

HIGH COURT OF AZAD JAMMU & KASHMIR

*Writ Petition No.2023/2023;*  
*Date of Institution 31.05.2023;*  
*Date of Decision 19.02.2025.*

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1. Sardar Javaid Sharif S/O Muhammad Sharif Khan, Chairman District Council Poonch R/O Village Kayyat Kalan Pakgali, Tehsil Rawalakot, District Poonch, Azad Jammu & Kashmir;
2. Kh. Javaid Iqbal Dar S/O Kh. Abdul Ghani Dar, Chairman District Council Haveli Kahuta R/O Tehsil Khurshidabad, District Haveli Kahuta, Azad Jammu & Kashmir;
3. Syed Sikander Gillani S/O Syed Nisar Hassan Gillani, Mayor Municipal Corporation Muzaffarabad, R/O Ward No.1 Ambore, Tehsil & District Muzaffarabad, Azad Jammu & Kashmir;
4. Maj (R) Abdul Qayyum Baig S/O Sardar Muhammad Akram Khan, Mayor Municipal Corporation Bagh, Tehsil & District Bagh, Azad Jammu & Kashmir;
5. Sardar Tariq Masood Advocate, Member District Council Bagh R/O Tehsil & District Bagh, Azad Jammu & Kashmir;
6. Muhammad Rizwan Yasin Chaudhary S/O Ch. Muhammad Yasin Gulshan, Member District Council Poonch, R/O Village Teengran, Tehsil Abaspur, District Poonch, Azad Jammu & Kashmir;
7. Arslan Nisar S/O Sardar Muhammad Nisar Khan, Member District Council Sudhanoti, R/O Tehsil & District Sudhanoti, Azad Jammu & Kashmir;
8. Abdul Rahim S/O Abdul Karim, Member District Council Kotli, R/O Village Tatapani, Tehsil & District Kotli, Azad Jammu & Kashmir;
9. Banaras Sheharyar Azam S/O Ch. Muhammad Azam, Member District Council Mirpur, R/O Village Afzalpur, Tehsil & District Mirpur, Azad Jammu & Kashmir;

10. Asad Arshad Mughal S/O Muhammad Arshad Mughal, Member District Council Hattian Bala, R/O Village Goharabad, Tehsil & District Hattian Bala, Azad Jammu & Kashmir;
11. Shahid Mehmood S/O Sakhi Muhammad, Member District Council Sudhanoti, R/O Village Palandripora, Tehsil Pallandri, District Sudhanoti, Azad Jammu & Kashmir;
12. Asghar Hussain Khan S/O Muhammad Farooq Khan, Member District Council Sudhanoti, R/O Village Nakkhar Jhandabagla, Tehsil Palandri, District Sudhanoti, Azad Jammu & Kashmir;
13. Ch. Abrar-ul-Haq S/O Ch. Fazl-ul Haq, Member District Council Bhimber, R/O Village Pindi, Tehsil & District Bhimber, Azad Jammu & Kashmir;
14. Waqas Tufail S/O Muhammad Tufail, Member District Council Kotli. R/O Village Kot, Tehsil Fatehpur Thakyaala & District Kotli, Azad Jammu & Kashmir;
15. Raja Iftikhar Khan S/O Raja Muqarrab Khan, Member District Council Neelum, R/O Tehsil Athmuqam & District Neelum, Azad Jammu & Kashmir;
16. Siddique Baig S/O Maroof Baig, Member District Council Neelum, No. 6, Tehsil Athmuqam & District Neelum, Azad Jammu & Kashmir;
17. Raja Madad Ali Khan, Member District Council, Muzaffarabad;
18. Ch. Javaid Iqbal, Member District Council, Muzaffarabad;
19. Mir Iftikhar Ahmed, Member District Council, Muzaffarabad;
20. Mir Muhammad Naseer Gillani, Member District Council, Muzaffarabad;
21. Mir Adil Hussain, Member District Council, Muzaffarabad;
22. Dr. Sumera Rashid, Member District Council, Muzaffarabad;
23. Ch. Abdul Naem, Member District Council,

Muzaffarabad.

24. Kh. Imtiaz Ahmed, Member District Council, Muzaffarabad.
25. Umer Ali S/O Ali Muhammad Abbasi, Councillor Ward No. 9, Municipal Corporation, Muzaffarabad.
26. Umair Kayani S/O Gohar-ur-Rehman, Councillor Ward No. 30, Municipal Corporation, Muzaffarabad.
27. Adil Irfan Qureshi S/O Muhammad Irfan Qureshi, Councillor Ward No. 33, Municipal Corporation, Muzaffarabad;
28. Anjum Zaman S/O Gul Zaman, Councillor Ward No. 3, Municipal Corporation, Muzaffarabad.

*Petitioners*

*VERSUS*

1. Government of Azad Jammu & Kashmir through Secretary Department of Local Government & Rural Development having its office at New Secretariat. Muzaffarabad, Azad Kashmir;
2. Prime Minister of Azad Jammu and Kashmir through his Principal Secretary, having its office at New Secretariat, Muzaffarabad, Azad Kashmir;
3. Department of Local Government & Rural Development, Government of Azad Jammu & Kashmir through its Secretary, having its office at New Secretariat, Muzaffarabad, Azad Kashmir;
4. Local Government Board through its Secretary, Department of Local Government & Rural Development, Government of Azad Jammu & Kashmir Upper Chatter, Muzaffarabad, Azad Kashmir;

*Real-Respondents*

5. Legislative Assembly of Azad State of Jammu & Kashmir through its Speaker, Muzaffarabad, Azad Kashmir;

6. Ch. Anwar-ul-Haq, LA-VII Bhimber-III, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
7. Riaz Ahmed, LA-XXXIV Jammu & others-I, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
8. Ch. Latif Akbar, LA-XXXI Muzaffarabad-V, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
9. Sardar Abdul Qayyum Khan Nayazi, LA-XVIII Sudhnoti & Poonch-1 Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
10. Azhar Sadiq, LA-I Mirpur-I, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
11. Chaudhry Qasim Majeed ,LA-11 Mirpur-11, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
12. Yasir Sultan Ch., LA-III Mirpur-III, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
13. Ch. Arshad Hussain, LA-IV Mirpur-IV, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
14. Waqar Ahmed Noor, LA-V Bhimber-I, Member Legislative Assembly of AJ&K. Legislative Assembly Muzaffarabad, AJ&K;
15. Ali Shan Chaudhry, LA-VI Bhimber-II, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
16. Zaffar Iqbal Malik, LA-VIII Kotli-I, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
17. Ch. Javaid Iqbal Badhanvi, LA-IX Kotli-II, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
18. Choudhary Muhammad Yasin, LA-X Kotli-III, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
19. Ch. Muhammad Ikhlaq, LA-XI Kotli-IV, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;

20. Amir Yasin Choudhary, LA-XII Kotli-V, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
21. Nisar Ansar, LA-XIII Kotli-VI, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
22. Sardar Attique Ahmed Khan, LA-XIV Bagh-I, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
23. Sardar Mir Akbar Khan LA-XVI Bagh-III, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
24. Raja Faisal Mumtaz Rathore, LA-XVII Bagh-IV, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
25. Sardar Amir Altaf, LA-XIX Sudhnoti & Poonch-II, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
26. Sardar Muhammad Yaqoob Khan, LA-XX Sudhnoti & Poonch-III, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
27. Sardar Hassan Ibrahim, LA-XXI Sudhnoti & Poonch-IV, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
28. Shahida Saghir, LA-XXII Sudhnoti & Poonch-V, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
29. Sardar Muhammad Hussain, LA XXIII Sudhnoti & Poonch-VI, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
30. Faheem Akhter, LA XXIV Sudhnoti & Poonch-VII, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
31. Shah Ghulam Qadir, LA XXV Neelum-1 Member, Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;

32. Abdul Waheed, LA XXVI Neelum-11, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
33. Sardar Muhammad Javaid, LA XXVII Muzaffarabad-1, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
34. Syed Bazal Ali Naqvi, LA XXVIII Muzaffarabad-II, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
35. Kh. Farooq Ahmed, LA-XXIX Muzaffarabad-III, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
36. Muhammad Rasheed, LA-XXX Muzaffarabad-IV, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
37. Raja Muhammad Farooq Haider Khan, LA-XXXI Muzaffarabad-VI, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
38. Deewan Ali Khan, LA-XXXIII Muzaffarabad-VII, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
39. Maqbool Ahmed, LA-XXXV Jammu & Others -II, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
40. Hafiz Hamid Raza, LA-XXXVI Jammu & Others -III, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
41. Muhammad Akmal Sargala, LA-XXXVII Jammu & Others-IV, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
42. Muhammad Akbar Chaudhry, LA-XXXVIII Jammu & Others -V, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
43. Raja Muhammad Siddique, LA-XXXIX Jammu & others-VI, Member Legislative

- Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
44. Amir Abdul Ghaffar Lone, LA-XL Kashmir Valley-I, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  45. Ghulam Mohi-ud-Din Deewan, LA-XLI Kashmir Valley-II, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  46. Muhammad Asim Sharif, LA-XLII Kashmir Valley-III, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  47. Javaid Butt, LA-XLIII Kashmir Valley-IV, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  48. Muhammad Ahmed Raza Qadri, LA-XLIV Kashmir Valley-V, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  49. Abdul Majid Khan, LA-XLV Kashmir Valley-VI, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  50. Imtiaz Nasim, Women Special Seat, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  51. Sabiha Saddique Ch., Women Special Seat, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  52. Kausar Taqdees Gillani, Women Special Seat, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  53. Nabeela Ayoub Khan, Women Special Seat, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  54. Nisaran Abbasi, Women Special Seat, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
  55. Muhammad Mazhir Saeed, Ulema-e-Din Mushaikh, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;

56. Muhammad Iqbal, Jammu & Kashmir State Subjects residing Abroad, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K;
57. Muhammad Rafique Nayyar, Technocrats & other professional, Member Legislative Assembly of AJ&K, Legislative Assembly Muzaffarabad, AJ&K.

