

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.493/2020

Sheikh Anser Aziz

versus

Federation of Pakistan, etc.

Petitioner by: M/s Kashif Ali Malik, Adil Aziz Qazi and Haseeb Hassan, Advocate.

Respondents by: Mr. Shah Khawar and Raja Faisal Younas Satti, Advocate for Respondents No.2 & 3
Niaz Ullah Khan Niazi, Advocate General, Islamabad.
Barrister Muhammad Mumtaz Ali, AAG.
Irfan Anjum, Joint-Secretary (CDA/MCI), Ministry of Interior.
Muhammad Nasir Khan, Deputy Secretary (CDA/MCI), Ministry of Interior.
Yawar Hussain Raja, S.O. (MCI), Ministry of Interior.
Capt. (R) Syed Ali Asghar, Secretary Local Government Commission, Islamabad.

Date of Hearing: 11.06.2020.

MOHSIN AKHTAR KAYANI, J: Through this writ petition the petitioner Sheikh Ansar Aziz/Mayor Metropolitan Corporation Islamabad has called in question notification dated 07.01.2020, issued by the Secretary Ministry of Interior, Government of Pakistan (Respondent No.1) to the extent of appointment of Respondent No.2 Ali Nawaz Awan/MNA as the Chairman of the Local Government Commission under Islamabad Capital Territory Local Government Act, 2015. The petitioner has further prayed that the impugned order/recommendations dated 14.02.2020, passed by respondents No.2 & 3 may kindly be declared to have been passed without lawful authority and in violation of the fundamental rights of the petitioner and settled principles of due process and the same may graciously be set aside.

2. Brief facts referred in the instant writ petition are that Ali Nawaz Awan (Respondent No.2) MNA, Special Assistant to Prime Minister on CDA affairs

was notified as Chairman of the Local Government Commission vide notification dated 07.01.2020, whose appointment has been challenged mainly on the ground that the very appointment of Chairman in terms of Section 95 of the Islamabad Capital Territory Local Government Act, 2015 was not made in accordance with law, especially when no rules have yet been framed by the Federal Government to implement the Islamabad Capital Territory Local Government Act, 2015 in a proper manner.

3. Learned counsel for petitioner contends that in terms of Section 95(2) of the Islamabad Capital Territory Local Government Act, 2015 (*hereinafter referred to as "Act, 2015"*), a Chairman shall be a retired civil servant or eminent citizen of integrity and good track record, to be appointed by the Government but the process adopted by the Government for appointment of the Chairman of Local Government Commission (*hereinafter referred to as "Commission"*) has secretly been managed which does not reflect any transparency nor general public was invited through any competitive process, neither any comparative analysis was made by the Selection Committee to justify the very appointment of Respondent No.2 being Chairman of the Commission; that Respondent No.2 is not only a Member of the National Assembly but is also Special Assistant to Prime Minister on CDA affairs and as such, his appointment is in direct conflict as he is wearing the cap of the Federal Government by sitting in the Cabinet, hence the question of impartiality is compromised; that while considering the composition of the Commission, the Act creates a balance, whereby two members are from Treasury Benches and two members from opposition and remaining two are from technocrats, whereas Chief Commissioner, Islamabad is also a Member, however if an MNA from ruling party or treasury bench is appointed as Chairman of the Commission, the very impartiality and independence of the Commission is no longer visible and treasury benches will run over the decisions making authority.

Learned counsel for the petitioner after arguing the case at length states that he is pressing the instant writ petition only to the extent of declaring the appointment of respondent No.2 as Chairman of the Local Government Commission being null and void, whereas, he is not pressing the prayer to the extent of declaring the order/recommendations dated 14.02.2020, passed by respondents No.2 & 3 being without lawful authority, as in W.P. No.1401/2020 titled "*Sheikh Ansar Aziz Versus Federation of Pakistan etc.*" Mr. Tariq Mehmood Khokhar, Additional Attorney General contended that he has apprised the Federal Government to withdraw notification dated 17.05.2020 regarding suspension of Sheikh Ansar Aziz, Mayor Metropolitan Corporation, Islamabad and said writ petition has been disposed of by this Court as having become infructuous vide order dated 05.06.2020.

