

**HIGH COURT OF AZAD JAMMU & KASHMIR**

Writ Petition No.2992/2022.  
Date of institution 04.08.2022.  
Date of decision 14.12.2022.

Muhammad Ayan Ali Raja R/o Raja Amjid Saddique R/o Ward No.05  
Bait-ul-Kausar, Jalalabad, Tehsil and District Muzaffarabad, Azad  
Jammu & Kashmir.

....Petitioner

**VERSUS**

1. The Azad Jammu and Kashmir Legislative Assembly through its Secretary at Muzaffarabad.
2. The Azad Jammu and Kashmir Government through Secretary Local Government Department at Muzaffarabad.
3. Department of Law, Justice and Parliamentary Affairs through Secretary AJ&K having his office at New Secretariat Muzaffarabad.
4. The Azad Jammu and Kashmir Election Commission through its Secretary at Muzaffarabad.
5. Chief Election Commissioner, Azad Jammu & Kashmir at Muzaffarabad.

....Respondents

**WRIT PETITION**

**Before:-** Justice Sardar Habib Zia, J.  
Justice Mian Arif Hussain, J.  
Justice Syed Shahid Bahar, J.  
(Larger Bench)

**PRESENT:**

Manzoor Hussain Raja, Advocate for the petitioner.  
Mr. Tahir Aziz Khan, Advocate on behalf of AJ&K Election Commission.  
Legal Advisor on behalf of Local Govt. Department.

**Judgment:-**

(Justice Syed Shahid Bahar, J). Through the captioned constitutional petition filed under Article 44 of the Azad Jammu &

Kashmir Interim Constitution, 1974, the petitioner has entreated  
infra relief:-

“It is most humbly prayed that by accepting the writ petition on behalf of petitioner, section 3 of Azad Jammu & Kashmir Local Government Act, 1990 amended Act 2021 to the extent of age of candidate (a person have the age of 25 years) being against the Fundamental Right of petitioner/state subject may kindly be set aside.”

**CONDENSED FACTS OF THE LIS IN HAND:-**

2. The petitioner, as per contents of the instant petition, has claimed that he is 1<sup>st</sup> class State Subject of Azad Jammu & Kashmir and permanent resident of District Muzaffarabad. It is contended that the petitioner being a social/political activist has always striven for uplifting deplorable living conditions of the inhabitants belonging to vulnerable stratum of his native area and protection of their fundamental rights. It is averred that petitioner decided to contest local bodies elections, but once he started preparation for the purpose, respondent No.01 by amending the **2<sup>nd</sup> schedule part-II entry No.3 of the Azad Jammu & Kashmir Local Government Act, 1990 through Azad Jammu & Kashmir Local Government (Amendment) Act, 2021** imposed a qualification in [Section 3] in a manner that a person who has less than the age of twenty five years cannot participate in local bodies election. It is claimed that the impugned amendment made in the second schedule Part-II entry No.03 of the Azad Jammu & Kashmir

Local Government Act, 1990 vide Azad Jammu & Kashmir Local Government (Amendment) Act, 2021 (Act XXVII of 2021) is contrary to the scheme of the Constitution, violative of the fundamental rights, illogical and unjustified, hence, the same may be set at naught.

3. Written statement has been filed on behalf of official respondents wherein the claim of the petitioner has been refuted. It is submitted that the petitioner has abysmally failed to substantiate that a valid statute enacted by the worthy Legislature cannot be dismissed on this sole ground. Finally, it is prayed that the writ petition may be dismissed with costs.

