

**HIGH COURT OF AZAD JAMMU & KASHMIR**

Raja Farooq Haider Khan  
Vs.  
Chaudhary Anwar-ul-Haq and others

**PRESENT:**

Raja Ayaz Ahmed, Advocate alongwith petitioner Raja Farooq Haider Khan, in person.

Sheikh Masood Iqbal, Advocate General for the State of Azad Jammu & Kashmir.

Raja Muhammad Saeed Khan and Haider Rasheed Mughal, A.A.G for Azad Govt.

Sheikh Attique-ur-Rehman and Muhammad Asad Khan, Advocates for respondent No.1.

Ansar Khan Tahir, Legal Advisor for Law Department.

**ORDER:**                    *(Justice Syed Shahid Bahar, J.):-*

Before the Azad Jammu and Kashmir (AJ&K) High Court, petitioner, Mr. Raja Muhammad Farooq Haider Khan, a former Prime Minister of the AJ&K, twice vested with that exalted trust and a top-brass figure of political echelon, now calls into question the claim to premiership of Mr. Chaudhary Anwar-ul-Haq, the incumbent Prime Minister of the AJ&K since April 20, 2023, through this constitutional writ of Quo-Warranto, demanding to know by what authority the latter is holding the most coveted office of the executive organ of the State. Petition was filed on 09.10.2024 which was placed before the present Division Bench (DB) on 16.04.2025. Parawise comments were filed on 17.04.2025.

2. At the outset, the petition at hand was filed on 09.10.2024 after lapse of 2 years of election of the incumbent

Premier approximately, although there is no estoppel against law<sup>1</sup> & warrant of the Court can be asked for against occupier of the position/ public office, but, conduct of petitioner is one of the relevant factors, thus the petitioner has to cross the barrier of laches as well<sup>2</sup>. Doctrine of laches can come into play, coupled with other aspects, particularly acquiescence. We have to glean wisdom from the ratio decidendi of the Honorable Supreme Court of AJ&K. Seeking countermand of the election of the sitting Premier is an extraordinary relief, thus in that sense requires qualitative proof & clean handed approach. Relevant doctrine of law will activate for and against as well.

3. To say, writ of quo warranto is issued in a case to determine the right of a person holding an office, directing him to disclose under what authority of law he is holding that office<sup>3</sup>, purpose of writ of quo warranto is to ensure that a public office is occupied by an authorized person and not by that person who usurped the office.<sup>4</sup> Trite that proceedings of writ of Quo-Warranto are not strictly adversarial in nature, such proceedings are inquisitorial and anybody can come forward by saying that occupation of public office is contra-jus. But the grant of relief in writ jurisdiction is a matter of ‘discretion’ even in case of Quo-

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<sup>1</sup>. The Jumma Masjid, Mercara v. Kodimaniandra Deviah (AIR 1962 SC 584) and Zarai Taraqati Bank Limited v. Said Rehman (2013 SCMR 642).

<sup>2</sup>. Syed Manzoor Hussain Gillani v. Sain Mullah, Advocate (PLD 1993 SC AJK 12) and Muhammad Tahir v. Chairman Board of Governors (2022 MLD 1294).

<sup>3</sup>. Article 44 (2)(b)(ii) of the AJ&K Interim Constitution, 1974, and Ghulam Mustafa Mughal, President Central Bar Association, Muzaffarabad v. Azad Government (1993 SCR 131).

<sup>4</sup>. Jawad Ahmad Mir v. Prof. Dr. Imtiaz Ali Khan, Vice-Chancellor, University of Swabi, District Swabi, KPK [2023 PLC (C.S) 813].

Warranto and this Court can test the bonafide of the relator to see if he has come with clean hands or not. A writ of Quo-Warranto, in particular, is not to issue as a matter of course on sheer technicalities let alone on a doctrinaire approach.<sup>5</sup>

4. Be that as it may, in a writ of Quo-Warranto, petitioner is regarded merely as a ‘whistle blower’ against usurpation of a public office.<sup>6</sup> Power of judicial review becomes duplex, when a matter is brought before the Court regarding adherence of the constitutional provisions. Guiding principles in this regard have been chalked out in the plethora of pronouncements by the Honorable Supreme Court. Surveillance of the administrative acts and business by an organ of the State in view of adherence of the Constitutional commandment is burdened duty of this Court<sup>7</sup>, seemingly, the whole truth is being obfuscated; everyone has his own right & wrong.<sup>8</sup> Petitioner when confronted on the point that how he can question the proceedings when he himself became instrumental in the election of Premier at prefatory stage, he could not satisfy the Court in this regard so far, while on the other hand, the answering respondent (for whom it was a serendipity) could not bring clarity as well.

5. When acts disparaging the command of the Constitution are under judicial review, the High Court always

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<sup>5</sup>. Dr. Kamal Hussain v. Muhammad Sirajul Islam (PLD 1969 SC 42).

<sup>6</sup>. Barrister Sardar Muhammad v. Federation of Pakistan (PLD 2013 Lahore 343).

<sup>7</sup>. Syed Mumtaz Hussain Naqvi v. Raja Muhammad Farooq Haider Khan (2014 SCR 43).

