

The Chairman, Azad Jammu & Kashmir Council (hereinafter to be referred as the Council), Prime Minister of Pakistan, while acting under Sections 50 of Act, 1974 read with Sections 3 and 5 of the Chief Election Commissioner (Terms & Conditions) Act, 2000 (hereinafter to be referred as Act, 2000), advised for the appointment of Mr. Justice (R) Munir Ahmed Chaudhary as Chief Election Commissioner of Azad Jammu & Kashmir for a period of one year and 17 days i.e. the remaining period of his previous term of three years. Mr. Justice (R) Munir Ahmed Chaudhary, being a judge of the High Court, was appointed as Chief Election Commissioner in addition to the functions as judge Azad Jammu & Kashmir High Court, vide notification No.LD/AD/461-76/2013, dated 27th April, 2013. On 14th April, 2015 he stood retired as judge of the High Court. Under the first proviso to Section 5(1) of Act, 2000, if a judge of the Supreme Court or the High Court is appointed as Chief Election Commissioner, in addition to his functions as a judge, he shall, on retirement, cease to function as the Chief Election Commissioner. His period as Chief Election Commissioner comes to one year, 11 months and 17 days. In the light of the provisions of Act, 2000, the term of the office of Chief Election Commissioner is fixed as three years. It is provided in Section 7(2) of Act, 2000 that a person, who is holding the office of Chief Election Commissioner, shall not hold any office of profit in the service of Azad Jammu & Kashmir till the expiry of a period of two years, from the date on which he has ceased to hold that

office. After receiving the advice, the President referred the following questions to the Court for opinion:-

- “i) There are two Acts in the field one passed by the Assembly as Act, 1992, and the other one passed by the Council as Act, 2000, as mentioned above. Under Section 31(2) of the Interim Constitution Act, 1974, the subject of Chief Election Commissioner is not enumerated in the Council Legislative List and such matter comes in legislative purview of the Assembly. So in the present situation which authority is competent to make law on the subject? Council or Assembly.
- ii) Under Section 43(7) of the Interim Constitution Act, 1974, Judge High Court is not entitled to hold any other office of profit in the service of Azad Jammu & Kashmir if his remuneration is thereby increased or he cannot occupy any other position carrying the right to remuneration for rendering any service. In this context whether a serving judge of High Court can be appointed as Chief Election Commissioner?
- iii) If a serving judge of High Court is appointed as Chief Election Commissioner in addition to his duties as judge High Court and he has ceased to function in term of Section 5 of Act, 2000, whether any term is left after ceasing to function as Chief Election Commissioner on retirement as judge High Court and if any term is available, whether that can be given in parts?

- iv) Whether in term of Section 7(2) of Act, 2000, a retired judge, who has held office of Chief Election Commissioner in addition to his office as judge High Court, is eligible for re-appointment as Chief Election Commissioner before expiry of two years from date of his ceasing to function as Chief Election Commissioner?”

As the opinion was sought on the question whether the Azad Jammu & Kashmir Legislative Assembly or the Azad Jammu & Kashmir Council is competent to legislate in respect of the terms and conditions of the Chief Election Commissioner, a notice was issued to the Secretary Azad Jammu & Kashmir Legislative Assembly and the Azad Jammu & Kashmir Council as well as the public at large to file the statement of facts. The statements of facts were filed on behalf of Azad Jammu & Kashmir council, the President, Secretary Azad Jammu & Kashmir Legislative Assembly, Ch. Anwaarul Haque, a former Speaker of the Azad Jammu & Kashmir Legislative Assembly and Mr. K. D. Khan, an advocate of this Court.

2. At the outset, Raja Muhammad Hanif Khan, advocate, representing the Council, raised a preliminary objection on maintainability of the reference on the ground that the reference has been made by the President in violation of sub-rules (1) and (4) of Rule 11 and Schedule V(12)(c) of the Rules of Business, 1985. The Secretary Law, Justice, Parliamentary Affairs and the Human Rights Department, Azad Government of the State of Jammu & Kashmir, initiated the summary for sending back the advice to the Chairman

Azad Jammu & Kashmir Council for revisiting the same on the ground that there is no concept of appointment of the Chief Election Commissioner for the remaining period which is fixed for the tenure of the office of Chief Election Commissioner. The learned counsel submitted that no summary was initiated for referring the matter to the Court, therefore, the reference is not competently filed. The learned counsel submitted that in the light of the provisions contained in Rule 7(b) of the Rules of Business, 1985, the summary was to be routed back through the Chief Secretary. The said summary was not routed back and was not sent to the Chief Secretary, therefore, without the signature of the Chief Secretary, the reference was not competently filed. The learned counsel made another objection on the maintainability of the reference that under Rule 10 of the Azad Jammu & Kashmir Rules of Business, 1985, the sanction of the President in every matter is to be notified. The sanction of the President for filing the reference was not notified, therefore, the reference was not competently filed. The learned counsel referred to and relied upon the case reported as *Syed Mumtaz Hussain Naqvi & 9 others v/s Raja Muhammad Farooq Haider Khan & 4 others* [2014 SCR 43].

3. Mr. Abdul Rasheed Abbasi, advocate, while arguing on behalf of the referring authority and the Azad Jammu & Kashmir Legislative Assembly, submitted that the organization of the Department is provided in Rule 4(1) of the Rules of Business, 1985.

The Secretary of the Department submitted the summary to the Minister. The Minister Law, Justice, Parliamentary Affairs & Human Rights Department, apart from the points raised before him, formulated further points and opined that the matter be sent to the Prime Minister for advising the President for seeking the opinion of the Supreme Court under Section 46-A of Act, 1974. It is not the intention of the Rules of Business, 1985, that the Minister, Law, Justice, Parliamentary Affairs & Human Rights Department, in all circumstances, shall follow the summary. On the advice of the Prime Minister the summary was sent to the President for his approval. The learned counsel submitted that routing back the summary under Rule 7(b) of the Rules of Business, 1985, relates only to those matters where a formal order has to be issued. In the matter in hand, it is the sole prerogative of the President to refer the matter, therefore, the formal notification was not required. It is only the President, who may invoke the advisory jurisdiction of the Court. The learned counsel submitted that in the light of Rule 10 of the Rules of Business, 1985, the executive orders of the Government have to be notified. The reference under Section 46-A of Act, 1974 is not an executive order of the Government. The learned counsel submitted that the Court in its order dated 16th September 2015 has held that legal questions of public importance have been referred to the Court for opinion, therefore, the Court entertained the same.

4. We have carefully perused the preliminary objection raised by Raja Muhammad Hanif Khan, advocate, representing the Council.

