

## J U D G M E N T

DETAILED REASONS OF THE SHORT ORDER ANNOUNCED ON 12.7.2024 IN CIVIL APPEAL NO. 333/2024, CMA NO. 2920/2024 IN CIVIL APPEAL NO.333/2024, CIVIL APPEAL NO. 334/2024, CIVIL PETITION NOS. 1612 TO 1617 OF 2024 AND CMA NO.3554 OF 2024 IN CP NIL OF 2024.

AMIN-UD-DIN KHAN, J.  
NAEEM AKHTAR AFGHAN, J.

The matter in issue relates to seats reserved for women and non-Muslims in the National Assembly as well as Provincial Assemblies in accordance with Articles 51 and 106 of the Constitution of Islamic Republic of Pakistan, 1973 (**'the Constitution'**) after the general elections which were held on 08.02.2024. After the elections, Sunni Ittehad Council (**'SIC'**)<sup>1</sup> wrote four letters, all dated 21.2.2024 to the Election Commission of Pakistan (**'ECP'**) claiming that after the General Elections held on 8.2.2024, independent candidates whose notifications as returned candidates to the National Assembly/or any one of three Provincial Assemblies i.e. Punjab, KPK and Sindh were issued by the ECP on different dates, joined SIC as a Political Party, accordingly their consent forms/affidavits were filed by the SIC and received in the Commission vide receipt diary numbers mentioned in the letters. The last paragraph of the letters states as follows:

*"we look forward to hearing from you at your earliest convenience so that we may submit our priority list to the Commission for notifications of our MNAs (MPAs) on these reserved seats".*

These four letters are scanned here for convenience and to consider the admitted position between the parties to the lis with regard to joining of independent returned candidates to SIC.

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<sup>1</sup> A registered Political Party in the list of ECP.

**SUNNI ITTEHAD COUNCIL**  
3- MALIK ROAD, NEAR BANKING COURT, FAISALABAD

Date: \_\_\_\_\_ Ref: \_\_\_\_\_

February 21 2024

Election Commission of Pakistan,  
ECP House, Constitution Avenue,  
Islamabad

Subject: - Due Share of Sunni Ittehad Council in the seats reserved in NA

Dear Sir,

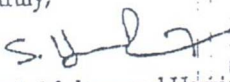
After the General Elections held on February 08, 2024, independent candidates whose nominations as returned candidates to the National Assembly were issued by ECP on different dates, joined Sunni Ittehad Council ('SIC') as a political party. Accordingly their consent forms/affidavits were filed by SIC and received in this Commission vide the followings receipts:

1. List of 50 MNAs vide Diary No.2394, dt.19-02-2024
2. List of 29 MNAs vide Diary No.2488, dt.20-02-2024
3. List of 03 MNAs vide Diary No.2502, dt.20-02-2024
4. List of 01 MNA vide Diary No.2501, dt.20-02-2024
5. List of 03 MNAs vide Diary No.2510, dt.21-02-2024



That is a total of 86 MNAs in the National Assembly on the strength of SIC. You are therefore requested to kindly issue necessary directions to allocate to SIC, its due share in the 'seats reserved in the National Assembly for women and non-Muslim' on the basis of the aforesaid strength in that National Assembly.

We look forward to hearing from you at your earliest convenience so that we may submit our priority list to the Commission for notifications of our MNAs on these reserved seats.

Yours truly,

  
Sahibzada Muhammad Hamid Raza  
Chairman, SIC Pakistan

Sahibzada  
Muhammad Hamid Raza  
Chairman  
Sunni Ittehad Council



# SUNNI ITTEHAD COUNCIL

3- MALIK ROAD, NEAR BANKING COURT, FAISALABAD



Date: \_\_\_\_\_

Ref: \_\_\_\_\_

February 21 2024

Election Commission of Pakistan,  
ECP House, Constitution Avenue,  
Islamabad

MPA Punjab

Subject: - Due Share of Sunni Ittehad Council in the seats reserved in PP

Dear Sir,

After the General Elections held on February 08, 2024, independents candidates whose nominations as returned candidates to the Punjab Provincial Assembly were issued by ECP on different dates, joined Sunni Ittehad Council ('SIC') as a political party. Accordingly their consent forms/affidavits were filed by SIC and received in this Commission vide the followings receipts:

1. List of 104 MPAs vide Dairy No.2500, dt.20-02-2024
2. List of 02 MPAs vide Dairy No.2505, dt.21-02-2024
3. List of 01 MPAs vide Dairy No.2589 dt.21-02-2024

That is a total of 107 MPAs in the Punjab Provincial Assembly on the strength of SIC. You are therefore requested to kindly issue necessary directions to allocate to SIC, its due share in the 'seats reserved in the Punjab Provincial Assembly for women and non-Muslim' on the basis of the aforesaid strength in that Punjab Provincial Assembly.

We look forward to hearing from you at your earliest convenience so that we may submit our priority list to the Commission for notifications of our MPAs on these reserved seats.

Yours truly,

S. H. Raza

Sahibzada Muhammad Hamid Raza  
Chairman, SIC Pakistan

Sahibzada  
Muhammad Hamid Raza  
Chairman  
Sunni Ittehad Council



Signature

# SUNNI ITTEHAD COUNCIL

3- MALIK ROAD, NEAR BANKING COURT, FAISALABAD

Ref:

February 21 2024

Election Commission of Pakistan,  
ECP House, Constitution Avenue,  
Islamabad

MPA, KPK

Subject: - Due Share of Sunni Ittehad Council in the seats reserved in PK

Dear Sir,

After the General Elections held on February 08, 2024, independent candidates whose nominations as returned candidates to the KPK Provincial Assembly were issued by ECP on different dates, joined Sunni Ittehad Council (SIC) as a political party. Accordingly their consent forms/affidavits were filed by SIC and received in this Commission vide the following receipts:

1. List of 85 MPAs vide Diary No. 2503, dt. 20-02-2024
2. List of 02 MPAs vide Diary No. 2573, dt. 21-02-2024
3. List of 03 MPAs vide Diary No. 2591, dt. 21-02-2024

That is a total of 90 MPAs in the KPK Provincial Assembly on the strength of SIC. You are therefore requested to kindly issue necessary directions to allocate to SIC, its due share in the 'seats reserved in the KPK Provincial Assembly for women and non-Muslim' on the basis of the aforesaid strength in that KPK Provincial Assembly.

