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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.5851 of 2023

Pakistan Tehreek-e-Insaaf through V/S Governor of Punjab and another
its General Secretary Asad Umar

Writ Petition No.6118 of 2023

Munir Ahmad V/S The Governor of Punjab and others

Writ Petition No.6093 of 2023

Zaman Khan Vardag V/S Province of Punjab and another

Writ Petition No.6119 of 2023

Sabir Raza Gill V/S Governor of Punjab

JUDGMENT

Dates of Hearing	30.01.2023, 03.02.2023, 09.02.2023 and 10.02.2023
Petitioner(s) by	Senator Barrister Syed Ali Zafar, ASC, Uzair Karamat Bhandari, ASC, Barrister Ahmad Pansota, ASC, Dr. Ali Qazilbash, Safdar Shaheen Pirzada, ASC, Syed Mohammad Aslam Rizvi, Saad Ullah, Barrister Ahtasham Mukhtar, Imran Iqbal, Ahmad Abdul Rehman, Barrister Ahmad Asfandyar Waheed, Asna Ahsan, Sara Majeed, Tariha Arif, Sikandar Sultan Ch., Abdullah Arif, Muhammad Asfandyar Khan Lodhi, Rabbiya Ali, Mian Ihsan ul Haq Sajid, Advocates for the Petitioner Asad Umar, Fawad Ahmad Ch., Ahsan Khawar, Shibli Faraz, Omar Ayub, Major Sarwar, Riaz Fatyana, Mian Aslam Iqbal, Sibtain Khan and Ashraf Sohna. Mr. Mohammad Azhar Siddique, ASC with Ahmad Imran Ghazi, Ashad Azhar, Mian

	<p>Shabbir Ismail, Irfan Mukhtar, Munir Ahmad, Salma Riaz and Amna Liaqat, Advocates in W.P.No.6118 of 2023.</p> <p>Mr. Muhammad Nouman Shams, Advocate in W.P.No.6093 of 2023 with Petitioner, Zaman Khan Vardag.</p> <p>Ch. Shahid Iqbal, Advocate for the Petitioner in W.P.No.6119 of 2023.</p>
Respondent(s) by	<p>Mr. Muhammad Shahzad Shaukat, ASC with Muhammad Nasir Chohan, ASC, Rana Asadullah, ASC, Rana Mashood Ahmad, ASC, Barrister Taha, Shaukat, Barkaat Asif, Muhammad Ahsan Nasrullah Dhillon, Saad Salman Parvez, Ali Raza Shah, Advocates for the Respondent No.1.</p> <p>Mr. Shezada Mazhar, ASC with M. Jawwad Khan Lodhi, Asad Raza and M. Ahmad Khan Niazi, Advocates alongwith Khurram Shahzad, ADG Legal, Ch. Umar Hayat, Director Legal, Imran Arif Ranjha, Legal Advisor and Hafiz Adeel Ashraf, Assistant Law Officer for Election Commission of Pakistan.</p> <p>Mirza Nasar Ahmad, Additional Attorney General with Mr. Nasir Javed Ghuman, Deputy Attorney General and Asad Abbas Dhothar, Assistant Advocate General.</p> <p>Mr. Zahid Zaman, Chief Secretary, Government of Punjab.</p> <p>Dr. Usman Anwar, Inspector General of Police, Punjab.</p>
	<p>Dr. Asim Murtaza Cheema, Civil Judge/Research Officer, Lahore High Court, Lahore.</p>

At the heart of the concept of the rule of law is the idea that society is governed by law. Parliament exists primarily in order to make laws for society in this country. Democratic procedures exist primarily in order to ensure that the Parliament which makes those laws includes Members of Parliament who are chosen by the people of this country and are accountable to them. Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other.