5. The advisory jurisdiction under Section 46-A of Act, 1974 is vested in the Court, as under:-

“46-A. **Advisory jurisdiction.**- (1) If, at any time , the Chairman of the Council or the President desires to obtain the opinion of the Supreme Court of Azad Jammu and Kashmir on any question of law which he considers of public importance, he may refer the question to the Supreme Court of Azad Jammu and Kashmir for consideration.

(2) The Supreme Court of Azad Jammu and Kashmir shall consider a question so referred and report its opinion on the question to the Chairman of the Council or, as the case may be, the President.”

A bare reading of Section 46-A of Act, 1974 speaks that if the Chairman, Azad Jammu & Kashmir Council or the President desires to obtain the opinion of the Supreme Court of Azad Jammu & Kashmir on any question of law, which he considers to be of public importance, he may refer the question to the Supreme Court for consideration and opinion. The question referred to the Supreme Court by the President is neither an appeal nor a petition for leave to appeal. The provisions of the Rules of Business, 1985, regarding filing of an appeal or the petition for leave to appeal, when read along with the Law Department Manual, 1984, make it obligatory for the authority to issue a notification for filing the same. Without a formal notification and appointment of the counsel, the appeal or petition for

leave to appeal, as the case may be, is not competent. The provisions of Law Department Manual, 1984, are not attracted while filing reference by the Chairman of the Council or the President, as constitutional provision of Section 46-A provides self-explanatory method of filing the reference.

6. Raja Muhammad Hanif Khan, advocate, has laid much stress on the point that the Secretary Law, Justice, Parliamentary Affairs & Human Rights Department has not initiated the summary for filing the reference. We have carefully perused the summary initiated by the Secretary Law. The Secretary, after detailed narration of facts, apprised that Mr. Justice (R) Munir Ahmed Chaudhary, a serving judge of the High Court, was appointed as the Chief Election Commissioner. After reaching the age of superannuation, he was retired from his office and on his retirement, he ceased to be the Chief Election Commissioner of Azad Jammu & Kashmir w.e.f. 14th April, 2015. In the light of the provisions contained in proviso to Section 5(1) of Act, 2000, a judge of the Supreme Court or the High Court, who is appointed as Chief Election Commissioner in addition to the functions as a judge, he shall, on retirement as judge of the Supreme Court or the High Court, as the case may be, cease to function as Chief Election Commissioner and in the light of Section 7(2) of Act, 2000, a person who is holding the office of Chief Election Commissioner, shall not hold any office of profit in the service of Azad Jammu & Kashmir before expiry of two years, after he ceases to

hold that office. Mr. Justice (R) Munir Ahmed Chaudhary cannot be appointed as Chief Election Commissioner again till 13th April, 2017, i.e. till the expiry of the period of two years. He requested the Minister Law, Justice, Parliamentary Affairs & Human Rights Department, that the matter may be referred to the President through the Prime Minister for review of the advice on these grounds. After perusal of the summary, the Minister Law pointed out that presently two Acts relating to the terms and conditions of Chief Election Commissioner; one made by the Azad Jammu & Kashmir Legislative Assembly in the year 1992 and the other made by the Azad Jammu & Kashmir Council in the year 2000, are holding the field. Which one out of the two forums is competent to legislate upon the terms and conditions of the Chief Election Commissioner and also that in the light of the provisions contained in Section 43(7) of Act, 1974, a judge of the High Court is not entitled to hold any office of profit in the service of Azad Jammu & Kashmir if remuneration is thereby increased or any other office carrying along with the right of remuneration for rendering any service. He requested the Prime Minister that the President be advised to refer the matter to the Supreme Court for seeking the opinion.

7. The “Department” is defined in Rule 2(ix-a) of the Rules of Business, 1985, which means a self-contained administrative unit in the Secretariat, responsible for the conduct of business of the Government in a distinct and specified sphere and declared as such by

the Government. The organization of the Department, as provided in Rule 4 of the Rules of Business, 1985, provides that a Department shall consist of a Minister, a Secretary and of such other officials as the Government may determine and under Rule 6 of the Rules of Business, 1985, the Minister shall be responsible for policy matters and for conducting the business of his Department and he has to submit the cases to the Prime Minister as required by the provisions of these Rules. Under Rule 8 of the Rules of Business, 1985, a Secretary has to assist the Minister in formulation of policies and bring to the notice of the Minister the cases which are required to be submitted to the Prime Minister under the Rules. He has to execute the sanctioned policies. He is responsible to the Minister for proper conduct of the business of the Department. It is the duty of the Secretary that whenever any order made by the Minister, appears to involve a departure from the rules, regulations or Government policy, resubmit the case to the Minister. Under sub-rule (2) of Rule 8 of the Rules of Business, 1985, the Secretary, while resubmitting the case to the Minister, shall suggest a definite line of action. The Secretary has initiated the matter that in his opinion, the appointment of Mr. Justice (R) Munir Ahmed Chaudhary appears to be against the provisions contained in Section 5 and Section 7 of Act, 2000. The Minister thought that the interpretation of legislative powers of the Council and the Azad Jammu & Kashmir Legislative Assembly under Section 31 of Act, 1974, the interpretation of the provisions of Section 43(7) of Act, 1974 and the provisions of Act, 2000 are involved, therefore, it is

appropriate that the President be advised to seek the opinion from the Supreme Court and referred the case to the Prime Minister. In this context, the argument of Raja Muhammad Hanif Khan, advocate, appears to be misconceived.

8. We agree with the argument of Raja Muhammad Hanif Khan, advocate, that under Rule 7(b) of the Rules of Business, 1985, all the cases submitted to the Prime Minister or the President for orders shall be routed back through the Chief Secretary and all the orders of the Government have to be notified. The cases where after the approval of the President and the Prime Minister, the formal order is required by a Department, the file is sent back to the Department through the Chief Secretary for formal notification. The filing of reference in the Supreme Court doesn't require a formal notification. The Prime Minister advised the President and the President filed a reference for seeking the opinion of the Court on the formulated points. The objection on the maintainability of the reference is devoid of any force, hence is repelled.

