

**SUPREME COURT OF PAKISTAN**

**CONSTITUTIONAL BENCH**

(Review Jurisdiction)

**Present**

Justice Amin-ud-Din Khan, Senior Judge  
Justice Jamal Khan Mandokhail  
Justice Muhammad Ali Mazhar  
Justice Syed Hasan Azhar Rizvi  
Justice Musarrat Hilali  
Justice Naeem Akhter Afghan  
Justice Shahid Bilal Hassan  
Justice Muhammad Hashim Khan Kakar  
Justice Aamer Farooq  
Justice Ali Baqar Najafi

**Civil Review Petition No.312/2024 in C.A. No.333/2024**

**&**

**Civil Review Petition No.313/2024 in C.A. No.334/2024**

**&**

**Civil Review Petition No.319/2024 in C.A. No.333/2024**

**&**

**Civil Review Petition No.320/2024 in C.A. No.334/2024**

**&**

**Civil Review Petition No.331/2024 in C.A. No.333/2024**

**&**

**Civil Review Petition No.332/2024 in C.A. No.334/2024**

(For review of judgment of this court dated 12.07.2024  
passed in C.A.No.333 & 334 of 2024)

**and**

**Civil Review Petition No.1264/2024 in C.A.  
No.333/2024**

(For review of judgment of this court dated 14.09.2024  
passed  
in C.M.As. 7540 & 8139 of 2024 in C.A.No.333 & 334 of  
2024)

**and**

**Civil Review Petition No. 1272/2024 in C.A. No.  
333/2024**

(For review of judgment of this court dated 12.07.2024  
passed  
in C.A.No.333 & 334 of 2024)

**and**

**Civil Misc. Application No.5084/2025 in C.R.P.  
No.312/2024**

*(Application for impleadment of Govt. of KPK as party)*

Pakistan Muslim League (N) through its President Lahore  
and others (in C.R.P.312 & 313/2024)

Pakistan People's Party Parliamentarian (PPPP), Islamabad  
(in C.R.P.319 & 320/2024)

Election Commission of Pakistan through its Secretary,  
Islamabad (in C.R.P.331, 332 & 1264/2024)

Huma Akhtar Chughtai and others (in C.R.P. 1272/2024)

...Petitioners

**Versus**

Sunni Ittehad Council through its Chairman,  
Faisalabad and others (in all cases)

...Respondents

**For the Petitioners:**

Mr. Makhdoom Ali Khan, Sr. ASC  
Mr. Saad Mumtaz Hashmi, ASC  
*Assisted by Yawar Mukhtar, Advocate*  
*(CRPs. 312 & 1272/24)*

Barrister Haris Azmat, ASC  
*assisted by M/s. Qasim Sheikh and Awais*  
*Anwar, Advocates*  
*(CRP.313/2024)*

Mr. Asad Abbasi, ASC  
*(on behalf of Mr. Farooq H. Naek, Sr. ASC)*  
*(CRPs. 319 & 320/24)*

Mr. Sikandar Bashir Mohmand, ASC  
Mr. Taimoor Aslam Khan, ASC  
*Assisted by M/s Hamza Azmat Khan,*  
*Abdullah Noor and Barrister Khizer Hayat*  
*Advocates*

Syed Rifaqat Hussain Shah, AOR  
Mr. M. Arshad, Spl. Secy. (Law)  
Mr. Zafar Iqbal, Spl Secy.  
Mr. Khurram Shehzad, ADG (Law)  
Mr. Yasir Ali Raja, Dir. (Law)  
Mr. Asad Ali, Dy. Dir. (Law)  
Ms. Saima Tariq Janjua, Dy. Dir. (Law)  
*(CRPs.331, 332 & 1264/24)*

**On Court's Notice:**

For the Federation:

Mr. Mansoor Usman Awan, AGP  
Ch. Aamir Rehman, Addl. AG  
*assisted by M/s. Maryam Ali Abbasi,*  
*Saad Javid Satti, Advocates and Ms.*  
*Maryam Rashid and Barrister Maryam*  
*Janjua, Consultants*

For Province of Punjab:

Mr. Muhammad Amjad Pervaiz, AG  
Mr. Waseem Mumtaz Malik, Addl. AG  
Mr. Sanaullah Zahid, Addl. AG  
Rao Muhammad Aurangzeb, AAG  
*assisted by Mr. Muhammad Adil Chatha,*  
*Sr. Consultant*

For Province of KPK:	Syed Kausar Ali Shah, Addl. AG Mr. Zahid Yousaf Qureshi, AOR (also for the applicant in CMA No.5084/2025)
For Province of Balochistan:	Mr. M. Ayaz Khan Swati, Addl. AG Mr. Tahir Iqbal Khattak, Addl. AG
For Province of Sindh:	Mr. Suresh Kumar, Addl. AG (via video link from Karachi)
For ICT:	Mr. Ayyaz Shaukat, AG Dr. Mirza Muhammad Usman, AOR
<b>For the Respondents:</b>	
For Sunni Ittehad Council:	Mr. Hamid Khan, Sr. ASC Mr. Ajmal Ghaffar Toor, ASC (in CRPs.1264/2024)  Mr. Faisal Siddiqui, ASC assisted by Mr. Muhammad Ammar Rafique, Advocate Ms. Tehmina Ambreen, AOR (in CRPs.312, 313, 320, 331, 332 & 1272/24)  Mr. Salman Akram Raja, ASC assisted by M/s. Raja Hamza Anwar, Atira Ikram, Wanya Qureshi, Muhammad Ali Talib, Muhammad Hamza Aslam, Malik Ahsan Mehmood and Malik Ghulam Sabir Advocates (in CRPs.319/24)
For Election Commission of Pakistan	Mr. Sajeel Sheryar Swati, ASC Mr. Anis Muhammad Shahzad, AOR (in CRPs.312 & 319/2024)
Other respondents:	Nemo
Dates of Hearings:	6 <sup>th</sup> , 7 <sup>th</sup> , 13 <sup>th</sup> , 19 <sup>th</sup> , 20 <sup>th</sup> to 22 <sup>nd</sup> , 26 <sup>th</sup> , 27 <sup>th</sup> , 29 <sup>th</sup> May, 16 <sup>th</sup> to 20 <sup>th</sup> , 26 <sup>th</sup> and 27 <sup>th</sup> June, 2025.

**J U D G M E N T**

**Amin-ud-Din Khan, Senior Judge.** These Civil Review Petitions arise out of the majority judgment of this Court, delivered on 23.9.2024 in Civil Appeals No. 333 and 334 of 2024 whereby while dismissing the appeals of Sunni Ittehad Council ("SIC") the judgment of a Full Bench of the Peshawar High Court ("PHC") and the order of the Election Commission of Pakistan ("ECP")

were set aside. It is reported as Sunni Ittehad Council and another v. Election Commission of Pakistan (PLD 2025 SC 67).

2. In view of the requirements of the Constitution, these review petitions could only be heard by the Constitutional Bench and no other bench of the Supreme Court. This bench comprises of all the members of the Constitutional Bench which, in law, could hear these cases. On 6.5.2025 when these review petitions came up for hearing, before a 13 members bench, an 11 members majority issued notices to the Respondents in all such review petitions. Notices were also directed to be issued to all the Advocate Generals and the Attorney General for Pakistan under Order XXVII-A Rule 1 of the Code of Civil Procedure ("CPC").

3. A different view was taken by 2 members of the Bench. They dismissed the review petitions for reasons to be assigned separately and having so rendered their final judgment, in the review petitions, did not participate any further in the proceedings or deliberations of the Court. (Order by 2 members of the Bench is annexed with this judgment).

4. On 7.5.2025 Mr. Hamid Khan, learned Sr. ASC appearing on behalf of Mr. Faisal Siddiqui, learned counsel for respondents No. 1 & 2 informed *"that the latter is unable to appear before the court due to the reason that flight was not available, otherwise, he has filed power of attorney in all the listed review petitions, as such he prays for adjournment."* The request of the learned counsel was granted and as desired by him the matter was adjourned to 13.5.2025. Notices were also repeated to all the respondents who remained unrepresented on this date.

5. On 13.5.2025 Mr. Faisal Siddiqui ASC appeared for SIC in all the review petitions. Mr. Harris Azmat, learned ASC for the petitioners in CRPs 312 and 313/24 submitted that the case will be argued by Mr. Makhdoom Ali Khan Sr. ASC. Before Mr. Makhdoom Ali Khan could commence his arguments Mr. Faisal Siddiqui came to the rostrum and requested for some time to file an application, challenging the constitution of the Bench and requesting that the matter be heard by the Full Court. It was observed that as the Bench comprised of all members of the Constitutional Bench who could hear the case, under

the Constitution, the matter was being heard by the Full Court and no challenge could, therefore, be made. It was observed that the law, in this respect, was fully settled that a Full Court means all the available judges who can hear a case. This case was being heard accordingly. As he insisted on making the application and sought time, the Court after some reluctance and to accommodate him, adjourned the matter to 19.5.2025.

It was also observed that if any party desires to file any application it should be filed with an advance copy to the other side before the next date of hearing.

6. On 19.5.2025 having filed an application under Order XXXIII Rule 6 of the Supreme Court Rules, 1980, read with Article 187(1) of the Constitution for the reformation and reconstitution of the Bench under Order XXVI rule 8 of the Supreme Court Rules, 1980 being CMA 3612/2025, Mr. Faisal Siddiqui, ASC, commenced arguments on his application. He stated that he needed another day to conclude his arguments. The request was granted and the matter adjourned.

7. On 20.5.2025 Mr. Faisal Siddiqui, ASC, concluded his arguments. Mr. Hamid Khan, Sr. ASC appearing for the Respondents in CRP 1264/2024 filed 2 Civil Misc. Applications on behalf of the same respondent i.e. SIC which was represented by Mr. Faisal Siddiqui. CMA 3640/2025 was for adjournment of these civil review petitions till the decision of the petitions, challenging the 26th amendment to the Constitution. CMA 3641/2025 was for live streaming of the proceedings in the matter.

8. Mr. Hamid Khan Sr. ASC also submitted that he had also filed an application that *"the review bench presently constituted be reconstituted by including 12 learned judges who were members of the original bench of the Supreme Court that gave the impugned judgement dated 12 July 2024 and are presently available as judges."* He further submitted that in this application he had made a prayer that *"the Chief Justice of Pakistan who was a member of the original bench preside over the review bench."* He submitted that the office of the Supreme Court had returned this application without giving it a number and the application was not placed before the Court. It was observed by the Bench that the application could only be heard after the objections were

complied with by SIC or it filed an appeal before a Judge in Chambers, as provided in the Supreme Court Rules and according to the settled and invariable practice of the Court. The Bench declined to entertain his request for a direction that the application be placed before it as it had no jurisdiction to issue such a direction. The direction could only be given in a Chamber Appeal filed by SIC before a Judge in Chambers. He alone had the jurisdiction in the matter. As SIC had not appealed the objections the order of the office raising objections to the application could not be called in question in these proceedings and no directions could be issued to the office.

9. The Court observed with regret that the conduct of the Respondent SIC and its Chairman was not appreciable as their counsel had consumed two days in arguing a preliminary application and two other applications had thereafter been moved to delay matters. The Court nevertheless adjourned the case for Mr. Hamid Khan, Sr. ASC to address it, on these two applications.

