CITATION AWAITED

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.784 of 2020

Election Commission of Pakistan, through its Secretary
Vs.
Pakistan Information Commission and another.

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W.P No.785 of 2020

Election Commission of Pakistan, through its Secretary
Vs.
Pakistan Information Commission and another.

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W.P No.963 of 2020

Election Commission of Pakistan, through its Secretary
Vs.
Pakistan Information Commission and another.

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W.P No.964 of 2020

Election Commission of Pakistan, through its Secretary
Vs.
Pakistan Information Commission and another.

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W.P No.965 of 2020

Election Commission of Pakistan, through its Secretary
Vs.
Pakistan Information Commission and another.

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W.P No.1485 of 2020

DRAFT

Federation of Pakistan, through Secretary to President
Vs.
Pakistan Information Commission and another.

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W.P No.3564 of 2020

Election Commission of Pakistan, through its Secretary
Vs.
Pakistan Information Commission and another.

&

W.P No.3706 of 2022

Election Commission of Pakistan, through its Secretary
Vs.
Pakistan Information Commission and another.

&

W.P No.3707 of 2022

Election Commission of Pakistan, through its Secretary
Vs.
Pakistan Information Commission and another.

Date of hearing : 16.10.2025.
Petitioners by : Mr. Nouman Munir Paracha, Advocate a/w Yasir Ali Raja, Director Law, ECP, Saima Tariq Janjua, Deputy Director Law, ECP, Zaheer Abbas Assistant Director Law, ECP.
Respondents No.1 by : Ms. Azra Batool, AAG.

MUHAMMAD ASIF, J.- Through the afore-titled writ petitions, the petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), assailing the orders dated 11.02.2020, 12.12.2019, 26.02.2020, 03.03.2020, 05.03.2020, 11.03.2020, 04.11.2020, 24.08.2022, and 09.09.2022, passed by Pakistan Information Commission (**PIC**)/respondent No.1 in the respective matters. The grievance of the petitioners is that the impugned orders have been issued

without lawful authority and are of no legal consequence, as the petitioner does not constitute a "public body" within the contemplation of the Right of Access to Information Act, 2017 (**the Act**); hence, the provisions of the said Act are not applicable to it.

2. The brief facts, as narrated by the petitioners, are that respondent No.2, in all the afore-titled writ petitions, approached the Election Commission of Pakistan ("**ECP**") and the Secretary to the President of Pakistan, seeking information regarding the budget allocated to the office of the Chief Election Commissioner ("**CEC**") and the ECP from the year 2017 to date, particularly in relation to expenditure incurred on POL, repair and maintenance of vehicles, oil changes, inquiries against ECP officials concerning vehicle maintenance, and the prescribed limits for the use of official vehicles by the Members and other officers of the ECP. Further information was also sought concerning the total expenditures incurred on the General Elections 2013 along with a detailed breakdown under major heads, the total number of auctions and disposals conducted by the ECP, the nature of items auctioned or disposed of, the number of requests for cancellation or deletion of votes from electoral rolls, the number of cases processed for such cancellation or deletion, documents relating to the appointment of Law Officers in 2021, the total number of overseas voters along with their country-wise and constituency-wise breakup, any policy of the ECP for online or internet voting by overseas Pakistanis, the cost incurred on such voting arrangements, internal audit reports (if conducted), details of rented buildings or accommodations, the total sanctioned strength of staff members, existing vacancies in various pay scales, and the number of regular, contractual, female, and differently-abled employees, as well as the number of transgender staff members in the President's Office. The details of these requests have been comprehensively recorded in the impugned orders. As the requested information was not provided, the respondent No.2, in each of the above petitions, preferred an appeal before the PIC, Government of Pakistan, under Act. The PIC, after issuing notices and hearing the parties at length, proceeded to pass the

impugned orders. Aggrieved thereby, the petitioners, having been left without any adequate, efficacious, or alternative remedy, have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, seeking to set aside the impugned orders.

3. I propose to decide all the afore-titled writ petitions through this common judgment, as they involve identical questions of law and fact.