**SUBMISSIONS PROFERRED ON BEHALF OF THE PETITIONER:-**

4. Mr. Manzoor Hussain Raja, the learned counsel for the petitioner reiterated the facts and grounds narrated in the petition and further contended in his arguments that the condition of age qualification to be a member of an elected body does not exist anywhere in the world, even in the most developed countries. The learned counsel staunchly contended that the prime duty of the worthy Legislature is to maintain equality before law amongst the citizens of the State and not to discriminate. The learned counsel fervently contended that the impugned legislation has snatched the vested rights of the petitioner especially those enshrined in **Article 4(4)(15) read with Article 3-D of Interim Constitution, 1974,**

therefore, the same is not maintainable and is at variance with the Interim Constitution, 1974. The learned counsel further contended that the impugned legislation is a malafide attempt and the outcome of maneuvering and a deliberate conspiracy has been perpetrated in such a pernicious manner so that the petitioner inter alia other candidates; who are in their bloom of youth and are vying to contest local bodies elections from their respective constituencies, can be circumscribed from contesting said elections; via technical knockout which is tantamount to flout constitutional guarantees enshrined in the Interim Constitution, 1974, in shape of fundamental rights, therefore, keeping in view this aspect of the matter the impugned legislation is liable to be countermanded. Finally, the learned counsel prayed that by accepting the writ petition, the impugned legislation namely **Azad Jammu and Kashmir Local Government (Amendment) Act, 2021** may be quashed, declaring the same illegal and ultra vires of Interim Constitution, 1974.

**SUBMISSIONS SET FORTH ON BEHALF OF RESPONDENTS:-**

5. Mr. Tahir Aziz Khan, the learned counsel appearing on behalf of Election Commission of AJ&K/respondents contended that the petitioner has failed to establish any substantial legal right on the basis of which he can stand legally entitled to file the instant writ petition. The learned Legal Advisor argued that the



petitioner under gross misconception and misunderstanding of law claimed in his writ petition that his vested rights have been terribly violated despite of the fact that neither any legal right is accrued to him nor any legal right is vested to him in this regard. He emphatically contended that the worthy Assembly (lawmaking body) is composed of chosen representatives of the people, who are supposed to know and be aware of the needs of the people that what is good and bad for them. The learned Legal Advisor further maintained that the petitioners are attributing mala-fide intention towards the legislature without any substantial proof which is bad in law, furthermore, the law in question has been duly passed under the mandate of the Interim Constitution of AJ&K, 1974, therefore, a valid law cannot be struck down on the ill will of the petitioner. He lastly prayed for dismissal of the writ petition and in support of his submission, he referred a case law reported as 2001 SCR 380.

6. The learned A.A.G and Legal Advisor for Local Government glaringly refuted the stance of the petitioner and also adopted the arguments of the learned Legal Advisor for Election Commission and prayed for dismissal of the writ petition with costs.

**DETERMINATION BY THE COURT:-**

7. After squeezing the pleaded facts, the case of the petitioner is that the upper age limit prescribed for contesting election of local bodies is ultra vires to the constitutionally fundamental guaranteed rights which ex-facie is meant for putting un-necessary barriers in the way of youth lot in order to deprive them from contesting elections.

8. The impugned provision pertains to age limit which is liable to be judged in the gauge of Constitution in order to ascertain its pith and substance and to explore the true wisdom of the worthy Legislature by filtering the same in the lens of logic and rationale.

9. At the outset, it is pertinent to mention here that a State Subject who has attained 18 years of age is eligible to exercise his/her right to vote/franchise meaning thereby that he/she is allowed to elect the candidate of his/her own choice but simultaneously he/she is debarred to contest election for the same slot himself/herself unless he/she attains the age of 25 years.

10. As adumbrated, elected representatives are not expected to be experts, who can be hired from market or technocrats who can be selected on the basis of their expertise in a given area of responsibility, particularly with regard to scientific or technical knowledge. They are only required to be aware of their

electors' needs and aspirations, anybody who otherwise is qualified to cast his/her vote can be a candidate in local bodies elections subject only to restriction of reasonable age limit.

Besides all this, **Article 21 of the Universal Declaration of Human Rights (UDHR)** postulates as under:-

**Article 21:-**

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedure. (emphasis supplied).

In addition to that, **Article 5(2) of the International Covenant on Civil and Political Rights (ICCPR)**, which was ratified by the Islamic Republic of Pakistan on 23<sup>rd</sup> of June, 2010 states i.e.

