JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : W.P. NO.3248-2022
Farrukh Habib
Vs.
Election Commission of Pakistan Islamabad

Petitioner by	:	**Barrister Umaima Anwar Khan, Advocate** **Mr. Naveed Anjum Mumtaz, Advocate**
Respondents by	:	**Ms. Saman Mamoon, Advocate** **Mr. Khurram Shehzad, ADG (Law), Mr. Zaigham Anees, Law Officer & Ms. Bushra Rasheed, Senior Law Officer, ECP**
Date of decision	:	**29.03.2023**

AAMER FAROOQ C.J. The petitioner is a leader of a Political Party namely Pakistan Tehreek-e-Insaaf (PTI); he has filed the instant petition seeking a declaration to the effect that Election Commission of Pakistan (ECP) has discriminated by not deciding the issue of foreign funding with respect to other political parties, whereas only with respect to PTI, the matter has been decided.

2. Barrister Umaima Anwar Khan, Advocate, appearing for the petitioner, *inter alia* contended that the matter of scrutiny of the funding received by the political parties was the subject matter of the case reported as Muhammad Hanif Abbasi Vs. Imran Ahmad Khan Niazi and others (PLD 2018 Supreme Court 189). It was submitted that certain directions were issued by Supreme Court of Pakistan to Election Commission of Pakistan to undertake scrutiny of the foreign funding received by the political parties. It was submitted that scrutiny was conducted of all the parties, but only issue pertaining to PTI was decided in undue haste, whereas the matter is still pending qua other main political parties. Learned counsel submits that conduct of ECP is discriminatory towards PTI, of which, the petitioner is a prominent leader. In response to the query of the Court that Election Commission of Pakistan is a constitutional body hence writ of *mandamus* can be issued against it, learned counsel submits that superior courts of the country and, in particular under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution), time and again has decided the issues by setting aside decisions of ECP by issuing writ of *certiorari*; in this regard, she made reference to case mentioned in the footnote [1] and drew attention of the Court towards directions issued by the High Court to the Election Commission of

[1] Muhammad Aslam Abro Vs. Sardar Muhammad Muqeem Khosa (2013 SCMR 1676)

Pakistan. Reference was made to cases footnoted below [2] and unreported judgment of this Court titled Pakistan Tehreek-e-Insaf (PTI) through its Additional Secretary General Mr. Omer Ayub Khan Vs. Election Commission of Pakistan and another (W.P. No.2998-2022).

3. On the other hand, learned counsel for Election Commission of Pakistan *inter alia* contended that even in the past, the matter was agitated by one of the leaders of PTI and a direction was made regarding expeditious disposal. It was submitted that before even expiry of time period, the matter has been agitated without any justification or basis. Learned counsel for ECP submitted that no direction can be issued to Election Commission of Pakistan, however, contended that the matter can be decided by ECP, if reasonable time is provided.

4. Submissions made by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The facts, leading to filing of instant petition, are almost admitted. It is only the legal issue that is the moot point between the parties viz whether a direction can be issued to Election Commission of Pakistan which is a constitutional body.

6. The Election Commission of Pakistan, of course, is a constitutional body created under the provisions of the Constitution and has multiple functions including holding of elections in Pakistan; one of the functions, of course, is to regulate the political parties; in this regard, a political party has to furnish with Election Commission of Pakistan audited accounts every year, which it can scrutinize to ensure that there is no prohibited funding. In case mentioned in footnote [3], the issue regarding scrutiny of accounts of various political parties was before the Supreme Court of Pakistan and while concluding the matter, certain directions were issued to ECP; in this regard, ECP was *inter alia* directed to act transparently, fairly, justly and without discretion among different political parties. It was also observed that while undertaking such scrutiny, it shall be reasonable for ECP to examine the accounts of a political party within five years of the objected accounts of that party having been published in the official gazette. The referred direction basically set the ball rolling with respect to scrutiny of the accounts of the political parties, whereas in the case of PTI, one Akbar S. Ahmad Babar, had originally moved an application for the same purpose, however, after the direction, impetus was provided to the exercise not only with respect to case of PTI but all

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[2] Ejaz Ahmed Sandhu and another Vs. Election Commission of Pakistan through Chief Election Commissioner, Islamabad and others (2018 SCMR 1367), Dr. Raja Aamer Zaman Vs. Omar Ayub Khan and others (2015 SCMR 1303) & Supreme Court Bar Association of Pakistan through its President, Supreme Court Building, Islamabad Vs. Federation of Pakistan through M/o Interior Islamabad and others (PLD 2023 SC 42)

[3] Muhammad Hanif Abbas Vs. Imran Khan Niazi and others (PLD 2018 Supreme Court 189)

political parties. It seems that case of PTI took precedence over the other political parties qua scrutiny of the accounts and matter did culminated into show cause notice issued to PTI, however, with respect to other political parties, Scrutiny Committee is still undertaking the assignment and in this background, the petitioner feels discriminated. I do not think that the fact that the matter of one political party has been decided and with respect to others, it is still pending, amounts to discrimination, but naturally, it has to be decided expeditiously, as the matter initially arose in 2018 and almost five years have lapsed.