4. Conversely, learned counsel for respondent No.2 i.e. Chairman, Local Government Commission as well as Local Government Commission have jointly submitted their para-wise comments in which the stance raised by the petitioner has been negated; that the Chairman of the Commission (Respondent No.2) was appointed after due process and procedure provided by the Federal Government and respondent No.2 was selected amongst four nominees. Similarly, the Assistant Attorney General while representing the Federal Government has filed separate para-wise comments and justified the very appointment of Respondent No.2 as Chairman of the Commission in terms of Section 95(1)(2)(a) of the Act, 2015 with the contention that he fulfills the entire requirements laid down under the law.

5. During the course of arguments, the Secretary Ministry of Interior was directed to submit complete record along with summary through which the name of Respondent No.2 has been proposed and his appointment has been made under the law. In compliance whereof, the S.O., Ministry of Interior along

with AAG has submitted the original record and one set of documents placed in this case.

6. Arguments heard, record perused.

7. Perusal of record reveals that Islamabad Capital Territory Local Government Act, 2015 was given ascent on 05.08.2015 by the President of Pakistan on 03.08.2015 after it was passed by the Parliament in order to promote good governance, effective delivery of services and to establish elected Local Government system within the Islamabad Capital Territory. The Act of 2015 provides the Commission in terms of Section 95 comprising of a Chairman, two members of Senate, two members of National Assembly, one each nominated by leader of the House and leader of opposition in Senate as well as in N.A., two members from technocrats nominated by Federal Government, a representative of Chief Commissioner, Director Development and Finance ICT, and the local Government Commission may co-opt any official of the Government for any specific assignment, however the Chairman is the key person in the Commission, therefore, the requirements laid down in law for those members as well as for the Commission have been given in Section 95(1) & (a) of the Act, 2015, which are as under:

95. *Local Government Commission. (1) The Government shall appoint a Local Government Commission which shall consist of persons of integrity and good track record of public service.*

(2) *.....*

(a) *a Chairman, who shall be a retired civil servant or an eminent citizen of integrity and good track record, to be appointed by the Government;*

8. Keeping in view the above position, we have gone through the entire record with able assistance of the learned counsel for the parties as well as AAG, whereby the clear position eminent from the law is that the selection procedure and process has not been provided in the law, therefore, the Advocate General, ICT has been confronted to submit the stance qua the preparation and making of

the rules in terms of Section 117 of the Act, 2015, whereby a categorical stance has been taken that the rules have not yet been framed and same are under process, however the draft available to the Advocate General ICT also did not provide any procedure for appointment of the Chairman, Local Government Commission, therefore, the only mechanism provided in Section 95(1)(a) has to be considered for resolution of the issue in question.

9. While considering the above legal position, the minimum requirements reflected from the law are as under:

- a) A person of integrity;
- b) Good track record of public service;
- c) A retired civil servant or an eminent citizen of integrity and good track record; and,
- d) To be appointed by the Government.

Whereas, the Government means the Federal Government as defined in the Rules of Business, 1973 in terms of Section 2(t) of the Act, 2015.

10. While considering the above requirements, it has been observed that a Chairman has to be qualified with two-fold eligibility i.e. firstly which has been provided in sub-section 1 of the Section 95 of the Act, 2015 i.e. person of integrity and good track record of public service, which is the requirement for all members of the Commission, however for the Chairman a retired civil servant or an eminent citizen of integrity and good track record are the essential ingredients for eligibility, however in this case Respondent No.2 is not a retired civil servant, therefore, his case has to be considered on the touchstone of imminent citizen of integrity and good track record.

11. The above referred two requirements have to be considered through any process adopted by the Federal Government in this regard as to how Respondent No.2 was evaluated for this purpose to be called as eminent citizen having good

track record, when confronted, no such material was placed along with para-wise comments, however this Court vide order dated 09.06.2020 had directed the Secretary, Ministry of Interior to provide original record and in compliance whereof, the original record has been placed along with copy of one set.

12. Before going into legal discussion, it is important to consider the report submitted by the Federal Government in this regard, which is as under:

Government of Pakistan
Ministry of Interior
(MCI Section)

Subject: **REPORT REGARDING CONSTITUTION OF LOCAL GOVERNMENT COMMISSION**

Summary for the Prime Minister dated 17-09-2019 has been moved by the Ministry of Interior for obtaining the approval of the Prime Minister being Chief Executive, before submitting the Summary for the Cabinet for constitution of the Local Government Commission in the light of Section 95 (1) of the ICT Local Government Act 2015.

