

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

**CASE NO. : W.P. NO.318-2020**

**Mushtaq Ahmad Abbasi**

**Vs.**

**Chairman, Election Commission of Pakistan, Islamabad etc.**

**CASE NO. : W.P. NO.405-2020**

**Zahid Afzal**

**Vs.**

**Election Commission of Pakistan through Chief Election Commissioner,  
Islamabad**

**Petitioners by : Mr. Akhtar Mahmood, Advocate**

**Mr. Qasim Iqbal, Advocate**

**Respondents by : Mr. Sana Ullah Zahid, Advocate with Ghulam  
Abbas, Deputy Director, ECP**

**Syed Qamar Hussain Sabzwari, Advocate**

**Malik Qatadah Jamal Khan, Advocate**

**Date of decision : 10.02.2020**

**AAMER FAROOQ J.** This judgment shall decide instant petition as well as W.P. No.405-2020, as common questions of law and facts are involved.

2. The petitioners, in both the petitions, have assailed notification dated 30.01.2020 issued by Election Commission of Pakistan, whereby the poll date with respect to elections of Union Council-40 (I-8), Islamabad as well as post election schedule has been announced.

3. Learned counsel for the petitioners, *inter alia*, contended that under Rule 11 of the Islamabad Territory Local Government (Conduct of Elections) Rules, 2015, entire fresh schedule has to be issued and the poll date solely cannot be notified.

4. Learned counsel for petitioner in W.P. No.405-2020 submitted that impugned notification dated 30.01.2020 is discriminatory inasmuch as poll date with respect to UC-40 (I-8), Islamabad has been announced, whereas there is vacancy in UC-8, Tumair, Islamabad, for which, no schedule has been announced.

5. Learned counsel for Election Commission of Pakistan, *inter alia*, contended that under section 58 of the Elections Act, 2017 read with Rule 11 of Islamabad Capital Territory Local Government (Conduct of Elections) Rules, 2015 and other enabling provisions, poll date can be deferred which was accordingly done. It was further contended that for one reason or the other, bye-election was postponed and now it is scheduled for 15.02.2020.

6. Learned counsel for respondents No.3, 4 & 7, *inter alia*, contended that under section 31 of the Islamabad Capital Territory Local Government Act, 2015, a vacancy is to be filled within thirty days.

7. Likewise, learned counsel for respondent No.5 also contended that for reasons best known to Election Commission of Pakistan, the matter was deferred/postponed time and again.

8. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

9. Due to vacancy in various local Councils, the Election Commission of Pakistan on 04.10.2019 issued election schedule including the one in UC-40 (I-8), Islamabad, which is the subject matter of W.P. No.318-2020. On 29.10.2019, the poll date was deferred till further orders. It is relevant to mention that poll date was 02.11.2019. A fresh date for election was announced on 02.01.2020, which was 11.01.2020. The said notification was again superseded by notification dated 08.01.2020 and the poll date was deferred until further orders. On 30.01.2020, a fresh notification was issued announcing the poll date for UC-40 (I-8), Islamabad as 15.02.2020.

10. The grievance of the petitioner in W.P. No.318-2020 is that merely a poll date cannot be announced and the entire election schedule has to be notified afresh. Reliance was placed on Rule 11 of the Islamabad Capital Territory Local Government (Conduct of Elections) Rules, 2015. For the sake of brevity, the said Rule is reproduced below: -

*“11. Election schedule.- (1) The Election Commission shall announce the schedule for conduct of local government elections under the Act, hereinafter referred to as ‘Election*

*Schedule', and shall publish it in the official Gazette for the information of general public.*

*(2) Election Commission may at any time before the date of poll rescind or alter the Election Schedule published under sub-rule (1) and shall issue a revised Election Schedule”.*

The Election Commission of Pakistan, in notifying the fresh poll date, has placed reliance on Rule 11(2) *ibid* and also on sections 8(c) and 58 of Elections Act, 2017. The duty to conduct Local Government elections is of Election Commission of Pakistan. The Local Government elections are conducted under the Elections Act, 2017 as well as respective Local Government Acts and the Rules. In this behalf, the filling up of vacancy of a Member of Local Government is specifically provided in section 228 of Election Act, 2017, which reads as follows:-

