IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Munib Akhtar
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar

SUO MOTU CASE NO. 1 OF 2023
(Suo Motu Regarding Holding of General Elections to the Provincial Assemblies of Punjab and KP)

And

CONST. PETITION NO.1 OF 2023

And

CONST. PETITION NO.2 OF 2023

Islamabad High Court Bar Association Islamabad through its President Muhammad Shoaib Shaheen, ASC Islamabad
(in Const.P.1/2023)

Muhammad Sibtain Khan and others
(in Const.P.2/2023)

...Petitioner(s)

Versus

Election Commission of Pakistan through the Chief Election Commissioner, Islamabad and others
(in Const.P.1&2/2023)

...Respondent(s)

For the petitioner : Mr. Abid S. Zuberi, ASC.
Mr. Shoaib Shaheen, ASC.
Assisted by:
Ayan Memon, Adv.
Ms. Amna Khalili, Adv.
Mr. Agha Ali Durrani, Adv.
Mr. Arif Ansari, Adv.
(in Const. P.1 of 2023)

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For the petitioner : Syed Ali Zafar, ASC
Mr. Sarfraz Ahmad Cheema, ASC
Mr. Zahid Nawaz Cheema, ASC
Ch. Faisal Fareed, ASC.
Mr. Safdar Shaheen Pirzada, ASC
Mr. Ashfaq Ahmed Kharal, ASC
Mr. Amir Saeed Rawn, ASC
(in Const. P.2 of 2023)

On Court's Notice

For Federation of Pak. : Mr. Shehzad Ata Elahi,
Attorney General for Pakistan
Ch. Aamir Rehman, Addl. AGP
Malik Javaid Iqbal Wains, Addl. AG
Assisted by:
Ms. Mehwish Batool, Adv.
Mr. Aitzaz ul Haque, Adv.
Ms. Maryam Rasheed, Adv.

For President of Pak. : Mr. Salman Akram Raja, ASC
Mr. Amir Malik, AOR
Assisted by:
Malik Ghulam Sabir, Adv.
Mr. M. Shakeel Mughal, Adv.
Mr. Maqbool Ahmed, Adv.
Sameen Qureshi, Adv.

For Governor KP : Mr. Khalid Ishaq, ASC.

For Governor Punjab : Mr. Mustafa Ramday, ASC.
Mr. Jahanzeb Awan, ASC
Mr. Rashid Hafeez, ASC.
Assisted by:
Ms. Zoe K. Khan, Adv.
Mr. Ahmed Junaid, Adv.
Mr. Akbar Khan, Adv.
Mr. Uzair Shafi, Adv.
Barrister Maria Haq, Adv.
Barrister Salman Ahmed, Adv.

For ECP : Mr. Sajeel Shehryar Swati, ASC.
Assisted by:
Barrister Saman Mamoon, Adv.
Ms. Kiran Khadijah, Adv.
Mr. Zafar Iqbal, Special Secy.
Mr. Muhammad Arshad, DG Law
Mr. Khurram Shehzad, Addl. DG Law
Ms. Saima Tariq Janjua, DD (Law)
Ms. Bushra Rasheed, Law Officer
Mr. Zaighum Anees, Law Officer

For Govt. of Punjab : Mr. Muhammad Shan Gul, AG
Malik Waseem Mumtaz, Addl. AG
Mr. Sana Ullah Zahid, Addl. AG

