

Civil Appeals No. 333 and 334 of 2024 etc

Sunni Ittehad Council through its Chairman

v.

Election Commission of Pakistan

Sr. No.	Heading	Page #
1.	Conduct of Election:	2
2.	Role of ROs:	2
3.	Election to Seats Reserved for Women and non-Muslims	3
4.	Procedure to Contest Election to the Reserved Seats:	4
5.	Determination of Reserved Seats:	6
6.	Whether Reserved Seats can be left Vacant:	6
7.	Facts of the Case:	7
8.	Findings:	8
9.	Status of Returned Candidates who joined SIC:	9
10.	Political Party:	10
11.	Status of PTI	12
12.	Entitlement of PTI for the Reserved Seats:	13
13.	Independents:	14
15	Short order dated 12.7.2024	16

Jamal Khan Mandokhail, J.- We respectfully do not agree with the findings of the majority judgment with regard to providing an option to members of National and Provincial Assemblies to join Pakistan Tehreek-e-Insaf ("**PTI**") within a period of fifteen days. These are the reasons for our short order dated 12.07.2024.

Conduct of Election:

2. Under Article 218 of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**'), it shall be the duty of the Election Commission of Pakistan ('**ECP**') to organize and conduct the elections honestly, justly, fairly and in accordance with law. Under section 66 of the Election Act, 2017 ('**the Act**'), any person contesting elections from the platform of a particular political party, shall file a declaration in writing before the concerned Returning Officer ('**RO**') about his affiliation with a particular political party, if any, along with a certificate (commonly known as party ticket) from the political party showing that he is that party's candidate from the constituency. According to section 67(3) of the Act, a candidate not nominated by any political party, shall be called as "independent candidate". Thus, to be a nominated candidate of a particular political party, a declaration of affiliation from a candidate and a certificate from that party, showing his nomination is a condition precedent.

Role of ROs:

3. The role of ROs is the most significant. The Act assigns them the duty of receiving nomination papers, scrutinizing and deciding fate of them. The ROs have to allot symbols to contesting candidates, and thereafter, shall publish their names as provided by section 68(1) of the Act. The list shall contain name of the candidates, symbols allotted to them, their party affiliation, if any, according to their declarations. The ROs shall supply a copy of the list to each candidate and to exhibit it at a prominent place at each polling station on the day of the poll and to send a copy thereof to the ECP, which shall upload it for display on its website enabling each candidate and the general public to know about the detail mentioned in the list. According to rule 56(1) of the Election Rules, 2017 ('**the Rules**'), the list of contesting candidates shall be drawn up in Form 33, that has a set template. The ROs have no other option, but to fill-in the form on the basis of information given by a candidate in his nomination papers and declaration, in the following format:

FORM-33

[see rule 56(1)]

LIST OF CONTESTING CANDIDATES

Election to the *National Assembly
Provincial Assembly of the Punjab
Sindh
Khyber Pakhtunkhwa
Balochistan

No. and name of constituency

Serial No.	Name of the contesting candidate in the Urdu alphabetical order	Address of the contesting candidate	Symbol allocated	Party affiliation, if any
1	2	3	4	5
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
etc.				

Notice is hereby given that the poll shall be taken between the hours
of to on (date)

Place

Date

Signature of Returning Officer

*Strike off the words not applicable.

Under section 90(10) of the Act, after close of poll, every Presiding Officer shall prepare a Result of the Count of votes in Form 45, as provided by rule 81 of the Rules. The ROs shall forthwith prepare and announce the provisional Consolidated Statement of Result of the Count in accordance with section 92 of the Act. The ROs shall prepare a final consolidated result in terms of section 95 of the Act, on the basis whereof, the ECP shall notify results of returned candidates of every constituency.