*Proforma-Respondents*

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- (2) *Writ Petition No.2036/2023;*  
*Date of Institution 03.06.2023;*

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1. Raja Faheem Farooq S/o Raja Muhammad Farooq Khan R/o Rangla, Vice Chairman District Council Bagh, Azad Jammu & Kashmir;
2. Major (Rtd.) Muhammad Latif Khalique S/o Muhammad Ashraf Khan R/o Narrakot Tehsil Dhirkot, Member District Council Bagh, Azad Jammu & Kashmir;
3. Javed Arif Abbasi S/o Arif Khan R/o Chirala Tehsil Dhirkot, Member District Council Bagh, Azad Jammu & Kashmir;
4. Raja Mehmood Ahmed Khan S/o Raja Muhammad Azad Khan R/o Ringoli, Member District Council Bagh, Azad Jammu & Kashmir;
5. Raja Sohrab Ahmed Khan S/o Raja Mushtaq Ahmed Khan R/o village Chalandrat Tehsil Dhirkot, Member District Council Bagh, Azad Jammu & Kashmir;
6. Muhammad Abdul Nasir Khan Abbasi S/o Muhammad Arif Khan Abbasi R/o Mandri Sharqi Tehsil Dhirkot, Member District Council Bagh, Azad Jammu & Kashmir;
7. Raja Muhammad Zahoor Khan S/o Haji Muhammad Afzal Khan R/o Narwal



- Dhirkot, Chairman Town Committee  
Dhirkot, District Bagh, Azad Jammu & Kashmir;
8. Hadayatullah Khan S/o Imam Din, Chairman Union Council Kotli-Ringoli, Azad Jammu & Kashmir;
  9. Muhammad Mumtaz Khan S/o Muhammad Gulzar Khan R/o Ringoli Tehsil Dhirkot, Vice Chairman Union Council Kotli- Ringoli, District Bagh, Azad Jammu & Kashmir;
  10. Muhammad Munir Khan S/o Muhammad Younis Khan R/o Dhana Tehsil Dhirkot Chairman Union Council Kalas Sessar, District Bagh, Azad Jammu & Kashmir.
  11. Adil Shamim S/o Shamim Ahmed Abbasi R/o Chirala Sessar Tehsil Dhirkot, Member Union Council Kalas Sessar District Bagh, Azad Jammu & Kashmir;
  12. Abdul Rehman Khan S/o AU Afsar Khan R/o Chamankot Tehsil Dhirkot Vice Chairman Union Council Hill Surang District Bagh, Azad Jammu & Kashmir;
  13. Ishtiaq Abbasi Member Union Council Chirra District Bagh, Azad Jammu & Kashmir;
  14. Adnan Iqbal S/o Muhammad Iqbal Khan, Youth Councillor Union Council Maloot, District Bagh, Azad Jammu & Kashmir;
  15. Mehmood Ahmed Khan S/o Muhammad Ismail Khan R/o Mandgri Channat Tehsil Dhirkot, Vice Chairman Union Council Maloot District Bagh, Azad Jammu & Kashmir;
  16. Muhammad Nashat Ahmed Khan S/o Muhammad Aslam Khan R/o village Channat Tehsil Dhirkot, Kissan Councillor Union Council Maloot District Bagh, Azad Jammu & Kashmir;
  17. Raja Faisal Hayat Khan S/o Raja Muhammad Sikandar Hayat Khan R/o Kotli Janoobi Tehsil Dhirkot, Member Town Committee Dhirkot, District Bagh, Azad Jammu & Kashmir;

18. Muhammad Sagheer Khan S/o Fateh Ahmed Khan R/o Chalandrat Tehsil Dhirkot, Local Council, Union Council Maloot District Bagh, Azad Jammu & Kashmir;
19. Muhammad Nasir Khan S/o Saraj Din Khan R/o village Mallot Tehsil Dhirkot, Chairman Union Council Mallot District Bagh, Azad Jammu & Kashmir;
20. Raja Abdul Ghafar Khan S/o Muhammad Saeed Khan R/o village Pail Tehsil Dhirkot, Local Councillor Union Council Malloot, District Bagh, Azad Jammu & Kashmir;
21. Raja Tariq Ayoub Khan S/o Raja Muhammad Ayoub Khan R/o village Kahori Kair Tehsil Dhirkot Local Councilor, Union Council Rangla District Bagh, Azad Jammu & Kashmir;
22. Jahangir Khan S/o Muhammad Yasin Khan R/o Bagla Chor Tehsil Dhirkot, Local Councilor, Union Council Mallot District Bagh, Azad Jammu & Kashmir;
23. Najeeb Ahmed Khan S/o Gul Akbar Khan R/o village Ringoli Tehsil Dhirkot Member Local Council Union Council Kotli Ringoli, District Bagh, Azad Jammu & Kashmir;
24. Muhammad Arshad Ahmed S/o Khan Muhammad Khan R/o village Narrwal, Tehsil Dhirkot, Member Local Councilor, Union Council Kotli Ringoli, District Bagh, Azad Jammu & Kashmir;
25. Saleem Nadeem S/o Raja Kala Khan R/o village Bagsar, Tehsil Dhirkot, Kissan Councilor, Union Council Kotli Ringoli District Bagh, Azad Jammu & Kashmir;
26. Aqeel Ahmed Khan Abbasi S/o Zafar Ahmed Khan Abbasi R/o Chamyati, Local Councillor Union Council Chamyati District Bagh, Azad Jammu & Kashmir;
27. Raja Imran Tariq S/o Namardar Raja Muhammad Tariq Khan R/o Dhirkot, Youth Councillor Town Committee Dhirkot District Bagh, Azad Jammu & Kashmir;
28. Shazia Zahid W/o Raja Muhammad Zahid

- Khan R/o village Kotli, Tehsil Dhirkot, Lady Councillor Union Councillor Kotli, Ringoli District Bagh, Azad Jammu & Kashmir;
29. Uzma Jaleel W/o Waqas Sarfaraz R/o Neela But, Lady Councilor, Union Council Sessor Kalas, District Bagh, Azad Jammu and Kashmir;
30. Kishwar Amin D/o Raja Muhammad Amin Khan R/o Kari Kotli, Tehsil Dhirkot Lady Councillor Town Committee Dhirkot, District Bagh, Azad Jammu & Kashmir;
31. Rabia Younis D/o Muhammad Younis Khan R/o Dhak, Lady Councillor District Council Bagh, Azad Jammu & Kashmir.