9. Mr. Abdul Rasheed Abbasi, advocate, while arguing on behalf of the referring authority, the President of Azad Jammu & Kashmir, and the Azad Jammu & Kashmir Legislative Assembly, submitted that the legislative powers of the Council and the AJ&K Legislative Assembly are contained in Section 31 of Act, 1974. He submitted that the Council and the Legislative Assembly have powers to make laws for the territories of Azad Jammu & Kashmir, for all the

State subjects wherever they are or they may be. Under subsection (2) of Section 31 of Act, 1974 the Council is vested with the powers to legislate in the matters falling in the Council Legislative List set out in third schedule and in the residuary matters, the Council shall not and the Assembly shall have powers to make laws. He submitted that under Section 50 of Act, 1974, the Chief Election Commissioner shall be appointed by the President on the advice of the Council on such terms and conditions, as may be prescribed. The word “prescribed” is defined in Section 2 of Act, 1974 as “prescribed by law or rules made thereunder.” The matter of appointment and terms and conditions of the Chief Election Commissioner does not fall in the Council Legislative List. It is a residuary matter and only the Azad Jammu & Kashmir Legislative Assembly is competent to legislate in the matter. The Legislative Assembly competently made the Chief Election Commissioner (Terms & Conditions) Act, 1992 and appointments of the Chief Election Commissioner were made on the advice of the Council under this Act in the year 1992 and 1997. Later on, the Council passed Act, 2000 on the same subject in the year 2000. The learned counsel submitted that subsection (2) of Section 31 of Act, 1974 categorically lays down that the Council has legislative competence only in the matters enumerated in the Council Legislative List falling in the third schedule and clause (b) of subsection (2) of Section 31 of Act, 1974 further prohibits the Council from legislating on any residuary matter. The matter of appointment and terms and conditions of the Chief Election Commissioner exclusively falls in the

residuary matter and it is only the Azad Jammu & Kashmir Legislative Assembly which is competent to legislate in the matter. The Council is not competent to legislate in the matter.

The learned counsel argued that in the statement of facts filed by the learned counsel for the Council, the reliance has been placed on entry No.51 enumerated in the Council Legislative List. The matter of appointment, terms and conditions of the Chief Election Commissioner is not within its legislative competence because it does not fall in the list. On second part of entry No.51, regarding the matters relating to the Council, he submitted that entry No.51 enumerated in the third schedule of Act, 1974 means the subjects which are not only covered by schedule but are entered in the Constitution, such like example is Section 50-A of Act, 1974, which provides that the Auditor-General shall be appointed by the Council and the Council has powers to make law for appointment, terms and conditions of the Auditor-General. The appointment of the Auditor-General is not mentioned in the Council Legislative List. The learned counsel submitted that entry No.25 of third schedule of Act, 1974 provides for the elections to the Council and not the Chief Election Commissioner. The Assembly and the Council are two separate entities. The learned counsel made a comparison of Section 50 and 50-A of Act, 1974 and submitted that the Council is not empowered to legislate upon the terms and conditions of the Chief Election Commissioner. The learned counsel referred to and relied upon the

cases reported as *Syed Mumtaz Hussain Naqvi & 9 others v/s Raja Muhammad Farooq Haider Khan & 4 others* [2014 SCR 43], *Reference No.01 of 2012* [PLD 2013 SC 279], *Abdul Hameed Khan v/s Azad Govt. & others* [2009 SCR 400] and *Tahir Mehmood & 3 others v/s Khalid Sharif & 9 others* [2007 SCR 281].

The learned counsel further submitted that the provisions of the Constitution shall be read as an organic whole. He further submitted that the words “....relates to the Council” appearing in entry No.51 of the third schedule of Act, 1974 cannot enlarge the scope of schedule as compared to clear statutory provisions as laid down in the Section. By giving powers for issuing advice to the Council, does not empower the Council for legislation in the matter. Harmonious interpretation of the law is to be made. The learned counsel referred to and relied upon the cases reported as *Tahir Mehmood & 3 others v/s Khalid Sharif & 9 others* [2007 SCR 281], *Khalid Mehmood But & another v/s Managing Director, AKLASC & 4 others* [2002 SCR 158] and *Raja Muhammad Sohrab v/s AJ&K Government & 6 others* [2001 SCR 481].

In the alternative, the learned counsel submitted that the word “or” appearing in Section 51 of Act, 1974 may be read as “and”. He referred to and relied upon the case reported as *Sardar Abdul Rauf Khan & others v/s The Land Acquisition Collector/Deputy Commissioner, Abbottabad & others* [1991 SCMR 2164] and submitted that when there is a dispute between Section 31 and the

schedule to Section 31 of Act, 1974, Section 31 shall prevail. He referred to Crawford 1998th Edition, page 43. The learned counsel further submitted that *ejusdem generis* rule is applicable in the matter. He referred to Maxwell on Interpretation of Statutes, page 889 and Crawford, page 237. The learned counsel also referred to the Constitution of the Islamic Republic of Pakistan, 1973, by Justice Muhammad Munir, Vol. I, Page 99, 1996th Edition. The learned counsel submitted that exception shall be strictly construed. Entry No.51 of the third schedule be accepted as an exception. The learned counsel referred to and relied upon the case reported as *Ch. Muhammad Siddique & another v/s Deputy Collector Excise & Taxation & others* [1992 SCR 110]. The learned counsel referred to the Rules of Business of Azad Jammu & Kashmir Council, 1983 and entry No.18 and 19, which provide for the appointment of Chief Election Commissioner and the Auditor-General and submitted that these rules provide the cases to be sent to the Chairman AJ&K Council for orders including the appointment of the Chief Election Commissioner and the Auditor-General. The learned counsel in support of the argument, submitted that the Azad Jammu & Kashmir Rules of Business, 1985, provides that the Chief Election Commissioner is a special institution of the Law, Justice, Parliamentary Affairs & Human Rights Department. The executive authority in respect of the Chief Election Commissioner vests in the Government. The pay, budget and other matters are provided by the Azad Jammu & Kashmir Government and not the Council, therefore,

it is only the Azad Jammu & Kashmir Legislative Assembly, which has power to legislate in the matter. The learned counsel referred to Section 21 of Act, 1974 and argued that the executive authority of the Government shall extended to the matters which fall exclusively in the legislative competence of the Assembly. The learned counsel submitted that there are two laws in respect of the appointment and terms and conditions of the Chief Election Commissioner; one made by the Assembly in the year 1992 and the other by the Council made on the same subject in the year 2000. It does not amount to surrendering the authority before the Council. Act, 1992 was not repealed. He submitted that for determining the legislative competence of the Council and the Assembly, the pith and substance of the Act is to be looked into. When the executive authority is being exercised by the Government, after promulgation of Act, 1974, the legislative competence also vests in the Azad Jammu & Kashmir Legislative Assembly.