10. On 21.5.2025 Mr. Hamid Khan Sr. ASC concluded his arguments on the two applications as well as the application filed by Mr. Faisal Siddiqui. Mr. Makhdoom Ali Khan Sr. ASC commenced his reply arguments on all applications. As court time was over, the matter was adjourned to 22.5.2025. On that date Mr. Makhdoom Ali Khan Sr. ASC concluded his arguments. Mr. Faisal Siddiqui ASC and Mr. Hamid Khan Sr. ASC made submissions in rebuttal. At the conclusion of their submissions, the Court after deliberating the matter granted CMA 3641/20205 for live streaming. The remaining applications were dismissed. The case was adjourned to 26.5.2025.

11. On that date Mr. Makhdoom Ali Khan, Sr. ASC opened the case for the review petitioners and concluded his arguments. Mr. Harris Azmat, learned ASC appearing for some other petitioners and Mr. Sikander Bashir Mohmand appearing for the Election Commission of Pakistan adopted his arguments. Mr. Asad Abbasi, learned ASC appearing on behalf of Mr. Farooq. H. Naek Sr. ASC also adopted the arguments of Mr. Makhdoom Ali Khan with the request that he be allowed to file written arguments later. These were later filed. The matter was then adjourned to 27.5.2025 for the arguments of Mr. Faisal Siddiqui ASC. Mr. Faisal Siddiqui ASC argued the case on 27.5.2025, 29.5.2025, 16.6.2025 and on 17.6.2025.

12. On 17.6.2025 Mr. Salman Akram Raja ASC submitted that he would argue the case for Kanwal Shauzab who had made an application being CMA 4161/2025 to be heard in the matter as an intervenor. He submitted that he would also argue CMA 4162/20205 which was an application filed by PTI through its Chairman Barrister Gohar Ali Khan. He further submitted, later, that he would also argue the case for SIC.

13. Mr. Salman Akram Raja ASC argued the case on 18.6.2025, 19.6.2025 and 20.6.2025. He concluded his arguments on 26.6.2025.

14. After Mr. Salman Akram Raja, ASC had concluded his arguments, Mr. Hamid Khan senior ASC was invited to commence his arguments. Mr. Khan submitted that he had applied for and obtained general adjournment from 23.6.2025 to 05.8.2025. He submitted that he would like the court to adjourn the matter. He further submitted that he would argue the case only if his request for adjournment was denied.

15. This request was denied for reasons given in the order of 26.6.2025. The relevant portions of that order are reproduced below:

*"2. We have gone through his application for adjournment as well as letter dated 19.06.2025 whereby he was communicated regarding grant of general adjournment which is conditional one i.e. **"this general adjournment will not apply to date by Court cases as well as the cases fixed before Larger/Special Bench if constituted during this period"**. Hearing of this case started on 06. 05. 2025 and on 17. 05. 2025 learned Sr. counsel appeared on behalf of Mr. Faisal Siddiqui, ASC and sought adjournment. Thereafter, he is representing the respondent Sunni Ittehad Council in CRP No. 1264 of 2024 and is appearing on each and every date. The record shows that he applied for general adjournment on 17.06.2025 and on 19.06.2025 conditional general adjournment was granted. The learned senior ASC never informed the Court earlier that he has sought general adjournment and when respondent's side arguments were invited on 27.05.2025 he being one of the senior most advocates out of four advocates representing the respondent SIC was asked to lead the arguments, he opted to argue the matter in the last after the arguments of other three counsel(s). Mr. Faisal Siddiqui ASC as well as Mr. Salman Akram Raja, ASC informed that the third counsel Mr. Uzair Karamat Bhandari, ASC will not argue the matter and he will submit the arguments.*

*"3. Today, when learned senior ASC has been asked to argue, then application for adjournment was pointed out by him. As per general adjournment granted, same is not applicable on this fixed by Court case which is being heard on day-to-day basis before a*

*larger bench and further it is a Constitutional Bench of this court hearing these Review Petitions, therefore, prayer for adjournment is declined."*

After his application was declined, Mr. Hamid Khan learned Sr. ASC argued the case till Court time was over. Mr. Khan in the course of his arguments, specifically targeted the inclusion of Hon'ble Judges, in the Bench, who were appointed subsequent to the 26<sup>th</sup> Constitutional Amendment. He questioned the propriety of their participation in the Bench for adjudication of the review petitions.

On this date Syed Kausar Ali Shah, learned Additional Advocate-General, KP stated that he has filed written arguments through CMA No. 5188/2025 in support of CMA No. 5084/2025 filed on 16 June 2025 by Government of KP for its impleadment as party in these review petitions.

The matter was adjourned to 27.6.2025. On that date when the Bench reconvened, one of the members of the Bench Mr. Justice Salahuddin Panhwar recused himself from the Bench. He observed that he had been a member of the Bench right from the date when the hearing of the review petitions commenced. He noted that *"During these proceedings, all learned counsel, including Mr Faisal Siddiqi, Advocate for the Sunni Ittehad Council (SIC), and Mr Salman Akram Raja, Advocate for the Pakistan Tehreek-e-Insaf (PTI), unequivocally expressed their confidence in the composition of the Bench, including the participation of all its members."* "the learned judge nevertheless recused himself while pointedly noting that his recusal was not on account of, *"any admission of disqualification"*.

Mr. Hamid Khan Sr. ASC requested that the Bench should not hear the case any further. This request was declined. The Bench continued to hear the case. Mr. Hamid Khan Sr. ASC concluded his arguments. After that Mr. Makhdoom Ali Khan Sr. ASC argued the case for the petitioners in rebuttal. All other counsel, appearing in support of the review petitions, adopted his arguments. Mr. Mansoor Usman Awan, the learned Attorney General for Pakistan ("AGP"), spoke last, he supported the arguments of Mr. Makhdoom Ali Khan Sr. ASC and also made two further submissions besides drawing the attention of the Court to the submissions made by him in the appeal proceedings.



A short order was passed whereby the Bench decided to accept the review petitions, with some variations in relief. A majority, being 7 members, Justice Amin-ud-Din Khan, Senior Judge, Justice Musarrat Hilali, Justice Naeem Akhter Afghan, Justice Shahid Bilal Hassan, Justice Muhammad Hashim Khan Kakar, Justice Aamer Farooq and Justice Ali Baqar Najafi, allowed all Civil Review Petitions and set aside the impugned majority judgment dated 12.07.2024, as a consequence thereof, Civil Appeal Nos. 333 of 2024 and 334 of 2024 filed by the SIC were dismissed and the judgment rendered by the Peshawar High Court, Peshawar restored.

Mr. Justice Jamal Khan Mandokhel, however, allowed the review petitions partly and to the extent of 41 seats only.

Mr. Justice Muhammad Ali Mazhar and Mr. Justice Syed Hasan Azhar Rizvi also allowed the review petitions with directions to *“ECP to examine and consider the nomination papers/declaration and other relevant documents of all 80 returned candidates by means of de novo exercise with regard to their affiliation and take appropriate decision in accordance with law and applicable rules for allocation of reserved seats within 15 days”* from receiving a copy of the Short Order.

The Short Order forms a part of this judgment and is reproduced here:

Today, at the verge of conclusion, one of the Hon'ble members of the larger Bench (Mr. Justice Salahuddin Panhwar) for certain reasons, recused to continue his sitting in this Bench and contributed his separate note, therefore, the Bench was reconstituted with all the available members of the Constitutional Bench. Initially this Constitutional Bench was constituted for hearing of the aforesaid review petitions by 13 Hon'ble Judges of this Court but two of them (Justice Ayesha A. Malik and Justice Aqeel Ahmed Abbasi) on the first date of hearing have dismissed all the review petitions.

*For detailed reasons to be recorded later, subject to amplification or elucidation as may be deemed appropriate, by majority of 7 (Justice Amin-ud-Din Khan, Senior Judge, Justice Musarrat Hilali, Justice Naeem Akhter Afghan, Justice Shahid Bilal Hassan, Justice Muhammad Hashim Khan Kakar, Justice Aamer Farooq and Justice Ali Baqar Najafi), all Civil Review Petitions are allowed and the impugned majority judgment dated 12.07.2024 is set aside, as a consequence thereof, Civil Appeal Nos. 333 of 2024 and 334 of 2024 filed by the SIC are dismissed and the judgment rendered by the Peshawar High Court, Peshawar is restored.*

*Whereas, Justice Jamal Khan Mandokhail, for reasons to be recorded later, partly allowed the review petitions and maintained his original order with regard to 39 seats but reviewed the majority judgment to the extent of 41 seats.*

*Whereas Justice Muhammad Ali Mazhar and Justice Syed Hasan Azhar Rizvi, for reasons to be recorded later, also reviewed the judgment and allowed the review petitions with the rider that since the factual controversy or disputed questions of facts neither could be resolved by the Peshawar High Court nor this Court in original or review jurisdiction, therefore, directions are issued to the ECP to examine and consider the nomination papers/declaration and other relevant documents of all 80 returned candidates by means of de novo exercise with regard to their affiliation and take appropriate decision in accordance with law and applicable rules for allocation of reserve seats within 15 days from receiving the copy of this Short Order."*

16. While the case has received much press attention and has been the subject of intense and partisan political comments, the facts of this case are simple and the law clear. The facts were discussed in the majority judgment under review and the dissenting opinions. These are briefly restated for the purpose of this review. These are the facts which remain uncontested. Disputed facts are not part of this narration:

- (i) a number of candidates, in the General Elections, were declared independent by the Returning Officers:
  - (a) as they had declared themselves as independent in the nomination papers; or
  - (b) in spite of the fact that they had declared themselves as PTI candidates.
- (ii) Except for the abandoned effort of Mr. Salman Akram Raja, ASC, as a candidate in the General Elections, none of the other candidates whether returned or not, even initiated a challenge to the orders of Returning Officers claiming that they were PTI candidates and not independents and were wrongly being denied the right to contest elections. Even Mr. Raja did not file an application to be impleaded as a party or to revive the abandoned proceedings to seek relief in the proceedings before this Court in appeal or in review.
- (iii) Some candidates were allowed to contest the elections as PTI candidates.
- (iv) No one, however, challenged the validity of Explanation to Rule 94 of Election Rules, 2017.

- (v) No challenge at all was made by PTI to the actions of the Returning Officers allegedly preventing its members from contesting elections as its candidates, at any time before any forum or at any stage of these proceedings including those which have now reached us through these review petitions.
- (vi) After the General Election, 80 returned candidates joined SIC, in the National Assembly, in accordance with the proviso to Article 51(6)(d)(e). The MPAs acted in like manner under Article 106, of the Constitution. Each of these candidates submitted sworn affidavits confirming that they were joining SIC by free will and shall be bound by this election. This was done within the time stipulated by Articles 51 and 106 of the Constitution.
- (vii) SIC applied to ECP for allocation of reserved seats after the joining of these returned candidates in the National as well as the Provincial Assemblies. SIC, PTI and all MNAs and MPAs which joined SIC knew at the time the application was made and at all material times that SIC had not contested the General Elections as a political party. That even its Chairman had contested the election as an independent candidate, he never used the election symbol (Horse) allocated to SIC and instead contested elections on the symbol of Tower allocated to him as an individual independent candidate. It was not even alleged and there is nothing on the record to suggest that he was contesting election as a PTI candidate. No candidate submitted nomination papers to be allocated a reserved seat as a SIC member. SIC did not submit a list of candidates for reserved seats for women and non-Muslims. Prior to the General Elections and in accordance with the schedule announced by ECP, no one submitted nomination papers for scrutiny by Returning Officers as a candidate for the reserved seats. At the time of the General Elections the list of SIC candidates for reserved seats was not before the electorate.
- (viii) No application was filed by PTI before ECP for allocation of reserved seats. No application was even made by any person claiming to be on PTI's list of reserved seats in the National Assembly or in the Provincial Assemblies to contend that he/she had a right to contest as PTI member and to be allocated a reserved seat.