Election to Seats Reserved for Women and non-Muslims:

4. In order to ensure full participation of women and non-Muslims in all spheres of national life, Article 51(3) & 4 and Article 106(3) of the Constitution has determined their due representation in National and Provincial Assemblies, respectively. Article 51(6)(d) of the Constitution provides a procedure and a formula for election to the seats reserved for women in National Assembly as under:

(6) For the purpose of election to the National Assembly,-

(a)

(b)

(c)

(d) members to the seats reserved for women which are allocated to a Province under clause (3) shall be elected in accordance with law through proportional

representation system of political parties' lists of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly:

Article 51(6)(e) of the Constitution provides a procedure and a formula for election to the seats reserved for non-Muslims in National Assembly as under:

(e) members to the seats reserved for non-Muslims shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats won by each political party in the National Assembly:

Article 106(3)(c) of the Constitution provides with the procedure and a formula for election to the seats reserved for women and non-Muslims in Provincial Assemblies as under:

"106. (1) ...
 (2) ...
 (3) For the purpose of election to a Provincial Assembly,--
 (a) ...
 (b) ...
 (c) *the members to fill seats reserved for women and non-Muslims allocated to a Province under clause(1) shall be elected in accordance with law through proportional representation system of political parties' list of candidates on the basis of the total number of general seats secured by each political party in the Provincial Assembly.*"

Procedure to Contest Election to the Reserved Seats:

5. According to the above provisions of the Constitution, members to the seats reserved for women and non-Muslims shall be elected in accordance with law, through proportional representation system of political parties' lists of candidates. All matters relating to the conduct of election and matters connected therewith or ancillary thereto are enshrined in the Act. Section 104 thereof provides a complete procedure for the conduct of election to the reserved seats as under:

104. Party lists for reserved seats.—(1) *For the purpose of election to seats reserved for women and non-Muslims in an Assembly, the political parties contesting election for such seats shall, within the period fixed by the Commission for submission of nomination papers,*

file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Commission or, as it may direct, with the Provincial Election Commissioner or other authorized officer of the Commission, who shall forthwith cause such lists to be published for information of the public:

Provided that the list submitted by a political party shall not be subject to change or alteration either in the order of priority or through addition of new names in the list or omission of any name after expiry of the date of submission of nomination papers.

(2) The parties' lists referred to in sub-section (1) may contain as many names of additional candidates as a political party may deem necessary for contesting seats reserved for women and non-Muslims, to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seats during the term of an Assembly.

(3) A candidate to a seat reserved for women or non-Muslims shall file the nomination papers on the Form on or before the last date fixed for filing of nomination papers for the election and the nomination papers shall, as nearly as possible, be scrutinized in the same manner as nomination papers of candidates on general seats are scrutinized under section 62.

(4) ---

(5) ---

(6) ---

(7) ---"

Since Article 51(6)(d)&(e) and Article 106(3)(b)&(c) of the Constitution provide that members to the seats reserved for women and non-Muslims shall be elected in accordance with law, therefore, the procedure and method provided by the above provision of the Act must be acted upon in its letter and spirit, as it is a command of the Constitution. If a law requires an act has to be done in a particular manner, that is how it should be done. Thus, no party is entitled to file list of its candidates to the reserved seats contrary to the provisions of section 104 of the Act, after the period fixed by the ECP for submission of nomination papers.

Determination of Reserved Seats:

6. In the context of Article 51(6)(d)&(e) of the Constitution, a political party means a party that has won/secured at least a general seat in the National Assembly, and in the context of Article 106(3)(c) of the Constitution, a political party means a party that has won/secured at least a general seat in a Provincial Assembly. The provisos to these Articles fixes three days' time for the independent returned candidates to join any political party, which won general seats in the election. After expiry of three days, the ECP shall publish a list of total number of general seats won by each political party, including the independent returned candidates, who joined that party. The seats reserved for women and non-Muslims shall be allocated through proportional representation system of political parties' lists of candidates on the basis of the total number of general seats secured by each political party.