*Petitioners*

*Versus*

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Department of Local Government and Rural Development having its office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir;
2. Prime Minister of Azad Jammu and Kashmir through his Principal Secretary, having its office at New Secretariat, Muzaffarabad, Azad Jammu and Kashmir;
3. Cabinet of Azad Jammu & Kashmir through Secretary Cabinet/ Chief Secretary Azad Govt. of the State of Jammu and Kashmir having its office at New Secretariat Muzaffarabad;
4. Legislative Assembly of Azad Jammu and Kashmir through Secretary Assembly, Azad Govt. of the State of Jammu and Kashmir having its office at New Secretariat Muzaffarabad;
5. Department of Local Government and Rural Development, government of Azad Jammu and Kashmir through its Secretary, having its office at New Secretariat Muzaffarabad, Azad Jammu and Kashmir;

6. Local Government Board through its Secretary, Department of Local Government and Rural Development, Government of Azad Jammu and Kashmir Upper Chatter Muzaffarabad, Azad Jammu and Kashmir;
7. Department of Law, Justice and Parliamentary Affairs, through Secretary Law, Justice and Parliamentary Affairs, Azad Govt. of the State of Jammu and Kashmir having its office at New Secretariat Muzaffarabad;
8. Planning and Development Department through Secretary Planning and Development Azad Govt. of the State of Jammu and Kashmir having its office at New Secretariat Muzaffarabad;
9. Director General Local Government & Rural Development, Azad Govt. of the State of Jammu and Kashmir having its office at New Secretariat Muzaffarabad;
10. Accountant General Azad Govt, of the State of Jammu and Kashmir having its office at Sathra Hills Muzaffarabad.
11. Assistant Director Local Government and Rural Development District Bagh, Azad Jammu & Kashmir.
12. Project Manager Markaz Dhirkot District Bagh, Azad Jammu & Kashmir.
13. Assistant Engineer Markaz Dhirkot, District Bagh, Azad Jammu & Kashmir.
14. Manager National Bank Dhirkot District Bagh, Azad Jammu & Kashmir.
15. Azhar Sadiq, LA-1 Mirpur-I, Member Legislative Assembly of Azad Jammu and Kashmir legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
16. Chaudary Qasim Majeed, LA-II, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
17. Yasir Sultan Ch., LA.III Mirpur, III, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative

- Assembly Muzaffarabad, Azad Jammu and Kashmir.
18. Ch. Arshad Hussain LA-IV Mirpur, IV, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  19. Waqar Ahmed Noor LA-V Bhimber-I, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  20. Ali Shah Chaudhary LA-VI, Bhimber-II, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  21. Ch. Anwar-ul-Haq, LA-VII Bhimber-III, Member Legislative Assembly of AJK, Legislative Muzaffarabad, Azad Jammu and Kashmir.
  22. Zafar Iqbal Malik, LA-VIII Kotli I, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  23. Ch. Javaid Iqbal, LA-IX, Kotli II, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  24. Chaudhary Muhammad Yaseen, LA-X Kotli III, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  25. Ch. Muhammad Akhlaq, LA-XI, Kotli IV, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  26. Amir Yaseen Chaudhary, LA-XII Kotli V, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.

27. Nisar Ansar LA-XIII Kotli, IV, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
28. Sardar Attique Ahmed Khan, LA-XIV Bagh-I, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
29. Tanveer Uy as LA-XV Bagh-II Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly, Muzaffarabad, Azad Jammu and Kashmir.
30. Sardar Mir Akbar Khan, LA-XVI Bagh III, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
31. Raja Faisal Mumtaz Rathore LA-XVII Bagh-IV, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly, Muzaffarabad, Azad Jammu and Kashmir.
32. Sardar Abdul Qayyum Khan Niazi, LA-XVIII Sudhnuti-I, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly, Muzaffarabad, Azad Jammu and Kashmir.
33. Sardar Amir Altaf LA-XIX, Sudhnoti and Poonch II, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
34. Sardar Muhammad Yaqoob Khan LA-XX Sudhnoti and Poonch III, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
35. Sardar Hassan Ibrahim LA-XXI, Sudhnoti and Poonch IV, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.

36. Shahida Sagheer LA-XXII, Sudhnoti and Poonch V, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
37. Sardar Muhammad Hussain Khan LA-XXIII, Sudhnoti-VI, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly, Muzaffarabad, Azad Jammu and Kashmir.
38. Faheem Akhter LA-XXIV, Sudhnoti and Poonch VII, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
39. Shah Ghulam Qaddar LA-XXV, Neelum I, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
40. Abdul Waheed LA-XXVI Neelum-II, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
41. Sardar Muhammad Javed LA-XXVII, Muzaffarabad-I, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
42. Syed Bazal Ali Naqvi LA-XXVIII, Muzaffarabad-III, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
43. Kh. Farooq Ahmed LA-XXIX, Muzaffarabad-III, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
44. Muhammad Rasheed, LA-XXX Muzaffarabad-IV, Member Legislative Assembly of Azad Jammu and Kashmir,

- Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
45. Chaudhary Latif Akbar, LA-XXXI, Muzaffarabad-V, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  46. Raja Muhammad Farooq Haider Khan, LA-XXXH, Muzaffarabad VI, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  47. Deewan Ali Khan, LA-XXXIII Muzaffarabad, VII, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  48. Riaz Ahmed LA-XXXIV, Jammu-I, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly, Azad Jammu and Kashmir Muzaffarabad.
  49. Maqbool Ahmed LA-XXXV Jammu-II, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  50. Hafiz Hamid Raza LA-XXXVI Jammu & others, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  51. Muhammad Akmal Sargala LA-XXXVII, Jammu & others, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  52. Muhammad Akbar Ch. LA-XXXVIII, Jammu and others, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  53. Raja Muhammad Siddique, LA-XXXIX, Jammu and others, Member Legislative Assembly of Azad Jammu and Kashmir,



- Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
54. Amir Abdul Ghafoor Lone, LA-XL Kashmir Valley-I, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  55. Ghulam Mahi-ud-Din Deewan, LA-XLI, Kashmir Valley-II, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  56. Muhammad Asim Sharif LA-XLII, Kashmir Valley-III, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  57. Javaid Butt, LA-XLIII, Kashmir Valley-IV, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  58. Muhammad Ahmed Raza Qadri, LA-XLIV, Kashmir Valley-V, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  59. Abdul Majid Khan LA-XLV Kashmir Valley-VI, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  60. Imtiaz Naseem, Women Special Seat, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  61. Sabiha Siddique Ch. Women Special Seat, Member Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
  62. Kausar Taqdeess Gillani, Women Special Seat, Member Legislative Assembly of Azad Jammu and Kashmir, Muzaffarabad.

63. Nabeela Ayoub Khan, Women Special Seat, Member Legislative Assembly of Azad Jammu and Kashmir, Muzaffarabad.
64. Nisaran Abbasi, Women Special Seat, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly, AJ&K.
65. Muhammad Mazhar Saeed, Ulema-e-Din or Mushikh, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly, AJ&K.
66. Muhammad Iqbal, Jammu and Kashmir State subjects residing Aboard, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
67. Muhammad Rafique Nayyar, Technocrats and others Professional, Member Legislative Assembly of Azad Jammu and Kashmir, Legislative Assembly Muzaffarabad, Azad Jammu and Kashmir.
68. Manager Kashmir Bank, Markaz Dhirkot, District Bagh, Azad Jammu and Kashmir.
69. Public at Large.

*Respondents*

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(3) *Writ Petition No.3049/2023;*  
*Date of Institution 03.11.2023;*

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1. Abdul Majeed Mughal S/o Saifullah Mughal, Member District Councillor District Neelum R/o Kayyian Sharif District Neelum Valley, Azad Jammu & Kashmir;
2. Asad Mehmood S/o Hakim Khan, Local Councillor Bugna Union Council Salkhala District Neelum R/o Kayyian Sharif District Neelum Valley, Azad Jammu & Kashmir;
3. Muhammad Shafahat S/o Saif-ur-Rehman, Local Councillor Palari Union Council Salkhala District Neelum R/o Kayyian Sharif District Neelum Valley, AJ&K.

*Petitioners*

VERSUS

1. Azad Government of the State of Jammu & Kashmir through Secretary Local Government & Rural Development Department, having his office at new Secretariat Muzaffarabad.
2. Secretary Local Government & Rural Development Department, Azad Government of the State of Jammu & Kashmir, having his office at new Secretariat Muzaffarabad.
3. Secretary Local Government Board, having his office at Upper Chatter near State Bank Muzaffarabad.
4. Secretary Law, Justice, Parliamentary affairs & Human Rights, Azad Government of the State of Jammu & Kashmir, having his office at new Secretariat Muzaffarabad.
5. Coordination Council for Rural Development through its Chairman/ Prime Minister of Azad Jammu & Kashmir through Principal Secretary, having his office at new Secretariat Muzaffarabad.
6. Additional Chief Secretary Development, Azad Government of the State of Jammu & Kashmir, having his office at new Secretariat Muzaffarabad.
7. Director General Local Government & Rural Development Department, Azad Jammu & Kashmir, having his office at new District Complex Muzaffarabad.
8. Deputy Director Local Government & Rural Development Department District Neelum, AJ&K, having his office at District headquarter Neelum.
9. Project Manager, Local Government Rural Development Department Authmuqam/ Sharda District Neelum.
10. Mian Abdul Waheed Member Legislative Assembly constituency LA-26 Neelum-2/ Minister of Law, Justice Parliamentary Affairs & Human Rights., AJ&K, having office at New Secretariat Chatter.

*Respondents*

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

**Before:-** Justice Sardar Muhammad Ejaz Khan, J.  
Justice Chaudhary Khalid Rasheed, J.  
(Division Bench)

**PRESENT:**

M/s Barrister Humayun Nawaz Khan, Raja Sajjad Ahmed Khan and Muhammad Yaqoob Khan Mughal, Advocates for the petitioners in all petitions.

Sheikh Masood Iqbal Advocate General for official respondents No.1 to 4 in petition No.2023/23, respondents No.1 to 9 & 11 in petition No.2036/23 and respondents No.1 to 4 & 6 to 9 in petition No.3049/23.

