

# ELECTIONS

## Chapter - 1

### CHIEF ELECTION COMMISSIONER AND ELECTION COMMISSIONS

**213. Chief Election Commissioner.** (1) There shall be a Chief Election Commissioner (in this Part referred to as the Commissioner), who shall be appointed by the President <sup>1</sup>[\*\*\*].

(2) No person shall be appointed to be Commissioner unless he is, or has been, a Judge of the Supreme Court or is, or has been, a Judge of a High Court and is qualified under paragraph (a) of clause (2) of Article 177 to be appointed a Judge of the Supreme Court.

<sup>2</sup>[(2A) The Prime Minister shall in consultation with the Leader of the Opposition in the National Assembly, forward three names for appointment of the Commissioner to a Parliamentary Committee for hearing and confirmation of any one person.

(2B) The Parliamentary Committee to be constituted by the Speaker shall comprise fifty percent members from the Treasury Benches and fifty percent from the Opposition Parties, based on their strength in Majlis-e-Shoora (Parliament), to be nominated by the respective Parliamentary Leaders:

Provided that in case there is no consensus between the Prime Minister and the Leader of the Opposition, each shall forward separate lists to the Parliamentary Committee for consideration which may confirm any one name:

1 The words "in his discretion" omitted by Constitution (Eighteenth Amendment) Act, X of 2010.

2 Inst. by Constitution (Eighteenth Amendment) Act, X of 2010.

<sup>3</sup>[Provided further that the total strength of the Parliamentary Committee shall be twelve members out of which one-third shall be from the Senate:]

Provided also that when the National Assembly is dissolved and a vacancy occurs in the office of the Chief Election Commissioner, the <sup>4</sup>[total membership of the Parliamentary Committee shall consist of] the members from the Senate only and the foregoing provisions of this clause shall, *mutatis mutandis*, apply.]

(3) The Commissioner shall have such powers and functions as are conferred on him by the Constitution and law.

### NOTES

**1. Formation of Election Commission.** Formation of an independent and viable Election Commission is sine qua non for the holding of a free, transparent and fair election. Despite immediate effectiveness of the amended Article 213 read with Article 218 of the Constitution, the election Commission has not been constituted to perform its function. Failure to constitute the Commission in accordance with the Constitution amounts to negation of the fundamental rights of the citizens of Pakistan. Proper and lawful formation and functioning of the Election Commission, cannot be denied. [PLD 2011 S.C. 775]

**2. Appointment of Chief Election.** For appointment of Chief Election Commissioner and members of the Election Commission, the advice of the Prime Minister was not required. [PLD 2013 S.C. 279] Although the President had to appoint the Chief Election Commissioner and members of the Election Commission, (but) he had no discretion except to appoint the "person" whose name was confirmed by the Parliamentary Committee. [PLD 2013 S.C. 279]

**2.1 Qualifications.** Article 213(2) of the Constitution provides two distinctive (separate) categories of appointment as Chief Election Commissioner, firstly, that no person shall be appointed to such office unless he is or has been a Judge of Superior Court; secondly, unless such person is, or has been a Judge of the High Court and is qualified under Article 177 (2)(a) of the Constitution to be appointed as Judge of the Supreme Court. [PLD 2013 S.C. 378] Person who is or has been a Judge of the Supreme Court in the past, is out rightly eligible to whole of office of Chief Election Commissioner without any condition of upper age limit. [PLD 2013 S.C. 378] Requirement under Art. 213 of the Constitution that no person should be appointed to office of the Chief Election Commissioner unless he is or has been a Judge of Supreme Court does not 'ipso facto' attract the disabilities visualised under Art. 179 and 207(2) of the Constitution, more so when such aspect (disabilities) are separately dealt with under Art. 215 and 216 of the Constitution. [PLD 2013 S.C. 378]

**2.2 Appointment as Governor of a Province.** Appointment as Governor of a province was to be considered as non-political during tenure of such office. Oath taken by Chief Election Commissioner in terms of Art. 214 of the Constitution also made it abundantly clear that if the new incumbent had any political affiliations in the past, he had denounced such affiliation and was required to hold the office of Chief Election Commissioner strictly in terms of the oath. Persons who is or has been a Judge of the

<sup>3</sup> Subs. by Constitution (19<sup>th</sup> Amndt.) Act, 2010 (Act I of 2011).

<sup>4</sup> Subs. by Constitution (19<sup>th</sup> Amndt.) Act, 2010 (Act I of 2011).

Supreme Court in the past, is eligible to be appointed to office of Chief Election Commissioner without any condition of upper age limit. Grounds upon which appointment of Chief Election Commissioner was challenged were devoid of merit. [PLD 2013 S.C. 378]

3. **Challenge to appointment of Chief Election Commissioner.** Petitioner primarily emphasized that the procedure provided in Arts. 213 and 218 of the Constitution with regard to appointment of the Chief Election Commissioner as well as the Members of Election Commission had not been followed in letter and spirit. Petitioner neither listed infraction of any of the Fundamental Rights in the petition nor their enforcement had been sought in the prayer clause; and even during the course of arguments the petitioner failed to identify any of the Fundamental Rights, which might have been violated, thus, one of the fundamental requirements of Art. 184(3) of the Constitution, namely, the violation of any of the Fundamental Rights, enabling the Supreme Court to exercise jurisdiction conferred by said Article, was apparently missing in the present petition. Burden of proof was upon the petitioner to demonstrate as to which of his Fundamental Rights had been infringed upon but he failed to point out an infraction of any of his Fundamental Rights. [PLD 2013 S.C. 413] Where electoral rolls by and large completed and as such much water had flown under the bridge. Laches became vital to deal with the petition. After having become fully functional, the election commission was headed to words holding election and no one except the petitioner alone as a voter had questioned their appointments. Petitioner held suffered from laches and thus not maintainable. [PLD 2013 S.C. 413]

