JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No. 1787–2024

Muhammad Ijlal

Vs.

Election Commission of Pakistan and others.

Petitioner by:	Syed M. Yawar Gardezi, Advocate.
Respondents by:	Mr. Usman Rasool Ghumman, AAG. Rana Ali Raza, State Counsel. Barrister Saman Mamoon, Legal Advisor, ECP. Muhammad Arshad, Special Secretary (Law), ECP. Yasir Ali Raja, Director Law (ECP). Nadeem Qasim, ADG (LGE). Said Ghafoor, D.D (Election), ECP.
Date of Decision:	10.11.2025.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has prayed for the following relief:

> *Direct respondent No.1 to announce the Election Schedule for holding Local Government Elections in ICT in light of the 2015 and 2017 Acts.*
>
> *Direct respondents No.2 and 3 to provide respondent No.1 with all required assistance for holding the Local Government Elections in ICT.*
>
> *Declare that, in terms of section 29(3) of the 2015 Act, respondent No.4/5 has no authority to hold the office of Administrator MCI.*
>
> *Declare any liabilities imposed or actions taken which are detrimental to the interests of, or impose a liability on, the Public, including the imposition of Property Tax, by the Administrator MCI after the expiry of six (6) months, in terms of 29(3) of the 2015 Act, as illegal and without lawful authority.*
>
> *Remove the current Administrator MCI (respondent No.4/5) and appoint an impartial individual to hold the office of the Administrator MCI, for carrying out day-to-day affairs, until*

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the respondents conduct the Local Government Elections in ICT, as no law allows the Federal Government to appoint an Administrator for more than six months following the expiry of the term of a Local Government.

Any other relief deemed appropriate by this Court may also be granted.

2. When confronted, learned counsel representing the ECP contends that the delimitation process has already been completed after inviting and deciding all objections. However, there appears to be an apparent mistake in the amended Act of 2024, wherein Section 15 gives rise to a new situation in which the election of members of the Union Council is to be conducted, convened, and presided over by the Secretary of the Union Council. Even the election for the posts of Chairman and Vice Chairman of the Union Council is to be presided over and held by the Secretary, Union Council, who is an employee of the District Administration in BPS-11.

3. Before the 2024 amendment, the legal position regarding the conduct of elections was entirely different. The Secretary of the Union Council (UC) was not designated as the Presiding Officer for conducting local government elections in the Islamabad Capital Territory (ICT). The term Presiding Officer is defined under section 2(xxxi) of the Elections Act, 2017 as follows:

> *xxxi) "Presiding Officer" means a Presiding Officer appointed under this Act for a polling station and includes an Assistant Presiding Officer performing the functions of a Presiding Officer;*

Under section 17 of the ICT Local Government Act, 2015 (ICT LGA 2015), the responsibility to conduct local government elections continues to rest with the Election Commission of Pakistan (ECP). Consequently, the appointment of Presiding Officers is to be made by the ECP in accordance with the Elections Act, 2017. To

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understand the basic flaw in the law, a comparison needs to be drawn between the pre- and post-2024 Amendment in the ICTLGA, 2015.