7. A proportion is an equation in which two ratios are set equal to each other. There is no fixed number or ratio of general seats in the said provisions of the Constitution for the purpose of allocation of reserved seats. The only basis for allocation of reserved seats depends upon the total number of general seats secured by a political party, after induction of independent returned candidates, if any. In general elections, the number of the general seats won by political parties' nominated candidates and independents vary. It is for this reason, the ECP in every election sums up total general seats secured by all the political parties including the independents joining political party(ies) and thereafter divides them in the case of women by sixty seats reserved for women in order to determine the ratio on the basis whereof the reserved seats are to be allocated. This procedure has further been elaborated by rule 94 of the Rules. In this way, the share of each political party out of the seats reserved for women is determined. The same procedure is to be followed for the allocation of seats reserved for non-Muslims in the National Assembly. This formula also applies for the allocation of reserved seats in the Provincial Assemblies, keeping in view total number of general seats fixed by the Constitution for each Provincial Assembly.

Whether Reserved Seats can be left Vacant:

8. In the general elections of 2024, a large number of independent candidates won. As a result, the number of general seats won by political parties in the recent election is less than it was in previous elections. It was alternatively argued that after allocation of share of each political

party on the basis of general seats won by each political party, rest of the reserved seats may be left vacant. A question arises whether seats reserved for women and non-Muslims in National and Provincial Assemblies can be left vacant? According to Article 34 of the Constitution *steps shall be taken to ensure full participation of women in all spheres of national life*. The Constitution allocated a specific number of seats for women and non-Muslims in Parliament and each Provincial Assembly. However, they can also contest on general seats, thereby enabling them to contribute in the process of legislation and policy making. It is the constitutional responsibility of every organ and authority of the State and each person performing functions on behalf of an authority of the State, every political party and every citizen to act in accordance with the provisions of the Constitution and the law. The seats reserved for women and non-Muslims is their constitutional right, as such, they cannot be deprived from their such fundamental right by leaving any reserved seat vacant. Similarly, no formula other than provided by the above provisions of the Constitution can be applied for allocation of reserved seats to political parties.

Facts of the Case:

9. The ECP had notified the Election Program for the election of National Assembly and all Provincial Assemblies through a Schedule ('**Schedule**') on 15 December 2023, which prescribed a specific period for submission, scrutiny and withdrawal of nomination papers for general seats and for seats reserved for women and non-Muslims. A number of candidates contested election to National and Provincial Assemblies independently, out of whom, eighty (80) returned candidates joined Sunni Ittehad Council ('**SIC**'), within three days of their notifications, as prescribed by the Constitution. SIC is an enlisted political party and Sahibzada Hamid Raza being its Chairman, requested the ECP for submission of his party's list of candidates and allocation of seats reserved for women and non-Muslims to SIC on the basis of total number of independent candidates, who joined it. The request of the appellant was declined by the ECP vide order dated 01.03.2024, which was assailed before the Peshawar High Court, but failed¹, hence these appeals.

10. The learned counsel for the appellant stated that after the independent candidates joined SIC, in a way, it secured general seats, therefore, SIC was entitled for its share in the seats reserved for women

P¹ *Sunni Ittehad Council v. Federation of Pakistan* PLD 2024 Peshawar 89

and non-Muslims in National and Provincial Assemblies, respectively. The learned counsel stated that though SIC did not win general seats in National or any Provincial Assembly, but because of joining independent candidates, SIC has secured general seats. He suggested that after securing general seats, a purposive and progressive interpretation of Article 51(6)(d)&(e) and Article 106(3)(c) of the Constitution is required in order to consider SIC as a political party for the purpose of allocation of reserved seats. He made a reference to PLD 2024 SC 698².