Supreme Court observed that the country remained in the clouds of extra-constitutional eras from time to time and finally succeeded in establishing a democratic order in the country through the process of last general elections; that democratic system had continued for a period of 5 years, as the Parliament was about to complete its term and registered voters were ready to elect their representatives in the upcoming elections, which were a few months away; that at such critical stage, no objection or reservation had been shown to appointment of the Chief Election Commissioner and Members of the Election Commission by the citizens, registered voters, members of the National and Provincial Assemblies and members of Senate; that even prospective candidates for the forthcoming elections had also not raised a question of public importance for enforcement of any of their Fundamental Rights, either in the Supreme Court or before any of the Provincial High Courts, for the simple reason that the entire nation was ready for the forthcoming elections; that the Election Commission had also geared up the process of elections and statistical pre-poll preparations had almost been completed; that in such a situation, appointments to the Election Commission had been challenged by a person, who though could exercise his own right to vote but was disqualified from contesting elections in view of the bar contained in Art. 63(1)(c) of the Constitution; that in a speech delivered by the petitioner he insisted upon delaying the elections, and to achieve such declared agenda of his, the petitioner also led a Long March; that during the proceedings at one stage petitioner claimed that he filed present petition in the nature of quo warranto, despite admitting that he had no objection(s) to the eligibility or competency of the Chief Election Commissioner and the Members of the Election Commission; that such moulded relief of writ of quo warranto sought by petitioner clearly reflected on his bona fides. Supreme Court further observed that petitioner lacked bona fides in approaching the Court under Art. 184(3) of the Constitution; that present petition was geared against the Election Commission, an independent institution and creature of the Constitution

that ensured the very strength, survival and continuity of the democratic system; that given the fact that it was election year, the importance of Election Commission was highlighted more than ever and Court had to exercise caution so as not to appear to be partaking in placing restrictions upon the independent and constitutional functions of the Election Commission. [PLD 2013 S.C. 413]

**3.1 Petitioner having citizenship of a foreign country.** Petitioner has acquired the citizenship of a foreign country and had taken an oath inter alia to pledge his loyalty and allegiance to the foreign country, and as such this disqualified him from contesting elections to Parliament, in view of the bar contained in Art.63(1)(c) of the Constitution. After acquiring the citizenship of another country and pledging his loyalty to that country, petitioner has lost some of his rights including the right to be elected as Member of Parliament, even though he did not lose his Pakistani citizenship as well as other rights granted under the Constitution and the law, as a consequence of his dual nationality. Although acquisition of nationality of any foreign country was not an impediment by itself in filing a petition under Art.184(3) of the Constitution, but petitioner had failed to make out a case for exercising the discretionary jurisdiction of Supreme Court under Art.184(3) of the Constitution since violation of any of the Fundamental Rights under Chapter 1 of Part II of the Constitution had neither been listed in the petition nor established during course of arguments. Petitioner had also failed to prove his bona fides to invoke the jurisdiction of the Supreme Court coupled with the fact that he had no locus standi to claim relief as prayed for in the present petition, inter alia, for the reasons that being a holder of dual citizenship, he was not qualified to contest the election to the Parliament in view of the constitutional bar under Art. 63(1)(c) of the Constitution. [PLD 2013 S.C. 413]

**214.** <sup>5</sup>[\*\*\*] **Oath of office.** Before entering upon office, the Commissioner shall make before the Chief Justice of Pakistan <sup>6</sup>[, and a member of the Election Commissioner shall make before the Commissioner,] oath in the form set out in the Third Schedule.

**215. Term of office of Commissioner** <sup>7</sup>[and members]. (1) The Commissioner <sup>8</sup>[and a member] shall, subject to this Article, hold office for a term of <sup>9</sup>[five] years from the day he enters upon his office:

<sup>10</sup>[Provided that the aforesaid amendment shall be effective after the expiry of current tenure of the present incumbent <sup>11</sup>[Commissioner].]

<sup>12</sup>[\*\*\*]

(2) The Commissioner <sup>13</sup>[or a member] shall not be removed from office except in the manner prescribed in Article 209 for the removal from office of a

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- 5 Word "Commissioner's" omitted by Constitution (Twentieth Amendment) Act, 2012.  
 6 Inserted by Constitution (Twentieth Amendment) Act, 2012.  
 7 Added by Constitution (Twentieth Amendment) Act, 2012.  
 8 Inserted by Constitution (Twentieth Amendment) Act, 2012.  
 9 Word "three" subs. by Constitution (Eighteenth Amendment) Act, X of 2010.  
 10 Inst. by Constitution (Eighteenth Amendment) Act, X of 2010.  
 11 Added by Constitution (Twentieth Amendment) Act, 2012.  
 12 Omit by Constitution (Eighteenth Amendment) Act, X of 2010.  
 13 Inserted by Constitution (Twentieth Amendment) Act, 2012.

Judge and, in the application of the Article for the purposes of this clause, any reference in that Article to a Judge shall be construed as a reference to the Commissioner<sup>14</sup> [or, as the case may be, a member].

(3) The Commissioner<sup>15</sup> [or a member] may, by writing under his hand addressed to the President, resign his office.]

**216. Commissioner<sup>16</sup> [and members] not to hold office of profit.** (1) The Commissioner<sup>17</sup> [or a member] shall not—

(a) hold any other office of profit in the service of Pakistan; or

(b) occupy any other position carrying the right to remuneration for the rendering of services.

(2) A person who has held office as Commissioner<sup>18</sup> [or a member] shall not hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office:

Provided that—

(a) this clause shall not be construed as preventing a person who was a Judge of the Supreme Court immediately before his appointment as Commissioner from resuming his duties as such Judge on the expiration of his term as Commissioner<sup>19</sup> [.]

