**In the Supreme Court of Pakistan**

In re:

**C.M.A. No. \_\_\_\_\_\_\_ of 2024**

in

**Civil Appeals No. 333 and 334 of 2024**

and

**Civil Petitions No. 1612 to 1617 of 2024**

**Sunni Ittihad Council and another**

v.

**Election Commission of Pakistan**

**Application on behalf of the Pakistan Tehreek-e-Insaf in terms of paragraph 10 of the short order dated 12.07.2024**

Respectfully sheweth

**Summary**

1. That the instant application is being filed by the Pakistan Tehreek-e-Insaf (“**PTI**”) through its Chairman, Barrister Gohar Ali Khan, who is duly authorized in this regard by virtue of PTI’s Constitution, is well conversant with the facts of the case and is competent and able to depose thereto.
2. That the PTI is filing the instant application in light of a letter dated 19 September 2024 by the Speaker of the National Assembly (the “**NA Speaker’s Letter**”) to the Election Commission of Pakistan (“**ECP**”) in which the Speaker has contended that, in light of the amendments to the Elections Act, 2017 (“**2017 Act**”) through the Elections (Second Amendment) Act, 2024 (the “**Amendment Act**”), the short order dated 12 July 2017 (“**Short Order**”) passed by this Court in the titled matter “*is now incapable of implementation*”. A similar letter has also been written to the ECP by the Speaker of the Punjab Assembly (the “**PA Speaker’s Letter**”). The NA Speaker’s Letter and the PA Speaker’s Letter (collectively, the “**Speakers’ Letters**”) are nothing but an attempt to obstruct implementation of the Short Order and fail to take into account that, as also clarified by this Court in the clarification order dated 14 September 2024 (the “**Clarification Order**”), the Short Order was passed “*on the constitutional plane, being the proper interpretation and understanding of the relevant constitutional provisions*”, and thus cannot be made ineffective by means of ordinary legislation such as the Amendment Act.

Copies of the Speakers’ Letters are attached as **Annexures A and** **B.**

**Facts**

1. That in paragraph 3 of the Short Order, this Court had declared that “*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*”. The Short Order had additionally held that PTI was “*entitled to reserved seats for women and minorities in the National Assembly*” on the basis of the 39 MNAs recognized as PTI returned MNAs in paragraph 7 of the Short Order and such of the 41 returned MNAs (identified in paragraph 8 of the Short Order) who issue statements of affiliation with PTI, which statements PTI certifies to be correct.
2. That ECP then filed an application in terms of paragraph 10 of the Short Order (CMA 7540/2024) claiming that while certifications in terms of paragraph 8 of the Short Order had been filed by PTI in respect of the 41 returned MNAs identified therein, the ECP was “*facing difficulty*” in implementing the Short Order “*as PTI at the moment has no organizational structure for confirmation of statements of MNAs/MPAs, purportedly belong* [sic] *to PTI*”.
3. That PTI filed a reply to ECP’s application through CMA 8139/2024.
4. That on 14 September 2024, this Court passed the Clarification Order which held that the certifications issued by PTI “*were correct and valid in terms of the Short Order and the continued denial and refusal of the Commission to accept the same, as and when filed, is constitutionally and legally incorrect and may expose the Commission to such further or other action as may be warranted in terms of the Constitution and the law.*”
5. That, importantly, the Clarification Order held as follows:

“*It was categorically declared in paragraph 8 of the Short Order that on filing the requisite statement and its confirmation by the political party concerned, the seat secured by such candidate shall be* ***forthwith deemed*** *to be a seat secured by that political party. Therefore,* ***upon submission of the declarations and certifications*** *referred to above, the position of the returned candidates (now respectively MNAs and MPAs)* ***immediately and ipso facto*** *stood determined and fixed as a matter of law as on those dates and* ***no subsequent act can alter what became, on the respective dates, past and closed transactions****. As per the position so determined, the said returned candidates were and are the returned candidates of PTI and thus members of the parliamentary party of PTI in the National Assembly and Provincial Assemblies concerned,* ***for all constitutional and legal purposes***.”

(Emphasis supplied)

1. That as far as the legal basis for the Short Order was concerned, the Clarification Order stated as follows:

“*These paragraphs, and the preceding paragraph 3 of the Short Order, sound on the constitutional plane, being the proper interpretation and understanding of the relevant constitutional provisions. The other paragraphs of the Short Order, including in particular paragraphs 8 and 10, are consequential upon what has been held and declared in the paragraphs just noted, and flow and emanate from, and give effect to, constitutional conclusions*.”