We look forward to hearing from you at your earliest convenience so that we may submit our priority list to the Commission for notifications of our MPAs on these reserved seats.

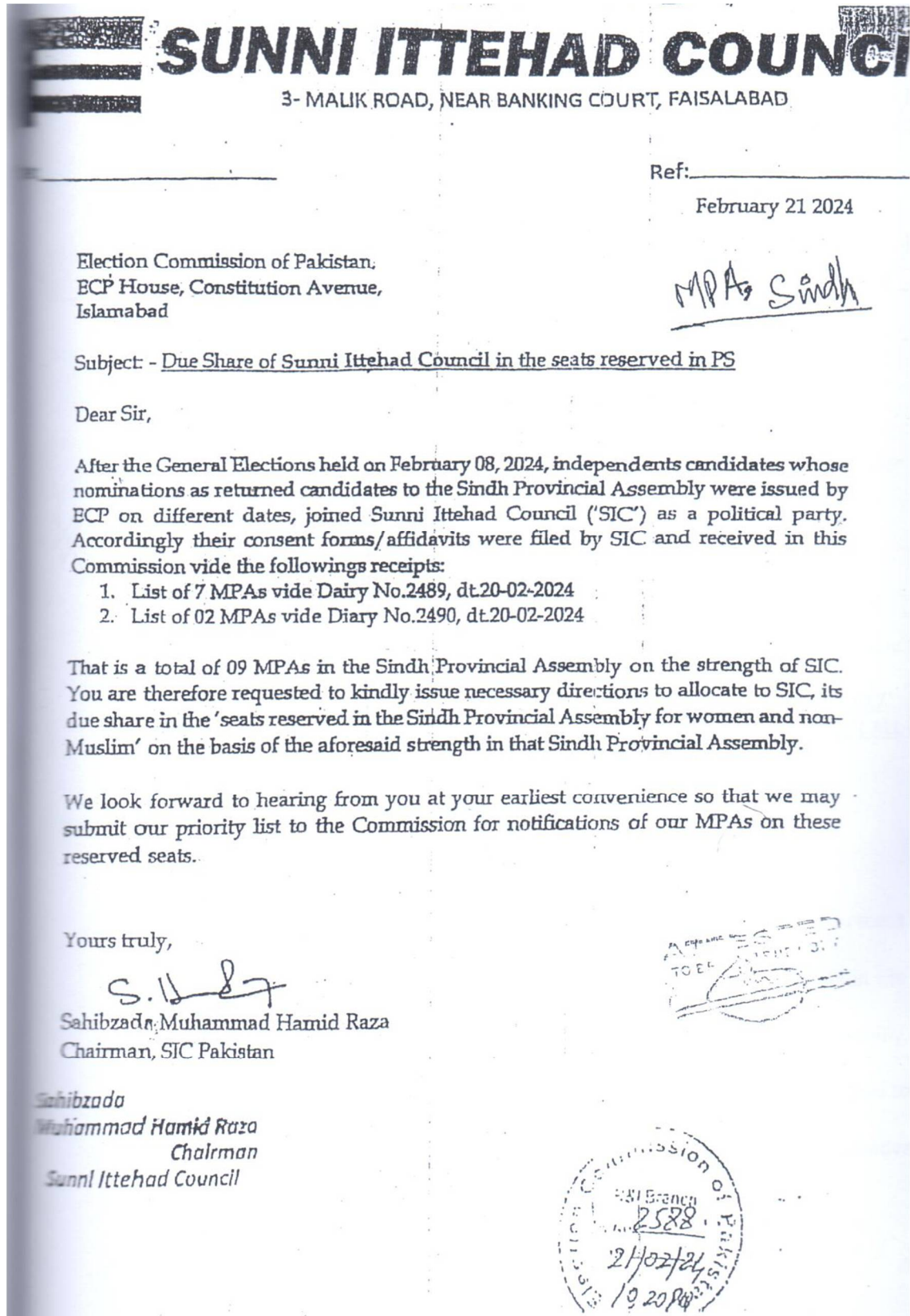
Yours truly,

S. H. Raza  
Sahibzada Muhammad Hamid Raza  
Chairman, SIC Pakistan

Sahibzada  
Muhammad Hamid Raza  
Chairman  
Sunni Ittehad Council







Letter dated 26.2.2024 is also scanned to know the admitted position that no candidate contested general election on SIC symbol.

**SUNNI ITTEHAD COUNCIL**  
3- MALIK ROAD, NEAR BANKING COURT, FAISALABAD

Date: 26-02-24 Ref: ECP-5/2024


To  
Election Commission of Pakistan

Subject:- **IMPLEMENTATION OF SECTION 206 OF ELECTIONS ACT, 2017.**

Reference to Letter No. F 6 (1) / 2023- Confd, dated 23. 02. 2024 on the above mentioned subject wherein the undersigned has been directed to submit the List of Women Candidates under section 206 of Elections Act, 2017 to the commission.

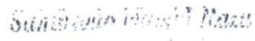
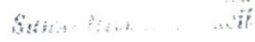
The undersigned submits that since no candidate contested in the General Elections 2024 on the symbol of Sunni Ittehad Council, therefore, the list regarding women candidates does not exist, hence not submitted.

Kind Regards

  
Sahibzada Muhammad Hamid Raza  
Chairman  
Sunni Ittehad Council

Copy to:

1. The Director general (Law) ECP secretariat Islamabad
2. Muhammad Mehtab Ahmed Khan  
Assistant Director (Confid.)

CONFIDENTIAL BRANCH  
By NO. 75  
Dated: 27-02-2024

2. A significant fact and an admitted position is that SIC did not participate in the said General Elections as a political party. Not a single candidate participated as a party candidate and even the Chairman of SIC/appellant No.2 participated as an independent candidate in the general elections and was declared a returned candidate as such. For the distribution of reserved seats for women and non-Muslims claimed by various political parties on the basis of proportional representation system of political parties, list of candidates, the matter was fixed by the ECP for hearing before the Full

Election Commission comprising of the Chairman as well as four members and was heard and decided by the Commission through its order announced on 1.3.2024. They held that SIC was not entitled to claim the quota for reserved seats for women and non-Muslims. The said order was challenged by the appellants through two Writ Petitions bearing No. 1272-P of 2024 and 1339-P of 2024. Both the writ petitions were heard and dismissed vide the consolidated judgment announced on 14.3.2024 as well as the judgment prepared and signed on 25.3.2024. Against the said judgment, two petitions for leave to appeal i.e. CP No.1328 of 2024 as well as CP.No.1329 of 2024 were filed, which were fixed before the learned three member bench of this Court on 6.5.2024 in which leave was granted as well as it was referred to the Committee constituted under section 4 of the Supreme Court (Practice and Procedure) Act, 2023 for constitution of a larger bench to hear the appeals which were ordered to be fixed for hearing on 03.06.2024.

