

URGENT FORM

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

In Ref to

W.P No. _____/2023

Muhammad Muazzam Butt

.....Petitioner

VERSUS

President of Pakistan & others

.....Respondents

1. Will you kindly treat the accompanying W.P as Urgent and in accordance with the provision of Rules 9, Chapter 3-A, of the Rules & Orders of the High Court, Lahore Volume V.
2. The Grounds of Urgency are;

That petitioners has raised serious question of law which relates to the fundamental rights of the citizen of Pakistan and specifically to the citizen of KP and the respondents are taking away the fundamental rights to participate in the political activities therefore the instant case may please be fixed in the next Divisional Bench, Please.


ADVOCATE

Before the Peshawar High Court Peshawar

CHECK LIST.

Case Title: <u>M Muazzam Butt.....Versus.....</u> <u>President</u>		
1.	Case is duly signed.	YES NO
2.	The law under which the case is preferred has been mentioned.	YES NO
3.	Approved file cover is used.	YES NO
4.	Affidavit is duly attested and appended.	YES NO
5.	Case and annexure are properly paged/ numbered according to index.	YES NO
6.	Copies of annexure are legible and attested. If not, then better copies duly attested have been annexed.	YES NO
7.	Certified copies of all the requisite documents have been filed.	YES NO
8.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	YES NO
9.	Case is within time.	YES NO
10.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	YES NO
11.	Court fee in shape of stamp paper is affixed. (for writ Rs.500, for other was required).	YES NO
12.	Power of attorney is in proper form.	YES NO
13.	Memo of addresses filed.	YES NO
14.	List of books mentioned in the petition.	YES NO
15.	The requisite number of spare copied attached. (writ Petition-3 Nos, Civil Appeal (SB-1, DB-2) Civil Revision (SB-1, DB-2)).	YES NO
16.	Case (Revision/appeal/petition etc.) is filed on the prescribed form.	YES NO
17.	Power of attorney is attested by jail authority (for jail prisoner only).	YES NO

It is certified that formalities/documents as requires in column 2 to 18 above, have been fulfilled.

Signature. _____

M Muazzam Butt.
Advocate Peshawar.

COPY RECEIVED
15/11/23
16/11/23
Date: 15/11/2023.

For office use only.

Case No. _____
Case received. _____
Complete in all respect; Yes/No (if No the grounds) _____

Date in court. _____
Signature. _____
(Reader)

Date. _____
(Deputy Registrar) Countersigned _____

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

WP No:- _____ -P/2023 .

Muhammad Muazzam Butt

Versus

President of Pakistan & Others

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Dated:- 15-11-2023

Petitioner

Through:-

Muhammad Muazzam Butt
Advocate Supreme Court

&
Muhammad Adeel Butt
Advocate High Court

**IN THE PESHAWAR HIGH COURT, PESHAWAR
OPENING SHEET FOR WRIT BRANCH**

Date of Filing: 15-11-2023

District: Peshawar

Case Type; Writ Petition

Nature of Original Proceedings:

Category Code

5 0 8 0 2

(Categories & Sub categories are given at the back of the opening sheet)

Review/ Contempt of Court in respect of:

Writ of:

Haabus
Corpus

Prohibition

Mandamus
√

Qua
Warranto

Certiorari

If Certiorari:

Forum	Date	Interlocutory/ Final Order	Case Pertains to
Nil			<input type="checkbox"/> SB
Nil			<input checked="" type="checkbox"/> DB

Petitioner Name	M. Muazzam butt ASC
Mobile No.	0336-9721235
Address	Office 6-A, Nasir mansion Shuba Bazar, Peshawar .
CNIC No.	17301-9259950-7
Email Address	

Counsel for Petitioner(s)	M. Muazzam Butt ASC
Mobile No.	0336-9721235
Address	Office 6-A, Nasir mansion Shuba Bazar, Peshawar .
CNIC No.	17301-9259950-7
Email Address	m.muazzamadv@gmail.com

Respondents	President of Pakistan through Principle Secretary
Address	Islamabad

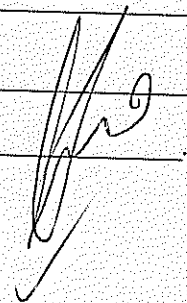
ORIGINAL ORDER/ ACTION/ INACTION COMPLAINED OF:

PRAYER It is therefore very humbly prayed that appropriate writ may be granted as follow:-

DECLARE that for the enforcement of fundamental rights of citizens of Pakistan so that they may choose their representatives through election process which is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against and that whereas to achieve such objectives it would be fair and lawful that the entire election process in the province of KP may be performed under the watch of the judiciary and the election process may be directed to be conducted through judicial officers in line with the mechanism provided in Election Act and rules made there under,

LAW/ RULES/ GOVERNING THE ORIGINAL PROCEEDINGS/ ACTION/ LOCATION
Constitution of Pakistan, 1973.

Signature



- 1 -

IN THE PESHAWAR HIGH COURT, PESHAWAR

In Ref to Writ Petition No _____/2023

Muhammad Muazzam Butt, Advocate Supreme Court
Spokesperson Pakistan Tehreek-e-Insaf
R/o Office Address: 6-A, Nasir Mansion, 2-Railway Road, Shuba Bazar, Peshawar
.....Petitioner

V E R S U S

1. President of Pakistan through Principal Secretary
Office Address: Room No. 332, 3rd Floor, Aiwan-e-Sadr, Islamabad
2. Federation of Pakistan through Secretary Interior
R Block, Pak Secretariat, Islamabad
3. Governor Khyber Pakhtunkhwa, through Principal Secretary
2H64+8W, Finance Department, Civil Secretariat, Peshawar
4. Election Commission of Pakistan through Secretary,
ECP Building, Constitutional Avenue, Islamabad
5. Deputy Election Commissioner, Peshawar
Election Commission of Pakistan Shami Road Peshawar
6. Government of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat, Khyber Road, Peshawar Cantt
7. Khyber Union of Journalist
Through its President, Press Club Railway Road Peshawar
8. Peshawar Press Club
Through its President, Press Club, Railway Road, Peshawar

.....Respondents

W R I T P E T I T I O N U N D E R A R T I C L E 1 9 9 O F T H E C O N S T I T U T I O N O F I S L A M I C R E P U B L I C O F P A K I S T A N , 1 9 7 3

Respectfully Sheweth:

1. That the petitioner is a citizen of Islamic Republic of Pakistan, is an Advocate Supreme Court, is the spokesperson of Pakistan Tehreek-i-Insaf (PTI) and is the Secretary General of Insaf Lawyers Forum, Pakistan (ILF).

Copy of Spokesperson Notification is Annexure A

2. That 08.02.2024 has been announced as poll date for the general elections to the National Assembly of Pakistan and Provincial assemblies of Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan, in such context the Election Commission of Pakistan notification dated 03.11.2023 is attached as Annexure B.
3. That it is the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and the corrupt practices are guarded against, However the conduct of Election Commission reveals that organizing and conducting the election and to make the necessary arrangements to assuring the conduct of election honestly, justly, fairly and in accordance with law is/will not be possible and the corrupt practices would prevail.
4. That the petitioner being aggrieved invokes the jurisdiction of Honorable Peshawar High Court under Article 199 of the Constitution of Pakistan on the following among other grounds:-

GROUND S:

- a) That the August Supreme Court of Pakistan while hearing Constitutional Petitions No 32 and 36 of 2023, Civil Miscellaneous Appeal Nos. 118 and 119 of 2023 in Const. P. NIL/2023 has graciously been humbled in facilitating the President and ECP to do right by the people of Pakistan and the matter of holding of general election on 08.02.2024 thus stands resolved.
- b) That it has already been observed in various decisions of Courts' that the higher the Constitutional office or body the greater is the responsibility. Obedience to the Constitution and law is and inviolable obligation of every citizen, and added responsibility and obligation is placed on all those who assumed their office by taking an oath. The President, the Chief Election Commissioner, Members of ECP and the Governor take the prescribed oath.
- c) That the Order passed by the August Supreme Court of Pakistan in Suo Moto Case No. 01 of 2023 and Constitutional Petition No 01 of 2023 and Constitutional Petition No 02 of 2023 in para 13 of the order dated 01.03.2023, it has been held that the Governor of KPK province, in as much as he has not

appointed the date for holding general election to the assembly of the province is in breach of his constitutional responsibility.

- d) That intelligence agency had no role to play in the political affairs of the country such as formation or destabilization of government, or interference in holding of honest, free and fair election, involvement of the officers/ members of secret/ intelligence agencies in unlawful (political) activities, individually or collectively calls for strict action being violative of oath of their office and if involved, they were liable to be dealt with under the Constitution and the law (Reliance Muhammad Asghar Khan Vs Mirza Aslam Baig) whereas the Governor KP while sleeping over above stated constitutional position and the law has declined giving election date as provided in Article 105(3) of the Constitution on the ground that the election date would be given by him in consultation with agencies, his narrative and expression was widely published in electronic and print media.
- e) That the Governor KP has now appointed another interim Chief Minister, consequent to the death of Mr. Azam Khan the care taker CM, in the absence of any constitutional provision authorizing him to do so. All this being carried out constitutes pre poll rigging, illegal and corrupt practices which are distant to deny the fair, honest and transparent election safeguarding the vote of the citizen of Pakistan.

Copy of the Governor letter DO. No. PSG 1(2)/GS/2023 dated 11.11.2023 is **Annexure C**

Copy of Letter No CMS/KP/PF/2023/2324 dated 12.11.2023 is **Annexure D** signed by Mehmood Khan, Former Chief Minister, Akram Khan Durrani, Former Leader of the Opposition/ Provincial Assembly Khyber Pakhtunkhwa and the projection on the subject by media/ press is attached as **Annexure E**

- f) That the constitutionality and the legitimacy beyond the period of 90 days headed by deceased CM Azam Khan has long expired, his holding of the office was also unlawful and without jurisdiction rather it was imposed and thrust upon the people of KP in disregard to the constitutional mandate whereas the former Chief Minister then was the leader of the House being the member of PTI, now he has made his own independent party known as Pakistan Tehreek-e-PTI-P and on no ground whatsoever make use of his previous office as the leader of the then ruling party PTI.

- g) That in the absence of legitimate or controversial care taker cabinet of KP Governor, the holding of free, fair and transparent election would not be simply possible. Needless to say that the actions in disregard to the oath of office by the holders of constitutional provision have already been observed by the Supreme Court of Pakistan.
- h) That the provincial interim government and even the Governor KP is not impartial and rather opposed to Pakistan Tehreek-e-Insaf in particular.
- i) That the care taker provincial government has implicated almost every leader of PTI in false cases in each and every district of the Country including KP, the media has also been covering the violation and abuse to the fundamental rights of political activist leading the PTI from grass root level up to Provincial and National leadership which also includes former Speaker of National Assembly of Pakistan Mr. Asad Qaiser.
- j) That under Article 218(3) of the Constitution, it is the duty of election commission to make such arrangement as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law and that the corrupt practices are guarded against.
- k) That as the legitimacy of the provincial government has already under challenged, it cannot be trusted for honest governance of the election process and as it is acting in consultation with security agency, (Respectfully stated) in disregard to the principle laid down in the Supreme Court judgment reported as Muhammad Asghar Khan Vs Mirza Aslam Baig.
- l) That under the law, the Election Commission in consultation with the chief justice of the concerned High Court can appoint Returning officer and Assistant Returning Officer, who may take all necessary acts for effective conduct of the poll in accordance with the provision of the Constitution and Election Act, 2017.
- m) That the Election Commission of Pakistan has already acted in violation of the Constitution by delaying the election process and that it has turned upside down the entire election process against the public interest.
- n) That the election process has already been initiated, other parties have held huge public gatherings and demonstrations whereas the Provincial Government in every Tehsil, District and at Provincial level has infringed the right of PTI to reach

out to the voters, its rallies have been attacked, its conventions have been not allowed and they are being restrained from raising their flags and posting their posters and Panaflexes. Practically the entire political activities of PTI have been freeze.

