

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**WRIT PETITION NO.668/2013**

**MAKHDOOM M. NIAZ INQLABI, ADVOCATE *etc.***

**APPELLANT**  
**PETITIONER**

**VERSUS**

**ELECTION COMMISSION OF PAKISTAN, ETC.**

**RESPONDENT**  
**DEFENDANT**

Appeal/revision against the decree or order (as the case may be) of \_\_\_\_\_

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OR ORDER OF PROCEEDINGS	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

20.02.2013    M/s. Makhdoom M. Niaz Iqlabi, M. Zahid Aziz Alvi  
and Asghar Ali Mubarak, Advocates, petitioners.

Petitioners invoked the constitutional  
jurisdiction of this court by way of filing instant  
writ petition with the following prayer:-

*“In view of above submissions, it is most  
respectfully prayed that a direction and declaration  
may graciously be given to the effect that;-*

- a. The appointment of Chief Election Commissioner  
and four Honourable Members of the Election  
Commission of Pakistan is not in accordance  
with the provisions of Article 213 and 218 of the  
constitution, hence all these appointments are  
void ab-initio.*
- b. That a direction to the respondent No.4 may  
graciously be issued on urgent basis to re-  
appoint the Chief Election Commissioner and  
four Members of the Election Commission of  
Pakistan immediately in accordance with  
procedure laid down in Article 213(2) (a) and  
218(2) (a) and (b) of the Constitution of Islamic  
Republic of Pakistan, 1973 so that forthcoming  
elections may not be delayed on any pretext and  
is conducted, fairly, justly and in accordance  
with law.*

- c. *A direction may kindly be issued to the respondents regarding the lawful appointment of Honourable members of Election Commission of Pakistan in accordance with procedure and law mentioned in the Constitution of Pakistan within shortest possible period of time.*
- d. *Respondent No.1 may kindly be restrained from performing its duties till the disposal of instant writ petition. (underlining is mine)*
- e. *It is further prayed that concerned authorities may kindly be directed to observe the entire provisions of Articles 62 and 63 of Constitution of Islamic Republic of Pakistan, 1973 while conducting the election process.*
- f. *The direction be issued regarding implementation of People Representative Act, 1976 wholly in letter and spirit.*
- g. *The direction be issued to concerned authorities for restraining any kind of enhancement of security amount Rs.2000/4000 for the candidates of MPAs and MNAs respectively. Any kind of enhancement in security amount may kindly be declared as null and void ab-initio.*
- h. *Any other relief, which this Honourable Court deems fit and appropriate in view of the averments made in the petition may also be awarded for the sake of holding of free and fair election in the country.”*

2. Petitioners in person contended that this is a writ of quo-warranto through which authority to hold office by Chief Election Commissioner and Members of Election Commission of Pakistan has been challenged. According to petitioners appointment of the Chief Election Commissioner and members of the Election Commission are

besides the constitution as procedure prescribed by Articles 213 and 218 has not been followed. When asked by the court that why the petitioners remained silent since June 2011, when appointment of the learned members of the commission was made, petitioners replied that they were not aware of this fact and came to know about the same, couple of weeks back, when debate about same started on the electronic media and thereafter, they kept on waiting of the outcome of proceedings pending before the Honourable Supreme Court. On court question about the non-joining of necessary parties, petitioners maintained that all necessary parties have been impleaded and there is no requirement to implead by name, the learned Chief Election Commissioner and members as respondents. Petitioners vehemently argued that very foundation i.e composition of the Election Commission is not in accordance with the constitution, therefore, general elections likely to be held in the near future would not be lawful. Petitioners further submitted that **law of necessity** ( **نظریہ ضرورت** ) has already been buried by the Supreme Court, therefore, holding of elections in near future should not come in the way, in making the declaration that appointments made are without procedure prescribed.

I have heard the petitioners at some length and also perused the documents annexed with the petition.

3. Instant writ petition has been described by the petitioners as one of “Quo Waranto”, although prayer made in the writ petition does not reconcile with the same. Article 199(1) (b) (ii) which empowers the High Court to issue writ of “Quo Warranto” reads as under:-

**(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office;**

Plain reading of above makes it clear that for the purpose of “requiring any person” particulars of that person are necessary and if “any person” prefers a petition then person to be called upon has to be impleaded as respondent. Although this court invited the attention of petitioners who are learned advocates of the High Court but they preferred to argue the matter with this inherent defect. Even, otherwise, no petition can be maintained without necessary parties, who are likely to suffer of the outcome of any proceedings.