2. In response vide endorsement No.2467/SPM/2019 dated 02-10-2019 the Secretary to the Prime Minister conveyed orders of the Prime Minister's Office as follows:-

"While agreeing, in principle, with the proposal contained in para 3 of the Summary, the Prime Minister has been pleased to desire that Ministry of Interior, in the first instance, shall constitute a Search Committee for the purpose. The Committee shall propose panel of suitable persons for the Local Government Commission and the matter shall, thereafter, be placed before the Federal Cabinet for consideration.

The Prime Minister has further been pleased to desire that Ministry of Interior shall also consult the Ministry of Parliamentary Affairs for suitable nominations, in terms of Section 95 (2) (b)&(c) of the Islamabad Capital Territory Local Government Act, 2015.

Further necessary action may please be taken accordingly"

3. Pursuant thereto, a Search Committee has been constituted by the Ministry of Interior with the approval of the Competent Authority and notification dated 04-10-2019 issued, the committee comprised of the following:

- | | | |
|------|---|------------------|
| i) | Chief Commissioner,
Islamabad Capital Territory | Chairman |
| ii) | Joint Secretary (ICT),
Ministry of Interior | Member |
| iii) | Joint Secretary,
Establishment Division | Member |
| iv) | Director General (Developed & Finance)
Islamabad Capital Territory | Member/Secretary |

4. Accordingly the Search Committee in its meeting dated 24-10-2019 proposed the name of the following individuals for the slot of the Chairman, ICT Local Government Commission:

- | | | |
|-----|------------------------|--------------|
| i) | Mr. Faisal Javed | Chairman |
| ii) | Mr. Abdul Rauf Khattak | -----do----- |

iii) Muhammad Ahsan Raja

----do----

5. However, one nominee, Mr Faisal Javed expressed his inability to become part of the Commission therefore, another meeting of the Search Committee has been convened on 08-11-2019 to propose alternate candidate in place of Mr. Faisal Javed. The Committee in its second meeting dated 08-11-2019 proposed the name of **Senator Mohsin Aziz** in place of Mr. Faisal Javed in the category of **proposed Chairman ICT Local Government Commission**.

6. After receipt of the nomination from the Search Committee for the slot of Chairman, ICT Local Government Commission and recommendation of Ministry of Parliamentary Affairs for the other members the Summary dated 15-11-2019 moved to the Cabinet recommend therein the following panel for the slot of Chairman, ICT Local Government Commission:

i)	Mr. Mohsin Aziz, Senator	Chairman
ii)	Mr. Abdul Rauf Khattak	----do----
iii)	Muhammad Ahsan Raja	----do----

7. In response Cabinet Division vide decision No.1011/46/2019 dated 10-12-2019 conveyed the following decision of the Cabinet.

"The Cabinet considered the summary titled 'Constitution of Islamabad Capital Territory Local Government Commission, Islamabad' dated 15th November, 2019, submitted by the Interior Division, and directed the sponsoring Division to finalize the panels of nominations after further deliberations and resubmit the summary thereafter"

8. The Cabinet decision dated 10-12-2019 conveyed to Chief Commissioner (ICT) and Secretary, parliamentary Affairs vide this Ministry's letters dated 18-12-2019.

9. On receipt of the decision of the cabinet the Search Committee convened its third meeting dated 23-12-2019 and proposed the following panel of names for the slot of Chairman, ICT Local Government Commission after due deliberations in pursuant to directions of the Cabinet dated 10-12-2019:

i)	Mr. Ali Nawaz Awan, MNA	Chairman
ii)	Mr. Mohsin Aziz, Senator	----do----
iii)	Mr. Abdul Rauf Khattak	----do----
iv)	Muhammad Ahsan Raja	----do----

10. After receipt of the recommendations of the Search Committee and nominations from Parliamentary Affairs Summary dated 23-12-2019 submitted to the cabinet proposed therein name of the following individuals for the slot of the Chairman Local Government Commission:

i)	Mr. Ali Nawaz Awan, MNA	Chairman
ii)	Mr. Mohsin Aziz, Senator	----do----
iii)	Mr. Abdul Rauf Khattak	----do----
iv)	Muhammad Ahsan Raja	----do----