- (ix) ECP dismissed SIC's application by an Order dated 28.02.2024. This order was challenged in writ petitions before Peshawar High Court by SIC. PTI did not challenge the order or file its own petition seeking the allocation of reserved seats. By judgment dated 25.3.2024 the Peshawar High Court upheld the order of ECP.
- (x) SIC filed CPLAs No.1328-1329 of 2024 on 03.04.2024 before this Court under Article 185(3) of the Constitution. Leave to appeal was granted on 06.05.2024. No petition was filed by PTI either against the ECP Order or the Peshawar High Court judgment. None of the returned candidates/person with names on PTI's reserved lists made any application to be joined as a party.
- (xi) Only Kanwal Shauzab claiming that she would have been a candidate on the PTI reserved list filed an application to be heard. She was heard through counsel but her application was dismissed. Even the majority did not find her to be a necessary party.
- (xii) At the time of the hearing of the appeals PTI did not file any application to be joined as a petitioner or appellant. PTI and its Chairman, Mr. Gohar Ali Khan merely filed an application (CMA 5913/2024 on 26.06.2024) for impleadment as an intervenor to make submissions for assistance of this Court.:

It did not seek:

- (a) to be declared a political party which contested the General Election; or
  - (b) for independent returned candidates to be declared as candidates/members of PTI; or
  - (c) that reserved seats be allocated to PTI.
- (xiii) Through the majority judgment:
- (a) SIC's appeals were dismissed. (On this issue there was complete unanimity between the majority and the dissenters.)

- (b) PTI was declared a political party which contested the General Election and secured 80 seats in National Assembly;
- (c) It was declared that 80 independent candidates could not have joined SIC as it was not a Parliamentary Party;
- (d) Explanation to Rule 94 of the Rules was declared invalid;
- (e) 39 returned candidates were declared members of PTI;
- (f) 41 returned candidates were given time to declare their party affiliation;
- (g) ECP was directed to notify such returned candidates as members of PTI; and
- (h) ECP was directed to allocate reserved seats to PTI.

That the above facts are uncontested and even confirmed in the impugned majority judgment. We reproduce these:

**"Relevant facts of the case"**

14. On 15 December 2023, the Election Commission of Pakistan ("Commission") announced the election programme for the General Elections-2024 to the National Assembly and Provincial Assemblies. According to this programme, the last date for candidates to file nomination papers with the Returning Officers was 22 December 2023, which was extended on that day to 24 December 2023. On 22 December 2023, the Commission also decided the then-pending matter of intraparty elections of the political party, Pakistan Tehreek-e-Insaf ("PTI"). The Commission determined that PTI had not conducted its intra-party elections in accordance with its constitution and election laws. As a result, the Commission declined to recognize PTI's intra-party elections and declared PTI ineligible to obtain its election symbol. Although this decision was initially suspended on 26 December 2023 and subsequently set aside on 10 January 2024 by the Peshawar High Court, this Court restored the Commission's decision on 13 January 2024. PTI candidates were thus not allotted the party symbol of PTI but instead were allotted various different symbols

*that had been prescribed by the Commission for independent candidates.*

15. *In the course of the election programme, when the Returning Officers published the lists of contesting candidates (Form-33, they mentioned PTI candidates as independent candidates. One of the PTI candidates, Mr. Salman Akram Raja, challenged this action by the Returning Officer of his constituency before the Commission. By its order dated 2 February 2024, the Commission rejected his challenge and declared him an independent candidate. The poll for the elections was then held on 8 February 2024, and PTI candidates were notified by the Commission as independent returned candidates in the notification published in the official Gazette under Section 98 of the Elections Act 2017 ("Section-98 Notification").*

16. *After the publication of Section-98 Notification, a substantial number of independent returned candidates (86 for the National Assembly; 107 for the Punjab Assembly; 90 for the Khyber Pakhtunkhwa Assembly; and 9 for the Sindh Assembly) joined a political party, Sunni Ittehad Council ("SIC"), to obtain the share of proportional representation in the seats reserved for women and non-Muslims in the National Assembly and the Provincial Assemblies of Khyber Pakhtunkhwa, Punjab and Sindh. SIC then informed the Commission of the joining of these returned candidates and requested the Commission, through four separate applications (letters) dated 21 February 2024, to allocate to it its due share in the seats reserved for women and non-Muslims in the National Assembly and the said three Provincial Assemblies.*

17. *Certain other political parties, such as Pakistan Muslim League (Nawaz) (PML(N)) and Muttahida Qaumi Movement (Pakistan) (MQM(P)), filed applications opposing SIC's request for reserved seats and prayed for the allocation of the reserved seats to them and other eligible political parties. Some individuals also filed applications opposing the SIC's request and praying that SIC should not be treated as a parliamentary party. The political party, Pakistan People's Party Parliamentarians (PPPP), appeared before the Commission as a proforma respondent in the application filed by MQM(P), while the political parties, Jamiat Ulema-e-Islam*

*Pakistan (JUIP) and Pakistan Muslim League (PML), appeared in response to the Commission's notice and opposed SIC's request.*

*18. By its order dated 1 March 2024, the Commission rejected SIC's applications and decided that the reserved seats for women and non-Muslims, which had been requested by SIC but declined, would be allocated to other political parties as per the proportional representation system of political parties. Accordingly, those reserved seats (19 for women and 3 for non-Muslims in the National Assembly; 21 for women and 4 for non-Muslims in the Khyber Pakhtunkhwa Assembly; 24 for women and 3 for non-Muslims in the Punjab Assembly; and 2 for women and 1 for non-Muslims in the Sindh Assembly - 78 in total - hereinafter referred to as the "disputed reserved seats") were allocated to other political parties. SIC challenged the Commission's order before the Peshawar High Court in writ jurisdiction. By its judgment dated 25 March 2024 ("impugned judgment."), the Peshawar High Court dismissed the SIC's challenge and upheld the Commission's order. Hence, these appeals were filed by SIC with leave of the Court."*

17. Having narrated the facts, before even noting the arguments of counsel we would like to make a few observations and record some findings which arise out of these uncontested facts and the settled law applicable thereto:

**First**, while in the matter under review there were differences between the impugned majority judgment and dissenting minority opinions, there was complete consensus on one issue: SIC was not entitled to any reserved seat. The Court unanimously dismissed both its appeals. No review against this judgment of the Court was filed by the Sunni Ittehad Council. When Mr. Faisal Siddiqui was pointedly asked about this, he submitted that though the appeals of the SIC were dismissed it had, in his view, won. As he put it in Urdu, "*iss haar mein meri jeet hey*". The parts of the impugned judgment which dismissed the appeals of the SIC have, thus, attained finality and are not called in question in these review petitions.

**Second**, the majority judgment while dismissing the appeals of the SIC and denying relief to it, had granted relief to PTI which was not a party to the proceedings. It had not filed any application before the ECP for

grant of reserved seats, it had not contested the decision of the ECP allocating these seats to political parties other than SIC, it had not filed any petition before the PHC challenging the decision of the ECP and had not filed any appeal in this Court challenging the decision of the PHC. Even though PTI was not a party to the proceedings in the fora below, it could have filed an appeal in view of the consistent jurisprudence of this Court, over almost half a century, that a person affected by a judgment of a court can appeal to a higher court, including the Supreme Court and that it was not necessary for such a person to have been a party in the earlier proceedings.

PTI and its Chairman, Mr. Gohar Ali Khan no doubt filed an application, **CMA 5913/2024 on 26.06.2024** for impleadment as an intervenor but that was to make submissions for assistance of this Court and not to be joined as a party. PTI, merely supported the case of Sunni Ittehad Council. It did not seek that it be declared a political party which had contested the General Elections; or for the returned candidates be declared as candidates/members of PTI; or that reserved seat be allocated to PTI. It only claimed:

*"...That the denial by the ECP of reserved seats to the SIC will result in the NA and the provincial assemblies losing their representative character. These seats cannot be allowed to any other party."* **Ground K, CMA 5913/24 at p.5.**

It prayed that it may be "*allowed to assist this August Court as intervenors*". It was, consequently never made a party and joined either as an appellant or a respondent, in the proceedings which culminated in the judgment under review.

**Third**, in view of the principle stated above, even though PTI was not a party to the appeals before this Court, having been granted relief by the Court in those appeals, through the impugned majority judgment, it could have filed an application, in these review petitions, to be joined as a respondent and to be allowed to contest the review petitions. An application **CMA 4162/2025 in CRP 320/2024** was indeed filed by PTI and its Chairman Barrister Gohar Ali Khan but again it made no prayer to be joined as a respondent. All three counsel appearing before us submitted that they represented the SIC. Mr. Salman Akram Raja also appeared for Ms. Kanwal Shauzab **CMA 4161/2025** as intervenor and further submitted that he was appearing in the application filed by



PTI and its Chairman Barrister Gohar Khan **CMA 4162/2025** *"to be heard"*. He was accordingly heard, as desired. No application having been made to be joined as a party to the review petitions, none could be granted. PTI, thus, made a conscious decision not to join these proceedings as a party. Kanwal Shauzab who filed CMA 4161/2025 and was also represented by Mr. Salman Akram Raja ASC. In her application, she correctly admitted that her application to be impleaded as a party *"was not granted"* through the impugned majority judgment but she *"was heard through her counsel."* She too only prayed that she *"may be heard in the titled Review Petition in the interests of justice."* She neither contested the impugned majority judgment whereby her application was not granted nor did she seek to be joined as a respondent in the review proceedings. As Mr. Raja ASC was heard at length by the Court on several dates of hearing the relief sought in both applications was granted. These are accordingly disposed off.

**Fourth**, from the above it is apparent that PTI did not either initiate or join the proceedings, at any stage. Before the Election Commission of Pakistan, the Peshawar High Court, the appellate proceedings before this Court and now in the review petitions, PTI did not approach any of the fora as a party or applied to be joined as one. It cannot, therefore, be granted any relief. As noted by two of us (Aminuddin Khan and Naeem Akhtar Afghan) in our dissenting opinion in the appeals:

- i. "PTI was not before this Court nor before the High Court nor even before the ECP;"*

That position has remained unchanged in these review petitions. PTI cannot, therefore be granted any relief in these proceedings nor can the relief granted to it by the majority judgement, in the appeals be sustained.

