

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Mian Saqib Nisar, HCJ

Mr. Justice Umar Ata Bandial

Mr. Justice Ijaz ul Ahsan

Constitution Petitions No.37 to 45, 47 to 51 & 54 of 2017

And

CM Appeal No.244 of 2017 in Const. Petition No.Nil of 2017

*UNDER ARTICLE 184(3) OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973*

Zulfiqar Ahmed Bhutta	Petitioner (in CP#37/17)
Sheikh Rasheed Ahmed	Petitioner (in CP#38/17)
All Pakistan Aam Admi Party through its Chairman, Ch. Nasir Mehmood	Petitioner (in CP#39/17)
Pakistan Justice Party through its Chairman Muhammad Munsif Malik.	Petitioner (in CP#40/17)
Muhammad Dawood Ghaznavi	Petitioner (in CP#41/17)
Abdul Wadood Qureshi	Petitioner (in CP#42/17)
Sheikh Ahsan ud Din	Petitioner (in CP#43/17)
Pakistan Peoples Party through its Secretary General	Petitioner (in CP#44/17)
Jamshed Ahmed Khan Dasti	Petitioner (in CP#45/17)
National Party	Petitioner (in CP#47/17)
Malik Shah Muhammad Wazir	Petitioner (in CP#48/17)
Imran Khan	Petitioner (in CP#49/17)
Ishtiaq Ahmad Ch	Petitioner (in CP#50/17)
Gohar Nawaz Sindhu	Petitioner (in CP#51/17)
Amna Malik	Petitioner (in CP#54/17)
Istiqlal Party through its Chairman & others.	Appellant (in CMA#244/17)

VERSUS

Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs and others	Respondents (in CP#38-44, 47-50&54/17)
Federation of Pakistan through Secretary Cabinet Division and others	Respondents (in CP#45 &37/17)
Prime Minister of Pakistan through Principal Secretary Cabinet Division,	Respondents (in CP#51/17)

Islamabad and others
Federation of Pakistan through its
Secretary, Civil Secretariat, Islamabad.

Respondents
(in CMA#244/17)

For the Petitioner(s): In person.
(in CP#37, 39, 41&51/17)

Dr. Farough Naseem, ASC
Mr. Faisal Farid Chaudhry, ASC.
Syed Razaqat Hussain Shah, AOR
(in CP#38/17)

Mr. M. Ikram Chaudhry, Sr. ASC
(in CP#40/17)

Sardar M. Latif Khan Khosa, Sr.ASC
Ch. Akhtar Ali, AOR
Assisted by Sardar Shahbaz Ali Khosa,
Barrister Afzal Hussain, Malik Javed
Iqbal, Syed Naz Gul Shah, Sardar Imran
Rafique, Mr. Arshad Binyamin,
Advocates (in CP#44/17)

Mr. Tariq Asad, ASC (in CP#42/17)

Mr. Saeed Khurshid Ahmed, ASC
(in CP#45/17)

Sh. Ahsan ud Din, ASC (in CP#43/17)
Mr. Khalid Abbas Khan, ASC
Mr. Mehmood A. Sheikh, AOR
(in CP#47/17)

Dr. Babar Awan, Sr. ASC assisted by Mr.
Shahid Naseem Gondal, Advocate
(in CP#48 & 49/17)

Mr. Azhar Siddique, ASC.
Ch. Akhtar Ali, AOR
(in CP#50 & 54/17)

Malik Munsif Awan, ASC
(in C.M.Appeal#244/17)

For the Respondent(s): Mr. Salman Akram Raja, ASC.
Raja Zafar-ul-Haq, Chairman PML(N)
Assisted by Mr. Asad Ladha and Malik
Ghulam Sabir, Advocates.
[On behalf of PML(N)]

Nemo.
(On behalf of Respondent No.4 in CP#38 & 39/17,
Respondent No.7 in CP#42/17, Respondent No.5 in
CP#43/17, Respondent No.2 in CP#44/17 and
Respondent No.3 in CP#50/17)

Mr. Kamran Murtaza, Sr.ASC
Muhammad Usman Ansari,

Deputy Secretary (Litigation)
National Assembly.

On Court's Notice: Mr. Ashtar Ausaf Ali,
Attorney General for Pakistan *assisted
by Barrister Asad Rahim Khan, Mirza Munir
Baig, M. Usama Rauf, Advocates*

Mr. M. Waqar Rana,
Additional Attorney General for Pakistan
Muhammad Arshad, DG (Law),
Election Commission of Pakistan.

Date of Hearing: 23.01.2018, 06.02.2018, 07.02.2018,
08.02.2018, 09.02.2018, 13.02.2018,
14.02.2018, 15.02.2018 & 21.02.2018

JUDGMENT

MIAN SAQIB NISAR, CJ-. The Petitioners before us are public spirited citizens and political parties which are a part of the political landscape of Pakistan. Both sets of Petitioners have a direct interest in compliance with and implementation of provisions of the Constitution of the Islamic Republic of Pakistan, 1973 (***the Constitution***). The grievance of the Petitioners arises out of certain provisions of the recently promulgated law under the name and style of Election Act, 2017 (***“the Act, 2017”***). The Act, 2017 which was enacted to amend, consolidate and unify laws relating to conduct of elections came into force on 2nd of September 2017.

2. A brief background of the controversy before this Court is that Respondent No.3-Pakistan Muslim League (N) is the largest political party (in terms of seats) in the National Assembly of Pakistan. Pursuant to its majority in the National Assembly it formed a Government after the General Election, 2013. Respondent No.4 (Muhammad Nawaz Sharif) was its

President. He was elected as the Prime Minister of Pakistan. On 03.04.2016, the International Consortium of Investigative Journalists (ICIJ) released some information and documents taken from the database of a law firm by the name of Mossack Fonseca & Company, based in Panama. The said information was published in the Print and Electronic Media worldwide on 04.04.2016. It disclosed details of a large number of offshore companies established in different countries and tax havens. Such offshore companies were ostensibly owned or controlled by various persons and entities in different parts of the world. The information coming into public domain revealed that a number of political and public figures and their families belonging to different countries owned valuable assets in various parts of the world, through these offshore companies. The names of the children of Respondent No.4 (*who was at the relevant time, the sitting Prime Minister of Pakistan*) also featured in the disclosed information/documents. This information was previously not known publicly nor was it disclosed to any competent authority.

3. The public uproar that followed forced some political figures around the world to tender resignations from public offices held by them. Others submitted explanations in Parliaments, offered themselves for accountability and/or provided proof that the offshore companies and the assets acquired through such offshore companies had been procured through legitimate means and lawful sources. In

some countries, investigations were initiated to inquire into the allegations of ill gotten gains, corruption, money laundering, financial crimes and illegal financial activities.

4. Similar allegations were leveled against Respondent No.4 and his children. He submitted explanations on a number of occasions including one, before the Parliament in his address to the Parliamentarians and another, during an address to the Nation on radio and television. However, owing to their contradictory nature, such explanations failed to convince many. Some of them approached this Court under Article 184(3) of the Constitution. Respondent No.4 submitted to the jurisdiction of this Court, did not raise any objection and waived Constitutional privilege (if any). The matter was taken up and heard by a five member Bench of this Court.

5. After a detailed hearing which continued for months on end, the matter was decided by this Court vide its judgment dated 20.04.2017. In the said judgment, two out of five learned Members of the Bench namely Asif Saeed Khan Khosa and Gulzar Ahmad, JJ disqualified Respondent No.4 in terms of Article 62(1)(f) of the Constitution. However, three learned Members of the Bench namely Ejaz Afzal Khan, Sh. Azmat Saeed and Ijaz ul Ahsan, JJ decided to constitute a Joint Investigation Team (JIT). The mandate of the JIT was to conduct a detailed investigation into the allegations against Respondent No.4 and members of his family, identify the various assets owned by them directly or indirectly through

offshore companies, front men, etc and submit a report within sixty days. The judgment of this Court is reported as Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif (PLD 2017 SC 265). As mandated by this Court, the JIT proceeded with its inquiry / investigation. On expiry of sixty days and completion of its investigation, the JIT submitted its report spread over 10 volumes before this Court. On examination and scrutiny of the report, the aforementioned three learned Members of the Bench pronounced their judgment on 28.07.2017. The said learned Members also disqualified Respondent No.4 as a Member of the Majlis-e-Shoora (Parliament) in terms of Article 62(1)(f) of the Constitution. The net result of the judgment of 28.07.2017 was that all five learned Judges of this Court unanimously disqualified Respondent No.4 in terms of Article 62(1)(f) of the Constitution. In addition, they directed the National Accountability Bureau (NAB) to file various References *inter alia* against Respondent No.4, some of his children, son in law and others with a direction that such References be decided by the Accountability Court within a period of six months from the date of filing of the References. We understand that the directions of this Court in so far as they relate to filing of the References by the NAB have been complied with. Various References against Respondent No.4, some of his children, son in law and others have been filed in the Accountability Court and proceedings are underway.