3. A larger bench of 13 members was constituted by the Committee and the matter was heard by the learned 13 members bench on various dates i.e. 03.06.2024, 04.06.2024, 24.06.2024, 25.06.2024, 27.06.2024, 01.07.2024, 02.07.2024 and the last hearing was on 09.7.2024. The short order was announced on 12.07.2024, the majority's order is reproduced:

**"Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan, JJ.:** For detailed reasons to be recorded later and subject to what is set out therein by way of amplification and/or explanation or otherwise, these appeals are decided in the following terms:

1. The impugned judgment dated 25.03.2024 of the learned Full Bench of the High Court is set aside to the extent it is or may be inconsistent with this Order or the detailed reasons.
2. The order of the Election Commission of Pakistan ("Commission") dated 01.03.2024 ("Impugned Order") is

declared to be ultra vires the Constitution, without lawful authority and of no legal effect.

3. The notifications (of various dates) whereby the persons respectively mentioned therein (being the persons identified in the Commission's notification No.F.5(1)/2024-Cord. dated 13.05.2024) have been declared to be returned candidates for reserved seats for women and minorities in the National and Provincial Assemblies are declared to be ultra vires the Constitution, without lawful authority and of no legal effect, and are quashed from 06.05.2024 onwards, being the date an interim order was made by the Court in CPLA Nos. 1328-9 of 2024, the leave petitions out of which the instant appeals arise.

4. It is declared that the lack or denial of an election symbol does not in any manner affect the constitutional and legal rights of a political party to participate in an election (whether general or bye) and to field candidates and the Commission is under a constitutional duty to act, and construe and apply all statutory provisions, accordingly.

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 Insaf ("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 herein after provided.

6. During the course of the hearing of the instant appeals, on 27.06.2024, learned counsel for the Commission placed before the Court a list ("the List") of 80 returned candidates for the National Assembly (now MNAs), setting out in tabular form particulars relating to their election. Learned counsel made a categorical statement that the Commission stood by the data so provided to the Court. In particular, the List contained three columns marked as follows: (i) "Statement (on nomination form) given in declaration and oath by the person nominated (i.e., 'I belong to')"; (ii) "Certificate of party affiliation under Section 66 of the Elections Act, 2017"; and (iii) "Statutory Declaration/affidavit accompanying section 66 certificate".

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 of 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 retuned 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 s. 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 apply 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 Pakhtunkwa, 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.

**Annexure-A**

*(Names of Candidates Affiliated with the Pakistan Tehreek-e-Insaf as per the list verified from the data provided by ECP<sup>2</sup>)*

Sr. No.	Number and Name of the	Name of the Candidate
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1 CMA No.5924 of 2024 consists of Volume (I-VI).

	Constituency	
1.	NA-2 (Swat-I)	Amjad Ali Khan
2.	NA-3 (Swat-II)	Saleem Rehman
3.	NA-4 (Swat-III)	Sohail Sultan
4.	NA-6 (Lower Dir-I)	Muhammad Bashir Khan
5.	NA-7 (Lower Dir-II)	Mehboob Shah
6.	NA-9 (Malakand)	Junaid Akbar
7.	NA-17 (Abbottabad-II)	Ali Khan Jadoon
8.	NA-19 (Swabi-I)	Asad Qaiser
9.	NA-20 (Swabi-II)	Shahram Khan
10.	NA-21 (Mardan-I)	Mujahid Ali
11.	NA-24 (Charsadda-I)	Anwar Taj
12.	NA-25 (Charsadda-II)	Fazal Muhammad Khan
13.	NA-29 (Peshawar-II)	Arbab Amir Ayub
14.	NA-30 (Peshawar-III)	Shandana Gulzar Khan
15.	NA-31 (Peshawar-IV)	Sher Ali Arbab
16.	NA-32 (Peshawar-V)	Asif Khan
17.	NA-33 (Nowshera-I)	Syed Shah Ahad Ali Shah
18.	NA-38 (Karak)	Shahid Ahmad
19.	NA-39 (Bannu)	Nasim Ali Shah
20.	NA-41 (Lakki Marwat)	Sher Afzal Khan
21.	NA-83 (Sargodha-II)	Usama Ahmed Mela
22.	NA-84 (Sargodha-III)	Shafqat Abbas
23.	NA-95 (Faisalabad-I)	Ali Afzal Sahi
24.	NA-96 (Faisalabad-II)	Rai Haider Ali Khan
25.	NA-100 (Faisalabad-VI)	Nisar Ahmed
26.	NA-101 (Faisalabad-VII)	Rana Atif
27.	NA-102 (Faisalabad-VIII)	Changaze Ahmad Khan
28.	NA-103 (Faisalabad-IX)	Muhammad Ali Sarfraz
29.	NA-115 (Sheikhupura-III)	Khurram Shahzad Virk
30.	NA-122 (Lahore-VI)	Sardar Muhammad Latif Khan Khosa
31.	NA-143 (Sahiwal-III)	Rai Hassan Nawaz Khan
32.	NA-149 (Multan-II)	Malik Muhammad Aamir Dogar
33.	NA-150 (Multan-III)	Makhdoom Zain Hussain Qureshi
34.	NA-154 (Lodhran-I)	Rana Muhammad Faraz Noon
35.	NA-171 (Rahim Yar Khan-III)	Mumtaz Mustafa
36.	NA-179 (Kot Addu-I)	Muhammad Shabbir Ali Qureshi
37.	NA-181 (Layyah-I)	Umber Majeed
38.	NA-182 (Layyah-II)	Awais Haider Jakhar
39.	NA-185 (D.G. Khan-II)	Zartaj Gul