<sup>8</sup>. “There are no facts, only interpretations”, this is what the German philosopher Friedrich Nietzsche said and sometimes referred ‘perspectivism’. The Portable Nietzsche (1954)@ p. 458, translated by Walter Kaufmann.

remains slow to adopt a doctrinaire or technical approach, but simultaneously guiding principles/ ratio decidendi of the Apex Court are liable to be followed as a beacon of light.

6. At the threshold of the controversy lies a pivotal question going to the roots of the case that in view of Article 29(7) of the AJ&K Interim Constitution, 1974, the office of the Speaker or Deputy Speaker is deemed to be 'vacant' only in 2 eventualities i.e. either he ceases to be a member of the Assembly or he is removed from office by way of resolution of the Assembly. Except *ibid*, no other eventuality is provided to hold the office of the Speaker as 'vacant', thus what is the cumulative effect and aftermath of Article 29(7) read with Article 29(6), wherein concept of 'resignation' from the office of the Speaker is evinced coupled with having a juxtapose glance/analysis of the corresponding Articles of the Constitutions of Pakistan i.e. Article 53(7) and India i.e. Article 94. It is abundantly clear from bare reading of Article 29(7) of the AJ&K Interim Constitution, 1974 that the Legislature has avoided to insert the eventuality of 'resignation' in Article 29(7) which is specifically provided in both the corresponding articles of the Constitutions of Pakistan i.e. Article 53(7) and India i.e. Article 94. Celebrated canon of construction of the constitutional provisions is to read the Articles of the Constitution in a way to harmonize all other sister provisions of

the Constitution<sup>9</sup> in order to explore and reach the wisdom of the Constitution.

(Emphasis supplied)

7. Petition at hand is **admitted** for regular hearing in order to resolve the following law points:

- I. Can the High Court, in its constitutional jurisdiction, intervene in matters that fall squarely within the “internal proceedings” relating to the proper business of the House in view of the express bar engrafted in Article 34(1) and Article 34(4) of the AJ&K Interim Constitution, 1974?
- II. In such a situation, is there any alternate remedy available i.e. to bring a motion of no confidence, considering whether the remedy provided in Article 44 of the AJ&K Interim Constitution, 1974, is adequate and efficacious?
- III. Considering Articles 29(1), 29(4) and 13(2), was the business of the House regarding the election of the Premier conducted constitutionally? And is a dual/two-fold manner of conducting business of the House permissible under the AJ&K Interim Constitution, 1974?
- IV. Considering the stipulation within Article 29(7) of the AJ&K Interim Constitution, 1974, that a

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<sup>9</sup>. Jamal Din v. Haji Muhammad Aslam (PLD 1965 Lahore 503).

Speaker's resignation does not, ipso facto, render the office "vacant" as discussed in para No.6 supra, might a legal fiction be invoked to deem the resigning Speaker as 'continuing in office' until the formal election of his successor?

- V. Was the Assembly "in session" on the eve of the former Premier's ouster<sup>10</sup> on April 11, 2023, as per Article 17(2) of the AJ&K Interim Constitution, 1974, such that the election of a new Prime Minister could proceed "forthwith" in view of Article 17(2) *ibid*? And if the Assembly was not "in session", did the President summon the Assembly within 14 days as mandated under Article 17(2) *ibid* in order to elect a new Prime Minister? and
- VI. Whether a constitutional petition in a High Court can be filed after delay of 3 months sans furnishing reasonable explanation for condonation of delay, and in case of affirmation, won't the ratio decidendi of the Honorable Supreme Court handed down in Syed Altaf Hussain Bukhari v. Zeeshan Shaukat (2022 SCR 1088) be flouted which is binding on everyone throughout AJ&K in view of Article 42-B of the AJ&K Interim Constitution, 1974 ?

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<sup>10</sup>. Mr. Sardar Tanvir Ilyas Khan, former Prime Minister of AJ&K, was ousted from his position on April 11, 2023, by a court order in Robkar Adalat v. Tanvir Ilyas (PLD 2023 HC AJK 75).

8. In a writ of Quo-Warranto, generally the office holder is asked to explain by what authority of law he is holding the said office, and the authority is also questioned that by what authority of law the person holding the public office is appointed (in the instant case, elected). The election of the Premier is challenged in the instant petition, even though the incumbent enjoys the support of 48 out of 53 Members of the Legislative Assembly (MLAs'). Therefore, by adhering to the constitutional guarantee incorporated in Article 4 (4) (19) qua 'right to fair trial', all the Voters/Members of the Legislative Assembly (MLAs') are arrayed as "Necessary party" in the line of respondents, except petitioner. Office is directed to obtain list of all the MLAs' who voted in favour of the respondent-office holder and insert their names in the line of real-respondents, except petitioner. Notices be issued to the newly added respondents as well in order to enable them to furnish their respective versions on record.

9. Therefore, in light of the above formulated law points, respondents are directed to file written statement, affidavit and other documents, if any, on or before next date of hearing. To come up for the purpose on 05.06.2025.

**Admitted for regular hearing.**

Muzaffarabad,  
05.05.2025.

**JUDGE**

**JUDGE**

**Approved for Reporting**

**JUDGE**

**JUDGE**