6. It may be pointed out that subsequently Respondent No.4 and others preferred Review Petitions before this Court against the judgment dated 28.07.2017. These were dismissed vide order dated 15.09.2017. Consequently, the order of this Court recorded on 28.07.2017 attained finality which *inter alia* included a declaration that Respondent No.4 was not “*honest*” in terms of Section 99 (f) of the Representation of People Act, 1976 and Article 62(1)(f) of the Constitution. Therefore, he was disqualified to be a Member of the Majlis-e-Shoora (Parliament). The Election Commission of Pakistan (***the Commission***) was also directed to issue a notification disqualifying Respondent No.4 from being a Member of the Majlis-e-Shoora (Parliament) with immediate effect, whereafter, he ceased to be the Prime Minister of Pakistan.

7. As a consequence of the judgment of this Court, the Commission de-notified Respondent No.4, who stepped down as Prime Minister of Pakistan.

8. As noted above, Respondent No.4 at all material times was the President of Respondent No.3-Pakistan Muslim League(N) which is a political party registered with the Election Commission of Pakistan. In view of the first proviso to Article 5 of the Political Parties Order, 2002 (*Order, 2002*), the Respondent No.4 could not remain an office bearer or President of Respondent No.3 by reason of his disqualification under Articles 62 and 63 of the Constitution. Accordingly, he stood removed from the said office as a consequence of the

aforenoted judgment of this Court and by operation of the relevant law. In view of the relevance of Section 5 of the Order, 2002 in the matter before us, the same is reproduced below:-

“5. Membership of political parties.- (1) *Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party or be otherwise associated with a political party or take part in political activities or be elected as an office-bearer of a political party:*

Provided that a person shall not be appointed or serve as an office-bearer of a political party if he is not qualified to be, or is disqualified from being, elected or chosen as a member of the Majlis-e-Shoora (Parliament) under Article 63 of the Constitution of the Islamic Republic of Pakistan or under any other law for the time being in force.

Provided further that the condition of educational qualification being a graduate possessing a bachelor degree or equivalent laid down for a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly shall not be applicable to an office-bearer of a political party.

(2) *Where a person joins a political party, his name shall be duly entered in the record of the political party as a member and shall be issued a membership card, or any other document showing his membership of such political party.*

(3) *A person shall not be a member of more than one political party at a time.*

(4) *A member of a political party shall have the right of access to the records of the political party. [Underlining is ours]”*

9. It is alleged by the Petitioners that in order to undo the effect of the judgment of this Court as also the first proviso to Section 5 of the Order, 2002 (*reproduced and underlined above*) the ruling party (PML(N) introduced a Bill in the Senate of Pakistan titled Election Act, 2017. In the

proposed Bill, a large number of Election Laws including the Order, 2002 were to be repealed and replaced by the Act, 2017.

10. For the purpose of present controversy, two Sections of the Election Act, 2017 are significant. For the sake of convenience, the same are reproduced below:-

“203. Membership of political parties.—*(1) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party or be otherwise associated with a political party or take part in political activities or be elected as an office-bearer of a political party.*

(2) Where a person joins a political party, his name shall be entered in the record of the political party as a member and shall be issued a membership card, or any other document showing his membership of the political party.

(3) A person shall not be a member of more than one political party at a time.

(4) A political party shall encourage women to become its members.

(5) A member of a political party shall have the right of access to the records of the political party, other than the record of another member.

232. Disqualification on account of offences.—*Where a person has been convicted for any offence under this Act or has been found guilty of any corrupt or illegal practice by a Tribunal, he shall, if the Commission is of the view that circumstances so warrant and makes an order to that effect, be disqualified for such period not exceeding, five years as may be specified in the order from being, or being elected as a Member of an Assembly, the Senate or a local government.”*

11. It appears that the Bill was voted in the Senate of Pakistan on 22.09.2017. We have been informed that various amendments in the said Bill were proposed by some political parties, including the retention of the aforementioned proviso to

Section 5 of the Order, 2002. It may also be noted that except for the proviso, Section 5 of the Order, 2002 was retained in its original form in the proposed Bill. However, it appears that most of the amendments suggested by various parties were not incorporated. The Petitioners have vehemently argued that proceedings before the Senate of Pakistan were fundamentally questionable and flawed. However, we do not wish to enter into this controversy in due deference to the provisions of Article 69 of the Constitution especially so where no specific grounds have been urged that may justify probe and scrutiny of the process by which the Bill was passed in the Senate of Pakistan. We have gone through the record of debates on the Bill and find that no purposeful debates on the Bill took place in the Senate of Pakistan. Nevertheless, we would not like to delve deeper in the said aspect of the issue.

12. After passage of the Bill in the Senate of Pakistan, the Election Bill, 2017 was tabled in the National Assembly on 02.10.2017. It was passed on the same day. It also received Presidential assent the same day.

13. On 03.10.2017, the PML(N)-Respondent No.3 amended its constitution and elected Respondent No.4 as its President. It is alleged by the Petitioners that the Election Act, 2017 which became part of the Statute Book on 02.10.2017 was enacted and amendments in the constitution of Respondent No.3 undertaken on 03.10.2017 were person specific and undertaken to favour and accommodate one

individual namely Respondent No.4 (Muhammad Nawaz Sharif).

14. In the above background, the Petitioners challenged Sections 203 & 232 of the Election Act, 2017 reproduced above. It has *inter alia* been prayed that the said Sections may either be struck down being *ultra vires* the Constitution or at least read and interpreted in a manner that may harmonize their meaning, scope and interpretation with Constitutional provisions which in any event have primacy over statutory provisions.

15. Mr. Farough Naseem, learned ASC, appearing for the Petitioner in Constitution Petition No.38 of 2017 has argued that on its bare reading Section 203 of the Election Act, 2017 *per se* does not expressly permit any person who has been disqualified by a Court of law to remain or become an office bearer of a political party. However, if it is interpreted to mean that Section 203 does not debar a disqualified person from being an office bearer of a political party then the said Section is liable to be struck down as unconstitutional or alternatively it is liable to be read down by holding that the said provision does not permit a person who has been disqualified by a Court of law to become or remain a Member of the Parliament or to be or remain an office bearer or head of a political party. He maintains that a person who has been disqualified from being elected or chosen as a Member of the Majlis-e-Shoora (Parliament) under Article 62 or Article 63 of the Constitution or under any

law for the time being in force cannot become an office bearer of a political party either. This is so because a person who has been declared not to be *honest* or *ameen* if made an office bearer, including head of a political party, would in effect be heading individuals who may be Members of the Senate of Pakistan and the National or Provincial Assemblies and do not suffer from any of the aforementioned disqualifications. In other words, a person who is not honest and ameen will head and lead many who may be honest and ameen. This according to him is absurd, a paradox and a contradiction in terms.