**Fifth**, this Court had never passed any order declaring that PTI cannot contest the elections as a political party or directed the Election Commission of Pakistan to prevent its members from contesting elections as members of PTI. Indeed several members of PTI including its Chairman Barrister Gohar Khan contested elections as PTI candidates. It cannot be disputed, however, that in several cases the Returning Officers appointed by the ECP did not allow PTI candidates to contest the elections as such. In the course of the election programme, when the Returning Officers published the lists of

contesting candidates (Form-33), they mentioned PTI candidates as independent candidates. There is nothing on the record to show that either PTI or these independent candidates challenged these orders of the Returning Officers before any of the High Courts or this Court. One of the PTI candidates, Mr. Salman Akram Raja ASC, challenged this action by the Returning Officer of his constituency before the Commission. By its order dated 2.2.2024, the Commission rejected his challenge and declared him an independent candidate. He alleged that he challenged this decision before the Lahore High Court and when he did not get any relief, he filed a Civil Petition for Leave to Appeal in this Court. The office of this Court raised several objections to this petition. Mr. Raja could have either rectified the petition by meeting the objections or filed an appeal, as provided by law, before a Judge in Chambers of this Court. He did neither and, thus, abandoned his challenge. As noted by one of us, Mr. Justice Jamal Khan Mandokhel, in his partially dissenting opinion, in appeals, with which the then Chief Justice of Pakistan Mr. Justice Qazi Faez Isa agreed:

*"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 orders 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 judgement 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.*

The orders of the ROs against which grievances were made in these review proceedings, as well as in the earlier appeal proceedings, are not

before us. The submissions made regarding these cannot now lead to any consequence. They were not challenged, at the relevant time before any competent forum and no appeal from any such forum was pending before this Court, at the time of the hearing of the appeals or when the review petitions were heard. Irrespective of the flaws from which such orders may suffer, these have attained finality and cannot now be called into question or reopened in these proceedings and indeed could not be re-opened in the appeals.

**Sixth**, none of the 80 candidates who were elected as independents approached ECP or, the PHC or this Court claiming that they were from PTI or that they wanted to be part of the PTI parliamentary party or that the reserved seats be allotted to PTI.

**Seventh**, the ECP after its decision had allocated the reserved seats to the candidates of other political parties, the results were declared, the persons returned to these reserved seats had taken oath and entered upon their respective offices as members of Parliament and Provincial Assemblies. As a direct consequence of the judgment under review and by explicit directions of the Court they were stripped of their elective office. The Court passed the impugned judgment without first joining them as parties and without giving them any right of hearing.

18. After having made the above observations and recorded findings we now turn to the submissions of Mr. Makhdoom Ali Khan Sr. ASC. He opened the case for the review petitioners and drew our attention, in particular to paragraphs 5 and 7 to 10 of the dispositive part of the impugned short order dated 9.7.2024. These read as follows:

5. *It is declared that for the purposes, and within the meaning of paragraphs(d) and (e) of clause (6) of Article 51 ("Article 51 Provisions") and paragraph (c) of clause (3) of Article 106 ("Article 106 Provisions") of the Constitution, the Pakistan Tehreek e Insaaf ("PTI") was and is a political party, which secured or won (the two terms being interchangeable) general seats in the National and Provincial Assemblies in the General Elections of 2024 as hereinafter provided.*

7. *In the peculiar facts and circumstances of the General Election of 2024, it is declared that out of the aforesaid 80 returned candidates (now MNAs) those (being 39 in all and whose particulars are set out in Annex A to this Order) in respect of whom the Commission has shown "PTI" in any one the aforesaid columns in the List, were and are the returned candidates whose seats were and have been secured by the PTI within the meaning, and*

for purposes of, para 5 above in relation to the Article 51 Provisions.

8. In the peculiar facts and circumstances of the General Election of 2024, it is further ordered that any of the remaining 41 returned candidates out of the aforesaid 80 (whose particulars are set out in Annex B to this Order) may, within 15 working days of this Order file a statement duly signed and notarized stating that he or she contested the General Election as a candidate of the political party specified therein. If any such statement(s) is/are filed, the Commission shall forthwith but in any case within 7 days thereafter give notice to the political party concerned to file, within 15 working days, a confirmation that the candidate contested the General Election as its candidate. A political party may in any case, at any time after the filing of a statement as aforesaid, of its own motion file its confirmation. If such a statement is filed, and is confirmed by the political party concerned, then the seat secured by such candidate shall be forthwith deemed to be a seat secured by that political party for the purposes of para 5 above in relation to the Article 51 Provisions. The Commission shall also forthwith issue, and post on its website, a list of the returned candidates (now MNAs) and seats to which this para applies within 7 days after the last date on which a political party may file its confirmation and shall simultaneously file a compliance report in the Court.

9. For the purposes of para 5 of this Order in relation to the Article 51 Provisions, the number of general seats secured by PTI shall be the total of the seats declared in terms of para 7 and those, if any, to which para 8 applies. The PTI shall be entitled to reserved seats for women and minorities in the National Assembly accordingly. PTI shall, within 15 working days of this Order file its lists of candidates for the said reserved seats and the provisions of the Elections Act, 2017 ("Act") (including in particular section 104) and the Elections Rules, 2017 ("Rules") shall be applied to such lists in such manner as gives effect to this Order in full measure. The Commission shall, out of the reserved seats for women and minorities in the National Assembly to which para 3 of this Order applies, notify as elected in terms of the Article 51 Provisions, that number of candidates from the lists filed (or, as the case may be, to be filed) by the PTI as is proportionate to the general seats secured by it in terms of paras 7 and 8 of this Order.

10. The foregoing paras shall *mutatis mutandis* for purposes of the Article 106 Provisions in relation to PTI (as set out in para 5 herein above) for the reserved seats for women and minorities in the Khyber Pakhtunkhwa, Punjab and Sindh Provincial Assemblies to which para 3 of this Order applies. In case the Commission or PTI need any clarification or order so as to give effect to this para in full measure, it shall forthwith apply to the court by making an appropriate application, which shall be put up before the Judges constituting the majority in chambers for such orders and directions as may be deemed appropriate.

19. While identifying the reviewable errors in the judgment as a whole and the above dispositive part, in particular, he made several brief submissions:

1. The test for review has been laid down by this Court in several judgments. If the Petitioners succeed in pointing out that the judgment suffers from an error apparent on the face of the record it must be set aside. Such an error results when the order is based on an erroneous assumption of material facts, or is made without advertent to or in contravention of a provision of law, or departure from a settled or undisputed construction of law or the Constitution. A judgment which interprets the law or the Constitution in a manner which makes the statute or the Constitution ineffective for certain persons to whom it is or ought to be applicable also attracts the review jurisdiction of the Court. He submitted that substitution of constitutional provisions for personal likes or dislikes or preference for a particular political outcome also constituted a reviewable error. In this regard he placed reliance on several judgments of this Court.<sup>1</sup>
2. The submissions which follow would indicate the several errors apparent on the face of the record in the judgment under review. If the review petitioners succeed on any one of these the petitions must be accepted and the impugned judgment set aside.
3. The scheme of the Constitution and election laws for elections to reserved seats is not different from elections to the general seats. This becomes apparent on an examination of Sections 57, 60, 62, 64, 67 and 104 of the Elections Act, 2017, read with the Election Rules 2017 and Articles 51 and 106 of the Constitution.
4. He submitted that the effect of paragraphs 8 and 9 of the operative part of the impugned judgment negates this entire process and prevents the people of Pakistan in having any say in the matter.

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1. <sup>1</sup> Suba v. Fatima Bibi; 1996 SCMR 158 at 165A; Pakistan v. Fecto Belarus Tractors Limited; PLD 2002 SC 208 at 216 (para.12); Managing Director, SSGC v. Ghulam Abbas; PLD 2003 SC 724 at 799 MM [5 Member Bench]; Muhammad Siddiqui Farooq v. The State; 2010 SCMR 198 at 207 A & B (material overlooked by SC is a valid ground for review); Mehmood Hassan Harvi Vs. The State through D.G., A.N.F; 2012 SCMR 119 at 122A; Dr. Raja Aamer Zaman v. Omar Ayub Khan; 2015 SCMR 1303 at 1316 (para.17); Dr. Raja Aamer Zaman v. Omar Ayub Khan; 2015 SCMR 1303 at 1316 (para.17); Dr. Raja Aamer Zaman v. Omar Ayub Khan; 2015 SCMR 1303 at 1316 (para.17); Basharat Ali Khan v. Muhammad Akbar; 2017 SCMR 309 at 316 E (material aspect overlooked by SCP constitutes a fit ground for review); Justice Qazi Faez Isa v. President of Pakistan; PLD 2022 SC 119 at 170B, 171 (para.48), 178 (para.2); Nadia Naz v. President of Islamic Republic of Pakistan; 2023 PLC (C.S.) 1353 at 1366 (para.4), 1371 (para.13) (*per Ayesha Malik, J.*); Supreme Court Bar Association of Pakistan v. FoP; PLD 2024 SC 1199 at 1222 (paras 43 & 44) (63A Review – 5 Member Bench); Inter Quest Informatics Services v. Commissioner of Income Tax; 2025 SCMR 257 at para.3, para.13. (*per Mansoor Ali Shah, J.*)

5. The majority judgment ignored the timelines provided in the proviso to Article 51(6)(d)(e) and proviso to Article 106(3)(c) of the Constitution.
6. The findings in the majority judgment are based on Article 187 of the Constitution and the doctrine of constitutional fidelity. The doctrine is not supported by any precedents of this Court and Article 187 is not a stand-alone provision. It can only be invoked when the court is otherwise competently *seised* of a *lis* under Articles 184, 185, 186 or 188 of the Constitution.
7. Neither the so-called doctrine of constitutional fidelity nor Article 187 of the Constitution confer the jurisdiction on this Court to grant relief to a party which was not before it, which had not sought any relief and which had in fact supported the case of another party (SIC) for the grant of relief. It had prayed that relief be granted to SIC. The Supreme Court dismissed the appeals of SIC and yet granted the relief to PTI. The natural and legal consequence of such dismissal of SIC appeals was that the judgement of PHC and the order of the ECP could not be set aside and had to be maintained. Instead of doing that, the Court, to the contrary set aside both and in a manner more akin to legislation than adjudication granted relief to a stranger to the proceedings. The relief granted by this Court, beyond the scope of the pleadings and or submissions of the parties, was clearly without jurisdiction and could not be sustained. It was in the nature of a legislative act rather than a judicial decision and violated the doctrine of separation of powers.
8. The majority judgment ignored the mandatory requirements of Article 225 of the Constitution and provisions of the Elections Act, 2017 regarding challenging the election of a returned candidate.
9. That this Court in the impugned judgment has passed orders in the absence of persons (necessary parties) who were de-seated, at the instance of Sunni Ittehad Council which was not entitled to any relief and without any application by PTI or the 80 independent returned candidates claiming any relief or even seeking to be joined as a party in the appeals.

10. That the appeals of the Sunni Ittehad Council were unanimously dismissed by this Court. No review has been filed by the Sunni Ittehad Council and, therefore:
  - i. The judgment dismissing its appeals has attained finality and cannot be called in question by this Court, in review, and Sunni Ittehad Council has no right of audience before this Court.
  - ii. It was conceded that Sunni Ittehad Council has been impleaded as a respondent by the review petitioners but that was done to conform to the practice and procedure of the court which requires that all those who were parties to the appeal be made a party in the review petitions. That cannot be treated as acknowledging that it had any right of audience in this Court, in the hearing of the review petitions.
11. That paragraph 10 of the dispositive part of the order whereby the majority had constituted itself, to the exclusion of all other members of the bench, into a special bench for issuing such further orders and directions, as found appropriate by the majority members was clearly contrary to the settled practice of this Court. It had no authority to constitute itself into a special bench to the exclusion of all other members of the bench and vest itself with the power to issue further clarifications and orders. That on the announcement of the judgement of the court all the members of the Court, both in majority and in minority, became functus officio. The judgement of the Court could thereafter only be challenged before the Court in the exercise of the review jurisdiction under Article 188 of the Constitution. That in the past even when an implementation bench was constituted, the order in that regard was passed by the Chief Justice of Pakistan, who at the relevant time alone had the authority to do so. The order whereby the majority had converted itself into a special bench to the exclusion of the minority members was both unprecedented and illegal.
20. All other counsel appearing for the review petitioners and such respondents who were supporting the petitioners adopted the arguments of Mr. Makhdoom Ali Khan ASC.