Raja Ansar Khan Tahir Legal Advisor Law Department.

Nemo for the other respondents.

**JUDGMENT:**

**Sardar Muhammad Ejaz Khan, J.** The captioned writ petitions have been addressed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974.

2. As common questions of facts and law are involved in the cases in hand, therefore, the same were consolidated and are being decided through this single judgment.

3. The petitioners in petition No.2023 of 2023 sought the following relief:-

*“Therefore, it is most respectfully prayed that this writ petition may graciously be accepted and:*

- (a) Respondents jointly and severally be directed to implement the provisions of Local Government Act, 1990 along-with all other enabling laws by allocating and releasing the funds of developmental scheme to all the local councils of Azad Jammu & Kashmir throughout the Azad Jammu & Kashmir without any delay;*
- (b) Respondents jointly and severally be prohibited to allocate or release any development funds to Members of Legislative Assembly by declaring that the members of Legislative Assembly have no role or right under provisions of Local Government Act, 1990 or under any other law regarding funds of developmental scheme;*
- (c) Any other relief which this Court deems fit may also be granted in favour of the petitioners with costs.”*

4. Synthesized grievance as claimed by the petitioners in the captioned petition are that Local Bodies Elections were held after a long time while they contested the same in which they have been declared as successful

candidates and they are elected representatives i.e. Chairmen District Councils, Mayors of Municipal Corporations and Members of District/Local Councils and hail from all units of Azad Jammu & Kashmir. It has been stated that an executive authority of the State exercises its powers in the name of president by the Government consisting of Prime Minister and Ministers, which shall act through Prime Minister and in order to regulate the allocation and transaction of the Government business, powers are delegated to the officer and authorities subordinate to it under the relevant provisions of Constitution, supra, while in The Azad Jammu & Kashmir Rules of Business (Revised), 1985 (hereinafter referred as 'the RoB'), a list of 25 administrative departments has been given and every department has been assigned a specific business out of which one Local Government & Rural Development Department

has been figured out at serial No.15 of that list and furtherance thereof, matters relating to Government & Rural Development Department have been defined in Rule 15 of the 2<sup>nd</sup> Schedule of Rules of Business. It has further been stated that under the relevant provisions of the Constitution, the Government is under legal obligation to encourage and promote the Local Government Institutions in Azad Jammu & Kashmir. It has been averred that the local councils have been defined in the Local Government Act, 1990 (hereinafter referred as 'the Act') and under Section 6 of the Act, Ibid, every local council is a body corporate, having perpetual succession and a common seal with powers to acquire, hold and transfer property and shall by its name sue or be sued. It has been contended that under the relevant provisions of Act, supra, functions of Local Council and District Council have been defined wherein a comprehensive mechanism of public

welfare has been given whereas in such like affairs, the Member of Legislative Assembly has got no nexus with the affairs of Local Government and Rural Development Projects under relevant provisions of law rather the document namely '*Dastoor-al-Amal*', (دستور العمل) has got no legal or statutory backing and in that document, the Members of legislative Assembly have been given a role to identify the development schemes whereas in Annual Development Programme 2022-23 (ADP), 13000 projects of Local Government & Rural Development were allocated and after elections of Local Bodies, it is incumbent upon the respondents to implement all the provisions of the Act, supra, and allocate requisite funds for ADPs while entrusting the same to the elected representatives of the local bodies but they are trying to frustrate the law and Constitution by moving different unconstitutional and illegal summaries, which indicate that they are not



sincere in smooth functioning of local Government institutions and its affairs, which act of respondents is unconstitutional, illegal, void *ab-initio*, contrary to law to law and rules. It has been craved that the respondents may be directed to implement the relevant provisions of the Act, Ibid, and release the funds of local Government Development Projects to all elected representatives of local bodies and they may be restrained from allocating and transferring any funds to Members of Legislative Assembly in the interest of justice. It has been craved that the petitioners have got no alternate and efficacious remedy except to invoke the jurisdiction of this Court, hence, this writ petition.

5. As the relief sought in writ petitions No.2036/23 & 3049/2023 is of similar nature, hence, for the sake brevity, prayer clause of

petition No.2036/23 is usefully reproduced as

under:-

*“It is, therefore, very humbly prayed that by accepting this writ petition following relief may very kindly be granted:-*

- i. Set-aside the notification dated 25.01.2023 and letter dated 210.01.2023 whereby funds have been allocated in favour of MLAs and on sole discretion of Worthy Prime Minister;*
- ii. Official respondents be directed to implement the provisions of Local Government Act, 1990 and all other laws by allocating and releasing the funds of Local Government and Rural Development Department for all Local Councils for year 2022-2023 throughout in Azad Jammu & Kashmir;*
- iii. Restrain the respondents from releasing further developments funds to MLAs by declaring that MLAs have no role or any right under the Constitution and Local Government Act, 1990 or under any other law;*
- iv. Set-aside the Local Government Manual being issued without any statutory backing and against Section 92 of the Local Government Act, 1990*

*or Section 92 of the Local Government Act, 1990 or Section 82 of the Local Government Ordinance, 1979;*

- v. Respondents be directed to take all necessary measures/steps to strengthen the local bodies including establishment of Local Government Finance Commission as established in the Punjab Local Government Act, 2019;*
- vi. Any other relief which this Court deems fit may also be granted in favour of the petitioners in the interest of justice.”*

6. In petition No.3049/23, the petitioners solicited the following relief:-

*“It is, therefore, very humbly prayed that in light of above pleading an appropriate writ may kindly be issued in favour of the petitioners in the following manner:-*

- i. Respondents, jointly severally be directed to implement the provisions of Local Government Act, 1990 as amended up-to date along-with all other laws allocating and releasing the funds of Local Development Schemes to local councils throughout Azad Jammu & Kashmir without any delay;*

- ii. *That the funds allocated illegally to the respondent (MLA) under the umbrella of coordination council, decision dated 21.10.2006 read with 19.01.2017 and list of Scheme at annexure "PB" may kindly be ordered to be ceased, same may kindly be declared illegal against the law and constitution;*
- iii. *Respondents jointly and severally, be prohibited to allocate any development funds to members legislative assembly by declaring that the members legislative assembly have no role and right under the provision of Local Government Act, 1990 or under any other law regarding local development schemes;*
- iv. *Notifications dated 26.11.1996, 12.06.2007 & 30.11.2017 may kindly be declared illegal, against law, same may kindly be set aside;*
- v. *Official respondents may kindly be restrained to issue any work order against the purposed list of local schemes (Annexure "PB") issued by member legislative Assembly, constituency No.LA26 Neelum;*
- vi. *Direction may kindly be issued to official respondents to issue the funds to local bodies for the Development Scheme proposed by the local bodies, local Council, Union Council and District Council;*

*vii. Any other relief which is admissible under may also be granted in favour of petitioners in the interest of Justice.”*

7. Raja Sajjad Ahmed Khan, Advocate, for petitioners in petition No.2036/23 argued that the impugned notification dated 25.01.2023 is contrary to law and rules because the Government of Azad Jammu & Kashmir accorded approval for adjustment of funds within approved sub-sectors of the ADP pertaining to year 2022-23 of LG&RDD amounting to Rs.2800.000 million, which funds were allocated for 13000 projects of LG&RDD out of which 1880.000 million has been released while the respondents allocated this amount for different heads i.e. Special Sector Prime Minister's Directive Projects 2022-2023, Block Provision 2022-23, Union Councils 2022-23, District Councils 2022-23 & PMCIDP etc. and the Government sanctioned the funds of Development Projects of Local Government & Rural Development in favour of MLAs for which the representatives of local bodies arranged different meetings for

allocation of funds for them but on 10.05.2023, the Government issued breakup of Annual Development Programme (ADP) 2022-23 but the allocation of funds through representatives of local bodies has not been made rather the respondents are under legal obligation to act upon within the dimensions and parameters defined by the relevant provisions of the Act, supra, but they failed to do so. The learned counsel contended that the respondents allocated more than 50.00 million for respondent No.28 who is MLA, LA-XIV Bagh-I out of which 20.00 million has been released rather the local representatives have been deprived off from their legal rights, hence, they may be restrained from doing that. The learned counsel maintained that under the relevant provisions of the Constitution, Ibid, and The AJ&K Local Government Act, 1990, the Government has no powers to grant funds of Local Government & Rural Development to MLAs while the applicability of the AJ&K Local Government Act, supra, is within the territorial limits of Azad Jammu & Kashmir but the

official respondents allocated funds for MLAs refugees settled in Pakistan, which is sheer violation of law, hence, act done and prevalent practice of the respondents may be declared as unconstitutional and contrary to Act, and rules. The learned counsel pressed into service that the Government carries on its business pertaining to allocation of funds and identification of schemes in the light of Local Government Manual (دستور العمل) wherein procedure pertaining to identification of development projects, constitution of project committees etc. has been defined, which has got no statutory backing, however, for the sake of arguments, if it is assumed that the same has legal backing even then no any development project has been initiated on the instigation or proposal of local population, members of local Councils, District Councils and non-Governmental Organizations. The learned counsel emphasized that the Local Government Manual (دستور العمل), notification dated 25.01.2023 & letter dated 10.05.2023 having no statutory backing may be *set-aside*

while directing the respondents to implement the provisions of Azad Jammu & Kashmir Local Government Act, 1990 and releasing funds of local Government and Rural Development projects to representatives of local bodies and no further development funds may be released to MLAs. The learned counsel craved that writ petition may be accepted in the interest of justice.