16. The learned counsel for the Petitioner has also drawn our attention to Article 63(A) of the Constitution and submitted that a Party Head enjoys wide-ranging powers in matters where Members of his party vote or abstain from voting in the House contrary to any direction issued by the Parliamentary Party to whom he belongs in relation to election of the Prime Minister or the Chief Minister, a vote of confidence or no confidence, a Money Bill and a Constitutional Amendment Bill. He has pointed out that where the Party Head declares that a Member of his party has defected and such declaration is sent to the Presiding Officer and the Chief Election Commissioner, it can ultimately lead to his disqualification. He further maintains that the Party Head also exercises, control and takes decisions regarding how members of his party would vote in the context of Constitution and other laws. The learned ASC further

maintains that citizens of Pakistan have a constitutional right to join any political party. According to him, this right would be jeopardized if the political party which they may want to join is headed by a person who has been disqualified by way of a declaration issued by a Court of competent jurisdiction specially so where such declaration reflects on the honesty of such person. He submits that citizens of Pakistan have a fundamental right that a person who has been disqualified under the Constitution should not head a political party or have the power to control Parliamentarians in the Senate of Pakistan, the National Assembly and/or the Provincial Assemblies. Therefore, any interpretation of the Constitution and the law to the effect that despite a declaration by a Court of competent jurisdiction that a person is not honest and *ameen*, and hence disqualified to be a Parliamentarian, he can still become the head of a political party, would not only amount to negating the spirit of the Constitution but also clearly violate the fundamental right of freedom of association entrenched in Article 17 of the Constitution as also the fundamental rights enshrined in Article 14 of the Constitution. He maintains that to become a Member of a Political Party which is headed by a person declared to be lacking honesty by a Court of competent jurisdiction also militates against the fundamental right of dignity of man to which each citizen is entitled. He finally maintains that the act whereby Respondent No.4 has been made the Party Head of PML(N) is clearly violative of Articles 62, 63 & 189 of the Constitution.

17. Sardar Muhammad Latif Khan Khosa, learned ASC, representing Pakistan Peoples Party (*in Constitution Petition No.44 of 2017*) has made similar submissions and added that insertion of Sections 203 and 232 of the Election Act, 2017 in so far as they are designed and intended to defeat, bypass and nullify the provisions of the Constitution (*specially Articles 62 and 63 of the Constitution*) are patently *mala fide* and unconstitutional as they are person specific and intended to favour, accommodate and benefit one individual. He further submits that Section 203 is tailored to defeat and override not only the provisions of Articles 62 & 63 of the Constitution, but also the judgment of this Court in the case of Imran Ahmad Khan Niazi (*ibid*). He has finally submitted that the impugned Legislation is also un-Islamic and violates Articles 2A and 227 of the Constitution.

18. Mr. Babar Awan, learned ASC, appearing for the Petitioner in Constitution Petition No.49 of 2017 while adopting the submissions earlier made, has submitted that any deletion from or incorporation in an existing Statute or enactment in so far as it is *ultra vires* the Constitution is void. He further submits that it is settled law that sub constitutional legislation cannot circumvent the effect or applicability of constitutional provisions. He maintains that provisions of Section 203 of the Election Act, 2017 offend against the provisions of Article 227 of the Constitution and therefore the same are liable to be set aside. He maintains that the provision in question has superficially been designed

to benefit one individual i.e. Respondent No.4. He adds that the principle of law has been settled by this Court that person specific legislation is untenable. Reference in this regard has been placed on Pakistan v. Muhammad Umar Khan (1992 SCMR 2450) and Federation of Pakistan v. Mubashar Hassan (PLD 2012 Supreme Court 106). He maintains that the Constitution is based upon *trichotomy* of powers and it recognizes three pillars of the State namely the Parliament, the Executive and the Judicature. Any attempt to subvert, bypass or nullify the effect of any provision of the Constitution by the Parliament or the Executive is liable to be struck down by this Court which being the custodian of the Constitution enjoys the constitutional mandate to interpret the Constitution. He further maintains that interpretation given by this Court to the provisions of the Constitution are final and in terms of Article 190 of the Constitution all Executive and judicial authorities throughout Pakistan are required to give effect to such interpretations and also act in aid of this Court.

19. Mr. Ahsan ud Din Sheikh, Petitioner in Constitution Petition No.43 of 2017, has submitted that Respondent No.4 was disqualified on 28.07.2017. On the said date, the Order, 2002 held the field. Therefore, on the date in question, Respondent No.4 incurred a disqualification in terms of the proviso to Section 5 of the Order, 2002. He submits that such disqualification emanated from and was triggered by a constitutional disqualification which could not

be removed either retrospectively or through ordinary legislation. He further submits that incorporation of Sections 203 & 232 in the Election Act, 2017 is an attempt to do indirectly what could not be done directly. Such course of action is prohibited under the law. Reference in this regard has been placed on Contempt Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752).

20. Developing his argument regarding the effect of disqualification vide judgment of this Court dated 28.07.2017 when the Order, 2002 was in force and Respondent No.4 had admittedly incurred a disqualification under the first proviso to Section 5 of the Order, 2002, the Petitioner has drawn our attention to the provisions of Article 264 of the Constitution. He has maintained that where a law is repealed or deemed to have been repealed, it does not, except as otherwise provided in the Constitution, affect any right, privilege, obligation or liability, acquired or incurred under the law, nor does it affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law. He has further referred to Section 6 of the General Clauses Act, 1957 to argue that since Respondent No.4 had already incurred a disqualification, repeal of the Order, 2002 and enactment of Election Act, 2017 could not wash away the disqualification which had already been incurred. He has finally submitted that the rights enshrined in Article 17 of the Constitution are circumscribed by and subject to the law and public morality. He maintains that appointment of a person who had been

disqualified by the highest Court of the land in terms of Article 62(1)(f) of the Constitution pricks the conscience of citizens and impinges on public morality.

21. The learned ASCs and the Petitioners in person in Constitution Petitions No.41, 42, 44, 45, 47, 50 and 54 of 2017 have also made submissions to the same effect and adopted the aforementioned arguments. They have however additionally argued that Section 203 of the Election Act, 2017 and the amendment made therein violates the provisions of Article 17 of the Constitution in so far as it is meant to render the provisions of Articles 62 & 63 of the Constitution redundant. Further, party tickets have been issued by Respondent No.4 which shows that he wields and exercises influence and control over the party and members of the party who also happen to be Members of the Parliament. This makes a mockery of the constitutional provisions, public morality and the salutary principles of free and fair elections which are *sine qua non* for a democratic dispensation.

22. Mr. Salman Akram Raja, learned ASC, representing Respondent No.3-Pakistan Muslim League (N), has submitted that omission from Section 203 of the Election Act, 2017 of an earlier restraint on appointment as Party Head of a person as contained in proviso to Section 5 of the Order, 2002 does not constitute violation of any constitutional provisions. He submits that the said proviso was a peculiar provision added at a particular phase of our history and did not articulate a constitutional test against

which Section 203 of the Act, 2017 is to be measured. He added that freedom of association and freedom of speech imply that there is freedom to members of a political party to freely determine the terms of their association and choose office-bearers including Party Head of their own liking. He maintained that the constitution of a political party is its internal matter and should be left to the will and choice of its members. He argued that restrictions imposed by Articles 17 and 19 of the Constitution are built in the said Articles and no further restrictions or restraints can be imported, transposed or read into the said Articles unless expressly provided by the Constitution. In support of his contentions, the learned ASC has placed reliance on Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416).

23. According to the learned ASC, the effect of lack of qualification or disqualification as provided in Articles 62 and 63 of the Constitution is limited to the effect that is expressly provided in the Constitution namely disqualification from being elected as Members of the Parliament or the Provincial Assemblies. Such disqualification or disability cannot be extended to office holders of political parties.

24. While referring to the arguments of the learned counsel for the Petitioners that the Election Bill was hastily moved and voted upon in the two Houses of the Parliament without much debate and the process left much to be desired, Mr. Salman Raja submitted that the Parliamentary Proceedings are protected under Article 69 of the Constitution

and the same cannot be called into question on the ground of any irregularity of procedure. He maintains that the draft Bill was debated in the Parliamentary Sub Committee which consisted of representatives of a cross section of the political parties represented in the Parliament. As such it cannot be said that the Bill was pushed through in haste without debate, discussion or deliberation.