Pre-amendment	**Post-amendment**
15. Election of the members of the Union Councils. Members of each Union Councils shall be directly elected by the voters registered in the concerned Union Council.	**15. Election, of the members of the Union Councils.—(**1) All nine general members of each Union Council shall be directly elected by the voters registered in the concerned Union Council. (2) Save as otherwise provided, in the first meeting of the Union Council to *be* convened and presided over by **the Secretary of the Union Council** and to the exclusion of any other business, the general members of the Union Council shall elect through secret ballot one women, one peasant or worker or businessman or technocrat, one youth member and one non-Muslim member mentioned at serial number (iii) to (vi) of section 11 of this Act: Provided that election of the members shall be conducted in the prescribed manner. (3) After the completion of the process of the election under sub-section (2), **the Secretary of the Union Council** shall convene and preside meeting of the Union Council to elect a Chairman and Vice-Chairman as joint candidate from members mentioned at serial number (ii) to (vi) of section 11 of this Act: Provided that the electoral college for the election of the Chairman and Vice-Chairman as joint candidate shall be members mentioned at serial number (ii) to (vi) of section 11 of this Act: Provided further that election of the Chairman and Vice-Chairman shall be conducted in the prescribed manner.
16. Election of the members of the Metropolitan Corporation. Members of Metropolitan Corporation, mentioned at serial number (iii) to (vii) of sub-section (1) of section 12, shall be elected by the 1[Chairman] of the Union Councils present and voting.	**16. Election of the members of the Metropolitan Corporation**.— Members of Metropolitan Corporation, mentioned at serial number (iii) to (vii) of sub-section (1) of section 12, shall be elected by the 2 [Chairmen] of the Union Councils present and voting.

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17. Election Commission to conduct elections.___(1) The Election Commission shall conduct the local government election, 2[and for this purpose shall, by notification in the official Gazette, declare the election schedule for election under this Act.] (2) The Election Commission may, by order in the Official Gazette, make provisions for the conduct of local government elections if no provisions or no sufficient provisions have been made under this Act or the rules. 2[(3) Without prejudice to the provisions of this Act and for the purpose of election to the Local Governments under this Act, the provisions of the Representation of the People Act, 1976 (LXXXV of 1976) shall mutatis mutandis apply].	**17. Election Commission to conduct elections.___(**1) The Election Commission shall conduct the local government elections 2 [and for this purpose shall, by notification in the official Gazette, declare the election schedule for election under this Act]. (2) The Election Commission may, by order in the Official Gazette, make provisions for the conduct of local government elections if no provisions or no sufficient provisions have been made under this Act or the rules [(3) Without prejudice to the provisions of this Act and for the purpose of election to the Local Governments under this Act, the provisions of 2 [the Elections Act, 2017 (XXXIII OF 2017)] shall mutatis mutandis apply.

4. While comparing the above provisions, it appears that legislature has not given thoughtful review while considering the mandate of ICT LGA, 2015, as well as Elections Act, 2017, accordingly and authorized the Secretary of the Union Council to preside elections of members enlisted under section 15 (2) through secret ballot and the election of Chairman and Vice-Chairman of the Union Council under section 15 (3), which itself is a glaring mistake and against the mandate of law. Similarly, the Secretary of the UC neither fulfills the statutory qualifications required to conduct elections under the Elections Act, 2017, nor falls within the category of officers eligible for appointment as Presiding Officers. While the scheme of local government is laid out in the ICT LGA, 2015, the procedure for conducting elections is governed by the Elections Act, 2017 and the rules made thereunder, which apply mutatis mutandis.

5. The presiding officers who will conduct the elections will be appointed by the returning officers according to section 53 of the

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2017 Act, and prior to that the returning officers' appointment procedure is given under the section 51 of the said Act. Hence, this post-amendment provision in section 15 of the ICT LGA, 2015, has created an obstacle for the conduct of election as it is contrary to the whole scheme of the election process and out of the ambit of the ECP. The insertion of section 15(2)(3) in the amended ICT LGA 2015 thus creates a clear statutory inconsistency. It introduces a process whereby an administrative functionary (*the Secretary UC*), who is not under the control or supervision of the ECP nor falls under the concept of officials referred in section 51 & 53 of the Elections Act, 2017, neither he is called as an officer, is nominated to conduct elections, contrary to the constitutional and statutory framework, that vests such authority exclusively in the ECP.

