

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

C.P No.D-1235 of 2024

Order with signature of Judge(s)

Fresh case

1. For orders on Misc. No.5762/2024 (Urgent Application)
2. For orders on Misc. No.5763/2024 (Exemption Application)
3. For orders on Misc. No.5764/2024 (Stay Application)
4. For hearing of main case

08.03.2024

Mr. Ali Tahir, Advocate for the petitioner alongwith
M/s. Hafeez Rakshani and M. Hashim Sairani, Advocates
Mr. Hassan Akbar, A.G Sindh alongwith Qazi Muhammad Bashir,
Additional A.G and M/s. Saifullah and Muhammad Javed, AAsG

1. Urgency granted.
2. Exemption granted subject to all just exceptions.
- 3&4. The petitioner has not only challenged the order of the Election Commission of Pakistan (ECP) dated 28.02.2024 where for a number of reasons assigned, the petitioner party did not qualify to the allocation of proportionate Reserved Seats for Minorities and Women in the Provincial Assemblies across the country, but the petitioner has also challenged the effect given to the said Order by ECP that has issued two subsequent notifications bearing No.F.6(6)/2024-Cord and No.F.5(3)/2024-Cord both dated 04.03.2024, where for the proportional seats reserved for the Minorities and Women in the Provincial Assembly of Sindh, Respondent Nos.10, 11 and 12 were notified to be returned candidates for the seats reserved for Women (Respondent No.10 and 11) and for the Minorities (Respondent No.12) under Article 106 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 104 of the Election Act, 2017.

When the learned counsel for the petitioner was posed with the challenge as to maintainability of the petition as well as locus standi of the petitioner and as to why this matter was not agitated before the

Election Tribunal, Court was informed that under Section 154 of the Election Act, 2017 the said Tribunal can make only certain limited declarations, as detailed in paragraph (a) and (b) of Section 154(1), which are not the prayers sought through this petition. The counsel also stated that the issue posed through this petition is purely constitutional in nature, as candidature of the returned candidate in the General Election 2024 has not been challenged individually through this petition. Learned counsel also referred to an order passed by a Division Bench of the Hon'ble Peshawar High Court in WP No.1272 of 2024 as well as referred to page 93 which is reportedly a page from the impugned Notification No.F.6(6)/2024-Cord to show that Minorities and Women seats have been distributed amongst various political parties in gratis without making any reference to the applicable law or rules.

During the proceedings, learned Advocate General, Sindh showed appearance and waived notice, who was also heard at some length, who challenged the very maintainability of the instant petition, as well as the latches posed. Learned Advocate General also pointed out that these three Minorities/Women candidates have taken Oath yesterday (07.03.2024) around 03:00 p.m. making the prayers of the petitioner infructuous, and the said Members have also signed the Roll of the Provincial Assembly, therefore, they have acquired rights to cast votes in the upcoming Presidential Elections, which are being held tomorrow i.e. 09.03.2024 as per the scheme provided in the Second Schedule of the Constitution of the Islamic Republic of Pakistan, 1973.

During the deliberations, it also came to surface that at best, if the impugned notifications are *set aside* this would effect a small number of presidential vote(s) arising out of the votes cast by three members of the Provincial Assembly as per the scheme given under para 18(1)(b) of the Second Schedule to the Constitution. It was also pointed out that *in fact* on account of majority votes of the returned candidates

of the political parties (page 93), such small fraction of votes will not make any significant difference.

Subject to maintainability, let pre-admission notice be issued to the respondents as well as DAG to be served through first three modes for **28.03.2024**.

While this Court would not like to interfere in the actual process of the Members of the Sindh Provincial Assembly casting their votes to the candidates of their choice for the election of the President of Pakistan scheduled for tomorrow, however, the residual effect of three votes cast from Sindh Provincial Assembly towards the result of the returning presidential candidate not to be treated as decisive vote(s) till the final outcome of this petition.

Judge

Judge

B-K Soomro