21. Mr. Faisal Siddiqui ASC, the lead counsel for the contesting Respondents, submitted that he wanted the Court and all opposing counsel who had so adopted the arguments to note that he will seriously object if any of them later sought to rebut his submissions or that of any of the counsel appearing for Sunni Ittehad Council i.e., Mr. Hamid Khan Sr. ASC or Mr. Salman Raja ASC. This was noted and, consequently, none of the other counsel were given an opportunity, by the Court, to make any submissions in rebuttal.

22. Mr. Faisal Siddiqui ASC also very vehemently submitted that once his client has been impleaded as a Respondent in the review petitions, it cannot be denied the opportunity to address this court and contest the review petitions. When repeatedly questioned by the Court about the conduct of his client and why in spite of the fact that both its appeals were dismissed, it had not filed any review petitions before the Court he offered no plausible explanation. He merely submitted that he was fully satisfied with the judgement under review and, therefore, it was unnecessary for him to contest the judgement dismissing the appeals of his client. He submitted that there was no bar which prevented his client to change its position, in review, and support the majority judgement. He submitted that even though its appeals were dismissed, he supported the majority judgment. He ultimately, submitted that this loss was his victory.

23. Mr. Salman Akram Raja ASC and Mr. Hamid Khan Sr. ASC who also appeared for the Sunni Ittehad Council could not come up with a better argument, in this respect.

24. These answers were contested, in rebuttal, by Mr. Makhdoom Ali Khan and by Mr. Mansoor Usman Awan, the learned Attorney General for Pakistan. The latter appeared on Court notice and spoke last.

25. We find considerable force in the arguments of Mr Mansoor Usman Awan, the learned Attorney General for Pakistan and Mr. Makhdoom Ali Khan Sr. ASC. We are fully cognisant of the facts and the legal position that the Sunni Ittehad Council, after the dismissal of its appeals, did not contest the impugned judgement in review. That by choosing to do so it deprived itself of the standing to contest the challenge, to the impugned judgment, made by others, through review petitions. We are however not inclined to decide this case on



preliminary or technical legal objections. It is for this reason that we are not inclined to entertain this objection.

26. The learned Attorney General for Pakistan also raised another preliminary objection that he was not issued a notice under Order XXVII-A CPC, as required by law in all cases, when a question relating to the interpretation of Constitution or a federal law is involved. He did not seek that the impugned judgment be set aside in its entirety and rightly so as we were not inclined to dispose off these petitions on technicalities. He made a much narrower submission that the Explanation to Rule 94 of the Election Rules 2017 could not have been struck down without a notice to the Attorney General. This objection has considerable force, in particular, as it is also supported by several judgments of this Court including a long-standing judgement of the Full Court. We are, therefore, inclined to accept this submission but to this extent only. We accordingly hold that the Explanation to Rule 94 could not have been struck down without notice to the Attorney General. As to the merits i.e., whether this Explanation is valid or void we leave the question open to be determined, after notice to the Attorney General, in proceedings where it so directly arises. Any observation by us on this aspect of the matter would prejudice the case of the parties in such appropriate proceedings. We are, therefore not inclined to make any observation or record any finding with regard thereto.

27. Likewise, the submission relating to the majority, through the impugned judgment, having constituted itself into a special bench to issue directions and clarifications in pursuance of its impugned majority judgment need not be decided. We have already through the short order accepted the review petitions and set aside the impugned judgment. As the impugned judgement has been set aside and the review petitions accepted the part of the majority impugned judgement whereby it had conferred upon itself the authority to issue directions and clarifications has also been set aside. The two clarifications issued subsequent to the announcement of short order leading to the impugned majority judgement and which form a part thereof, are also set aside. Nothing more, therefore, needs to be said on this issue. The submission, therefore, has become an academic issue. It is settled law that this Court does not decide academic questions. This submission is, therefore, rejected.

28. Another short but powerful submission made by the learned Attorney General was to the effect that the certificates of party affiliation filed under Section 66 of the Elections Act, 2017, under the signature of the purported Chairman of PTI are a nullity because his elections to this office is not recognised under the Elections Act, 2017. As such, PTI could not nominate any candidate to contest elections. He submitted that, therefore, even those candidates who had filed such certificates had to be treated as independent candidates under Section 67(2) of the Elections Act, 2017. We recognise the considerable force and merit of this submission.

29. Mr. Faisal Siddiqui ASC argued the case for several dates of hearing. A lot of time was spent on reading various passages from the majority judgment and some excerpts from the dissenting opinions. He submitted, in short, that

- a) Review petitions were not maintainable:
  - i. as a stranger cannot file a review petition;
  - ii. no certificate of counsel was filed with additional grounds.
  - iii. ECP as a quasi-judicial authority could not file review petition.

30. Responding to these preliminary objections Mr. Makhdoom Ali Khan Sr. ASC submitted that the review petitions were filed both by the political parties and the individuals adversely affected, these were parties to the appellate proceedings and/or directly impacted by the impugned judgment. Other affected candidates who would be de-seated if the review petitions were dismissed had submitted applications to be impleaded as parties, to the review petitions and to support the same. Only after leave was granted to them to submit review petitions had they proceeded further. It cannot, therefore, be said that either were strangers to the proceedings.

31. He further submitted that in every case where a review petition was filed, a certificate of counsel was also submitted. Even if the allegation that in a particular case such a certificate was not attached, which allegation is not correct, then too all the other review petitions would have to be decided. The objection was, therefore, of no

consequence. He also submitted that there was no requirement for filing yet another certificate of counsel with the additional grounds.

32. We have considered the preliminary objections as well as the response and on an examination of the record find that the review petitions were supported by certificates of counsel in almost every case. These petitions, it is correctly submitted, will have to be decided, and all the petitions cannot, therefore, be dismissed, on this ground, even if it is found to be correct in a particular case.

33. We are also not persuaded by this submission that ECP has no authority to file a review petition. Where a question of law is decided which will have far reaching consequences for the jurisdiction and functions of ECP it has the right to appeal against or seek review of such a judgement so that the law on the subject is settled and it has clear guidance with regard to the nature and scope of the jurisdiction vested in it and the functions it can exercise. Given the fact that the exercise of jurisdiction and performance of functions by ECP may have consequences for the entire polity, it is necessary that it is not denied the right to seek such guidance.

34. In view of the above all the three preliminary objections, noted above, as raised by Mr Faisal Siddiqui ASC are rejected.

Mr. Faisal Siddiqui further submitted that the:

- (a) Timelines provided under Article 51 can be altered under Article 254 of the Constitution. This was a submission with which Mr. Salman Akram Raja ASC disagreed and was, therefore, later withdrawn by Mr Siddiqui ASC.
- (b) This Court can invoke Article 187 in Article 185(3) proceedings to do complete justice.

35. Mr. Salman Akram Raja, who also appeared for Sunni Ittehad Council, Kanwal Sahuzab and in an application by PTI, to assist the Court, also read out several pages of the majority judgment to submit that it was correctly decided.

His submissions can be summarized as follows:

- i. Factual determination by the majority judgment cannot be challenged in review.
- ii. The scope of review was limited to material irregularity, grave injustice and injury to some party before the court.
- iii. He widened the scope of the above submission by raising a question, *"kya in 8 nay koi aysa amal kya jo bilkul aaeen aur qanoon kay khilaaf baghawat thi?"*
- iv. 80 independent candidates had no option but to join SIC;
- v. Article 254 was not applicable in this case:
  - a) The majority judgment did not alter the timelines provided under Articles 51 or 106 of the Constitution;
  - b) After declaring the actions of ECP as unconstitutional, the majority judgment merely provided the 80 returned candidates an opportunity to join a political party.
- vi. SCP can exercise curative jurisdiction when chaos is created by invoking Article 187 in proceedings under Article 185(3) and/or Article 184(3) of the Constitution.
- vii. Article 187 was invoked by the impugned majority judgment to protect the Fundamental Rights of citizens under Articles 9 and 17 of the Constitution.

36. When questioned by one of us, Mr. Justice Muhammad Ali Mazhar about the scope of the so-called curative jurisdiction and whether the Court had it, Mr. Salman Akram Raja ASC submitted that in his view the Court had no such jurisdiction. That this was a mere turn of phrase and he would accordingly not press it. It is ordered accordingly.

37. Mr. Hamid Khan Sr. ASC, who by choice, spoke last, made no substantive additions to the arguments of Mr. Siddiqui and/or Mr. Raja ASCs. His focus was mainly on submitting that the hearing of the case be postponed till his general adjournment was over or the case be heard after the constitution petitions challenging the 26<sup>th</sup> amendments and that the judges designated to the Constitution Bench after the 26<sup>th</sup>

amendment to the Constitution do not hear the case. All these objections were rejected during the course of the hearings.

38. When making the findings and observations above and in what follows we have thoroughly considered every submission made by each counsel. If a submission does not appear in this judgment that does not mean that it was not considered. The omission may be for reasons of not unnecessarily adding to the length of this judgment by dealing with issues which are not material for the disposal of the case. Only those submissions are, therefore, noted which are germane to the controversy and necessary finally dispose off the review petitions.

39. It is clear from a reading of the relevant provisions of the Elections Act, 2017 and the Constitution that from the announcement of the election programme/schedule by ECP, filing of the nomination papers and till the notification of the list of returned candidates the process for the election of the candidates to the general and reserved seats is quite similar. In addition to the candidates filing nomination papers for seats reserved for non-Muslims and women and going through the scrutiny process and a publication of the list of candidates by the ECP, the political party contesting the election also has to file separate lists of their candidates with the Commission in order of priority and the Commission is required to cause such lists to be published for information of the public.

40. Nomination papers for election to the reserved seats are filed by the candidates, their party affiliation is stated and the scrutiny of these papers takes place in the same manner as that of the candidates for the general seats.

41. It is an uncontested fact that no one filed nomination papers for election to reserved seats as a candidate of SIC. Consequently, no scrutiny took place. SIC did not file any list of its candidates for reserved seats. No such list was, therefore, published by the election Commission.

42. No such list was before the electorate at the time of the General Elections and none could, therefore be considered by the electorate at the time of elections.

43. The object and purpose of these requirements is to ensure that the list of candidates for reserved seats of each political party is before the electorate at the time of the general elections. When people go to vote in general elections, they are aware of the candidates whose names are included in the list of reserved seats by the political parties. When they cast their votes in a general election they are conscious of the fact that the success of the candidates of a political party will result in a proportionate number of persons on the reserved seats being elected.

