

-----  
P L D 2023 Lahore 105

*Before Muhammad Ameer Bhatti, C.J.*

**MUHAMMAD HAMZA SHAHBAZ SHARIF---Petitioner**

**versus**

**FEDERATION OF PAKISTAN through Secretary, Ministry  
of Law and Justice and 4 others---Respondents**

Writ Petition No. 25671 of 2022, decided on 27th April, 2022.

***(a) Constitution of Pakistan---***

***---Art. 199---Constitutional petition---High Court, powers of---  
Administration of justice---High Court is custodian to protect, observe***

PLD

*and defend the Constitution---High Court is in all respects justified to exercise powers provided under Art. 199 of the Constitution for supremacy of law as none whosoever highly placed is above law. [p. 114] A*

**(b) Constitution of Pakistan---**

*---Arts. 199 & 255---Constitutional petition---Oath of office---Delay, causing of---Dispute was with regard to administering oath to newly elected Chief Minister as Governor was reluctant either to take oath himself nor had appointed some other person in such regard---Validity---All enabling provisions/Articles of the Constitution, suggested prompt formation of Governments, i.e. Provincial and Federal---For such matter, expeditious administration of oath either by the President or by Governor or their nominee, as the case could be, was mandatory---All expected reasons/options causing delay were excluded/procured by suggesting/providing alternate mechanism---Vacuum or space existed in the Constitution for causing any delay in administration of oath required under the Constitution---Province of Punjab was being operated without functional Government for the last 25- days since acceptance of resignation of the then Chief Minister---Oath of newly elected Chief Minister, Punjab was being delayed on one pretext or the other, which was not only against democratic norms but also against scheme of the Constitution---High Court suggested / advised / proposed that Governor would ensure completion of process of administration of oath of Chief Minister Punjab, either himself or through his nominee, in terms of Art. 255 of the Constitution, within two days---High Court suggested the President of Pakistan to play his role mandated by the Constitution/Law, ensuring a functional Provincial Government in Punjab, as he was also under Constitutional obligation to facilitate expeditious administration of oath of Prime Minister or Chief Minister in any Province---Constitutional petition was allowed accordingly. [p. 115] B*

Hakim Ali Zardari v. The State and another PLD 1998 SC 1; Mst. Amina Begum and others v. Mehar Ghulam Dastgir PLD 1978 SC 220; Justice Khurshid Anwar Bhinder v. Federation of Pakistan and another PLD 2010 SC 483 and All Pakistan Newspapers Society and others v. Federation of Pakistan and others PLD 2004 SC 600 rel.

Ashter Ausaf Ali, Senior Advocate Supreme Court, Khalid Ishaq (Advocate Supreme Court), Ch. Sultan Mehmood, Attaullah Tarar, Sardar Akbar Ali Dogar, Qamar Hayat, Zahir Abbas, Barrister Asad Rahim Khan, Nimra Arshad, Kashif Akbar Bandesha, Sardar Khalil Tahir Sandhu, Rana Afzal Razzaq, Atif Mohtashim Khan, Rana Muhammad Ashraf, Khawar Ikram Bhatti, Kh. Mohsin Abbas,

Muhammad Asif Mehmood, Abid Hussain Sial, Wajahat Ali, Adeel Shahid Karim, Faizan Ahmed, Rahil Riaz, Danyal Akbar, Ahmed Saeed, **Usman Nassir**, Ali Javed Bajwa, Faiqa Dawood, Malik Muhammad Abbas Farooq, Raja Khurram Shahzad, Mian Imran Ali, M. Irfan-ul-Haq, Imtiaz Elahi, Muhammad Nasir Chohan, Sitar Sahil, Rafaqat Dogar, Khawaja Aurangzeb Alamgir, Malik Mohsin Ali Awan, Ch. Arshad Hussain, Ch. Waseem Ahsan, Syed Abbas, Ch. Sultan Mahmood, Samran Mushtaq Ch. and Ahmad Hassan Khan Shahani for Petitioners.

Ahmad Awais, Advocate General Punjab, Umair Khan Niazi, Anees Ali Hashmi, Fayyaz Ahmad Mehar and Mian Shakeel Ahmad, Additional Advocates General for Respondents.

Ch. Sarfraz Ahmad Khatana, Deputy Prosecutor General for Respondents.

Mirza Nassar Ahmad, Additional Attorney General along with Tahir Mehmood Ahmad Khokhar, Deputy Attorney General for Respondents.

Date of hearing: 26th April, 2022.