(Emphasis supplied)

1. That in light of the Short Order and the Clarification Order, the matter of affiliation of the 80 returned MNAs identified in paragraph 6 of the Short Order now stands finally determined. As clarified by the Clarification Order, such candidates “*were and are the returned candidates of PTI... for all constitutional legal purposes*”, and “*no subsequent acts”* can alter this position. The position having crystallised on the Constitutional plane, it cannot be modified by ordinary legislation such as the Amendment Act.
2. That the foregoing is entirely consistent with settled law that interpretations of Constitutional provisions by this Court, which the Short Order admittedly was, form part of the Constitution and cannot be undone through ordinary legislation. Reference in this regard may be made to, *inter alia*, Al-Jehad Trust v. Federation of Pakistan, PLD 1997 SC 84, 146, 193; Ghulam Mohiuddin v. Federation of Pakistan, PLD 2023 SC 825, 897 para 23; and T.U. Plastic Industry Co. (Pvt.) Ltd. v. Federation of Pakistan, 2019 PTD 1542, 1550, Saleem Ahmad Jan v. Deputy Commissioner, Islamabad, 2024 CLC 953, 963 para 15; Dickerson v. United States, 530 US 428, 437; 147 L Ed 2d 405, 415 citing City of Boerne v. Flores, 521 US 507, 517-521; 138 L Ed 2d 624. As such, contrary to what is claimed by the Speakers’ Letters, the Amendment Act imposes no hurdles in the “*implementation*” of the Short Order; the latter will prevail over the former.
3. That any law which falls foul of the Constitution, as interpreted by this Court, can be challenged even in collateral proceedings, as held in Muhammad Hanif Abbasi v. Jahangir Khan Tareen, PLD 2018 SC 114, 143; Saleem Ahmad Jan v. Deputy Commissioner, Islamabad, 2024 CLC 953, 961 paras 10, 11; Imran Ahmad Khan Niazi v. PEMRA, 2024 CLC 584, 592 para 15. In the words of Salahuddin Ahmed J in Manzoor Elahi v. Federation of Pakistan, PLD 1975 SC 66, 102: “*... the ‘will’ of the Constitution reigns supreme, and nobody can be permitted to flout the ‘will’. So far as a superior Court is concerned whenever and wherever it comes across anything done in violation of the provisions of the Constitution, it must declare such thing as void*.”
4. That, however, considering ECP’s prejudice towards the PTI, and its recalcitrance in implementing the Short Order, which has already been recognized in the Clarification Order, PTI fears that the ECP will use the Speakers’ Letters to wrongly refuse implementation of the Short Order and will instead declare PTI’s returned candidates as independents and will allocate reserved seats to other political parties on such basis. Thus, this application.
5. That it is also clear that the Speakers’ Letters, and the ECP conduct pursuant thereto, are a blatant and contumacious attempt at hindering and obstructing the implementation of the orders of this Court. As such, appropriate proceedings, including those for contempt of court, may, if considered appropriate, be initiated against the relevant personnel, especially the Chief Election Commissioner and Members of the ECP. However, that is a matter of the consideration of the court.

**Prayer**

In light of the above, it is most respectfully prayed that this Court may graciously be pleased to clarify that:

1. the Elections (Second Amendment) Act, 2024, has no bearing or effect on the binding nature of the Short Order dated 12 July 2024 and the implementation thereof cannot be refused on the basis of the said statute;
2. the NA Speaker’s Letter and the PA Speaker’s Letter do not set out the correct Constitutional and legal position, have no legal effect on the Short Order dated 12 July 2024 and are liable to be ignored by the Election Commission of Pakistan;
3. the Election Commission of Pakistan is bound to implement the Short Order dated 12 July 2024, as clarified by the Clarification Order dated 14 September 2024, in letter and spirit.
4. Pending determination of this matter, ECP may kindly be restrained from allocating the subject reserved seats to any other party;

Such other relief as is deemed just and fit in all the circumstances of the case may also graciously be granted.

**Pakistan Tehreek-e-Insaf**

**through**

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| **Drawn and settled by** |  | **Filed by** |
| **Uzair Karamat Bhandari**  Advocate Supreme Court  Bhandari, Naqvi Riaz  15 Zafar Ali Road, Gulberg V, Lahore  Cell: 0300-9446456 |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Advocate on Record |