

ORDER SHEET
LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

W.P.No.18733 of 2023

Munir Ahmad, Advocate High Court

versus

Province of Punjab, through Chief Secretary, etc.

<i>Sr. No. of order/ Proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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22.03.2023 Mr. Muhammad Azhar Siddique, Advocate for petitioner.

MUZAMIL AKHTAR SHABIR, J: Through this constitution petition, petitioner has prayed as under:

“In view of the foregoing facts and peculiar circumstances of the case, it is, therefore, most respectfully prayed that this instant petition may kindly be allowed and as the Election Commission of Pakistan has badly failed to implement Articles 218 & 220 of the Constitution of Islamic Republic of Pakistan, 1973 and at the same time the respondent/Chief Secretary of Punjab and Inspector General of Police Punjab are also reluctant to holding the election within the stipulated time as directed by the august Supreme Court of Pakistan read with different constitutional provisions, hence, directions may kindly be made to all the respondents to conduct fair and free transparent elections in view of Article 218 (3) read with Article 220 of the Constitution of Islamic Republic of Pakistan, 1973 read with judgments on the subject, of course, in the interest of justice, equity and fair play.”

2. Mr. Muhammad Azhar Siddique, Advocate-learned counsel for the petitioner states that the Election Commission of Pakistan has failed to implement Articles 218 and 220 of the Constitution of the Islamic Republic of Pakistan, 1972 **“the Constitution”** and at the same time, the

respondent-Chief Secretary of Punjab and Inspector General of Police, Punjab are reluctant to hold the election within the stipulated time as directed by the august Supreme Court of Pakistan and in the circumstances, a direction may be issued to all the respondents to conduct fair and free transparent election in terms of Article 218 (3) read with Article 220 of the Constitution, for which purpose, the learned counsel for petitioner has relied upon the averments of the instant constitution petition as well as the documents attached with it to substantiate his stance.

3. The petitioner seeks direction to respondent-authority for conducting elections in fair manner in terms of Article 218 and 220 of the Constitution which are reproduced as under:

“218. (1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election to such other public offices as may be specified by law, a permanent Election Commission shall be constituted in accordance with this Article.

(2) The Election Commission shall consist of—

(a) the Commissioner who shall be Chairman of the Commission; and

(b) four members, one from each Province, each of whom shall be a person who has been a Judge of a High Court or has been a senior civil servant or is a technocrat and is not more than sixty-five years of age, to be appointed by the President in the manner provided for appointment of the Commissioner in clauses (2A) and (2B) of Article 213.

Explanation.—“senior civil servant” and “technocrat” shall have the same meaning as given in clause (2) of Article 213.

(3) 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.

219.
.....

220. 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.”

4. The Hon’ble Supreme Court of Pakistan has already issued direction for holding the elections to the Election Commission of Pakistan in *Suo Motu* Case No.1 of 2023, Const. Petition No.1 of 2023 and Const. Petition No.2 of 2023 titled “*Islamabad High Court Bar Association Islamabad through its President etc. v. Election Commission of Pakistan through the Chief Election Commissioner, Islamabad and others*” and has resolved the controversy vide order dated 01.03.2023. For ready reference, the operative part of the said order is reproduced as under:-

“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 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 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.

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.

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

5. The perusal of afore-referred order shows that the Hon’ble Supreme Court of Pakistan has already issued a direction for conducting free and fair elections and in terms thereof, the Election Commission of Pakistan is authorized to take necessary steps for the said purpose and in compliance of the said order, election schedule for election to the Provincial Assembly of Province of Punjab has already been issued and notified on 08.03.2023 and Election Commission of Pakistan is proceeding with the matter in terms thereof whereby the elections are scheduled to be held on 30.04.2023, the said schedule is reproduced below for ready reference:

“ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad, the 8" March, 2023

No.F.2(3)/2023-Cord.- In pursuance of the dissolution of the Provincial Assembly of the Punjab on 14th January, 2023 and Order dated 1st March, 2023 passed by the Hon'ble Supreme Court of Pakistan in Suo Motu Case No.1 of 2023, Constitution Petition No.1 of 2023 and Constitution Petition No.2 of 2023 and announcement of date by the President of the Islamic Republic of Pakistan as 30 April, 2023, the Election Commission of Pakistan in terms of Article 224(2) and 254 of the Constitution of the Islamic Republic of Pakistan read with Section 57(2) of the Elections Act, 2017 (Act No. XXXIII of 2017) and all other powers enabling it in that behalf, hereby calls upon the electors of the Provincial Assembly of Punjab constituencies to elect their representatives from each of these constituencies to the general seats and in connection therewith appoints the following dates for various activities of the election to the aforesaid Assembly:

PROGRAMME		
Sr. No.	EVENTS	DATE
1	2	3
1.	Notification of Election Programme	08.03.2023
2.	Public Notice to be issued by the Returning Officer on	11.03.2023
3.	Dates for filing of nomination papers with the Returning Officer by the candidates	12.03.2023 To 14.03.2023
4.	Publication of names of the nominated candidates	15.03.2023
5.	Last date for Scrutiny of nomination papers by the Returning Officer	22.03.2023
6.	Last date for filing of appeals against decisions of the Returning Officer rejecting/accepting the nomination papers	27.03.2023
7.	Last date for deciding of appeals by the Appellate Tribunal	03.04.2023
8.	Publication of revised list of candidates	04.04.2023
9.	Last date for withdrawal of candidature and Publication of revised list of candidates	05.04.2023
10.	Allotment of Election Symbol to contesting candidates	06.04.2023
11.	Polling day	30.04.2023

2. The above mentioned programme shall also apply to the Seats Reserved for Women & Non-Muslims in the Provincial Assembly of Punjab. Last date of filing of separate list of priority for Seats Reserved for Women & Non-Muslims before the Returning Officer is 14 March, 2023.

By Order of the Election Commission of Pakistan

S/d
(Muhammad Farid Afridi)
Additional Director General (Elec-II)

The Manager,
Printing Corporation of Pakistan Press,
Islamabad.”

6. Although, the petitioner refers to certain instances wherein certain incidents have taken place including the imposition of ban under Section 144 Cr.P.C. and also refers to news items that the Inspector General of Police, Punjab and Chief Secretary of Province of Punjab had shown their inability to facilitate the conduct of the elections; however, nothing substantial is presently available on the record to establish that the Election Commission of Pakistan had

failed to implement Articles 218 and 220 of the Constitution and was not proceeding with the matter of conduct of elections in fair manner in letter and spirit. The Election Commission of Pakistan has not raised any plea against any of the officers that he/she is not helping in conducting the election in a proper manner or that it is not in a position to hold elections in a fair manner; yet if any such matter had arisen, the Hon'ble Supreme Court of Pakistan had authorized the Election Commission of Pakistan to deal with the said matter in accordance with law.

7. Presently the averments raised in the instant constitution petition are only based on apprehensions that free and fair elections shall not be conducted but no cogent and substantial material is available on the record to reach such a finding in the matter; consequently, this petition being pre-mature and based on apprehensions only is accordingly **dismissed**.

(CH. MUHAMMAD IQBAL)
JUDGE

(MUZAMIL AKHTAR SHABIR)
JUDGE

KMSubhani