JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT.

W.P No.210/2017.

Hussain Ahmad and others **Vs.** **Government of KPK & others**

Petitioners by:	**Mr. Amir Javed, Advocate.**
Respondents No.1 to 4 by:	**Malik Mujtaba Ahmad, Addl. D.G Legal.** **Ch. Muhammad Haseeb,** **Standing Counsel.**
Respondents No.5 to 8 by:	**Mr. Muhammad Sohail, Assistant Advocate General, Provincial Government, KPK.** **Sajid Gul, Secretary Provincial Delimitation Authority, Local Government, Department KPK.** **Atta ur Rehman, Joint Secretary (Lit) ECP.**
Date of Decision:	**28.04.2017.**

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has assailed the notification dated 13.01.2017 and election schedule for election notified on 17.01.2017 issued by respondents No.1 & 3. It has further been prayed by the petitioners in the instant writ petition that respondents No.1 & 2 be directed to decide the defection proceedings/case No.28(I)/2015-LGE-KPK pending adjudication before Election Commission of Pakistan.

2. Brief facts necessary for the disposal of instant petition are that Provincial Assembly of KPK enacted Khyber Pakhtunkhwa Government Local Act, 2012 on 31.10.2013, which was assented to by the Governor KPK on 05.11.2013. The said KP Local Government Act, 2013 was also extended to PATA in terms of Article 247 of the Constitution vide notification dated 14.03.2014. The Local Government elections were held in the entire province of KPK on 30.05.2015 under the Local Government Act, 2013 and KP Local Government (Conduct of Elections) Rules, 2014, whereby present petitioners and seven others contested the elections for the membership of Tehsil Council Wari District Upper Dir and have been declared successful. All the petitioners and seven others members have duly been notified as elected Tehsil Councilors, whereas all the

petitioners have contested elections on the party ticket of Jamat-e-Islami. That after completion of membership of Local Councils, Election Commission of Pakistan has announced schedule for election of Nazim and Naib Nazim Tehsils & Districts to be held on 30.08.2015 in terms of section 79 of KP Local Government Act, 2013 read with rule 70 of KP Local Government (Conduct of Elections) Rules, 2014.

3. As per contents of the petition, petitioner No.1 was nominated by his party Jamat-e-Islami to contest election for the post of Tehsil Nazim of Tehsil Wari District Upper Dir, whereas petitioner No.2 was the nominated candidate for Naib Nazim on the party ticket of Jamal-e-Islami. As per rule 70 of KP Local Government (Conduct of Elections) Rules 2014, if any contesting candidate secures majority of the votes in the first round, second round shall be held between the candidates supported by two higher numbers of the members in the first round and the candidates, who is supported by majority of the members of the Local Council shall be declar4ed to be commanding the confidence of the majority of the members of the Local Council, however, in terms of proviso of section 70, if equal number of members supported the candidate then further round shall be held between them until one of them secure support of the majority of the members of the Local Council. As per contents of the petition the candidates secured in all first, second and third round which sitting on election held on 30.08.2015, 13.09.2015 and 06.12.2016, respectively, however, the Election Commission of Pakistan vide notification dated 13.01.2017 dissolved the Tehsil Council Wari District Upper Dir under section 79 of the KP Local Government Act, 2013.

4. Learned counsel for the petitioner has contended that every citizen of Pakistan is entitled to be treated in accordance with law and to enjoy equal protection of law as inalienable right; that actions initiated by Election Commission of Pakistan including the notification dated 17.01.2017 have not been issued in accordance with law; that Election Commission of Pakistan while passing the impugned notification has not given any opportunity to the petitioners to argue their case, hence, they committed violation of the principle audi alterum pertem; that case of two members of the said Tehsil Council namely Gul Bahadar and Mst. Bibi Shaheen have committed act of defection, therefore, right to cost vote in the election has no sanctity in the eyes of law, even otherwise the matter is pending before Election Commission of Pakistan to decide the same.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam

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