#### JUDGMENT

MUHAMMAD AMEER BHATTI, C.J.---The short order was announced in open Court on 27.04.2022, which is as under:-

1. It is, therefore, concluded that all the enabling provisions/ Articles of the Constitution of Islamic Republic of Pakistan, 1973, suggest prompt formation of Governments, i.e. Provincial and Federal. For that matter, expeditious administration of oath either by President or by Governor or their nominee, as the case may be, is mandatory; as all expected reasons/options causing delay are excluded/procured by suggesting/providing alternate mechanism and I do not find any vacuum or space in the Constitution for causing any delay in administration of oath required under Constitution. Whereas the Province of Punjab is being operated without the functional Government, for the last 25-days, since the acceptance of the resignation of the then Chief Minister Mr. Usman Buzdar. On the other hand, the oath of the newly elected Chief Minister, Punjab Mr. Muhammad Hamza Shahbaz Sharif is being delayed on one pretext or the other, which is not only against democratic norms but also against the scheme of the Constitution.
2. That being the case, it is suggested / advised / proposed that Governor shall ensure the completion of the process of administration of oath of Chief Minister Punjab, either himself

or through his nominee, in terms of Article 255 of the Constitution, on or before 28.04.2022.

3. Moreover, President of Pakistan, who is also under constitutional obligation to facilitate the expeditious administration of oath of Prime Minister or Chief Minister in any Province, hence, is suggested to play his role mandated by the Constitution/Law, ensuring a functional Provincial Government in Punjab.
4. The office of this Court is directed to transmit this order through fax immediately to the offices of the Governor and President for its placement before them, today."

The following are the reasons of the aforesaid short order.

2. Mandate of the Constitution of Islamic Republic of Pakistan, 1973 (*the Constitution*) relating to formation of the Provincial Government not being followed, reflecting from the reluctance of the Governor to take oath and consequently non-exercise of power, in such eventuality, by the President of Pakistan, has been called-in-question through this constitutional petition.

3. Brief facts of the case are that on acceptance of resignation of the then Chief Minister by the then Governor Muhammad Sarwar Chaudhry, session of the Provincial Assembly of the Punjab was requisitioned for 02.04.2022, wherein the nomination papers for the election of office of the Chief Minister were submitted by the present petitioner-a returned candidate and the present Speaker of the Provincial Assembly Ch. Pervez Elahi. After scrutiny and completing all other formalities, the nomination papers of both the candidates were declared valid by the Deputy Speaker, who was holding the charge of Presiding Officer in absence of the Speaker, who was contesting the election of Chief Minister. 03.04.2022 was fixed for voting, however, on the said date election could not be held on account of some unavoidable circumstances and Session was adjourned for 06.04.2022. Again the date was changed by the then Deputy Speaker, which was rescheduled for 16.04.2022, although the matter was taken to the honourable Supreme Court by a political party by filing Civil Petition for its hearing along with suo motu case against Ruling of the Deputy Speaker of the National Assembly. In due course, the action of the Deputy Speaker fixing the date as 16.04.2022 was challenged through Writ Petition No.21710/2022 by the petitioner. Another Writ Petition No.21711/2022 was also filed by the Deputy Speaker whose powers were curtailed by the Speaker. Both the petitions were heard together and vide judgment dated 13.04.2022, the following order was passed:--

"1. The prayer of the petitioner in Writ Petition No.21710/2022

to shorten the date of Session, which is already fixed by the Deputy Speaker for 16.04.2022 to elect the Chief Minister is hereby declined.

2. It is directed that the Deputy Speaker on the date fixed i.e. 16.04.2022 shall proceed to elect the Chief Minister in terms of sub-Article (3) of Article 130 of the Constitution read with Rule 20 of the Rules of Procedure and all other enabling provisions and powers in this behalf. The Deputy Speaker and all other persons including the Provincial Government are directed to act impartially, justly and fairly to ensure the supremacy of the Constitution.

3. During the course of arguments the respondents' counsel including the learned Advocate General have not shown any reservation for holding of election in terms of Article 130(3) of the Constitution read with Rule 20 of the Rules of Procedure on 16.04.2022, who shall not, in any manner, hinder, obstruct or interfere with any member of the Provincial Assembly who wish to attend the Session summoned as above, and to participate in, and cast their votes in terms of short order of the honourable Supreme Court dated 07.04.2022. The Secretary and other employees of the Provincial Assembly shall make all efforts to provide assistance which they otherwise are under legal obligation in this regard.

4. The Secretary, Provincial Assembly is further directed to ensure the completion of renovation work of the Provincial Assembly before 11:00 p.m. of 15.04.2022 and should be made available for its use for the honourable members of the Provincial Assembly on 16.04.2022 in respectable manner.