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		Assisted by: Mr. Khurram Chughtai, Adv. Mr. Usman Ghani, Adv. Mr. Raza Rehman, Adv. Mr. Ahmed Raza Sarwar, Addl. Chief Sec. Law (Pb)
For Govt. of KPK	:	Mr. Aamir Javaid, AG Sardar Ali Raza, Addl. AG Mian Shafaqat Jan, Addl. AG
For Govt. of Baluchistan	:	Mr. Asif Reki, A.G Mr. M. Ayaz Swati, Addl. AG.
For Govt. of Sindh	:	Mr. Hassan Akbar, A.G Mr. Saifullah, AAG (through V.L. Karachi) Mr. Fauzi Zafar, Addl. AG Mr. Zeeshan Edhi, Addl. AG
For ICT	:	Mr. Jehangir Khan Jadoon, AG
For Pak. Bar Council	:	Mr. Haroon-ur-Rasheed, ASC. Vice Chairman, PBC Mr. Hassan Raza Pasha, ASC. Chairman, Executive Council.
For Supreme Court Bar Association	:	Mr. Abid S. Zuberi, ASC. President SCBA Mr. Muqtadir Akhtar Shabbir, ASC/ Secretary SCBA Malik Shakeel-ur-Rehman, ASC/ Addl. Secretary
For PTI	:	Syed Ali Zafar, ASC. Ch. Faisal Fareed, ASC. Mr. Safdar Shaheen Pirzada, ASC Mr. Ashfaq Kharal, ASC
For PPPP	:	Mr. Farooq H. Naek, Sr. ASC. Assisted by: Barrister Sheraz Shaukat Rajpar
For PML(N)	:	Mr. Mansoor Usman Awan, ASC. Mr. Anees Shehzad, AOR.
For JUIP	:	Mr. Kamran Murtaza, Sr. ASC.
For Jamat-e-Islami	:	Mr.Ghulam Mohyuddin Malik, ASC Syed Rifaqat Hussain Shah, AOR.
For PML (Awami)	:	Mr. Azhar Siddiqui, ASC
Date of hearing	:	28.02.2023.

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O R D E R

By a majority of 3:2 (Mr. Justice Syed Mansoor Ali Shah and Mr. Justice Jamal Khan Mandokhail dissenting) and for detailed reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, these matters are disposed of in the following terms:

1. Parliamentary democracy is one of the salient features of the Constitution. There can be no parliamentary democracy without Parliament or the Provincial Assemblies. And there can be neither Parliament nor Provincial Assemblies without the holding of general elections as envisaged, required and mandated by and under the Constitution and in accordance therewith. Elections, and the periodic holding of elections, therefore underpin the very fabric of the Constitution. They are a sine qua non for parliamentary democracy, and ensure that the sacred trust of sovereignty entrusted to the people of Pakistan is always in the hands of their chosen representatives.

2. While the holding of general elections has different aspects and requirements, one that is absolutely crucial is the timeframe or period in which such elections are to be held. The Constitution envisages two such periods, being of sixty and ninety days respectively. In relation to a Provincial Assembly, the first period applies when the Assembly dissolves on the expiration of its term under Article 107 and the second period is prescribed when it is sooner dissolved under Article 112. The time periods so set down in Article 224(1) and (2) respectively are constitutional imperatives that command complete fidelity.

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We are here concerned with the dissolution of two Provincial Assemblies before the expiry of their terms and therefore to the holding of general elections in relation to each within 90 days.

3. It is in the foregoing context that three questions have to be considered by the Court. The Assemblies in question are those of the Punjab and Khyber Pakhtunkhwa Provinces, which dissolved on 14.01.2023 and 18.01.2023 respectively. In both cases, the then Chief Ministers tendered advice to their respective Governors under Article 112(1) of the Constitution to dissolve the Assembly. In the case of the Punjab Province the Governor chose not to act on the said advice so that the Assembly stood dissolved on the expiry of 48 hours, on the date just mentioned. In the case of the KPK Province, the Governor did act on the advice and made an order dissolving the Assembly, on 18.01.2023. The questions which have been considered with the assistance of learned counsel for the various parties and the Law Officers are as follows:

> 1. Who has the constitutional responsibility and authority for appointing the date for the holding of a general election to a Provincial Assembly, upon its dissolution in the various situations envisaged by and under the Constitution?
>
> 2. How and when is this constitutional responsibility to be discharged?
>
> 3. What are the constitutional responsibilities and duties of the Federation and the Province with regard to the holding of the general election?

4. The Constitution envisages three situations for the dissolution of a Provincial Assembly. These, in the context of the role of the Governor, are as follows.

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5. The first situation is set out in clause (2) of Article 112. This envisages the dissolution of the Assembly by an order made by the Governor at his discretion, subject to the previous approval of the President and fulfillment of the conditions set out therein. In this situation, the Assembly cannot, and does not, dissolve without an order being made by the Governor, and dissolves immediately on the making of the order.

6. The second situation is set out in clause (1) of Article 112, when the Chief Minister advises dissolution. This situation can be divided into two sub-categories, which are as follows:

a. The first is where the Governor acts on the advice tendered and makes an order dissolving the Assembly. Here, the Assembly dissolves immediately on the making of the order.

b. The second sub-category is where the Governor does not make an order of dissolution on the advice tendered. Here, the Assembly stands dissolved on the expiry of forty-eight hours from the tendering of the advice by the Chief Minister (i.e., by the efflux of time), and that does not require an order of the Governor.