**Article 5.**

- (1) .....
- (2). There shall be no discrimination upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present covenant does not recognize such rights or that it recognizes them to a lesser extent.

Similarly, Article 25 of the supra Covenant (ICCPR) glaringly speaks as infra i.e.

### Article 25.

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) .....
- (c) .....

Likewise, Article 26 of the said Covenant (ICCPR) states as under:-

### Article 26.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religious, political or other opinion, national or social origin, property, birth or other status.

Article 26 of ICCPR corresponds to clause 15 of Article 4(4) of the Azad Jammu and Kashmir Interim Constitution, 1974 i.e.

#### **4.4.15 Equality of State Subjects:-**

All State Subjects are equal before the law and are entitled to equal protection of law. Right number 15 is divided into two parts.

The word 'law' in the former expression is used in a philosophical sense whereas the word 'law' in the latter expression denotes specific laws in force. The former implies the absence of any special privilege in favour of any individual and the equal



subjection of all classes to the ordinary law while the latter is a more positive concept implying equality of treatment in equal circumstances.

In the case of Nazir Hashmi V. Capital Development Authority reported as [PLD 1976 Lahore 1115], while interpreting the phrases “equality before law’ and ‘equal protection of law in Article 25 of the Constitution of Pakistan (corresponding to clause (15) of Article 4(4) of our Constitution), it was held:-

- “(a) rights of all persons must rest upon the same rule under similar circumstances regardless of race, religion, antecedents, physical appearance, intellect, public spirit, political views, wealth or occupation;
- (b) all persons shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed;
- (c) equality or equal protection permits reasonable classification and mere differentiation or inequality of treatment does not amount to discrimination.”

In the case of Yahya Bakhtiar V. The State reported as [NLR 1980 Quetta 815] (horizontal precedent) it was held that:-

“Term ‘equality before law’ means that among equals law should be equal and should be equally administered and that like should be treated alike. The doctrine of equality before law or the

equal protection of law does not signify that same law applies to every situation. It means same law for same situation and not when situations are different and entirely dissimilar.”

It expounds no logic and rationale at all that a person who has a right to vote has no right to contest elections, thus vast majority of the people has been rendered ineligible to contest elections in guise of unreasonable age limit of 25 years.

11. An other important aspect of the matter is that through the Azad Jammu & Kashmir Local Government (Amendment) Act, 2021 (XXVII of 2021), certain amendments have been introduced by the worthy legislature inter alia by providing room to the women and youth members at the ratio of 12.5% each of the total number of seats for the District Council, Local Council/Union Council, Town Committee and Municipal Committee respectively, relevant abstract of amended law is tabulated as under:-

**COMPOSITION OF LOCAL COUNCILS/ UNION COUNCIL**

8. (1) A Union Council shall, subject to the other provisions of this Act consist of such number of members as may be fixed by the Government.

<sup>2</sup>[1-a) The women and youth members equal to 12.5% each of the total number of seats, subject to minimum of four i.e., two women and two youth, shall be elected by the directly elected members of the Union Council.]

**DISTRICT COUNCIL**

9. (1) A District Council shall consist of.-

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

[(4) The women and youth members equal to 12.5% each of the total number of seats, subject to minimum of four i.e., two women and two youth, shall be elected by the directly elected members of the district council.

#### DEHI COUNCIL

#### TOWN COMMITTEE

11. (1) A Town Committee shall consist of such number of elected members as may be fixed by the Government;

[(1-a) The women and youth members equal to 12.5% each of the total number of seats, subject to minimum of four i.e., two women and two youth, shall be elected by the directly elected members of the town committee.]

(3) \_\_\_\_\_

12. Municipal Committees.- (1) A Municipal Committee shall consist of such number of members as may be notification be fixed by the Government.

(2) The elected members of Municipal Committee shall, in the prescribed manner, elect one of members to be its Chairman and Vice-Chairman.

(3) The Elected Chairman of a Municipal committee shall be ex-officio member of the District Council.

