. A 'Divisional Organization' shall consist of a Division within a Province under the law excluding any urban area of the Capital City of the Province/Quasi Province (Gilgit Baltistan and Azad Jammu and Kashmir). The Capital cities 8 of the provinces/Quasi-Provinces and Islamabad Capital Area (ICT) shall each comprise a separate 'Capital City' Organization at the same level of Division. Provided that the ICT Capital City Organization shall directly report to the Central Organization.

6. A 'Provincial Organization' shall be formed for each Province and Quasi-Province (Gilgit Baltistan and Azad Jammu and Kashmir)

7. An Organization for the International Chapters (OIC) shall be formed for the overseas Pakistanis.

8. A National Organization shall be formed for the entire country including overseas Pakistanis.

9. A PTI Federal Election Commission (PTI FedEC) to be formed to conduct Intra Party Elections (IPE) with a permanent secretariat.

10. Finance Boards shall be formed which shall include Central Finance Board (CFB), Provincial Finance Boards and a Finance Board for each Country Organization of OIC.

11. Standing Committee on Accountability and Discipline (SCAD) shall be formed.

12. Seven wings (Women, Youth, Minorities, Labour, Insaf Students Federation, Insaf Doctors Forum, Insaf Lawyers Forum) shall be formed. All these wings shall be represented in the corresponding executive committees. Central Executive Committee may sanction more wings provided they can fulfill the constitutional requirements."

11. The basic pillar for formation of intra party organization, as per PTI Constitution is PTI Federal Election Commission (PTI Fed EC), which shall be formed to conduct intra party election.

12. Article-IX of the PTI constitution 2019 if reproduce, would be reads as under:-

"FEDERAL ELECTION COMMISSION (FedEC)

1. An Election Commission shall be formed comprising following
 - 1.1 Federal Election Commissioner – Chief of the FedEC
 - 1.2 One Commissioner from each of all four provinces and one each from Quasi-Provincial areas of AJK and GB, (total of 6)
2. The Secretary General (SG) shall propose; with the approval of the Chairman; the names for the all six commissioners and Chief of the FedEC; from outside the membership of the National Council. SG shall circulate the names among the members of the CEC two weeks prior to the deliberations in the meeting. The CEC shall make sure that all commissioners have a clean record and possess requisite qualifications

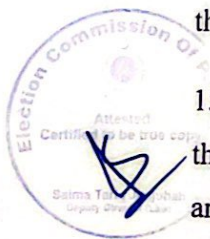


3. *Once deliberations are done in CEC, the Secretary General shall convene the National Council meeting after an interval of not less than 2 weeks and present the names of secret ballot.*
4. *The term of the members and Chief of FedEC shall be for five years and once notified by the SG on behalf of the national council, shall only be removed through a two-third of the national council.*
5. *The Commission can co-opt associated members for specific jobs/departments; and may co-opt members for any vacancy arising out of resignation or incapacitation of a member.*
6. *In case of the resignation or incapacitation of the Chief of FedEC: full above mentioned procedure need to be adopted."*

13. The political Finance Wing has raised serious objection on the appointment of Mr. Niaz Ullah Niazi, as Chief Election Commissioner, who allegedly held the intra party election of PTI on 02.12.2023. The Director General, Political Finance Wing contended that appointment of Mr. Niaz Ullah Niazi is against the provision of article-IX of the PTI constitution 2019 and he could not exercise his powers to conduct, hold intra party election, being appointed by a person having no such authority in order to appoint a Chief Election Commissioner for the purpose of holding intra party election. Mr. Omer Ayub was never appointed constitutionally by any forum or body of the PTI as Secretary General and as such he could not appoint Federal Election Commissioner. Secondly, this Commission was apprised that in term of article-IX of the PTI constitution Federal Election Commission may be the legal body to conduct and hold intra party election of PTI and Chief Election Commissioner has no any such authority to hold and conduct intra party election on his own behalf without approval and consent of rest of members of FEC.