5. Impugned order dated 06.04.2022 in Writ Petition No.21711/2022, whereby the powers of the Deputy Speaker in terms of Rule 25 of the Rules of Procedure were withdrawn, being contrary to Article 53(3) of the Constitution by virtue of which Deputy Speaker in absence of the Speaker attained the status of Speaker for this Session, completely overriding the powers provided in Rules, is hereby set-aside."

In consequence whereof the respondents filed Intra Court Appeal, which was also disposed of without interfering in the judgment impugned passed by the Single Judge-in-Chambers with further direction to the Deputy Speaker to observe all the necessary measures to complete the process of voting in fair and transparent manner. The Chief Secretary and the Inspector General of Police, Punjab, were also directed to

provide all assistance in this regard. The election was held on the given date, the present petitioner was elected and the result was conveyed by the Deputy Speaker to the Governor in terms of Rule 21 of the Rules of Procedure of the Provincial Assembly of the Punjab, 1997, whereupon the Governor Punjab lingered on the matter of taking oath of the petitioner. Ultimately, Writ Petition No.24320/2022 was filed and this Court vide judgment dated 22.04.2022 disposed of the matter after recording the statement of the learned Advocate General on behalf of the Governor regarding intention of the Governor of non-administering the oath of the newly elected Chief Minister and sent the matter to the President of Pakistan to exercise the power provided under Article 104 of the Constitution. The judgment was received by office of the President of Pakistan and same was placed before the President of Pakistan.

4. Mr. Ashter Ausaf, learned counsel for the petitioner argued that the Governor of the Punjab has shown his inability to administer oath of newly elected Chief Minister of the Punjab despite the fact that the petitioner has been duly elected as Chief Minister of the Punjab but due to inaction of the Governor of the Punjab, the petitioner was constrained to file Writ Petition No.24320/2022 which was decided by this Court wherein this Court specifically observed that the President of Pakistan will exercise his power under Article 104 of the Constitution of Islamic Republic of Pakistan, 1973, but unfortunately, the President also did not perform his constitutional duty while the judgment of this Court was to be implemented in letter and spirit rather than implementing the judgment, the President sought advice of Prime Minister, who clearly sent his advice that judgment of this court had to be implemented, but in vain. He further adds that Governor of the Punjab wrote a letter to the President on 23.04.2022 while giving his opinion about the validity of election of Chief Minister despite the fact that under Article 130(5) of Constitution of Islamic Republic of Pakistan, 1973, the Governor, by no stretch of imagination, could avoid administering oath from the newly elected Chief Minister. He contended that there is not even a single provision in the Constitution authorizing the Governor to comment upon the legality/validity of the election of the Chief Minister conducted in the Punjab Assembly, so the Governor himself flouted the Constitution.

5. Learned Additional Attorney General-1, representing the Federal Government, apprised the court that after letter of Governor, the President of Pakistan sent summary to the Prime Minister for his advice and the Prime Minister of Pakistan, in response to that, sent his advice while recommending the date and time for the oath of the newly elected Chief Minister as well as the person suggested to administer oath but that summary was also kept dormant by the President of Pakistan. He further

adds that Prime Minister sent two other advices to the President which were not acted upon, so no fault lies with the Federal Government.

6. Mr. Ahmad Awais, learned Advocate General Punjab who appeared in response to a notice under Order XXVII-A of C.P.C. contended that this petition is not maintainable because the Court cannot give the relief claimed for as the Court cannot pass a direction to the Chairman Senate to administer oath of the newly elected Chief Minister. He contended that Article 48 of Constitution of Islamic Republic of Pakistan, 1973 clearly gives 15 days to the President to consider and require the Prime Minister to reconsider any advice and after reconsideration further 10 days are available with the President to act upon, so President cannot be made bound to act upon the advice of the Prime Minister forthwith. He contended that the President has immunity under Article 248 of Constitution of Islamic Republic of Pakistan, 1973 and this Court cannot take away his immunity and cannot bind him to exercise his right short of the stipulated time given by the Constitution under Article 48 of Constitution of Islamic Republic of Pakistan, 1973.

7. Since both the parties have been heard at length, therefore, this case is being treated and decided as admitted case.

8. In earlier part of the day, the Additional Attorney General and the learned Advocate General, Punjab, who were present in Court, were called and directed to assist this Court by issuing notice under Order XXVIIA(1), C.P.C., as to why the power provided under Article 255 of the Constitution of Islamic Republic of Pakistan, 1973, which is as under,

“Oath of office. (1) An oath required to be made by a person under the Constitution shall [preferably by made in Urdu or] a language that is understood by that person.