- o) That the favorite political parties are being supported and favorite group and political parties are being patronized whereas the holders of constitutional positions and even others to follow owe constitutional duty to represent the unity of the republic to which KP is a Federating unit.
- p) That in the above mentioned circumstances, where both election commission of Pakistan & Governor KP and heads of Constitutional position are evidently supporting one another to oust the PTI from political arena and that as they have failed to provide equal playing level field to the PTI which is the most popular party in Pakistan then the judiciary may be gracious enough to bring the entire election process in its watch by directing the conduct of election by the judicial officers and to make such arrangements to ensure that the election is conducted honestly, justly, fairly and in accordance with law and that the corrupt practice are guarded against, under strict watch and supervision of the judiciary.

It is therefore very humbly prayed that appropriate writ may be granted as follow:-

- I. **DECLARE** that the enforcement of fundamental rights of citizens of Pakistan should be ensured and for the true spirit of democracy, the citizens may be allowed to freely choose their representatives through election process which is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against and that whereas to achieve such objectives it would be fair and lawful that the entire election process in the province of KP may be performed under the watch and supervision of the judiciary and the election process may be directed to be conducted through judicial officers in line with the mechanism provided in Election Act and rules made thereunder.
- II. **CONSEQUENTLY** the election commission of Pakistan, the stated interim government of the province and the Governor KP may be directed to be refrained from any interference in the entire election process adversely affect the essence of Article 218(3), Preamble and Article 2-A of the

Constitution of Pakistan and that other provision of the Constitution of Pakistan.

III. **THE** appropriate mechanism may please be streamline to ensure the election is conducted is honestly, justly fairly and in accordance with law and corrupt practices are guarded against.

IV. **ANY** other relief which though has not been specifically prayed for but is found appropriate may also be granted to the petitioner.

Dated: 23-05-2023

Peshawar

Petitioner

Muhammad Muazzam Butt
Advocate Supreme Court

Muhammad Adeel Butt
Advocate High Court

INTERIM RELIEF:-

In the meanwhile the respondents may be directed to provide level playing field to the party and to refrain from restraining the members, workers and leaders of PTI from their political activities and from causing harassment to the PTI workers.

ADVOCATE

CERTIFICATE:

Certified on instructions of my client that petitioner has not previously moved to this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter. Further stated that being Writ Petition on the score that since there is no adequate and alternate legal remedy is available, thus this case may be fixed before the Worthy Division Bench (D.B) of this Honorable Court.

ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need

ADVOCATE

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

In Ref to

W.P No. _____/2023

Muhammad Muazzam Butt

.....Petitioner

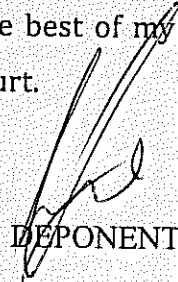
VERSUS

President of Pakistan & others


.....Respondents

AFFIDAVIT

I Muhammad Muazzam Butt, Advocate Supreme Court, R/o Office Address: 6-A, Nasir Mansion, 2-Railway Road, Shuba Bazar, Peshawar, do hereby solemnly affirm and declare that contents of this Writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT

CNIC NO: 17301-9259950-7
CELL NO: 0336-9721235

In No. 53380.....
Certified that the above was verified on solemnly
affirmation before me in office, this 15.....
day of Nov..... 2023 by M. MUHAMMAD BUTT
s/o Advo..... do PESHAWAR
who was identified by self.....
Who is personally known to me:

Oath Commissioner 15/11/2023
Peshawar High Court, Peshawar

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

In Ref to

W.P No. _____/2023

Muhammad Muazzam Butt

.....Petitioner

V E R S U S

President of Pakistan & others

.....Respondents

ADDRESSES OF PARTIES

PETITIONER

Muhammad Muazzam Butt, Advocate Supreme Court

Spokesperson Pakistan Tehreek-e-Insaf

R/o Office Address: 6-A, Nasir Mansion, 2-Railway Road, Shuba Bazar, Peshawar

RESPONDENTS

1. President of Pakistan through Principal Secretary
Office Address: Room No. 332, 3rd Floor, Aiwan-e-Sadr, Islamabad
2. Federation of Pakistan through Secretary Interior
R Block, Pak Secretariat, Islamabad
3. Governor Khyber Pakhtunkhwa, through Principal Secretary
2H64+8W, Finance Department, Civil Secretariat, Peshawar
4. Election Commission of Pakistan through Secretary,
ECP Building, Constitutional Avenue, Islamabad
5. Deputy Election Commissioner, Peshawar
Election Commission of Pakistan Shami Road Peshawar
6. Government of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat, Khyber Road, Peshawar Cantt
7. Khyber Union of Journalist
Through its President, Press Club Railway Road Peshawar
8. Peshawar Press Club
Through its President, Press Club, Railway Road, Peshawar


ADVOCATE

-9-
-A-



Pakistan Tehreek-e-Insaf

Central Secretariat

No: CS/SG/271/2023

Oct 12th, 2023

NOTIFICATION

It is hereby notified that Mr. Moazzam Butt Advocate Supreme Court is hereby appointed as Spokesperson of Pakistan Tehreek-e-Insaf with immediate effect.

Omar Ayub Khan
Secretary General
Pakistan Tehreek-e-Insaf

ATTESTED
to be true Copy

Attested by
M Moazzam Butt
Advocate




ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad, the 3rd November, 2023

No.F.2(3)/2023-Cord-Vol-I. Pursuant to the Order passed by Hon'ble Supreme Court of Pakistan dated 2nd November, 2023 in Constitution Petition No. 32 and 36 of 2023 along-with C.M. Appeals No. 118 and 119 of 2023 in Const. Petitions No. Nil/2023 and subsequent meeting with Hon'ble President of Islamic Republic of Pakistan, the Election Commission of Pakistan in exercise of its powers under Section 57(1) of the Elections Act, 2017 and all other powers enabling it in that behalf, hereby announces 8th February, 2024 as poll date for the General Elections to the National Assembly of Pakistan and the Provincial Assemblies of Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan.

By Order of the Election Commission of Pakistan


3-11-2023
(Syed Nadeem Haider)
Additional Director General
(Elections-II)

The Manager,
Printing Corporation of Pakistan Press,
Islamabad.

[For publication in the Gazette of Pakistan,
Extraordinary (Part-III) of today's date.]

ATTESTED
to be true Copy

Attested by
M. Muzam Butt
ASC

Haji Ghulam Ali

Governor's House
Khyber Pakhtunkhwa Peshawar

Governor

DO No. PSG 1(2)/GS/2023

Subject: CONSULTATION UNDER ARTICLE 224 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN 1973

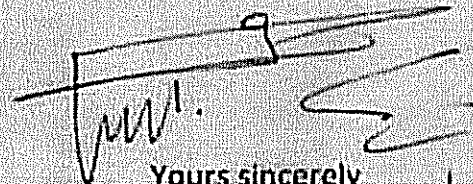
My Dear Muhammad Akram Khan Durrani,

As you are aware that due to the sad demise of the Care-Taker Chief Minister, Khyber Pakhtunkhwa Muhammad Azam Khan on 11-11-2023; the Governor Khyber Pakhtunkhwa under his constitutional obligation calls upon you to initiate the consultation process under Article 224(1A) of the Constitution ibid for appointment of the new care taker Chief Minister.

You are advised to attend Chief Minister Office tomorrow i.e. 12-11-2023 at 11:00 AM for the subject purpose. Needless to mention that the consultation process shall be concluded within 03 days from 11-11-2023.

Since, the election date is already been announced, therefore it is expected that meaningful consultation would result in fruitful consensus.

Best Regard


Yours sincerely
11 Nov / 2023

1. Mahmood Khan, Former Chief Minister Khyber Pakhtunkhwa.
2. Muhammad Akram Khan Durrani, Former Leader of the opposition Khyber Pakhtunkhwa, Provincial Assembly.

CC:

1. Chief Secretary Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
3. PSD to Chief Minister Khyber Pakhtunkhwa.

ATTESTED
to be true Copy

Attested By
M. Muazzam Butt
Advocate

BETTER COPY OF -12-
Annexure 'C'

Haji Ghulam Ali

Government's House
Khyber Pakhtunkhwa Peshawar

Governor

DO No. P5G 1(2)/GS/2023

Subject: CONSULTATION UNDER ARTICLE 224 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN 1973

My Dear Muhammad Akram Khan Durani

As you are aware that due to the sad demise of the Care-Taker Chief Minister, Khyber Pakhtunkhwa Muhammad Azam Khan on 11-11-2023, the Governor Khyber Pakhtunkhwa under his constitutional obligation calls upon you to initiate the consultation process under Article 224(1A) of the Constitution ibid for appointment of the new care taker Chief Minister

You are advised to attend Chief Minister Office tomorrow i.e. 12-11-2023 at 11:00 AM for the subject purpose. Needless to mention that the consultation process shall be concluded within 03 days from 11-11-2023.

Since, the election date is already been announced, therefore it is expected that meaningful consultation would result in fruitful consensus.

Best Regard

Yours sincerely

1. Mahmood Khan, Former Chief Minister Khyber Pakhtunkhwa
2. Muhammad Akram Khan Durrani, Former Leader of the opposition Khyber Pakhtunkhwa, Provincial Assembly.

CC

1. Chief Secretary Khyber Pakhtunkhwa
2. Principal Secretary to Chief Minister Khyber Pakhtunkhwa,
3. PSO to Chief Minister Khyber Pakhtunkhwa

ATTESTED
to be true Copy

Attested By
M. Muazzam Butt
Advocate

Subject:- CONSULTATION UNDER ARTICLE 224 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

Reference letter of Governor, Khyber Pakhtunkhwa dated 11.11.2023 on the subject matter.

02. Consultative meeting for the appointment of new Care-taker Chief Minister has been conducted on 12.11.2023 in the office of Chief Minister, Khyber Pakhtunkhwa.

03. We, after consultation, have agreed to nominate Justice (R) Syed Arshad Hussain Shah to be appointed as Care-taker Chief Minister, Khyber Pakhtunkhwa under clause (1A) of Article 224 of the Constitution of the Islamic Republic of Pakistan, 1973.

04. The Governor, Khyber Pakhtunkhwa may proceed to appoint him/her as such.



(Mahmood Khan)
Former Chief Minister,
Khyber Pakhtunkhwa



(Akram Khan Durrani)
Former Leader of the
Opposition,
Provincial Assembly,
Khyber Pakhtunkhwa

12/11/23

Attested by
Adv. M. Waqar
Advocate

ATTESTED
to be true Copy

-14-
BETTER COPY OF
Annexure 'D'

No. CMS/KP/PF/2023/2324

Dated Peshawar 12th November, 2023

Subject:-

**CONSULTATION UNDER ARTICLE 224 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973**

Reference letter of Governor, Khyber Pakhtunkhwa dated 11.11.2023 on the subject matter.