14. We went through the available record submitted by the respondent party in the year 2022, which reveals that one Mr. Jamal Akbar Insari was elected Chief Election Commissioner in order to hold previous alleged intra party election of PTI. The documents and certificate of intra party election held in 2022 submitted by Mr. Jamal Akbar Insari before the Commission was declared void. We did not find any document in respect thereto, either resignation of Mr. Jamal Akbar Insari from the CEC position or any other document available with the Commission that he has been removed there from the party chief election commissioner office in accordance with the procedure provided there under PTI Constitution, 2019 for removal of CEC.

15. According to sub clause (4) of Article IX of PTI constitution 2019 provides that the term of the members and chief of Federal Election Commission shall be for 5 years and once notified by the Secretary General on behalf of the national council, shall only be removed through a two-third vote of the national council. No any resolution of PTI has



submitted to this Commission that Mr. Insari has been removed from his office. Sub-clause (6) of Article IX specifically covers the case of the resignation or incapacitation of the Chief of FedEC, which is reproduced below:-

“6. In case of the resignation or incapacitation of the Chief of FedEC: full above mentioned procedure need to be adopted.”

16. Learned counsel for the respondent confronted with clear provision of Article-IX of the constitution of PTI for appointment of chief of FedEC, he candidly admitted that the procedure provided thereunder in Article IX has not been adopted as the national council was not in existence. He referred to rule 28 of PTI rules that the Secretary General, in case of urgency, may appoint chief of FedEC.

17. It is settled principle of law where procedure is provided thereunder an Act or constitution the rule cannot supersede the same at any eventuality while the provision contained in sub-clause (6) of article IX of the PTI constitution provides a well defined provision in contingency situation where any vacancy occurred in Federal Election member.

18. Now adverting to the tenure of various organization and office bearers, it is admitted fact that all office bearers of PTI as well as all organization elected, constituted respectively in the year 2017 at the occasion of their first intra party election had completed their respective tenure and no any organization or office holder was legally holding their office. Mr. Omer Ayub purportedly being Secretary General of PTI has never been constitutionally elected or nominated by any competent authority to exercise powers of Secretary General of PTI. The Notification, dated 28.11.2023 is issued by a person having no any such authority to appoint any person as chief election commissioner for holding PTI intra party election.

19. As already expressed herein above that all the office bearers have already completed their respective tenure of office in term of clause 5.2 of Article V of PTI constitution on completion of their 3 years of tenure except the chairman who can hold his office for 5 years thereafter the year 2017.

20. We confronted learned counsel for the respondent in order to assist as to whether any provision of PTI constitution confers any powers upon the chairman or any other office bearers to extend the tenure of any office bearers in case the election is not held



within the prescribed period of 4 years or extended one year period but the learned counsel for the respondent failed to pinpoint any such provision in the constitution of PTI. However, it was argued that clause 5.2.7 of article V provides a mechanism and confers powers upon the chairman to extend the tenure of all executive committees by one year in case the election is due before one year of general election, which reads as under:-

"5.2.7 In case of party elections failing within one year before general elections of the country, term of all executive committees shall be extended by one year; in case of AJK and GB elections, term of quasi-provincial and all lower tiers executive committees shall be extended by one year."

21. Even if office bearers, is taken to be part of an executive committee, their tenure may be extended for further one year, thereafter on expiry of prescribed period of 3 years, at the occasion, falling within one year before general elections of the country but all the office bearers except chairman had already completed their tenure in the year 2019.

22. According to the available record, the Secretary General of PTI is Mr. Asad Omer and nothing in document is available, that PTI or any other competent wing of PTI has ever elected Mr. Omer Ayub as Secretary General of PTI. We also failed to find herein PTI constitution 2019, any provisions that chairman of the PTI can extend tenure of any office bearers while the tenure of the chairman itself had expired on 13.06.2023. So after target date 13.06.2023 chairman possess no authority to exercise such power either to control or to extend the tenure of any office bearers. Such eventuality is well defined and the procedure is provided under clause IV of Article 5 of PTI Constitution 2019, which reads as under:-

"In case of the Chairman's position falling vacant due to any reason, the SG shall take additional-charge of the office in the interim and Elections for the Chairman's office shall be held within 30 days of position falling vacant."