(2) Where, under the Constitution, an oath is required to be made before a specified person and, for any reason, it is impracticable for the oath to be made before that person, it may be made before such other person as may be nominated by that person.

(3) Where, under the Constitution, a person is required to make an oath before he enters upon an office, he shall be deemed to have entered upon the office on the day on which he makes the oath.”

shall not be exercised/assumed by this Court in order to nominate any person to administer oath to the newly elected Chief Minister, and they were also directed to obtain instructions from the concerned quarter. Following the direction of this Court, the Additional Attorney

General representing the Presidency Secretariat and the Federal Government, presented the documents he received from both corners, revealing whereof, it transpired that the Presidency Secretariat sent letter dated 22.04.2022 to the Prime Minister's office for obtaining advice relating to the direction of this Court. The Prime Minister's office vide letter dated 23.04.2022 gave its advice in the following manner:-

"In view of the above, the Prime Minister may like to advise the President to designate the Speaker, Provincial Assembly of the Punjab or any other person, as deemed appropriate, to administer the oath of the newly elected Chief Minister of the Punjab."

On 24.04.2022 another letter was written by the Prime Minister to the President's Secretariat with the following narration:-

"Apropos advice tendered bearing PM Office u.o. No.1000/Secy(PM)/2022, dated 23rd April, 2022, which suggested the time, place and designation of the person to be nominated by the President for administering oath to the Chief Minister elect of the Province of Punjab. The President is again advised that the order of the Honourable Lahore High Court is binding and leaves no room for any deliberations. It is on good authority that the President is advised that the delay in swearing in the Chief Minister despite court order may have far reaching implications including but not limited to proceedings under the Contempt of Court Act.

2. Needless to state that the Province of Punjab continues to be without a government for the last 23 days. The constitutional functioning of the Province cannot be kept in abeyance any further."

Today, the Prime Minister addressed another letter to the President in continuation of his earlier letter dated 24.04.2022, which reads as under:-

"Reference is invited to President's Secretariat (Public)'s u.o. No. 20(01)/Dir(E)/2022 dated 25.04.2022, on the above subject.

2. The Governor of Punjab's letter No.Nil dated 23rd April, 2022 along with enclosures addressed to the President of Pakistan is non est and needs no comments. The President is again advised to implement the clear and self-explanatory order of the Lahore High Court, Lahore dated 22.04.2022."

9. The Additional Attorney General, who contacted the Presidency

Secretariat received the letter reflecting instructions issued by the President, which are as under:-

"Please refer to Office of the Additional Attorney General for Pakistan's letter No. Addl. AG-I/Pak/LHR/2022 dated 26th April, 2022 on the subject.

2. The above letter of the Additional Attorney General was submitted to the Honourable President. He has given the following instructions:-

*"Without prejudice to the immunity and protection envisaged by Article 248 of the Constitution that the Head of State i.e. President is entitled to, in deference to the observations of the Hon'ble Chief Justice of the Lahore High Court in its order disposing of the Writ Petition, the copy of the order was immediately forwarded to the Prime Minister in view of Article 48(1) of the Constitution the same evening. The advice of the Prime Minister has been received which is under consideration and will be dealt with as per proviso to Clause 1 of Article 48 prescribing the time line thereof i.e. 15 days. The President is firmly of the view and committed to go by and follow the Constitutional mandate and will not act in deviation thereof. It's matter of fact and also projected by the Media as well, that in the meanwhile a report from the Governor of the Province Punjab has been received that the election of the Chief Minister, Punjab was neither according to the Constitution, the Rules of Punjab Assembly, or order of the learned Division Bench of this Court. The same has also been referred to the Prime Minister.*

*At this juncture it may also be noticeable that under Article 104 when the Governor by reason of absence from Pakistan or for other cause he is unable to perform functions, the Speaker of the Provincial Assembly and in his absence any other person as the President may nominate shall perform the functions of the Governor. The Constitutional provision provides the sequential order in which the matter is to be dealt with by the functionaries. It is the Speaker of the Provincial Assembly in the first instance to perform the functions of the Governor and the role of the President comes into play only when the Speaker is also absent to perform functions of the Governor. The President therefore is strictly following the letter and spirit of the constitutional provisions and in no way intends to act in deviation thereof."*

3. The above quoted instructions of the Honourable President may be submitted to the Honourable Lahore High Court, Lahore."