6. Considering the above provision in conjunction with Sections 51, 52, and 53 of the Election Act, 2017, it is evident that the Commission possesses the power to appoint, from amongst its own officers or officers of any government, corporation, autonomous or semi-autonomous body controlled by a government, or from the subordinate judiciary (in consultation with the Chief Justice of the concerned High Court), a Returning Officer for each constituency, as well as Presiding Officers, Assistant Presiding Officers, and Polling Officers, in terms of the powers contained in Section 53 of the said Act. The constitutional scheme leaves no ambiguity regarding the authority and responsibility for holding local government elections. Article 140A(2) of the Constitution expressly provides that:

> (2) *"Elections to the local governments shall be held by the Election Commission of Pakistan."*

This constitutional command is further reinforced by Article 218(3), which entrusts upon the Election Commission the duty:

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> *(3) It shall be the duty of the Election Commission 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.*

7. Thus, the constitutional obligation to conduct elections, whether to Parliament, the Provincial Assemblies, or local governments, rests squarely and exclusively with the Election Commission of Pakistan. Any statutory framework enacted under Article 140-A of the Constitution must, therefore, operate within and remain consistent with this overarching constitutional mandate.

8. The question of powers of the Election Commission of Pakistan to conduct local government elections has already been resolved by the Supreme Court in its judgment reported as ***PLD 2014 SC 531 (Province of Sindh Vs. MQM)***, whereby it is held that the power to hold elections of local governments vests exclusively in the Election Commission of Pakistan under Article 140A of the Constitution. The Court further declared that the mandate under Article 218(3) is comprehensive, encompassing all steps necessary to ensure that elections are conducted honestly, justly, fairly, and in accordance with law.

> *"For reasons to be recorded later in the detailed judgment, we hold, declare and direct as under:-*
>
> *i) that the power to hold elections of the Local Government stand vested in the Election Commission of Pakistan in terms of Article 140A of the Constitution of Islamic Republic of Pakistan. The Election Commission of Pakistan has been mandated 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" (Article 218(3) of the Constitution);*
>
> *ii) that we uphold para 60(e) of the judgment of the Sindh High Court dated 26-12-2013;*

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iii) that since the delimitation of constituencies of the Local Government is part of the process of organizing and holding elections honestly, justly and fairly which is the Constitutional mandate of the Election Commission of Pakistan, the power to carry out such delimitation should vest with the Election Commission of Pakistan;

iv) that as the holding of election of Local Government has been delayed for more than nine years, which is violative of the Constitutional command, we are persuaded to direct the Governments, Federal and Provincial (of Sindh) to carry out appropriate amendments/legislation to empower the Election Commission of Pakistan to initiate and carry out the process of delimitation of constituencies for the Local Government Elections. This exercise should be completed within a period of five months from today and the Election Commission of Pakistan shall thereafter take requisite measures to carry out the process of delimitation of constituencies for the Local Government expeditiously so as to complete the same within a period of 45 days of the enactment/ amendments in laws in terms of this order. The Election Commission of Pakistan shall further ensure that the announcement of election schedule and the process of holding it is complete by or before 15th of November, 2014."

9. The next question is about the inconsistency between two provisions of the two statutes, i.e. ICT LGA, 2015 and Election Act, 2017, which requires resolution, hence, this Court has attended the amended section of ICT LGA, 2015 which empowers the *Secretary of the Union Council* to act as presiding officer which stands in contrast to the procedure prescribed under sections 51 and 53 of the Elections Act, 2017, whereby, such power vest with the Election Commission of Pakistan to appoint returning officer and presiding officer accordingly. While comparing those provisions, the inconsistency is apparent in the legislative instrument of section 15 of the ICT LGA, 2015, which is a created obstacle by the legislative mistake is required to be corrected either through the amendment in the law which is a cumbersome process, also needs more time which itself is not available