On point No.ii, the learned counsel submitted that a serving judge of the High Court can validly be appointed as Chief Election Commissioner. Clause (a) of subsection (7) of Section 43 of Act, 1974, provides that a judge of the High Court shall not hold any other office of profit in the service of Azad Jammu & Kashmir, if his remuneration is thereby increased. The learned counsel submitted that prohibition is subject to the condition that if his remuneration is thereby increased and in Act, 1992 and Act, 2000, it is laid down that

a judge shall not receive the pay of two offices. Clause (b) of subsection (7) of Section 43 of Act, 1974 does not relate to the service of Azad Jammu & Kashmir. There is difference between clause (a) and (b). In clause (a) of sub-section (7) of Section 43 of Act, 1974 the prohibition is to the effect that a judge shall not hold any office of profit in the service of Azad Jammu & Kashmir if his remuneration is thereby increased but clause (b) relates to any other position carrying the right to remuneration. This clause deals with any other office, not the service of Azad Jammu & Kashmir and provides that there is a right to remuneration with the post. The office of Chief Election Commissioner is a part of the service of Azad Jammu & Kashmir and a judge while acting as Chief Election Commissioner shall not receive the additional salary for the said post, therefore, a judge of the High Court can validly be appointed as Chief Election Commissioner. The learned counsel submitted that in Act, 2000, the word used is “shall not hold any office” while performing the functions of Chief Election Commissioner. By holding the office it means permanently holding the post and in Section 5 of Act, 2000, in proviso, the word has been used as “function”. A serving judge of the High Court can validly be appointed as Chief Election Commissioner. The learned counsel referred to and relied upon the case reported as *Bostan Chaudhary v/s Audit & Accounts Department & 6 others* [2011 SCR 279] for definition of the word “if”.

On point No.iii, whether a judge of the High Court, who was also acting as the Chief Election Commissioner and served as Chief Election Commissioner for some time after retirement as a judge of the High Court, can be appointed as Chief Election Commissioner for the remaining period fixed for the office of Chief Election Commissioner, the learned counsel submitted that the tenure of the office of the Chief Election Commissioner under Section 5 is fixed as three years. The proviso attached to Section 5(1) of Act, 2000 is to the effect that if a judge of the Supreme Court or the High Court is appointed as Chief Election Commissioner, in addition to the functions as a judge, he shall, on retirement as a judge of the Supreme Court or the High Court, as the case may be, shall also cease to function as Chief Election Commissioner. This proviso shall be read with the proviso to Section 7 of the Act. The proviso to Section 5 of Act, 2000 has overriding effect that if a person is appointed as Chief Election Commissioner in addition to his duties as judge of the Supreme Court or the High Court, as the case may be, when the judge retires, he ceases to be the Chief Election Commissioner. The appointment of the Chief Election Commissioner under this provision, when read with proviso to Section 7 of Act, 2000, makes it clear that if a serving judge is appointed as Chief Election Commissioner and his term expires before expiry of three years, then the Chief Election Commissioner ceases to hold the office and if he retires as judge of the Supreme Court or the High Court, as the case may be, he also ceases to function as Chief Election Commissioner.

On point No.iv, whether in terms of Section 7(2) of Act, 2000, a retired judge, who has held the office of Chief Election Commissioner in addition to his office as a judge of High Court, is eligible for re-appointment as Chief Election Commissioner before expiry of two years from the date of his ceasing to function as Chief Election Commissioner, the learned counsel submitted that Section 7(2) of Act, 2000 categorically debars a Chief Election Commissioner to hold any other office of profit in the service of Azad Jammu & Kashmir before expiry of two years' period from the date of on which he ceased to hold that office. The office of Chief Election Commissioner falls in the service of Azad Jammu & Kashmir, therefore, a person, who has held the office of Chief Election Commissioner, even for a shorter period, cannot be appointed as Chief Election Commissioner unless the period of two years has elapsed. An exception has been created in Section 43(8) of Act, 1974 that a judge of the High Court shall not hold the office of profit in the service of Azad Jammu & Kashmir after retirement before expiry of two years except the office of Chief Election Commissioner or the office of Chairman or Member, Public Service Commission. An exception has been created for a judge. No exception has been created for the Chief Election Commissioner.

10. Raja Muhammad Hanif Khan, advocate, representing the Council, submitted that the Chief Election Commissioner is appointed under Section 50 of Act, 1974, which provides that the terms and

conditions of the Chief Election Commissioner may be prescribed. The learned counsel submitted that the Chief Election Commissioner is appointed by the President on the advice of the Council and throughout right from 1974 the Chief Election Commissioner is being appointed on the advice of the Council. The word 'advice' is of much significance. The advice is an executive act and the authority, which performs the executive act, has powers to legislate under Section 21 and 31 of Act, 1974. The Azad Jammu & Kashmir Legislative Assembly made Act, 1992 for appointment, terms and conditions of the Chief Election Commissioner. Since the functions relating to the Chief Election Commissioner are of such nature, which require impartiality, therefore, the Council legislated Act, 2000 for appointment, terms and conditions of the Chief Election Commissioner. The learned counsel submitted that the Constitution shall be read as an organic whole and when we look into the whole scheme of the Constitution, it becomes crystal clear that the authority, which exercises the executive act, has powers to legislate in that matter. Since the Council has powers to issue advice for appointment of the Chief Election Commissioner under Section 50 of Act, 1974, it has the legislative authority and entry No.51 of Third Schedule clearly empowers the Council to legislate in the matter. Entry No.51 gives powers to the Council for legislation in respect of the matters "which under the Act are within the legislative competence of the Council or relates to the Council". The matter of appointment or issuance of advice relates to the Council, therefore, it is the Council, which has

powers to legislate in the matter. The learned counsel referred to the Azad Jammu & Kashmir Council Rules of Business, 1983, Schedule V, Entry No.18 and 19 and submitted that the appointment of Chief Election Commissioner and the Auditor-General of Azad Jammu & Kashmir falls in the competence of the Council. The learned counsel referred to and relied upon the cases reported as *Syed Mumtaz Hussain Naqvi & 9 others v/s Raja Muhammad Farooq Haider Khan & 4 others* [2014 SCR 43] and *Dossani Travels Pvt. Ltd. v/s Messrs Travels Shop (Pvt.) Ltd. & others* [PLD 2014 SC 1].

The learned counsel submitted that entry in the schedule is to be considered final. The learned counsel submitted that entry No.51 of third schedule of Act, 1974 be read with Entry No.52, which says that the matters incidental or ancillary to any of the matters enumerated in the Council Legislative List shall fall in exclusive legislative competence of the Council. The learned counsel referred to and relied upon the case reported as *Federation of Pakistan v/s Malik Muhammad Miskeen & others* [1995 SCR 43]. The learned counsel further submitted that Act, 1992 made by the Azad Jammu & Kashmir Legislative Assembly has impliedly been repealed after the enforcement of Act, 2000 by the doctrine of implied repeal. Only Act, 2000 is a valid piece of legislation and the Assembly has no power to legislate in the matter. The learned counsel referred to and relied upon the case reported as *Tanveer Hussain v/s Divisional Superintendent, Pakistan Railways & 2 others* [PLD 2006 SC 249]. The learned

counsel referred to and relied upon the judgment of the Azad Jammu & Kashmir High Court delivered in the case titled *Justice (R) Muhammad Siddique Farooqi v/s Azad Jammu & Kashmir Council & others* (writ petition No.24/2001, decided on 28.2.2001) and submitted that the Azad Jammu & Kashmir Government has accepted the version of the Council that the Council has legislative authority in the matters of the appointment of the Chief Election Commissioner. After accepting the same, the Government cannot turnaround. In fact, in the guise of this reference, the Government has filed an appeal from the judgment of the High Court delivered in 2001 with *mala fide* intention.

