

**ELECTION COMMISSION OF PAKISTAN****ORDER****08-02-2024**

Subject: **APPLICATION FOR POSTPONMENT OF PRESIDENTIAL ELECTION-2024.**

**WHEREAS**, the Election Commission of Pakistan (hereinafter referred as the "Commission") is a Constitutional body constituted under Article 218(2) of the Constitution of Pakistan, 1973 (hereinafter referred as the "Constitution"). The Election Commission of Pakistan is mandated under Article 218(3) of the Constitution to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

**AND WHEREAS**, the Commission is constituted to organize and conduct Elections to both the Houses of Majlis-e Shoora Parliament, Provincial Assemblies and for the Election of such other public offices as may be specified by law.

**AND WHEREAS**, Article 41 of the Constitution read with second schedule and further read with Presidential Election Rules, 1988, provides that the Commission shall hold and conduct Election to the office of the President and Chief Election Commissioner hereinafter referred as "CEC" shall be the Returning officer for such Election.

**AND WHEREAS**, Clause 3 of Article 41 of the Constitution provides that the President shall be elected in accordance with the provisions of Second Schedule of the members of an electoral college consisting of;

- a. The member of both the Houses
- b. The members of Provincial Assemblies.

**AND WHEREAS**, the National and Provincial Assemblies were dissolved and General Election was held on 8<sup>th</sup> February, 2024.

**AND WHEREAS**, proviso of Clause 5 of Article 41 of the Constitution provides that if election cannot be held within period provided in clause *ibid* because the National Assembly is dissolved, it shall be held within thirty days of the General Election to the Assembly.

**AND WHEREAS**, the Election to the office of the President within 30 days is a Constitutional Imperative therefore the Commission issued Notification of Election Programme on 1<sup>st</sup> March, 2024 with poll date 9<sup>th</sup> March, 2024.

**AND WHEREAS**, nomination papers have been submitted by the prospective candidates including the present petitioner and scrutiny has been completed and poll date is fixed for 9<sup>th</sup> march, 2024.

**AND WHEREAS**, Mr Mehmood Khan Ahakzai candidate for the Election to the office of President moved the subject application for postponement of the election to the office of president on the grounds that the Electoral College(s) is in complete for want of vacancies of the reserved seats. He has further pointed out that the issue of allocation of



reserved seats to Sunni Ittehad Council is Sub-Judge before the Honourable Peshawar High Court.

**AND WHEREAS**, the present petitioner appeared during the scrutiny of his nomination papers before the Returning officer and did not raise any objection to the in-completion of Electoral College(s) and submitted his nomination papers thereby acquiescing to the Election to the office of the President.

**AND WHEREAS**, Electoral College(s) comprising of the National Assembly, Senate and all four Provincial Assemblies are fully functional and have elected the Prime Minister and Chief Ministers.

**AND WHEREAS**, the Electoral College cannot be deemed to be in-complete for any vacancy (ies). Section 130 of the Elections Act, 2017 provides that vacancy in Electoral College not to invalidate election. Although the provision of section 130 pertains to election of member of the Senate but as there is no direct provision on the same issue in the Constitution or the Presidential Election Rules, the Honourable Supreme Court of Pakistan in plethora of judgements has held that if no provision pertaining to an issue is available in the Constitution or statute, then reference can be made to other provisions of the Constitution or the Statute for the purpose of interpretation. The Election to the office of the President is Constitutional Imperative in terms of Article 41 of the Constitution and cannot be delayed beyond 30 days. The Electoral College cannot be deemed to be in complete for want of vacancy (ies) because recently 22 MNA(s)/MPA(s) have vacated the seats whereby they were elected from more than one seats. It clearly shows that the Electoral College(s) cannot be considered to be incomplete for want of vacancy(s). It is crystal clear that Electoral College(s) mean the existence of the Parliament and Provincial Assemblies. Had it been the intention of the framers of the Constitution that Electoral College(s) shall be incomplete for want of vacancies for election to the Office of the President, it would have been provided expressly in the Constitution. In absence of any express bar, it can be safely presumed that the very existence of the Parliament and Provincial Assemblies is a complete Electoral College not withstanding any vacancy.

**NOW THEREFORE**, the Commission in exercise of powers conferred upon it under Article 218(3) of the Constitution, Article 41, read with Second Schedule and further read with Presidential Election Rules, 1988, decline to delay the Election to the office of the President and reject the application of the petitioner .

— sd —

**SIKANDAR SULTAN RAJA**  
Chairman

— sd —

**NISAR AHMED DURRANI**  
Member

— sd —

**SHAH MUHAMMAD JATOI**  
Member

— sd —

**BABAR HASSAN BHARWANA**  
Member

— sd —

**JUSTICE (r) IKRAMULLAH KHAN**  
Member