Annexure-B

(Names of Independent Candidates)

Sr. No.	Number and Name of the Constituency	Name of the Candidate
1.	NA-1 (Chitral Upper-cum-Chitral Lower)	Abdul Latif
2.	NA-5 (Upper Dir)	Sahibzada Sibghatullah

3.	NA-13 (Battagram)	Muhammad Nawaz Khan
4.	NA-22 (Mardan-II)	Muhammad Atif
5.	NA-23 (Mardan-III)	Ali Muhammad
6.	NA-26 (Mohmand)	Sajid Khan
7.	NA-27 (Khyber)	Muhammad Iqbal Khan
8.	NA-34 (Nowshera-II)	Zulfiqar Ali
9.	NA-35 (Kohat)	Shehryar Afridi
10.	NA-36 (Hangu-cum-Orakzai)	Yousaf Khan
11.	NA-42 (South Waziristan Upper-cum-South Waziristan Lower)	Zubair Khan
12.	NA-66 (Wazirabad)	Mohammad Ahmed Chattha
13.	NA-67 (Hafizabad)	Aniga Mehdi
14.	NA-68 (Mandi Bahauddin-I)	Haji Imtiaz Ahmed Choudhry
15.	NA-78 (Gujranwala-II)	Muhammad Mobeen Arif
16.	NA-79 (Gujranwala-III)	Ihsan Ullah Virk
17.	NA-181 (Gujranwala-V)	Ch. Bilal Ejaz
18.	NA-86 (Sargodha-V)	Muhammad Miqdad Ali Khan
19.	NA-89 (Mianwali-I)	Muhammad Jamal Ahsan Khan
20.	NA-90 (Mianwali-II)	Umair Khan Niazi
21.	NA-91 (Bhakkar-I)	M. Sana Ullah Khan Mastikhel
22.	NA-93 (Chiniot-I)	Ghulam Muhammad
23.	NA-97 (Faisalabad-III)	Muhammad Saad Ullah
24.	NA-99 (Faisalabad-V)	Umar Farooq
25.	NA-105 (Toba Tek Singh-I)	Usama Hamza
26.	NA-107 (Toba Tek Singh-III)	Mohammad Riaz Khan
27.	NA-108 (Jhang-I)	Muhammad Mahbob Sultan
28.	NA-109 (Jhang-II)	Waqas Akram
29.	NA-110 (Jhang-III)	Muhammad Ameer Sultan
30.	NA-111 (Nankana Sahib-I)	Muhammad Arshad Sahi
31.	NA-116 (Sheikhupura-IV)	Khurram Munawar Manj
32.	NA-129 (Lahore-XIII)	Mian Muhammad Azhar
33.	NA-133 (Kasur-III)	Azim Uddin Zahid
34.	NA-137 (Okara-III)	Syed Raza Ali Gillani
35.	NA-156 (Vehari-I)	Ayesha Nazir
36.	NA-170 (Rahim Yar Khan-II)	Mian Ghous Muhammad
37.	NA-172 (Rahim Yar Khan-IV)	Javaid Iqbal
38.	NA-175 (Muzaffargarh-I)	Jamshaid Ahmad
39.	NA-177 (Muzaffargarh-III)	Muhammad Moazzam Ali Khan
40.	NA-180 (Kot Addu-II)	Fiaz Hussain
41.	NA-183 (Taunsa)	Khawaja Sheraz Mehmood

4. Therefore, the majority's order, which became the Order of the Court was noted as under:

**Order of the Court**

By a majority of 8 (comprising Syed Mansoor Ali Shah, Munib Akhtar, Muhammad Ali Mazhar, Ayesha A. Malik, Athar Minallah, Syed Hasan Azhar Rizvi, Shahid Waheed and Irfan Saadat Khan, JJ) the instant appeals are decided

in terms of the short order of the majority of even date (and the other petitions including leave petitions and C.M.As are decided accordingly).

I agree with the short order authored by Justice Jamal Khan Mandokhail.

Justice Qazi Faez Isa, CJ.

Justice Syed Mansoor Ali Shah, J.

Justice Munib Akhtar, J.

With utmost respect I differ. My short order is appended herewith.

Justice Yahya Afridi, J.

I have attached my separate short order dismissing all the appeals, petitions and applications and uphold the impugned judgment of the Peshawar H.C.

Justice Amin-ud-Din Khan, J.

I have appended my separate order.

Justice Jamal Khan Mandokhail, J.

Justice Muhammad Ali Mazhar, J.

Justice Ayesha A. Malik, J.

Justice Athar Minallah, J.

Justice Syed Hasan Azhar Rizvi, J.

Justice Shahid Waheed, J.

Justice Irfan Saadat Khan, J.

I agree with the short order passed by J. Amin-ud-Din Khan.

Justice Naeem Akhtar Afghan, J.

5. The detailed majority judgment has not yet come to surface, despite the expiry of the 15 days mentioned therein. The delay may render infructuous, the review petition filed against the order of the court. Therefore, on the basis of the short order we have been compelled to record our findings, which are in two parts. The first part states why we are unable to agree with the majority decision and the second part states our decision on the appeals based on the merits of the case.



6. The admitted position is that the subject matter in the instant litigation before this Court was petitions filed under Article 185(3) of the **Constitution** against the judgment of the five member bench of the Peshawar High Court whereby writ petitions filed by the appellants were dismissed. Leave was granted by this Court vide order dated 6.5.2024, which is reproduced:

“Learned counsel for the petitioners submits that allocation of the reserved seats for women and non-Muslims to the political parties other than the petitioner, Sunni Ittehad Council (**“SIC”**), is in violation of Article 51(6)(d) & (e) of the Constitution of the Islamic Republic of Pakistan (**“Constitution”**) which provides for proportional representation system on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly. Once a political party has been allocated the reserved seats on the basis of proportional representation system, the remaining seats cannot be re-allocated to the same political party. As per Letter issued by the Election Commission of Pakistan dated 25.04.2024, he submits, it has been acknowledged that SIC is a parliamentary party having 82 general seats in the National Assembly. Therefore, SIC is entitled to reserved seats as per the proportional representation system in terms of Articles 51(6)(d) & (e) and 106(2)(c) of the Constitution.