<sup>20</sup> [(b) \*\*\*]

### NOTES

**Holding of any other office of profit.** Article 216 of the Constitution, 1973 does indeed prohibit the Chief Election Commissioner, during the continuance of his office as such, from holding any other office of profit in the service of Pakistan: or occupying any other position carrying a right to remuneration for the rendering of services. This prohibition also applies to the performance of judicial functions by a person who is a serving Judge of the Supreme Court or of High Court at the time of his appointment as Chief Election Commissioner. However, by virtue of the special saving clause contained in proviso (a) to clause (2), Article 216 such a person may resume his judicial functions on the expiration of his term as Chief Election Commissioner. It is also clear that the disability imposed by Article 216 of the Constitution applies to a person holding the permanent and substantive appointment of the Chief Election Commissioner for the term or terms specified in Article 215(1) read with proviso (b) to clause (2) of Article 216 of the Constitution, the aggregate of which may amount to a period of seven years. The disability or prohibition does not apply to an acting appointment

14 Added by Constitution (Twentieth Amendment) Act, 2012.

15 Inserted by Constitution (Twentieth Amendment) Act, 2012.

16 Inserted by Constitution (Twentieth Amendment) Act, 2012.

17 Inserted by Constitution (Twentieth Amendment) Act, 2012.

18 Inserted by Constitution (Twentieth Amendment) Act, 2012.

19 Subs. by Constitution (Eighteenth Amendment) Act, X of 2010.

20 Omitted by Constitution (Eighteenth Amendment) Act, X of 2010.

made under Article 217 of the Constitution, which provision permits the simultaneous performance of judicial functions by a Judge of the Supreme Court appointed as Acting Chief Election Commissioner. Finally as Article 216 is in the nature of a Constitution prohibition, it is to be strictly construed in the sense that it shall apply only to a permanent and substantive appointment made in terms of the Constitution, and for the purpose of holding elections thereunder, and cannot be extended by analogy to an appointment not falling in this category. [PLD 1978 S.C. 40 (p. 55)] Where the appointment of the Chief Election Commissioner is in the nature of a temporary and ad hoc, in a situation not covered or contemplated by the Constitution of 1973. It is not a permanent and substantive appointment in terms of the Constitution, but is merely intended for the limited purpose of holding the forthcoming general elections, notwithstanding the fact that certain other duties or powers may also have been conferred on him. It is, therefore, not an appointment to which the prohibition contained in Article 216 of the Constitution can be attracted. Accordingly, there is no bar in the way of the Chief Election Commissioner continuing to perform his judicial functions as a judge and Acting Chief Justice of the High Court. [PLD 1978 S.C. 40 (p. 60)]

**217. Acting Commissioner.** At any time when—

- (a) the office of Commissioner is vacant, or
- (b) the Commissioner is absent or unable to perform the functions of his office due to any other cause,

A Judge of the Supreme Court nominated by the Chief Justice of Pakistan shall Act as Commissioner.

<sup>21</sup>[**218. Election Commission.** <sup>22</sup>[(1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election to such other public officers as may be specified by law, a permanent Election Commission shall be constituted in accordance with this Article.]

<sup>23</sup>[(2) The Election Commission shall consist of,-

- (a) The Commissioner who shall be the Chairman of the Commission; and
- (b) Four members, each of whom has been a Judge of a High Court from each Province, appointed by the President in the manner provided for appointment of the Commissioner in clauses (2A) and (2B) of Article 213.]

(3) It shall be the duty of the Election Commission <sup>24</sup>[\*\*\*] 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.

21 Subs. by Legal Framework Order, 2002.

22 Subs. by Constitution (Eighteenth Amendment) Act, X of 2010.

23 Subs. by Constitution (Eighteenth Amendment) Act, X of 2010.

24 Words "constituted in relation to an election" omitted by Constitution (Twentieth Amendment) Act, 2012.

**Legis Change:** Clause (1) has been subs. as above, prior to subs clause (1) ran as under:

**218. Election Commission.** (1) For the purpose of each general election to the National Assembly and to a Provincial Assembly, an Election Commission shall be constituted in accordance with this Article.

### SYNOPSIS

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| <ol style="list-style-type: none"> <li>1. Scope and power of judicial review by High Court under Article 199.</li> <li>2. Holding of election.</li> <li>3. Producing Identity Card for casting vote.</li> <li>4. Fair election</li> <li>5. Duties of Election Commission.</li> <li>6. Abusing and beating of election staff.</li> <li>7. Representative of the People Act 1976 — Objection against nomination paper.</li> <li>8. Arts. 218(3) read with Representation of the People Act (LXXXV of 1976).</li> </ol> | <ol style="list-style-type: none"> <li>9. Cognizable activities.</li> <li>10. Bogus voters' list.</li> <li>11. Irregularity in the preparation of Electoral Rolls—Art. 218 read with Art. 184(3).</li> <li>12. Combination of offices of Chief Election Commissioner and Judge of High Court in one person.</li> <li>13. Conduct of Referendum.</li> <li>14. Changes made by caretaker Government.</li> <li>15. Holding of bye-election of vacant seat</li> </ol> |
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**1. Scope and power of judicial review by High Court under Article 199.** Unless there are special reasons, the High Court, in exercise of its constitutional jurisdiction, should not interfere and adjudicate in election dispute. The Extraordinary remedy of writ petition can be availed in election matters in exceptional circumstances in a case of grave illegality in which an aggrieved person has no other statutory remedy for redressal of his grievance. The law requires every statutory authority to act within the limits of law and if such an authority exceeds the limits of law or fails to function as per requirement of law and proceeds to pass an order beyond the scope of law and his authority, the High Court, under Article 199 of the Constitution, can declare such an order as without lawful authority and of no legal effect.