10. As the Oath is to Almighty Allah and not to the Governor, who carries-out ministerial act of administering oath, therefore, in the eventuality when he is incapable and is not willing to administer oath or when he is impracticable for any reason, and on the other hand his act of avoiding to nominate any other person amounts to transgressing the constitutional mandate as despite lapse of nine days from election of the Chief Minister, administration of oath is being avoided. It is noticed that election of the Chief Minister has not been challenged before any forum and still intact, therefore, escaping to administer oath by the Governor himself is permissible but, in such eventuality, nomination of any other person to administer oath is mandatory under Article 255 of the Constitution. Consequently, avoiding to administer oath through nominee tantamount to resile from his legal obligation, hence, this Court while deciding the earlier Writ Petition No.24320/2022 sent the matter to worthy President, being head of the State, for its solution but as per information provided by the Additional Attorney General file is still pending without any progress despite receiving advice thrice from Prime Minister's office, which was otherwise not necessary. Therefore, by not taking prompt action to resolve the issue of administering oath of Chief Minister Punjab, for the sake of removal of anomaly of non-existence of functional Provincial Government exposes the President and his lofty office that will destroy the public trust and respect necessary for such office to represent the unity of the Republic. Since both the authorities failed to fulfill their obligations as mandated in the Constitution, in such eventuality, this Court being custodian to protect, observe and defend the Constitution, is in all respect justified to exercise the powers provided under Article 199 of the Constitution for the supremacy of law as none whosoever highly placed is above law, constrained to issue the direction mandated by the Constitution to ensure the administration of oath in terms of Article 255 of Constitution, of the newly elected Chief Minister of Province of the Punjab. A

11. Contention of the learned Advocate General referring to the prayer of the petitioner that the writ petition is not maintainable as providing the relief claimed is out of domain of this Court's power and no other prayer is incorporated in the petition, thus the petitioner is not entitled for any relief. I am afraid, the contention has no force. It is well settled law that the Court is always empowered to grant such relief as the justice of a case demand. Reliance is placed on Hakim Ali Zardari v. The State and another (PLD 1998 Supreme Court 1) and Mst. Amina Begum and others v. Mehar Ghulam Dastgir (PLD 1978 Supreme Court 220). In the later pronouncement, it has been held as under:-

"Indeed in our considered opinion a discretion, is vested in this behalf in the Courts to be judicially exercised in proper cases in order to avoid multiplicity of proceedings, to shorten litigation,

PLD

2023]

Muhammad Hamza Shahbaz Sharif v.

Lahore 115

Federation of Pakistan (Muhammad Ameer Bhatti, C.J.)

and to do complete justice between the parties and mould the relief according to the altered circumstances in the larger interest of justice.”

Therefore, this Court is within parameters determined by the honourable Supreme Court in the above-noted judgments, in the present case, to grant a relief, which is flowing from the contents of the petition. It is also declared that the verdict of the apex Court has the binding force under the provision of Article 189 of the Constitution; as far as the principle of law is laid down, reliance is placed on Justice Khurshid Anwar Bhinder v. Federation of Pakistan and another (PLD 2010 Supreme Court 483) and All Pakistan Newspapers Society and others v. Federation of Pakistan and others (PLD 2004 Supreme Court 600).

12. It is, therefore, concluded that all the enabling provisions/Articles of the Constitution of Islamic Republic of Pakistan, 1973, suggest prompt formation of Governments, i.e. Provincial and Federal. For that matter, expeditious administration of oath either by President or by Governor or their nominee, as the case may be, is mandatory; as all expected reasons/options causing delay are excluded/procured by suggesting/providing alternate mechanism and I do not find any vacuum or space in the Constitution for causing any delay in administration of oath required under Constitution. Whereas the Province of Punjab is being operated without the functional Government for the last 25-days since the acceptance of the resignation of the then Chief Minister Sardar Usman Ahmad Khan Buzdar. On the other hand, the oath of the newly elected Chief Minister, Punjab Mr. Muhammad Hamza Shahbaz Sharif is being delayed on one pretext or the other, which is not only against democratic norms but also against the scheme of the Constitution.

That being the case, it is suggested / advised / proposed that Governor shall ensure the completion of the process of administration of oath of Chief Minister Punjab, either himself or through his nominee, in terms of Article 255 of the Constitution, on or before 28.04.2022.

Moreover, President of Pakistan, who is also under constitutional obligation to facilitate the expeditious administration of oath of Prime Minister or Chief Minister in any Province, hence, is suggested to play his role mandated by the Constitution/Law, ensuring a functional Provincial Government in Punjab.

The office of this Court is directed to transmit this order through fax immediately to the offices of the Governor and President for its placement before them, today.

MH/M-140/L

Order accordingly.