25. Referring to Article 63A of the Constitution, the learned ASC submitted that the said provision was incorporated in its present form in the Constitution through the Eighteenth Amendment Act, 2010. It has a limited purpose namely to act as an anti-defection measure and disqualification of a member of the parliamentary party in the event of his resignation from membership of his party, joining another party, voting or abstaining from voting in the House contrary to any direction issued by his Parliamentary Party in relation to the election of the Prime Minister or the Chief Minister or a vote of confidence or no confidence or a Money Bill or a Constitution Amendment Bill. Even in that eventuality, the learned counsel submits that the Party Head can only declare that such member had defected from his party and may forward a copy of such declaration to the Presiding Officer and the Chief Election Commissioner. The Chief Election Commissioner is required to lay the declaration before the Election Commission. If the Election Commission confirms such declaration, in that eventuality, the member in question ceases to be a member of the House. He therefore

submits that the role of the Party Head under Article 63A of the Constitution is largely ceremonial for a limited purpose and it is not correct to assume that the Party Head is all powerful and can dictate and impose his will on the members of the Parliament who constitute the parliamentary party of a particular political party. He submits that the Party Head can either issue a declaration or refrain from issuing such declaration and condone any act of a member of the parliamentary party that may possibly fall within the mischief of Article 63A of the Constitution.

26. Referring to the question of person specific legislation, the learned counsel submitted that neither Section 203 nor 232 of the Election Act, 2017 could be termed as person specific legislation and in any event the legislation in question was not hit by the law laid down in Fauji Foundation v. Shamimur Rehman (PLD 1983 SC 457); Baz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 870); and Baz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 923).

27. Respondent No.4 (*Muhammad Nawaz Sharif*) was duly served. However, despite service he opted not to appear and remain unrepresented. He was therefore proceeded against *ex parte* vide order dated 06.02.2018. We however observed in the order that he may if he so deemed fit join proceedings at any stage and make his submissions before this Court. However, despite opportunity no one has entered

appearance on his behalf to present his point of view before us.

28. We have heard the learned counsel for the parties, considered their arguments and examined the material available on record.

29. Pakistan was formed in the name of Islam. The guiding principles of the new State and its associates are Islamic Ideology and Muslim faith. These ideals were incorporated in 1949 in a Resolution commonly known as the Objectives Resolution which provided as follows:-

“Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;

And whereas it is the will of the people of Pakistan to establish and order;

Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah.”

30. The Objectives Resolution constitutes the Preamble of the Constitution. Subsequently, in 1985 through the insertion of Article 2A in the Constitution, it was categorically provided that the principles and provisions set out in the Objectives Resolution would constitute a

substantive part of the Constitution and shall have effect accordingly. In view of the Objectives Resolution, it has been stated that although sovereignty over the entire Universe belongs to Almighty Allah alone, the authority is to be exercised by the people of Pakistan within the limits prescribed by Him as a sacred trust. This is in conformity with the Muslim faith that though the system of governance will be democracy but such democracy will not come in conflict with the Islamic Principles. It, therefore, fits into the scheme of the Objectives Resolution which refers to the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam and envisions a State where the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah.

31. Article 2 of the Constitution provides that Islam shall be the State religion of Pakistan. Likewise under Article 41(2) of the Constitution, the President, who is the Head of State is required to be a Muslim. Under Article 50 of the Constitution, the Parliament of the State is to be called Majlis-e-Shoora after Islamic traditions. Article 31 of the Constitution categorically provides that steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand

the meaning of life according to the Holy Quran and Sunnah. Article 31(2)(b) of the Constitution provides that the State shall endeavour, as respects the Muslims of Pakistan to promote unity and the observance of the Islamic moral standards. Article 203C of the Constitution provides for establishment of the Federal Shariat Court. The said Court has been empowered to examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam. Article 227 of the Constitution also provides that all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah and that no law shall be enacted which is repugnant to such Injunctions. The above provisions of the Constitution are a testament to the given theme of the Constitution as highlighted in the Preamble of the Constitution. By the same token and in the same context, the qualifications prescribed for membership of the Majlis-e-Shoora (Parliament) or Provincial Assemblies have distinct and unmistakable Islamic underpinnings which is evident from the provisions of Article 62 of the Constitution. Article 62(1)(d)(e)(f) and (g) of the Constitution, dealing with qualification for members of the Majlis-e-Shoora (Parliament) is reproduced below:-

“Article 62(1) *A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—*

- (d) he is of good character and is not commonly known as one who violates Islamic Injunctions;*
- (e) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;*

- (f) *he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law; and*
- (g) *he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan.”*

32. The above qualifications may be onerous and hard to meet but at the same time it has to be kept in mind that chosen representatives of the people while exercising powers and authority of the State ought to exercise the sovereignty of Almighty Allah as His delegates by way of a sacred trust. Faithful adherence to the provisions of Article 62 of the Constitution provides a recipe for cleansing the fountain heads of the State from persons who suffer from character flaws, openly violate the Injunctions of Islam, lack adequate knowledge of Islamic teachings, do not practice obligatory duties prescribed by Islam, do not abstain from major sins, are not sagacious, righteous, non-profligate, honest and ameen or convicted for crimes involving moral turpitude or giving false evidence or have worked against the integrity of the country or opposed the ideology of Pakistan. The rationale for incorporation of these qualifications is not hard to understand. When the Legislative Units of the State are purified at the top, clean leadership would emerge which would administer the country as true and responsible delegates of the sovereignty and authority of Almighty Allah (Imran Ahmad Khan Niazi's case *ibid*). This is the constitutional intent and design and the Courts are under a constitutional obligation to interpret and enforce it.

33. In the past few years, our jurisprudence has undergone considerable development with reference to qualifications and disqualifications of the members of the Majlis-e-Shoora (Parliament) and Provincial Assemblies. The members of the Majlis-e-Shoora (Parliament) and Provincial Assemblies were disqualified for having falsely claimed to possess educational degrees which were fake or bogus whereas others had practiced cheating and fraud in obtaining the requisite educational qualification. In doing so, they had submitted false declarations and suppressed material information regarding holding of dual nationalities or had concealed their assets and submitted false declarations alongwith their nomination papers in their election returns. In the above context, reference may usefully be made to the cases of Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner, Islamabad and others (PLD 2010 SC 817) and Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif (PLD 2017 SC 265).

“Muhammad Khan Junejo v. Fida Hussain Dero and others (PLD 2004 SC 452), Nawabzada Iftikhar Ahmed Khan Bar v. Chief Election Commissioner Islamabad and others (PLD 2010 SC 817), Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828), Rana Aftab Ahmad Khan v. Muhammad Ajmal and another (PLD 2010 SC 1066), Haji Nasir Mehmood v. Mian Imran Masood and others (PLD 2010 SC 1089), Mudassar Qayyum Nahra v. Ch. Bilal Ijaz (2011 SCMR 80), Syed Mehmood Akhtar Naqvi v. Federation of Pakistan and others (2012 SCMR 1101), Malik Iqbal Ahmad Langrial v. Jamshed Alam and others (PLD 2013 SC 179), Mian Najeeb-ud-Din Owasi and another v. Amir Yar Waran and others (PLD 2013 SC 482), Sadiq Ali Memon v. Returning Officer and others (2013 SCMR 1246), Abdul Ghafoor Lehri v. Returning Officer and

others (2013 SCMR 1271), Muhammad Khan Junejo v. Federation of Pakistan through Secretary, M/o Law, Justice and Parliamentary Affairs and others (2013 SCMR 1328), General (R.) Pervez Musharraf v. Election Commission of Pakistan and another (2013 CLC 1461), Allah Dino Khan Bhayo v. Election Commission of Pakistan, Islamabad and others (2013 SCMR 1655) Malik Umar Aslam v. Mrs. Sumaira Malik and others (2014 SCMR 45), Gohar Nawaz Sindhu v. Mian Muhammad Nawaz Sharif (PLD 2014 Lahore 670), Muhammad Ijaz Ahmed Chaudhry v. Mumtaz Ahmad Tarar and others (2016 SCMR 1), Muhammad Siddique Baloch v. Jehangir Khan Tareen and others (PLD 2016 SC 97) and Rai Hassan Nawaz v. Haji Muhammad Ayub and others (PLD 2017 SC 70).