11. The Cabinet in its meeting dated 24-12-2019 approved the Summary dated 24-12-2019 and conveyed its decision vide Case No.1050/47/2019 dated 24-12-2019 as follows:

"The cabinet considered the Summary titled 'Constitution of Islamabad Capital Territory Local Government Commission, Islamabad.' Dated 23rd December, 2019, submitted by Interior Division, and approved the constitution of ICT Local Government Commission as under:-

1.	Mr. Ali Nawaz Awan, MNA	Chairman
2.	Mrs. Seeme Ezdi, Senator	Member/Treasury bench

3.	Raja Khurram Shehzad Nawaz, MNA	Member/Treasury bench
4.	Mr. Mushahid Hussain Syed, Senator	Member/Treasury bench
5.	Raja Pervez Ashraf, MNA	Member/Treasury bench
6.	Mr. Ali Bukhari	Technocrat Member (Male)
7.	Mrs. Tayyab Ibrahim	Technocrat Member (female)

12. After receipt of the above decision of the Cabinet dated 24-12-2019 draft notification of ICT Local Government Commission has been forwarded to Law and Justice Division for legal vetting and after vetting notification dated 07-01-2020 issued by the Ministry of Interior.

(On behalf of the Secretary,
Ministry of Interior)

(-----sd-----)
Section Officer (MCI)
10.06.2020

13. I have gone through the above referred report regarding Constitution of the Commission along with annexure and observed that a Search Committee was constituted by Ministry of Interior with the approval of the Prime Minister of Pakistan comprising of four members i.e. the Chairman (Chief Commissioner, ICT), Joint Secretary Ministry of Interior (Member), Joint Secretary Establishment Division (Member) and Director General Development and Finance ICT being Secretary, who in their first meeting held on 24.10.2019 considered three persons namely **Faisal Javed**, **Abdul Rauf Khattak** and **Muhammad Ahsan Raja** for the Chairman of the Commission. However, after showing inability by one of the nominee namely Faisal Javed, name of Mohsin Aziz/Senator was included and matter was placed before the Cabinet on 10.12.2019, whereafter name of Ali Nawaz Awan (Respondent No.2) was also included on 18.12.2019 in the second recommendations and final recommendation given by the Search Committee in third meeting held on 23.12.2019. The final recommendation was given by the Search Committee comprising of names of Ali Nawaz Awan, MNA, Mohsin Aziz Senator, Abdul Rauf Khattak and Muhammad Ahsan Raja for the post of Chairman, Local Government Commission and matter was transmitted to Cabinet through summary submitted by the Ministry of Interior, whereafter on

24.12.2019, Respondent No.2 has been selected as Chairman of the Commission and pursuant thereof impugned notification dated 07.01.2020 was issued.

14. I have gone through each and every page of the summary along with annexure, but surprisingly there is no personal information, data of each and every recommendee/nominee nor their credentials have been appended and even no comparative analysis *viz-a-viz* their qualifications, qualities, expertise, and intellectual abilities were provided through which one should consider their eminence and good track record, which are the key essentials provided in Section 95(1)(a) of the Act, 2015.

15. It is trite law that when any legislation is silent qua any particular term then the general meaning provided in the dictionary has to be considered. Reliance is placed upon 2010 SCMR 241 Collector of Central Excise and Sales Tax, Multan vs. Holiday Inn, Multan. As the phrases, "*eminent citizen of integrity*" and "*good track record*" are not explained in the Islamabad Capital Territory Local Government Act, 2015, therefore, the phrase "*eminent citizen*" has to be considered from the Oxford Thesaurus of English, which means "*distinguished, renowned, esteemed, notable, noteworthy, great, prestigious, important, significant, influential, outstanding, famous, prominent, celebrated, well-known, superior, high-standing, high ranking, elevated, leading, legendary*", whereas the word "*integrity*" means, "*honesty, uprightness, honor, good character, righteous, morality, nobility, right mindedness, trustworthiness, etc.*"

16. On the other hand, the phrase of "*good track record of public service*" the second ingredient for this position has to be evaluated on previous history and working of any nominee. By the phrase "*public service*" means "*A public service is something such as health care, transport, or the removal of waste which is organized by the government or an official body in order to benefit all the people in a particular society or community.*" (Reference: Collins Dictionary).