8. Barrister Humayun Nawaz Khan, the learned counsel for the petitioners in petition No.2023/23, more or less, reiterated the grounds of writ petition, which have sufficiently been incorporated in pre-paras and strongly argued that the official respondents have failed to implement the relevant provisions of The Azad Jammu & Kashmir Local Government Act, 1990 coupled with the other enabling laws rather they are legally bound to allocate and release the funds of development schemes to all the Local Councils of Azad Jammu & Kashmir but they failed to do so, hence, they may be directed to implement the relevant provisions of



Constitution and Act in letter and spirit. The learned counsel drew the attention of the Court towards the relevant provisions of the Constitution, Rules of Business and The AJ&K Local Government Act, supra, and also defined its application in present scenario with convincing arguments. The learned counsel maintained that no any provision of The Azad Jammu & Kashmir Local Government Act, 1990 empowers to Member Legislative Assembly (MLA) to allocate and identify Local Government & Rural Development Projects rather matters relating to Local Government & Rural Development have been defined in Rule 15 of the Rules of Business, Ibid while functions of Local and District Councils have been defined in third, fourth and fifth Schedules of the Act, supra. The learned counsel craved that Local Government Manual (دستور العمل) has got no statutory backing while MLAs have got no role or right under the prevailing law of the land, hence, the respondents may be directed to implement the law holding the field in letter and spirit, as

such, they may be restrained from allocating or releasing any development fund to MLAs falling within the ambit of the Act, Ibid to meet the ends of justice.

9. Muhammad Yaqoob Khan Mughal, the learned counsel for the petitioners in petition No.3049/23 wholly owned the arguments advanced by the learned counsel for the petitioners in other petitions at bar and requested for acceptance of his writ petition in the interest of justice.

10. Conversely, Sheikh Masood Iqbal the learned Advocate General representing the official respondents while controverting the arguments of the learned counsel for the petitioners zealously argued that the petitioners called in question the notifications letters, which were issued for ADPs pertaining to years 2022-23, 2023-24 rather the said period has completed its life, hence, writ petitions to that extent have become infructuous. The learned A.G. maintained that the Government is performing its duties

according to law while the petitioners in all petitions are not aggrieved party and have got no *locus-standi* to invoke the constitutional jurisdiction of this Court in a routine matter, however, during the course of his arguments, the learned A.G. was confronted on the following propositions:-

- i. *What is the legal backing of Local Government Manual (دستور العمل)?*
- ii. *Whether the AJ&K Local Government Act, 1990 has its application outside the territorial jurisdiction of Azad Jammu & Kashmir?*
- ii. *Whether under the relevant provisions of the Act, Ibid, along-with other enabling provisions of law, the Government is competent to allocate and release the development funds of Local Government & Rural Development to MLAs within the purview of The Azad Jammu & Kashmir Local Government Act, 1990?*

The learned Advocate General gracefully replied that (i) Local Government Manual (دستور العمل) has got no legal backing whereas (ii) the AJ&K Local Government Act, 1990 is applicable within the territorial limits of Azad

Jammu & Kashmir not otherwise and (iii) obviously, MLAs have been given no role in the relevant provisions of law to allocate and identify the development schemes concerning to Local Government & Rural Development Department.

11. We have given our due consideration to the respective arguments advanced by the learned counsel for the parties at bar and gone through the available record with our utmost attention.

12. After reply of the learned Advocate General, the controversy brought before Court becomes narrow down. Now, it has to be seen that whether the act done by the official respondents is inconsonance with the relevant provisions of The Azad Jammu & Kashmir Interim Constitution, 1974 and The Azad Jammu & Kashmir Local Government Act, 1990 along-with other enabling provisions of law or not? First of all we have to consider the

importance of Constitution in a State. The Constitution is the grundnorm and mother of all the laws and political institutions of the State. It is the most sacred asset of a nation after the State, which is a set of fundamental principles and established precedents according to which a State or other organization is governed. It outlines the structure of Government, the distribution of powers, the rights and duties of the citizens. The importance of Constitution lies in its role as the supreme law that guides the functioning of a nation. It helps to ensure the rule of law, protects individual freedom and provides a framework for political stability and accountability. The Interim Constitution defines principles of policy in Article 3-A to 3-J and under the said provisions, it is the responsibility of each organ, authority of the State and all persons performing functions in connection with the affairs of the State to

act in accordance with these principle in so far as they relate to the functions of the organ or authority. One of principles is Article 3-D of the Constitution in which the State is under legal obligation to encourage local Government institutions wherein the elected representatives of the area concerned will be given special representation to peasants, workers and women. For proper appreciation of the matter Article 3-D of the Constriction, Ibid, is usefully reproduced as under:-

**“ARTICLE 3-D**

***[Promotion of local Government institutions.- The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.]”***

The Government for carrying on its business delegate any of its functions to officers or

authorities subordinate to it under Sub Article (5) of Article 12 of the Constitution, Ibid, which is usefully reproduced as under:-

*“(5) The Government may regulate the allocation and transaction of its business and may for the convenient transaction of that business delegate any of its functions to officers or authorities subordinate to it.”*

13. Obviously, for the purpose of carrying out the business of the State, The Azad Government of the State of Jammu and Kashmir Rules of Business (Revised), 1985 were framed under Article 58 of the Constitution, supra. In first Schedule of The Government of The State of Jammu & Kashmir Rules of Business, (Revised), 1985 a list of Departments has been given wherein Local Government and Rural Development Department is falling at serial No.15 of that list. As the matters relating to Local Government and Rural Development

Department like local councils, elections, development funds etc. have been defined, hence, for more convenience Rule 15 of the Rules of Business, Ibid, defined in Second Schedule is helpfully reproduced as under:-

**“15. LOCAL GOVERNMENT AND RURAL DEVELOPMENT DEPARTMENT**

*Matters relating to:-*

- a) *Local Councils.*
  - b) *Elections, Election Petitions/ Writ Petitions and Civil Suits with regard to Local Councils through Law Department.*
  - c) *Establishment and Budget of Local Councils except Grant-in-Aid for Hospitals and Dispensaries.*
  - d) *Directorate of Local Government and Rural Development Department and their subordinate offices.*
  - e) *Local Taxation and Local Rates.*
  - f) *Preparation of claims relating to the Local Councils.*
  - g) *Local Council Service including Engineering Health and Sanitation under the Local Bodies.*
1. ***Registration of Births and Deaths by Local Councils.***
  2. ***Development Funds and Development Schemes pertaining to Local Councils including water supply, drainage and sanitary schemes and welfare of women folk.***



3. *Grant-in-Aid for Local Councils.*
4. *Matters relating to compulsory/optional functions of Local Council other than adult education.*
5. *All matters relating to the Local Council Service.*
6. *Framing of rules, regulations and bye-laws.*
7. *Cattle Trespass Act.*
8. *Local Government Board.*
9. *Slaughter Houses under the local Councils.*
10. *Rural Development Councils and Rural Development Program.*
11. *Municipal Administration, framing of rules, regulations and by laws.*
12. *Co-ordination with Civil Defense Authorities, where necessary.*
13. *Jumma Market arrangements.*
14. *Graveyards etc. not under Auqaf Department.*
15. *Training, Research and Evaluation.*
16. *Seminars, Conventions and Publications.*
17. *Purchase of stores and capital good's for the Department.*
18. *Service matters except those entrusted to S&GIFT-DEED.*
19. *Administration of the relevant law and the rules pertaining to the Department.”*

14. The Azad Government of the State of Jammu and Kashmir Local Government Act, 1990 was promulgated on 20.02.1990 through

Act VII of 1990 and in its preamble it has been defined that this Act, is enforced throughout the Azad Jammu & Kashmir territory while in Section 1 (2) it has been prescribed that *'it extends to the whole of Azad Jammu & Kashmir'* meaning thereby that it will carry its business only in the territory of the Azad Jammu & Kashmir and not anywhere else.

