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Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

WRIT PETITION NO.30456 OF 2022

Muhammad Sibtain Khan v. Province of the Punjab, etc.

WRIT PETITION NO.30459 OF 2022

Mushtaq Ahmad Malik v. Muhammad Hamza Shahbaz Sharif, etc.

WRIT PETITION NO.34726 OF 2022

Zainab Umair, etc. v. Province of the Punjab, etc.

WRIT PETITION NO.32665 OF 2022

Mian Mahmood ur Rasheed Ahmad v. Government of the Punjab, etc.

WRIT PETITION NO.30670 OF 2022

Munir Ahmad v. Province of the Punjab, etc.

WRIT PETITION NO.30569 OF 2022

Chaudhary Parvez Elahi v. Province of the Punjab, etc.

and

INTRA COURT APPEAL NO.27313 OF 2022

Muhammad Sibtain Khan, etc. v. Muhammad Hamza Shahbaz Sharif, etc.

INTRA COURT APPEAL NO.28417 OF 2022

Mian Muhammad Aslam, etc. v. Muhammad Hamza Shahbaz Sharif, etc.

INTRA COURT APPEAL NO.28418 OF 2022

Mian Mehmood ur Rasheed etc. v. Muhammad Hamza Shahbaz Sharif etc.

Date of Hearing:	30.06.2022.
Petitioners/appellants by:	M/s Syed Ali Zafar, Muhammad Azhar Siddique, Imtiaz Rasheed Siddiqui, M. Safdar Shaheen Pirzada, Amir Saeed Rawn, Mushtaq Ahmad Mohal, Chaudhary Muhammad Farman Manais, Abdullah Malik, Munir Ahmad, Mian Shabbir Asmail, Barrister Shehryar Kasuri, Naila Iqbal, Ashhad Ali Azhar, Raza Imtiaz Siddiqui, Muhammad Humzah Sh., Junaid Razaq, Hammad Khalid Butt, Khawaja Khalid Butt, Sardar Qasim Hassan Khan, Mustafa Shaukat Imran Pasha, Afsar Raza Khan, Muhammad Kashif Khan Khichi, Chaudhary Muhammad

	Shoaib, Salma Riaz, Fayyad Ahmad Mehr, Amna Liaqat, Nudrat B. Majeed, Ahmad Imran Ghazi, Arslan Altaf Khan Swati, Kashif Bashir, Sabeel Tariq, Nasir Mehmood Chaudhary, Waqas Asghar Jathol, Qadeer Ahmad Kalyar and Jamshaid Alam, Advocates.
Respondent (Muhammad Hamza Shahbaz Sharif) by:	M/s Mansoor Usman Awan, Khalid Ishaq, Umair Ahmad, Malik Mohammad Aslam, Haris Irfan, Mian Shahzeb and Malik Muhammad Ashraf, Advocates.
Respondent (Dost Muhammad Mazari)	M/s Malik Muhammad Ahmad Khan. Usama Khawar Ghumman, Ramis Sohail, Barrister Jannat Ali Kalyar and Salman Ahmad Dogar, Advocates.
	<u>Federation:</u> M/s Mirza Nasar Ahmad, Additional Attorney General and Tahir Mahmood Ahmad Khokhar Deputy Attorney General.
	<u>Province:</u> Mr. Shahzad Shaukat, Advocate General, Punjab. M/s Jawad Yaqoob Malik and Barrister Qasim Ali Chowhan, Additional Advocates General, M/s Barrister Hassan Khalid Ranjha, Barrister Tayyab Jan and Sumera Hussain, Assistant Advocates General.
	<u>President of Pakistan.</u> Mr. Ahmed Awais, Advocate assisted by M/s Tipu Salman Makhdoom, Rai Shahid Saleem Khan, Ali Awais, Moeen Ahmad, Hussain Awais and Belal Awais, Advocates.
	<u>Governor of the Punjab:</u> M/s Ch. Sultan Mahmood and Samran Mushtaq, Advocates.

SHORT ORDER

For the reasons to be followed, decision on writ petitions and appeals heard by this Bench is as under: -

1. The decision by August Supreme Court of not counting votes of defecting members of a political party is squarely applicable to the election of Chief

Minister held on 14th April 2022. Relevant excerpt of which is reproduced hereunder: -

“3. Turning to the second question and keeping in mind the answer to the first, it is our view that the vote of any member (including a deemed member) of a Parliamentary Party in a House that is cast contrary to any direction issued by the latter in terms of para (b) of clause (1) of Article 63A cannot be counted and must be disregarded, and this is so regardless of whether the Party Head, subsequent to such vote, proceeds to take, or refrains from taking, action that would result in a declaration of defection. The second question referred to this Court stands answered in the foregoing terms.”