4. This petition also hits by “LACHES” as appointment of the learned members was made on June 11.06.2011 and learned Chief Election Commissioner was appointed on 16.07.2012. Reasons advanced by the petitioners that they came to know about the appointments recently,

when debate started on the electronic and print media, to my mind is nothing but a fallacy. It is a matter of record that same media, aired and published the news of the appointment of the learned CEC and members of the commission.

5. Timing of instant petition requires greater attention and sensitive approach. On 13<sup>th</sup> Feb. 2013 Hon'ble Supreme Court passed the order of dismissal of the constitution petition No.5 titled as Dr. Muhammad Tahir-ul-Qadri Vs. Federation of Pakistan etc. On the same date petitioner No.1, through TCS, send applications for the reconstitution of ECP to the Ministry of law, Parliamentary Committee and ECP. Petitioners approached this court on 18.02.2013.

6. It is ground reality that term of national and Provincial Assemblies coming to an end by 16<sup>th</sup> March, 2013, therefore, all the political parties are preparing for the fresh elections, which are likely to be held in the month of May, 2013. Entire nation has also focused on the constitutional and democratic event of election, as Election Commission of Pakistan commenced the process of holding elections. If, for the sake of arguments, stance of the petitioners that proper procedure has not been followed in the appointment of Chief Election Commissioner and members of ECP, is accepted, even then at this stage, this court shall refrain from issuing any writ.

7. In the case of Haji Saif Ullah, reported as PLD 1989 SC 166, august Supreme Court has already held as under:-

*“The third factor to be noted is that all the Writ Petitioners were directly and immediately affected by the dissolution of the Assemblies, by the failure to hold the General Elections within ninety days of the dissolution, by the omission to appoint a Prime Minister for the caretaker cabinet, but none of them came forward to challenge any of these acts of omission and commission. It was only when the late General Muhammad Zia-ul-Haq, disappeared from the scene on account of an unforeseen disaster, after the stage had been fully set and the whole nation was preparing itself for the General Elections that these writ petitions were filed seeking reversal of the state of affairs, asking for a declaration of all round pervasive nullities and illegalities and for claiming all the reliefs which have been enumerated. This conduct of the petitioners, the stage at which these petitions were filed and the death of General Muhammad Zia-ul-Haq whose acts had in essence occasioned all the grievances of the petitioners, disentitled them of any discretionary relief in the matter. The mere transitory continuance for such a pre-existing state of affairs, with an eye on the immediate and prime objective of holding a timely and fair General Elections prompts us not to interfere in these proceedings with those matters, and the prevailing state of affairs.*

*For reasons already given the findings recorded by the High Court are upheld, the denial of relief to the writ petitioners is affirmed, and all the appeals are dismissed with no order as to costs.”*

8. In my estimation above laid down dictum is directly applicable in the present scenario. Now, coming to the contention of the petitioners that **“law of necessity”** has been buried by honourable Supreme Court, therefore holding of elections in near future should not come in the way in making declaration that appointments of

Chief Election Commissioner and Members as unconstitutional. Undoubtedly, august Supreme Court through authoritative pronouncement reported as PLD 2009 SC 879, buried the notorious "law of necessity" for all times to come but at the same time superior courts have become more vigilant in appreciating the intent of any party in bringing any matter before them. As superior courts have also thrown out the **"doctrine of mischief"** (نظریہ شرارت).

I am constrained to observe that instant petition originated from above mentioned doctrine.

9. Even otherwise questions raised before this court were also agitated in the constitutional petition No.05/2013 which stand dismissed, vide order dated 13.02.2013, to be followed by the reasons of dismissal. Therefore, this court lacks jurisdiction to adjudicate upon any matter which has already been decided by august Supreme Court.

In this view of the matter and for the reasons stated above instant petition is dismissed being not maintainable.

**(SHAUKAT AZIZ SIDDIQUI)**  
**JUDGE**

**Approved for Reporting.**

**JUDGE**