02. Consultative meeting for the appointment of new Care-taker Chief Minister has been conducted on 12.11.2023 in the office of Chief Minister, Khyber Pakhtunkhwa,

03. We, after consultation, have agreed to nominate Justice(R) Syed Arshad Hussain Shah to be appointed as Care-taker Chief Minister, Khyber Pakhtunkhwa under clause (1A) of Article 224 of the Constitution of the Islamic Republic of Pakistan, 1973.

04. The Governor, Khyber Pakhtunkhwa may proceed to appoint him/her as such.

(Mahmood Khan)
Former Chief Minister,
Khyber Pakhtunkhwa

(Akram Khan Durrani)
Former Leader of the
Opposition,
Provincial Assembly,
Khyber Pakhtunkhwa

Attested by
M. Muazzam Bult
Advocate

ATTESTED
to be true Copy

Interim K-P cabinet dissolved after CM Azam's demise

PESHAWAR:

Khyber-Pakhtunkhwa on Saturday plunged into a constitutional crisis after the death of caretaker K-P Chief Minister Muhammad Azam Khan.

Following the chief minister's demise, the provincial cabinet stood dissolved - triggering a series of unprecedented constitutional steps with fears that it could crack open a new Pandora's box.

The governance of the province has been temporarily handed over to the governor, who will wield executive powers until the appointment of a new caretaker chief minister and the formation of a cabinet.

However, the process of appointing a new caretaker chief minister has raised legal complexities as it is the first instance of such a case.

Legal experts find themselves in a state of uncertainty regarding the unprecedented scenario of the re-appointment of a caretaker chief minister.

According to sources within the Election Commission of Pakistan (ECP), the responsibility of appointing the new caretaker chief minister will fall on either the former chief minister or the opposition leader.

Read Immutable air pollution chokes K-P

The urgency to make this appointment stems from the constitutional significance of the position as the head of the province.

In the event of a disagreement, the matter will be escalated to the ECP for resolution.

Former advocate general Shumail Ahmad Butt explained that Article 224A of the Constitution dictated the joint appointment of the caretaker chief minister by the CM and the opposition leader.

He elaborated that the Leader of the House and the Leader of the Opposition must reach an agreement within three days. In case of a deadlock in the decision-making process, the matter will then be referred to a committee or directly to the ECP.

Read Interior Secretary Abdullah Khan Sumbal passes away in Lahore

However, Butt highlighted a constitutional nuance, saying that the Constitution provided a procedure for appointing only one caretaker chief minister and not successive appointments.

On the other hand, some experts are wondering whether they will have to resort to former chief minister Mahmood Khan and opposition leader Karam Durrani to stand in the race again.

The 89-year-old retired bureaucrat had passed away earlier on Saturday morning.

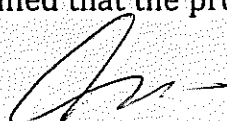
He was admitted to the intensive care unit (ICU) of the Rehman Medical Institute (RMI) in Peshawar on Friday night, reportedly over complaints of chest pain. He was a heart patient and was brought to the hospital in a critical condition, it was revealed.

Azam Khan served as the caretaker chief minister of the province for nine-and-a-half months.

'No crisis'

Addressing the issue of the interim chief minister, caretaker Federal Minister for Information and Broadcasting Murtaza Solangi clarified that the procedure given in the Constitution will be followed.

ATTESTED
to be true Copy



In a post on the social media networking site 'X', he stressed that the "spirit of the Constitution is crystal clear" on the matter of the appointment.

The governor, chief secretary, and the entire provincial government will perform their duties under the Constitution, Solangi added.

"There is no crisis and the new K-P chief minister will be appointed soon," he maintained, ruling out room for any kind of speculation.

Ministers reluctant to relinquish slots

In the wake of the passing of the caretaker chief minister, the provincial cabinet faced another complex legal situation, leading to a formal announcement of its dissolution by Governor Ghulam Ali.

Following Azam Khan's demise and the subsequent dissolution of the provincial cabinet, certain cabinet members asserted their continued status as ministers.

Some cabinet members persisted in their claim, contending that as they had neither been removed nor had they resigned, they retained their positions, and also conveyed their concerns to Governor Ghulam Ali.

To address this dispute, the K-P governor, in consultation with legal experts, formally announced the dissolution of the cabinet.

Sources said that the advocate general and the legal team clarified that with the departure of the chief minister, the caretaker cabinet had automatically dissolved.

New Pandora's box?

Meanwhile, observers say that in what could potentially open a new Pandora's box, the process of appointing a new caretaker chief minister is veering towards uncertainty as it is anticipated to involve former chief minister Mahmood and opposition leader Akram Durrani.

Earlier this year, Mahmood Khan, in his capacity as the former chief minister of the Pakistan Tehreek-e-Insaf (PTI), engaged in consultations with opposition leader Karam Durrani regarding the appointment of a caretaker chief minister.

Former chief minister Pervez Khattak, then leader of the PTI, also played a mediating role in fostering dialogue between the two parties.

However, the political landscape has since evolved, with both Parvez Khattak and Mahmood Khan now leading the PTI Parliamentarians, a splinter group mainly comprising defectors from the PTI.

This shift has raised concerns among observers, who fear potential objections from the PTI if Mahmood Khan, as a former chief minister, is tasked with representing the previous PTI government.

The anticipated objection could complicate the appointment process, leading observers to speculate that the matter may ultimately be escalated to the ECP for resolution.

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Attested By
M. Hussain Butt
Advocate

Navigating the conundrum of caretaker CM's appointment in case of a demise

Relevance of outgoing assembly, careful consideration of political legitimacy concerns, inclusive decision-making are vital to securing appointment's credibility, moral legitimacy.

The recent demise of Khyber Pakhtunkhwa caretaker chief minister Azam Khan has once again ignited discussions around the process of an interim chief minister's appointment and the integrity of the electoral process.

Diverse partisan suggestions have been circulated in the mainstream and social media, ranging from KP Governor Haji Ghulam Ali, affiliated with Jamiat Ulema-i-Islam Fazl, assuming the functions of the chief minister to appointing someone like the chief justice to assume the role. Some have even proposed that the Election Commission of Pakistan (ECP) appoint a cabinet minister or autonomously select a caretaker chief minister. Additionally, there are calls for the Senate to play a role in this appointment process.

Amid these calls, one encouraging development is that the KP Governor has written a letter to the former chief minister Mahmood Khan and former opposition leader Akram Durrani, inviting them for consultations for the appointment of their caretaker CM under Article 224(1A) of the Constitution.

As the process moves ahead, it is imperative to revisit the constitutional procedure for appointing a caretaker chief minister. This not only ensures adherence to the Constitution's letter and spirit, but also safeguards the remaining credibility of the electoral process. This process is pivotal for the moral and political legitimacy of the upcoming KP elections.

The unique structure of a caretaker government, designed to conduct elections at the end of a government's term, is a distinctive feature of constitutional democracies. In the case of Pakistan, this concept was introduced in 1985 and remains essential to prevent ruling parties from manipulating elections. To maintain the sanctity of this constitutional provision, it is crucial to navigate the appointment process diligently.

A critical aspect to address in ongoing discussions is the misconception regarding the governor's role in assuming the responsibility of the interim chief minister. Contrary to some suggestions, the governor, after the 18th Amendment has no role in the discharge of executive functions except the constitutional promulgation of an emergency under the Constitution.

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Attested By
M. A. Azam Butt
Advocate

Bipartisan intent of caretaker appointment

Article 224 and 224A of the Constitution provide the meticulous procedure following the dissolution of a provincial assembly. Article 224 stipulates that, upon dissolution, a caretaker chief minister is to be appointed by the governor in consultation with the chief minister and the opposition leader in the outgoing provincial assembly. This initial consultation, rooted in bipartisan collaboration, is fundamental to the constitutional intent of a neutral interim chief minister.

However, Article 224A becomes relevant if consensus is not reached within three days between the chief minister and the opposition leader after the assembly's dissolution. In such cases, they are required to forward two nominees each to a bipartisan committee constituted by the assembly speaker. This committee, comprising eight members with equal representation from the treasury and the opposition, is responsible for finalising the caretaker chief minister's name within three days. If the committee fails, the matter is referred to the ECP for a final decision within two days.

A gap in the constitutional framework arises when addressing the procedure or interim arrangements if the appointed caretaker chief minister resigns or dies. Despite the Constitution's silence on this matter, it is crucial to emphasise that the absence of explicit guidance does not negate the spirit or intent of the Constitution. The Constitution envisions a role for both the treasury and opposition benches at two out of three stages, highlighting bipartisan intent.

Since the appointment was done in the first stage and there were no disagreements between the outgoing chief minister and the opposition leader, there were no nominees for the committee or the ECP to consider. This necessitates restarting the entire process for a fresh appointment of the chief minister.

The constitutional provisions make it clear that the democratic and political actors, rather than the ECP itself, are responsible for the appointment of the caretaker chief minister. Arguments for the ECP to appoint a caretaker chief minister at this stage lack merit. The ECP's role is only activated when the committee fails to decide within the stipulated timeframe.

Can there be an interim caretaker chief minister?

The Constitution does not envision such an appointment, except for a chief minister who the governor can ask to continue to hold office until his successor assumes office, under Article 133 of the Constitution. This provision only kicks in after a chief minister resigns from office. This aligns with constitutional offices that allow for interim or acting officeholders only for specific positions permanently occupied.

The constitutional framework explicitly designates five types of offices that must be permanently occupied. These include the president, governor, chief justice of Pakistan, chief justice of high courts and ECP commissioner. For each of these offices, the Constitution details who is designated to perform "acting" functions, as outlined in Article 260.

It is essential to emphasise the centrality of the outgoing assembly in this entire process. Even after the death of the chief minister, the Constitution clearly refers to the outgoing assembly as the starting point for the appointment of a new caretaker chief minister. Dismissing arguments that suggest the irrelevance of Article 224 or 224A due to the absence of a regularly elected chief minister or opposition leader, the Constitution, instead, explicitly designates the outgoing assembly as the relevant forum.

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Attested By
M. Muazzam Butt
Advocate

Political and moral legitimacy under scrutiny

From both a political and moral legitimacy standpoint, the current situation raises genuine concerns. The political dynamics surrounding the appointments by Mahmood Khan and opposition leader Akram Khan Durrani invite questions about the legitimacy of the decision and the incoming caretaker government. Given the recent allegations of political manipulation, persecution and changing loyalties, it becomes imperative for the ECP and political forces to exercise extra caution.

In particular, the exclusion of the PTI, a major stakeholder, from the decision-making process raises concerns about political legitimacy. The PTI, according to recent Gallup Pakistan surveys and the last two elections, has emerged as the largest and most popular party in the province. To address these concerns, it is crucial for Khan and Durrani to either include the PTI in the decision-making process or submit names to the parliamentary committee after considering the PTI's suggestions.

In conclusion, the constitutional procedure for appointing a caretaker chief minister in KP transcends legal technicalities; it is a pivotal mechanism for upholding the democratic ethos. The continued relevance of the outgoing assembly, careful consideration of political legitimacy concerns and an inclusive decision-making process are integral to securing this critical appointment's credibility and moral legitimacy. As KP navigates these challenges, a commitment to constitutional principles and a transparent, inclusive approach will fortify the democratic foundation on which our electoral system stands, reinforcing the very essence of a vibrant and resilient democracy.

