

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.1972/2025;
Date of Institution 02.08.2025;
Date of Decision 23.09.2025.

Ch. Ejaz Ahmed Khatana S/o Imam Deen
R/o Bhagloor Tehsil & District Bagh Azad
Jammu & Kashmir Ex-candidate of PML
(N) from Constituency Legislative
Assembly-16 Bagh City District Bagh,
Azad Kashmir.

Petitioner

VERSUS

1. Azad Jammu & Kashmir Council
through Secretary Azad Jammu &
Kashmir Council having its office at
Kashmir Secretariat Sector F-5/2,
Islamabad;
2. Chairman Azad Jammu & Kashmir
Council through Secretary Azad
Jammu & Kashmir Council having its
office at Kashmir Secretariat F-5/2,
Islamabad;
3. President of Azad Jammu & Kashmir
through Secretary to President having
its office at President House
Jalalabad, Muzaffarabad;
4. Prime Minister of Azad Jammu &
Kashmir having his office at Prime
Minister Secretariat, Muzaffarabad;
5. Leader of Opposition in Legislative
Assembly Azad Jammu & Kashmir,
Muzaffarabad;
6. Chief Secretary Azad Jammu &
Kashmir having its office at New

- Secretariat Muzaffarabad;
7. Azad Government of the State of Jammu & Kashmir through Secretary LG&RD having its office at New Secretariat Muzaffarabad;
 8. Secretary Election Commission Azad Jammu & Kashmir having its office at Assembly Secretariat Muzaffarabad;
 9. Election Commission Azad Jammu & Kashmir through Election Commission having its office at Assembly Secretariat Muzaffarabad;
 10. Azad Jammu & Kashmir Legislative Assembly through Secretary Legislative Assembly Chatter Muzaffarabad;
 11. Department of Law, Justice & Parliamentary Affairs through Secretary Law Chatter Muzaffarabad Azad Kashmir.

Respondents

WRIT PETITION UNDER ARTICLE 44 OF
THE AJ&K INTERIM CONSTITUTION, 1974

Before:- Justice Sardar Muhammad Ejaz Khan , J.

PRESENT:

Raja Sajjad Ahmed Khan, Advocate for the petitioner.

A.A.G. for official respondents No.1, 3, 4, 6 & 7.

Mr. Sajid Hussain Abbasi, Advocate for respondent No.2.

Mr. Junaid Pandat, Advocate for respondent No.5.

Mr. Tahir Aziz Khan, Legal Advisor Election Commission of Azad Jammu & Kashmir/respondents No.8 & 9.

Mr. Saqib Abbasi, Advocate for the intervener.

O R D E R:

The captioned amended writ petition has been addressed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 whereby the following relief has been implored by the petitioner:-

“It is, therefore, very humbly prayed on behalf of the petitioner that by accepting this amended writ petition:-

- (i) Direct respondent No.4 to finalize the nominees for appointment as Chief Election Commissioner after consultation with the Leader of Opposition and send the penal to respondent No.2 for issuance of advice for the appointment of Chief Election Commissioner forthwith without any further delay;*
- (ii) Respondents No.2 & 3 be directed perform his constitutional obligation as per provisions of the Azad Jammu & Kashmir Interim Constitution, 1974;*
- (iii) Respondents No.7, 8 & 9 be directed to conduct and organize the bye-elections the seats of Local Bodies forthwith which are laying vacant;*
- (iv) Any other relief which is admissible under law may kindly be granted;*
- (v) Direct the respondents to prescribe terms and condition of the office of Commissioner under Article 50(14) of the Interim Constitution, 1974 without any delay.”*