*“228. Bye-elections.\_ When the seat of a Member of a local government becomes vacant and bye-election is required to fill the seat under the applicable local government law, the Commission shall, by notification in the official Gazette, call upon the constituency or electoral college to elect a person to fill the seat on such date as may be specified in the notification and the provisions of the Act, the Rules and applicable local government law shall apply to the election to fill such seat”.*

Under the above provision, bye-election with respect to local government, is to be held in accordance with provisions of Elections Act, 2017, rules and applicable local government law; hence local

government elections are governed partially by Elections Act, 2017 and respective local government laws. The provisions of Elections Act, 2017, which are applicable in the case of local government elections, are provided in section 229 of Elections Act, 2017, which reads as follows:-

***“229. Application of provisions to local government election.\_\_\_\_***

Subject to this Chapter and the Rules relating to conduct of local government elections, election disputes, election offences and allocation of symbols, the provisions of Chapter V, Chapter IX, Chapter X and Chapter XII of this Act, as nearly as possible, shall apply to the conduct of local government election”.

The bare perusal of above section shows that only provisions of Chapter V, Chapter IX, Chapter X and Chapter XII of Election Act, 2017 are applicable as nearly as possible in case of elections of local government. Reliance was placed by Election Commission of Pakistan as is also mentioned in the notification impugned that powers have been exercised by Election Commission of Pakistan under section 58 as well as 8(c) of Elections Act, 2017. In this behalf, section 8(c) *ibid* pertains to general power of Election Commission of Pakistan to ensure fair, fresh and just elections, however, section 58 *ibid* pertains to alteration in the election programme. Reliance on section 58 *ibid* by Election Commission of Pakistan is not tenable inasmuch as under section 229 of Election Act, 2017, Chapter VII (which encompasses section 58 *ibid*) is not

applicable in local government elections. The relevant law, for the purposes of elections of local government regarding issuance of election schedule and its variation, is Rule 11 of the Islamabad Capital Territory Local Government (Conduct of Elections) Rules, 2015. The referred Rule has been reproduced above and the examination of the same shows that in case, date of poll is rescinded or altered, entire revised election schedule is to be issued. Rule 11(2) *ibid* does not envisage revision of a specific date or dates, as is the case in section 58 *ibid*, which provides for variation of any singular date or multiple dates as contained in the original schedule.

11. Even-otherwise, no written explanation or reason was offered by Election Commission of Pakistan in the impugned notification for deferring the election schedule; only in notification dated 29.10.2019, it was provided that due to law and order situation in Islamabad Capital Territory, the poll date is deferred. The referred deferment was for an indefinite period and same was the position in the notification dated 08.01.2020. In view of said position, impugned notification dated 30.01.2020 is not tenable, as Election Commission of Pakistan under Rule 11(2) *ibid* is required to revise entire election schedule with respect to bye-elections in Union Council-40, I-8, Islamabad.

12. In so far as grievance of petitioner in W.P. No.405-2020 is concerned, the same is also justified inasmuch as originally on 04.10.2019, election schedule with respect of Union Council-08, Tumair, Islamabad was notified, but subsequently, same was postponed/deferred vide notification dated 29.10.2019 and later on, no notification was issued with respect thereto without any justification or basis. Under section 31 of Islamabad Capital Territory Local Government Act, 2015, where a vacancy is created of a Mayor, Deputy Mayor, Chairman or Vice Chairman etc. elections are to be conducted within thirty days from the date, when such vacancy is notified. Notification dated 04.10.2019 shows that in UC-08, Tumair, Islamabad, the vacancy was with respect to Chairman hence section 31 ibid is applicable.

13. For what has been stated above, both the petitions are allowed and the impugned notification dated 30.01.2020 is set aside; consequently, Election Commission of Pakistan shall issue a fresh election schedule as provided in Rule 11(2) of the Islamabad Capital Territory Local Government (Conduct of Elections) Rules, 2015. The Election Commission of Pakistan shall also announce election schedule with respect to UC-08, Tumair, Islamabad for holding of bye-elections of Chairman in compliance of section 31 of Islamabad Capital Territory Local Government Act, 2015.

**(AAMER FAROOQ)**  
**JUDGE**

Approved for reporting

Zawar

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