Attested By
M. Muazzam Butt
Advocate

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, CJ
Mr. Justice Amin-ud-Din Khan
Mr. Justice Athar Minallah

Constitution Petition Nos. 32 and 36 of 2023

*Supreme Court Bar Association of Pakistan through
its Secretary, Islamabad and others.*
(in Const. P. No. 32/23)

Munir Ahmed.
(in Const. P. No. 36/23)

Versus

... Petitioners

*Federation of Pakistan through Secretary,
Cabinet Division, Islamabad and others.*
(in both Constitution Petitions)

... Respondents

And

Civil Misc. Appeal Nos. 118 and 119 of 2023 in Const.P.NIL/2023

*Pakistan Tehreek-e-Insaf (PTI), Islamabad through
its Secretary General and another.*
(in CM Appeal No. 118/23)

Ibad-ur-Rehman Lodhi, ASC.
(in CM Appeal No. 119/23)

Versus

... Appellants

*Election Commission of Pakistan through Chief
Election Commissioner, Islamabad and others.*
(in CM Appeal No. 118/23)

*The Registrar, Supreme Court of Pakistan,
Islamabad and others.*
(in CM Appeal No. 119/23)

... Respondents

For the Petitioners:
(In Const.P. 32/23)

Mr. Abid S. Zuberi, ASC.
assisted by Miss Amna Khalili, Adv.
Mr. Muqtadir Akhtar Shabbir, ASC.
Ms. Bushra Qamar, ASC.
Mr. Saleem Akhtar Warraich, ASC.
Mr. M. Sharif Janjua, AOR.

For the Petitioner:
(In Const.P. 36/23)

Mr. Anwar Mansoor Khan, Sr. ASC.
(Through video-link from Karachi)

For the Appellant:
(In CM Appeal 118/23)

Syed Ali Zafar, ASC.
(Through video-link from Lahore)

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Attested by
M. M. Quazzam Butt
Advocate

For the Appellant:
(In CM Appeal 119/23)

Mr. Ibad-ur-Rehman Lodhi, ASC.

For the Respondents:

Not represented.

Date of Hearing:

23.10.2023.

ORDER

1. Constitution Petition No. 32 of 2023 has been filed by the Supreme Court Bar Association of Pakistan through its Secretary and three Members on 16 August 2023. Constitution Petition No. 36 of 2023 has been filed by Mr. Munir Ahmed, an Advocate of the High Court on 13 September 2023. We enquired from learned Mr. Abid S. Zuberi representing the petitioners in Constitution Petition No. 32/2023 and learned Mr. Anwar Mansoor Khan representing the petitioner in Constitution Petition No. 36/2023 as to why applications seeking urgent fixation of these petitions were not filed, particularly since they were time sensitive, but received no answer.

2. Civil Miscellaneous Appeal No. 118 of 2023 has been filed by Pakistan Tehreek-e-Insaf ('PTI') through its Secretary General, Mr. Omer Ayub on 28 August 2023. And, Civil Miscellaneous Appeal No. 119 of 2023 has been filed by Mr. Ibad-ur-Rehman Lodhi, an Advocate of the Supreme Court. Both the said Appeals were filed against the orders of the office which had questioned the maintainability of the petitions, including on the ground that the President of the Islamic Republic of Pakistan enjoys immunity in terms of Article 248 of the Constitution of the Islamic Republic of Pakistan (**the Constitution**), and while the incumbent, Dr. Arif Alvi, holds the office of the President an order cannot be passed against him. The ordinary procedure stipulates that an appeal filed against office objections is heard by a Judge-in-Chambers. However, since two petitions seeking apparently similar relief are fixed in Court today both the said Appeals were fixed in Court today.

3. The learned counsel for the petitioners and the petitioner representing himself, who is also an Advocate of the Supreme Court, commenced their submissions by stating that the general elections are being delayed because the '7th Population and Housing Census, 2023', held pursuant to section 31 of the General Statistics (Re-organization) Act, 2011, was conducted belatedly. It is submitted that the Council of Common Interest ('CCI'), pursuant to Article 154(1) of the Constitution read with

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M. Muazzam Butt
Advocate

entry nine of Part-II of the Federal Legislative List¹ is empowered to approve the census, which it did on 5 August 2023.² Reference was also made to the proviso to Article 51(5) of the Constitution, which reads as under:

'Provided that for purposes of the next general elections to be held in 2018 and bye-elections related thereto, the allocation shall be made on the basis of provisional results of the 2017 census which shall be published by the Federal Government.'

4. It had taken the CCI about four years to approve the '6th Population and Housing Census, 2017' which was finally approved on 12 April 2021, as under:

The CCI decided to approve the Final Results of the 6th Population and Housing Census, 2017 in the larger national interest. The Decision was taken by majority vote, in terms of Rule 5(10) of the Rules of Procedure of the Council of Common Interests, 2010, as seven members supported the approval of Final Census Result while the Chief Minister Sindh opposed it. The CCI directed that the process of next Census should start as early as possible according to international best practices by using latest technology.'

5. Presumably, pursuant to the abovementioned CCI decision of 12 April 2021, the 7th Population and Housing Census, 2023 was carried out. It is submitted that the CCI could not have approved the 7th Population and Housing Census, 2023 because two provinces, respectively Punjab and Khyber Pakhtunkhwa, could not legally participate in the CCI meeting. We enquired whether, if for the sake of argument, it be assumed that the said two provinces did not vote to approve the said census would it negate its approval by the other members of the CCI. Another question which arose was, if for the sake of argument, the 7th Population and Housing Census, 2023 was to be disregarded, could the general elections be held pursuant to the 6th Population and Housing Census, 2017, when the proviso to Article 51(5) of the Constitution had categorized it as '*provisional*' and restricted its scope to the '*general elections to be held in 2018 and bye-elections related thereto*'.

6. We note that Article 222(b) of the Constitution empowers Parliament to make laws providing for '*delimitation of constituencies*'. Consequently, *Delimitation of Constituencies* was provided in chapter III of the Elections Act, 2017, and the Election Commission of Pakistan ('ECP') issued

¹ Constitution of the Islamic Republic of Pakistan, Fourth Schedule.

² Notification, S.R.O 1012(1)/2023, published in the Gazette of Pakistan, Extraordinary, on 7 August 2023.

ATTESTED
10/11/2023
M. Quazzam Butt
Advocate

notification dated 17 August 2023³ setting out the 'schedule for carrying out of delimitation of constituencies afresh in accordance with the official result of 7th Population and Housing Census, 2023'. As per this notification the first action to be taken was on 17 August 2023 and the last action, that is, the 'Final Publication of Delimitation' would take place on 14 December 2023; we are informed that the notification was amended on 1 September 2023 and had brought forward the date of 'Final Publication of Delimitation' to 30 November 2023.

7. It is further submitted that the Constitution mandates that the elections be held within ninety days of the date of dissolution of the National and provincial assemblies, but if credence is given to the 7th Population and Housing Census, 2023 and its approval by CCI and delimitation is to take place, then elections cannot be held within ninety days. Reference was also made to section 57 of the Elections Act, 2017 and we are told that the minimum period required (after delimitation) would commence after 'seven days of the announcement under sub-section (1)' of section 57, and would require a minimum period of 54 days.

8. We enquired from the learned counsel and the petitioner representing himself whose obligation it was to announce the date of elections, and received contradictory answers. Some stated that it was the President and the others that it was the ECP. However, all unanimously stated that it was no longer possible to hold elections within ninety days of the dissolution of the assemblies. Learned Syed Ali Zafar referred to Article 254 of the Constitution and stated that if a particular period is prescribed in the Constitution and something cannot be done within such period, which in the instant petitions would be the holding of general elections, it would not render invalid or ineffective the elections that will be held. Article 254 of the Constitution provides that:

'When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or other-wise ineffective by reason only that it was not done within that period.'

9. Three out of the four petitions have arrayed the President as a respondent. Constitution Petition No. 36/2023 attaches a purported message of the President, conveyed through social media (X, formerly

³ No.F.9(1)/2021-Elec-I.

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Muazzam Butt
Advocate

Twitter) which simply calls for the views of the ECP. If the said message was of the President, it leads to the question of whether the country can be run on the basis of such messaging on social media. Copy of a legal notice dated 12 August 2023 has also been attached whereby the petitioner's counsel, Mr. Mohammad Azhar Siddique, writes to the President calling upon him to announce the date of elections and issue notification in this regard. However, learned Mr. Anwar Mansoor Khan who represents the same petitioner (in Constitution Petition No. 36/2023) does not assign blame, let alone hold the President responsible for not announcing the date for holding elections.

10. We pointed out that if matters other than holding of elections are to be taken up, they would require constitutional interpretation and as such would attract section 4 of the Supreme Court (Practice and Procedure) Act, 2023, and a larger bench in terms thereof will have to be constituted. Thereupon, all the learned counsel and the petitioner who represents himself stated that they restrict their prayers in the petitions only to the holding of the general elections, and that they have no objection to this three-member bench hearing the petitions.

10. Therefore, to ascertain when general elections are to be held, issue **notice** to the Election Commission of Pakistan. Notice be also issued to the Federation of Pakistan. Copy of the order passed today to accompany the notices. To come up on **Thursday, 2 November 2023 at 11.30 am.**

Chief Justice

Judge

Judge

Islamabad:
23.10.2023
(M. Tauseef)

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Attested By
M. Muazzam Butt
Advocate

THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Justice Qazi Faez Isa, C.J.
Justice Amin-ud-Din Khan
Justice Athar Minallah

Constitutional Petitions No.32 and 36 of 2023 along with C.M. Appeals No.118 and 119 of 2023 in Const. Petitions No.Nil/2023

(Const. Petitions filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973) (CMAs against order of the Registrar of this Court dated 14.09.2023 declaring the titled Const. Petitions as 'not entertainable'.)

Supreme Court Bar Association
of Pakistan, through its Secretary,
Islamabad and others

...Petitioners in Const.P.32/2023

Munir Ahmad

...Petitioner in Const.P.36/2023

Pakistan Tehreek-e-Insaf (PTI),
Islamabad through its Secretary
General and another

Ibad-ur-Rehman Lodhi, Advocate
Supreme Court of Pakistan, Former
Judge, Lahore High Court, Lahore

Versus

The Federation of Pakistan
and others

...Respondents in Const.Ps.32 & 36 of 2023

Election Commission of
Pakistan through Chief
Election Commissioner
Islamabad and others

....Respondents in C.M. Appeal No.118/2023

The Registrar, Supreme

Court of Pakistan, Islamabad.Respondents in C.M. Appeal No.119/2023

For the Petitioners:
(in Const.P.32/23)

Mr. Abid S. Zuberi, ASC. (In Const.P. 32/23)
assisted by Miss Amna Khalili, Adv.
Mr. Muqtadir Akhtar Shabbir, ASC.
Mr. Shakeel ur Rehman, ASC
Ms. Bushra Qamar, ASC.
Mr. Saim Chaudhry, ASC

For applicant:
(in CMA-9298/23):

Mr. Farooq H. Naek, Sr. ASC

For the Petitioner:
(in Const.P.36/23)

Nemo.