Findings:

11. The Supreme Court ('SC') can interpret the Constitution, but it must ensure that words are not read into it nor should it ascribe artificial meaning to commonly understood words. Article 51(6)(d) & (e) and Article 106(3)(c) of the Constitution are clear enough to understand. The said provisions state that election to the seats reserved for women and non-Muslims shall be conducted in accordance with the law, which is the Act. Its section 104 provides that political parties shall within the period fixed by the ECP for submission of nomination papers, file separate lists of their candidates with the ECP to seats reserved for women and non-Muslims; and the listed candidates shall file nomination papers by or before the last date fixed for filing of nomination papers for general seats as prescribed by the Schedule. The nomination papers filed for reserved seats shall be scrutinized in the same manner as nomination papers of candidates on general seats are scrutinized under section 62 of the Act.

12. Admittedly, the appellant (SIC) did not nominate any candidate for general seats nor filed its list of candidates and their nomination papers before the ECP within the stipulated period, which is a condition precedent to elect candidates to the seats reserved for women and non-Muslims. Although SIC is an enlisted political party and the independent elected members have a constitutional right to join it, but it does not mean that it fulfils the criteria necessary for allocation of seats reserved for women and non-Muslims. As SIC did not contest election, therefore, in the context of Article 51(6)(d)&(e) and Article 106(3)(b)&(c) of the Constitution, it cannot be termed as a political party. Merely because a large number of independent returned candidates joined SIC does not entitle it to file its list of candidates for reserved seats, and that too after the conduct of

² *Federation of Pakistan through the Secretary, Ministry of Law & Justice Islamabad v. The Honourable Supreme Judicial Council through its Secretary, Supreme Court Building, Islamabad and others.*

election. All the Hon'ble members of the Bench have unanimously held that the appellant is not entitled to file its list of candidates for the seats reserved for women and non-Muslims.

13. As far as the judgment relied upon by the learned counsel for the appellant (PLD 2024 SC 698) with regard to purposive and progressive interpretation of the Constitution is concerned, relevant portion whereof is reproduced as under:

In absence of express words or an enactment, preventing the Council from inquiring into the matter upon resignation or retirement of a judge, jurisdiction of the Council cannot be abolished, ousted or terminated. Since there is no express provision in the Constitution, nor is there any enactment, preventing the Council from continuing its proceedings of inquiry in a situation where a judge is retired or resigns before conclusion of the inquiry, it is the constitutional obligation of the Council to conclude the inquiry initiated against a judge and form an opinion regarding his conduct.

In the referred case, Article 209 of the Constitution was under discussion, which assigns power to the Supreme Judicial Council ('SJC') to initiate an inquiry against a judge of Supreme Court, Federal Shariat Court or a High Court. The Constitution does not provide for automatic termination of an inquiry already initiated against a sitting judge, upon his resignation or retirement. It was for this reason that this Court held that once the SJC initiates the inquiry against a sitting Judge, it shall be taken to its logical conclusion. Had the provision of Article 209 of the Constitution been interpreted progressively or purposively, in a manner that upon retirement or resignation of a judge, the inquiry initiated by a constitutional body shall stand terminated, it would have amounted to adding these words into the Constitution, which is beyond the domain of this Court. The referred judgment in the circumstances is of no assistance to the appellant, rather it strengthens the view that the Constitution has to be interpreted rigidly and to be implemented in its letter and spirit. As has been discussed above that the appellant does not qualify for reserved seats, therefore, we cannot mould the Constitution in a manner to facilitate SIC. The appeals to such extent failed.