4. Learned counsel for the petitioners submitted that the Act was enacted by the Federal Legislature on 13.10.2017, and under Sections 4, 5, 11 to 14, and 17 thereof, every "public body" is required to maintain records, disclose specified information, and provide access to citizens upon request; that neither the ECP nor the President's Secretariat falls within the definition of a "public body" under Section 2(ix) of the Act, as both institutions derive their existence directly from the Constitution, Articles 218 and 41 respectively, and not from any "Federal law" within the meaning of Article 260 of the Constitution; that Section 1(2) confines the Act's applicability to "public bodies of the Federal Government"; and that in view of *M/s Mustafa Impex etc. v. Government of Pakistan* (PLD 2016 SC 808), the term "Federal Government" means the Prime Minister and the Federal Ministers acting collectively under Article 90, hence the ECP and the President's Secretariat do not form part thereof; that the respondent No.2, sought information relating to budgets, expenditures, elections, and administrative matters; upon refusal, the PIC in appeal without jurisdiction and without affording opportunity of hearing, passed the impugned orders; that the respondent No.1 further misapplied constitutional provisions, misconstrued the Rules of Business framed under Articles 90 and 99, and erroneously invoked Article 8. The impugned orders, being without jurisdiction and lawful authority, are void *ab initio* and liable to be set aside.

5. Conversely, the respondent No.1 filed Para wise comments and opposed the petitions and contended the PIC is a statutory body

empowered under the Act to direct disclosure of information held by public bodies, and this Court, in its discretionary jurisdiction, ought not to interfere with such lawful exercise of authority. It was further argued that access to information held by anybody performing public functions and funded by public money is a fundamental right guaranteed under Article 19A of the Constitution. The Commission, while exercising its statutory powers, rightly concluded that the Office of the President and ECP constitutes a "public body" within the meaning of Section 2(ix)(g) of the Act, as it performs public functions and operates through funds drawn from the Federal Consolidated Fund. It was emphasized that under the Rules of Business, 1973, the President's Secretariat and ECP functions as part of the Cabinet Division and, therefore, forms an integral component of the Federal Government; that the impugned orders were passed strictly in accordance with law, in the exercise of lawful authority, and without causing any injustice to the petitioners. Hence, the petitions being devoid of merit are liable to be dismissed with costs.

6. The learned AAG, representing the respondents in all the connected writ petitions, opposed the petitions and submitted that while the impugned orders may not be sustainable insofar as it pertains to the Office of the President, it is otherwise well-founded with respect to the ECP.

7. The respondents No.2 also filed Para wise comments and opposed the contention of the learned counsel for the petitioners, the learned AAG as well as the petitions and supported the impugned orders, contending that the writ petitions are not maintainable as they raise factual controversies, which cannot be adjudicated in constitutional jurisdiction; that the impugned orders were passed strictly in accordance with law and that the respondent No.1 exercised restraint by not imposing statutory penalties despite the petitioner's failure to provide information within the prescribed time; that the petitions are misconceived, devoid of merit, and liable to be dismissed with costs.

8. I have heard the learned counsel for the petitioners, the learned Assistant Attorney General, and the learned counsel representing the respondents, and have carefully examined the record, the impugned orders of the PIC, and the relevant statutory and constitutional provisions. The central issue requiring determination before this Court is whether the PIC, constituted under the Act, possesses the jurisdiction to issue binding directions to constitutional bodies, such as the ECP and the Office of the President, for the disclosure of information sought by citizens or whether any office under the garb of constitutional protection deny disclosure of information under the Act 2017.

9. Before proceeding to examine the issue at hand, it is pertinent to recall the constitutional foundation of the right to information. Article 19A of the Constitution guarantees every citizen the right to have access to information in all matters of public importance, subject only to reasonable restrictions imposed by law. Through the Eighteenth Amendment, the framers of the Constitution elevated this entitlement to the status of a fundamental right, thereby recognizing transparency and accountability as essential features of democratic governance. To give effect to this constitutional guarantee, the Act was enacted, providing a mechanism through which citizens may exercise their right to obtain information held by public bodies. The right to information lies at the very heart of constitutional democracy. It ensures that citizens the ultimate sovereigns in a democratic order remain informed about the functioning and conduct of their government. Access to information fosters transparency, deters misuse of authority, and strengthens public trust in State institutions. It is also internationally recognized as a fundamental human right, forming part of the freedom of expression guaranteed under Article 19 of the Universal Declaration of Human Rights (1948) and Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), both of which affirm the right to seek, receive, and impart information. Domestically, this right has been constitutionally entrenched through Article 19A of the Constitution, inserted by the Eighteenth Amendment Act, 2010, which provides:

> *"Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law."*

This provision imposes a positive constitutional obligation upon every public authority to facilitate citizens' access to information and to proactively disclose matters of public importance. The guarantee extends to all organs and offices of the State without exception. Parliament fulfilled this constitutional mandate by enacting the Act, which lays down a comprehensive statutory framework for disclosure of information and establishes the PIC as the enforcement authority to ensure its effective implementation.