Lord Robert John Reed, President of the UK Supreme Court

JAWAD HASSAN, J. This judgment will decide above numbered petitions (the “*consolidated petitions*”), whereby interpretation of time bound/time specific constitutional provisions of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) read with relevant provisions of the Elections Act, 2017 (the “*Act*”) has been sought by Pakistan Tehreek-e-Insaaf (the “*PTI*”) through its Secretary General Asad Umar, Munir Ahmad, Zaman Khan Vardag and Sabir Raza Gill (the “*Petitioners*”) to issue writ of mandamus in terms of Article 199 of the “*Constitution*” directing the Respondents to announce date of holding elections of Provincial Assembly, Punjab (the “*date of election*”) within ninety (90) days as mandated by the “*Constitution*” and the relevant provisions of the “*Act*”. The prayer made in the “*consolidated petitions*” reads as under:-

“W.P.No.5851 of 2023

Direct Respondent to immediately announce the date of election for the Provincial Assembly of the Punjab so as to ensure that the election is held not later than ninety days of dissolution of Assembly.

W.P.No.6118 of 2023

*In view of the aforementioned facts and peculiar circumstances, it is, therefore, humbly prayed that the Writ Petition at hand may very kindly be accepted and necessary orders may kindly be issued the Respondent to No.1/Governor to immediately announce the date of election for the Provincial Assembly of the Punjab as directed under Article 105, read with 224 of the Constitution of the Islamic Republic of Pakistan, 1973 so as to enforce Article 218(3) *ibid*, so that the Election is held not later than ninety days of dissolution of the Assembly, in the interest of public, democratic norms, justice, equity and fair play.*

It is further prayed that in view of the constant violations of the Governor/Respondent No.1 of his Constitutional Mandate, his Oath as well as the continuous violations of Articles 4 & 5, 105, 218(3) and 224 of the Constitution of the Islamic Republic of Pakistan, 1973, it is requested that the President of Pakistan may kindly be directed to act in accordance with Article 101(3) of the Constitution of the Islamic Republic of Pakistan, 1973, so as to remove the same, of course, in order to fulfil the constitutional mandate.

Writ Petition No.6093 of 2023

UNDER THE ABOVEMENTIONED CIRCUMSTANCES, it is respectfully prayed that an appropriate writ may be issued by declaring that after dissolution of a Provincial Assembly, the delay on the part of the Governor for appointing an actual date for holding of a General election to the Assembly is violative of Articles 105(3) and 5(2) of the Constitution of Pakistan.

It is further prayed that a direction may be issued to the Governor of Punjab to appoint an actual date, not later than 90 days from the date of dissolution for holding of a general election to a Provincial Assembly of Punjab.

Writ Petition No.6119 of 2023

In view of the foregoing, it is most respectfully prayed that this Hon'ble Court may be pleased to direct Respondent to immediately announce the date of election for the Provincial Assembly of the Punjab so as to ensure that the election is held not later than ninety days of dissolution of the Assembly”

2. The common prayer in the “*consolidated petitions*” revolves around the announcement of “*date of election*” by the Respondents. Pertinently, on the issue of time specific/time bound provision of a Statue/Act, this Court has already rendered a detailed judgment reported in “SHAHEEN MERCHANT Versus FEDERATION OF PAKISTAN etc” (2021 PTD 2126 Lahore) in which this Court has developed the *doctrine of time bound legislation* with its mandate to decide the matter as per time frame given under a statute while discussing the anatomy of authority/regulator, jurisprudential anthology regarding the duty of the State to provide expeditious justice under Article 37-D of the “*Constitution*” while referring the judgments of Hon'ble Supreme Court of Pakistan and the legal anthropology of time frame, pathology regarding the time specific tribunal with time bound mandate to decide the matter under the law. This Court first time developed the principles of time frame by relying quote of Justice Warren E. Burger, Chief Justice of United States which reads as:

A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: (i) that people come to believe that inefficiency and delay will drain even a just judgment of its value; (ii) that people who have long been exploited in the smaller transactions of

daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; (iii) that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets quotation.

In the aforesaid judgment, the Court specifically stated that under Article 37-D of the “*Constitution*” the State is duty bound to give the expeditious justice.