2. On the other hand, Mr. Sikandar Bashir Mohmand, learned counsel for the Election Commission of Pakistan (**“ECP”**), submits that according to Articles 51 and 106 of the Constitution the reserved seats have to be allocated on the proportional representation system only to those political parties who have contested the general elections and won at least one seat in the said elections. Since SIC did not contest the elections and did not win even a single seat in the general elections, it cannot be considered as a political party in terms of Articles 51(6)(d) & (e) and 106(2)(c) of the Constitution, for the purpose of allocating the reserved seats. Learned Attorney-General for Pakistan (**“AGP”**) supports the contentions of the learned counsel for the ECP. Both the learned counsel for ECP and the learned AGP frankly concede that this is a case of first impression involving questions of constitutional law that have not been addressed by the Court earlier.

3. The above questions of allocation of reserved seats in the National and Provincial Assemblies touch upon the foundational constitutional concept of a parliamentary democracy that the voice of the electorate is truly reflected in the composition of the assemblies. Democratic mandate necessitates that the allocation of reserved seats enhances the representativeness of the electorate in the assemblies and upholds the principles of fairness and transparency in the electoral process. It is paramount to prioritize the

integrity of the elections so that the Parliament remains a true reflection of the will of the people.

4. Therefore, leave to appeal is granted to consider, amongst others, the said questions. The appeals are to be posted for hearing on 03.06.2024. The appeal arising out of these petitions will be heard on the basis of available record; however, both sides are at liberty to file any additional documents, which were part of the record before the fora below but have not been filed with instant petitions.

5. Notices under Order XXVII-A CPC be issued to the learned AGP as well as the Advocates-General of the Provinces.

**CMA 2920 of 2024:**

6. Notice for the same date. In the meanwhile, operation of the impugned judgment of the Peshawar High Court dated 25.03.2024, as well as, the order of the Election Commission of Pakistan dated 01.03.2024 is suspended. It is, however, clarified that this interim order relates to the disputed seats only, i.e., the reserved seats allocated over and above the initially allocated reserved seats to the political parties. It is also clarified that this order is to operate prospectively, w.e.f., from today.

**CMA 3554/2024:**

7. Notice. To be heard alongwith CPLA No.1328/2024 on 03.06.2024.

8. Since the questions under consideration require constitutional interpretation, the matter be placed before the Committee under Section 4 of the Supreme Court (Practice and Procedure) Act, 2023 for constitution of a larger bench to hear the appeals."

7. The independent returned candidates joined the appellant, and their joining was duly processed, accepted and notified by the ECP with regard to the National Assembly as well as the three Provincial Assemblies. None has ever disputed the joining to SIC of the 39 and 41 persons mentioned in Annexure A & B of the majority short order within three days, as prescribed by the Constitution. Notifications as the returned independent candidates in the general elections were issued and their submitting affidavit and requisite documents etc. for joining SIC. The other contesting political parties, who were parties before the ECP as well as the High Court and before this Court also did not dispute their joining SIC. SIC does not dispute their joining SIC.

The said persons have also never disputed their joining the SIC. Furthermore, PTI was not a party to these proceedings starting from the ECP, then before the High Court nor before this Court. Even at the time of the announcement of the short order neither any person from PTI nor PTI joined the proceedings. Not a single one of said 80 persons, mentioned in the short order, were parties before this Court collectively or in their individual capacity. They were never heard. The claim of the SIC before the ECP was that SIC was entitled to the reserved seats on the basis of the said persons joining SIC.

8. To appreciate the arguments advanced before the Court and for giving clear picture and understanding to a person reading this judgment, it will be appropriate that most relevant portions of Articles of the Constitution i.e. Article 51(6)(d) & (e) and Article 106 and section 104 of the Elections Act, 2017 are reproduced:

**"Article 51**

- (1). -----
- (2). -----
- (3). -----
- (4). -----
- (5). -----
- (6) For the purpose of election to the National Assembly,--
  - (a) -----
  - (b) -----
  - (c) -----
  - (d) members to the seats reserved for women which are allocated to a Province under clause (3) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly:

Provided that for the purpose of this paragraph the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates; and

- (e) members to the seats reserved for non-Muslims shall be elected in accordance with law through proportional representation system of political parties'

lists of candidates on the basis of total number of general seats won by each political party in the National Assembly:

Provided that for the purpose of this paragraph the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates."

**"Article 106**

- (1) -----
- (2) -----
- (3) For the purpose of election to a Provincial Assembly,--
  - (a) -----
  - (b) -----
  - (c) the members to fill seats reserved for women and non-Muslims allocated to a Province under clause (1) shall be elected in accordance with law through proportional representation system of political parties' lists of candidates on the basis of the total number of general seats secured by each political party in the Provincial Assembly:

Provided that for the purpose of this sub-clause, the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates."

and

**"Section 104.** Party lists for reserved seats.—(1) For the purpose of election to seats reserved for women and non-Muslims in an Assembly, the political parties contesting election for such seats shall, within the period fixed by the Commission for submission of nomination papers, file separate lists of their candidates in order to priority for seats reserved for women and non-Muslims with the Commission or, as it may direct, with the Provincial Election Commissioner or other authorized officer of the Commission, who shall forthwith cause such lists to be published for information of the public:

Provided that the list submitted by a political party shall not be subject to change or alteration either in the order of priority or through addition of new names in the list or omission of any name after expiry of the date of submission of nomination papers.

- (2). The parties' lists referred to in sub-section (1) may contain as many names of additional candidates as a political party may deem necessary for contesting



seats reserved for women and non-Muslims, to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seats during the term of an Assembly.

(3). A candidate to a seat reserved for women or non-Muslims shall file the nomination papers on the Form on or before the last date fixed for filing of nomination papers for the election and the nomination papers shall, as nearly as possible, be scrutinized in the same manner as nomination papers of candidates on general seats are scrutinized under section 62.

(4). If, at any time, the party list is exhausted, the political party may submit a name for any vacancy which may occur thereafter and the provisions of sub-sections (1), (2) and (3) shall, as nearly as possible, apply to fill such vacancy.

(5). Where a seat reserved for women or non-Muslims in an Assembly falls vacant as a result of death, resignation or disqualification of a Member, it shall be filled in by the next person in order of precedence from the party's list of candidates submitted to the Commission under sub-section (1).