[emphasis supplied]

It is an undeniable fact that 25 members of Pakistan Tehreek-e-Insaaf had voted for Mr. Muhammad Hamza Shahbaz, whereas the party had nominated Mr. Pervaiz Ellahi as its candidate. Respondent's contention that the members have not defected in absence of a direction in terms of Article 63A(1)(b) has no force. The emphasised part of the order, *ibid*, discloses the intent behind the decision that possibility of defection from the Party line, policy or direction is to be curbed, at the time of poll by the Presiding Officer, regardless of declaration or action by Party Head. It is understood that presence in the House, enlistment on voter list and casting of vote is not prohibited, however the vote so cast, is held not countable.

2. The contention of quashing the Notification No. SO (CAB-II)2-12/2018(VOL-I) dated 30.04.2022, besides direction for second poll under proviso to Article 130(4) has not impressed us. We could, possibly direct fresh election after declaring the election as unlawful but it would nullify the direction by Apex Court to the state functionaries for conduct of election in accordance with the Constitution and the decision by learned Division Bench of this Court, appointing Deputy Speaker as presiding officer and directing for conduct of election on 16th April 2022. We cannot quash the Notification and ask the Presiding Officer to proceed under provisos to Article 130(4), when one of petitioner's counsel (Mr. Amir Rawn, Advocate) has pleaded that practically 195 votes were casted and the respondent's contention is that casted votes are 197. Even otherwise, after declaring that 25 votes could not be counted, we cannot assume the role of the Presiding Officer, under Article 130(4), to determine majority of countable casted votes. The Presiding Officer (Deputy

Speaker) of the election held on 16th April 2022 is, therefore, directed to recount votes after excluding 25 votes of the defecting members. As a consequence, if required majority, under Article 130(4), is not secured by any candidate, he shall proceed for second and further polls under its provisos for completing the process of election as required under Article 130(4), unless a candidate is elected by majority votes.

Though on recounting as directed, the consequential procedure and effect shall be in accordance with the Constitution and Rules made thereunder, nevertheless, for clarity it is explained that Hamza Shahbaz shall cease to be Chief Minister, if he loses the required majority after exclusion of 25 votes by Presiding Officer and the communication of his being elected candidate under Rule 21 along with Notification dated 30.04.2022 shall deem to have been quashed. In this eventuality, functions performed and powers exercised, by Hamza Shahbaz as Chief Minister and his cabinet, in accordance with law, shall be protected under the *de facto* doctrine.

3. The session, for this purpose, as originally called by the then Governor shall be resumed on 1st July 2022 (Friday) at 4:00 pm without fail. All the functionaries under the Constitution or law, within their respective share of powers, shall act jointly and severally to implement the directions by this Court. The session so resumed shall not be prorogued till the election process is completed and Presiding officer intimates the result of elected Chief Minister to the Governor under the Rule 21. The Governor shall preform his duty, under Article 130(5), of administering oath without any hesitation and by ignoring any apprehension regarding conduct election, at any time before 11:00 am very next day.

We cannot ignore the disorder in various sessions of the Provincial Assembly, therefore are constrained to observe and direct that any attempt of disorder from any quarter shall be taken as contempt of court and shall be proceeded accordingly by this Larger Bench on formal information by any person.

4. We allow writ petitions to the extent and manner noted above, however, rest of the prayers in the petitions are declined by dismissing the petitions to this extent.

The Appeals, regarding oath of Chief Minister by Speaker National Assembly, an ancillary matter, are hereby disposed of. The reasons and decision on the constitutional questions, pleaded and argued during proceedings, shall be released later.

5. We appreciate that on our verbal instructions, the print and electronic media has reported proceedings before this Bench professionally and carefully, however, some Vloggers have scandalised the proceedings recently. We, therefore, direct the FIA and PEMRA, having jurisdiction in the matter, to take legal action on their own notice and if so informed by any person. This Larger Bench shall initiate contempt proceedings for scandalizing the proceedings before it, if so brought formally before this Court by any person.

SADAQAT ALI KHAN
Judge

SHEHRAM SARWAR CH.
Judge

SHAHID JAMIL KHAN
Judge

I am partly not in agreement with the majority decision and have appended separate note.

MUHAMMAD SAJID MEHMOOD SETHI
Judge

I concur with the short order of the majority. However, I shall record my reasons separately.