15. From bare reading of the Act, supra, it makes crystal clear that Sections 5 to 13 define the formation and composition of Local Council, Union Council, District Council, Dehi Council, Town Committee, Municipal Committee and Municipal Corporation for which the term of office of a local council shall be for a period of four years under Section 21 of the Act, Ibid. The important segment of this Act, is Section 25 and 29 pertaining to functions of Local Councils and Functions of District Council, hence, we deem it proper to

reproduce Section 25 of Act, Ibid, for ready reference in the following manner:-

*“Function of Local Councils.- Subject to rules and such directions as the Government may give from time to time, and within the limits of funds at its disposal, a Dehi, Union and District Council, Municipal Committee and Town Committee shall undertake the functions as enumerated in third, fourth and fifth schedule respectively as are required to be undertaken by it and any undertake such other function.-*

*(a) As are declared by the Government to be appropriate matters for administration by them; and*

*(b) All or any of the functions so given which shall be undertaken by them.”*

In Section 29 of the Act, supra, functions of District Council have been defined in the following manner:-

**“Functions of District Council.-** (1) Subject to rules a District Council shall within the limit of the funds at its disposal make adequate arrangements for

*carrying out the requirements of the District in respect of the matters enumerated in Schedule IV.*

*(2) A District Council shall coordinate the activities of all local councils and municipal bodies within the District.”*

In the third Schedule of the Act, *supra*, the functions of Dehi Council & Union Councils have been defined, hence, for more convenience, we deem it proper to reproduce the ‘*functions of Union Councils*’ in the following manner:-

**“FUNCTIONS OF UNION COUNCILS**

1. *Conciliation Courts.*
2. *Such functions in connection with ‘Zakat’ and Ushr as may be assigned by the Government.*
3. *Supervision and coordination of functions of Dehi Councils.*
4. *Prohibition of the use of the water of Wells, ponds and other sources of water supply suspected to be dangerous to Public Health.*
5. *Holding of fairs and shows.*
6. *Promotion of public games and sports.*
7. *Any other measures likely to promote the welfare, health, safety, comfort or*

*convenience of the inhabitants of the village or visitors.*

- 8. To report to the police, the commission of any offence to bring to the notice of the police, person in Deh, or persons of notorious character and to assist in the investigation and prevention of and arresting criminals.*
- 9. Coordination of development activities of all nations building Departments in particular Agriculture Sector.*
- 10. Adoption of necessary measures to promote Islamic values and ways of life.*
- 11. Registration of births and deaths and the maintenance of such vital statistics as may be prescribed.*
- 12. Plantation and preservation of trees in general and plantation and preservation of trees on public ways, public streets and public places in particular.*
- 13. Lightening of public ways, public streets and public places.*
- 14. Management and maintenance of "Shamilate" burial grounds, common meeting places and other common property.*
- 15. Prevention and regulation of encroachment of public ways, public streets and public places.*
- 16. Regulation of the disposal of cases of dead animals.*

17. *Regulation of the slaughter of animals.*
18. *Provision and maintenance of well, water pumps, tanks, ponds and other works for the supply of water.*
19. *Adoption of measures for preventing the contamination of the sources of water supply for drinking.*
20. *Provision and maintenance of accommodation for travelers.*
21. *Voluntary registration of the sale of cattle and dad other animals.*
22. *Provision and maintenance of public ways and public streets.*
23. *Provision and maintenance of public places, public open places, public gardens and public grounds.*
24. *Regulation of the erection and re-erection of buildings in the Union.*
25. *Regulation of the dangerous buildings and structures.*
26. *Regulation or prohibition of the excavation of earth, stone or other material within residential areas.*
27. *Regulation or prohibition of the establishment of brick kilns, potteries and other kilns within residential areas.*
28. *Provision of relief measures in the event of any fire, flood, hall storm earthquake or other natural calamity.*

29. *Agricultural, industrial and community development, promotion and development of co-operative movements, village industries, forests, livestock and fisheries.*
30. *Provision of first aid centers.*
31. *Provision of libraries and reading rooms.*
32. *Cooperating with other organizations engaged in activities similar to those of the Dehi Council.*
33. *Aid in the promotion of education under the direction of the District Council.”*

Functions of District Council has been defined in the fourth schedule of the Act, Ibid, in the following manner:-

**“FUNCTIONS OF DISTRICT COUNCIL**

1. *Such functions in connection with Zakat and Usher as may be assigned by Government under relevant law.*
2. *Provision and maintenance of libraries and reading rooms.*
3. *Provision and maintenance of Primary SchoolS/other educational institutions.*
4. *Provision and maintenance of hospitals and dispensaries, including veterinary hospitals and dispensaries.*

5. *Provision, maintenance and improvement of public roads, culverts, and bridges,*
6. *Plantation and preservation of trees on road sides and public places.*
7. *Provision and maintenance of public gardens, public playgrounds and public places.*
8. *Maintenance and regulation of public ferries, other than those maintained by Government Departments.*
9. *Maintenance and regulation of cattle ponds.*
10. *Provision and maintenance of series, dakbunglows, Zailghers, Rest-houses and other buildings for the convenience of travelers.*
11. *Prevention, regulation and removal of encroachments.*
12. *Prevention and abatement of nuisances.*
13. *Holding of fairs and shows.*
14. *Promotion of public games and sports.*
15. *Celebration of public festivals.*
16. *Promotion of sanitation of public health.*
17. *Prevention, regulation and control of infectious diseases.*
18. *Enforcement of vaccination.*
19. *Protection of food stuffs and prevention of adulteration.*
20. *Registration of marriages.*
21. *Registration of the sale of cattle.*
22. *Provision of water-supply, construction, repair and maintenance of water works and other sources of water supply.*
23. *Agricultural, industrial and community development.*



24. *Promotion of national reconstruction; promotion and development of co-operative movement and village industries.*
25. *Adoption of measures for increased agricultural production.*
26. *Regulation of traffic/licensing of vehicles other than motor vehicles and the establishment and maintenance of public stands for vehicles.*
27. *Improvement of the breeding of cattle, horses and other animals, and the prevention of cruelty animals.*
28. *Relief measures in the event of any fire, hail-storm, earthquake, famine, or other natural calamity.*
29. *Co-operation with other organizations engaged in activities similar to those of the District Council.*
30. *Any other functions that may be directed by Government to be undertaken by District Councils either generally or by a particular District Council.*
31. *Provisions and maintenance of schools other than primary schools.*
32. *Construction and maintenance of buildings to be used as hostels for students.*
33. *Provision of Scholarships.*
34. *Training of teachers.*

35. *Payment of grants and subsidies to educational institutions.*
36. *Promotion and assistance of educational societies.*
37. *Undertaking of educational surveys, framing of educational plans and implementation thereof.*
38. *Promotion of adult education.*
39. *Provision of milk supply and meals for schools children.*
40. *Publication of school/books and the maintenance of printing presses.*
41. *Provision of school books to orphans and indigent students free of cost or at concessional rates.*
42. *Maintenance of depots for the sale of school books and articles stationery.*
43. *Any other measures likely to promote the cause of education.*
44. *Organization of general cultural activity.*
45. *Establishment and maintenance of information centers.*
46. *Organization of museum, exhibitions and art galleries.*
47. *Maintenance of radio sets at public institutions and public places.*
48. *Provision and maintenance of public halls, public meeting places and community centers.*
49. *Furtherance of civic education*

- and the dissemination of information on such matters as local Government, rural reconstruction, hygiene, community development, agriculture, industries, cattle breeding and other matters of a public interest.*
50. *Celebration of the Holy Prophet's Birthday, and other national\occasion.*
  51. *Reception of distinguished visitors.*
  52. *Encouragement of national and regional languages.*
  53. *Promotion of physical culture, the encouragement of public games and sports and the organization of rallies, matches and tournaments.*
  54. *Preservation of the historical and indigenous characteristics of the local area.*
  55. *Any other measures likely to promote cultural progress and advancement.*
  56. *Establishment, management and maintenance of welfare homes, asylum, orphanages, widow-homes and other institutions for the relief of the distressed.*
  57. *Burial and cremation of paupers found dead within the local area.*
  58. *Prevention of beggary, prostitution, gambling, taking of injuries drugs and consumption of alcohol liquor, juvenile delinquency and other social evils.*

59. *Promotion of social, civic and patriotic virtues among the people and discouraging parochial, racial, tribal and sectarian prejudices.*
60. *Organization of social service volunteers.*
61. *Organization of legal aid for the poor.*
62. *Adoption of measures for the promotion of the welfare of women, backward classes, and children and families of the persons serving in the Armed Forces.*
63. *Adoption of measures for the settlement of disputes by conciliation and arbitration.*
64. *Any other measures likely to promote social welfare.*
65. *Establishment and maintenance of model, agricultural farms.*
66. *Popularization of improved methods of agriculture, maintenance of improved agricultural implements and the lending of such implements to cultivators, and adoption of measures for bringing waste lands under cultivation.*
67. *Maintenance of crops statistics, protection of crops, the lending of seeds for sowing purposes, distribution of fertilizers and the popularization of their use and the maintenance of fodder reserves.*
68. *Promotion of agricultural credit; agricultural education; and adoption of other measures likely to promote agricultural development.*