(6). Before notifying the name of the next person in order of priority from the party list, such person shall submit a declaration on oath that since the filing of his nomination paper, he has not become subject to any disqualification contained in Article 63.

(7). A candidate contesting election on a seat reserved for women or non-Muslims shall, along with the nomination papers and its annexures, submit to the Returning Officer appointed by the Commission in this behalf ----

(a). a copy of the party list of the candidate's political party for such seats;

(b). declarations and statements in support of the nomination; and

(c). proof of deposit of the fee required for filing nomination papers.

(8). Where there is equality of share on a reserved seat between two or more political parties, the Returning Officer shall declare the returned candidate by drawing of lots."

9. During the hearing of the appeals before this Court on the above-said eight dates of hearing by the thirteen member Bench of this Court, most of the time was consumed by the queries made by various members of the Bench to the learned counsel for the appellant as well as to Mr. Salman Akram Raja, who moved CMA No. 3554 of 2024 on behalf of Kanwal Shauzab for permission to file CPLA, and in paragraph No. 2 of CPLA No.NIL of 2024 it was pleaded that:

“the petitioner expected to be considered, and to be nominated as candidate of the Sunni Ittehad Council for seats reserved for women in the Khyber Pakhtunkhwa Provincial Assembly as well as the National Assembly of Pakistan.”

She also sought leave against the judgment of the five member bench of the Peshawar High Court (wrongly mentioned as Division Bench). On query by some members of the Bench, whether the reserved seats can be given to PTI in the peculiar circumstances of this case, none of the counsels agreed to this, though the suggestion was made by some of the members of the Bench repeatedly to the learned counsel for the appellant as well as to Mr. Salman Akram Raja. I recall that Mr. Salman Akram Raja replied that he will not press that the seats be given to PTI, but the Court has the power to do so. In these circumstances, we have thoroughly considered the hurdles before us which forced us to disagree with the majority decision and these are listed hereunder:

- i. PTI was not before this Court nor before the High Court nor even before the ECP;
- ii. The joining of 80 independent returned candidates to SIC was never disputed by anyone;
- iii. The said 39 plus 41 persons as mentioned in the majority's short order did not come before this Court nor were they heard. The majority short order decides about their rights or luck thereof without their consent or even hearing them. Their joining of SIC has been undone without such prayer of anyone before this Court, or before the High Court.
- iv. Not only the appeals filed by the SIC have been dismissed by the majority order, as no relief has been granted to SIC but independent members who joined the SIC have also been snatched from the SIC and that too without hearing the above said 39 plus 41 persons.
- v. Unless Articles 51, 106 and 63 of Constitution are suspended and in their place new articles in consonance with the relief granted through the majority order are inserted in the Constitution, the relief which has been granted to the PTI cannot be granted.
- vi. Article 175 of the Constitution has been ignored.

- vii. The constitutional limits of jurisdiction under Article 185 of the Constitution have been ignored.
- viii. All substantive as well as procedural law with regard to parties to lis have been ignored.
- ix. The relief granted to PTI will be self-created and has been carved out relief by the majority, as none has claimed this relief in these proceedings.
- x. Not only SIC has not been granted relief claimed by it but all those who have joined it have been taken off and for the rest of the tenure of the National as well as Provincial assemblies SIC has been kicked out from the assemblies.
- xi. For a specific date i.e. 6.5.2024 the notification of returned candidates for special seats has been quashed, however before that date their notification and acts are held to be valid. It is incomprehensible how can this be done, as it is without any backing of Constitution.
- xii. The majority judgment virtually declares that said 80 persons are not honest and ameen in accordance with Article 62(1)(f) of the Constitution.
- xiii. All the returned candidates for the reserved seats of other parties who have been notified were not issued notices and provided an opportunity of hearing.
- xiv. 41 candidates mentioned in Annexure-B have been given the choice of joining any other Political Party.
- xv. The issue was simply the matter of post general elections directly related to the reserved seats for both women and non-Muslims on the basis of proportional representation system of political parties' lists of candidates under Articles 51 and 106 of the Constitution. The majority's short order in effect created a new parliamentary party in the National Assembly and three Provincial Assemblies and since this related to the pre election process, it is clearly and unequivocally not an issue before this Court. In the process of the general elections all events are scheduled and time-bound and the same cannot be reversed.
- xvi. The judgment of the full Bench of the Peshawar High Court has been set aside by the majority's short order to the extent, that it is or may be inconsistent of the majority's short order. This is incomprehensible as none of the rights which have now been created in favour of PTI by the majority's short order were in issue before the High Court,

nor had been adjudicated upon. The High Court had simply dismissed SIC's claim to the reserved seats, which was the *lis* before the High Court.

In conclusion, it is clear that the superstructure created by the majority's short order, does not in any way come within the ambit of the jurisdiction vested in this Court or in the Constitution.

10. Vires of section 104 of the Election Act, 2017 was initially challenged before the High Court. Even in the pleadings before this Court the vires was challenged, but at the time of the hearing by the thirteen member bench, the learned counsel for the appellant categorically stated more than once before the Court and when the court inquired from him whether the appellants still press their challenge to the vires of section 104 of the Act and the learned counsel categorically stated that he does not challenge the vires of section 104 and he will instead submit his arguments with regard to the interpretation of section 104 of the Elections Act, 2017. Unless Section 104 as well as the relevant rules are also suspended and new sections/rules are substituted, the majority order cannot be passed.

11. We are always conscious of our jurisdiction before hearing a matter fixed before us whether as a Judge of the High Court or that of this Court. In the instant matter, we are conscious that we are sitting in a jurisdiction vested in this Court under Article 185 of the Constitution and can exercise jurisdiction under Article 175 of the Constitution, but cannot exercise any other jurisdiction as this is not conferred upon this Court, therefore, it cannot be exercised. In this matter only the appellate jurisdiction of the Court was invoked by filing petitions under Article 185(3) of the Constitution whereafter leave was granted. The matters alien to the jurisdiction vested in this Court cannot be considered nor decided by this Court. The majority judgment ignores all rules of procedure, substantive provisions of law and the Constitution.