For the Appellant
(in CM Appeal 118/23):

Syed Ali Zafar, ASC.

For the Appellant:
(in CM Appeal 119/23):

Mr. Ibad-ur-Rehman Lodhi, ASC.

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Attested By
M. Muazzam Butt
Advocate

For ECP: Mr. Sajeel Shehryar Swati, ASC
Mr. Umar Hamid Khan, Secretary, ECP
Mr. Muhammad Arshad, D.G. (LAW), ECP

For the Federation: Mr. Mansoor Usman Awan, Attorney General for
Pakistan
Ch. Aamir Rehman, Addl. AGP

Date of hearing: 02.11.2023

ORDER

Qazi Faez Isa, CJ. Our order dated 23 October 2023 concluded as follows, 'to ascertain when general elections are to be held, issue **notice** to the Election Commission of Pakistan. Notice be also issued to the Federation of Pakistan'.

2. Today, the Election Commission of Pakistan's ('ECP') counsel states that the process of delimitation is underway, which will conclude on 30 November 2023, and publication of the final result of the delimitation will be by 5 December 2023. Thereafter, the election programme is to be announced in terms of section 57(2) of the Elections Act, 2017, which provides certain timeframes and will conclude on 29 January 2024.

3. ECP's counsel further states that to maximize public participation elections should ideally be held on a Sunday, and the first Sunday after the above timeframe would be 4 February 2024. However, to enable political parties to convey their respective programmes and manifestoes it would be appropriate to hold elections on Sunday, 11 February, 2024.

4. Let the ECP meet with the President of Pakistan today and the date for holding general elections in Pakistan be appointed. In this regard, the Attorney-General for Pakistan will arrange such meeting and shall provide to the President this Court's order of 23 October 2023 and today's order, and be available to render assistance.

5. We expect that the matter of appointing a date for holding general elections shall be settled, and this Court will be informed tomorrow, that is, 3 November 2023.

Chief Justice

Judge

Judge
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Islamabad
02.11.2023
M. Ashiq Malik

Attested By
M. A. Quazam Butt
Advocate

IN THE SUPREME COURT OF PAKISTAN
(Original/Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Amin-ud-Din Khan
Justice Athar Minallah

Constitution Petition Nos. 32 and 36 of 2023

*Supreme Court Bar Association of Pakistan through
its Secretary, Islamabad and others.*
(in Const. P. No. 32/23)

Munir Ahmed.
(in Const. P. No. 36/23)

... Petitioners

Versus

*Federation of Pakistan through Secretary,
Cabinet Division, Islamabad and others.*
(in both Constitution Petitions)

... Respondents

And

Civil Misc. Appeal Nos. 118 and 119 of 2023 in Const.P.NIL/2023

*Pakistan Tehreek-e-Insaf (PTI), Islamabad through
its Secretary General and another.*
(in CM Appeal No. 118/23)

Ibad-ur-Rehman Lodhi, ASC.
(in CM Appeal No. 119/23)

... Appellants

Versus

*Election Commission of Pakistan through Chief
Election Commissioner, Islamabad and others.*
(in CM Appeal No. 118/23)

*The Registrar, Supreme Court of Pakistan,
Islamabad and others.*
(in CM Appeal No. 119/23)

... Respondents

For the Petitioners:
(In Const.P.No.32/23)

Mr. Abid S. Zuberi, ASC.
assisted by Miss Amna Khalili, Adv.
and Agha Ali Durrani, Adv.
Mr. Muqtadir Akhtar Shabbir, ASC.
Mr. Shakeel-ur-Rehman, ASC.
Ms. Bushra Qamar, ASC.
Mr. Saim Chaudhry, ASC.

Mr. Irfan Mir Halepota, ASC.
(Through video-link from Karachi)

For the Petitioner:
(In Const.P.No.36/23)

Mr. Anwar Mansoor Khan, Sr. ASC.

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Attested By
M. Maazam Butt
Advocate

For the Appellant: Syed Ali Zafar, ASC.
(In CM Appeal 118/23) assisted by
Syed Haider Ali Zafar, Adv.

For the Appellant: Mr. Ibad-ur-Rehman Lodhi, ASC.
(In CM Appeal 119/23)

For the Federation: Mr. Mansoor Usman Awan,
Attorney-General for Pakistan.
assisted by
Maryam Ali Abbasi, Adv.,
Mr. Ahmed-ur-Rehman, Adv. and
Mr. Saad Javid Satti, Adv.
Ch. Aamir Rehman,
Additional Attorney General for Pakistan.

For Govt. of Punjab: Mr. Waseem Mumtaz Malik,
Additional Advocate-General, Punjab.

For Govt. of Sindh: Mr. Saulat Rizvi,
Additional Advocate-General, Sindh.

For Govt. of
Khyber Pakhtunkhwa: Mr. Sultan Mazher Sher Khan,
Additional Advocate-General, KP.

For Govt. of Balochistan: Mr. Ayaz Khan Swati,
Additional Advocate-General, Balochistan.

For Islamabad
Capital Territory: Mr. Ayaz Shaukat,
Advocate-General, Islamabad.

For the ECP: Mr. Sajeel Sheryar Swati, ASC.
Mr. M. Arshad, DG (Law) ECP.
Mr. Khurram Shehzad, Addl. DG (Law) ECP.
Mr. Falak Sher, Legal Consultant, ECP.

Date of Hearing: 03.11.2023.

JUDGMENT

Qazi Faez Isa, CJ. Constitution Petition No. 32 of 2023 was filed by the Supreme Court Bar Association of Pakistan by its Secretary and three Members, on 16 August 2023, and was represented by the learned Mr. Abid S. Zuberi. Constitution Petition No. 36 of 2023 was filed by Mr. Munir Ahmed, an Advocate of the High Court, on 13 September 2023, but he remained absent throughout and replaced his counsel with learned Mr. Anwar Mansoor Khan today, when matters stood almost concluded. The petitioners want early elections but surprisingly did not seek their petitions' early hearing.

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M. A. Jazir Butt
Advocate

2. Civil Miscellaneous Appeal No. 118 of 2023 was filed by the Pakistan Tehreek-e-Insaf ('PTI') through its Secretary General, Mr. Omer Ayub, on 28 August 2023, and PTI was represented by the learned Mr. Ali Zafar and Civil Miscellaneous Appeal No. 119 of 2023 was filed by Mr. Ibad-ur-Rehman Lodhi, an Advocate of the Supreme Court, against objections to their maintainability. Such appeals are usually heard by a Judge-in-Chambers, but since the same relief was sought in the petitions these appeals too were ordered to be fixed in Court.

3. The National Assembly was dissolved on the advice of the Prime Minister on 9 August 2023, and the Chief Ministers of the provinces advised the dissolution of the provincial assemblies. The President of Pakistan was required to 'appoint a date, not later than ninety days from the date of the dissolution, for the holding of a general election to the Assembly.'¹ And, the Elections Act, 2017 requires the notification of the Election Programme, including the date of the general election, as under:

'57. **Notification of Election Programme.** (1) Subject to the Constitution, the Commission shall by notification in the official Gazette announce the date or dates, as the case may be, of the general elections.'

4. However, general election is not being held within the stipulated period because of the belated conduct of the '7th Population and Housing Census, 2023' ('the 7th Census'). Census is held pursuant to section 31 of the General Statistics (Re-organization) Act, 2011. After a census is held the Council of Common Interest ('CCI') approves it, pursuant to Article 154(1) of the Constitution read with the ninth entry of Part-II of the Federal Legislative List.²

5. The CCI had approved the previous census, the '6th Population and Housing Census, 2017' ('the 6th Census'), on 12 April 2021, that is after a period of about four years, and directed that the process of the next census be commenced:

The CCI decided to approve the Final Results of the 6th Population and Housing Census, 2017 in the larger national interest. The Decision was taken by majority vote, in terms of Rule 5(10) of the Rules of Procedure of the Council of Common Interests, 2010, as seven members supported the approval of Final Census Result while the Chief Minister Sindh opposed it. The CCI directed that the process of next

¹ Constitution of the Islamic Republic of Pakistan, Article 48(5)(a).

² Constitution of the Islamic Republic of Pakistan, Fourth Schedule.

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Attested By
M. Muazzam Butt
Advocate

Census should start as early as possible according to international best practices by using latest technology.'

A proviso to Article 51(5) of the Constitution was added on 22 December 2017,³ stating:

'(5) The seats in the National Assembly shall be allocated to each province and the Federal Capital on the basis of population in accordance with the last preceding census officially published:

'Provided that for purposes of the next general elections to be held in 2018 and bye-elections related thereto, the allocation shall be made on the basis of provisional results of the 2017 census which shall be published by the Federal Government.'

6. Pursuant to the decision of CCI taken on 5 August 2023 the 7th Census was carried out. However, since the proviso to Article 51(5) of the Constitution had restricted the application of the 6th Census to the '*general elections to be held in 2018 and bye-elections related thereto*', it necessitated that another census be undertaken for the next general election, that is, the 7th Census.

7. A census is followed by delimitation. Article 222(b) of the Constitution empowers Parliament to make laws providing for the '*delimitation of constituencies*', and *Delimitation of Constituencies* is provided in Chapter III of the Elections Act, 2017. The Election Commission of Pakistan ('ECP') issued notification dated 17 August 2023⁴ setting out the '*schedule for carrying out of delimitation of constituencies afresh in accordance with the official result of 7th Population and Housing Census, 2023*'. As per the ECP's said notification, the first step towards delimitation was taken on 17 August 2023 and the last action was the '*Final Publication of Delimitation*' which is to take place on 14 December 2023; but, we were informed that an amendment was made on 1 September 2023 which brought forward the date of '*Final Publication of Delimitation*' to 30 November 2023.

8. Article 224(2) of the Constitution also requires that general election '*shall be held within a period of ninety days after the dissolution*'. However, CCI took almost four years to approve the 6th Census, which delayed the 7th Census and in turn delayed delimitation. Section 57(2) of the Elections Act, 2017 stipulates that within '*seven days of the announcement under sub-*

³ Constitution (Twenty-Fourth Amendment) Act, 2017.

⁴ No.F.9(1)/2021-Elec-I.

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Attested By
M. I. Muazzam Butt
Advocate

section (1) of section 57, the election programme is announced, which, we were told, requires a minimum period of 54 days.

9. All the learned counsel are of the unanimous view that it is no longer possible to hold elections within ninety days of the dissolution of the assemblies. The learned Syed Ali Zafar by referring to Article 254 of the Constitution stated that if for the doing of any act a particular period is prescribed but it was not done within such period it would not render the act invalid or ineffective. Article 254 of the Constitution is reproduced hereunder:

'When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or other-wise ineffective by reason only that it was not done within that period.'

10. In three of the cases before us the President is arrayed as a respondent. Constitution Petition No. 36/2023 attaches a message of the President, conveyed through social media (X, formerly Twitter) calling for the views of the ECP on the announcement of a date for holding elections. If the said message was that of the President, it leads one to question whether the country can be run on the basis of messaging on social media.

11. The President of Pakistan and the ECP subsequently reached an impasse. The correspondence between the two ended with the President's letter of 13 September 2023, which concluded:

'THEREFORE, taking into account all the above, the Election Commission of Pakistan in consultation with Provincial Governments and political parties under the relevant provisions of the Constitution and in view that some of these matters are already subjudice, may seek guidance from the Superior Judiciary for announcement of a single date for general election to the National and Provincial Assemblies.'⁵

ECP confirms the receipt of the above letter, which we are informed it did not reply to.