69. *Construction and repair of embankments, supply, storage, and control of water for agricultural purposes.*
70. *Preservation and reclamation of soil and the drainage and redemption of swamps.*
71. *Management, protection and maintenance of village forests.*
72. *Provisions, regulation and maintenance of markets.*
73. *Provision of facilities for the procurement of raw materials and marketing of products of village industries.*
74. *Establishment, maintenance and management of industrial schools and the training of workers in village industries.*
75. *Adoption of other measures likely to promote the development of village industries.*
76. *Organization, maintenance and management of village stores.*
77. *Popularization of the cooperative movement and the promotion of education in co-operation.*
78. *Any other measures likely to promote economic welfare.*
79. *Promotion of education in public health.*
80. *Farming and implementation of anti-malaria schemes, and schemes for the prevention and control of infectious diseases.*
81. *Organization and maintenance of first aid centers.*
82. *Provisions and maintenance of mobile medical aid units.*
83. *Promotion and encroachment of societies for the provision of medical aid.*

84. *Promotion of medical education and the payment of grants to institutions for medical workers.*
85. *Medical inspection of compounders, dispensers, nurses and other medical workers.*
86. *Establishment, management, maintenance and the visiting of Unani, ayurvedic and Homeopathic dispensaries.*
87. *Establishment, management, maintenance and the visiting of health centers, maternity centers and centers for the welfare of infants and children, the training of dais and the adoption of other measures likely to promote the health and welfare of women, infants and children.*
88. *Measures to alleviate diseases of animals and birds and the prevention and control of contiguous diseases among birds and animals.*
89. *Preservation of cattle health.*
90. *Provisions, maintenance and improvement of pastures and grazing grounds.*
91. *Regulation of milk supply; establishment of milk colonies and provision and regulation of sanitary stables.*
92. *Establishment and maintenance of cattle farms and dairies.*
93. *Any other measures likely to promote public health, animals, husbandry and welfare of birds.*
94. *Improvement of the means of communications.*
95. *Drainage, water-supply, pavement of streets and other works of public utility.*

96. *Farming and execution of village plans, village improvement schemes, town planning schemes and regional planning schemes.*
97. *Maintenance of maps for local areas.*
98. *Construction, management and maintenance of such other works of public utility not specified elsewhere as may be required for fulfilling any obligation imposed by or under this Act or any other law for the time being in force.*
99. *Measures likely to promote the religious and moral advancement and increase the material prosperity of the local area and its inhabitants.”*

In the fifth Schedule of the Act, supra, compulsory functions of Municipal committees and town committees have been defined in the following manner:-

**“COMPULSORY FUNCTIONS OF MUNICIPAL COMMITTEES AND TOWN COMMITTEES.**

*Such Functions in connection with Zakat and Usher as may be assigned by Government under relevant law.*

**A. PUBLIC HEALTH**

*I. Responsibility for sanitation.*

*A Municipal Committee shall be responsible for the sanitation of the Municipal area.*

*In-sanitary buildings and land.*

(1) A Municipal Committee may, by notice require the owner or occupier of any building or land which is in an insanitary or unwholesome state:-

- a) to clean or otherwise Put it in a proper state;
- b) to make arrangements to the satisfaction of the Municipal Committee for the proper sanitation; and
- c) to lime-wash the building and to make such essential repairs as may be specified in the notice.

(2) If any requirement of a notice issued under sub-section (1) is not complied with, within such period as may be specified in the notice, the Municipal Committee may cause the necessary steps to be taken at the expense of the owner or the occupier, and the cost so incurred by the Municipal Committee shall be deemed to be a tax levied on the owner or the occupier under this Act.

3. **Removal Collection, and disposal of refuse.**- (1) A Municipal Committee shall make adequate arrangements for the removal of refuse from all public roads and streets, public latrines, Urinals, drains and all buildings and land vested in the Municipal Committee and



*for the collection and proper disposal of such refuse.*

- (2) The occupiers of all other buildings and lands within the Municipality shall be responsible for the removal of refuse from such buildings and land subject to the general control and supervision of the Municipal Committee.*
- (3) The Municipal Committee shall cause public dustbins or other suitable receptacles to be provided at suitable places and in proper and convenient situations in streets or other public places and where such dustbins or receptacles are provided, the Municipal Committee may by public notice, require that all refuse accumulating in any premises or land shall be deposited by the owner or occupier of such premises or land in such dustbins or receptacles.*
- (4) All refuse removed and collected by the staff of the Municipal Committee or under their control and supervision and all refuse deposited in the dustbins and other receptacles provided by the Municipal Committee.*

**Latrines and Urinals.**-(1) *A Municipal Committee shall provide and maintain in sufficient number and in proper*

*situations public latrines and Urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleaned.*

- (2) *The occupier of any premises to which any latrine or urinal pertains shall keep such latrine or urinal in proper state to the satisfaction of the Municipal Committee and shall employ such staff for the purpose as may be necessary or as may be specified by the Municipal Committee.*
- (3) *Where any premises are without, privy or urinal accommodation, or the privy or urinal is on any ground objectionable, the Municipal Committee may, by notice, require the owner of such premises:-*

  - (a) *to provide such or such additional privy or urinal accommodation as may be specified in the notice.*
  - (b) *to make such structural or other alteration in the existing privy or urinal accommodation as may be so specified.*
  - (c) *to remove the privy or urinal; and*
  - (d) *Where there, is any underground sewerage system to substitute connected privy or connected urinal accommodation for any service privy or service urinal accommodation.*

**Birth and deaths.** - A Municipal Committee shall register all births and deaths within the limits of the Municipality and information of such births and deaths shall be given by such persons or authorities and shall be registered in such manner as the bye-laws may provide.

**Infectious disease.** A Municipal Committee shall adopt measures to prevent infectious diseases and to restrain infection within the Municipality.

(2) A Municipal Committee shall establish and maintain one or more hospitals for the reception and treatment of persons suffering from infectious disease.

## **B. WATER SUPPLY**

**7. Water Supply.-(1)** A Municipal Committee shall provide or cause to be provided to the Municipality a supply of wholesome water sufficient for public and private purposes.

(2) Where a piped water supply is provided, the Municipal Committee shall supply water to private and public premises in such manner and on payment of such charges as the bye-laws may provide.

**Private sources of water supply.** -

(1) All private sources of water

*supply within municipality shall be subject to control, regulation and inspection by the Municipal Committee.*

*(2) No new well, water- pump or any other source of water for drinking purposes shall be dug, constructed or provided except with the sanction of the Municipal Committee.*

*(3) A Municipal Committee may by notice, require the owner or any person having the control of any private source of water supply used for drinking purposes.-*

- (a) to keep the same in good order and to clean it from time to time of silt, refuse and decaying matter;*
- (b) to protect the same from contamination in such manner as the Municipal Committees directs; and*
- (c) if the water therein is proved to the satisfaction of the Municipal Committee to be unfit for drinking purposes, to take such measures as may be specified in the notice to prevent the use of such water for drinking purposes.*

### **DRAINAGE**

**Drainage.** - *(1) A Municipal Committee shall provide an adequate system of public drains in the Municipality and all such drains shall be constructed, maintained, kept cleared and emptied with due regard to the*

*health and convenience of the public.*

*(2) Every owner or occupier of any land or building within the municipality may, with the previous permission of the Municipal Committee and subject to such terms and conditions including the payment of fees, as the Municipal Committee may impose, cause his drains to be emptied into public drains.*

*(3) All private drains shall be subject to control regulation and inspection by the Municipal Committee.*

*(4) Subject to the provision of any other law for the time being in force a Municipal Committee may by notice direct a commercial or industrial concern to provide for the disposal of its waste or effluent in the manner specified, and failure on the part of owner, tenant or occupier thereof to comply with such directions shall be offence under this Act.*

*(5) A Municipal Committee may, by notice require the owner of any building land or an industrial concern within the Municipality.-*

*a) to construct such drains within the building or land or the street adjoining such building or land and to take such other measures for treatment and disposal*

*efficiently as may be specified in the notice.*

*(6) In case of failure of the owner to comply with the requirements of notice under sub-section (5) the Municipal Committee may itself cause to carry out such requirements and the cost so incurred shall be deemed to be a tax levied on the owner of the building or land, as the case may be, under this Act.*

**10. Drainage and sewerage schemes for commercial and industrial area/areas.-**

*(1)A Municipal Committees may through a notice require the owners, tenants and occupiers of commercial and industrial concerns in any area or areas within a Municipality to have at their own cost prepared, a scheme for the adequate and safe drainage and disposal of their wastes and effluent of the quality permitted under the rules or the bye-laws and submit it to the Municipal Committee within the time specified in the notice provided that the time may be extended by the Municipal Committee for a maximum period of three months at the request of the owners, tenants or occupiers of the commercial and the industrial units concerned.*