CONTEXT OF THE CASE

3. In terms of Article 112(1) of the “*Constitution*”, the then Chief Minister of Punjab, Ch. Pervaiz Elahi on 12.01.2023 advised the Governor of Punjab to dissolve Provincial Assembly. The Governor of Punjab in its letter dated 14.01.2023 declared that the Provincial Assembly Punjab and the Cabinet stood dissolved after forty-eight hours at 22:10 hours and assured his availability for discharging his constitutional obligations. The incumbent Speaker of the Punjab Assembly Muhammad Sibtain Khan had requested the Governor of Punjab on 20.01.2023 to appoint the “*date of election*”. Another request for the same purpose was also made by the “*ECP*” to Principal Secretary to the Governor of the Punjab on 24.01.2023, in reply thereto, the Principal Secretary to the Governor of Punjab has mentioned that he has been directed to state, in the aforementioned context, and to ask the “*ECP*” to note that the Provincial Assembly of Punjab stood dissolved in terms of clause(1) of Article 112 of the Constitution of the Islamic Republic of Pakistan, 1973 by efflux of time stipulated therein and not by the order of the Governor of the Punjab. Therefore, clause (3) of Article 105 of the Constitution of the Islamic Republic of Pakistan, 1973 does not apply in this situation. Instead, the election process to now take place in accordance with Article 224 read with clause (3) of Article 218 of the Constitution of Islamic Republic of Pakistan and the applicable provisions of the Elections Act, 2017, hence this petition.

PROCEEDINGS BEFORE THE COURT.

On 30.01.2023, when the titled petition first time brought before the Court, it was only carrying documents appended therewith (Annex-A to Annex-D, Pages 8 to 13). In all petitions, the prayer of the Petitioners circumambulates for issuance of directions to the Respondents to announce the “*date of election*” within the time frame provided in the “*Constitution*” and the “*Act*”.

First Date of Hearing (30.01.2023)

4. Senator Barrister Syed Ali Zafar, ASC during course of hearing, had referred to a letter dated 24.01.2023 issued by the “*ECP*” to Principal Secretary to the Governor of the Punjab in terms of Article 224 of the “*Constitution*” read with Section 57(2) of the “*Act*” regarding announcing the “*date of election*” and he, on confrontation, has made the “*ECP*” as the Respondent No.2 in this petition. Mr. Asad Umar concurrently highlighted the right of democracy and political justice by relying the judgment of this Court in the case of “*HAFEEZ UR REHMAN CH Versus FEDERATION OF PAKISTAN etc*” (2022 MLD 2006). The Court after hearing the arguments, admitted the petitions and issued notices to the Attorney General for Pakistan as well as Advocate General Punjab in terms of Order XXVII-A of the Code of Civil Procedure (V of 1908), sought replies.

Second Date of Hearing (03.02.2023)

5. Senator Barrister Syed Ali Zafar, ASC remained consistent on focal point viz the mandate of the Governor of Punjab to announce the “*date of election*” within constitutional time frame of ninety days after dissolution of Provincial Assembly and relied on certain Articles of the “*Constitution*” and non-compliance thereof entails constitutional breach by referring “*FEDERATION OF PAKISTAN Versus MUHAMMAD SAIFULLAH KHAN*” (PLD 1989 SC 166) (Full Bench), “*ELECTION COMMISSION OF PAKISTAN Versus JAVAID HASHMI*” (PLD 1989 SC 396), “*MUHAMMAD SHARIF*”

Versus FEDERATION OF PAKISTAN” (PLD 1988 Lahore 725) (Full Bench) and “Rao NAEEM SARFARAZ Versus ELECTION COMMISSION OF PAKISTAN through Chief Election Commissioner” (PLD 2013 Lahore 675). Mr. Asad Umar referred “Curate’s Egg” principle and stated that he sees the role of ECP **some good** as it had announced dates of bye-elections throughout the Country but **some bad** as the “ECP” is not giving the “*date of election*” in his case. The Court also directed the Respondents to file reply to this petition.