10. The Act was enacted to give effect to Article 19A of the Constitution, which guarantees the fundamental right to access information in matters of public importance. Section 2(ix) of the Act defines a "public body" as follows:

> *""public body" means-*
>
> *(a) Any Ministry, Division, attached department or subordinate office, including autonomous bodies of the Federal;*
>
> *(b) Any Federal and any municipal or local authority set up or established by or under any Federal law;*
>
> *(c) The National assembly and the senate including their secretariats, committees and members;*
>
> *(d) Any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government;*
>
> *(e) Any court, tribunal, commission or board under the Federal law;*
>
> *(f) Any incorporated or unincorporated body of the Federal Government functioning under the control or authority of another public body or wherein one or more public bodies own or have*

> *controlling interest or provide substantial funding;*
>
> *(g) Any other organization which under takes a public function, to extent of that function; and*
>
> *(h) A non-governmental organization which directly or indirectly receives or has received public funds, subsidy, tax exemptions, piece of land or any other benefit involving public funds and any other non-governmental organization or body registered udder any law for the time being in force."*

A plain reading of the above definition reveals that the Act applies to executive and statutory organs of the Federal Government. The provision is silent about institutions created directly under the Constitution, such as the Office of the President, the Parliament, the ECP, or the Superior Judiciary. These institutions are not creatures of statute, but derive their authority directly from the Constitution itself.

11. In the case titled *Mukhtar Ahmed Ali versus the Registrar Supreme Court of Pakistan and another* reported in (***PLD 2024 Supreme Court 192***, the Hon'ble Supreme Court undertook an exhaustive examination of the scope and application of Article 19A of the Constitution and the Act of 2017. The apex Court categorically held that the Act of 2017 does not extend to constitutional bodies, since its legislative intent and definitional scope are confined to "public bodies" established or controlled by the executive. The Court clarified that while the Act is a statutory mechanism designed to operationalize the right under Article 19A of the Constitution for executive and statutory institutions, the constitutional bodies remain outside its direct statutory domain.

12. However, the Hon'ble Supreme Court in the case *Mukhtar Ahmed Ali* (Supra) made an equally important declaration that Article 19A of the Constitution has a wider, self-executing effect, binding upon every organ and functionary of the State, legislative, executive, and judicial alike. The constitutional right to information, therefore, operates independently of the Act and imposes a constitutional duty upon all

public authorities, including constitutional bodies, to ensure transparency and accountability in governance, subject to reasonable restrictions in the public interest, national security, or due administration of justice.

13. The Apex Court further held that the independence and functioning of constitutional institutions cannot be subjected to a statutory authority created under an executive statute. The PIC, being a statutory entity established under the Act, lacks jurisdiction to exercise supervisory or coercive powers over institutions that are directly constituted under the Constitution. The rationale lies in the principle of constitutional supremacy that bodies created by the Constitution cannot be placed under statutory control, unless expressly provided by the Constitution itself.

14. The ECP, established under Article 218, and the Office of the President, established under Article 41 of the Constitution, are both constitutional institutions performing functions explicitly defined and regulated by the Constitution. These institutions are funded by the Federal Consolidated Fund, but are structurally independent of the executive in their functioning. Their autonomy and constitutional status place them outside the jurisdictional reach of a statutory authority like the PIC.

15. In the light of the above authoritative pronouncement, this Court has no hesitation in holding that the Right of Access to Information Act, 2017 cannot be invoked against the ECP or the Office of the President. The PIC, being a creation of the Act, exceeded its jurisdiction in issuing the impugned directions to these constitutional entities. Such exercise of power is contrary to the constitutional scheme and is coram non judice.

16. At the same time, this Court must emphasize that constitutional offices are not immune from transparency or accountability. The Hon'ble Supreme Court in the case *Mukhtar Ahmed Ali* (Supra) made it clear that every constitutional organ is under a direct

constitutional obligation to respect and implement Article 19A of the Constitution by establishing its own regulatory framework to facilitate citizens' access to information of public importance. This obligation arises not from the Act, but from the Constitution itself. Accordingly, constitutional institutions like the ECP and the Office of the President must ensure mechanisms for disclosure, consistent with their constitutional character, security imperatives, and the principle of good governance.

17. The issue whether the private respondents can invoke Article 19A of the Constitution to seek information merits due consideration. The ECP and the Office of the President are not exempt from the purview of Article 19A of the Constitution, and information of public importance may be lawfully sought from them. What was once a matter of privilege or administrative discretion has, by virtue of Article 19A of the Constitution, evolved into a constitutional "right to know." The burden has shifted from those seeking information to those attempting to withhold it. Access to information now stands recognized as a fundamental right of every citizen of Pakistan, enforceable under Article 19A of the Constitution.