The above rule is subject to the exception that if the statutory authority in exercise of jurisdiction within the limits of law, passes an order in discharge of its duty then an aggrieved person can avail alternate remedy before a forum established under the law against such order. The invoking of writ jurisdiction of High Court in such matter for mere reasons that the alternate remedy before the forum concerned cannot be availed for the time being, is not proper. In *Ghulam Mustafa Jatoi v. Additional District and Sessions Judge/Returning Officer*, N.A. 158, *Noshehro Feroz and another* 1994 SCMR 1299 this Court held that in election matters, the High Court can entertain a writ petition and exercise jurisdiction in exceptional circumstances if no other remedy is available to an aggrieved person and we without taking any exception to the above judgment hold that jurisdiction of the High Court under Article 199 of the Constitution can certainly be invoked in exceptional cases but mere reason that for the time being no alternate remedy can be availed, is not, as such, a sufficient and valid ground to invoke constitutional jurisdiction of the High Court in a matter in which a constitutional forum or a statutory authority, in exercise of its jurisdiction, has passed a just and proper order. This is a consistent view of this Court that mere availability of an alternate remedy may not preclude institution of a constitutional petition as the sub-constitutional law cannot limit or control the jurisdiction of the High Court under Article 199 of the Constitution and this is well established

law that the superior Courts, in exercise of constitutional jurisdiction, may set aside the action taken or orders passed in illegal and unlawful manner. The High Court in an election matter, may, in exercise of its jurisdiction under Article 199 of the Constitution, grant an appropriate relief if an aggrieved person, after exhausting sub-constitutional remedies available under the law, has questioned the legality of the order passed by an election authority on a legal question of constitutional importance.

The conduct of elections is exclusive function of Election Commission of Pakistan, a constitutional forum and this function is performed by the Commission as its constitutional duty under Article 218 and 219 of the Constitution read with sections 103 and 103-AA of the Representation of the People Act, 1976, therefore, the High Court in exercise of its power of judicial review under Article 199 of the Constitution, is not justified to interfere in the orders passed by the Election Commission in the process to ensure fair and transparent election and substitute its own opinion for the opinion of Commission about the matter.

In consequence to the above discussion, we hold that the scope of interference of the High Court in its jurisdiction under Article 199 of the Constitution in election cases is limited only to the extent of matters which do not exclusively fall within the ambit of jurisdiction of Election Tribunals or Election Commission of Pakistan or in respect of the orders which are *coram non iudice*, without jurisdiction or *mala fide*. The interference of the High court in the orders passed by Election Commission of Pakistan in discharge of its duty in terms of Articles 218 and 219 of the Constitution read with sections 103 and 103-AA of Act, 1976, in the normal circumstances, is not justified. [PLD 2008 S.C. 779]

**2. Holding of election.** Election have to be held strictly in accordance with law, justly, fairly and honestly and corrupt practices are to be guarded against Chief Election Commissioner is not subordinate to any Authority while doing his duties in holding free, fair and transparent elections. [PLD 1997 S.C. 84] Power to decide the dispute regarding recognition of the political party and allotment of the symbol is a part of State judicial power and such power is conferred on the Election Commission by virtue of Articles 218 and 219 of the Constitution. [2004 YLR 1459]

**3. Producing Identity Card for casting vote.** The condition of producing identity card before casting vote is to lend greater credibility to the election process in the country by ensuring the compliance of constitutional requirement of Article 218(3). [PLD 1989 S.C. 61]

**4. Fair election.** Fair and transparent election rests at the heart of a democratic system, therefore, any effort which cultivated a complimentary political culture should be encouraged. Supreme Court observed that fair, free, honest and just elections are sine qua non for strengthening of democracy and to achieve said goal, accurate preparation/revision of electoral rolls was immediately required to be undertaken by the Election Commission through credible and independent agencies, and that conventional ways and means of merely depending upon National Database and Registration Authority (NADRA) alone or other similar bodies has to be discontinued immediately. Supreme Court directed the Election Commission to undertake door-to-door checking of voters' lists and if needed, complete the process of updating/revision of the electoral rolls by engaging the Army and the Frontier Corps. Election process is one of the key aspects of democracy and is identified and regulated by the Constitution. Article 218 of the Constitution, constituted the Election Commission and empowered it to organize and oversee the election process and to ensure, inter alia, that it is conducted honestly, justly, fairly and in accordance with law and that corrupt practices were guarded against. By fulfilling its



mandated duties and responsibilities, the Election Commission essentially gave birth to a body/institution of the nation, called the Parliament. Effective fulfillment and honest discharge by the Commission of its responsibilities would lend greater legitimacy to an elected democratic government and give effect to its constitutional mandate; therefore, it is imperative that the Election Commission employed its extensive powers to regulate the election process. Any shortfall in the discharge of its responsibilities would violate express dictates of the Constitution; devastate the efficacy of the Constitutional Order and the envisioned operation of the State. Article 218 of the Constitution, constituted the Election Commission and empowered it to organize and oversee the election process and to ensure, inter alia, that it is conducted honestly, justly, fairly and in accordance with law and that corrupt practices were guarded against. In the parliamentary system of government a constitutionally independent and empowered Election Commission rested as one of the foundational stones of a democratic setup. Article 218(3) implied that the Election Commission was responsible-not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. Constitution conferred such responsibility on the Election Commission and ensured that all activities both prior, on and subsequent to Election Day, that were carried out in anticipation thereof, adhered to standards of justness and fairness, were honest, in accordance with law and were free from corrupt and/or illegal practices. Where a violation of the standards mentioned in Art.218(3) of the Constitution had not as yet taken place, the Election Commission was legally empowered under Art.218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Election Commission was fully empowered by Art.218(3) of the Constitution to make such orders as in its opinion were necessary for ensuring that the election was fair, honest etc. Election Commission enjoyed broad powers not only to take pre-emptive action but also to pass any and all orders necessary to ensure that the standards of honesty, justness and fairness mentioned in Art. 218(3) were met. [PLD 2012 SC 681]