44. The candidates for reserved seats can and do campaign for the success of the candidates for general seats knowing full well that the greater the number of candidates elected on general seats the more will be the likelihood of them being allocated a reserved seat by ECP. The success of their political party, in the General Elections, has a direct impact on the number of persons on the reserve seats being elected.

45. The results of the general election and the measure and extent of the success of a political party in the General Elections has a direct bearing on the number of persons who get elected from that political party to a reserved seat.

46. The list of reserved seats is, therefore, in this manner considered and voted upon by the electorate in the General Elections.

47. The manner may be indirect but it ensures that the electorate has a voice in the elections of the candidates for reserved seats. The success of the candidates for the reserved seats is, therefore, contingent on the number of votes cast, by the electorate, for the candidates of a political party to the general seats. This is in keeping with the democratic spirit of the Constitution and the principles of democracy both envisaged by and enshrined in it.

48. At the same time, when a voter casts his vote for an independent candidate he knows that his election will not result in having any impact on the elections to seats reserved for women and non-Muslims. For his election to a general seat to have any bearing on the elections to the reserved seats the Constitution commands that the returned independent candidate must join a political party within three days of the publication of the list of the names of the returned candidates in the official Gazette.

49. A candidate returned as an independent has a number of choices before him. He may continue to remain independent of any political party in Parliament. He may with other independents form a new political party. He may join a political party which has not won or secured any seats in the general elections. But in all such cases that will have no impact on the elections to the reserved seats for women and non- Muslims. The Constitution requires that if the election of an independent candidate to the National or a Provincial Assembly is to have any effect on the elections to the reserved seats such an independent candidate must, within 3 days of the publication of his name in the official Gazette, join such a political party whose candidates have won or secured seats in the General Elections.

50. SIC was not such a political party. It did not field any candidates in the general elections and it had not submitted a list of its candidates for reserved seats to ECP. As it had not won or secured any seats in the general elections and none of its candidates had been returned elected on its ticket to either the National or the Provincial Assemblies it was not a political party the joining of which by independents could either result in its becoming a parliamentary party in view of Article 63A(2) of the Constitution or produce any effect on the outcome of the elections to the reserved seats. The constitutional position was clear. All concerned including political parties, as well as returned candidates whether independent or not were or ought to have been aware of this position. The decision of the returned independent candidates who claim to be members of PTI to join SIC was not going to have any effect on the outcome of the elections to the reserved seats. SIC not having won a single seat in the general elections it was not entitled to any reserved seats. Moreover, because the joining of SIC by independents could not result in SIC becoming a parliamentary party, the status of the independents remains unchanged. That is, they shall retain the status of independents members during the term of the National or Provincial Assemblies.

51. The impugned majority judgment also accepts this legal and constitutional position. It gave effect to it by dismissing both the SIC appeals. Once the appeals were dismissed there was no legal way out but to uphold the judgement of the PHC and ECP. The majority, however, instead of taking this legal and constitutional course used the

so-called "*peculiar facts and circumstances of the General Election of 2024*" to issue a series of declarations and directives:

- i. Declare that PTI "*was and is a political party which secured or won*" the seats won by the 80 independent candidates.
- ii. Declared that 39 out of the 80 independent returned candidates, in respect of whom ECP had shown PTI in one of the columns of the relevant form "*were and are returned candidates whose seats were and have been secured by PTI*" for the purposes of Article 51 of the Constitution.
- iii. Declared that any of the returned 41 independent candidates "*may within 15 working days of this Order file a statement*" that he or she contested the General Election as a candidate of the political party specified therein.
- iv. Directed ECP that if such a statement was filed, "*it shall forthwith but in any case within 7 days thereafter to give notice to the political party concerned to file, within 15 working days, a confirmation that the candidate contested the election as its candidate.*".
- v. Declared that if such a statement was "*filed and is confirmed by the political party concerned, then the seat secured by such candidate shall be forthwith deemed to be a seat secured by the political party for the purposes of*" Article 51 of the Constitution.
- vi. Directed ECP to issue forthwith and post on its website a list of the returned candidates and the seats within 7 days after the last date on which a political party has filed its confirmation. It was further directed to simultaneously file a compliance report in the Court.
- vii. Declared that, in relation to Article 51 of the Constitution the number of general seats secured by PTI shall be the total of the seats above.
- viii. Declared that PTI she'll be entitled to reserved seats for women and minorities accordingly.



- ix. Directed PTI to file, within 15 working days of the Order, it's list of candidates for the said reserved seats.
- x. Directed that the Elections Act, 2017, and the Elections Rules, 2017, shall be applied to such lists in such manner as gives effect to the Order in full measure.
- xi. Directed ECP to set out the reserved seats for women and minorities in accordance with the order so that the number of candidates from the lists filed or, as the case may be, to be filed by the PTI, as is proportionate to the general seats secured by it in terms of this Order.
- xii. Directed that the Order was to apply *mutatis mutandis* to the concerned Provincial Assemblies.
- xiii. Declared that where in any of the forms issued by ECP the independent returned candidates had been shown as having an affiliation with PTI they were to be considered as having contested the elections as PTI candidates.

52. These sets of declarations and directives completely ignored the fact there the 80 independently returned candidates had within 3 days of their names being published in the official Gazette joined SIC, voluntarily, and that both PTI and SIC had urged the Court that these declarations and sworn statements of voluntarily joining SIC by these 80 independent candidates be given effect to and the seats allocated accordingly. That none of these candidates had come forward at any stage of the proceedings to claim that they were members of PTI, or that they be declared to be so, or that their actions, albeit, voluntary, of joining SIC may be disregarded.

53. The provisions of the Elections Act, 2017, and the Elections Rules, 2017, the Schedule for General Elections, published by ECP, setting out the dates for filing of nomination papers, scrutiny of papers, publication of list of candidates for reserved seats and the dates for filing and publication of lists of reserved seats by political parties and ECP had all long since passed. Neither the statute nor the rules nor any provision of the Constitution permitted filing of nomination papers, or scrutiny by ROs, or issue of lists of candidates for reserved seats by political parties or their publication by ECP after the expiry of the

statutory deadlines. Also ignored was the fact that the Constitution allows independent candidates no more than 3 days to join a political party if their success in the General Elections was to benefit a political party in securing seats reserved for minorities and women. These timelines are in the nature of conditions precedent and the Court has no authority to alter the 3 days' time limit mandated by Articles 51 and 106 of the Constitution.

54. The Court through these declarations and directives gave new dates and timelines which were clearly repugnant to the Election Schedule published by ECP, the provisions of the Election Act, 2017, the Rules made thereunder and Articles 51 and 106 of the Constitution.

55. Setting new timelines which were at variance with the provisions of the statute and the Constitution and that too with retrospective effect could have been done but only by the legislature in exercise of its constitutionally vested authority to amend the statute and the Constitution, with prospective or retrospective effect in accordance with the established procedures. By issuing these declarations and directives the Court transgressed the limits of judicial power, acted in excess of its jurisdiction, and in violation of Article 175(2) of the Constitution.

56. Not only did these declarations and directives violate the statutory and constitutional provisions, the doctrine of separation of powers mandated by the Constitution, transgressed judicial limits clearly demarcated by the Constitution and trespassed into the legislative field but they also clearly and categorically violated the democratic norms and principles which imbue the letter and spirit of the Constitution. Elections to reserved seats, no doubt indirect, and no doubt based on the principle of proportional representation, were no longer determined by the will and votes of the electorate. They were taken over by the Court. Further, the will of the people and the command of the Constitution was ignored and made subservient to the directives of the Court and the wishes of the leadership of PTI.

57. Independently elected candidates who had freely and voluntarily joined SIC within 3 days as required by the Constitution were no longer to remain parliamentary members of SIC and their membership was transferred to PTI without ascertaining their opinion and without any request or claim by them or by PTI or SIC.

58. Any person whose name the leadership of PTI chose to include in the list of candidates for reserved seats was to be returned elected in proportion to the general seats allegedly secured by it. The electorate had never had an opportunity to consider this list or to cast votes in support of or against it. The people were deprived of the mandate to elect candidates to the reserved seats, no doubt indirectly, and the matter was now placed in the hands of and made a gift by the party leadership to the persons it liked as a consequence of the orders of Court.

59. The Supreme Court has the jurisdiction to interpret the statutes and the Constitution. Insofar as it remains within those limits its authority is both considerable and absolute. It cannot be called into question by any other department of government or even by another constitutional institution, be it the Legislature or the Executive. The authority to interpret the law and the Constitution does not, however, confer on the courts the authority to rewrite the Constitution or the law. The will of the legislature and the will of the Constitution-makers delegated as it is by the people has to be respected and given effect to. It cannot be negated or usurped by the judiciary by scribing artificial meanings to the clear language of the Constitution or by derogating from the plain meaning of its words. Any Court or judge, including the Supreme Court and its judges, has no jurisdiction to read their personal likes and dislikes into the Constitution or to ignore or circumvent its commands. The power to interpret is a very wide and formidable power indeed but that power is negated not enhanced when the Court proceeds, under its guise, to rewrite the Constitution<sup>2</sup>..

60. We are, therefore, of the view that the impugned judgment which was passed and the series of declarations and directives issued therein

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<sup>2</sup> Fazalul Quader Chaudhury v. Shah Nawaz; PLD 1966 SC 105 at 113; Hamza Rasheed Khan v. Election Appellate Tribunal, Lahore High Court, Lahore; PLD 2024 SC 1028 at 1056 A1; Shahtaj Sugar Mills Ltd. v. Government of Pakistan – 2024 SCMR 1656 at 1665 C. State v. Zia-ur-Rehman; PLD 1973 SC 49 at 68-73, 76-77 and 80

*“...it is not the function of the judiciary to legislate or to question the wisdom of the Legislature in making a particular ... Again if a law has been competently and validly made the judiciary cannot refuse to enforce it even if the result of it be to nullify its own decisions. The Legislature has also every right to change, amend or clarify the law if the judiciary has found that the language used by the Legislature conveys an intent different from that which was sought to be conveyed by it.”*

all being contrary to the law and the Constitution cannot be sustained and must be set aside.

61. The notifications of various dates whereby the persons respectively mentioned therein being the persons identified in the ECP's notification dated 13.5.2024 and declared to be returned candidates for the reserved seats for women and minorities in the National and Provincial Assemblies were declared *ultra vires*, without lawful authority and without legal effect and quashed, by the impugned majority judgment.

62. While some of these persons were impleaded in the petitions before the PHC and in the appeals before this Court, all were not. All of them were adversely affected by the majority judgment but a significant number were denied any right of hearing. Their election to reserved seats were set aside, the fact that they had taken oath as members of the respective Assemblies and had been performing functions as legislators was all but ignored. No notices were issued by the Court to these persons either directly or through their political parties or through the ECP or through the Speakers or Secretaries of their respective assemblies. They were condemned unheard. That they were necessary parties and no valid order could be passed in their absence was clear but this principle of law, the Constitution, in general, and in particular Articles 4 and 10A of the Constitution were completely lost sight of.

63. No reference was made or attention paid to Article 225 of the Constitution which requires that no election to either House of Parliament or a Provincial Assembly shall be called in question except by election petition presented to such tribunal and in such manner as may be determined by an Act of Parliament.