Status of Returned Candidates who joined SIC:

14. In order to ascertain the status of 80 returned candidates, who joined SIC, the learned counsel for the ECP on our directions, produced their nomination papers. Perusal whereof would reveal that out of the 80

returned candidates, 39 returned candidates had filed declarations about their affiliation with PTI. Despite such fact, the ROs while publishing list of the contesting candidates in Form 33, showed them as independents, on the basis whereof, they contested election and were subsequently notified as independent returned candidates by the ECP. The ROs did not fill Forms 33 of these 39 candidates in consonance with their declarations. The learned counsel for the ECP admitted the fact that those 39 candidates filed declarations about their affiliation with PTI, but because of refusal of symbol by the ECP, endorsed by this Court on 13 January 2024 in the case of *Election Commission of Pakistan*³, PTI was not considered as a political party for the purpose of election. He relied upon the Explanation to rule 94 of the Rules, which is reproduced as under:

***‘Explanation.** For the purpose of this rule, the expression “political party” means a political party to which a symbol has been allocated by the Commission.’*

The learned counsel for the ECP stated that on account of non-allocation of symbol to PTI, the declarations of the candidates and their nomination by PTI were not accepted. According to him, all of them were independent returned candidates, who contested election on different election symbols. They had exercised their constitutional right by joining SIC out of their free will and consent.

Political Party:

15. Under Article 17(2) of the Constitution “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 sovereignty or integrity of Pakistan, public order or morality.” A political party means a group of persons organized to acquire and exercise political power. Section 2(xxviii) of the Act defines a political party as under:

“political party” means an association of citizens or a combination or group of such associations formed with a view to propagating or influencing political opinion and participating in elections for any elective public office or for membership of a legislative body, including an Assembly, the Senate, or local government;

³ PLD 2024 SC 267

The definition in the Act is so clear that the Parliamentarians did not consider the need of further explanation. To the contrary, rule 94 of the Rules provides an explanation to the definition of a political party. It is a settled proposition of law that rules framed under a Statute must remain within its domain and cannot transgress the limits and parameters of the statute⁴. The explanation to rule 94 of the Rules is, therefore, beyond the scope of the definition of a political party, hence, amounts to transgressing the limits and parameters provided by section 2(xxviii) of the Act. The Constitution has recognized the right of formation of a political party, subject to any reasonable restrictions imposed by law in the interest of sovereignty and integrity of Pakistan, public order and morality. After complying with the provisions of sections 200 and 201 of the Act, a political party shall be enlisted with the ECP in a manner as provided by section 202 of the Act. Under section 215 of the Act, a political party enlisted under the Act shall be eligible to obtain an election symbol for contesting election for National and Provincial Assemblies as well as local governments. However, under section 215(5) of the Act, if a political party fails to comply with the provisions of section 209 or 210 of the Act, and fails to conduct its intraparty election, the ECP shall not allocate an election symbol to such political party or combination of political parties in subsequent election. This is the reasonable restriction imposed upon a political party in the circumstances.

16. Primarily, the purpose of allocation of a symbol to political parties is to facilitate their voters in identifying, recognizing and remembering the party's nominated candidates. If an election symbol of a political party is revoked for any reason, there is no penal consequence in the Act, except losing the right of having a common election symbol. Thus, refusing symbol to any political party does not affect its existence nor does it lose the rest of its rights available to it under the Constitution and the Act. Non-allocation of symbol to a political party, in no way prevents a candidate from filing a declaration about his affiliation with that political party, nor does it prevent such political party from nominating a candidate to contest an election. Once a political party is enlisted, it has a right under section 206 of the Act to nominate candidates for election to the National and Provincial Assemblies. If a candidate is nominated by a political party having no common symbol, under section 67(1) of the Act, he shall be

⁴ 2016 SCMR 550; 2015 PTD 1100; 2013 PLC (C.S.) 1223.

allotted one of the prescribed symbols not allocated to any political party. Such political party can still propagate and influence political opinion and agenda in order to promote its nominated candidates. The primary role of a political party is to place a political agenda and policies to persuade people. To achieve its goal, a political party contests election by putting up candidates, and voters choose the party's nominated candidates on the basis of its manifesto, policies and programs. The party which wins majority seats in the election, forms a government and the parties which win less number of seats in the election, form an opposition. In any case, an enlisted political party shall exist and has a right to exercise its political power by participating in election, unless the Supreme Court upholds the declaration made against a political party by the Federal Government under section 212 of the Act, that such political party shall stand dissolved forthwith.