The learned counsel on point No.ii concurred with the opinion of Mr. Abdul Rasheed Abbasi, advocate, and submitted that a sitting judge of the High Court can be appointed as Chief Election Commissioner.

On point No.iii, the learned counsel submitted that proviso to section 5 of Act, 2000 is *ultra vires* the constitution but in presence of this proviso there is no concept of appointment of the Chief Election Commissioner for the remaining period. In the light of the proviso, a person, who is appointed as Chief Election Commissioner in addition to his functions as a judge of the Supreme Court or the High Court, as the case may be, ceases to be the Chief Election Commissioner, when he retires as a judge.

On point No.iv, the learned counsel submitted that in the light of the provisions contained in Section 7(2) of Act, 2000, a person, who has held the office of the Chief Election Commissioner, cannot be appointed as Chief Election Commissioner again, before the expiry of two years from the date, he ceases to hold that office. There is no other view but this provision is also *ultra vires* the constitution. On query by the Court that Act, 2000 is made by the Azad Jammu & Kashmir Council, the appointment order is also being made by the Council in the light of this provision, how can the Council say that the proviso to section 5 and section 7(2) of Act, 2000 is *ultra vires* the constitution, the learned counsel submitted that it is correct that the law is made by the Council but the fact of the matter is that the provisions are against the basic spirit of the constitution, therefore, these are *ultra vires* the constitution.

11. Mr. K. D. Khan, an advocate of this Court, who has filed the statement of facts voluntarily, submitted that the provisions contained in Section 31 of Act 1974, provide that subject to the succeeding provisions of this section, the Assembly and the Council shall have power to legislate for the territories of Azad Jammu & Kashmir and for the State subjects wherever they may be, and succeeding section 50 of Act, 1974 provides for appointment of the Chief Election Commissioner. Initially the Chief Election Commissioner was provided to be appointed without the advice of the Council but in the year 1975, the section was amended and it was

provided that the Chief Election Commissioner shall be appointed on the advice of the Council and advice is an executive act, therefore, by exercising the executive authority, the right to legislate in respect of the terms and conditions of Chief Election Commissioner vests in the Azad Jammu & Kashmir Council and the Assembly is not competent to legislate in the matter. The learned counsel submitted that Act, 1992 has impliedly been repealed by promulgation of Act, 2000. It is only the Council which has the authority to legislate in the matter. The learned counsel referred to and relied upon the case reported as *Shahid Nabi Malik v/s Chief Election Commissioner, Islamabad & 7 others* [1997 PSC 10] and *Rana Aamer Raza Ashfaq & another v/s Dr. Minhaj Ahmed Khan & another* [2012 SCMR 6]. The learned counsel further submitted that the schedule is an extension of the section and the schedule shall be read as part of that Section. Section 50 of Act, 1974 and the schedule when read together, leave no doubt that it is only the Council which has power to legislate in the matter.

12. Raja Amjad Ali Khan, advocate, representing Ch. Anwaarul Haque, a former speaker of the Azad Jammu & Kashmir Legislative Assembly, submitted that the reference made by the President under Section 46-A of Act, 1974 is not an appeal or the petition for leave to appeal. The President and the Chairman, Azad Jammu & Kashmir Council has exclusive powers under Section 46-A of Act, 1974 to seek the opinion of the Supreme Court on any question of law of public importance. No objection can be raised by

anybody on the reference because there is no concept of parties in the reference. The learned counsel while attending point No.i submitted that under Section 31(2) of Act, 1974, the Council has exclusive powers to make laws enumerated in the Council Legislative List set out in the third schedule. In the said matters, it is only the Council which can legislate and the Assembly has nothing to do with such matters as in clause (b) of Section 31(2) of Act, 1974 it has categorically been laid down that in the residuary matters, the Assembly shall and the Council shall not have powers to make laws in respect of the matters not enumerated in the Council Legislative List. A restriction has been imposed on the legislative powers of the Council in clause (b) of subsection (2) of Section 31 of Act, 1974. The matter of appointment, terms and conditions of the Chief Election Commissioner is not included in the Council Legislative list. The Council has powers to legislate in the matters, which are clearly provided in the Council Legislative List. The learned counsel submitted that the argument of Raja Muhammad Hanif Khan, advocate, that the Azad Government of the State of Jammu & Kashmir has surrendered its right of legislation before the High Court that the Council is competent to legislate in the matter, has no force as the jurisdiction cannot be conferred by consent. The Azad Jammu & Kashmir Legislative Assembly was not party in the said writ petition and the judgment of the High Court is not binding on this Court. The said judgment was delivered without filing of written statement by the Government. It has no value. The learned counsel submitted that the

deciding factor for the legislative purpose is the Council Legislative List and entry No.51 incorporated in the Council Legislative List relates to the matters falling within the Council legislative competence. For interpreting the said entry, it cannot be said that a matter distant to the Council can fall in the Council Legislative List. The learned counsel placed on record a copy of the letter written by Sardar Muhammad Ibrahim Khan, President of Azad Jammu & Kashmir, addressed to the Minister Kashmir Affairs on 27th November, 2000, whereby the President has shown serious reservations on the promulgation of Act, 2000. The learned counsel submitted that by reading of the whole of Act, 1974, the constitutional provisions, i.e. Sections 19, 21 and 31 and the schedule of Act, 1974, it becomes crystal clear that only the Azad Jammu & Kashmir Legislative Assembly has competence to make laws for appointment, terms and conditions of the Chief Election Commissioner. The Council has no jurisdiction in the matter.

On point No.ii, the learned counsel submitted that in the light of the provisions contained in Section 43(7)(b) of Act, 1974, a judge of the High Court cannot be appointed against a post in addition to his own duties where right of remuneration is attached. The post of Chief Election Commissioner is a full time salaried office. The right to remuneration is attached, therefore, a serving judge of the High Court cannot be appointed as Chief Election Commissioner.

On point No.iii, the learned counsel submitted that the proviso to Section 5 of Act, 2000, makes it clear that there is no concept of appointment of Chief Election Commissioner for the remaining period. If a serving judge of the High Court or the Supreme Court is appointed as Chief Election Commissioner in addition to his own office, he will serve till he remains in service or till expiry of a period of three years and if the judge retires before that period, he shall also cease to function as Chief Election Commissioner. This can be deduced from the proviso to Section 7 of Act, 2000, which also says that if a judge is appointed as Chief Election Commissioner, his tenure shall be three years and when a period of three years expires, the judge shall continue to serve as judge of the High Court or the Supreme Court, as the case may be.