23. Clause 1 of Article V (General Provisions) of PTI constitution widely speaks about collective decision making, which reads as:-

"1.1. All decision shall be taken by the corresponding governing body/executive committee and other such bodies by a majority of vote; Minimum quorum required for validity shall be seventy-five percent (75%) for smaller bodies/committees and fifty percent (50%) for the larger committees/councils of the total membership; agenda items shall be distributed by the secretary along with invitation notice wherever possible."



24. Clause 1.3 of Article V (General Provisions) of PTI constitution describes that Governing Body can take provisional decisions in policy matters where there is enough room to believe that an executive committee meeting could not be convened in time.

25. Thereafter as mentioned herein above it was mandatory for the PTI in term of clause 1.4 of Article V that on expiry of 18 months thereafter the adoption of the PTI constitution 2019, which has been adopted on 01.05.2019 to appoint the Chief Organizer who had to use all powers and functions of the chairman well mentioned therein clause 4.2 of Article 5 of the PTI constitution already reproduced herein above.

26. Going through the above mentioned clause 4 of Article V, the PTI constitution 2019, the PTI general council as per record supplied hereto the Commission, adopted and approved the constitution 2019 on 01.05.2019 and thereafter 18 months, constitutionally, the PTI is deemed to be run by Chief Organizer till the announcement of intra party election by the FedEC. However, it would be the Chief Organizer to nominate various members and constitute various committees in interregnum period, thereafter 18 months of adoption of PTI constitution 2019 and first intra party election scheduled on 13.06.2021.

27. As the chairman of PTI never opted to hold intra party election till 10.06.2022 just three days before the target date of intra party election provided thereunder section 208 of the Elections Act, 2017, however, as the said election was not found to be held in accordance with PTI constitution 2019 declared void by this Commission.

28. As discussed herein above in accordance with clause 4 of the Article V of PTI constitution 2019, all powers to organize PTI vests and deemed to be vest in the Chief Organizer, which according to their available record has never been appointed so far. While according to constitution of PTI 2019 no other office bearer has the authority and power to appoint or nominate any other office bearer, particularly Federal Election Commission.

29. The available record submitted by PTI, herein before the Commission, never provided any document, that any competent authority has ever appointed Federal Election Commission in accordance with the provision of Article IX of PTI constitution 2019. Only appointment of a single Federal Election Commissioner is not requirement of Article IX of the PTI constitution and such a solitary office bearer, could not exercise any power to hold PTI intra party election till the Commission as a whole not appointed by a competent authority provided thereunder Article IX of the PTI constitution. However,



Federal Election Commissioner may frame and may make by-laws only for the purpose to conduct his day to day affairs and working subject to notify the same on website. But no authority has been provided thereunder PTI constitution that apart from constitution, by-laws or rules will also be made. Even if it is admitted the PTI make some rules for internal affairs it could not supersede the basic document, i.e. constitution of PTI, where a specific procedure is provided for appointment of election commissioner and particularly office bearer then any rule made in contravention of said provision of constitution has no any legal sanctity and could not be given effect thereto.

30. So keeping in view, the clear mandate of Elections Act, 2017 read with PTI constitution 2019, and for reasons mentioned hereinabove, it is held that PTI has not complied with our directions rendered therein order dated 23rd November, 2023 and failed to hold intra-party election in accordance with PTI prevailing Constitution, 2019 and Election Act, 2017, and Election Rules, 2017. Therefore, the certificate dated 4th December, 2023 and Form-65 filed by the alleged Chairman, is hereby regretted and rejected accordingly. The provisions of Section 215 of the Election Act, 2017 are hereby invoked and PTI is hereby declared ineligible to obtain, the Election Symbol, for which they have applied for.

Sd/-

SIKANDAR SULTAN RAJA
Chairman

Sd/-

NISAR AHMED DURRANI
Member

Sd/-

SHAH MUHAMMAD JATOI
Member

Sd/-

BABAR HASSAN BHARWANA
Member

Sd/-

JUSTICE (R) IKRAMULLAH KHAN
Member