Status of PTI:

17. It is important to mention here that on account of not-conducting of intra-party election, the ECP had declined to allot symbol to PTI, because this is what **section 215(5)** of the Act stipulates. However, this did not mean that affiliation of the candidates with PTI stopped or that PTI stopped being a political party to contest election. Candidates from different constituencies from National and Provincial Assemblies filed nomination papers and declarations showing their affiliation with PTI, but the ROs while issuing list of contesting candidates drawn up in Form 33, declared them as independents. The decision of the ROs was solely based upon the explanation to rule 94 of the Rules and on account of the decision of the ECP, revoking symbol of PTI. The election authorities did not properly apply the relevant provisions of the Constitution and the Act. The PTI's affiliated candidates had submitted their declarations by 24 December 2023, much earlier than the judgment passed by this Court on 13 January 2024. The contention of the learned counsel for the ECP that the decision of declaring PTI's affiliated candidates as independents, were pursuant to the judgment of this Court, is unfounded. There was no restraining order either from the ECP or in the judgment of this Court, preventing PTI from nominating candidates and participating in election, but, the ROs and the ECP misinterpreted the said judgment, which created an anomaly.

18. Admittedly, a large number of renowned lawyers are members of PTI and many of them contested election of the year 2024 for the general seats in National and Provincial Assemblies, filing declarations about their

affiliation with PTI. Surprisingly, none of them had challenged the order of the ROs, declaring them as independent candidates and their notifications being independent returned candidates issued by the ECP. It is not known as to what had prevented them to do so? The learned counsel for the appellant and the PTI were unable to assign any reason in this behalf. Though, a PTI candidate, Mr. Salman Akram Raja, challenged the order of the RO but did so only to the extent of declaring him as an independent candidate, but surprisingly he did not take the matter to its logical conclusion. His petition was objected to by the Registrar, against which, a chamber appeal was provided by the Supreme Court Rules, 1980 but he did not avail such remedy, for the reason best known to him. We must say that the administration of PTI and its nominated candidates for National and Provincial Assemblies, were equally responsible for misinterpreting the judgment of this Court by presuming the PTI's nominated candidates as independents. They were negligent in failing to challenge the orders of the ROs and the ECP.

Entitlement of PTI for the Reserved Seats:

19. In the case in hand, the matter pending before this Court pertains to administrative responsibility of the ROs and the ECP with regard to allocation of seats reserved for women and non-Muslims, as provided by the Constitution and the Act. They have committed an illegality by declaring PTI's affiliated candidates as independents. These appeals pending before us is a continuation of the original matter of publishing list of contesting candidates drawn up in Form 33 by the ROs and notifications of returned candidates issued by the ECP in their administrative capacities. Since right of the electorate and of candidates for the seats reserved for women and non-Muslims is involved, they cannot be penalized because of the act of the ROs, the ECP, the PTI's administration and of those 39 candidates, who did not agitate their grievances. To protect and preserve their constitutional right, we can take notice of the matter.

20. Choosing a candidate for general seats and the seats reserved for women and non-Muslims is one of the fundamental rights of an electorate, guaranteed by the Constitution and the law. It is therefore, not a matter solely of the PTI, rather it involves a constitutional right of an electorate and legitimate interests of women and non-Muslims, which has to be provided to them on the basis of general seats secured/won by PTI. Protecting their constitutional rights and interests should have been the prime consideration of the ROs and the ECP, but the needful was not done

and they acted contrary to the command of the Constitution and the law. We do not agree with the reasons which prevailed upon the ROs and the ECP, declaring PTI's 39 affiliated returned candidates as independents. The electorate voted for them in their such capacity. The act of the ROs and the ECP, declaring them as independent returned candidates amounts to depriving them from their constitutional right of forming a Parliamentary Party of PTI in National and Provincial Assemblies. Similarly, it has also deprived the PTI's women and non-Muslims candidates from their legitimate fundamental right to participate in national life, and to promote agenda and policies of the political party, to which they were affiliated. Consequently, the members to the seats reserved for women and non-Muslims shall be elected in accordance with law on the basis of general seats won/secured, including the said 39 returned candidates.