**5. Duties of Election Commission.** Under Art. 218(3) of the Constitution, it is the duty of the Election Commission to organize and conduct the elections and to make such arrangements as were necessary to ensure that the election was conducted honestly, justly, fairly and in accordance with law, be it a general election or a bye-election. For achieving such purpose Election Commission could seek assistance, if necessary from the Executive authorities in the Federation, which are obliged to render such assistance by virtue of Art. 220 of the Constitution. [PLD 2013 SC 120] Duty of Election Commission being to ensure holding of elections in an honest, just, fair and legal manner and guard such elections from corrupt practices. Legislation would not be required to infuse life into such constitutional mandate of the Commission for same being self-sustaining. Federal and Provincial Executive authorities individually and collectively were bound to provide assistance to the Commission in discharge of its functions, and their failure or refusal to do so would be breach of a constitutional obligation and not simply a violation of a statutory provision. [PLD 2013 Sindh 117] Primary obligation of Election Commission of Pakistan to ensure organization and conduct of election and make such arrangements as are necessary to ensure that elections are conducted honestly, justly and fairly and in accordance with law and Constitution. Till such time that results have been notified, Election Commission of Pakistan continues to be supervisor of the process and can in appropriate cases interfere in the matter in order to fulfil its constitutional obligations. [PLD 2013 Lah. 610] Election must not only be held in a fair, just and honest manner but also appear to be so; in order to inspire the confidence of the electorate.

Provisions of Art. 219 of the Constitution and the Electoral Rolls Act, 1974 and rules framed thereunder must necessarily be interpreted in a manner so as to achieve the said object. [PLD 2013 SC 120]

**6. Abusing and beating of election staff.** Abusing and beating of election staff at polling station by a contesting candidate. Earlier, direction has been given by two Members of Election Commission to Returning Officer to register F.I.R. with regard to such incident. Taking cognizance of such incident by Returning Officer in terms of Notification dated 14-2-2012 at subsequent directions of three Members of the Commission. Plea of accused candidate was that without convening a formal meeting of all five members, impugned decision of three Members was not by a properly constituted Commission and has no legal effect. Election Commission was not mandatory required to act and take decisions always in a formally notified meeting of its all the five Members. Commission could take its decision by a simple majority of its members for the time being. Two Members would not constitute requisite majority. Impugned decision has been taken by three Members, thus, same being a decision of majority members of Commission was binding, resultantly direction of two Members and any action/proceedings taken on its basis ceased to have effect. Non-convening of formal meeting of all five Members of the Commission would not invalidate impugned decision. Officers and employees of Commission would not be entitled to insist that directive or orders given to them must come from at least three Members of the Commission. Employees and officers of the Commission would be obliged to act in terms of order which they received from one or two Members, unless same was overridden subsequently by order of remaining Members constituting a majority. [PLD 2013 Sindh 117]

**7. Representative of the People Act 1976 —Objection against nomination paper.** Appellant filed objection against nomination papers of respondent alleging that he had made a wrong declaration and did not deposit emoluments received by him during the period for which he was declared disqualified by Supreme Court. Money ordered to be refunded had not been calculated and ascertained and as such respondent could not be held having not complied with the order passed by Supreme Court. Returning Officer passed order rejecting objection petition of appellant and accepting nomination papers of respondent in view of record which did not hint that respondent was undergoing a disqualification under Arts.62 and 63 of the Constitution or corresponding sections 99 and 100 of Representation of the People Act, 1976, or had been declared by a court of law not to be sagacious, righteous, non-profligate, honest and Ameen and had not complied with orders passed by Supreme Court. Disqualification, if any, incurred by respondent could after production of evidence be considered by Election Tribunal appointed by Election Commission under section 57 of Representation of the People Act, 1976, in election petition. Returning Officer neither flouted the judgment passed by Supreme Court nor omitted to perform his functions and duties entrusted to him under sections 7 and 14 of Representation of the People Act, 1976. Election Tribunal declined to interfere in the order passed by Returning Officer. [2013 CLC 271]

**8. Arts. 218(3) read with Representation of the People Act (LXXXV of 1976).** Election Commission of Pakistan has to conduct/organize elections enabling the people to elect their representatives by means of a free and fair electoral process. [PLD 2013 S.C. 413] Representation of the People Act, 1976, vests the Election Commission with the responsibilities and powers to regulate and check into party affairs and actions taken by candidates and parties in anticipation of and on Election Day; to resolve all election disputes; to declare the election void, and to award punishments for violating relevant election laws.

Article 220 of the Constitution also directed the Federal and Provincial machinery to assist the Election Commission in fulfilling its constitutional responsibilities. Election Commission was entrusted with exclusive, broad and extensive powers to attend to all issues related directly and ancillary to the election process. [PLD 2012 SC 681] Higher Education Commission has the duty to verify or attest the educational testimonials of the Universities and all institutions of the Higher Education, however a mechanism is to be adopted by the Election Commission enabling the Higher Education Commission to supervise the scrutiny/examination of the educational testimonials of the candidates without vesting time. [2013 SCMR 862]