2. Synthesized facts, as per claim of the petitioner, are that he is 1st Class State Subject of Azad Jammu & Kashmir and he contested last election for the seat of Legislative Assembly from Constituency L.A.-16, Bagh, on ticket of PML(N). It has been stated that the term of former Chief Election Commissioner has expired after completion of 05 years tenure on 14.01.2025 and instead of appointing Chief Election Commissioner, only a Member of Election Commission has been appointed on 10.01.2025 whereas under Article 50(2) of the Constitution, *Ibid*, the Commission shall consist of Chief Election Commission who shall act as the Chairman and two Members. It has further been stated that under sub-Article 3 of the Constitution, the Chief Election Commissioner shall be appointed by the President on the advice of the Chairman Kashmir Council. It has been contended that

the Prime Minister after consultation with the leader of opposition in Assembly shall finalize the nominees for appointment as Commissioner and the same shall be forwarded to Chairman Kashmir Council and when the office of Commissioner is vacant or the Commissioner is absent or unable to perform the functions of his office due to any cause, the Senior Member of Commission duly designated at the time of appointment shall act as Commissioner for a period not exceeding six months. It has been averred that the office of the Election Commissioner is permanently vacant from 14.01.2025 and no Senior Member has been appointed as well, which is Constitutional obligation upon the respondents to appoint Chief Election Commissioner while the respondents be directed to prescribe the terms and conditions of Commissioner as provided under Article 50(14) of the

Constitution, *supra*, through an act of Assembly. It has been craved that the petitioner has no other alternate and efficacious remedy except to invoke the *extraordinary* jurisdiction of this Court, hence, this writ petition.

3. Writ petition was admitted for regular hearing vide order dated 02.09.2025 and the learned counsel for the respondents who were present before the Court were directed to file written statement and rest of the respondents were ordered to be summoned for the purpose while the same were filed on their behalf wherein the version of the petitioner taken in writ petition to some extent was denied and it has been craved for dismissal of writ petition.

4. Heard. Record perused. A contemplate perusal of record reveals that the formation of Election Commission, its functions and mode of appointment have been defined in Article 50

of the Constitution, *Ibid*, hence, for proper appreciation of the matter, the said Article is hereby helpfully reproduced as under:-

“Article 50. Election Commission: (1) There shall be an Election Commission for Azad Jammu & Kashmir hereinafter referred to as “the Commission.”

(2). The Commission shall consist of the Chief Election Commissioner, who shall act as the Chairman and two Members.

(3). The Chief Election Commissioner, hereinafter referred to as the Commissioner, shall be appointed by the President on the advice of the Chairman of the Council.

(4). The Prime Minister after consultation with the Leader of Opposition in the Assembly shall finalize the nominees for the appointment as Commissioner.

(5). No person shall be appointed as the Commissioner unless he has been a Judge of the Supreme court or High Court or has been a civil servant of BPS-21 and above, in the service of Azad Jammu & Kashmir.

(6). The members of the Commission possessing the qualification as mentioned for Commissioner in sub-Article (5) above, shall be appointed by the President on the advice of the Prime Minister.

(7). It shall be duty of the Commission to organize and conduct

the election for the office of the President, the Assembly, the council and local government bodies and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law.

(8). The Commission shall have such powers and perform such functions as are conferred on it under the Constitution and Act of the Assembly.

(9). At any time when the office of Commissioner is vacant or the Commissioner is absent or unable to perform the functions of his office due any cause, the senior member of Commission duly designated at the time of appointment shall act as Commissioner for a period not exceeding six months.

(10). Before entering upon office, the Commissioner shall make oath before the Chief Justice of Azad Jammu & Kashmir and the members before the Commissioner in the form set out in the First Schedule.

(11). Subject to this Article, the Commissioner and each member, as the case may be, shall hold office for a term of five years from the day he enters upon his office:

Provided that the Chief Election Commissioner appointed before the commencement of the Azad Jammu & Kashmir Interim Constitution (Thirteenth Amendment) Act, 2018 shall be deemed to have been appointed under this Article for remaining period of his term.

(12). The Commissioner and members shall not be removed from their office except in the manner prescribed in Article 42-E.

(13). The Commissioner and members may, by writing under his hand addressed to the President, resign from his office.