In the case of Nawabzada Iftikhar Ahmad Khan Bar v. Chief Election Commissioner Islamabad and others (PLD 2010 SC 817) this Court had observed as follows:

“14. The Parliament of any country is one of its noblest, honourable and important institutions making not only the policies and the laws for the nation but in fact shaping and carving its very destiny. And here is a man who being constitutionally and legally debarred from being its member, managed to sneak into it by making a false statement on oath and by using bogus, fake and forged documents polluting the piety of this pious body. His said conduct demonstrates not only his callous contempt for the basic norms of honesty, integrity and even for his own oath but also undermines the sanctity, the dignity and the majesty of the said august House. He is guilty, inter alia, of impersonation --- posing to be what he was not i.e. a graduate. He is also guilty of having been a party to the making of false documents and then dishonestly using them for his benefit knowing them to be false. He is further guilty of cheating --- cheating not only his own constitutes but the nation at large.

Similarly in the case of Muhammad Rizwan Gill v. Nadia Aziz and others (PLD 2010 SC 828) this Court had observed as under:

“13. And it was to preserve the pureness, the piety and the virtuousness of such-like eminent and exalted institutions that, inter-alia, Articles 62 and 63 of the Constitution and section 99 of the Representation of the People Act, 1976 had declared that, amongst others, the persons who were not of good character; who indulged in commission of major sins; who were not honest; who were removed, dismissed or compulsorily retired from service of Pakistan; who had obtained loans from banks and had not re-paid the same or who had indulged in corrupt practices during the course of elections, would not be allowed to pollute the clearness of these legislative institutions.”

In the case of Muhammad Ijaz Ahmed Chaudhry v. Mumtaz Ahmad Tarar and others (**2016 SCMR 1**) it was held by this Court that on account of his submitting a false declaration about his educational qualification

“the appellant failed the requirements of rectitude and integrity prescribed in Article 62(1)(f) of the Constitution.”

The case of Muhammad Siddique Baloch v. Jehangir Khan Tareen and others (**PLD 2016 SC 97**) was no different and this Court had observed therein as follows:

“26. The loss of qualification under Article 62(1)(f) of the Constitution has been visited with removal from elected office under the Constitution in a number of cases including ----- . Weighty reasons have been assigned for adopting and implementing the constitutional mandate as a bar on membership in Parliament. Firstly, the qualifications of a candidate set out in Article 62 of the Constitution are a sine qua non for eligibility to be elected as a Member of Parliament. No time limit for eligibility on this score is given in the Constitution. A person who is truthful or dishonest or profligate has no place in discharging the noble task of law making and administering the affairs of State in government office. Such faults in character or disposition, if duly established, cannot be treated as transient for the purpose of reposing trust and faith of the electorate and the Constitution in the holder of an elected office under the Constitution. The trusteeship attendant upon the discharge of every

public office under the Constitution, whether Legislative, Executive or Judicial is a universally recognized norm. However, our Constitution emphasizes upon it expressly for an elected parliamentary office. The Constitutional norm must be respected and therefore implemented.”

In Rai Hassan Nawaz v. Haji Muhammad Ayub and others (PLD 2017 SC 70) this Court had held as under:

“7. An honest and truthful declaration of assets and liabilities by a returned candidate in his nomination papers furnishes a benchmark for reviewing his integrity and probity in the discharge of his duties and functions as an elected legislator. -----

8. ----- Where assets, liabilities, earnings and income of an elected or contesting candidate are camouflaged or concealed by resort to different legal devices including benami, trustee, nominee, etc. arrangements for constituting holders of title, it would be appropriate for a learned Election Tribunal to probe whether the beneficial interest in such assets or income resides in the elected or contesting candidate in order to ascertain if his false or incorrect statement of declaration under Section 12(2) of the ROPA is intentional or otherwise. ----- It is to ensure integrity and probity of contesting candidate and therefore all legislators. -----

*15. The object of Section 76A *ibid* is clearly to promote public interest by ensuring that elected public representatives have untainted financial credentials of integrity, probity and good faith. ----*

16. Indeed, honesty, integrity, probity and bona fide dealings of a returned candidate are matters of public interest because these standards of rectitude and propriety are made the touchstone in the constitutional qualifications of legislators laid down in Articles 62 and 63 of the Constitution of Islamic Republic of Pakistan.”

34. In Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif (PD 2017 SC 265), one of us (*Ijaz ul Ahsan, J*)

held as follows:-

“92. During hearings of these matters and while examining the various pleas raised by the parties and the documents and other material placed before us, I have found it imperative to pass orders and take steps to ensure that the true facts should come before the people of Pakistan who have a fundamental right to be governed in accordance with law, by those who fulfill the requirements of the Constitution and the law and whose financial dealings, earnings and expenditures are open to public scrutiny to show that they meet the test of honesty, integrity, financial probity and bona fide dealings. It is high time that standards were set and systems were put in place to develop a culture of accountability at all levels in order to cleanse our system and institutions from the evils of corruption, money laundering, loot and plunder of national resources by a few, irrespective of their rank or status in the system.”

35. It is clear and obvious from the above discussion that the underlying theme and focus of the Constitution is to ensure that only those individuals enter the electoral process who fulfill the prerequisites and requirements spelt out in the Constitution itself to be worthy delegates of Almighty Allah in order to exercise His powers in trust for Him and for the welfare of the people of Pakistan by joining the political process, possibly leading to formation of the Government and thereby being part of the governing set up put in place by the people of Pakistan in exercise of their adult franchise.

36. In the above context, candidates who wish to offer themselves through election to Majlis-e-Shoora (Parliament) and Provincial Assemblies play a fundamentally important role. In most instances following the modern democratic norms and remaining within the framework and underlying theme of the Constitution mentioned above they form themselves into the political parties. Such political parties are

organized and regulated under statutory law and contest elections by fielding their members as candidates in the hope of winning elections, getting a majority of seats in the Majlis-e-Shoora (Parliament) and Provincial Assemblies and to form a government. It may therefore be seen that political parties are vehicles which provide intending candidates the means and the roadmap to reach the destination of membership of the Legislature and thereafter a possible chance of being a part of the Government formed by the Party which enjoys the maximum number of seats in the Majlis-e-Shoora (Parliament) or Provincial Assemblies.

37. Owing to the importance of political parties in the electoral process, laws have been put in place from time to time relating to conduct of elections and matters connected therewith and ancillary thereto. There were eight sets of laws dealing with various aspects of the electoral process ranging from preparation of electoral rolls, delimitation of constituencies, matters relating to conduct of elections, allocation of symbols and formation of political parties. The last such law relating to political parties was the Political Parties Order, 2002 (*Chief Executives Order No.18 of 2002*). With a view to consolidate and unify all such laws which cover various aspects of the electoral process and conduct of elections, a new law was promulgated with effect from 02.10.2017 called the Election Act, 2017. The said Act, *inter alia*, defines a political party in Section 2(xxviii) thereof. The said provision, for ease of convenience, is reproduced below:-

*“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. **[underlining is ours]”***

38. The above definition of a political party is substantially the same as under the provisions of Order, 2002. On perusal of the definition, one is left in no manner of doubt that the basic and fundamental purpose of forming a political party is to propagate or influence political opinion, participate in elections for an elective public office or membership of a legislative body. It can therefore be safely concluded that the purpose and object of seeking membership of a political party is to achieve the aforementioned objectives of participating in elections, entering the Assemblies and forming or being a part of the Ruling party.

