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ECP misinterpreted SC order, denying 'Bat' symbol to PTI:

Justice Minallah

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ISLAMABAD:

Supreme Court Justice Athar Minallah has said that the Election Commission Pakistan (ECP) misinterpreted a previous court decision, and had denied the 'Bat' symbol to the Pakistan Tehreek-e-Insaf. He made the statement on Tuesday during the hearing regarding the seats

reserved for women and minorities, brought forward by the Sunni Ittehad Council (SIC) that is being heard by the full court, led by Chief Justice Qazi Faez Isa. Justice Minallah went on to ask the ECP counsel whether the judiciary should endorse an “unconstitutional interpretation by a constitutional body?” The Election Commission of Pakistan (ECP) on December 22, 2023 stripped the PTI of its election symbol in view of irregularities in its intra-party polls. The Supreme Court on January 13 upheld the ECP order, forcing the PTI candidates to contest the February 8 general elections as independents. Today’s hearing began with Attorney General Pakistan (AGP) Mansoor Usman Awan presenting his arguments. Awan told the court that he had received records on reserved seats, dating back to 2002 and 2018. He highlighted that in 2002, Article 51 governed the allocation of ten non-Muslim reserved seats. In the 2002 National Assembly, after excluding 14 independent members, reserved seats were distributed among two political parties. Moving to 2018, he noted there were 272 full seats with elections for three postponed and 13 independent candidates elected, nine of whom later joined political parties. Reserved seats, according to the constitution, are allocated to political parties based on their election results. The AGP clarified that parties qualify for these seats only if they win at least one seat. Responding to Awan’s explanation, Justice Minallah questioned, “Attorney General, you have not answered the fundamental question. The Election Commission excluded a political party from the elections. If the Election

Commission took unconstitutional actions, is it not the judiciary's responsibility to correct it?" "A party's voters were excluded from the electoral process. The constitution is based on democracy," the judge commented. Awan responded that according to the constitution, a seat cannot be left vacant under any circumstances. Justice Mansoor Ali Shah remarked that the issue of independent members never came before the court previously. "Because the number of independent [candidates] is very high, the case has also been brought," Justice Shah noted. The AGP reiterated his point and stated, "The constitution is clear that reserved seats cannot be left vacant." "If 120 days remain until the assembly's term ends, the constitution states there is no need to hold elections," he explained. Justice Muhammad Ali Mazhar inquired if there was any mention of the consequences of keeping independents separate from political parties. In response, the AGP told the court that approximately 33% of members of the current assembly are independents. Justice Mazhar said, "I am limiting myself to the original language of sub-clause 6 of Article 51." Justice Minallah added, "The Election Commission excluded a political party. Is it not the Supreme Court's constitutional responsibility to consider the constitutional violation?" Awan mentioned that this question was also raised in the previous hearing, adding that he would provide arguments on Article 187 towards the end of his arguments. The AGP then reaffirmed that the constitution clearly states that reserved seats cannot be left vacant. If 120 days remain until the

assembly's term ends, there is no need for elections. "Political parties are the foundation of parliamentary democracy. This time, the number of independents is very high. The question is, where did these independents come from?" Justice Muneeb Akhtar noted. "This situation arose due to the Election Commission's error. The Election Commission misinterpreted the Supreme Court's ruling. If alternative methods exist, corrections should be made. The constitution implies that seats cannot be left vacant," the judge added. Awan responded that the primary engine is political parties. Justice Akhtar, while citing Article 51 D stated, "Proportional representation means that public representation should be reflected." The court highlighted the significant number of independents resulting from the ECP's error and questioned whether the Supreme Court should correct this mistake. He inquired whether the public had chosen these candidates as independents or if the Election Commission had declared them so. "Should the legal option to correct this mistake not be adopted? Chief Justice Isa remarked, "Has any party stated that seats should remain vacant? Every party argues that the seats should be given to them. Why are we spending time on an issue that is not before the Supreme Court?" Awan mentioned that Faisal Siddiqui had said that if the Sunni Ittehad Council did not receive seats, they should be left vacant. CJP Isa reiterated, "I am repeatedly referring to the words written in the constitution. If the constitution does not mention this situation or has an error, that is for the constitution and