18. The Hon'ble Supreme Court in the case Mukhtar Ahmed Ali Supra held as under,

> *"We may observe that it is only when citizens have access to the requisite information can they meaningfully question those paid from the public exchequer, and who are meant to serve their interests. The importance of the peoples' right to information was articulated 200 years ago:*
> *'A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives'*
> *By now over 100 countries have some form of freedom of information legislation. The United States Supreme Court has held it to be*

> *concomitant with democracy, accountability and safeguarding against corruption:*
>
> *"The basic purpose of (The Freedom of Information Act) is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."*

It was further held as under,

> *"15. Access to information laws are also taking on a new meaning of efficient administration of government, as a contributor to economic growth and a catalyst for the development of information industries, 17 And restricting information has an immense cost, as observed by the World Bank:*
> *'Lack of transparency can be costly both politically and economically. It is politically debilitating because it dilutes the ability of the democratic system to judge and correct government policy by cloaking the activities of special interests and because it creates rents by giving those with information something to trade. The economic costs of secrecy are staggering, affecting not only aggregate output but also the distribution of benefits and risks. The most significant cost is that of corruption, which adversely affects investment and economic growth.'*
> *Access to information thus secures the well-being of the people, which is what the nation aspires towards as stated in the Principles of Policy set out in the Constitution.*
> *16. High standards were set in early Islam and those governing had to provide information. The second caliph Hazrat Umar bin Al-Khattab (may Allah be pleased with him) was questioned about the quantity of material used in the making of his shirt; he did not object to being questioned and told his son, Abdullah bin Umar, to explain, who said that in view of his father's large size, extra material which was used to make his shirt was given by him."*

19. Transparency inherently fosters institutional introspection, which in turn strengthens accountability within public bodies. Article 19A of the Constitution mandates that access to information shall be subject to regulation and reasonable restrictions imposed by law.

However, no specific law presently governs the ECP or the Office of the President in this respect, nor have these institutions framed any regulations to operationalize the right conferred by Article 19A. Needless to emphasize that, once such law is enacted or regulations are promulgated, any request for information shall be dealt with strictly in accordance therewith and within the constitutional framework of Article 19A of the Constitution. While Article 19A contemplates the imposition of reasonable restrictions on the disclosure of information, the onus to justify any refusal squarely lies upon the authority or institution withholding it. In the present case, there appears no lawful justification for denying the information sought by the private respondents. The record does not disclose any ground to suggest that furnishing the requested information would be contrary to the public interest. Accordingly, the information sought ought to have been provided to the private respondents in the spirit of constitutional transparency and accountability.

20. In the present case, while the PIC may have acted with the bona fide intention of promoting transparency, it lacked the jurisdictional authority to compel the disclosure of information from constitutional entities through statutory means. The impugned orders, therefore, suffer from inherent lack of lawful authority and cannot be sustained.

21. For the reasons recorded above, and guided by the binding ratio laid down in ***PLD 2024 Supreme Court 192***, this Court holds as follows:

> (a) The Right of Access to Information Act, 2017 does not apply to constitutional bodies, including the Election Commission of Pakistan and the Office of the President of Pakistan, as they are not “public bodies” within the meaning of Section 2(ix) of the Act.
>
> (b) The Pakistan Information Commission, being a statutory authority, has no jurisdiction to issue

binding directions or orders against such constitutional entities.

(c) The impugned orders passed by the PIC, being without jurisdiction, are declared to have been issued without lawful authority and are of no legal effect within the meaning of Article 199 of the Constitution.

22. However, this Court also observes that the ECP and the Office of the President, being constitutional institutions, remain bound by the mandate of Article 19A of the Constitution. However, in the exercise of constitutional jurisdiction and to give full effect to Article 19A of the Constitution, the **Election Commission of Pakistan** and the **President's Secretariat** are directed to frame and notify appropriate regulations or mechanisms for ensuring citizens' access to information, thereby promoting transparency and accountability. This exercise shall be completed within **ninety (90) days** from the date of receipt of this judgment. Upon promulgation of such regulations, the information sought by the respondent No.2 shall be processed and provided strictly in accordance therewith, within a further period of **thirty (30) days**, subject to any legally permissible exemptions. Before parting, it is observed that **Article 19A** is **self-executory** in nature and extends to all organs of the State, whether established under the Constitution or by statute. While constitutional bodies may preserve their institutional autonomy, they remain bound by their constitutional duty to uphold transparency and ensure disclosure in matters of public importance.

23. Accordingly, the Writ Petitions No.784, 785, 963, 964, 965, 1485, 3564 of 2020 and Writ Petitions No.3706 and 3707 of 2022 are **allowed**, the impugned orders of the Pakistan Information Commission are **set aside**, and the constitutional question is answered in the terms discussed above. There shall be **no order as to costs**.

(MUHAMMAD ASIF)
JUDGE

APPROVED FOR REPORTING

/MALIK KAKAR/