**8.1 Improvement made by Election Commissioner in the nomination papers.** Plea on behalf of Federal Government that under S. 107 of the Representation of the People Act, 1976, a request was sent by Election Commission of Pakistan for the amendment of R.3 of the Representation of the People (Conduct of Election) Rules, 1977 but the President of Pakistan had not as yet approved the amendments, therefore, without adhering to the rules, the Election Commission might have not got printed nomination papers as Government had reservations on some of its portions. *Held*, Election Commission had made additions in the nomination forms following the command of Art. 218(3) of the Constitution as well as keeping in view observations/directions given by the Supreme Court in the cases of *Workers' Party Pakistan through Akhtar Hussain and 6 others v. Federation of Pakistan and 2 others* (PLD 2012 SC 681). Election Commission was responsible to arrange, organize and conduct elections honestly, justly, fairly and in accordance with law and emphasis was that corrupt practices should be guarded against. Solemn object, in view of Art 218(3) of the Constitution should be that no corrupt person was allowed to enter in the Parliament, and with such commitment of the Constitution, Election Commission without changing the complexion or contents of R.3 of the Representation of the People (Conduct of Election) Rules, 1977, had made improvements in the pro forma of nominations papers. No hard and fast rule existed for purposes of making improvements in a pro forma of nomination paper, particularly when required object was to enforce Article 218(3) of the Constitution. All the stakeholders i.e. political parties, voters, and the country as a whole expected that representation in the Parliament should be made by honest person(s) who were not polluted by allegation of corruption in any manner, thus, Election Commission in compliance of Art. 218 read with Art. 222 of the Constitution and Ss. 103 and 104 of Representation of the People Act, 1976 as well as the judgment in the case of *Workers' Party Pakistan through Akhtar Hussain and 6 others v. Federation of Pakistan and 2 others* (PLD 2012 S.C. 681) had prepared/improved nomination papers for the general elections of National and Provincial Assemblies, in accordance with the Constitution and the law. [PLD 2013 S.C. 406]

**9. Cognizable activities.** Section 103(a) of the Representation of the People Act, 1976, instructed the Election Commission to ensure a "fair election", which implied that large scale malpractices including coercion, intimidation and pressures, prevailing at the election would negate the 'fairness' elections were to embody. Sections 78, 79, 80, 80-A, 81 and 83 of the Representation of the People Act, 1976, specified activities that the Election Commission could regulate and check under Art.218(3), but section 103(a) of the Representation of the People Act, 1976 substantially enhanced said defined spectrum of cognizable activities and reinforced the obligation to check them. Section 103(c) of the Act, empowered the Election Commission

to issue instructions, exercise its powers and make orders to effectuate the said standard. [PLD 2012 SC 681]

By virtue of 5.107 of the Representation of the People Act, 1976, the Commission could, with the approval of the President, make rules for carrying out the purposes of the said Act, which, further reinforced the independence with which the Commission was to exercise its powers. No restriction existed on the Commission to frame rules with the approval of the President, to ensure that the elections were conducted fairly, honestly, justly and in accordance with law and that corrupt practices were guarded against. [PLD 2012 SC 681]

Majlis-e-Shoora could promulgate law to regulate the electoral laws, but any law which had the effect of abridging any of the powers of the Commissioner or the Commission would not find support in the law. [PLD 2012 SC 681]

**Effective discharge of responsibility.** Shortfall in effective discharge of responsibilities was of utmost importance that the Election Commission executed its functions and discharged its responsibilities effectively, efficiently and in letter and spirit. By fulfilling its mandated duties and responsibilities, the Election Commission essentially gave birth to a body/institution of the nation, called the Parliament. Effective fulfilment and honest discharge by the Commission of its responsibilities would lend greater legitimacy to an elected democratic government and give effect to its constitutional mandate; therefore, it was imperative that the Election Commission employed its extensive powers to regulate the election process. Any shortfall in the discharge of its responsibilities would violate express dictates of the Constitution, devastate the efficacy of the Constitutional Order and the envisioned operation of the State. [PLD 2012 SC 681]

Constitution and the election laws of Pakistan provided a comprehensive and adequate mechanism for regulating election expenses by enumerating different offences, penalties and procedures for a breach thereof but provisions and Articles regulating the same were not adhered to. both in letter and in spirit, therefore, it was observed by the Supreme Court, that all said laws should be strictly complied with by all the relevant parties. Supreme Court further observed that although the account of election expenditure was required to be submitted within thirty (30) days of the declaration of the result, the monitoring had to be done on a regular basis during the campaign period because after the campaign was over, it became difficult to get any evidence of election expenditure; that to overcome the phenomenon of filing of false returns of election expenses, the Election Commission must monitor election expenses from the day the holding of election was notified; that all expenses incurred in carrying out any election related activity, were legally required to be accounted for and it was precisely because of the failure to account for the same that election expenses incurred by each candidate ran into millions of rupees and exceeded the prescribed ceiling, and that all expenditure over and above the prescribed ceiling qualified as corrupt practice. Supreme Court directed the Election Commission to exercise its rule making power to formulate procedures to monitor election expenses and deal with the corrupt practices committed in the election process in accordance with law; to ensure that the election was held justly, honestly and in accordance with law; to devise an expenditure monitoring mechanism, i.e. monitoring cell, surveillance system, media certification, etc., to monitor the election expenses, be they for the National Assembly, Senate, Provincial Assemblies or the Local Bodies; to hold meetings with the candidates and apprise them of the relevant laws/rules, receive from them statements of expenses on weekly basis by engaging election staff and

carry out random inspection at different places; to enter all transactions relating to election expenses into with General Sales Tax (GST) registered firms/persons; to ensure that a candidate accounted for all the expenses immediately after the election was over, and to constitute election expenditure monitoring centers/teams to monitor day-to-day election expenditure incurred by the candidate. [PLD 2012 SC 681]