17. The above referred different meanings of the terms referred in Section 95(1)(a) of the Act, 2015 have been considered on the basis of their ordinary dictionary meaning and same were confronted to the Advocate General, Islamabad as well as Assistant Attorney General, who have been assisted by officials of Ministry of Interior to justify these requirements from summary placed on record or where any such discussion had been carried out in the summary, but surprisingly they could not justified a single word or given by the Search Committee in their recommendations of their third meeting held on 23.12.2019 as to how the Search Committee came to know about the names of Ali Nawaz Awan/MNA, Mohsin Aziz Senator, Abdul Rauf Khattak and Muhammad Ahsan Raja to be considered for the post of Chairman of the Commission, especially when their public service, good track record, other eligibilities of integrity and eminence were not provided.

18. The above referred practice adopted by the Search Committee without any subjective criteria has to be seen on the touchstone of case reported as 2016 PLC (CS) 896 Islamabad (Muhammad Muneer Malik v. Allama Iqbal Open University), whereby the objective of inviting applications from candidates through advertisement was highlighted in order to receive the applications from aspirants for the purpose of transparent and fair selection process, but no such exercise was carried out, even the concept of the public sector companies was discussed in case reported as 2019 SCMR 1952 (Human Right Case selling of national assets including PIA at throwaway prices), whereby it was held that Selection Committee has to adopt a process to evaluate a potential candidate for appointment on a fit and proper criteria and must act independently, transparently, totally impartially and in unbiased manner, so as to select the best and most suitable candidate strictly on merit.

19. I have also gone through another case reported as 2013 SCMR 1159 (Muhammad Ashraf Tiwana vs. Pakistan another), whereby the Federal Government was directed to consider the necessity of putting in place independent mechanism and of framing open, fair and transparent processes so that the objectives for which public bodies were established could be efficiently achieved and at the same time the pernicious culture of arbitrariness, favoritism and nepotism could be eliminated. Similar questions were also highlighted in 2014 SCMR 585 (Suo Motu Case No.18/2010), 2013 PLC (CS) 1178 Islamabad (Dr. Altaf Hussain v. Federation of Pakistan) and 2013 PLC (CS) 1147 Islamabad (Muhammad Ashraf Azeem v. Federation of Pakistan). The entire record is silent as to how a penal of candidate was recommended to the Federal Government even no scrutiny of candidates/appointee or a comparison was undertaken to gauge the eminence, integrity and track record of public services of each of the recommendee including respondent No.2 prior to placement before the Cabinet or even by the Cabinet itself. It is trite law that in absence of due diligence, it was impossible to ascertain objectively the qualification of recommendees as to their integrity, expertise, experience and eminence etc. as highlighted in the case of *Muhammad Ashraf Tiwana supra*.

20. The Islamabad High Court in case reported as 2013 PLC (CS) 1463 Islamabad (Muhammad Ashfaq Ahmed v. Ali Arshad Hakeem) has also put much emphasis on that qualification, experience, exposure, eminence and performance of any individual could not be gauged without inviting others to compete. The question of eminence or excellence of an individual has to be seen as a person being distinguishable, who has some expertise or exceptional qualities in his field with exceptional qualifications, which place him above average, even a person who has been honored or recognized by community or country or internally for his achievement in any field be also called a person of

distinction having eminence or excellence, but all those factors were not available to the Search Committee nor the same were placed before the Cabinet, even such aspects were not discussed by the Federal Government in their cabinet decision.

21. I have also gone through the eligibility criteria provided in the Act of 2015 in comparison with other Provincial Local Government Laws, whereby it has been observed that Section 54(1)(a) of KPK Local Government Act, 2013 provides the Minister for Local Government being Chairman of the Local Government Commission, whereas there was no Local Government Commission in the Balochistan Local Government Act, 2010. The Punjab Local Government Act, 2019 appoints Minister In-charge as Chairperson of the Local Government Commission in terms of Section 138(1)(a) of the Act. Similarly, the Minister for Local Government has been notified as Chairman under the Sindh Local Government Act, 2015 in terms of Section 119(1)(a). Hence, it could easily be ascertained that all other provincial local government laws provide a particular post by designation to be appointed as Chairman of the Local Government Commission, which is missing in the Islamabad Capital Territory Local Government Act, 2015.