Relief cannot be granted to the PTI as PTI was not before the Court nor tried to become a party before the ECP, High Court and before this Court nor was claiming the reserved seats, which were in issue in the instant litigation. If the said 39 plus 41 persons take any step on the basis of this judgment which is not in accordance with the **Constitution** they may lose their seats as returned candidates on the basis of violation of the Constitution. We are also of the firm view that any other constitutional body cannot be asked to take any steps or decisions which are not permissible under the Constitution. If the said 80 persons change their stance on the basis of the majority judgment, they will be guilty of violating their oath, which is provided under Article 65 (Third Schedule), being the Oath for the members of the National Assembly. The first paragraph is relevant, which is reproduced and which is similar to the Provincial Assembly oath with some modification:

“That, as a member of the National Assembly (or Senate), I will perform my functions honestly, to the best of my ability, faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan, and the law, **and the rules of the Assembly** (or Senate), and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan.”  
(bold and underlying by us)

12. For creating and carving out relief in these proceedings for PTI, we would have to travel beyond the jurisdiction conferred by Articles 175 and 185 of the Constitution and would also have to suspend Articles 51, 106 and 63 of the Constitution and section 104 of the Elections Act, 2017 along with the relevant rules. We would also have to insert instead of Articles 51, 106 and section 104 (mentioned supra). Such articles and sections therein in substitution and in consonance with the relief granted through the majority judgment. Previously there was a term used which was “reading in to the Constitution” or “reading down the Constitution” but now a new phrase

has been introduced that of “inserting new Articles in consonance with the relief to be granted in the peculiar circumstances of the case” in the Constitution. We do not have the courage to go to such an extent to give relief to a party who is not before the Court or who did not join the proceedings and pray for such relief. All the rules of procedures of proceedings before the Supreme Court and the Supreme Court Rules, 1980 would also have to be ignored as neither any party before the Court asked in writing nor orally for the relief which has been granted to PTI.

13. Regarding joining of 80 persons no one has denied that they have joined SIC, ECP does not deny this nor any other contesting party denies it. Even PTI does not deny this, who then are we to undo all these things and reverse the same and create a new process plus create a new and arbitrary time limit for joining any party of their choice by disregarding the mandate of the Constitution. In our view neither Article 62(2), 63 & 63-A have been suspended nor can be suspended, therefore, any affidavit contrary to the provisions of the affidavits already filed will entail the penal consequences of non-seating such members of National Assembly and Provincial Assemblies if he/she files a fresh affidavit in contradiction to his/her previous affidavit and joins any other party. Any order of the Court which is not in consonance with the constitutional provisions is not binding upon any other constitutional organ of the State.

14. Now we proceed to record some more facts, arguments and our reasons for dismissing the appeals, petitions and the applications.

15. We heard thorough arguments of learned counsel for the appellants Mr. Asad Jan Durrani, ASC KPK along with Malik Khawas, Assistant Law Officer, KPK Assembly, Mr. Salman Akram Raja, ASC

(who moved CMA No. 3554 of 2024 in CP No.NIL of 2024), Mr. Makhdoom Ali Khan, ASC, who represented respondent Nos.15 to 19, 21 and 22, who were the returned candidates for the reserved seats belonging to PML(N), JUI(P), PPPP and Mr. Sikandar Bashir Mohmand, learned counsel for ECP. Learned counsel for JUI adopted the arguments of learned counsel for ECP. Learned counsel for PML(N), Mr. Shehzad Shaukat adopted the arguments of Mr. Makhdoom Ali Khan and, learned counsel for respondent No.20 adopted the arguments of ECP. Maulvi Iqbal Haider also adopted the arguments of learned counsel for ECP. We have also heard the learned Attorney-General for Pakistan Mr. Mansoor Usman Awan, who submitted the formula for entitlement of reserved seats proportionately for the Political Parties with reference to his written submissions submitted through CMA No.5911 of 2024. Learned counsel for the parties produced record through CMAs as well as their written submissions and the case law also. There were four major counsels/set of counsels who pleaded the case before this Court. On one side there was counsel for the appellants who gets support from the learned Advocate General, KPK as well as learned Mr. Salman Akram Raja. On the other side was the learned Attorney-General as well as the learned counsel for the ECP and learned Mr. Makhdoom Ali Khan, representing the returned candidates for the reserved seats of various Political Parties. The appellant side attacked the order of the ECP as well as that of the learned five member Bench of the Peshawar High Court, and argued that the reserved seats for women and non-Muslims in accordance with the proportionate representation are the right of SIC. Whereas the learned Attorney-General for Pakistan as well as the learned counsel for ECP and the learned Mr. Makhdoom Ali Khan have supported the decision of the ECP to be absolutely correct and in accordance with the Constitution

and the law. Learned Mr. Makhdoom Ali Khan has argued with reference to Section 57 of the Elections Act, 2017 as well as its section 206 and Rule 94 of the Election Rules and Article 226 of the Constitution. Rule 94 with regard to powers of the Commission to declare seats won by each Political Party and supported the judgment of the High Court and prayed for dismissal of the appeals.

16. The premise of the arguments of learned counsel for the appellants seems to be on the questions, mainly question No.3 and question No.4 as framed by the learned counsel for the appellant submitted through CMA No. 5273 of 2024, Part 2, which are reproduced:

“3. Whether any Political Party could be allocated reserved seats disproportionate to their representation based on the total number of general seats secured by them?

4. Whether there is constitutional absence or silence about a situation, in which there are left over reserved seats which cannot be allocated to any party either because of disentanglement or disproportionality? If so, how can this be resolved?”

The arguments of the learned counsel for the appellant mainly revolved upon these two questions and the stance of the learned counsel was that on the basis of interpretation, as per the understanding of the learned counsel for the appellant, when a Political Party is a listed party in the ECP even if that party has not participated in the General Elections and after the notification of the independent returned candidates the joining of independent candidates makes the political party eligible for the reserved seats for women and non-Muslims, we are afraid that this interpretation is absolutely against the wording of Article 51 and of Article 106 of the Constitution. By interpretation no one can read into nor read down the Constitution. It is clearly mentioned that the political party which **won** in the General Elections and the independent candidates joining **such** political party can



enhance the proportion of such party. We are clear in our mind that if an independent candidate joins a party, though it may be listed as a political party with ECP, does not make that party entitled for the reserved seats. The joining of independent candidates only enhances the proportion of right in the reserved seats of that party if that party has won seats. By the joining of independent candidates with any political party does not create a right in favour of that political party to become eligible for reserved seats only on the basis of the joining of independent candidates. Question Nos.3 & 4 noted supra are absolutely misconceived. There is no question of disproportionate allocation of reserved seats as the seats are for the political parties entitled to the same. A political party which is not entitled for the same cannot claim proportionate allocation in the reserved seats, therefore, there is no question of disproportionate allocation of seats to political parties not entitled for the seats, in accordance with the formula of distribution of seats presented by the learned Attorney-General. The seats were given to the political parties which were entitled for the same. The formula of the distribution has not been specifically challenged by the appellants. If the appellants are not entitled to the special seats then the formula presented by the learned Attorney-General for Pakistan remains undisputed. Even the majority judgment of this Court as well as our other learned brothers are unanimous on the point that SIC is not entitled to the reserved seats.