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considering the background of the case where Islamabad Capital Territory citizens are not enjoying any protection of the local government regime. Though the same was not given constitutional protection with respect to its timeline frame work as compared to the elections of National Assembly as referred in Article 52 of the Constitution of Islamic Republic of Pakistan, 1973, whereby, term of 05 years from the date of its first meeting and shall stand dissolved on expiration of its term. This aspect further upholds that it is mandatory upon the Election Commission of Pakistan as well as all organs of State to conduct elections after expiry of the said tenure within period of 60 days as prescribed under Article 224 (1) and within 90 days if a seat becomes vacant under Article 224 (2) of the Constitution, and settled by learned Lahore High Court in judgment reported as ***PLD 2022 [Lahore] 607 (Tariq Iqbal Vs. ECP and others)*** and ***2013 PLD [Lahore] 711 (Ashfaq Ahmad Vs. ECP)***, as well as by the Supreme Court of Pakistan in ***2023 SCMR 2165 (Mohammad Sibtain Khan Vs. ECP through CEC and others)***. Therefore, this Court is also of the view that the political parties as well as the parliament should have acknowledged the core rights of the citizen in sharing governance mandate at gross root level by extending similar timeline by amending Article 140-A of the Constitution of Islamic Republic of Pakistan, 1973, so that after expiry of each tenure of the local government assembly the next local government election be conducted within constitutional period in a similar manner as that of Article 224 of the Constitution of Islamic Republic of Pakistan, 1973.

10. Now adverting towards the resolution process of such conflicting provision, this Court has been guided with the principles settled in the judgment reported as ***PLD 1997 SC 32***

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(Shahid Nabi Malik Vs. Chief Election Commissioner), ***PLD 1998 SC 1263 (Wukala Mahaz Barai Thafaz Dastoor Vs. Federation of Pakistan)***, on the question of interpretation, especially, dealing with the conflicting provisions. The principle for consideration if applied in such a manner, following have to be considered accordingly:

i. *Constitutional document or statute must be read and considered as a whole to discover the true intention of its framers;*
ii. *No redundancy, surplus age, absurdity or inconsistency can be attributed to the framers of the Constitution;*
iii. *More harmonious construction mechanism is to be adopted in two conflicting provisions to make their working purposeful and in accordance with the intention of the legislature;*
iv. *Where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence;*
v. *The words used by the Legislature are generally a safe guide to its intention;*
vi. *If the words are semantically ambiguous, or if a provision, if read literally, is patently incompatible with the other provisions of that instrument, the Court would be justified in construing the words in a manner which will make the particular provision purposeful.*
vii. *Judiciary could not legislate but it could, through the process of interpretation, remove such omission or conflict, if possible, by pressing into service well-settled rule of interpretation of statutes and Constitutional documents.*
viii. *The principle of reconciliation should have been applied, when it was not possible, the provision which related to a lesser right will yield to the provision which contains a higher right.*
ix. *While considering the drafting error, the principles are:*
    a. *that the power to add words is a power to rectify obvious drafting errors;*

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b. *that the Courts may read words into a provision which are not there if they consider that those words are necessarily implied by the words which are already there in that provision;*
c. *even if it is right to describe this power as the power to legislate, it is limited to filling gaps;*
d. *that what the Courts do in exercising that power is to give effect to the legislative or Constitutional intention; and*
e. *if there is an irreconcilable inconsistency between two provisions in the same statute, the later prevails, but this is doubtful, than the Courts must determine which is the leading provision and which the subordinate provision, and which must give way to the other;*

11. Justice Fazal Karim, in his book Judicial Review of Public Actions (2nd Edition, Vol. I, P. 630), has observed that when two provisions of the Constitution appear to be in conflict, the foremost duty of the Court is to interpret them harmoniously and to reconcile any apparent inconsistency. However, if such reconciliation is not possible and the provisions remain irreconcilable, the Court must then determine, in the discharge of its constitutional function, which provision shall prevail. In doing so, the Court does not declare the other provision void; it merely limits its operation to the extent necessary to give effect to the dominant provision.