22. In order to resolve the proposition, I have also been guided with the judgment of the Islamabad High Court reported as 2018 CLC 1275 Islamabad (Farrukh Nawaz Bhatti vs. Federal Government, etc.), whereby the very appointment of the Members of the CDA Board have been considered and declared illegal.

23. The other important missing link in this case is the role of Search Committee, who was bound to carry out a comparative evaluation to avoid any negative impact of nepotism and favoritism as discussed in PLD 2013 Lahore 343 (Barrister Sardar Muhammad vs. Federation of Pakistan), whereby a duty was casted upon the Cabinet for any appointment to carry out comparative

evaluation of the members and if same was not done it will affect the decision making authority of the Federal Cabinet, who have not considered the comparison from any data which was not placed before them.

24. The concept of proper summary was to be presented before the Prime Minister to enable him to make the selection, whereby Rule 15(2) of the Rules of Business, 1973 requires a self contained, concise and objective summary to be placed before the Prime Minister stating relevant facts and points for decision. No such summary was produced before the Prime Minister, which is key requirement as held in 2018 CLC 530 Lahore (Munir Ahmad vs. Federation of Pakistan).

25. The learned Advocate General Islamabad has put much emphasis on Section 117 of Act, 2015, whereby a power to make rules was assigned to the Government through publication and notification for carrying out the purpose of the Act, however no such Rules for appointment in the Commission have been framed so far, therefore, in absence of such rules, the process adopted by the Search Committee as well as by the Federal Cabinet was unguided, unplanned, unsystematic, arbitrary, aimless, perfunctory, mechanical, haphazard, discrete and unreasonable, whereby such an unguided appointment for being facially discriminatory would block merit, cripple opportunities and impair access of talented persons as held in 2010 PLC (CS) 967 Lahore (Shaikh Zayed Hospital and Post Graduate Medical Institute v. Dr Muhammad Saeed). Therefore, the Rules have to be framed which is need of the hour to structure the criteria in a transparent manner and to select those persons, who enjoy high integrity as held in 2017 SCMR 369 (Suo Motu Action Regarding Eligibility of Chairman and Members of Sindh Public Service Commission and others).

26. Section 95(1)(a) of the Act, 2015 refers discretionary powers conferred on Government, but same should be exercised reasonably subject to existence of

essential conditions required for exercise of such powers with the scope of law, which should ensure justice as per spirit of law. Reliance is placed upon 2010 SCMR 1301 (Tariq Aziz-ud-Din and others).

27. I have also gone through PLD 2020 Islamabad 130 (Saira Rubab Nasir vs. President of Pakistan through Secretary, Islamabad), whereby the very appointments and nominations of Members of Pakistan Medical Commission were set aside as the Prime Minister being executive head was bound to follow spirit of equal opportunity and merit in all respects, whereby in the case of PMC the appointments of Members of Commission were made in violation of basic principle of law, unstructured discretion was applied by the Prime Minister without any subjective criteria and this Court held that such process was adopted to accommodate the blue eyed persons by the Prime Minister, which was in violation of the constitutional mandate and in violation of 2019 SCMR 1952 (Selling of National Assets including PIA at throwaway price).

28. The other important aspect discussed and argued by the petitioner side is the conflict of interest of the Chairman, Local Government Commission who is sitting MNA of PTI from Islamabad Capital Territory, whereas the composition of the Commission was equalized with two members from Senate and two members from National Assembly on the recommendation of the Leader of House and Leader of Opposition, whereas Respondent No.2 was also notified as Special Assistant to Prime Minister on CDA affairs w.e.f. 06.11.2018 and is also holding the post of Chairman of the Commission, whereby the balance of decision making authority has been compromised, which is not in accordance with the legislative intent as it will create unbalance amongst decision making of the Commission, which is headed by the sitting MNA, a Special Assistant to Prime Minister, who has special inclination towards a particular political party and creates a disputed position if it could be seen in the light of Section 97(2) of