39. The right to form a political party is recognized as a fundamental right in the Constitution and the said fundamental right is duly reflected in a more detailed form by giving effect to the aforesaid right in terms of Section 203 of the Election Act, 2017. Chapter II of the Election Act, 2017 deals with political parties and various legal and procedural aspects of their formation, membership, functioning, internal elections, certification, funding, allocation of symbols, etc. Section 208 of the Election Act, 2017 provides for elections within a political party and stipulates that a member of a political party shall be subject to the provisions of the constitution of the political party and be provided with an equal

opportunity of contesting election for any office of the political party. It provides that the political party shall have a constitution and all members of the political party at the Federal, Provincial and Local levels shall constitute the Electoral College for election of the Party's General Council at the respective levels. Section 209 of the Act, 2017 provides for certification by the political party in the following terms:-

“209. Certification by the political party.— (1) *A political party shall, within seven days from completion of the intra-party elections, submit a certificate signed by an office-bearer authorized by the Party Head, to the Commission to the effect that the elections were held in accordance with the constitution of the political party and this Act to elect the office-bearers at the Federal, Provincial and local levels, wherever applicable.*

(2) *The certificate under sub-section (1) shall contain the following information—*

- (a) *the date of the last intra-party elections;*
- (b) *the names, designations and addresses of office-bearers elected at the Federal, Provincial and local levels, wherever applicable;*
- (c) *the election results; and*
- (d) *copy of the political party's notifications declaring the results of the election.*

(3) *The Commission shall, within seven days from the receipt of the certificate of a political party under sub-section (1), publish the certificate on its website.*

40. The words “Party Head” has been defined in Article 63A of the Constitution to mean any person by whatever name called, declared as such by the party. The Party Head typically performs various key functions, including but not limited to forming the central working committee, appointing a central executive committee, heading the central parliamentary board of the party, being a leader of the

parliamentary party and other pivotal functions. It can safely be said that the President of a political party is the material head of the entire organization, he is at the centre of all decision making and exercises all powers inherent in his office to ensure that the organization works in consonance with the constitution and byelaws adopted under the constitution. Section 209 of the Act, 2017 provides for certification to be filed with the Commission regarding intra party elections to be signed by an office bearer authorized by the Party Head. Section 210 of the Act, 2017 provides for information about the sources of funds accompanied by a report of the Chartered Accountant to be submitted with the Commission by an office bearer authorized by the Party Head. Section 216 of the Act, 2017 provides that an application for allocation of a symbol of its choice for each general election is to be signed by the Party Head by whatever name designated.

41. Recognizing the pivotal and important position of the Party Head, when the need for incorporation of the mechanism for disqualification of members of the Parliament on the basis of defection was felt, the Party Head, owing to his powerful and controlling position within the party was given a decisive role designed to keep the parliamentarians belonging to his party in line and acting according to the constitution and policy of the party as articulated and expressed by through or on behalf of the Party Head. Defection has been held by this court as a breach of “*confidence reposed in him (parliamentarian) by the electorate*” and a “*betrayal of the*

representative” in the context that ‘sovereignty over the entire universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust’¹.

42. With the above in mind, Article 63A of the Constitution was inserted by the Constitution (Eighteenth Amendment) Act, 2010 which for sake of convenience is reproduced below in its present form:-

“Article 63A (1). *If a member of a Parliamentary Party composed of a single political party in a House —*

- (a) resigns from membership of his political party or joins another Parliamentary Party; or*
- (b) votes or abstains from voting in the House contrary to any direction issued by the Parliamentary Party to which he belongs, in relation to—*
 - (i) election of the Prime Minister or the Chief Minister; or*
 - (ii) a vote of confidence or a vote of no-confidence; or*
 - (iii) a Money Bill or a Constitution (Amendment) Bill;*

he may be declared in writing by the Party Head to have defected from the political party, and the Party Head may forward a copy of the declaration to the Presiding Officer and the Chief Election Commissioner and shall similarly forward a copy thereof to the member concerned :

Provided that before making the declaration, the Party Head shall provide such member with an opportunity to show cause as to why such declaration may not be made against him.

Explanation.—“Party Head” means any person, by whatever name called, declared as such by the Party.

¹ Khawaja Ahmed Tariq Rahim V The Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and others [PLD 1992 SC 646] upheld & reiterated in PLD 1992 SC 723 @ 748 & PLD 1998 SC 1263 @ 1297

(2) *A member of a House shall be deemed to be a member of a Parliamentary Party if he, having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of a declaration in writing.*

(3) *Upon receipt of the declaration under clause (1), the Presiding Officer of the House shall within two days refer, and in case he fails to do so it shall be deemed that he has referred, the declaration to the Chief Election Commissioner who shall lay the declaration before the Election Commission for its decision thereon confirming the declaration or otherwise within thirty days of its receipt by the Chief Election Commissioner.*

(4) *Where the Election Commission confirms the declaration, the member referred to in clause (1) shall cease to be a member of the House and his seat shall become vacant.*

(5) *Any party aggrieved by the decision of the Election Commission may, within thirty days, prefer an appeal to the Supreme Court which shall decide the matter within ninety days from the date of the filing of the appeal.*

(6) *Nothing contained in this Article shall apply to the Chairman or Speaker of a House.*

(7) *For the purpose of this Article,--*

(a) *“House” means the National Assembly or the Senate, in relation to the Federation; and a Provincial Assembly in relation to the Province, as the case may be; and*

(b) *“Presiding Officer” means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be.*

43. Perusal of the provisions of Article 63A of the Constitution shows that where a member of a Parliamentary Party of a political party in a House resigns from membership of his party or joins another parliamentary party or votes or abstains from voting in the House contrary to any direction

issued by the parliamentary party to which he belongs in relation to; the election of the Prime Minister or the Chief Minister, a vote of confidence or a vote of no confidence, a Money Bill or a Constitution (Amendment) Bill, he may be declared in writing by the Party Head to have defected from the political party. On making such declaration, the Party Head can forward a copy of the declaration to the Speaker, National Assembly, Chairman Senate of Pakistan or the Speakers of the Provincial Assemblies, as the case may, for onwards transmission to Chief Election Commissioner. On receipt of such declaration and upon confirmation by the Commission, such member shall cease to be a member of the House and his seat shall become vacant. It is therefore clear and obvious that a declaration issued by the Party Head can trigger the process of disqualification of a member of the parliamentary party and by withholding of such a declaration he can save a member from such consequence. The discretion and power to prosecute or exonerate lies in the hands of the Party Head.

44. Article 63A cannot be read in isolation. It has to be read and interpreted keeping in view other provisions of the Constitution and the 'general scheme' of the Constitution discussed above. It may be noted that *'Article 63A of the Constitution does not contain a non-obstante clause. It is to be construed along with the other Articles of the Constitution including Article 63 keeping in view that a Constitution is an organic document designed and intended to cater the needs for*

*all times to come*². This approach has also been followed by this court Province of Sindh through Chief Secretary V MQM through Deputy Convener [PLD 2014 SC 531], Reference by President of Pakistan under Article 162 (PLD 1957 SC 219) and Lahore Development Authority through D.G. and others v. M.S. Imrana Tiwana and others (2015 SCMR 1739)

45. A combined reading of Article 63A, various provisions of the Election Act, 2017 and the constitution of Respondent No.3-PML(N) leads to the inescapable conclusion that the President/Party Head enjoys a central, pivotal and decisive role and position within the party, in the electoral process and in the Parliament through the Parliamentary Party, which he directly controls and superintends. He is the linchpin and pivot around which the entire structure of the party revolves, through which power flows to all organs, constituents and activities of the party. He has direct power, influence and control over how the party shall act and function within and outside the Parliament. One small example of his importance is that all material actions and decisions require his approval and it would not be an exaggeration to say that he in essence calls the shots in all important and major aspects and decisions of the party including awarding of party tickets. Reference in this regard may also be made to Sardar Sher Buhadar Khan v. Election Commission of Pakistan (PLD 2018 SC 97). While interpreting identical provisions in the Khyber Pakhtunkhwa

² Bahadur Khan Bangulzai V Attahullah Khan Mengal [1999 SCMR 1921 @1933]

Local Government Act, 2013 (XXVIII of 2013) dealing with powers of Party Head, one of us (*Mian Saqib Nisar, CJ*) held as follows:-

*“If a member of a party votes or abstains from voting in a Council contrary to any direction issued by the **political party** to which he is a member, in relation to election of the Nazim or Naib Nazim in a Council; he may be declared in writing by the Party Head to have defected from the political party, and the Party Head may forward a copy of the declaration to the Presiding Officer of the concerned Council and the Chief Election Commissioner. It is also provided that before making the declaration, the Party Head shall provide such member with an opportunity to show cause as to why such declaration may not be made against him. However, as per definition clause, the “Party Head” means any person, by whatever name called or declared as such by the Party and included the nominee of the Party Head. Thus, the authority to issue show cause notice, to consider the reply thereto and to declare a member to have defected, lies with the Party Head; however, the said authority may also be vested with the nominee of the Party Head. It is also evident from the above provision issued by the political party/ Party Head, not only with regard to casting the vote or to abstain from voting in the election of the Nazim or Naib Nazim, but also regarding vote of confidence or no-confidence and the approval of annual budget”.*