17. Mr. Faisal Siddiqi further argued on the basis of what he stated was the doctrine of progressive interpretation of the Constitution and on the basis of said interpretation has tried to analyze Article 51(6)(d)&(e) and Article 106(3)(c) of the Constitution as well as section 104 of the Elections Act, 2017 and rules 92 and 96 of the Election Rules, 2017. We absolutely do not agree with the understanding of

learned counsel for the appellants with regard to the said doctrine of progressive interpretation of the Constitution and of the provisions of Elections Act, 2017 and the Rules as his understanding is absolutely misconceived, that there is a constitutional absence or silence about the situation or with regard to disentanglement or disproportionately. There is absolutely no silence about the situation in the Constitution. The Constitution is absolutely clear and which has rightly been held so by the learned five member Bench of the Peshawar High Court through the impugned judgment.

18. As we have noted, by the majority's order virtually all the persons who joined the SIC and their joining of SIC has been undone. Further positions in the process of working of the proportional representation system of political parties is affected through the majority's order. For instance, at Sr.No.39 of Annexure-A Ms. Zartaj Gul from NA-185 (D.G.Khan-II) was appointed by the SIC as the Party Leader of SIC in the National Assembly, and her notification was issued by the Secretary General of the Assembly bearing No.F.1(1)/2024-N.O, Islamabad dated 23 June 2024, which was produced by the learned counsel for the appellants in CMA No. 5944 at Page 7. By the majority judgment her position the other positions given to the SIC also go.

19. As we have noted in the start of this order that the matter of the allocation of reserved seats for women and non-Muslims on the basis of proportional representation system of political parties arose before the ECP when the appellant informed the ECP that the independent candidates from National Assembly as well as Provincial Assemblies have joined them, and by stating that they did not participate in the General Elections as a political party, even though SIC was a registered political party in the List of Political Parties maintained by the ECP. The valid joining of the independent members

was recognized by the ECP as well as by the other contesting parties who also joined the proceedings, when all the concerned matters were fixed for hearing before the ECP comprising of the entire Commission, of the Chairman and the four Members. Para-1 of the order of ECP dated 1.3.2024 is reproduced to correctly appreciate the undisputed factual position:

“Brief facts of the matter are that all the above mentioned petitioners have filed petitions before the Commission in respect of the allocation of reserved seats for women and non-Muslims in the National and Provincial Assemblies constituted as a result of General Elections 2024, held on 08.02.2024. The Commission issued notification in which the independent candidates were notified as Returned Candidates in the National and Provincial Assemblies. Subsequent to the notifications some of the independent candidates joined Political Party Sunni Ittehad Council (SIC) and their affidavits were forwarded to the Commission by the said Political Party in respect of National Assembly, Provincial Assembly Punjab and Provincial Assembly KP and Provincial Assembly of Sindh. Sunni Ittehad Council requested for allocation of share in the seats reserved for women and non-Muslim in the National Assembly and three Provincial Assemblies mentioned above. Different applications were filed by the major Political Parties including MQM-P, PPPP and PML(N) and also some individuals for allocation of reserved seats as per their share in the Assemblies. The petitioners also agitated that Sunni Ittehad Council is not eligible to obtain the quota/share in reserved seats for women and non-Muslim. Matters were placed in the meetings of the Commission and decided to fix the same for hearing before full Commission.”

20. The ECP on the basis of admitted facts and in accordance with Article 51(6)(d) and Article 106(3) allocated seats in accordance with law through the proportional representation system of political parties' lists of candidates on the basis of the total number of seats secured by each political party. Admittedly, the SIC did not participate in the elections as a political party and, therefore, it did not file any list of candidates in accordance with section 104 of the Elections Act, 2017. None of the parties before the court or anyone else disputed the election program issued by the ECP for the elections held on 8.2.2024. Learned counsel for the SIC wants to take benefit of the proviso to Clause (d) of

sub-clause (6) of Article 51 that the interpretation that even when a party has not participated in the elections and has not won a single seat, if the independent candidates join it then such party is entitled to the reserved seats for women and non-Muslims, we are afraid that by no stretch of the imagination this interpretation of the proviso can be as learned counsel for the appellants wants the interpretation to be. The proviso only enables adding to the seats won by a political party in the elections as is clearly mentioned, that the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join **such** political party. Such political party means a party which has won seats and is in parliament and not a party who has not participated in the elections and filed not a single nomination paper by any candidate of the said party. Even if all the independent candidates join the said party they would not be entitled to reserved seats. In this view of the matter, the view taken by the ECP as well as by the learned five member bench of the Peshawar High Court is absolutely correct and in accordance with the Constitution. Even none of us i.e. thirteen members, has given relief to SIC who challenged the judgment of the Peshawar High Court, claim of the SIC has been discarded including the majority judgment.

21. In view of what has been discussed above, the learned High Court had rightly dismissed the writ petitions filed by the appellants, and the appeals are liable to be dismissed as there is no defect in the impugned judgment. These are the detailed reasons for dismissing the appeals. In the connected CPs leave has been sought against the judgment passed by the Peshawar High Court, however, as the appeals have been dismissed on merits, therefore, there is no need to further dilate upon the said CPs and the CMAs and the same are also dismissed.

22. These are the reasons of our short order dated 12.7.2024  
which is also reproduced:

“For reasons to be recorded later, we dismiss the appeals,  
petitions as well as CMAs and the judgment of the  
Peshawar High Court is upheld.”

JUDGE

JUDGE

3<sup>rd</sup> August, 2024

APPROVED FOR REPORTING