

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MR. JUSTICE JAWWAD S. KHWAJA

MR. JUSTICE SH. AZMAT SAEED

CONSTITUTION PETITION NO.39 OF 2013.

Raja Muhammad Zafar-ul-Haq, Senator,
Senate of Pakistan, Parliament House,
Islamabad

... Petitioner

VERSUS

Election Commission of Pakistan, Election
House, Constitution Avenue, Islamabad
through its Secretary and two others

... Respondents

For the petitioner:

Ch. Muhammad Ashraf Gujjar, ASC
Ch. Naseer Ahmad Bhutta, ASC
Dr. Rana Shamim Ahmed, ASC
with petitioner

On Court Notice:

Mr. Muneer A Malik, A.GP

For respondents No.1 & 2:

Syed Sher Afgan, Addl. Secretary, ECP

For respondent No.3:

N.R.

Date of hearing:

24.07.2013

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- This Petition has been
instituted by Raja Muhammad Zafar-ul-Haq, Senator/one of the elector for the
Election of the Office of the President of the Islamic Republic of Pakistan,

which has been scheduled following the mandate of Article 41(4) of the Constitution of the Islamic Republic of Pakistan, 1973, with the prayer that a direction be issued to the Election Commission of Pakistan (hereinafter referred to as “ECP”) to change its Schedule by holding Presidential Election, 2013 on 30th July, 2013 (20th Ramazan, 1434) instead of 6th August, 2013 (27th Ramazan, 1434). It is to be noted that, *inter alia*, the following grounds have been mentioned in the memo of petition to persuade this Court to grant the relief as noted herein below:-

“(i) that the last 10 days of Ramadan are normally the days of extensive spiritual and religious activity/worship and quite a number of the legislators may either be in Aitekaf or proceed for Umrah to Saudi Arabia during this period.

(ii) that 6th August, 2013 shall fall on one of the last three days of Ramadan, probably on 27th day of Ramadan. This would be too close to Eid-ul-Fitr and many Parliamentarians may like to proceed their home-towns by then.

(iii) That the Constitution guarantees that “ the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah”

(iv).....

(v).....

(vi) That if the Presidential elections are held on 6th August, 2013 (27th Ramadan), the fundamental rights of the Parliamentarians shall be infringed as they will not be able to participate in the Presidential elections in view of their engagements towards spiritual and religious plans in the last ten days of the Holy month of Ramadan.

(vii) That the impugned schedule is also violative of the fundamental rights of the Petitioner as well as other Parliamentarians that if they opt to exercise their right of vote then they will have to give-up their spiritual and religious plans i.e. (1) Umrah, (2) Aitekaf in Pakistan or at Harman Sharifan, KSA”

2. In response to the notice, the learned Attorney General for Pakistan alongwith the Additional Secretary, ECP appeared. With their assistance, we

have gone through the Schedule announced by the ECP for the Election of the Office of the President of the Islamic Republic of Pakistan, the contents whereof are reproduced herein below:-

Sl. No.	Events	Date
1	2	3
(a)	Filling of nomination papers with the Presiding Officers at Islamabad and with each of the Presiding Officers at Lahore, Karachi, Peshawar and Quetta	24.07.2013 (Upto 12:00 noon)
(b)	Scrutiny of nomination papers by the Returning Officer at Islamabad	26.7.2013 (at 10:00 AM)
(c)	Withdrawal of candidature before the Returning Officer at Islamabad	29.7.2013 (Upto 12:00 noon)
(d)	Publication of the list of validly nominated candidates	29.07.2013 (at 1:00 p.m.)
(e)	Polling day and Polling time	06.08.2013 (from 10:00 AM to 3:00 PM)
(f)	Place of the Poll	(1) The Parliament House, Islamabad. (2) The Provincial Assembly, Building, Lahore (3) The Provincial Assembly, Building, Karachi (4) The Provincial Assembly, Building, Peshawar (5) The Provincial Assembly, Building, Quetta

3. It is pointed out by the Additional Secretary, ECP that the ECP has to complete the procedural formalities after publication of the list of the Validly Nominated Candidates, therefore, the polling day and time has been fixed 6th of August, 2013. When we pointed out to him the reasons on account of which, the

request has been made for ante-dating the polling, as incorporated in the petition, he sought time to seek instructions from the ECP. Accordingly, the following statement has been filed by him for consideration:-

“The Election Commission has considered the matter regarding change of Presidential Election Schedule. The Commission feels that it shall require three clear days between withdrawal-day and poll-day to complete all necessary arrangements for conduct of poll. Whatever order is passed by this Hon’ble Court keeping this requirement in view will be complied with in letter and spirit.”

4. It may not be out of context to note that the holding of Election of the Office of the President of the Islamic Republic of Pakistan is one of the most important Constitutional Activity, which has to be undertaken by the ECP, therefore, we are of the opinion that at the same time, it is the duty of the ECP to facilitate all the voters and electors, enabling them to exercise their right of franchise for the Election of the Office of the President of the Islamic Republic of Pakistan. Therefore, keeping in view the reasons/grounds put forward and also to ensure that the ECP may discharge its functions. We accordingly direct the ECP to change its schedule in the following order:-

Sl. No.	Events	Date
1	2	3
(a)	Filling of nomination papers with the Presiding Officers at Islamabad and with each of the Presiding Officers at Lahore, Karachi, Peshawar and Quetta	24.07.2013
(b)	Scrutiny of nomination papers by the Returning Officer at Islamabad	26.7.2013 (at 10:00 AM)
(c)	Withdrawal of candidature before the Returning Officer at Islamabad	27.7.2013 (Upto 12:00 noon)

- | | | |
|-----|---|--|
| (d) | Publication of the list of validly nominated candidates | 27.07.2013
(at 5:00 p.m.) |
| (e) | Polling day and Polling time | 30.07.2013
(from 10:00 AM to 3:00 P.M.) |
| (f) | Place of the Poll | <ol style="list-style-type: none"> 1. The Parliament House, Islamabad. 2. The Provincial Assembly, Building, Lahore 3. The Provincial Assembly, Building, Karachi 4. The Provincial Assembly, Building, Peshawar 5. The Provincial Assembly, Building, Quetta |

5. The ECP may issue/revise Schedule, as it has been directed hereinabove, during the course of day.

6. This Constitution Petition stands disposed, accordingly.

Chief Justice

Judge

Judge

Islamabad, the
24th July, 2013
Not approved for reporting
*M. Safdar Mahmood/**