[4. The women and youth members equal to 12.5% each of the total number of seats, subject to minimum of four i.e., two women and two youth, shall be elected by the directly elected members of the Municipal Committee."

12. In view of supra given amendment whereby entry of youth has been made possible is not clear enough to the extent of age limit, that too the definition clause is also silent in this regard, presumably it seems that barrier of the age of 25 years has stood left or for that matter become redundant in this view of the matter after subsequent amendment.

13. Be that as it may, after having an overall juxtapose analysis of the laws of various countries as well as all the four provinces of the Islamic Republic of Pakistan besides Islamabad, it unequivocally transpires that the prescribed age limit stipulated in all the laws for contesting elections qua local bodies is twenty-one years (with only exception of Islamabad having 22 years) noteworthy to mention that in the United Kingdom and in Scotland the said age limit for the purpose has been brought down to eighteen years. It is useful to tabulate the prescribed age limit enshrined in the laws of different countries as infra:-

**In Pakistan**

Provinces/Capital	Enactments	Relevant provisions	Minimum age to contest Local Bodies Elections
Punjab	Punjab Local Government Act, 2022.	Section 70 sub-section 1(b)	21 years
Sindh	Sindh Local Government Act, 2013.	Section 35 sub-section 1(b)	21 years
KPK	Khyber Pakhtunkhawa	Section 78	21 years



	Local Government Act, 2013.	sub-section 1(b)	
<b>Balochistan</b>	Balochistan Local Government Act, 2010.	Section 24 sub-section 1(b)	21 years
<b>Islamabad</b>	Islamabad Capital Territory Local Government Ordinance, 2021	Section 68 sub-section 1(a)	22 years

### Other Countries

Countries	Enactments	Relevant provisions	Minimum age to contest Local Bodies Elections
<b>India</b>	(i) West Bengal Municipal Elections Act, 1994.	Section 30 sub-section 1(b)	21 years
	(ii) Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.	Section 15 sub-section (1)	21 years
<b>UK</b>	Local Government Act, 1972.	Section 79 sub-section (1)	18 years
<b>Scotland</b>	Local Government (Scotland) Act, 1973	Section 29 sub-section (1)	18 years

14. The supra age limit provided in laws of different countries postulates the wisdom and rationale of same, thus, by applying the tool of interpretation and exploring the wisdom of legislature behind prescribing lesser age limit for the purpose of contesting local bodies election it can safely be held that at the local bodies level no legislation or law-making is required at any stage, scope and area of working/performing duties of the members of local bodies is limited and merely to the extent of

local geographical limits that too working area and spheres have been circumscribed to the extent of local government issues meant for development schemes and uplifting the undeveloped areas. While on the other hand the public representatives in higher public fora i.e. Assembly and Senate have been bestowed with totally different job who are burdened with onerous liabilities qua legislation/law making, that is why the prescribed age limit for such like fora in different countries is even more than twenty-five years and the wisdom behind the same is crystal clear that the cumbersome task of law making and legislation inter-alia with other qualities require adequate maturity coupled with mental agility. It goes without saying that maturity improves wisdom and a famous maxim seems fit in the proposition i.e. Old is gold, but vice versa information technology has rapidly brought the entire world even closer by introducing the concept of "Global Village" thus, wisdom and maturity ipso facto cannot be bracketed and tagged with age. There are numerous examples of those people who over the course of time have defied the age barrier. The renowned example in this regard is that of Late Arfa Karim Randhawa, who, at the age of nine, made it to the Guinness Book of World Records by becoming the then youngest Microsoft Certified Professional in the year 2004. At this juncture a verse of Allama Iqbal seems fit:-

خرد کو غلامی سے آزاد کر

جوانوں کو پیروں کا اُستاد کر

Although the point supra has neither been agitated nor argued: A fleeting look of the law makes it abundantly clear that impression of redundancy of impugned legislation quo age limit of 25 years after insertion of provision qua allocating the seats for youth (without ascertaining age limit) is creating anomaly and ambiguity inviting indulgence on this count as well.