12. The next issue is to resolve the question of which provision is the dominant one, and that is to be examined in the context of the principle of reading down a statutory provision. The doctrine of reading down has been discussed and applied by the Supreme Court in several judgments to preserve the validity of statutes and to bring them in conformity with the Constitution. In ***PLD 2014 SC 531 (Province of Sindh through Chief Secretary and others***

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Vs. M.Q.M. through Deputy Convener and others), the Supreme Court explained that the object of reading down is primarily to save the statute rather than to strike it down. The Court laid down that, in doing so, two considerations must guide the judicial mind: first, whether, upon reading down, the statute would remain functional; and second, whether the legislature would have enacted the law in that form had the present inconsistency been brought to its notice. The Court further elaborated that the doctrine can be applied in three situations: (i) where the purpose of the legislation is obvious; (ii) where it is evident that the draftsman has made an error; and (iii) where, had the error been pointed out to the legislature, it would have corrected the mischief.

13. Similarly, in ***2016 SCMR 931 (Haroon-ur-Rashid Vs. Lahore Development Authority)***, the Supreme Court reaffirmed that while interpreting statutes, reading down means to construe a statutory provision by giving it a narrower or restrictive meaning to bring it within constitutional limits, whereas severance allows the invalid part to be sliced away, leaving the remainder operative. The overriding purpose of both principles is to save the statute from being rendered unconstitutional or ineffective. The operating part reads as:

> *"In this view of the matter Courts have a duty to construe and apply laws to specific fact situations. Sometimes they have to construe a particular law as meaning nothing and sometimes they have to construe the law as meaning something different from the letter of the law passed by the Parliament. The offending provision or part of it is read down to the extent it is necessary to give it legal effect, or will be severed if it cannot be read down, and the remaining part and provisions of the statute will remain intact."*

Therefore, by apply the interpreting principle of reading down to Section 15 (Post amendment) are Sections 51, 52, 53 of the

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Elections Act, it appears that the amendment made in Section 15 of the ICT Local Government (Amendment) Act, 2024, was not properly deliberated during the parliamentary legislative process. The term *Secretary of the Union Council* seems to have been inserted in contradiction to the superior mandate provided under the Elections Act, 2017, read with Section 17 of the ICT Local Government Act, 2015.

14. This Court is of the view that the principle of reading down between ICT, LGA, 2015 and Elections Act, 2017, is to be considered with principle of harmonious construction on conflicting provision as well as principle of severance which give rise to the scenario in which absurdity should not be read or offending provision or part of it to be read down and the remaining provision of the statute will remain intact. As a result whereof, the phrase used in the section 15 of the ICT, LGA, 2015, amended in 2024, in which " ***'the Secretary of the Union****' Council shall convene and preside meeting of the Union Council to elect a Chairman and Vice-Chairman*" or in any form in section 15 (2) (3), accordingly, or in any other part of the statute is to be excluded from consideration by applying the above tests of reading down and severance, whereby, the Election Commission of Pakistan should apply the principles of section 51, 52 and 53 of the Elections Act, 2017 accordingly to conduct the local government election in Islamabad Capital Territory.

15. The official representative of the Election Commission of Pakistan has also been confronted with respect to the above mandate of section 219 (4) of the Elections Act, 2017, whereby, it has been acknowledged on behalf of the Election Commission of Pakistan that they have consulted with Federal Government and

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are ready to hold the elections of the local government within 120 days, even the process of delimitation has already been completed.

16. In view of above discussion, instant writ petition is **ALLOWED**. The property tax enforced by the Administrator MCI is declared to be illegal and without lawful authority. The petitioner is directed to pay the property tax as per old rates till notification of local bodies assemblies in session who are competent to exercise their powers to settle the question of property tax, or for that matter surcharge or any delayed charges within the mandate of section 88, 89 and 90 of the Islamabad Capital Territory, Local Government Act, 2015, accordingly. However, with regard to the status of the present Administrator, the tenure earlier fixed under Section 29(3) of the ICT LG Act, 2015 has already expired. Therefore, no Administrator can be re-appointed in a manner that defeats the mandate of the law. Office is directed to transmit copy of this judgment to the Election Commission of Pakistan for information.

(MOHSIN AKHTAR KAYANI)
JUDGE

Approved for Reporting.

RAMZAN

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