TARIQ SALEEM SHEIKH
Judge

SAJJAD

MUHAMMAD SAJID MEHMOOD SETHI, J:- I have the privilege of going through the short or`der of my learned brothers. For detailed reasons to be recorded later, I concur with the majority decision to the extent that:

1. The short order dated 17.05.2022, passed by Hon'ble Apex Court in Constitution Petitions No.2 & 9 of 2022 and Presidential Reference No.1 of 2022, of not counting votes of defectors in view of Article 63A of the Constitution is applicable to the election of Chief Minister of the Punjab held on 16.04.2022.
2. The appeals concerning oath of respondent-Muhammad Hamza Shahbaz Sharif by Speaker National Assembly and other important questions raised therein are disposed of for the reasons to be released later.
3. Prayer to the extent of declaring the election illegal as a whole, in some Constitutional petitions, is declined.

However, I respectfully disagree with remaining majority decision and observe as under:-

- (i) 25-votes of defectors (Members of the Provincial Assembly from Pakistan Tehreek-e-Insaf), cast in favour of respondent-Muhammad Hamza Shahbaz Sharif, are admitted, so, there is no need to repeat the exercise of counting / re-counting. Deputy Speaker, Provincial Assembly of the Punjab shall conduct second poll in terms of first Proviso to Article 130(4) of the Constitution for the election of the office of Chief Minister. The second poll shall be held between the candidates who secured two highest numbers of votes in the first poll and the member securing majority of votes of the members present shall be called upon by the Governor of the Punjab to assume the office of Chief Minister after administering oath within the contemplation of Article 130(5) of the Constitution.
- (ii) Reasonable time is necessary enabling Members of the Provincial Assembly, hailing from far flung areas, to join the session. So it is appropriate that Provincial Assembly shall meet on 2nd July, 2022 at 4:00 p.m. The remaining directions in this regard, contained in majority decision, shall remain operative.

- (iii) The direction to hold second poll, in no way, would nullify any direction of Hon'ble Supreme Court as no role of Presiding Officer/State functionaries is being assumed for conduct of election and the Hon'ble Division Bench only ordered to ensure conduct of elections in a fair, transparent and impartial manner, strictly as per the dictates of the Constitution and the Rules of Procedure of the Provincial Assembly of the Punjab, 1997.
- (iv) Total membership of the Punjab Assembly is 371, the requisite majority to become Chief Minister is 186 votes. It is evident from record and admitted by Mr. Ali Zafar, Advocate for petitioners before this Bench as well as in his written submissions that respondent-Muhammad Hamza Shahbaz Sharif obtained 197 votes which fact is also confirmed by the respondents, therefore, stance of Mr. Amir Rawn, Advocate that actually 195 votes were cast in favour of respondent does not restrict this Bench to order for second poll as per the aforesaid provision of the Constitution so as to implement the judgment of the Hon'ble Apex Court straightaway, especially when petitions to the extent of challenging election as a whole stand dismissed by this Bench.
- (v) After excluding 25 votes of defectors, the remaining votes at the credit of respondent-Muhammad Hamza Shahbaz Sharif are 172, therefore, he is not member elected within the contemplation of Article 130(4) of the Constitution and being a stranger to the office of Chief Minister, cannot be allowed to hold the office; besides, it will give political advantage to respondent over the other contesting candidate, thus, office of a non-elected member cannot be protected which even otherwise appear to be against the mandate of Article 133 of the Constitution;
- (vi) Such disqualification will commence from the date when the Notification declaring the respondent as elected was issued, thus, the respondent is required to be de-notified;

CONCLUSION

- A. In view of the above, the Constitutional petitions are allowed in the manner that impugned letter dated 16.04.2022, addressed to

Governor of the Punjab by Deputy Speaker, pronouncing respondent-Muhammad Hamza Shahbaz Sharif as successful member elected for the office of Chief Minister, and Notifications dated 30.04.2022, regarding administration of oath by respondent-Muhammad Hamza Shahbaz Sharif as Chief Minister and cessation of Mr. Usman Ahmed Khan Buzdar to hold the office of Chief Minister are set aside being illegal and without lawful authority. Consequently, Mr. Usman Ahmed Khan Buzdar, is restored to the office of Chief Minister of the Punjab with immediate effect, as he was on said date.

- B. In the interest of the administration of the Province and its people, I put forth to invoke the de facto doctrine and declare that all acts / actions, otherwise legal and valid, executed between 30.04.2022 and today by the respondent-Muhammad Hamza Shahbaz Sharif as Chief Minister of the Punjab and his Cabinet, shall not be adversely affected by reason only of this order and proposed reasons.

(Muhammad Sajid Mehmood Sethi)
Judge