On point No.iv the learned counsel submitted that subsection (2) of Section 7 of Act, 2000 places an embargo on appointment of a person, who has held the office of Chief Election Commissioner against any post in the service of Azad Jammu & Kashmir before expiry of two years from the date he ceased to hold that office. He submitted that under Section 43(8) of Act, 1974, an exception has been created for the judge of the High Court that he may be appointed as Chief Election Commissioner, Chairman or Member of the Public Service Commission before the expiry of two years but in other offices, he cannot be appointed till expiry of two years and no such exception is found in Act, 2000 for appointment

against other offices. The provisions of Act, 2000 are unambiguous and a person who remained Chief Election Commissioner, cannot be appointed again as Chief Election Commissioner before the expiry of two years from the date he ceases to hold that office.

13. Mr. Sadaqat Hussain Raja, advocate, counsel for the Azad Jammu & Kashmir Council, submitted that the reference has been filed with *mala fide* intention. It is in fact an appeal against the judgment of the High Court delivered in Mr. Justice (R) Muhammad Siddique Farooqi's case (supra). The questions formulated are person related. Mr. Justice (R) Munir Ahmed Chaudhary remained a judge of the High Court and also remained Chief Election Commissioner for a period of one year, 11 months and 17 days till he reached the age of superannuation and retired as a judge of High Court. All the questions have been formulated only to debar him from being appointed as Chief Election Commissioner.

14. We have perused the terms of reference and heard the counsel for the referring authority, the Azad Jammu & Kashmir Legislative Assembly, the Council and the interveners.

Point No.i:

- “i) There are two Acts in the field one passed by the Assembly as Act, 1992, and the other one passed by the Council as Act, 2000, as mentioned above. Under Section 31(2) of the Interim Constitution Act, 1974, the subject of Chief Election

Commissioner is not enumerated in the Council Legislative List and such matter comes in legislative purview of the Assembly. So in the present situation which authority is competent to make law on the subject? Council or Assembly.”

15. The people of the State of Jammu & Kashmir waged a movement for independence from the Dogra Regime in the early decades of 20th century. At the time of cessation of British sovereignty, two independent States i.e. India and Pakistan were created. Kashmir was the biggest amongst 563 princely States of India. The Princely States were given option to join either of the newly created countries. The people of Kashmir waged the war of liberation from the yoke of Dogra regime. In the result of this struggle, the parts of the State namely Gilgit Baltistan and Azad Jammu & Kashmir were liberated. The Government of the Azad State of Jammu & Kashmir was formed on 24th October, 1947. India took the matter to the United Nations. The ceasefire took place and in the result of deliberations in the United Nations, India committed that Kashmiris will be given the right to self-determination to decide their future through independent plebiscite and in this background, the United Nations passed the resolutions. In the light of UNCIP resolutions, the affairs of the territories under the control of Azad Jammu & Kashmir Government and Gilgit Baltistan are being run by the Government of Pakistan. Initially, the Azad Jammu & Kashmir Government was run through the Rules of Business, 1950. The Azad

Jammu & Kashmir Presidential Elections Act, 1960 was enforced in Azad Jammu & Kashmir on 16th December, 1960, which provided an Election Commissioner for Presidential Elections and the Chief Advisor to the Azad Government of the State of Jammu & Kashmir or a person nominated by him was to be appointed as the Election Commissioner. It is worth mentioning here that under the Rules of Business of the Government of Azad Jammu & Kashmir in 1950, 1952 and 1956, the Joint Secretary, Ministry of the Kashmir Affairs remained the Chief Advisor of the Azad Government of the State of Jammu & Kashmir. In the year 1964, Act IV of 1964 by the name of Azad Jammu & Kashmir Government Act, 1964 was enforced, which provided a State Council consisting of eight members. Thereafter, on 17th September 1968, Act, 1964 was repealed and the Azad Jammu & Kashmir Government Act, 1968 was enforced. The State Council members were to be elected in the prescribed manner by the members of the Union Council, Union Committee and the Town Committee in Azad Jammu & Kashmir elected under the Basic Democracies Act, 1960. Later on, the Azad Jammu & Kashmir Government Act, 1970 (Act I of 1970) was enacted on 5th September 1970 and the Azad Jammu & Kashmir Government Act, 1968 along with the rules made thereunder, was repealed. For the first time the Legislative Assembly was provided with the legislative powers. There is no mention of the Chief Election Commissioner in Act, 1970, however, under the provisions of Section 27 of Act, 1970, the appointment of Election Commissioner is prescribed. The Azad Jammu & Kashmir Electoral

Rolls Ordinance, 1970, was promulgated by the President under Section 7 of the Azad Jammu & Kashmir Government Act, 1968. Section 4 of the said Ordinance provides the Election Commissioner, which is reproduced as under:-

“4. **Election Commissioner.**—(1) For the purpose of this Ordinance, the Government shall appoint a person to be the Election Commissioner.

(2) the person performing the functions of Election Commissioner immediately before the commencement of this Ordinance shall be deemed to be the Election Commissioner appointed under sub-section (1).”

The Presidential elections and elections to the Azad Jammu & Kashmir Legislative Assembly under the provisions of the Azad Jammu & Kashmir Government Act, 1970, were conducted by the Election Commissioner appointed under the Electoral Rolls Ordinance, 1970. Later on through an agreement between the leadership of the Azad Jammu & Kashmir and the Government of Pakistan, the Government of Pakistan in the discharge of its responsibilities under the UNCIP resolutions, approved the proposed repeal and reenactment of the Azad Jammu & Kashmir Government Act, 1970 to provide for the Government and administration of the territories of Azad Jammu & Kashmir and authorized the President of Azad Jammu & Kashmir to introduce the bill of Azad Jammu & Kashmir Interim Constitution Act, 1974 (Act VIII of 1974) in the Azad Jammu & Kashmir Legislative Assembly. The Azad Jammu & Kashmir Legislative Assembly passed the Azad Jammu & Kashmir

Interim Constitution Act, 1974 to provide for the better Government and administration of Azad Jammu & Kashmir. Section 50 of Act, 1974 provides for the Chief Election Commissioner.