Third Date of Hearing (09.02.2023)

6. Written statement on behalf of the Governor of Punjab was submitted by Mr. Muhammad Shahzad Shaukat, ASC on 08.02.2023 in W.P.No.6118 of 2023. The case was argued at length by Senator Barrister Syed Ali Zafar, ASC who referred Article 220 of the “*Constitution*” and also relied on the judgment of Hon’ble Supreme Court of Pakistan titled “CH. PERVAIZ ELAHI Versus DEPUTY SPEAKER, PROVINCIAL ASSEMBLY OF PUNJAB, LAHORE and others” (PLD 2022 SC 678) and sought writ of mandamus against the Respondents for announcing the “*date of election*”. Mr. Shezada Mazhar, ASC appeared on behalf of the “ECP” and sought time to file reply. While Mr. Muhammad Shahzad Shaukat, ASC for the Governor of Punjab was on adjournment due to his preoccupation before the Hon’ble Supreme Court of Pakistan. The case was adjourned to 10.02.2023.

Fourth Date of Hearing (10.02.2023)

7. Reply was filed by Mr. Shezada Mazhar, ASC on behalf of the “ECP” and arguments were concluded by learned counsel for the parties. Chief Secretary Punjab and Inspector General of Police appeared and made their statements before the Court with reference to Article 220 of the “*Constitution*” and stated that they will fully comply with the directions of the “ECP”.

8. Before proceedings further, it would be advantageous to add that reply on behalf of Governor of Punjab was filed only in

W.P.No.6118 of 2023 whereas reply on behalf of the “ECP” was only filed in W.P.No.5851 of 2023. Since the common question in the “*consolidated petitions*” with regard to “*date of election*” is involved therefore, the replies filed by the Respondents would be treated as replies in the “*consolidated petitions*” in the light of judgment reported in “DR. MUHAMMAD NASIM JAVED Versus LAHORE CANTONMENT HOUSING SOCIETY LTD, THROUGH THE SECRETARY FORTRESS STADIUM LAHORE CANTT. and 2 others” (PLD 1983 Lahore 552) wherein it was held that “*where a number of writ petitions are being heard together, written statement filed by respondents in one of such writ petition can also be treated as written statement in the other writ petitions being heard together and therefore no prejudice will be caused to such party by not filing of separate written statements in each case*”.

PETITIONERS SUBMISSIONS

9. Senator Barrister Syed Ali Zafar, ASC *inter alia* argues that after dissolving the Provincial Assembly by the Governor of Punjab in terms of Article 112(1) of the “*Constitution*”, ninety days’ time has been provided for announcement of “*date of election*” by the Governor of Punjab which, if not announced, cannot be left open for an indefinite period and under the law, the same can be announced either by the “ECP” or the President of Pakistan, as the case may be. In order to strengthen this argument, he has relied on paragraph No.16 of the judgment of Hon’ble Supreme Court of Pakistan in case titled “CH. PERVAIZ ELAHI Versus DEPUTY SPEAKER, PROVINCIAL ASSEMBLY OF PUNJAB, LAHORE and others” (PLD 2022 SC 678); that the Petitioners are seeking writ of mandamus to the “*Respondents*” to announce the “*date of election*” with reference to Articles 112, 105, 218 and 219 of the “*Constitution*”; Mr. Uzair Karamat Bhandari, ASC states that Articles 112 and 105 of the “*Constitution*” have to be read together as the Governor of Punjab though appointed caretaker government as per mandate of Article 105(3)(b) yet without announcing the “*date of election*” of dissolved