Practice of taking sat massive car rallies and use of expensive vehicles for transporting voters to and from polling stations. Effect and legality of such practices. By performing said practices candidates and parties end up incurring exorbitant expenses and exceed the ceiling prescribed by S.49 of the Representation of the People Act, 1976. Said practices also crated a nuisance for the ordinary citizens and caused discomfort to the sick and students. Such rallies should not be allowed to travel long & distances except if they had pre-arranged corner meetings at specific designated places, and such meetings should be notified to the ordinary public by the local administration, which must ensure that all candidates were accommodated. Supreme Court observed that substantial expenditure incurred in hiring and using transport had sever been adequately monitored by the Election Commission and Erected the Election Commission to take account of all expenditures occurred in the course of campaigning for activities that were directly and indirectly related and ancillary to the election process; to facilitate the voters by increasing the number of polling stations appropriately throughout the country so that the polling stations were not at a distance of more than two kilometers from the place of residence of voters; to take into consideration the suggestions made during the resent proceedings and ban all private transport on Election Day; to consider alternative arrangement of transporting voters by vehicles, owned, rented or affiliated with the Election Commission, and to widely advertise the routes of such vehicles in the print and electronic media for information of the general public. [PLD 2012 SC 681]

Practice of camping in vicinity of polling stations and handing over of 'perchis' to the voters. Effect and legality of said practices. By performing said practices the candidates, through their polling agents and supporters, influenced the voters and compromised the objectivity with which they were to cast their vote. Establishing camps near the polling stations on polling day and spending substantial amounts to canvass the voters to vote was clear violation of S.84 of the Representation of the People Act, 1976, on part of the candidates/supporters. Supreme Court observed that in order to ensure strict compliance with S.84 of the Representation of the People Act, 1976, the Election Commission might manage to dispatch extracts from the voters' list in the name of one or more persons living in a house much before the polling day by post, or to save the postage by annexing such extracts with any of the utility bills; that National Database and Registration Authority (NADRA) might be deputed to furnish details of the voters at their residences, which exercise was required to be completed at least seven (7) days before the polling day, and would facilitate a voter to exercise his right of franchise independently with full application of mind and without influence from the candidate or his supporters, and that if need be, instead of involving employees of Provincial Governments, the employees of Federal Government/ autonomous organizations/ agencies, including the armed and para-armed forces might be instructed to carry out stipulated functions at the polling stations. [PLD 2012 S C 681]

Fair and transparent election rested at the heart of a democratic system, therefore, any effort which cultivated a complimentary political culture should be encouraged. [PLD 2012 S C 681]

Supreme Court directed the Election Commission to frame rules and issue instructions to provide legal sanction to different measures, namely, door-to-door campaign, manifesto, canvassing on State television and radio, and candidate-voter interaction/debates, etc. as appropriate and implement the same. [PLD 2012 S C 681]

Supreme Court directed that all the election laws should be strictly implemented by the Election Commission in the discharge of its constitutional mandate under Art.218(3) of the Constitution, Representation of the People Act, 1976, and other laws/rules; that Election Commission was empowered to check not just illegal actions relating to the election (violating the limits set for campaign finance, etc.) or corrupt practices (bribery, etc.), but was also empowered to review all election activities, including "Jalsas", Jaloos use of loudspeakers, etc. for their effects on the standards of fairness justness and honesty' that elections were expected to meet; that the Election Commission was also empowered to take pre-emptive measures to ensure that the spirit of democracy and 'fairness, justness and honesty' of elections was fully observed; that the Election Commission must undertake monitoring of the election expenses from the day the holding of election was notified; that a candidate must account for all the expenses immediately after the election was over; that the Election Commission must hold meetings with the candidates and apprise them of the relevant laws/rules, receive from them statements of expenses on weekly basis by engaging election staff and carry out random inspection at different places; that all transactions relating to election expenses should be entered into with General Sales Tax (GST) registered firms/persons; that the number of polling stations might be increased appropriately throughout the country so that the polling stations were not at a distance of more than two kilometers from the place of residence of voters; that the Election Commission might take into consideration the suggestions made during the present proceedings, including the provision of official transport to the voters, but in no case, should it allow the candidates to hire/use private transport on election day; that where arrangement for transport was made by the Election Commission, the routes of such transport should be widely advertised in the print and electronic media for information of the general public; that with regard to handing over of "Perchis" to the voters at election camps, the Election Commission must take steps to provide the requisite information to the voters by other means; that establishing of camps near the polling stations should be banned immediately; that the Election Commission might manage to dispatch extracts from the voters' list in the name of one or more persons living in a house at least seven (7) days before the polling day by post, or to save the postage by annexing such extracts with any of the utility bill; that only those election campaign activities should be permitted, which on the one hand fulfilled the purpose of the election campaign, and on the other, were within the reach of the common man; that the Election Commission should encourage certain activities based on their merit, namely, door-to-door campaign, manifesto, canvassing on State television and radio, and candidate-voter interaction/debates, etc.; that instead of involving the employees of the Provincial Governments, the employees of Federal Government/ autonomous organizations/agencies, including the armed and para-armed forces (might be instructed to carry out stipulated functions at the polling stations; that the Election Commission was expected to take effective steps in regard to computerized balloting at an appropriate time; that the Election Commission should undertake door-to-door checking of voters' lists and complete the process of updating/revision of the electoral rolls by engaging Army and the Frontier Corps to ensure transparency, if need be; that the Election Commission had to ensure that the election disputes were resolved at the earliest, for which it might

consider establishing a panel of lawyers well conversant with election laws at the State expense to provide free legal services to marginalized segments of society; that all necessary steps must be taken to make voting compulsory as early as possible; that the voting system of 'First Past the Post' violated the principle of majority, therefore, the Election Commission might explore ways and means to introduce appropriate system of election including 'run-off election' and 'none of the above options' to ensure true representation of the people and rule of the majority, and that the Election Commission should frame rules and issue instructions to provide legal sanction to all said measures and implement the same to achieve the ultimate objective of fair, free, just and honest election. [PLD 2012 S C 681]