When the law itself allowed the entry of youth in local bodies by allocating/reserving seats (without prescribing age limit) then 25 years barrier is meaningless and does not seem to serve the very purpose of law and appears in hanging position. Thus, technique of interpretative presumptions is also available, which affords guidance arising out of the nature of legislation, as to legislators' prima-facie intention regarding the legal meaning is standing of a word of provision of law.

It has been held by the Apex Court of Pakistan in the case titled Chairman Pakistan Railway Vs. Shah Jahan Shah PLD 2016 SC 534, that when a word had not been defined in the Statute, its ordinary dictionary meaning was to be looked at.

As per settled rules of interpretation when a word has not been defined in the statute the ordinary dictionary meaning is to be looked at.

Thus, as the word youth employed in the amended law has not been defined in the Statute we can safely import the meaning of same from the dictionary meanings. In the Oxford Dictionary the word youth has been defined as under:-

“Youth; the time of life when a person is young, especially the time before a child become adult, the quality or state of being young.”

15. The intention of the law maker (Mens legislators) can be traced and ascertained from passage/avenue provided to the youth in local bodies by way of allocating a specific quota for this purpose, and definitely the same can be presumed legitimately and safely (mens legis) the spirit and purpose of law as well.

16. Legislative intention is the paramount criterion in statutory interpretation.

17. Ex-facie repugnancy of impugned legislation with latter one otherwise requires a combined meaning of the enactment and if same is inconsistent with the scheme of law then the interpretative criteria may require some other meaning to be treated as the legal meaning of the enactment (said juristic approach is exposed in Bennion on Statutory Interpretation written by Jurist, Francis Bennion).

18. In connection with the instant case, functional construction rule also provides aid for practical purpose (which



requires a strained construction to be given to the enactment).

Interpretation of Laws is also recognised in Islamic concept. In a dialogue between the **Prophet Muhammad (P.B.U.H)** and Muadh bin Jabal a judge on his way to Yemen denotes the principles of interpretation:-

Prophet; How will you decide a problem?

Muadh: According to Quran

Prophet; If it is not in it?

Muadh: According to Sunnah

Prophet; If it is not in that either?

Muadh: Then I will use my own reasoning

19. Statutes are often prepared unscientifically<sup>1</sup>, the limitation of language and human foresight makes it impossible for the legislator, however, specifically to cover every eventuality, but it is function of the Judge to cooperate with the legislature in providing through interpretation a systematic treatment of the whole field of legal relationship.

20. The work of interpretation in one sense is enduring and in another sense ephemeral, what is good in it endures, what is erroneous is pretty sure to perish, the good remains the foundation in which new structures will be built the bad will be rejected and cast off in the laboratory of the years.<sup>2</sup>

<sup>1</sup> Interpretation of statutes by Vepa P. Sarathi.

<sup>2</sup> The nature of the Judicial process By Benjimin N Cardozo

21. Saga of the statutory interpretation in its historical background is spread over centuries. In this connection reliance is placed on Rules of interpretation given in Jaimini's "Mimamsa" (A book written in 500 BC).

As per SM Zaffar renowned Jurist and Scholar modern rules are amazingly the reminiscent of these rules.

22. Mimamsa, dealt with the rules of interpretation of Vedas and the law of Smritis, one of axiomatic rules from mimamsa Sarthakya; i.e. every word should have a purposeful meaning, another rule is Anarthakya; i.e an interpretation which makes a word or phrase meaningless, should be avoided<sup>3</sup>.

Prevailing famous techniques/tools or approaches<sup>4</sup> are known as Literal rule. Mischief Rule and golden rule beside other ancillary or likewise techniques having nexus with said approaches.

Introductory glimpse of the Rules are articulated as under:-

#### Literal rule

Courts of law are bound to interpret a statutory provision as it is and not as it should be. If the language is plain and unambiguous, it can not ignored and must be adhered to.

#### Mischief Rule

Crux of mischief rules is that it proceeds on the presumption that the Parliament (law-making organ of the State) is taken to do nothing without a

<sup>3</sup> Interpretation of Statutes by Vepa. P. Sarathi.