(14). The terms and conditions, other than mentioned hereinabove, for the office of the Commissioner and member shall be such as may be prescribed by an Act of Assembly.

(15). The Commissioner or a member shall not:-

(a) hold any other office of profit in the Service of Azad Jammu & Kashmir or Pakistan; or

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

(16). A person who has held office as Commissioner or the member shall not hold any office of profit in the Service of Azad Jammu & Kashmir or Pakistan before the expiration of two years after he has ceased to hold that office.

(17). The Commission shall perform such functions as may be determined by Act of Assembly.

(18). It shall be the duty of all executive authorities in the State to assist the Commission in the discharge of its functions.

(19). Until Assembly by law otherwise provides, the Commission may, on the advice of the Prime

Minister and with the approval of the President, make rules providing for the appointment of officers and servants to be employed in connection with the functions of the Commission and for their terms and conditions of employment.”

5. In view of the above Article, it is relevant to narrate here that functions of the Commission are to hold the election for Assembly, President, the Council and Local Governments honestly, justly and fairly. It is apparent from relevant provisions of the Constitution that the Commissioner and Members shall not be removed from its office except in the manner as prescribed in Article 42-E of the Constitution, *Ibid.*

6. Under the command of the above Article, the Commission shall consist of Chief Election Commissioner and two Members while the term of their offices is defined as 05 years while under sub-Article 4 of Article 50 of the Constitution, *supra*, the Prime Minister after

consultation with the Leader of Opposition in the Assembly shall finalize the nominees for the appointment as Commissioner and that appointment shall be made by the President on the advice of the Chairman of the Council. Under Article 50 (5) of Constitution, *Ibid*, no person shall be appointed as the Commissioner unless he has been a Judge of the Supreme Court or High Court or has been a civil servant of BPS-21 and above, in the service of Azad Jammu & Kashmir rather the members of the Commission possessing the qualification as mentioned for Commissioner in sub-Article (5) above, shall be appointed by the President on the advice of the Prime Minister. It reflects from record that only one of the Members has been appointed vide notification dated 10.01.2025 whereas the Chief Election Commissioner and other Member have not yet been appointed. It is comprehensible that how the above noted

duties of the Commission under the command of Constitution are being performed. Where inaction of the State functionaries, their deviation or disregard or delay in the mandated performance of the functions under the scheme of Constitution are challenged, particularly on the parameters of the indispensable demands in the Constitution, the Courts have no jurisdiction to permit the State functionaries to remain stagnant, inefficient or reluctant towards their Constitutional obligations. It is observed that non-adherence to the Constitutional mandate is sure to entail serious consequences. This Court is legally bound to protect the relevant provisions of the Constitution, *supra*, by any means. The executive, legislature and judiciary cannot avoid and depart from their Constitutional duties. They, thus, essentially have to take

positive steps for the preservation of the Constitution and democratic order in the State.

7. It may be noted that office of Chief Election Commissioner and Member is still vacant while non-completion of the Commission will be a deviation from the Constitution and such deviation gives mandate to this Court to intervene in exercise of its Constitutional jurisdiction as enshrined under Article 44 because after the expiry of term of office Chief Election Commissioner, the appointment of Chief Election Commissioner has not yet been made, which cannot be kept vacant for an indefinite period, hence, the concerned quarters under the command of Constitution, *Ibid*, are legally bound to appoint the Chief Election Commissioner & Member. As the arguments on the application for hearing and impleading the applicants as party in the

line of respondents have been heard, hence, no further deliberation is required in this regard.

8. The nutshell of the foregoing reasons is that the instant writ petition is accepted and the respondents, jointly and severally, are hereby directed to appoint the Chief Election Commissioner & Member under the command of Constitution, *Ibid*, in the light of observations made hereinabove expeditiously. A copy of this judgment shall be transmitted to the concerned quarters for compliance.

Muzaffarabad:
23.09.2025(J.ZEB)

JUDGE

Approved for reporting

JUDGE