Assembly under Article 103(3)(a) of the “*Constitution*”; Mr. Mohammad Azhar Siddique, ASC states that Article 218(3) of the “*Constitution*” casts a duty upon the “*ECP*” to organize and conduct the election of the assemblies as defined under Section 2(iv) of the “*Act*” and to make such arrangements as are necessary to ensure the conduct of election honestly, justly, fairly and in accordance with law but in the case in hand, the “*ECP*” has shown his readiness to conduct the election and has made request to the Governor of Punjab to appoint a date under Article 224(2) of the “*Constitution*” read with Section 57(2) of the “*Act*” between 9th April, 2023 to 13th April, 2013 as evident from letter dated 24.01.2023 but this power has not been exercised by the Governor of Punjab; that under Article 5 of the “*Constitution*”, the Governor of Punjab is bound to obey the “*Constitution*” and law and the law in the case is the “*Act*” and the judgments of the apex Court; lastly he has put much emphasis on the preamble of the “*Constitution*” in the light of judgment of this Court passed in the case of “JAMSHED IQBAL CHEEMA Versus THE ELECTION APPELLATE TRIBUNAL and 19 others” (2022 CLC 463).

RESPONDENTS SUBMISSION

Reply on behalf of Governor of Punjab

10. Mr. Mohammad Shahzad Shaukat, ASC filed reply and took preliminary objection qua maintainability of the “*consolidated petitions*” on the touchstone of Article 248 of the “*Constitution*”. It has further been objected that the “*consolidated petitions*” have been filed in utter disregard to the provisions of Articles 105, 112, 218 and 219 of the “*Constitution*”.

Reply on behalf of the “ECP”

11. Mr. Shezada Mazhar, ASC filed reply and took preliminary objection qua maintainability of the “*consolidated petitions*” on the touchstone of Article 218(1), 224, 58(1), 48(5), 112(1) of the “*Constitution*”. It has further been objected that under the

“*Constitution*” and the “*Act*” there is no provision which requires the “*ECP*” to give date of election.

DETERMINATION BY THE COURT

12. From the prayer made in the “*consolidated petitions*”, the anchor point is whether writ of mandamus can be issued to either of the Respondents to announce the “*date of election*” under Article 199 of the “*Constitution*”. Without any shadow of doubt, 90 days’ time is mandated in the “*Constitution*” for fixing/announcing the “*date of election*” of Provincial Assembly after its dissolution in terms of Article 105 and time frame provided under Articles 112 and 224(2) of the “*Constitution*”. Aptly, the constitutional duties of the Governor of Punjab being the Head of the Province are mentioned under Part-IV, Chapter-1 of the “*Constitution*” according to which the Governor is appointed by the President on the advise of the Prime Minister and holds the office at the pleasure of the President. Under this Part, the Governor performs his functions on the advice of the Chief Minister or the Cabinet and this Part specifically deals with his role as the Governor for the Province as per Article 101 of the “*Constitution*” being the head of Province which is equal to the President of the Pakistan under Part-III, Chapter-1, but the President has the term of office under Article 44 for five years. The President also acts on the advice of the Cabinet under Article 41 which is similar to Article 105 of the “*Constitution*” but the duty/obligation of the Governor are subject to constitution because Article 105 of the “*Constitution*” starts with subject to constitution, and the provisions invoked by “the Petitioners” under Article of 105(3) where the governor dissolve the Provincial Assembly but he has to first give a date of holding general elections and then to appoint caretaker government. It is evident from the correspondence between the parties and the stance taken by the Governor of Punjab and letter of the President of Pakistan to the Governor clearly manifests that conduct of general election but who has to do it is not answered in Article 224 of the “*Constitution*” for holding elections within 90 days. It is quite clear that Article 224 of

the “*Constitution*” falls under Part-VIII, Chapter 2 which deals with electoral laws and conduct of elections whereas Part VIII Chapter 1 deals with the Chief Election Commission and Election Commissions with their mandate. Article 224(2) of the “*Constitution*” deals with the time of election but did not specific which authority as it falls under Chapter 2 of Part VIII which deals with electoral laws and conduct of election. It has been seen that Chapter 2 deals with conduct of election if it is read with Chapter 5 of the “*Act*”, which deals with the election of the Assemblies read with Chapter 5 of the Elections Rules, 2017.