7. The third situation is set out in Article 107. This provides that unless an Assembly is sooner dissolved (i.e., in terms of either of the two preceding situations), it stands dissolved after a term of five years. Here, the Governor has no role at all; the Assembly dissolves by the efflux of time.

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8. Article 105(3)(a) provides that where the Governor dissolves the Assembly he shall appoint a date for the holding of a general election thereto, being a date not later than 90 days from the date of the dissolution.

9. The Elections Act, 2017 ("2017 Act") has been enacted by Parliament in exercise of its legislative competence under the Constitution. That includes, in addition to Entry 41 of the Fourth Schedule, a specific provision in the body of the Constitution, being Article 222, that expressly articulates a list of matters relating to elections which are within the Federal domain. The 2017 Act applies, inter alia, to both the National and the Provincial Assemblies. Section 57(1) thereof provides that the President shall "announce the date or dates of the general elections after consultation with the Commission".

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

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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

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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.

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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.

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

Sd/-
Chief Justice

I have appended my separate order.
Sd/-
Judge

Sd/-
Judge

I have appended my note along with the main order.
Sd/-
Judge

Sd/-
Judge

Announced in Court
at Islamabad
on **01.03.2023.**

Sd/-
Chief Justice

NOT APPROVED FOR REPORTING.

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Syed Mansoor Ali Shah and Jamal Khan Mandokhail, JJ.- *For the reasons to be recorded later, we hold that:*

i. *The suo motu proceedings (SMC No. 1 of 2023), in the facts and circumstances of the case, are wholly unjustified in the mode and manner they were taken up under Article 184(3) of the Constitution of the Islamic Republic of Pakistan ("Constitution"), besides being initiated with undue haste.*

ii. *The Suo Motu Case No.1 of 2023 and the two Const. Petitions No. 1 & 2 of 2023 under Article 184(3) of the Constitution, in the light of the principles settled in Manzoor Ilahi*[1] *and Benzair Bhutto*[2]*, do not constitute a fit case to exercise the extraordinary original jurisdiction of this Court under Article 184(3) of the Constitution and are thus not maintainable as the same constitutional and legal issues seeking the same relief are pending and being deliberated upon by the respective Provincial High Courts in Lahore and Peshawar, without there being any inordinate delay in the conduct of the proceedings before them.*

iii. *There is no justification to invoke our extraordinary jurisdiction under Article 184(3) to initiate suo motu proceedings or entertain petitions under Article 184(3) of the Constitution, as a single Bench of the Lahore High Court has already decided the matter in favour of the petitioner before the said High Court vide judgment dated 10.02.2023 and the said judgment is still in the field. The intra court appeals (ICAs) filed against the said judgment are pending before the Division Bench of the Lahore High Court (and none of the said petitioners has approached this Court under Article 185(3) of the Constitution).*

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[1] PLD 1975 SC 66
[2] PLD 1988 SC 416

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iv. *Once a constitutional issue is pending before a Provincial High Court, keeping in view the Federal structure of our Constitution the autonomy and independence of the apex provincial constitutional court, should not be readily interfered with rather be supported to strengthen the provincial autonomy and avoid undermining the autonomy of the provincial constitutional courts.*

v. *There is no inordinate delay in the proceedings pending before the High Courts, infact the instant proceedings have unnecessarily delayed the matter before the High Courts. However, considering the importance of the matter we expect that the respective High Courts shall decide the matters pending before them within three working days from today.*

vi. *Even otherwise without prejudice to the above, such like matters should best be resolved by the Parliament.*

2. We, therefore, agree with the orders dated 23.02.2023 passed by our learned brothers, Yahya Afridi and Athar Minallah, JJ[3]*., and dismiss the present constitution petitions and drop the suo motu proceedings.*

Sd/-
Judge

Sd/-
Judge

Islamabad,
1st March, 2023.

[3] Initially a nine member bench heard this matter. The aforementioned two Hon'ble Judges decided the matter by dismissing the said petitions. Later on two other Hon'ble Judges disassociated themselves from the Bench for personal reasons and as the two aforementioned judges had dismissed the matter, the Bench was reconstituted into a five member bench vide order dated 27.02.2023. The decisions of the aforementioned two Hon'ble Judges dated 23.2.2023 form part of the record of this case.

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