*(2) The drainage, sewerage and disposal scheme as approved by the Municipal Committee with modification, if any shall be*

*executed and implemented by the owner's tenants or occupiers of the commercial or industrial units at their expense in such manner and within such time as may be specified by the Municipal Committee.*

*(3) In case of the failure of the owners, tenants or occupiers of the commercial or industrial concerns to comply with the provisions of sub-section (1) and (2) the Municipal Committee may itself prepare the drainage, sewerage and disposal schemes and execute and implement it after approval by Government at its own expense and the cost so incurred shall, under this Act be deemed to be a tax levied on the owners, tenants or occupiers of the industrial and commercial units concerned.*

**D. ARTICLES OF FOOD AND DRINK:**

**11. Private Market.-** *(1) No private market for the sale of articles of food or drink or animals shall be established or maintained within a Municipality except under a license granted by the Municipal Committee and in conformity with conditions of such license.*

*(2) A municipal committee may levy fees in respect of private market in the prescribed manner.*

*(3) A Municipal Committee may, by notice, require the owner of any private market to construct*

*such works, provide such conveniences and make such arrangements for the maintenance of the market, and within such period as may be specified in the notice.*

**12. Slaughter Houses.** *A Municipal Committee shall provide and maintain at such site or sites within or outside the limits of the Municipality one or more slaughter houses for the slaughter of animals or sale of any specified description of animals.*

**E. ANIMALS AND CATTLE:**

*13. Prohibition on picketing or Tethering in Streets.-No animals shall be picketed or tethered in such streets or place as may be specified by the Municipal Committee and any animals found picketed or tethered in any such street or place shall be liable to seizure and impounding.”*

Similarly in the above Schedule numerous other functions pertaining to educational institution, public safety, town planning, building control, streets, arboriculture, Dhobi Ghats Ferries, animal husbandry, public safety trees, parks, gardens and forests, education, culture & municipal police have been defined



while a comprehensive method for formation and carrying out the businesses of local bodies' representatives has been given.

16. A deep examination of the relevant provisions of law discussed above, it depicts that The Azad Jammu & Kashmir Interim Constitution, Ibid, defines the organs of the State, their functions and relations with each other for which articles 3-A to 3-J have been added by 13<sup>th</sup> amendment of the Constitution, it is the responsibility of each organ and authority of the State, and of each person performing functions in connection with the affairs of the State to advance the objects visualized by the principles of policy, however, such principles are not justiciable in the Court of law unless enacted in law, which cannot be enforced like fundamental rights and other laws for being principles of policy only. One of principles is Article 3-D in which each organ

State is under obligation to encourage local Government institutions.

17. Under Article 12 (5) of the Constitution, Ibid, the Government may delegate any of its functions to officer or authorities subordinate to it for carrying out its business conveniently. For running the business of the Government, The Azad Government of the State of Jammu & Kashmir Rules of Business (Revised), 1985 were framed under Article 58 of the Constitution wherein a list of 25 administrative departments has been given under Rule 2 sub-rule (1) clause (iii), (xii), (xxvi) of the first Schedule of Rules, supra, whereas distribution of business among departments has been defined in Rule 3 (3) of the second Schedule of Rules, Ibid, wherein, matters relegating to local Government and Rural Development Department have been defined. The Government is under legal obligation to encourage the Local Government

Institutions under Article 3-D read-with Article 3-A of the Constitution, Ibid, while Local Councils i.e. Dehi council, Union Council, District Council, Town Committee, Municipal Committee and Municipal Corporation, have been constituted in Section 5 of the Local Government Act, 1990 and under Section 6 of the Act, Ibid, every local council is a body corporate and their functions have been defined in 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Schedules of this Act, wherein, a comprehensive mechanism of public welfare falling their domain has been given whereas the Member of Legislative Assembly has nowhere nexus with Local Government & Rural Development Projects. In such like state of affair, '*Dastoor-al-Amal*', (دستور العمل) has got no statutory backing and in that document the Members of legislative Assembly have been given a role to identify the development schemes, hence, Annual Development Programme 2022-23 (ADP),

13000 projects of Local Government & Rural Development allocated, cannot be *set-aside* for initiation of new process, however, according to the version of the Advocate General, the aforesaid projects pertaining to 2022-2023 are near to completion, hence, it can safely be concluded that the process for allocation and identification of the development projects through MLAs on the basis of (دستور العمل) is contrary to the relevant provisions of the Act, Ibid, on the ground that the same has got no legal backing.

18. It is not out of place to mention here that it is incumbent upon the respondents to implement all the provisions of the Act, supra, and allocate requisite development funds to representatives of local bodies so that the local Government institutions be strengthened and its promotion under the Scheme of Article 3-D of the Constitution, supra, may be procured.

19. No doubt, the office of the Member of the Legislative Assembly (MLA) is very noble and esteemed as being elected representative of the people while the main role of its office is to raise the issues, problems of the people and suggest its solution at the relevant forum. Member of the Legislative Assembly has its symbolic importance because he connects the people to the Government and people trust him on his voice. The fundamental duties of a legislature include that:-

**Law Making.** *The primary responsibility of the legislature is to enact, amend, and repeal laws in accordance with the constitution and public interest. The legislature plays a role in modifying the constitution to address evolving legal, political, or social needs.*

**Representation.** *Legislators represent the will and interests of the people who elected them, ensuring their voices are heard in governance.*

**Oversight and Accountability.** *The legislature monitors the executive and ensures transparency, accountability, and adherence to constitutional principles.*

**Budget and Financial Control.** *Legislators approve budgets, allocate*

*resources and oversee government expenditures.*

**Safeguarding Rights and Liberties.**

*Ensuring that laws protect fundamental rights and promote justice, equality, and social welfare.*

**Debate and Deliberation.** *Legislators engage in discussions on policies, ensuring informed decision-making and consideration of diverse perspectives.*

**Conflict Resolution.** *Addressing national issues, maintaining political stability, and resolving conflicts through legislative measures.”*

20. So we can safely conclude that legislature is the pillar of the nation's governance, entrusted with the critical responsibility of making law, amending and repealing laws that uphold justice, equality and social order. It serves as the voice of the people, ensuring their concerns and aspirations are reflected in the legal framework. Beyond law making, it monitors the actions of the executive to prevent misuse of powers, safeguarding transparency and accountability. The legislature also makes such policies that drive economic development,

social welfare and the long term stability. In essence, the legislature is not just a law making body but a guardian of democratic principles and a catalyst for societal progress but under the umbrella of The Azad Jammu & Kashmir Interim Constitution, 1974 and The Azad Jammu & Kashmir Local Government Act, 1990 along-with other enabling provisions of law, the Members of Legislative Assembly (MLAs) have got no legitimate role in connections with the affairs of allocation and identification of development projects of LG&RDD in any manner.

21. A combined study of the relevant provisions of The Azad Jammu & Kashmir Interim Constitution, 1974, The Azad Jammu & Kashmir Local Government Act, 1990 and other enabling laws holding the field transpires that the local councils have got exclusive function and authority to carry on development schemes under the Local

Government Development & Rural Development and a comprehensive infrastructure has been provided for the purpose, hence, the respondents are under the command of the Constitution and Act, supra, to allocate and transfer all funds of development projects to the respective local bodies. It is a settled principle of law that if a particular act is required to be performed by that manner, it has to be performed according to the prescribed manner alone. It shall be deemed non-existent if not performed in the manner visualized by the law. All the organs of the State, Executive and departmental authorities are required to perform their respective functions as prescribed under the Constitution or relevant Act and rules. In performance of any act by the State Organs, executive or departments deviation from Constitutional command, any provision of Act or rules is interfered with and *set aside* by the



Courts. The powers conferred by this Court under Article 44 (2) (a) (i) & (ii) of the Azad Jammu & Kashmir Interim Constitution, 1974 to issue an appropriate writ or direction to person performing functions in connection with the affairs of Azad Jammu & Kashmir or local authority to act in a way as he is required under law to do such act or abstain from doing any act which he is not authorized under law to do or declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the State or local authority has been done or taken without lawful authority and is of no legal effect. An application dated 14.11.2023 for seeking amendment in petition No.2036/23 has not been pressed by the learned counsel during the course of arguments, hence, no further deliberation is required in this regard.

22. Be that as it may, the instant writ petitions are accepted and the respondents are

directed to implement The Azad Jammu & Kashmir Local Government Act, 1990 in letter and spirit while they are further directed to allocate and release funds of development schemes to all the local councils of Azad Jammu & Kashmir. In furtherance thereof, they are hereby restrained from allocating and releasing development funds to the Members of Legislative Assembly (MLAs) falling within the purview of the LG&RDD. A copy of this judgment shall be annexed along-with the other relevant files while the same shall also be sent to the concerned quarters for compliance.

Muzaffarabad:  
19.02.2025(J.ZEB)

**JUDGE**

**JUDGE**