Independents:

21. We have perused the nomination papers of 80 candidates, who joined SIC, out of whom, 41 candidates in clear terms declared themselves as independents, while filing their declarations without there being a certificate (ticket) from any party, including PTI. The date for submission of nomination papers as per the Schedule was with effect from 20 December 2023 till 24 December 2023. Admittedly, none of the candidates or the leadership of PTI came forward to claim that the candidates who declared themselves as independents, were actually the party's nominated candidates. There is nothing on the record to suggest that these 41 candidates were compelled, coerced, pressurized, misinterpreted the law or judgment of this Court or was there any other peculiar circumstance beyond their control, to declare their status as independents. In the given circumstances, there is no reason, why they should be considered as PTI's nominated candidates. Judges decide cases in accordance with the Constitution and law, based upon the material available before them. Any such contention must be supported by the record, which is lacking in this case, therefore, these 41 candidates were independents. In this behalf, observations made by the Hon'ble eight Members of the Bench in Paragraph 108 of the majority judgment as under:

108. ...The assertion of SIC and PTI that they were also PTI candidates and the electorate voted for them for their being PTI candidates though appears satisfactory but is not supported by the record presently before us. Therefore, it is the most challenging matter involved in the case where the scales of the

requirements of law and of justice are to be justly, fairly and reasonably balanced.

22. According to section 67(3) of the Act, 'A candidate not nominated by any political party (hereinafter called as 'independent candidate')'. In Paragraph 110 of the judgment, authored by our learned brother Syed Mansoor Ali Shah, J., it is stated that, *according to section 66 of the Election Act, two elements make a person the candidate of a political party: (i) the candidate's own declaration that he belongs to that party, and (ii) the party's certificate (party ticket) nominating him as its candidate*'. We agree with these findings and in the light thereof, there is no dispute that these 41 candidates did not file declarations about their affiliation with PTI, nor is there party's certificate (party ticket) nominating them as its candidates. This establishes the fact that at the time of submission of nomination papers, none of them had filed declarations about their affiliation with PTI, nor had a certificate (ticket) from the said party. All these candidates after being notified as independently elected candidates had an option to join PTI, instead they by exercising their constitutional right, joined SIC with free will and consent, and stated so in the affidavits filed by them. It is important to mention here that Mr. Salman Akram Raja, Advocate Supreme Court, appearing on behalf of PTI, surprisingly supported the stance of all those who joined SIC. The declarations in the nomination papers of 41 candidates were stated as independents, which were also accepted by this Court unanimously. It is for this reason, the Hon'ble majority Members gave the 41 independent candidates an option that they may join PTI by submitting declarations about their affiliation with PTI and to obtain certificates of their nomination by PTI, within a period of fifteen days. With great respect, we do not agree with the decision of majority members with regard to providing opportunity to 41 independently returned candidates, who have already joined SIC, by exercising their constitutional right. They are now members of SIC. Neither the Constitution nor the Act permits us to issue direction or provide an opportunity or additional avenue to them to join another political party and that too, within a period of fifteen days.