12. We pointed out to the learned counsel, that if their contentions required the *interpretation of the constitutional provision* it would attract section 4 of the Supreme Court (Practice and Procedure) Act, 2023, and a larger bench in terms thereof would have to be constituted. But, all the learned counsel stated that at this juncture they only want general election

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⁵ President's letter dated 13 September 2023 to the ECP filed with CMA No. 9293/2023.

Attested By
M. A. Qasbi
Advocate
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to be held and have no objection to this three-member Bench hearing the cases to achieve this objective.

13. Therefore, in order to ascertain how soon the general elections could be held, notices were issued, and 2 November 2023 was fixed as the next date of hearing on which date the following order was passed:

'... the Election Commission of Pakistan's ('ECP') counsel states that the process of delimitation is underway, which will conclude on 30 November 2023, and publication of the final result of the delimitation will be by 5 December 2023. Thereafter, the election programme is to be announced in terms of section 57(2) of the Elections Act, 2017, which provides certain timeframes and will conclude on 29 January 2024.'

'ECP's counsel further states that to maximize public participation elections should ideally be held on a Sunday, and the first Sunday after the above timeframe would be 4 February 2024. However, to enable political parties to convey their respective programmes and manifestoes it would be appropriate to hold elections on Sunday, 11 February 2024.'

'Let the ECP meet with the President of Pakistan today and the date for holding general elections in Pakistan be appointed. In this regard, the Attorney-General for Pakistan will arrange such meeting and shall provide to the President this Court's order of 23 October 2023 and today's order, and be available to render assistance.'

'We expect that the matter of appointing a date for holding general elections shall be settled, and this Court will be informed tomorrow, that is, 3 November 2023.'

14. The President in his letter (of 13 September 2023) had sought *guidance from Superior Judiciary*. The only possible avenue for the President to seek the Supreme Court's opinion was by invoking Article 186 of the Constitution, reproduced hereunder:

'186. (1) If, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration.

(2) The Supreme Court shall consider a question so referred and report its opinion on the question to the President.'

15. However, the President did not seek recourse to Article 186 requiring the Supreme Court to give its opinion. Needless to state, this was the only constitutionally permissible manner for the Supreme Court to provide *guidance*. The Supreme Court and the holder of every constitutional office

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and every constitutional body, including the President and the ECP, must act in accordance with the mandate of the Constitution. Abiding by the Constitution is not optional. It is equally important that no institution transgresses into the constitutional jurisdiction of another. A matter which should have been dealt with by the President and the ECP was quite unnecessarily brought to this Court. Cognizant of the constitutional scheme and fully aware of the limit of our constitutional jurisdiction, we were careful not to encroach on the jurisdiction of the President, nor that of the ECP.

16. Since the election date was not announced, concerns were rising amongst the people of Pakistan, where many of them apprehended that elections may be indefinitely postponed or not take place, which undoubtedly would cause irreparable damage to democracy and the country. Conscious of the Supreme Court's lack of jurisdiction and careful not to trespass on the jurisdiction of the President and of the ECP, we encouraged them to meet and determine that which was within their constitutional domain. They met yesterday (2 November 2023) and the meeting proved to be a success.

17. Mr. Mansoor Usman Awan, the learned Attorney-General for Pakistan, brought a letter issued by the Secretary to the President,⁶ which states that, '*after a briefing by Election Commission of Pakistan followed by due deliberation, there was an agreement to announce the date of Thursday, 8th February, 2024 for holding General Elections*'. The ECP has also filed documents,⁷ including the minutes signed by the Chief Election Commissioner and the four Members of the ECP, which state, '*The Commission and the Honourable President during meeting in the President House agreed to appoint 8th February, 2024 as a poll date for General Election 2024.*' The ECP has also issued a notification dated 3 November 2023, which states that 8 February 2024 is *the poll date* for general election to the National Assembly and the provincial assemblies. The learned Attorney-General, on behalf of the Federal Government, and the respective law officers, on behalf of the four provinces and the Islamabad Capital Territory, have also expressed their concurrence for the holding of general election on the said date.

⁶ President Sectt. (Public)'s u.o. No. 7/3/2023/FA&PA dated 3rd November, 2023.

⁷ CMA No. 9391/2023.

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Attested By
M. M. Jazam Butt
Advocate

18. The President of Pakistan and the ECP have announced the date for holding of general election to the National Assembly and to the provincial assemblies. The Federal Government, the Provincial Governments and the Islamabad Capital Territory have concurred. The matter of the holding of general election on 8 February 2024 stands resolved. No one should now put forward any pretext to derail democracy.

19. The higher the constitutional office or body the greater is the responsibility. Obedience to the Constitution and law is an inviolable obligation of every citizen,⁸ however, an added responsibility and obligation is placed on all those who assume their office by taking an oath.⁹ The President takes the prescribed oath¹⁰ and so too the Chief Election Commissioner and Members of the ECP.¹¹ The Constitution has subsisted for fifty years; there is no longer any excuse to remain ignorant of the Constitution. Incidentally, on this very day (3 November 2007) a grave constitutional transgression took place sixteen years ago, and like it every constitutional deviation has long lasting effects. We must abide by the Constitution and realise mistakes which have had a calamitous effect on the people and the territory of Pakistan. It is about time that courts cease to be involved in political disputes, which take up considerable court time; time which would be better spent doing what this Court is required to do.

20. This President had earlier *dissolved* the National Assembly when the Prime Minister faced a vote of no confidence. Despite the fact that the Constitution clearly mandated that once the requisite number of members had given a notice of a resolution for a vote of no confidence in the National Assembly, the power to advise dissolution of the National Assembly no longer remained with the Prime Minister. Therefore, the President could not dissolve the National Assembly. But the Constitution was disregarded, triggering a constitutional crisis, which then had to be redressed by this Court, in the case reported as *Pakistan Peoples Party Parliamentarians v Federation of Pakistan*.¹² It was pointed out by the Chief Justice and four Judges of this Court what was manifestly clear, that a Prime Minister facing a vote of no confidence could not advise the dissolution of the National Assembly. The purported dissolution of the National Assembly was declared unconstitutional and held to be of no legal effect. One of the

⁸ Constitution of the Islamic Republic of Pakistan, Article 5.

⁹ Ibid., Third Schedule.

¹⁰ Ibid, Article 42.

¹¹ Ibid, Article 214.

¹² PLD 2022 Supreme Court 574.

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Attested By
Muazzam Butt
Advocate

learned Judges opined that there should be consequences for such a blatant transgression of the Constitution:

'... the Constitution opens by stating that the exercise of authority "is a sacred trust" and can only be exercised through "the chosen representatives of the people." However, this sacred trust was violated amongst others by the President, PM, the Speaker, the Deputy Speaker and the Law Minister as the elected representatives of the people were prevented from voting on the resolution and for such blatant transgression of the Constitution there must be consequences and the law must take its course.'¹³

And that for such an unconstitutional act Article 6 of the Constitution may be invoked:

'... acts attract Article 6 of the Constitution is also left open to be determined by the Parliamentarians as to whether they leave open the doors for such unconstitutional acts or take suitable measures to stop such like mess in future.'

21. On that occasion (3 April 2022) the President had *dissolved* the National Assembly by using a power not vesting in him, while in the present case he did not use a power which he did possess. Constitutional office holders must adhere to the Constitution; fulfil the duties assigned to them as a *sacred trust*, and divest themselves from all that is outside their constitutional domain; only then do they serve the people of Pakistan. Pakistan was established democratically, is a democracy and must remain one. When general elections are due they have to be held. We are humbled in facilitating the President and the ECP to do right by the people of Pakistan.

22. In conclusion, we want to acknowledge the role of the media. Article 19 of the Constitution decrees that: '*there shall be freedom of the press*', subject to the stated *reasonable restrictions*. But some have construed this freedom as a license to disinform and build a false narrative, and do so to undermine democracy. The Pakistan Electronic Media Regulatory Authority ('**PEMRA**') prohibits content which '*incites or condones dislodgment of democratic setup against the command of the Constitution of Pakistan, provided that discussions on improvement of democracy shall constitute a fair comment*'.¹⁴

Attested By
M. A. Iqbal Butt
Advocate

¹³ Ibid., per Mazhar Alam Khan Miankhel, J.

¹⁴ PEMRA's Electronic Media Code of Conduct 2015, section 3(1).

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23. A decreased confidence in democracy diminishes people's engagement with it and suppresses voter turnout. A study conducted by the European Parliament found, that:

'Disinformation also has far-reaching implications for human rights and democratic norms worldwide. It threatens freedom of thought, the right to privacy and the right to democratic participation, as well as endangering a range of economic, social and cultural rights. It also diminishes broader indicators of democratic quality, unsettling citizens' faith in democratic institutions not only by distorting free and fair elections, but also fomenting digital violence and repression.'¹⁵

However, this Court appreciates those in the media who perform their duties professionally and truthfully.

24. We would like to commend the learned Attorney-General for Pakistan, the learned law officers and the learned counsel for their positive assistance and facilitation for the quick disposal of these cases.¹⁶

25. These matters are allowed in the aforesaid terms.

26. In view of the public importance of this matter, this judgment is to be translated into Urdu. However, the English version shall be treated as this Court's decision.

Chief Justice

Judge

Judge

Islamabad:
03.11.2023
(M. Tauseef)

Approved for Reporting

Attested By
M. Tauseef
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Advocate

¹⁵ 'The impact of disinformation on democratic processes and human rights in the world' Carne Colomina, Hector Sanchez Margalef, Richard Youngs, European Parliament, Directorate-General for External Policies.

¹⁶ These cases were fixed for hearing in Court on 23 October, heard on 2 and 3 November and decided on 3 November 2023, that is, within 12 days.

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Munib Akhtar
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar

SUO MOTU CASE NO. 1 OF 2023

(Suo Motu Regarding Holding of General Elections
to the Provincial Assemblies of Punjab and KP)

And

CONST. PETITION NO.1 OF 2023

And

CONST. PETITION NO.2 OF 2023

Islamabad High Court Bar Association
Islamabad through its President Muhammad
Shoaib Shaheen, ASC Islamabad
(in Const.P.1/2023)

Muhammad Sibtain Khan and others
(in Const.P.2/2023)

...Petitioner(s)

Versus

Election Commission of Pakistan through
the Chief Election Commissioner, Islamabad **...Respondent(s)**
and others
(in Const.P.1&2/2023)

For the petitioner

: Mr. Abid S. Zuberi, ASC.
Mr. Shoaib Shaheen, ASC.
Assisted by:
Ayan Memon, Adv.
Ms. Amna Khalili, Adv.
Mr. Agha Ali Durrani, Adv.
Mr. Arif Ansari, Adv.
(in Const. P.1 of 2023)

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For the petitioner : Syed Ali Zafar, ASC
Mr. Sarfraz Ahmad Cheema, ASC
Mr. Zahid Nawaz Cheema, ASC
Ch. Faisal Fareed, ASC.
Mr. Safdar Shaheen Pirzada, ASC
Mr. Ashfaq Ahmed Kharal, ASC
Mr. Amir Saeed Rawn, ASC
(in Const. P.2 of 2023)

On Court's Notice

For Federation of Pak. : Mr. Shehzad Ata Elahi,
Attorney General for Pakistan
Ch. Aamir Rehman, Addl. AGP
Malik Javaid Iqbal Wains, Addl. AG
Assisted by:
Ms. Mehwish Batool, Adv.
Mr. Aitzaz ul Haque, Adv.
Ms. Maryam Rasheed, Adv.