46. The argument of the learned counsel for Respondent No.4 that Article 17 of the Constitution and Section 203 of the Act have to be read together but to the exclusion of all other Article of the Constitution, is not logical and goes against the ‘general scheme’ of the Constitution and the principle of harmonious interpretation as developed by this Court over the course of our Constitutional history. A person who does not himself qualify to be a member of the Parliament, cannot in exercise of power under 63A be allowed to declare parliamentary members as disqualified to exercise

the authority (of Almighty Allah) as His delegates as a 'sacred trust'. Such interpretation would ex facie be absurd. How can it possibly be held that a Party Head who virtually controls and holds in his hands the fate and prospects of members of his party holding public office (who fulfill the requirements of Articles 62 and 63 of the Constitution), need not meet the requirements of the said Articles himself. Such an interpretation would not only be contrary to and in conflict with the entire scheme, focus and theme of the Constitution discussed above, but would also defeat the very purpose of inserting the said provisions in the Constitution. Reference in this regard may usefully be made to Muhammad Nawaz Sharif vs. Federation of Pakistan **(PLD 1993 SC 473)**

47. We are however of the view that the omission of proviso to Section 5 of the Order, 2002 in the text of Section 203 of the Act, 2017 would not have the effect of changing the meaning, scope and interpretation of the latter provision. This is in view of the settled principle of law that a constitutional provision (*Articles 62 and 63 of the Constitution in the present case*) cannot be overridden, diluted or bypassed through sub constitutional or subordinate legislation. Reference may be made to Abdul Aziz @ Labha and others vs. The province of West Pakistan **(PLD 1958 SC (Pak.) 499)** and Dr. Mubashir Hassan vs. Federation of Pakistan **(PLD 2010 SC 265)**.

48. Thus, the question whether the provisions relating to qualification and disqualification of membership to the Legislative bodies of Pakistan (Majlis-e-Shoora, Senate,

Provincial Assemblies etc), would also be applicable to a person elected or chosen as the Party Head is answered in the affirmative for the following reasons:-

- a) The Party Head through his power to impose disciplinary punishment as well to exonerate therefrom virtually controls the parliamentary party which is evident from the power available to him under Article 63A of the Constitution;
- b) The provisions of Sections 209, 210 & 216 and the general scheme of the Election Act, 2017 also substantiate, reinforce and buttress the finding that the Party Head wields decisive and controlling powers within his party and by exercise of such powers can and does directly control such fundamental matters as formation of the government, appointment of the Prime Minister, Federal Ministers, Ministers of State, Advisors, Chief Ministers, Provincial Ministers, Provincial Advisors, Governors, President, the mode and manner in which members of his party would vote in various matters that come before the Majlis-e-Shoora (Parliament) and Senate of Pakistan or the Provincial Assemblies;
- c) It would be absurd and illogical to hold that despite the fact that admittedly the Party Head virtually controls and holds in his hands the fate and prospects of members of his party holding parliamentary or other public office who fulfill the requirements of Articles 62 and 63 of the Constitution, yet he need not meet the requirements of the said Articles himself.

Such an interpretation would not only be contrary to and in conflict with the entire scheme, focus and theme of the Constitution discussed above, but would also defeat the very purpose of inserting the said provisions in the Constitution;

- d) The proviso to Section 5 of the Order, 2002 merely reiterates the applicability of Articles 62 and 63 of the Constitution to a Party Head. Its omission from the newly enacted law would not have the effect of changing that meaning and scope from the interpretation of Section 203 of the Act, 2017 in view of the settled principle of law, *inter alia*, that all Articles of the Constitution have to read harmoniously and as an organic whole.

49. The learned counsel for Respondent No.3 has attempted to convince us that the provisions of Article 17 of the Constitution have to be read in isolation and the right of a citizen under the said Article which according to him includes the right to head a political party cannot be curtailed or abridged by imposing restrictions on the same. We are unable to subscribe to the argument of the learned counsel in view of express language of Article 17 of the Constitution which permits imposition of reasonable restrictions in the interest of sovereignty or integrity of Pakistan.

50. It may also be noted that morality is a part and parcel of the Islamic Ideology of Pakistan and is included in the expression, "integrity of Pakistan". This is in line with the theme and underlying spirit of the Objectives Resolution,

various Articles of the Constitution discussed above and pronouncements of this Court referred to in the earlier part of this judgment. This Court has already held that *‘morality is part and parcel of Islamic Ideology of Pakistan and included in the expression “Integrity of Pakistan”*. Therefore, not only individually but also collectively Muslims have to live within an exclusively moral framework as enjoined by the Holy Quran and the Sunnah. No civilized society can deny this standard of morality. The concept of democracy in our Constitution should, therefore, be regarded to be imbued with individual and collective morality as according to Islam (Holy Quran and Sunnah). It goes without saying that morality provides the basis for society’s spiritual values and in terms of democracy, freedom, equality, tolerance and social justice. Collectively the political parties are now expected to protect public morals in the same way as other legal institutions protect public truthfulness and public symbols authority. To leave the political parties entirely free to do as they please is to suggest that morality does not matter. A situation like this might prove ultimately subversive to the fabric of the State in the maintenance of the law and order. Therefore, political parties should conform to stringent obligations of high ethical standard.’³

51. This Court while enunciating the above principle went on to hold that *‘Article 17(2) of the Constitution contains the declaration of the right and the restriction in its exercise as*

³ Benazir Bhutto V Federation of Pakistan [PLD 1988 SC 416 at Pg. 526-527]

*authorized by the Constitution. Thus it is not an absolute or uncontrolled liberty and is accordingly limited in order to be effectively possessed*⁴.

52. Even otherwise, Article 17 of the Constitution is to be read in light of the general scheme of the Constitution as embodied in various provisions of the Constitution including, but not limited to Articles 62 and 63 of the Constitution. In addition and without prejudice to what has been stated above, this Court has repeatedly held that subordinate legislation cannot run contrary to the constitutional provisions⁵ which have to be harmoniously construed and interpreted in order to give the fullest effect to words, meaning, scope, philosophy and underlying spirit of the Constitution. The argument that a Party Head can exist beyond the ambit, purview and scope of the constitutional and legal framework within which he operates if accepted would lead to illogical and unreasonable results which were not visualized or intended by the framers of the Constitution. Further, Article 63-A has been inserted in the Constitution *inter alia* to regulate working of parliamentary parties of political parties represented in the Parliament. To assert that Article 63-A has no nexus, link or connection with Article 17 of the Constitution which furnishes the very basis to form and join political parties is not only illogical but also irrational and untenable. Both Articles deal with the same broad

⁴ Benazir Bhutto V Federation of Pakistan [PLD 1988 SC 416 at Pg. 524]

⁵ Imtiaz Ahmad Lali v. Ghulam Muhammad Lali [PLD 2007 SC 369 at Pg 378]

subject and have to be read, understood and interpreted harmoniously.

53. To hold that a person who is disqualified to be king can nevertheless be given a freehand to operate as a kingmaker, who may despite lacking qualification and without going through the electoral process, act as a puppet master pull the strings and exercise political power vicariously would amount to making a complete mockery of the Constitution, the legislative process, the law, the government and values that we hold so dear and have consciously worked for, defended and incorporated in the Constitution. It is a cardinal principle of law and justice that what cannot be done directly cannot be done indirectly. Reference may be made to Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473) at page 687.