13. Perusal of Article 105 of the “*Constitution*” makes it quite clear that it covers two eventualities; the first eventuality deals with the situation where on the advice of the Chief Minister, the Governor exercises his constitutional power to dissolve the assembly while second eventuality deals with a situation where on such advice by the Chief Minister, he abstains from exercising his constitutional powers and the assembly stands dissolved by operation of law. In the first eventuality, where the Governor uses his constitutional powers to dissolve the assembly, he is clearly bound under Article 105(3)(a) to appoint a date not later than ninety days from the date of dissolution, for the holding of general elections to the Assembly but Article 105 is silent and does not clearly specify as to who is the authority to declare the date of election in the above-mentioned second eventuality.

14. On the other hand, careful perusal of Article 112 of the “*Constitution*” also shows that the said two eventualities are duly separated by insertion of semi-colon, separating the eventuality when the Governor so exercises his constitutional powers to dissolve the assembly, from the eventuality when it stands dissolved by the operation of law. Now question arises, at the cost of repetition, that none of the parties have taken the stance against Article 224(2) of the Constitution that general election is required to be held within 90 days therefore, the actual point of dispute is regarding the authority under the given circumstances who is to declare the date of such election.

This is because Article 224(2) also does not specifically mentions the authority who is constitutionally bound to declare the date of election of the Provincial Assembly in such eventuality. To resolve this controversy, while keeping in view the stance of the Governor of Punjab in his correspondence letter dated 01.02.2023, mentioned supra and the letter dated 08.02.2023 of the President of Pakistan addressed to the Chief Election Commissioner, it is necessary to look into the nature, scope, constitutional mandate and constitutional responsibility of the “ECP”. It is not out of place to mention here that the Governor vide his letter 01.02.2023 addressed to the Ex-Parliamentary Leader of “PTI”, has reaffirmed that he will discharge his responsibilities and duties in line with the “Constitution” and law as and when required.

15. On the other hand, perusal of Part-VIII of the “Constitution” shows that the Constitution in Articles 213 to 226 contained in Chapters 1 and 2 of the said Part, defines and elaborates the nature, scope, powers and purposes of the “ECP”. Article 218(3) of the “Constitution” provides that “It shall be 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 that corrupt practices are guarded against.” Article 219(d) of the “Constitution” further provides that the “ECP” is charged with the duty of “the holding of general elections to the National Assembly, Provincial Assemblies and the local governments”. Similarly, Article 220 provides that “it shall be the duty of 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”. These constitutional provisions dealing with role, powers and responsibilities of the “ECP”, have been elaborated and interpreted in a number of judgments by this Court as well as the Hon’ble Supreme Court of Pakistan. This Court in “TARIQ IQBAL Versus ELECTION COMMISSION OF PAKISTAN and others” (PLD 2022 Lahore 607)

has held that the Election Commission of Pakistan is the apex, independent and neutral constitutional authority to hold, organize and conduct elections in Pakistan. The Hon'ble Supreme Court of Pakistan in “WORKERS' PARTY PAKISTAN through Akhtar Hussain, Advocate, General Secretary and 6 others Versus FEDERATION OF PAKISTAN and 2 others” (PLD 2012 SC 681) while elaborating and interpreting Article 218(3) of the “Constitution” observed as under:

"40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in Election Commission of Pakistan v. Javaid Hashmi and others (PLD 1989 SC 396), observed that "(g)enerally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including all stages involved in the election process. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually

and collectively, against the standards enumerated therein”. Emphasis added

16. The interpretation of Article 218(3) by the Hon’ble Supreme Court in this case clearly indicates that the Election Commission of Pakistan is the ultimate authority to ensure the conduct of elections in accordance with law i.e. the provisions of the “Constitution” as well as the “Act”, and such authority is not limited to the election day or subsequent to it but also to all stages prior to it, while the election process starts with issuance of election program which in turn starts with the declaration of date of election. This broader role and responsibility of the ECP is further elaborated by the Hon’ble Supreme Court in “WORKERS’ PARTY PAKISTAN supra which reads as

"42. ... Article 220 of the Constitution also directs the Federal and Provincial machinery to assist the Election Commission in fulfilling its constitutional responsibilities. The law, therefore, entrusts the Election Commission with exclusive, broad and extensive powers to attend to all issues related directly and ancillary to the election process."