For President of Pak. : Mr. Salman Akram Raja, ASC
Mr. Amir Malik, AOR
Assisted by:
Malik Ghulam Sabir, Adv.
Mr. M. Shakeel Mughal, Adv.
Mr. Maqbool Ahmed, Adv.
Sameen Qureshi, Adv.

For Governor KP : Mr. Khalid Ishaq, ASC.

For Governor Punjab : Mr. Mustafa Ramday, ASC.
Mr. Jahanzeb Awan, ASC
Mr. Rashid Hafeez, ASC.
Assisted by:
Ms. Zoe K. Khan, Adv.
Mr. Ahmed Junaid, Adv.
Mr. Akbar Khan, Adv.
Mr. Uzair Shafi, Adv.
Barrister Maria Haq, Adv.
Barrister Salman Ahmed, Adv.

For ECP : Mr. Sajeel Shehryar Swati, ASC.
Assisted by:
Barrister Saman Mamoon, Adv.
Ms. Kiran Khadijah, Adv.
Mr. Zafar Iqbal, Special Secy.
Mr. Muhammad Arshad, DG Law
Mr. Khurram Shehzad, Addl. DG Law
Ms. Saima Tariq Janjua, DD (Law)
Ms. Bushra Rasheed, Law Officer
Mr. Zaighum Anees, Law Officer

For Govt. of Punjab : Mr. Muhammad Shan Gul, AG
Malik Waseem Mumtaz, Addl. AG
Mr. Sana Ullah Zahid, Addl. AG

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Assisted by:

Mr. Khurram Chughtai, Adv.
Mr. Usman Ghani, Adv.
Mr. Raza Rehman, Adv.
Mr. Ahmed Raza Sarwar,
Addl. Chief Sec. Law (Pb)

- For Govt. of KPK : Mr. Aamir Javaid, AG
Sardar Ali Raza, Addl. AG
Mian Shafaqat Jan, Addl. AG
- For Govt. of Baluchistan : Mr. Asif Reki, A.G
Mr. M. Ayaz Swati, Addl. AG.
- For Govt. of Sindh : Mr. Hassan Akbar, A.G
Mr. Saifullah, AAG
(through V.L. Karachi)
Mr. Fauzi Zafar, Addl. AG
Mr. Zeeshan Edhi, Addl. AG
- For ICT : Mr. Jehangir Khan Jadoon, AG
- For Pak. Bar Council : Mr. Haroon-ur-Rasheed, ASC.
Vice Chairman, PBC
Mr. Hassan Raza Pasha, ASC.
Chairman, Executive Council.
- For Supreme Court Bar Association : Mr. Abid S. Zuberi, ASC.
President SCBA
Mr. Muqtadir Akhtar Shabbir, ASC/
Secretary SCBA
Malik Shakeel-ur-Rehman, ASC/ Addl.
Secretary
- For PTI : Syed Ali Zafar, ASC.
Ch. Faisal Fareed, ASC.
Mr. Safdar Shaheen Pirzada, ASC
Mr. Ashfaq Kharal, ASC
- For PPPP : Mr. Farooq H. Naek, Sr. ASC.
Assisted by:
Barrister Sheraz Shaukat Rajpar
- For PML(N) : Mr. Mansoor Usman Awan, ASC.
Mr. Anees Shehzad, AOR.
- For JUIP : Mr. Kamran Murtaza, Sr. ASC.
- For Jamat-e-Islami : Mr. Ghulam Mohyuddin Malik, ASC
Syed Rifaqat Hussain Shah, AOR.
- For PML (Awami) : Mr. Azhar Siddiqui, ASC
- Date of hearing : 28.02.2023.

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ORDER

By a majority of 3:2 (Mr. Justice Syed Mansoor Ali Shah and Mr. Justice Jamal Khan Mandokhail dissenting) and for detailed reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, these matters are disposed of in the following terms:

1. Parliamentary democracy is one of the salient features of the Constitution. There can be no parliamentary democracy without Parliament or the Provincial Assemblies. And there can be neither Parliament nor Provincial Assemblies without the holding of general elections as envisaged, required and mandated by and under the Constitution and in accordance therewith. Elections, and the periodic holding of elections, therefore underpin the very fabric of the Constitution. They are a sine qua non for parliamentary democracy, and ensure that the sacred trust of sovereignty entrusted to the people of Pakistan is always in the hands of their chosen representatives.
2. While the holding of general elections has different aspects and requirements, one that is absolutely crucial is the timeframe or period in which such elections are to be held. The Constitution envisages two such periods, being of sixty and ninety days respectively. In relation to a Provincial Assembly, the first period applies when the Assembly dissolves on the expiration of its term under Article 107 and the second period is prescribed when it is sooner dissolved under Article 112. The time periods so set down in Article 224(1) and (2) respectively are constitutional imperatives that command complete fidelity.

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We are here concerned with the dissolution of two Provincial Assemblies before the expiry of their terms and therefore to the holding of general elections in relation to each within 90 days.

3. It is in the foregoing context that three questions have to be considered by the Court. The Assemblies in question are those of the Punjab and Khyber Pakhtunkhwa Provinces, which dissolved on 14.01.2023 and 18.01.2023 respectively. In both cases, the then Chief Ministers tendered advice to their respective Governors under Article 112(1) of the Constitution to dissolve the Assembly. In the case of the Punjab Province the Governor chose not to act on the said advice so that the Assembly stood dissolved on the expiry of 48 hours, on the date just mentioned. In the case of the KPK Province, the Governor did act on the advice and made an order dissolving the Assembly, on 18.01.2023. The questions which have been considered with the assistance of learned counsel for the various parties and the Law Officers are as follows:

1. Who has the constitutional responsibility and authority for appointing the date for the holding of a general election to a Provincial Assembly, upon its dissolution in the various situations envisaged by and under the Constitution?
2. How and when is this constitutional responsibility to be discharged?
3. What are the constitutional responsibilities and duties of the Federation and the Province with regard to the holding of the general election?

4. The Constitution envisages three situations for the dissolution of a Provincial Assembly. These, in the context of the role of the Governor, are as follows.

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5. The first situation is set out in clause (2) of Article 112. This envisages the dissolution of the Assembly by an order made by the Governor at his discretion, subject to the previous approval of the President and fulfillment of the conditions set out therein. In this situation, the Assembly cannot, and does not, dissolve without an order being made by the Governor, and dissolves immediately on the making of the order.

6. The second situation is set out in clause (1) of Article 112, when the Chief Minister advises dissolution. This situation can be divided into two sub-categories, which are as follows:

a. The first is where the Governor acts on the advice tendered and makes an order dissolving the Assembly. Here, the Assembly dissolves immediately on the making of the order.

b. The second sub-category is where the Governor does not make an order of dissolution on the advice tendered. Here, the Assembly stands dissolved on the expiry of forty-eight hours from the tendering of the advice by the Chief Minister (i.e., by the efflux of time), and that does not require an order of the Governor.

7. The third situation is set out in Article 107. This provides that unless an Assembly is sooner dissolved (i.e., in terms of either of the two preceding situations), it stands dissolved after a term of five years. Here, the Governor has no role at all; the Assembly dissolves by the efflux of time.

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8. Article 105(3)(a) provides that where the Governor dissolves the Assembly he shall appoint a date for the holding of a general election thereto, being a date not later than 90 days from the date of the dissolution.

9. The Elections Act, 2017 ("2017 Act") has been enacted by Parliament in exercise of its legislative competence under the Constitution. That includes, in addition to Entry 41 of the Fourth Schedule, a specific provision in the body of the Constitution, being Article 222, that expressly articulates a list of matters relating to elections which are within the Federal domain. The 2017 Act applies, inter alia, to both the National and the Provincial Assemblies. Section 57(1) thereof provides that the President shall "announce the date or dates of the general elections after consultation with the Commission".

10. On a conjoint reading of the foregoing provisions we conclude and hold as follows:

- a. In situations where the Assembly is dissolved by an order of the Governor, the constitutional responsibility of appointing a date for the general election that must follow is to be discharged by the Governor as provided in terms of Article 105(3)(a). These are the situations described in paras 5 and 6(a) above.
- b. In situations where the Assembly is not dissolved by an order of the Governor, the constitutional responsibility of appointing a date for the general election that must follow is to be discharged by the President as provided in terms of s. 57(1) of the

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2017 Act. These are the situations described in paras 6(b) and 7 above.

11. Since the general election on a dissolution of a Provincial Assembly has to be held within a time period stipulated by the Constitution itself, which is a constitutional imperative, the President or, as the case may be, the Governor must discharge the constitutional responsibility of appointing a date for the said election swiftly and without any delay and within the shortest time possible. The Election Commission must proactively be available to the President or the Governor, and be prepared for such consultation as required for a date for the holding of general elections.

12. It follows from the foregoing that in relation to the dissolution of the Punjab Assembly, to which the situation described in para 6(b) above applied, the constitutional responsibility for appointing a date for the general election that must follow was to be discharged by the President. However, in relation to the dissolution of the KPK Assembly, to which the situation described in para 6(a) above applied, the constitutional responsibility for appointing a date for the general election that must follow was to be discharged by the Governor.

13. It further follows that the order of the President dated 20.02.2023 is constitutionally competent and subject to what is observed below, it is hereby affirmed insofar as it applies to the

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Punjab Assembly; but the same is constitutionally invalid insofar as it applies to the KPK Assembly and is therefore hereby set aside. It also follows that the Governor of KPK Province, inasmuch as he has not appointed a date for the holding of the general election to the Assembly of that Province is in breach of his constitutional responsibility.

14. It is further declared and directed as follows in relation to the matters before the Court:

- a. In ordinary circumstances the general election to the Punjab Assembly ought to be held on 09.04.2023, the date announced by the President in terms of his order of 20.02.2023. However, we are informed that on account of the delay in the emergence of the date for the holding of the general election, it may not be possible to meet the 90 day deadline stipulated by the Constitution. It is also the case that (possibly on account of a misunderstanding of the law) the Election Commission did not make itself available for consultation as required under s. 57(1) of the 2017 Act. The Election Commission is therefore directed to use its utmost efforts to immediately propose, keeping in mind ss. 57 and 58 of the 2017 Act, a date to the President that is compliant with the aforesaid deadline. If such a course is not available, then the Election Commission shall in like manner propose a date for the holding of the poll that deviates to the barest minimum from the aforesaid deadline. After consultation with the Election Commission the President shall announce a date for the holding of the general election to the Punjab Assembly.

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b. The Governor of the KPK Province must after consultation with the Election Commission forthwith appoint a date for the holding of the general election to the KPK Assembly and the preceding clause (a) shall, mutatis mutandis, apply in relation thereto.

15. It is the constitutional duty of the Federation, in terms of clause (3) of Article 148, "to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution". There can be no doubt that this duty includes ensuring that a general election to the Assembly of every Province is held, and enabled to be held, in a timely manner within the period set out in the Constitution. This duty is in addition to, and applies independently of, the duty cast under Article 220 on "all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions". It follows that the Federation, and in particular the Federal Government, is, inter alia, obligated, on an immediate and urgent basis, to forthwith provide the Election Commission with all such facilities, personnel and security as it may require for the holding of the general elections. In like manner, it is the duty of the Provincial Governments, acting under the Caretaker Cabinets, to proactively provide all aid and assistance as may be required by the Election Commission. The duty cast upon the authorities as set out in s. 50 of the 2017 Act must also be discharged forthwith and proactively.