7. The main issue, for examination before this Court, is that ECP being a constitutional body, whether a direction can be issued to it; the kind of writ that this Court is being asked to issue and exercise its jurisdiction under Article 199 of the Constitution, is in the nature of *mandamus. Sine qua non* for issuance of writ of *mandamus*, is presence of statutory obligation/duty on party of statutory authority and denial of that duty/obligation. Naturally, ECP is under obligation to scrutinize the accounts of the other political parties, but having a constitutional status, it is not really a statutory body, even though, it performs various functions under the Elections Act, 2017 and in the instant case, under the Political Parties Order, 2002.

8. Undoubtedly, this Court adjudicates upon the orders of Election Commission of Pakistan when it passes the same and if they are found to be without jurisdiction or there is error of law, writ of *certiorari* is issued. On the touchstone of the said example, whether writ of *mandamus* can be issued, goes to the root of the matter. As mentioned above, though functions exercised by ECP are statutory in nature but ECP is a constitutional body. In various cases, observations have been made by Supreme Court of Pakistan regarding exercise of jurisdiction against ECP by High Courts. In case reported as Muhammad Aslam Abro Vs. Sardar Muhammad Muqeem Khosa (2013 SCMR 1676), reference was made to a writ of *mandamus* issued by the court and the exercise of jurisdiction was kind of approved. In case reported as Ejaz Ahmed Sandhu and others Vs. ECP (2018 SCMR 1367), the Supreme Court observed that Election Commission is a constitutional body and unless it is shown that the jurisdiction and direction exercise by it is illegal, malafide, manifestly arbitrary or unjustifiable, its working an decisions should not be interfered with. Likewise, in case reported as Dr. Raja Aamer Zaman Vs. Omar Ayub Khan and others (2015 SCMR 1303), while drawing distinction between jurisdiction of Election Tribunal and Election Commission of Pakistan, it was observed that there is a qualitative difference between the powers enjoyed by and invested in the two forums. The Election Commission is mandated to conduct elections honestly, justly, fairly and in accordance with law. It was concluded that

the powers exercised by the Commission are also subject to judicial review as administrative acts because the same are by definition, based on a summary inquiry or in certain cases, even without such inquiry. In case reported as Muhammad Hanif Abbasi Vs. Imran Ahmad Khan Niazi and others (PLD 2018 Supreme Court 189), the nature of powers to be exercised by ECP was discussed by the Supreme Court and it was observed that ECP is a supervisory body which exercises regulatory and administrative powers under the Constitution and the law.

9. As noted above, ECP admits that the matters are still pending before it, but takes exception to the maintainability of the writ on account of the fact that earlier, similar relief was sought which was not granted. It was also argued that writ petition cannot be used for creation of a right. Admittedly in the past as well, similar matter (s) was filed and with certain observations was disposed of, however, there is no clear-cut vested right in the petitioner to seek expeditious disposal of the matters pending against other political parties except the fact that it feels disadvantageous on the basis that its political adversaries are not facing the brunt, which it faced, while scrutiny was being carried out against PTI.

10. The upshot of above discussion and decisions are that the matters are pending before ECP and as per directions of Supreme Court in case reported as PLD 2018 Supreme Court 189 supra, it is undertaking scrutiny and it acknowledges that it shall conclude the same in a reasonable time. The petitioner though strictly does not have *locus standi* to seek such direction inasmuch as he is only claiming expeditious disposal on the basis that it may be treated at par with other political parties; despite the referred fact, it is only the mandate of law that 'justice should not only be done, but seems to be done', hence it is only appropriate that ECP treats all the political parties even handedly. In the referred backdrop, it is expected of the ECP to conclude scrutiny of accounts of other political parties in a reasonable time leaning towards expeditious disposal of the same.

11. The instant petition is disposed of in light of above observations.

(CHIEF JUSTICE)

Zawar