<sup>4</sup> Legislative drafting. A new approach by Sir William Dale.

reasons, meaning thereby there must be reason for passing an Act and an enactment within.

### Golden Rule

The golden rule provides that if there is nothing absurd in the statute etc you can rely on connotation of the crucial words. Mythology of canons of construction rests upon rationale to discern the legislative intention enunciated in the words. In this connection all the rules/techniques and tools of interpretation are not available in a static manner rather they are dynamic and vary from time to time.

23. The Orthodox view of the judicial function to the duty of interpretation of an enactment is search for the intention of the legislature from the words used, this absurd view is often rendered plausible by saying; the Judge is not to discover actually what the legislature intended as contra distinguished from what its words express, but what is the meaning of the word it used. There is a lot of dialectical skill shown by the protagonists of this theory in piloting the argument to its pompous and fussy formulation to illustrate which accusation, perhaps, it is necessary to recall the following defence of the last ditches.

24. Professor Gray while dilating upon the subject wrote "Difficulties of so called interpretation arise when the legislature has had no meaning at all when the question which is raised on the statute never occurred to it, when what the Judges have to do is not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended

on a point not presented to its mind if the point had been present”<sup>5</sup>.

25. In the case of representation of people at lowest level i.e local bodies level, neither any sort of legislation is assigned to the representatives of the said bodies nor they have to do any sort of recommendations of law making, what they have to do is to endeavor qua developments at local level by introducing proposal for local projects sanitation and other such like ancillary matters. Therefore, comparing the election of local bodies with that of higher fora has no nexus with constitutionally guaranteed fundamental rights, hence, equivalence brought and portrayed by the legislature qua highest fora and the fora of lowest ebb (local bodies) is not justifiable in the eye of law and militates against the constitutionally fundamental guaranteed rights especially right No.1 and right No.15, therefore, a large number from youth cannot be deprived to contest the local bodies elections on the basis of irrational condition having no rational nexus with Constitution and the law. Every piece of legislation/law or for that matter any provision of law which ex-facie runs counter to the constitutionally fundamental guaranteed rights is not sustainable and is simply liable to be ignored. Reliance in this regard is placed on the case law titled Shahid Pervaiz v. Ejaz Ahmad and others reported as [2017 SCMR 206] wherein it was held, i.e :-

<sup>5</sup> Fundamental law of Pakistan by A-K-Brohi.



“112. Undoubtedly, the legislature enjoys much leeway and competence in matters of legislation, but every law enacted may not necessarily be tenable on the touchstone of the Constitution. It is the sole jurisdiction of this Court, under the law and the constitution to look into the fairness and constitutionality of any enactment and even declare it non est, if it is found to be in conflict with the provisions of the Constitution. Thus, legislative competence is not enough to make a valid law; a law must pass the test at the touchstone of constitutionality to be enforceable, failing which it becomes invalid and unenforceable.”

26        Casus Omissus – i.e. case omitted, a point omitted in no case, be supplied by the Court of law as that would amount to altering the provision a Court of law is not entitled to read words into the Constitution or an Act of Parliament unless clear reason is found within the four corners of either of them<sup>6</sup>.

27.        It is for the legislature to resolve a casus omissus in a statute by suitable amendment and not for the court to remedy the defect<sup>7</sup>.

28.        If there is an accidental omission in a statute and the intention of the worthy legislature can be clearly called from the

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<sup>6</sup> PLD 2013 SC 279.

<sup>7</sup> AIR 1943 Lah. 48.

PLD 1966 Dacca 117.

word of statute, the omission can be supplied by the Court to serve the purpose of law<sup>8</sup>.

29. Court can supply an obvious omission in a particular provision of statute or omit the same which is apparently redundant in the context of the provision keeping in view of the principle that to advance object of the Act and not to frustrate the same<sup>9</sup>.