the Act, 2015 as it provides that the Chairman is answerable to the Government and as such, Respondent No.2 is Special Assistant to the Prime Minister on CDA affairs and at the same time he is representing the CDA, which is a rival department of Metropolitan Corporation Islamabad established under the Act, 2015, whereby it can easily be gathered from the positions held by Respondent No.2 that he is having all the authority to deal with the functions and powers under the CDA Ordinance, 1960 as well as under the Islamabad Capital Territory Local Government Act, 2015 at the same time, hence, the conflict of interest is, *prima facie*, reflected, therefore, the impartiality of the Chairman is disputed. The concept "answerable to the Government" has to be seen in the light of celebrated judgment of *Mustafa Impex*, reported as PLD 2016 SC 808, whereby Special Assistant to Prime Minister on one side is advising the Prime Minister in the Federal Cabinet on CDA matters and at the same time he is holding the office of Chairman, Local Government Commission and as such independence of the Commission seems to be affected.

29. While considering the above background together with concept of eminent citizen, good track record, no subjective evaluation criteria and transparency of the process has been demonstrated by the respondent side before this Court. The learned Advocate General, Islamabad has lastly referred reported judgment of PLD 2020 SC 1 (Jurists Foundation through its Chairman vs. Federation of Pakistan), whereby the Apex Court has shown judicial restraint in such type of proposition in the following manner:-

Judicial restraint in its substantial approach urges Judges considering constitutional questions to give deference to the views of the elected branches and invalidate their actions only when constitutional limits have clearly been violated; while the principle, "if it is not necessary to decide more, it is necessary not to decide more" well states the procedural aspect of judicial restraint. The power of judicial review is a "great weapon in the hands of Judges", but the Judges must observe the Constitutional limits

set by our parliamentary system on their exercise of this beneficial power, namely, the separation of powers between the Parliament, the Executive and the Courts. Judicial review must, therefore, remain strictly judicial and in its exercise Judges must take care not to intrude upon the domain of the other branches or Government. Judicial restraint, in this perspective, is essential to the continuance of rule of law, and for the continued public confidence in the political impartiality of the judiciary and the voluntary respect for the law as laid down and applied by the Courts.

30. Similarly, the Apex Court has highlighted the concept of separation of powers being a corner stone of constitutional democracy and restrain from encroaching upon the domain of legislature as a principle of tracheotomy of powers comes into play, whereas other branches of Government were given fair opportunity to fulfill their constitutional mandate before making a final verdict on disputed matters and given opportunity to the Federal Government to carry out appropriate legislation with the act of parliament within the period of 06 months, therefore, while relying upon the case of *Jurists Foundation supra*, it is in public interest not to destabilize the Commission as it will affect the issues of Metropolitan Corporation Islamabad and its Union Council, which in turn will affect the general public of Islamabad, however the powers of judicial review be exercised with constitutional limit set out by the parliamentary system which could only be exercised in a beneficial manner. There is no cavil to proposition that very selection of respondent No.2 is based upon unstructured and non-competitive process based upon personal whims without giving fair opportunity to large number of competitors, therefore, the same could be declared illegal. However, on the other side, if the Commission is unrepresented, the important issues of the Islamabad Capital Territory will remain unresolved, therefore, the Federal Government is directed to frame the rules within the period of 06 months by all means and provide a process while interpreting the requirements of Chairman, Local Government Commission *viz-a-viz* its qualification of eminent

citizen, integrity and good track record through a transparent and competitive process so that every individual can be considered in this regard. It is expected from the Federal Government that such like selection process shall not be adopted where no summary with reasons and qualification was prepared, which itself is in violation of Rules of Business, 1973, the Prime Minister of Pakistan shall be guided as per true spirit of law so that wisdom of Articles 4 & 18 of the Constitution of the Islamic Republic of Pakistan, 1973 is applied in a proper manner.

31. In view of above, the instant writ petition is hereby ACCEPTED. The appointment of Chairman, Local Government Commission is declared as *void*, however Respondent No.2 being the MNA of the Islamabad Capital Territory may represent the Commission only for day-to-day affairs till notification of the Rules within the period of 06 months, though he is not allowed to initiate any process while exercising the powers of Chairman, Local Government Commission nor he is allowed to cast any vote which affects the rights of the petitioner i.e. Shaikh Ansar Aziz/Mayor in any manner.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 16th June 2020

JUDGE

Khalid Z.