17. The above mentioned findings of Hon’ble Supreme Court of Pakistan in this case was further reaffirmed in **PLD 2021 Supreme Court 480** in the case of REFERENCE BY THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN, UNDER ARTICLE 186 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

18. The authority of the “ECP” regarding the conduct of elections in accordance with law was further extended by the Hon’ble Supreme Court of Pakistan in “Sheikh RASHID AHMED Versus GOVERNMENT OF PUNJAB and others” (PLD 2010 SC 573) wherein it has held that *“the provision of Article 220 of the Constitution also reflects to be in pari materia with the provision of Article 190 of the Constitution”*. This extended powers of the “ECP” were further elaborated in “ADMINISTRATOR MUNICIPAL

CORPORATION, PESHAWAR and others Versus TAIMUR HUSSAIN AMIN and others” (2021 SCMR 714) wherein the Hon’ble Supreme Court held that;

“6. ...Article 220 of the Constitution mandates that, 'It shall be the duty of 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.' In case the Federation and/or the Province(s) create hurdles in the way of the Commission holding elections, they will be violating the Constitution, which may attract serious consequences”.

19. Although, Article 224(2) read with Article 105 and 112 of the “Constitution” does not specifically mentions the authority to declare a date of election in a provincial assembly in case it stands dissolved by operation of law but in the light of jurisprudence developed in aforesaid judgments, it can safely be concluded that the “ECP” being apex, independent and neutral constitutional authority mandated under the “Constitution” to hold, organize and conduct elections in Pakistan in accordance with law is the ultimate constitutional authority to ensure compliance of Article 224(2) of the “Constitution” under the doctrine of Penumbra which refers to a legal principal that recognizes certain unenumerated rights and obligations as implicit in the guarantees of the Constitution which can also be termed as constitutional penumbras. Under this doctrine, a specific provision of a Constitution or a State should not be read in isolation and it must be considered in the context of other relevant and connecting provisions of a constitution or a statute which underlying values and principles of the constitution as a whole. The doctrine if penumbra enable the Courts in interpreting various provisions of the constitution in order to enforce those rights and obligations which are explicitly mentioned in the text of a particular provision of the constitution or a law. Keeping the aforesaid doctrine in view, when Articles 218(3) which cast a constitutional duty upon the “ECP” to organize and conduct elections and to ensure that the election is conducted in accordance with law

that is the “*Constitution*”, the “*Act*” and the Elections Rules, 2017 read with Article 219(d) which charged the “*ECP*” with the duty of holding the general elections to the provincial assemblies read with Article 224(2) and 220 of the “*Constitution*” which cast a duty on all the executive authorities in the federation and in the provinces to assist the “*ECP*” in discharge of its constitutional functions, are being considered together being connecting and relevant provisions, the obligation and duty of the “*ECP*” to declare the date of general election for the Province comes within the penumbra of these constitutional provisions and elections laws.

20. In view of the constitutional provisions mentioned above and the judgments of the Supreme Court of Pakistan, the prayer made in the “*consolidated petitions*” is allowed and the “*ECP*” is directed to immediately announce the “*date of election*” of the Provincial Assembly of Punjab with the Notification specifying reasons, after consultation with the Governor of Punjab, being the constitutional Head of the Province, to ensure that the elections are held not later than ninety days as per the mandate of the “*Constitution*”.

**(JAWAD HASSAN)
JUDGE**

Approved for Reporting

JUDGE