30. Doctrine of casus omissus will come into play where any statutory defect is liable to cure while doctrine of reading in provides aid and is available where constitutional defect is requiring repairment through this technique.

The Hon'ble Supreme Court of Pakistan by making distinction between the doctrine of reading in and doctrine of casus omissus held in the case titled "AAm Log Party Vs. The Election Commission of Pakistan" **PLD 2022 SCR 39** as infra:-

"The distinction between the constitutional remedy on the same hand and the supplying of a casus omissus in a Statute on the other is clear and principled."

31. Thus, it is clear enough that technique of reading in is available to cure constitutional defect while the doctrine of casus omissus is helpful where defect is oozing from a peace of legislation requiring repairment through this interpretative approach. (underling is ours).

<sup>8</sup> PLD 1972 Lah. 374.

<sup>9</sup> PLD 2009 SC 809.

32. There are several guiding principles laid down by the superior courts qua supplying an omission such as one interpretation in possible construction should be preferred which carries into effect the object of the statute. It is settled principle of law that Court can supply an obvious omission in a particular provision of statutes or omit the same which is apparently redundant in the context of the provision keeping in view to advance object of the Act and not to frustrate the same<sup>10</sup>. Thus, the above rule of canon of interpretation is also helpful to some extent in the case in hand.

#### **SQUEEZED ANALYSIS:-**

33. **Ratio est radius divine luminis** i.e. reason is the ray of divine right. Saga of the chronological facts narrated above makes it crystal clear that law recognizes such person as a voter who attains the age of eighteen years meaning thereby that he/she is qualified to elect his/her representative as per his/her choice and sweet will but simultaneously he/she is disqualified to contest election of local bodies until he/she attains the age of twenty five years (which is a marked difference of seven years). Suchlike barrier even is not convincing enough for a prudent mind to accept this analogy as to how a person can be put out of arena to contest election of local bodies without exhibiting any rationale in this regard, thus, although in logical and rational parlance, age of

<sup>10</sup> PLD 2009 SC 809 Shah Hussain Vs. The State.

eighteen years itself is sufficient equally for the purpose of contesting election of local bodies on the yardstick of constitutionally fundamental guaranteed rights i.e. **Articles 4.4.1** and **4.4.15** of the AJ&K Interim Constitution, 1974, but it is up to the worthy Legislature to expose its wisdom and to bring it in consonance with the constitutional guarantees, however, age of twenty-one years as unanimously prescribed by all the four provinces of Pakistan seems plausible in this regard at local bodies level. To declass a person/voter randomly in the guise of age is not a reasonable classification as no legislation or specific expertise is rationally required in this regard. Schedule 2 part II entry No.3 of the Azad Jammu and Kashmir Local Government Act, 1990 which has been inserted through Azad Jammu and Kashmir Local Government (Amendment) Act, 2021 is severable from the rest of the Act. Thus the impugned provision in parlance of the scheme of Constitution cannot stand ex-proprio vigore and lacking the ratio legis (the reason or purpose of making a law).

34. Therefore, the impugned amendment made in the second schedule **Part-II entry No.03 of The Azad Jammu and Kashmir Local Government Act, 1990 vide Azad Jammu & Kashmir Local Government (Amendment) Act, 2021 (Act XXVII of 2021 )** to the extent of age limit as 25 years for contesting elections of local bodies is sent in the state of hibernation on the yardstick of age



limit of 21 years prescribed unanimously in the enactments of four provinces of Pakistan and by gathering the wisdom of other countries in this regard, 21 years age for the purpose of contesting elections of local bodies is hereby supposed accordingly. However, the worthy legislature (a highly esteemed organ of the State) has the prerogative to legislate upon any subject as per doctrine of trias politica i.e. trichotomy of powers, hence, the impugned legislation is liable to be sent in hibernation.

The instant constitutional petition is accepted in the above stated manner.

Muzaffarabad,  
14.12.2022.

-sd-

**JUDGE**  
(H)

-sd-

**JUDGE**  
(A)

-sd-

**JUDGE**  
(S)

**Approved for reporting**