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16. The three matters before the Court are found maintainable and stand disposed of as above.

Sd/-
Chief Justice

I have appended my separate order.

Sd/-
Judge

Sd/-
Judge

I have appended my note along with the main order.

Sd/-
Judge

Sd/-
Judge

Announced in Court
at Islamabad
on 01.03.2023.

Sd/-
Chief Justice

NOT APPROVED FOR REPORTING.

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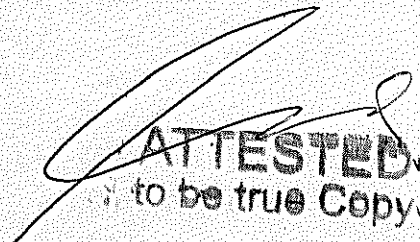
Syed Mansoor Ali Shah and Jamal Khan Mandokhail,

J.J.- For the reasons to be recorded later, we hold that:

- i. The suo motu proceedings (SMC No. 1 of 2023), in the facts and circumstances of the case, are wholly unjustified in the mode and manner they were taken up under Article 184(3) of the Constitution of the Islamic Republic of Pakistan ("Constitution"), besides being initiated with undue haste.
- ii. The Suo Motu Case No.1 of 2023 and the two Const. Petitions No. 1 & 2 of 2023 under Article 184(3) of the Constitution, in the light of the principles settled in *Manzoor Ilahi*¹ and *Benzair Bhutto*², do not constitute a fit case to exercise the extraordinary original jurisdiction of this Court under Article 184(3) of the Constitution and are thus not maintainable as the same constitutional and legal issues seeking the same relief are pending and being deliberated upon by the respective Provincial High Courts in Lahore and Peshawar, without there being any inordinate delay in the conduct of the proceedings before them.
- iii. There is no justification to invoke our extraordinary jurisdiction under Article 184(3) to initiate suo motu proceedings or entertain petitions under Article 184(3) of the Constitution, as a single Bench of the Lahore High Court has already decided the matter in favour of the petitioner before the said High Court vide judgment dated 10.02.2023 and the said judgment is still in the field. The intra court appeals (ICAs) filed against the said judgment are pending before the Division Bench of the Lahore High Court (and none of the said petitioners has approached this Court under Article 185(3) of the Constitution).

¹ PLD 1975 SC 66

² PLD 1988 SC 416


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- iv. *Once a constitutional issue is pending before a Provincial High Court, keeping in view the Federal structure of our Constitution the autonomy and independence of the apex provincial constitutional court, should not be readily interfered with rather be supported to strengthen the provincial autonomy and avoid undermining the autonomy of the provincial constitutional courts.*
- v. *There is no inordinate delay in the proceedings pending before the High Courts, infact the instant proceedings have unnecessarily delayed the matter before the High Courts. However, considering the importance of the matter we expect that the respective High Courts shall decide the matters pending before them within three working days from today.*
- vi. *Even otherwise without prejudice to the above, such like matters should best be resolved by the Parliament.*

2. *We, therefore, agree with the orders dated 23.02.2023 passed by our learned brothers, Yahya Afridi and Athar Minallah, JP., and dismiss the present constitution petitions and drop the suo motu proceedings.*

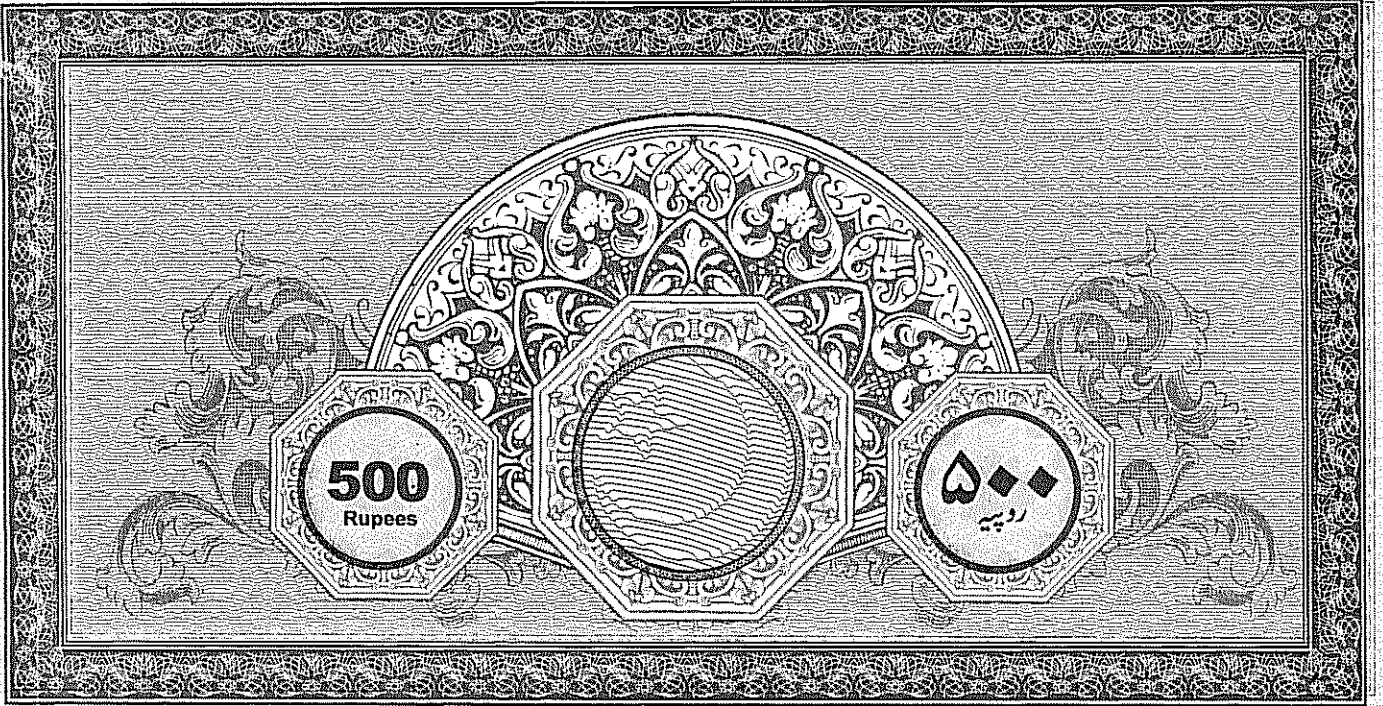
Sd/-
Judge

Sd/-
Judge

Islamabad,
1st March, 2023.

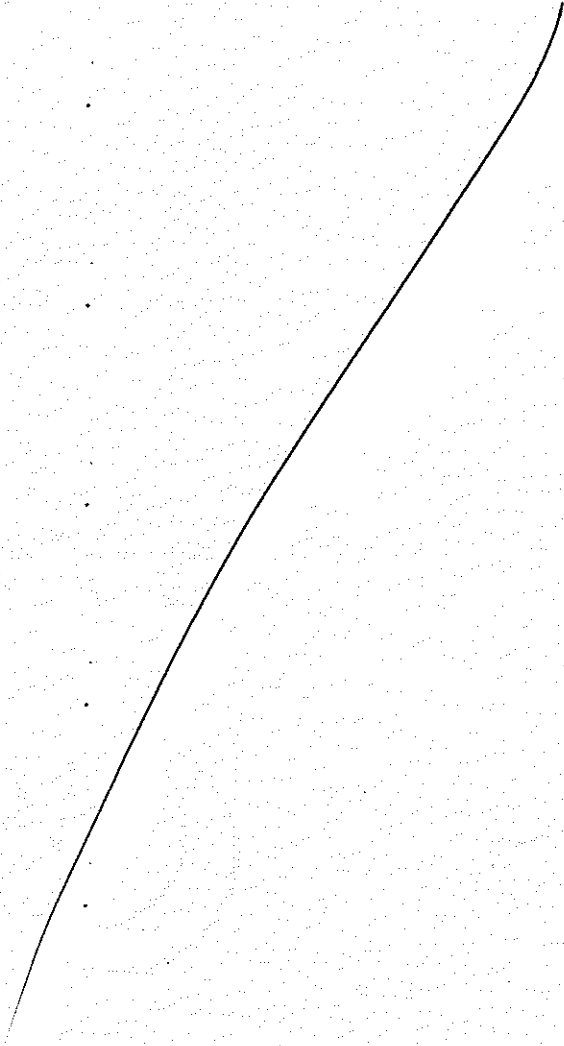
³ Initially a nine member bench heard this matter. The aforementioned two Hon'ble Judges decided the matter by dismissing the said petitions. Later on two other Hon'ble Judges disassociated themselves from the Bench for personal reasons and as the two aforementioned judges had dismissed the matter, the Bench was reconstituted into a five member bench vide order dated 27.02.2023. The decisions of the aforementioned two Hon'ble Judges dated 23.2.2023 form part of the record of this case.

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PAKISTAN COURT FEE

-50-



بعدالت پشاور ہائی کورٹ پشاور

-51-

مورخہ

Writ Petition

مقدمہ

Writ Petition

دعویٰ

جرم

Petitioner منجانب

M. Muazzam Butt ASC

President of Pakistan & others
باعث تحرے آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطہ بیروی و جواب دہی وکل کاروائی، متعلقہ آن مقام پشاور کیلئے ایڈووکیٹ و کورٹ کے محکمہ برٹ (ASC)

مقرر کر کے اقرار کیا جاتا ہے۔ کہ وکیل موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار حاصل ہوگا نیز وکیل صاحب کو عرضی دعویٰ داخل کرنے، جواب دعویٰ، اپیل، نظر ثانی کا بھی اختیار حاصل ہوگا نیز وکیل صاحب بصورت ڈگری برخلاف من اختیار دہندہ اپیل، نگرانی، نظر ثانی از عدالت ابتداء تا عدالت انتہا یعنی سپریم کورٹ آف پاکستان دائر کر سکتا ہے وکیل موصوف بصورت عدم بیروی کاروائی یکطرفہ یا ڈگری یکطرفہ کیخلاف درخواست دائر کر سکتا ہے اور وکیل موصوف میری جانب سے مقدمہ میں بصورت ڈگری چیک یا نقد روپیہ کی شکل میں وصولی کر سکے گا اور مزید یہ کہ وکیل موصوف مقدمہ متذکرہ کی کل یا جزوی کاروائی کیلئے اپنی بجائے دیگر وکیل بھی اپنے ساتھ مقرر کر سکتا ہے جس کو بھی وہ جملہ اختیار حاصل ہونگے جو کہ وکیل موصوف کو حاصل ہیں مجھے اس صورت میں تمام ساختہ پر داختم منظور و قبول ہوگا لہذا میں نے وکالت نامہ ہذا تحریر کر کے اس پر دستخط / نشان انگشت ثبت کر دیا ہے تاکہ سند رہے۔

المرقوم کا 11 ماہ 2023ء

Accepted By کے لئے منظور ہے۔
in presence of
پشاور بمقام

M. Muazzam Butt ASC
M. Adeel Butt