**10. Bogus voters' list.** Good number of voters had been found bogus and illegal, in the voters list therefore, election could not be held on the same. Bye-elections in constituencies could not be organized on the basis of bogus voters' list as such elections would be against the command of Art. 218(3) of the Constitution, which cast a duty upon the Election Commission to conduct elections and to make such arrangements as were necessary to ensure that election was conducted honestly, justly and fairly and in accordance with the law and that corrupt practices were guarded against. Election Commission was bound to ensure that elections in constituencies were held according to unpolluted and free from bogus/verified electoral list. [2012 SCMR 448]

**11. Irregularity in the preparation of Electoral Rolls—Art. 218 read with Art. 184(3).** Under Art. 184(3) the Constitution, Supreme Court was empowered to ensure fulfillment of the command of the Constitution of holding elections honestly, justly, fairly and in accordance with law. Present petitions were maintainable and the grievances raised therein were justiciable by the Supreme Court maintainable. [PLD 2013 SC 120] Constitutional petitions under Art. 184(3) of the Constitution concerning errors and irregularities in the preparation of electoral rolls of city of Karachi. Contentions of petitioners were that a large number of voters of Karachi has been disenfranchised and their names has been removed from the electoral roll; that approximately 50% votes of the electors of Karachi has been shifted to other parts of the country and in their places, names of unverified voters has been inserted, which was likely to lead to rigging in the elections and that the object of holding free, fair, honest and just election would be defeated unless the names of voters were re-verified on a door-to-door basis in accordance with the Constitution and the law through their Computerized National Identity Cards (CNIC). Even after the preparation of final electoral rolls of Karachi, the necessity of a further door-or-door verification was conceded by the Election Commission. Election Commission has also not implemented directions of the Supreme Court regarding delimitation of different constituencies of Karachi given in the judgment of Watan Party v. Federation of Pakistan (PLD 2011 SC 997). Discrepancies in the electoral rolls of Karachi identified by the petitioners, examined in conjunction with the admitted position of the Election Commission that a door-or-door verification of the entire residents of Karachi has not been carried out lead to the conclusion that the electoral rolls of Karachi did not inspire confidence and the possibility that a significant number of residents of Karachi might have been disenfranchised could not be ignored. Accurate electoral rolls was a sine qua non for the holding of a free, fair and transparent election, which was not only the command of the Constitution but also a Fundamental Right of the citizens, which appeared to have been compromised qua the residents of Karachi. Electoral rolls of the city Karachi were required to be revised by the Election Commission in exercise of powers conferred upon it under Art. 219 of the Constitution read with Electoral Rolls Act, 1974. Supreme Court directed the Election Commission to carry out proper and

complete door-to-door verification in Karachi so as to ensure that no voter was disenfranchised or dislocated and all other discrepancies were rectified as early as possible, and that in view of the peculiar security situation in Karachi such verification must be carried out by the Election Commission with the help and assistance of Army and Frontier Constabulary. [PLD 2013 SC 120]

**12. Combination of offices of Chief Election Commissioner and Judge of High Court in one person.** The Constitution of 1973, by its Article 217, permits a serving Judge of the Supreme Court to be appointed as the Acting Chief Election Commissioner, thereby showing that the makers of the Constitution did not entrain any apprehension that a temporary responsibility of this nature was likely to adversely affect the independence of such Judge in either capacity. Similarly, Article 218 of the Constitution provides that two serving Judges of the High Court shall act as members of the Commission for the purpose of holding a General election. There is no provision that during such membership they would cease to function as Judges of the High Court. Judicial notice can also be taken of the fact that in the past Chief Justices or Judges of the High Courts have been appointed to undertake the work of delimitation of electoral constituencies in addition to their judicial functions. Serving judges have also been called upon to work as Election Tribunals. [PLD 1978 S.C. 40 (p. 60)]

**13. Conduct of Referendum.** Chief Election Commissioner and the Election Commission of Pakistan have authority to conduct referendum in view of provisions of Article 213(3), 218 and 219 of the Constitution. [PLD 2002 S.C. 853]

**14. Changes made by caretaker Government.** Caretaker Government had no politics. Caretaker Government shared duty of the Election Commission of Pakistan to conduct the general elections honestly, justly, fairly and in accordance with law and that corrupt practices were guarded against. Caretaker government had discretion to make changes that strengthened its ability to discharge its constitutional obligation. Significant aspect of said constitutional obligation of a Caretaker government was to demonstrate and maintain strict neutrality in the discharge of its functions, inter alia, by appointing non-partisan officers. [PLD 2013 Lah. 598]

**15. Holding of bye-election of vacant seat.** Article 224(1) of the Constitution, no bye-election would be held on a seat fallen vacant at a time when 120 days or less were left for term of respective Assembly to expire or was dissolved earlier. Duty of Election Commission being to arrange election and ensure same to be conducted honestly, justly, fairly and in manner free from corrupt practices. Term of Assembly would expire on 4-4-2013, thus, 125 days remained for its term to expire if counted from 30-11-2013 i.e. date on which such seats became vacant due to resignation. Continuity of electoral process would strengthen democracy and democratic institutions. Parliament being mother of all democratic institutions, whereas National and Provincial Assemblies being its integral part. Election Commission like other citizens and public functionaries would be bound to obey and follow Constitution and laws of Pakistan. Mere delay would not absolve Election Commission from performance of its constitutional duty to organize and conduct elections to fill casual vacancies in an Assembly. Belated performance of a constitutional duty would not invalidate same or make same ineffective. Delay in issuing impugned notification would not render schedule of bye-election as invalid or unconstitutional. No revision or correction of an electoral roll could be made after announcement of election schedule by Commission. Electoral rolls prepared and published lastly would be foundation for conducting bye-election. Holding election and continuing democratic process would be secured at all cost. [PLD 2013 Sindh 300]