The appointment of Election Commissioner under the Azad Jammu & Kashmir Government Act, 1970, was validated. Initially in Act, 1974, it was provided that the Chief Election Commissioner shall be appointed by the President but later on an amendment was introduced in 1975 and the appointment of the Chief Election Commissioner was to be made by the President on the advice of the Council. Section 50 of Act, 1974 provides that the terms and conditions of the Chief Election Commissioner may be prescribed. Section 2 of Act, 1974 defines the word “prescribed” as “prescribed by law or rules made thereunder”. From 1974, onwards, no law prescribing the terms and conditions of the Chief Election Commissioner was made. For the first time the President of Azad Jammu & Kashmir promulgated an ordinance for determining the terms and conditions of the Chief Election Commissioner and Chief Election Commissioner (Terms and Conditions) Act, 1992 was passed by the Azad Jammu & Kashmir Legislative Assembly. For proper appreciation we deem it necessary to reproduce the same, which is as under:-

“Azad Government of the State of Jammu & Kashmir,

Law and Parliamentary Affairs Department,

‘Muzaffarabad’

Dated the 29th June, 1992

No.638-42/LD/Leg/92. The following Act of the Assembly received the assent of the President on 24th June, 1992 is hereby published for general information:-

(Act II of 1992)

AN

ACT

To provide for law relating to the terms and conditions of the Chief Election Commissioner

WHEREAS it is expedient to provide for law relating to the terms and conditions of the Chief Election Commissioner, in the manner hereinafter appearing;

It is hereby enacted as follows:-

1.
2.
3. Chief Election Commissioner.-(1) There shall be a Chief Election Commissioner.
 (2)The person appointed as Chief Election Commissioner and functioning as such immediately before the commencement of this Act shall be deemed to have been appointed on the same terms and conditions as are hereinafter specified in this Act from such commencement.
 (3)No person shall be appointed to be Chief Election Commissioner unless he is, or has been, a judge of the Supreme Court or is, or has been a judge of the High Court.
Explanation:- In this sub-section Judge means a Judge of the Supreme Court or the High Court;
 Provided that a person who is a Judge of the High Court or Supreme Court is appointed as Chief Election Commissioner, he in addition to his functioning as Chief Election Commissioner may if so required by the President, perform the functions of the judge of that Court.
4. Salary, allowances and Privileges of Chief Election Commissioner.- If a person who is a Judge of the High Court or the Supreme Court is appointed as a Chief Election Commissioner, his terms and conditions as to the salary, allowances, privileges and rights in respect of leave of absence shall be the same as are

applicable to a Judge of High Court or the Supreme Court, as the case may be;

Provided that if a retired Judge or a retiring Judge is appointed as Chief Election Commissioner, he shall be entitled, in addition to his pension, to the same salary, privileges, allowances and rights in respect of leave of absence as are admissible to him before retirement.

5. Term of Office of Chief Election Commissioner.-(1) The Chief Election Commissioner, shall, subject to this Section, hold his office for a term of five years from the day he enters upon his office;

Provided further that a person appointed as Chief Election Commissioner and functioning as such immediately before the commencement of this Act shall be deemed to have entered upon his office from the commencement of this Act.

(2) The Chief Election Commissioner shall not be removed from office except in the manner prescribed by law for the removal from office of a judge of the Supreme Court or the High Court, as the case may be, and in the application of law for the purposes of this Section any reference in that law, to a judge shall be construed as a reference to the Chief Election Commissioner.

(3) The terms and conditions of the service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

(4) The Chief Election Commissioner may, by writing under his hand-addressed to the President, resign his office.”

Later on two amendments were introduced in Act, 1992.

The amendments are reproduced as under:-

Amendment made on 15th July, 1992.

- “1.
- 2. Amendment of Section 3, Act II of 1992:- In the Chief Election Commissioner (terms and

conditions) Act, 1992 (Act II of 1992) in Section 3, in proviso to sub-section (3), for the words and comma “may if so required by the President,” the words “shall also”, shall be substituted.”

Amendment made on 28th April, 1995

“1.

2. Amendment of Section 4, Act II of 1992.- In the Chief Election Commissioner (Terms and Conditions) Act, 1992 (Act II of 1992) in Section 4, for the proviso the following shall be substituted, namely:-

“Provided that if a retired judge or a retiring judge is appointed as Chief Election Commissioner, he shall be entitled, in addition to his pension, to the same salary, privileges, allowances and rights in respect of leave of absence as are admissible from time to time to a judge of the High Court or Supreme Court, as the case may be.”

3.”

16. In pursuance of Act, 1992, in the year 1992, Mr. Justice (R) Sardar Muhammad Ashraf Khan, a judge of the Supreme Court, was appointed as Chief Election Commissioner on 8th September 1993 w.e.f. 29th June 1992, who was already acting as Chief Election Commissioner and he remained as Chief Election Commissioner up to 17th April 1999. Mr. Justice (R) Muhammad Siddique Farooqi, a serving judge of the High Court, was appointed as Chief Election Commissioner on 13th March 1999 on the advice of the Council.

17. The Azad Jammu & Kashmir Council enacted the Chief Election Commissioner (Terms & Conditions) Act, 2000 (Act IV of 2000) for providing the terms and conditions of the Chief Election

Commissioner. In the light of 2nd proviso to subsection (1) of Section 5 of Act, 2000, it was provided that the person functioning as Chief Election Commissioner before commencement of Act shall cease to hold the office on such commencement.

18. The whole controversy revolves around Sections 31 and 50 of Act, 1974 and provisions contained in Act, 2000, therefore, we deem it necessary to reproduce the relevant provisions of Act, 1974, which are as under:-

“31. Legislative Power.-(1) Subject to the succeeding provisions of this section, both the Council and the Assembly shall have the power to make laws-

- (a) For the territories of Azad Jammu & Kashmir.
 - (b) For all State Subjects wherever they may be; and
 - (c) For the officers of the Council or as the case may be the Government, wherever they may be.
- (2) Subject to sub-section (3).
- (a) the Council shall have exclusive power to make laws with respect to any matter in the Council Legislative list set out in the Third Schedule, hereinafter referred to as the Council Legislative List; and
 - (b) the Assembly shall, and the Council shall not, have power to make laws with respect to any matter not enumerated in the Council Legislative List.
- (3) Neither the Council nor the Assembly shall have the power to make any law concerning-
- (a) the responsibilities of the Government of Pakistan under the UNCIP Resolutions;
 - (b) the defence and security of Azad Jammu & Kashmir;
 - (c) the current coin or the issue of the bills, notes or other paper currency; or

(d) the external affairs of Azad Jammu & Kashmir including foreign trade and foreign aid.

(4) No tax shall be levied for the purposes of the territories of Azad Jammu & Kashmir except by or under the authority of an Act of the Council or the Assembly;

(5) No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought in conformity with the Holy Quran and Sunnah.”

.....

“50. Chief Election Commissioner.- (1) There shall be a Chief Election Commissioner appointed by the President on the advice of the Council on such terms and conditions as may be prescribed.

(2) The person appointed as Chief Election Commissioner under the Azad Jammu and Kashmir Government Act, 1970 or deemed to have been so appointed and functioning as such immediately before the commencement of this Act shall be deemed to have been appointed as Chief Election Commissioner under sub-section (1) on the same terms and conditions of service as are applicable to him immediately before such commencement.”