64. The law has been settled by several judgements of this court that except in the rare case where a person has been disenfranchised and has no remedy before an election tribunal, an election cannot be called in question by invoking the constitutional jurisdiction of the superior courts and recourse must be had to the election tribunals established by law.<sup>3</sup>

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<sup>3</sup> Election Commission of Pakistan v. Javaid Hashmi; PLD 1989 SC 396 at 416-8, 422; Ghulam Mustafa Jatoi v. Returning Officer; 1994 SCMR 1299 at 1315-6, 1321 I and Muhammad Raza Hayat Hiraj v. The Election Commission of Pakistan; 2015 SCMR 233 at 240 (para.14), 246-250, 252 (para.35), 253. Under Article 222 of the Constitution, Parliament has authority to make laws, *inter alia*, in respect of "allocation of seats in the National Assembly as required by clauses (3) and (4) of Article 51"; "the

65. The impugned majority judgment ignored the rights of the returned candidates, such as some of the review Petitioners, who were elected on reserved seats in National Assembly and notified as such. These returned candidates had also taken oath. A number of protections are provided to a returned candidate under the Constitution and the Elections Act, 2017, but were disregarded. A few are listed below:

- (i) Their election as a returned candidate could not have been declared void, except through an election petition filed in accordance with Chapter IX of 2017 Act.
- (ii) The review Petitioners and several other returned candidates on reserved seats were not a party to the proceedings before the Court.
- (iii) And this was done in spite of the fact that no one had challenged the election of the Petitioners before this Court.

66. The premise for this exercise of authority without any constitutional mooring was that election disputes are not between candidates but are matters which concern the constituency and the nation (page 135). This is clearly contrary to the explicit language of Article 225 of the Constitution.

67. It was observed in the impugned majority Judgment that an election case could not be equated to *"an ordinary civil case"* and, *"the proceedings therein are inquisitorial in nature."* The proceedings before the court were two civil appeals under Article 185 of the Constitution. These were adversarial proceedings and were being litigated between parties. No Supreme Court judgment supported the proposition and none was cited in support of the novel proposition that election disputes were inquisitorial not adversarial and were adjudicated and decided as civil disputes. The law of pleadings applied.<sup>4</sup> The burden of

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*conduct of elections and elections petitions"; and "matters relating to corrupt practices and other offences in connection with elections". The Elections Act, 2017 in Chapter IX of the 2017 Act provides the "manner" for filing and adjudicating election dispute Section 139 clearly provides that no election shall be called in question, "except by an election petition filed by a candidate for that election."*

<sup>4</sup> Zia ur Rehman v. Syed Ahmed Hussain and others; 2014 SCMR 1015 at 1019A and B; Lt. Col (R) Ghazanfar Shah v. Mehr Khalid Mehmood Sargana and others; 2015 SCMR 1585 at 1592A, 1596C & 1597D; Sultan Mahmood Hinjra v. Malik Ghulam Mustafa Khar and others; 2016 SCMR 1312 at 1322C; Province of Punjab and others v. Murree Brewery Company Limited and another; 2021 SCMR 305 at

proof was on the party making the allegation.<sup>5</sup> . A plethora of case law against this proposition was ignored. None of the judgments from the foreign jurisdictions cited in the impugned majority judgment supported the view taken. The Indian judgment cited arose out of election petitions filed before the Tribunals.<sup>6</sup> The two judgments from Pakistan cited in support of this proposition were of the Lahore High Court. Both arose from local bodies elections. One of these was decided by the High Court while acting as an election tribunal while the other adhered to the settled principle that election disputes must be decided by election tribunals.<sup>7</sup>

68. The other basis for this extra-ordinary exercise of power without any support from the language of the Constitution or the precedents of this Court was the so-called academic doctrine of constitutional fidelity. No case-law from even any foreign jurisdiction was cited where such a doctrine had been imported and applied to the Constitution to create powers for the Court which transgressed constitutional limits.

69. We, therefore, hold that the order quashing the notification of the ECP of 13.5.2024 and undoing the election of the notified persons cannot be sustained in law and under the Constitution and is accordingly set aside.

70. The impugned majority judgment also relied on Article 187 of the Constitution which authorises the court to do complete justice to justify the conclusions reached by it.

71. Under Article 187 of the Constitution this Court may, of course, pass any order or issue directions as may be necessary for doing complete justice. This authority is sparingly exercised and must be justified in the facts and circumstances of a case.<sup>8</sup> In this case there was no justification for invoking Article 187 and to grant relief to PTI

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308A; Haji Abdul Karim and others v. Florida Builders (Pvt) Ltd and others; PLD 2012 SC 247 at 260H; Ghulam Hassan v. Jamshaid Ali and others; 2001 SCMR 1001 at 1009D.

<sup>5</sup> Muhammad Saeed v. Election Petitions Tribunal, West Pakistan ; PLD 1957 SC 91 at Pages 123-124, 128; Saeed Hasan v. Pyar Ali; PLD 1976 SC 6 at Page 25; Ghulam Muhammad Ahmad Khan Maneka v. President; 1995 SCMR 571 at 578 - 9 (disqualification); Hafizuddin v. A. Razzaq; PLD 2016 SC 79, 93-94; and Muhammad Siddique Baloch v. Jehangir Khan Tareen; PLD 2016 SC 97 at 111 – 112 (Paragraph 15) and 118, 119, 120, 121.

<sup>6</sup> Sreenivasan v. Election Tribunal [1995] 11 E.L.R. 278; Inamati Basappa v. Desai Ayyappa; AIR 1958 SC 698 and Mohinder Singh v. Chief Election Commissioner; AIR 1978 SC 851

<sup>7</sup> Dilshad Khan v. Arshad Ali 1999 MLD 2874 and Irshad Hussain v. Ashraf Nagra 2003 YLR 812.

<sup>8</sup> Sheikh Khurshid Mehboob Alam v. Mirza Hashim Baig; 2012 SCMR 361 at paragraph 5

as PTI had not claimed the reserved seats before any fora, including this Court. It was not a party in the proceedings before ECP. It was not a party in PHC. It did not challenge the judgment of PHC before this Court. It also did not seek reserved seats in its intervenor application (CMA 5913 of 2024). It simply sought leave, “*to assist this August Court as intervenors.*” It was no one’s case before this Court that PTI was a political party for the purposes of Articles 51 and 106 of the Constitution and entitled to reserved seats. Article 187 cannot be invoked to give a person a relief which it hasn’t sought and in particular to a person which was not a party to the proceedings. As correctly and pertinently noted by Mr. Justice Yahya Afridi, now the Chief Justice of Pakistan, in his separate note:

*“Finally, while the undeniable power of this Court to do complete justice under Article 187 of the Constitution is recognised, exercising this power in the absence of an aggrieved party directly approaching the court could set **a dangerous and far-reaching precedent**. Such a course risks undermining the principles of due process and judicial restraint potentially leading to an overreach of judicial authority. The exercise of this power must, therefore, be reserved for exceptional circumstances, when there is a clear and compelling need to intervene to bolster the rights of the aggrieved petitioner and prevent a miscarriage of justice. In the present case, however, the matters before the Court do not meet this threshold... and that too, without providing hearing to all concerned parties. It is imperative to uphold the fundamental principle of due process and the sanctity of judicial process. This Court must, therefore, exercise caution to preserve the integrity of judicial proceedings and ensure that justice is administered within the boundaries set by the Constitution.*

[Emphasis added].

It is also clear that this jurisdiction can be exercised, “*in a case or matter pending*” before this Court. No case or matter for granting reserved seats to PTI was pending before this Court. There was, thus, no justification for giving relief to PTI under Article 187, especially as the appeals were filed and pursued by SIC under Article 185 (3) of the Constitution.

72. We, therefore, hold that Article 187 of the Constitution could not have been invoked to grant relief to PTI. The facts and circumstances of this case did not require application of Article 187. The exercise of authority purportedly under Article 187 of the Constitution to grant relief to a party which was not before the court, to remove from office MNAs and MPAs who had been declared elected and who were not before the Court and to issue declarations and directives which were

outside the scope of the statutory or constitutional authority of this Court was not warranted.

73. The impugned majority judgment being in excess of the jurisdiction vested in the Court and being contrary to the statutory and constitutional provisions identified above suffers from errors apparent on the face of the record which float on the surface. It, therefore, has to be set aside.

74. These are our reasons for accepting the review petitions and setting aside the impugned majority judgment through the Short Order.

**Justice Amin-ud-Din Khan**  
Senior Judge

**Justice Jamal Khan Mandokhail**  
(Partly agreed with the conclusion to the extent of accepting the review with regard to the fate of 41 independent candidates. I will append my own reasons.)

**Justice Muhammad Ali Mazhar**  
(I will write my separate reasons.)

**Justice Syed Hasan Azhar Rizvi**  
(I will append my separate note.)

**Justice Musarrat Hilali**

**Justice Naeem Akhter Afghan**

**Justice Shahid Bilal Hassan**

**Justice Muhammad Hashim Khan Kakar**  
(I will append additional note.)

**Justice Aamer Farooq**

**Justice Ali Baqar Najafi**

Islamabad, 25<sup>th</sup> August, 2025  
Mazhar Javed Bhatti  
**Approved for reporting.**



**Ayesha A. Malik, J.-** There are three sets of Review Petitions before us filed by the Pakistan Muslim League (N)<sup>1</sup> **PML(N)**, the Pakistan People's Party Parliamentary (PPPP)<sup>2</sup> (**PPPP**) and the Election Commission of Pakistan (**ECP**).<sup>3</sup> All Review Petitions have been filed against the short order dated 09.07.2024 (**Short Order**) and only the ECP has filed additional grounds through CMA Nos.10150 and 10151 of 2024 which emanate out of the detailed judgment released on 23.09.2024 reported as the *Sunni Ittehad Council* case<sup>4</sup> (**Detailed Judgment**).

2. Counsel for the PML(N) stressed on the fact that relief has been given to the Pakistan Tehreek-e-Insaf (**PTI**) which was not a party before the Court nor had it sought any relief from the Court. Furthermore, that parties are bound by their pleadings and at best, if at all any seats were to be given it could have been given to the Sunni Ittehad Council (**SIC**). The contention being that this amounts to an error apparent on the face of record for which review is maintainable. Counsel for the PPPP adopted these arguments.

3. So far as the ECP is concerned, they also stressed on the fact that relief has been granted to the PTI which was not before the Court and which did not seek any relief from the Court. Learned counsel argued that the opinion of the majority is premised on an erroneous fact that the PTI was before the Court and that it sought allocation of reserved seats. He stated that PTI did not seek impleadment nor allocation of any reserved seats yet in the opinion of the majority they are entitled to relief by way of reserved seats.

4. Having heard all the parties, we are of the opinion that no ground for review is made out as all issues raised have been sufficiently dealt with in the Detailed Judgement. The focus of the counsel has been on the issue that PTI was not before the Court, the procedural steps for impleading the PTI as a party to the proceedings and granting of relief. The Detailed Judgement not only addresses these issues in great detail but more importantly, also addresses the larger constitutional question being the protection of the right of the

<sup>1</sup> CRP Nos.312 and 313 of 2024 in CA Nos.333 and 334 of 2024.

<sup>2</sup> CRP Nos.319 and 320 of 2024 in CA Nos.333 and 334 of 2024.

<sup>3</sup> CRP Nos.331 and 332 of 2024 in CA Nos.333 and 334 of 2024.

