

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.4871-2022

Ali Nawaz Awan
Versus
Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<u>28-12-2022</u>	Sardar Taimoor Aslam Khan, Mr Mudassar Abbas, Ch. Ali Nawaz, Advocates for petitioner in the instant petition. Mr Hassan Javed, Advocate for petitioner in W.P. NO.4885/202.

The petitioner has assailed order, dated 27-12-2022, whereby the Local Government Election in Islamabad Capital Territory scheduled for 31-12-2022, have been postponed.

2. The learned counsel for the petitioner while explaining the brief back ground of the matter has stated that earlier in exercise of powers conferred under sub-section (1) of section 6 of the Islamabad Capital Territory Local Government Act, 2015 ("Act of 2015") issued notification, dated 19-05-2015, whereby determining the number of Union Councils as 50. The said notification was subsequently withdrawn on 18-05-2021 without issuing a new notification. In compliance with the judgment, dated 15-03-2021, of the august Supreme Court passed in Civil Misc. Application Nos.6762 and 2797 of 2020 in Civil Appeal No.20 of 2014, the Election Commission of Pakistan ("ECP") on

02-06-2022 announced the election schedule relying on the earlier notification of 50 UCs. A Writ Petition i.e. W.P. No.2235/2022 was filed before this Court wherein the ECP expressed willingness for conducting elections and filed a report categorically stated that direction may be issued to the Federal Government not to bring out further changes in law and number of councils. The said petition was disposed-of with the observation that the Commission will complete the process of delimitation of 101 Union Councils within the period specified under section 7 of the Act of 2015. After fresh delimitation exercise, the number of Union Council was increased to 101. Thereafter the Commission announced the election schedule for 31-12-2022. On 18-12-2022, a summary was forwarded to the Federal Cabinet mentioning that the Administrator Local Government has informed that the number of UCs has been determined on the basis of census 2017 and recommended increase of UCs to 125 on the ground that the population of ICT has been increased. Based on the said summary, the number of UCs has been increased to 125 vide notification, dated 19-12-2022. A copy of this notification was endorsed to the Commission. On 20-12-2022, the Commission in exercise of powers under Article 140-A(2), Article 218(3), Article 219(d) and Article 222 of the Constitution

read with section 219 of the Election Act, 2017 and all other enabling provisions decided to continue with the election process on the ground that notification dated 19-12-2022 was issued without concurrence of the Commission as required under section 4(4) of the ICT Local Government Act, 2015. However, to the utter surprise of the petitioner, the Commission while affording an opportunity to the applicants/petitioners in W.P. No.4787/2022 and 4809/2022 decided to postpone the elections scheduled for 31-12-2022 without mentioning any timeline for conducting election through the impugned order.

3. The learned counsel for the petitioner has, inter alia, contended that the Commission cannot retract from its earlier commitment which was recorded in the order passed in W.P. 2235/2022. He has further argued that the Commission vide order, dated 20-12-2022, had decided to continue with the election process on cogent reasons and no new development has occurred after passing of the said order. It has been argued that any Bill proposing amendments in any law cannot be termed as an Act of Parliament unless assented to by the President under Article 75(3) of the Constitution, however, the Commission in the impugned order has placed reliance on the proposed amendments, which has not yet attained the status of a law of the land.

The learned counsel has drawn the attention of this Court to section 29(3) of the Act of 2015 that the Administrator MCI has no role whatsoever in providing information regarding increase in the number of the Union Councils. The learned counsel has argued that determination of 101 UCs was based on the census of 2017 and no new census has been conducted thereafter, therefore, the proposal that population in the ICT has increased after the census is hypothetical and not based on actual facts and the notification issued on such basis is without lawful authority and jurisdiction. The learned counsel has argued that election schedule was announced, ballot boxes and ballot papers were distributed, orders relating to elections duties were passed, however, the election schedule was postponed at the verge of the elections, which is violative of judgment of the august Supreme Court and this Court and the rights of the inhabitants of ICT. The learned counsel has informed that almost 600 million have been incurred on arrangements for the scheduled elections.

4. The points raised need consideration. The office is directed to issue notices to the respondents for **tomorrow, to be taken up at 02:30 p.m.** Notice to the learned Attorney General for Pakistan is also directed to be issued. The respondents are also directed to assist as to why the amount

incurred on the process so far, for conduct of elections, may not be recovered from members of the Federal Cabinet. The respondents are also directed to satisfy this Court as to why the impugned order should not be suspended, pending final disposal of the instant petition.

5. The office is directed to send copy of this order to the respondents through special messenger and facsimile.

C.M. No.01/2022.

Notice.

C.M. No.02/2022.

Dispensation sought for is allowed, subject to legal exceptions.

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(ARBAB MUHAMMAD TAHIR)
JUDGE

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.4885-2022

Mian Muhammad Aslam
Versus
Election Commission of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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28-12-2022

Order of even date passed in W.P. No.4871/2022, shall be deemed to have been passed in this petition as well. The office is, therefore, to issue notices to the respondents in terms of the said order.

C.M. No.01/2022.

Dispensation sought for is allowed, subject to legal exceptions.

C.M. No.02/2022.

Notice.

Copy Dasti.

(ARBAB MUHAMMAD TAHIR)
JUDGE