23. These are the reasons for our short order dated 12 July 2024, which is reproduced here under:

For reasons to be recorded later, we dispose of these appeals, petitions and miscellaneous applications through a short order as under:

1. *These matters involve a controversy regarding the allocation of seats reserved for women and non-Muslims. The Sunni Itehad Council ("**SIC**") did not contest the General Elections of the year 2024. SIC, which demands allocation of reserved seats on account of inclusion of independent parliamentarians in it, did not secure a single seat in the National Assembly or any of the Provincial Assemblies nor submitted a list of its candidates for seats reserved for women and non-Muslims. Thus, it is not entitled to any of the reserved seats in the National Assembly and in the Provincial Assemblies. The impugned judgment and the order dated 1 March 2024 of the Election Commission of Pakistan ("**ECP**") to such extent is upheld.*

2. *Under Article 51(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"), the total number of seats in the National Assembly shall be 326, out of which 60 seats are reserved for women and 10 seats for non-Muslims. Such right of women and non-Muslims has been guaranteed by the Constitution. They shall be elected in accordance with the law through proportional representation system of political parties' list of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly and the Provincial Assemblies, as provided by Article 51(6) (d) and (e) of the Constitution. Therefore, they cannot be deprived of this right of theirs by leaving these seats vacant, and all reserved seats must be filled in, as provided by Article 224(6) of the Constitution.*

3. *The impugned judgment of the High Court and the said order of the ECP to the extent of the proportional representation distribution of seats amongst the political parties which won and secured seats is also maintained, however, since the ECP calculated and allocated the seats to the parties by the exclusion of the Pakistan Tehreek-e-Insaf ("**PTI**") candidates, therefore, to such extent, the impugned judgment of the High Court and the order of the ECP are set aside.*

4. *During the hearing, it transpired that a number of candidates had submitted their nomination papers declaring on Oath that they belonged to PTI supported by an affiliation certificate of the said party, though some did not submit affiliation certificates of PTI, however, since they stated on Oath that they belonged to PTI, and did not contradict themselves, they should be considered to be members of PTI in the National and the Provincial Assemblies. The ECP by misinterpreting the judgment of this Court dated 13 January 2024, which was regarding non-holding intra-party elections in PTI, wrongly mentioned the said candidates of the PTI as independents in Form 33 of the Election Rules. The ECP had no authority to declare validly nominated candidates of a political party to be independent candidates. Similarly, a candidate once declared*

himself/herself as a candidate of a political party, could not subsequently resile from his/her candidature of a particular party, after the last date of withdrawal of the nomination papers.

5. *It is important to mention here that neither the PTI nor any candidate affiliated with PTI approached either this Court before or during the hearing of these proceedings, or the High Court to challenge the decision of the ECP, declaring them as independents. However, in view of the fact that the appeal and the petition are a continuation of election proceedings before the ECP, we can look into the vires of the decision of the ECP in the light of the provisions of Article 51(1)(d) and (e) of the Constitution read with sections 66, 67 and 104 of the Elections Act, 2017 to safeguard the interest of women and non-Muslims. As a consequence whereof, the candidates who had submitted their nomination papers declaring that they belonged to PTI and had not filed a document showing affiliation with another political party before the last date of withdrawal of the nomination papers, should have been treated as the Parliamentary Party of PTI, but the needful was not done by the ECP. Consequently, the PTI as a Parliamentary Party is entitled to the reserved seats. The ECP should recalculate and reallocate the reserved seats amongst the political parties, including the PTI, as provided by Article 51(6)(d) and (e) of the Constitution.*

6. *The candidates who had submitted their nomination papers by 24 December 2023, which was the last date of submission of nomination papers, and had declared themselves either as independent candidates or had left blank the relevant column in the nomination papers/declaration and were elected shall be considered to be independents. SIC is a registered political party and every independent member of the National Assembly and of the Provincial Assemblies has a right to join it. All those who joined the SIC are presumed to have done so out of their own free will. None of them claimed to have joined SIC because of any misunderstanding of any judgment, the law, compulsion, coercion or undue influence and it is not for this Court to presume otherwise.*

We must ensure that words are not read into the Constitution nor to ascribe artificial meaning to commonly understood words. We must also abide by validly enacted laws and must not do anything either to hinder or facilitate a political party by ignoring the laws mandate.

(Qazi Faez Isa)
CJ

(Jamal Khan Mandokhail)
Judge