<sup>4</sup> *Sunni Ittehad Council v. Election Commission of Pakistan* (PLD 2025 SC 67) (*Sunni Ittehad Council*).



electorate as guaranteed under the Constitution.<sup>5</sup> We are also of the opinion that the Petitioners have attempted to reargue the case in order to obtain a different opinion from the one given. This Court has time and again held that review jurisdiction has limited scope and parties cannot reargue their case in this jurisdiction. A reviewable ground would essentially be one where the decision was *per incuriam*<sup>6</sup> or where the error is so evident that it is floating on the surface of the record having a substantial impact on the final outcome of the *lis*.<sup>7</sup> Meaning thereby that merely pointing out irregularities or errors having no bearing whatsoever on the judgment will not suffice. This Court has also held that even where there is some material irregularity but no substantial injury is caused then the judgment cannot be reviewed.<sup>8</sup> This Court has emphasized time and again that every judgment announced by the Supreme Court is considered to be solemn, final and a conscious deliberated decision where the power of review cannot be invoked as a routine matter and should be exercised in exceptional circumstances to avoid gross injustice.<sup>9</sup> That review is not synonymous with an appeal and merely because the conclusion drawn is wrong in the eyes of the party, it does not constitute a reviewable ground.<sup>10</sup> Furthermore, review is not a matter of right in which this Court should issue notice rather it is left to the discretion of the Court to determine whether any serious material error has been caused which requires reconsideration.<sup>11</sup> This Court in a recent judgment has aptly lamented on the fact that review petitions are filed as a matter of routine, without any accurate depiction of the error in the judgment, simply based on the fact that the party is dissatisfied with the decision.<sup>12</sup> The instant Petitions are an example of cases filed in review jurisdiction where no ground is made out and the focus is on rearguing the case.

5. Furthermore, in the Petitions before us, the PML(N) and the PPPP have not attributed any error to the Detailed Judgment as they have only challenged the Short Order in the Review Petitions. In this context, they filed their Petitions on 15.07.2024, the Detailed Judgement was released on 23.09.2024, and despite a lapse of more

<sup>5</sup> The Constitution of the Islamic Republic of Pakistan, 1973 (Constitution).

<sup>6</sup> CRP No.540 of 2023 in CPLA No.3113 of 2020.

<sup>7</sup> Commissioner Inland Revenue v. MSC Switzerland Geneva (2023 SCMR 1011).

<sup>8</sup> Board of I&S Education v. Bashir Ahmad Khan (PLD 1997 SC 280) and Mohd. Amir Khan v. Controller of Estate Duty (PLD 1962 SC 335).

<sup>9</sup> Abdul Ghaffar-Abdul Rehman v. Asghar Ali (PLD 1998 SC 363).

<sup>10</sup> Zakaria Ghani v. Muhammad Ikhtlaq Memon (PLD 2016 SC 229).

<sup>11</sup> Faqir Mohd. v. Akbar Shah (PLD 1973 SC 110).

<sup>12</sup> *Supra* note 7.



than seven months, they have not challenged the Detailed Judgment. Hence, the Petitioners have confined their challenge to the directions issued in the Short Order and have not questioned the reasoning set out in the Detailed Judgment. As such, no objection has been raised to the underlying rationale or findings of the Court in the Detailed Judgment. As a result, they have failed to point out any reviewable ground.

6. The ECP by way of its challenge to the Short Order and the filing of the additional grounds<sup>13</sup> have basically attempted to reargue the case. Again it is clarified that in terms of the *dicta* laid down by this Court they cannot reargue the case in review jurisdiction. What is more alarming so far as the ECP is concerned is that they have failed to implement the Short Order and the Detailed Judgment by their own admission stating that they have only implemented a certain part of the Short Order. This option is not available to the ECP who is legally and constitutionally bound to implement the judgment of this Court and is bound by the interpretation given to the Constitution by this Court. The Detailed Judgment was rendered in light of the constitutional mandate to uphold democratic principles and to ensure that the will of the people is respected and preserved. Compliance with the Detailed Judgment as such is not a matter of discretion but of constitutional fidelity. In a democracy, judgments that seek to safeguard electoral fairness, political representation and institutional accountability must be given full effect. To disregard such a decision would not only undermine the authority of this Court but also erode the foundational values of democracy itself. This Court has already stated in the case of *Adil Khan Bazai*<sup>14</sup> that the ECP has demonstrated a leaning in favour of a political party and the Government which totally negates its constitutional duty and constitutional standards to act honestly, justly and fairly. That the independence of the ECP is fundamental to the election process which is the very foundation of democracy and that the ECP should not become subservient to political influences rather must remain an impartial custodian of democracy. In fact, even the Detailed Judgment has commented on the manner in which the ECP has contested the matter of reserved seats, acting as a contesting party against the SIC and the PTI. Therefore,

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<sup>13</sup> CMA Nos.10150 and 10151 of 2024 in CRP No.331 and 332 of 2024 in CA No.333 and 334 of 2024.

<sup>14</sup> CA Nos.1507 and 1508 of 2024, *Adil Khan Bazai v. Election Commission of Pakistan*.



having failed to implement the Short order and Detailed Judgment, the ECP has acted contemptuously and has no right to challenge the Short order or Detailed Judgement. By filing Review Petitions, the ECP has once again revealed its political interest so far as the allocation of reserved seats is concerned.

7. Before parting with this order, we have certain reservations with respect to the constitution of the Bench hearing these Review Petitions, which we feel are important to observe notwithstanding the fact that no objection was raised to the constitution of the Bench by the parties before us. Originally, this case was heard by a Bench of thirteen members<sup>15</sup> of which five members, including the author, are available yet have not been included in this Bench. This exclusion is based out of Article 191A of the Constitution inserted by way of Twenty-Sixth Amendment<sup>16</sup> which requires the formation of constitutional benches comprising of judges nominated and determined by the Judicial Commission of Pakistan (**JCP**). The Judges who have been excluded were not nominated for the constitutional bench by the JCP to hear the Review Petitions. In this context, the Twenty-Sixth Amendment also amended Article 175A of the Constitution by reconfiguring the Members of the JCP such that it includes amongst others two members from the Senate and two members from the National Assembly of whom two shall be from the Treasury Benches, one from each House, and two from the Opposition Benches, one from each House. Accordingly, the effective majority in the JCP for appointing judges to the constitutional benches is that of the Government and political parties.<sup>17</sup> The Members of the JCP particularly those representing the Government and political parties are bound by a constitutional duty to ensure that their nominations are fair, transparent and impartial. As the JCP is established under the Constitution, it must uphold and safeguard the basic principles and values of the Constitution which include the independence of the judiciary. The JCP functions within a constitutional scheme predicated

<sup>15</sup> Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan.

<sup>16</sup> The Constitution (Twenty-Sixth Amendment) Act, 2024 (Twenty-Sixth Amendment).

<sup>17</sup> Mr. Justice Yahya Afridi, Chief Justice of Pakistan (Chairman), Mr. Justice Syed Mansoor Ali Shah, Senior Puisne Judge, Supreme Court of Pakistan, Mr. Justice Munib Akhtar, Judge, Supreme Court of Pakistan. Mr. Justice Amin-ud-Din Khan, Judge/Most Senior Judge of the Constitutional Benches Supreme Court of Pakistan, Mr. Justice Jamal Khan Mandokhail, Judge, Supreme Court of Pakistan, Mr. Azam Nazeer Tarar, Federal Minister for Law and Justice Government of Pakistan, Mr. Mansoor Usman Awan, Attorney General for Pakistan, Mr. Muhammad Ahsan Bhoon, Advocate, Supreme Court & Member Pakistan Bar Council, Senator Syed Ali Zafar, Barrister Gohar Ali Khan MNA, Senator Mr. Farooq Hamid Naeq, Mr. Sheikh Aftab Ahmad, Ms. Roshan Khursheed Bharucha (Members) (Members of the JCP).



upon the rule of law, separation of powers and supremacy of the Constitution. It is, therefore, incumbent upon the Members of the JCP to discharge their functions with integrity and in a manner that exemplifies constitutional propriety ensuring that the independence and integrity of the judiciary is always protected and maintained. Any departure from its constitutional duty will weaken not only the judiciary but public trust and confidence which is fundamental to a constitutional democracy. The constitutional duty does not end here. A corresponding constitutional duty is also placed on the Committee formed under the newly inserted Article 191 (A) (4), which is charged with determining the composition of constitutional benches from amongst those judges nominated by the JCP. It was incumbent upon the Committee to ensure that the Review Petitions are heard by a Bench which included all available members of the majority's opinion, including its author judge. In our opinion, the Committee should have requisitioned the JCP for nominations of these Judges for the purposes of the Review Petitions because the function of this Committee is not merely procedural or ministerial, rather it carries substantive constitutional weight. The legitimacy of a bench lies not only in the process of nomination, but equally in the manner of its constitution. It must therefore act with the same degree of fairness, impartiality and fidelity to constitutional values as is expected of the JCP itself. When the constitution of a bench gives rise to doubts about fairness, the legitimacy of the entire process is called into question. In our opinion, the current composition of the Bench reflects the will of the majority of the JCP which comprises of members from the Government PML(N) and the PPPP who are Review Petitioners before us. This raises serious concerns about fairness, impartiality and transparency as propriety demands that the five members who constitute part of the Judges who rendered the opinion of the majority be included in this Bench.

8. Finally we may add that in the order of this Court dated 06.05.2025 it is stated that *at the time of final determination by the remaining members of the Bench the dismissal of the review petitions by the two members will be counted*. Respectfully, we do not agree with this observation. In view of the aforesaid, we find no ground has been made out for issuance of notice, hence, these Review Petitions are

dismissed. CMA No.7458 of 2024 seeking permission to argue the case,<sup>18</sup> being not maintainable, also stands dismissed.

**JUDGE**

**JUDGE**

'Approved for Reporting'

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<sup>18</sup> CMA No.7458 of 2024 in CRP No.Nil/2024 in CA No.333 of 2024.



In the matter of the ongoing hearing of the review petition before the Honourable Constitutional Bench of the Supreme Court, I have had the privilege of participating as a member of this Bench across several dates. During these proceedings, all learned counsel, including Mr. Faisal Siddiqi, Advocate for the Sunni Ittehad Council (SIC), and Mr. Salman Akram Raja, Advocate for the Pakistan Tehreek-e-Insaf (PTI), unequivocally expressed their confidence in the composition of the Bench, including the participation of all its members.

However, on the previous hearing date, learned senior counsel Mr. Hamid Khan, in the course of his arguments, raised an objection specifically targeting the inclusion of certain Hon'ble Judges, including myself, who were appointed subsequent to the 26th Constitutional Amendment. He questioned the propriety of our participation in this Bench for the adjudication of the present matter.

While the dignity and impartiality of this Honourable Court have remained unchallenged throughout these proceedings, and while the broader consensus among the parties thus far has reflected faith in the Bench, judicial propriety and the appearance of impartiality remain paramount in maintaining public confidence in the judiciary.

In <sup>the</sup>light of the objection raised, and in deference to the principle of judicial propriety, irrespective of its merits or the timing of its assertion, I consider it appropriate to recuse myself from further hearing of this case. This recusal is made not from any admission of disqualification, but to uphold the institutional integrity and objectivity of these proceedings.

I hereby respectfully recuse myself from <sup>the</sup>this Bench in this matter.

**Mr. Justice Salahuddin Panhwar**