legislators to address.” Awan argued that for a parliamentary party to exist, a political party must win seats in the elections and said that a parliamentary party comes into existence after its members take the oath. Justice Akhtar stated that the example of a parliamentary party was irrelevant as the matter pertained to pre-election issues. Justice Shah asked where the formation of a parliamentary party is mentioned in the constitution. Awan clarified that the parliamentary party is only mentioned in Article 63 A, which requires the existence of a parliamentary party for its application. Justice Jamal Mandokhail added, “Decisions within the parliament are made by the parliamentary party, not the political party.” The AGP reiterated that independent candidates cannot join the parliamentary party, and a parliamentary party requires a political party to have won at least one seat. Justice Shah questioned whether the ECP had recognised the SIC as a parliamentary party. Awan responded that he was not aware of the ECP recognising the Sunni Ittehad Council as a parliamentary party. Justice Ayesha Malik asked if the SIC was currently a parliamentary party or not. The chief justice interjected, questioning the relevance of whether it was a parliamentary party or not. Justice Malik pressed on, asking how recognising a party as a parliamentary party would not make a difference. Faisal Siddiqui presented the notification of Zartaj Gul’s appointment as the parliamentary leader. Siddiqui stated that the notification was issued by the National Assembly Secretariat, and on April 25, the ECP issued a notification about

the inclusion of independent candidates and party positions. The ECP's response also acknowledged the inclusion of members in the Sunni Ittehad Council. Justice Akhtar noted that the presented documents introduced a new perspective because according to them, He questioned whether it was contradictory for the electoral watchdog to initially not recognise the SIC as a political party while later acknowledging its members. Chief Justice Isa inquired about the status of the notification. He questioned how a letter from the deputy registrar could be considered the SC's stance. Justice Akhtar asked how official communication from the ECP could be ignored. Justice Mandokhail questioned the legal basis for the ECP's notifications. Awan clarified that the notifications were not related to Article 63 A. Justice Akhtar pointed out that while it was said that the ECP is a constitutional body capable of everything, the ECP's official correspondence with the Assembly Secretariat should be considered. Awan mentioned that a constitutional provision cannot be read in isolation. Justice Mandokhail asked whether the defective clause would apply if there were no parliamentary party. Awan reiterated that only a political party can become a parliamentary party. The AGP referred to a verse from Allama Iqbal's poetry, "I admit I am not worthy of your sight, but look at my passion and my patience." Justice Mandokhail noted that accepting Awan's interpretation would mean that many members in parliament would not have a parliamentary leader, making it impossible to proceed against anyone under Article 63 A for

defection. Justice Akhtar pointed out that now even the ECP's records recognise these members as part of the Sunni Ittehad. He questioned how the ECP could deny them seats while recognising them as a parliamentary party. The ECP's counsel informed the parliament that their records showed the Sunni Ittehad as a parliamentary party, maintaining these records for a reason. Awan argued that the SIC was neither a parliamentary party nor entitled to reserved seats. He suggested that a parliamentary party comprising successful candidates from the SIC in by-elections could be formed, but independent members could not join the SIC's parliamentary party. Justice Mandokhail noted that a parliamentary party is only relevant for the application of Article 63 A. Awan mentioned that the SIC had challenged the PHC's decision, and a question regarding the application of Article 187 for complete justice was also raised. Article 187 could only be applied to cases under consideration, not to initiate new judicial proceedings. Justice Mandokhail questioned whether the Election Commission had the authority to issue the notification recognising a parliamentary party. He asked if the Election Commission could independently declare a candidate as independent and not part of a party. Justice Shah mentioned that people knew the independent candidates were affiliated with PTI. He asked where the court should exercise the power of complete justice when it could not see the whole picture. Justice Minallah reiterated, "It has been proven that the Election Commission misinterpreted the court's ruling.

Should the judiciary endorse an unconstitutional interpretation by a constitutional body?” “Do you want us to revive the doctrine of necessity?” Justice Shah added, “This is not a simple land dispute case limited to an appeal,” he noted. CJP Isa stated, “The court applies the law and constitution, not the requirements of justice. All decisions based on the doctrine of necessity refer to the demands of justice. When no solid material is found, justice is interpreted at will. I am not imputing malice to any judge.” Justice Minallah questioned whether the court should endorse a severe constitutional violation. He asked, “Can the elephant in the room be ignored?” The court is currently hearing further arguments in the case.