54. Lastly, it has vehemently been argued that Sections 203 & 232 of Election Act, 2017 in their existing form have been inserted in order to favour and benefit one particular individual or in any case, a limited set of politicians who have been or may be disqualified from holding public office in terms of Articles 62 and 63 of the Constitution. On consideration of the argument and examination of the material placed before us, the argument appears to be well founded. We get the distinct impression that a conscious effort has been made to protect, shield, cushion and favour a limited set of individuals to save them from the consequences of disqualification arising out of Articles 62 and 63 of the

Constitution. If Sections 203 and 232 of the Act, 2017 were to be read independent of the constitutional provisions discussed above, it would open the door for political parties being run and controlled remotely and the legislature being dictated and controlled vicariously by persons who have clearly and unambiguously been barred and prohibited by the Constitution from being a part of the parliamentary, legislative and political process. We have already held that sub-Constitutional Legislation cannot be used to circumvent and bypass constitutional provisions more so where the attempt is so blatant and *ex facie* designed to favour a few. ‘Person specific legislation’ is frowned at by the Courts that operate in an environment of constitutionalism and rule of law. This question was examined by this Court in the case of Mobashir Hassan v. Federation of Pakistan **(PLD 2010 SC 265) at page 353**. In that case, an Ordinance was found to have been promulgated as a result of a deal between two individuals for their personal objectives designed to benefit certain classes of individuals. This Ordinance was struck down by this Court holding it to be ultra vires the Constitution. Reference in this regard may also usefully be made to Jamat-e-Islami v. Federation of Pakistan **(PLD 2009 SC 549)**; Abdul Aziz v. Province of West Pakistan **(PLD 1958 SC 499)**; Province of East Pakistan v. Siraj-ul-Haq Patwari **(PLD 1966 SC 854)**; Inam-ur-Rehman v. Federation of Pakistan **(1992 SCMR 563)**; Sabir Shah v. Shad Muhammad Khan **(PLD 1995 SC 66)**; Multiline Associates v. Ardeshir Cowasjee **(PLD 1995 SC 423)**, Tariq Nawaz v. Government of

Pakistan (2000 SCMR 1956); Asif Islam v. Muhammad Asif (PLD 2001 SC 499); Federation of Pakistan v. Muhammad Sadiq (PLD 2007 SC 133); Elahi Cotton Mills Ltd. v. Federation of Pakistan (PLD 1997 SC 582); Islamic Republic of Pakistan v. Abdul Wali Khan (PLD 1976 SC 57); Raja Muhammad Afzal v. Ch. Muhammad Iltaf Hussain (1986 SCMR 1736); Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416); Muhammad Nawaz Sharif v. Federation of Pakistan (PLD 1993 SC 473); Benazir Bhutto v. President of Pakistan (PLD 1998 SC 388); Benazir Bhutto v. President of Pakistan (PLD 2000 SC 77); Pakistan Lawyers Forum v. Federation of Pakistan (PLD 2004 Lahore 130); Muhammad Shahbaz Sharif v. Federation of Pakistan (PLD 2004 SC 583); Watan Party v. Federation of Pakistan (PLD 2006 SC 697); and Sindh High Court Bar Association's case (PLD 2009 SC 879). We would, however, refrain from striking down Section 203 of the Act, 2017, in view of our interpretation of the said section in light of Articles 62, 63 and 63A of the Constitution, which harmonizes it with the general scheme, theme and jurisprudential architecture of the Constitution.

55. We have also noticed that in terms of Section 240(g) of the Election Act, 2017, the Political Parties Order, 2002 was repealed. Such repeal took effect on 2nd October, 2017 when the Act in question was enacted. In other words till the said date the Political Parties Order, 2002 alongwith Section 5 and the proviso thereto, was the law of the land. There is no denial of the fact that Respondent No.4 was

disqualified on account of being declared “not honest” in terms of Article 62(1)(f) of the Constitution vide judgment dated 28.07.2017 passed by a five Member Bench of this Court. On the said date, the law which held the field was the Order, 2002 pursuant to which the name of Respondent No.4 was removed by the Commission from its record as Party Head.

56. It is clear and obvious to us that on 28.07.2017, Respondent No.4 had already incurred a disqualification in terms of the proviso to Section 5 of the Order, 2002. Such disqualification was neither time bound nor did it cease to exist by reason of enactment of the Election Act, 2017. Therefore, the appointment of Respondent No.4 as President/Party Head of Respondent No.3 on 03.10.2017 immediately after the enactment of Act, 2017 was patently illegal as he suffered from a disqualification to hold the position of Party Head which was intact and fully in force.

57. Article 264 of the Constitution read with Section 6 of the General Clauses Act clearly covers the above situation. Section 6 of the General Clauses Act, provides as follows:-

“6. Effect of repeal.—Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

- (c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
- (d) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
- (e) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;*

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

58. It is settled law that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall in so far as it is not inconsistent with the provisions of new Act, be deemed to have been done or taken under the corresponding provisions of the new Act and unless a Legislature enacts a new law to be specifically retrospective, and that too with great particularity of language, the courts are not to assume retrospectivity⁶.

59. It is not the case of Respondent No.3 nor has any argument been made in this regard that a different intention was incorporated in the language of the Election Act, 2017 or there was any provision to the effect that by reason of repeal of the Order, 2002 disqualification incurred by Respondent No.4 under the said order will cease to have effect on enactment of the Election Act, 2017. In the absence of any such provision, the repeal of Order, 2002 did not affect the liability, penalty, punishment or disqualification incurred by

⁶ *Shahida Bibi V Habib Bank Ltd. [PLD 2016 SC 995, Para 8]*—as also held in *PLD 2002 SC 757. 1993 SCMR 1589 & 1992 SCMR 602*

Respondent No.4 in terms of Articles 62 and 63 of the Constitution as well as the proviso to Section 5 of the Order, 2002.

60. Above are the reasons for our short order of even date whereby the titled Constitution Petitions were allowed. The said order for ease of reference is reproduced below:-

*“The Preamble to the Constitution of the Islamic Republic of Pakistan, 1973 (**the Constitution**) provides that, “sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust”; “wherein the State shall exercise its powers and authority through the chosen representatives of the people; wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed”; “wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality”.*

2. *Article 17 of the Constitution grants to every citizen the fundamental right to form associations subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order and/or morality.*

3. *An elected Parliament, adorned with the chosen representatives of people on the one hand and the rule of law on the other hand are the foundations of democracy under the Constitution. Articles 62, 63 and 63-A of the Constitution create an integrated framework for ensuring that business of the Parliament is conducted by persons of probity, integrity and high moral character. These conditions are enforced by Articles 62 & 63 of the Constitution by prescribing qualifications and disqualifications for membership to the Parliament.*

4. *All laws pertaining to election to the Parliament and to participation in the proceedings thereof are to be read subject*

to such constitutional provisions in the exercise of the rights guaranteed by Article 17 of the Constitution.

5. *Under Article 63-A of the Constitution, the position of a Party Head of a political party that has representation in, inter alia, the Parliament has a central role in the performance of duties by the Members of the Parliament. For rendering such a role, a Party Head must necessarily possess the qualifications and be free of the disqualifications contemplated in Articles 62 & 63 of the Constitution.*

6. *The Election Act, 2017 empowers a Party Head to perform multifarious functions that have direct nexus with the process of elections to the Parliament and to matters relating to the affairs of political parties having parliamentary presence.*

7. *Therefore, for detailed reasons to be recorded later, these Constitutional Petitions are allowed. It is held and declared that provisions of Sections 203 and 232 of the Election Act, 2017 are liable to be read, construed and interpreted subject to the provisions of Articles 62, 63 and 63-A of the Constitution.*

8. *As a consequence, it is declared that any person who suffers from lack of qualification under Article 62 or disqualification under Article 63 of the Constitution is debarred from holding the position of 'Party Head' by whatever name called and prohibited from exercising any of the powers provided in Article 63-A of the Constitution, as 'Party Head' or any other power in the said capacity under any law, rule, regulation, statute, instrument or document of any political party. Such bar and prohibition shall commence from the date of disqualification and continue till such time that the lack of qualification/disqualification of such person continues in terms of the provisions of Articles 62 and 63 of the Constitution.*

9. *As a result of the above declaration, all steps taken, orders passed, directions given and documents issued by Respondent No.4 as Party Head after his disqualification on 28.07.2017 are also declared to have never been taken, passed, given or issued in the eyes of the law. The Election Commission of Pakistan is accordingly directed to remove the name of Respondent No.4 (Mian Muhammad Nawaz Sharif)*

as President/Party Head of Respondent No.3 (Pakistan Muslim League (N) from all relevant record(s))”.

61. **CM Appeal No.244 of 2017 in Constitution Petition No.Nil of 2017:** Since the main Constitution Petitions have been finally decided by us in the aforementioned terms, this CM Appeal is allowed and the Constitution Petition (*Constitution Petition No.Nil of 2017*) filed by the Appellant is directed to be numbered and allowed accordingly in the aforementioned terms.

Chief Justice

Judge

Judge

ISLAMABAD, THE

21st of February 2018.

ZR/ *

APPROVED FOR REPORTING