19. The Azad Jammu & Kashmir is being run under the Azad Jammu & Kashmir Interim Constitution Act, 1974 and Government of Pakistan is performing the responsibilities in the light of UNCIP Resolutions. The legislative powers under sections 31 of Act, 1974, are divided into three parts. One part is to be performed by the Government of Pakistan under sub-section (3) of section 31 of Act, 1974. Neither the Council, nor the Assembly has power to make any law concerning the matters enumerated in sub-section (3) of section 31.

Apart from the matters enumerated in sub-section (3) of Act, 1974, both; the Council and the Assembly, have powers to make laws for the territories of the Azad Jammu & Kashmir, the State Subjects wherever they may be; and for the officers of Council or as the case may be, the Government, wherever they may be. Sub-section (2) of section 31 of Act, 1974 provides that the Council shall have exclusive powers to make laws with respect to any other matters incorporated in the Council Legislative List, set out in the third Schedule and in respect of the residuary matters, it is laid down in clause “b” of sub-section (2) of Section 31 that the Assembly shall and the Council shall not have the power to make laws with respect to any matter not enumerated in the Council Legislative List. What transpires from the plain reading of section 31 of Act, 1974 that both; the Council and Assembly have the power to make laws for the territories of the Azad Jammu & Kashmir, the State Subjects and the officers of the Council or the Government, wherever they may be. The legislative powers of Assembly and Council are subject to sub-section (3) of section 31 of Act, 1974, in respect of the matters concerning the Government of Pakistan, i.e. (a) the responsibilities of the Government of Pakistan under the UNCIP Resolutions; (b) the defense and security of Azad Jammu & Kashmir; (c) the current coin or the issue of the bills, notes or other paper currency; or (d) the external affairs of Azad Jammu & Kashmir including foreign trade and foreign aid. Sub-section (4) of section 31 of Act, 1974, confers powers both in the Council and the Assembly for levying the tax for

the territories of the Azad Jammu & Kashmir. Similar provisions are found in the Constitution of Islamic Republic of Pakistan, 1973. Initially, there were two Legislative List set out under Article 142; the Federal Legislative List, the Concurrent Legislative List and the residuary matters were in the competence of the Provincial Assemblies. Through 18th amendment, the Concurrent Legislative List has been abolished and there is only Federal Legislative List, the remaining matters fall within the legislative competence of the Provincial Assemblies.

20. Before resolving the matter in the light of section 31 of Act, 1974, we deem it expedient to consider the provisions contained in section 19 of Act, 1974, which relates to the extent of the executive authority of the Government and section 21 which relates to the executive authority of the Azad Jammu & Kashmir Council. Section 19 is reproduced as under:-

“19. Extent of executive authority of Government.” (1) Subject to this Act, the executive authority of the Government shall extend to the matters with respect to which the Assembly has power to make laws.

(2) The executive authority of the Government shall be so exercised as :-

(a) not to impede or prejudice the responsibilities of the Government of Pakistan in relation to the matters specified in subsection (3) of section 31; and

(b) to secure compliance with the laws made by the Council.

(3) Notwithstanding anything contained in this Act, the Government may with the consent of the Council, entrust, either conditionally or unconditionally, to the Council, or to its officers functions in relation to any matter which the executive authority of the Government extends.”

A plain reading of section 19 of Act, 1974, shows that the executive authority of the Government shall extend and the Government shall exercise its executive authority to the matters with respect to which the Assembly has power to make laws. While exercising the executive authority, the Government shall not impede or prejudice the responsibilities of Government of Pakistan in relation to the matters specified in sub-section (3) of section 31 of Act, 1974 and shall also make compliance with the laws made by the Council. It is further laid down that the Azad Government of the State of Jammu & Kashmir may, with the consent of the Council, entrust, to the Council or its officers, the functions in relation to any matter to which the executive authority of the Government extends.

21. The Azad Jammu & Kashmir Council is constituted under section 21 of Act, 1974. The same is reproduced as under:-

21. **Azad Jammu & Kashmir Council.**_(1) There shall be an Azad Jammu & Kashmir Council consisting of .-
- (a) the Prime Minister of Pakistan;
 - (b) the President;
 - (c) five members to be nominated by the Prime Minister of Pakistan from time to time amongst Federal Minister and members of parliament;

- (d) the Prime Minister of Azad Jammu & Kashmir or a person nominated by him; and
- (e) six members to be elected by the Assembly from amongst State Subjects in accordance with the system of proportional representation by means of the single transferable Vote.

(2) The Prime Minister of Pakistan shall be the Chairman of the Council

(3) The President shall be the Vice Chairman of the Council.

(3-A) The Federal Minister of State for Kashmir Affairs and Northern Affairs shall be an ex-officio member of the Council.

4

5.

6.

7. The executive authority of the Council shall extend to all matters with respect to which the Council has power to make laws and shall be exercised, in the name of the Council, by the Chairman who may act either directly or through the Secretariat of the Council of which a Federal Minister nominated by the Chairman from amongst the members of the Council and not more than three advisors appointed by the Chairman shall be in-charge.

Provided that the Council may direct that, in respect of such matter as it may specify, its authority shall be exercisable by the Vice Chairman of the Council, subject to such condition, if any, as the Council may specify.”

8.

9.

10.

11.

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14.”

Sub-section (7) of Section 21 of Act, 1974 makes it clear that the executive authority of the Council shall extend to all the matters with respect to which the Council has power to make laws. It is worth mentioning that the Azad Jammu & Kashmir Council is not only a legislative body but it also exercises the executive authority in the matters which fall in its legislative competence. Sub-section (2) of section 31 of Act, 1974, refers the Council Legislative List, set out in the third Schedule. There are 52 items entered in the Council Legislative List in respect of which, the Council has the exclusive power to make laws. Whether, all the matters which are not enumerated in the Council Legislative List, fall in the legislative competence of the Legislative Assembly, the subject matter, topics or nature of activities on which the legislative structure for making laws, have to be looked into. Although, this question has been for the first time raised before this Court but the matter of legislative competence came under consideration of the Supreme Court of Pakistan in a number of cases. Articles 141, 142 and 143 of the Constitution of Islamic Republic of Pakistan 1973, (hereinafter to be referred as the Constitution of Pakistan, 1973), deal with the Federal and Provincial legislation. In the Constitution of Pakistan, 1973, initially there were two lists, Federal Legislative List and the Concurrent Legislative List. There are two parts of Federal Legislative List. Under Article 142 of the Constitution of Pakistan, 1973, the *Majlis-e-Shoora* has exclusive

jurisdiction to legislate in the matters enumerated in the Forth Schedule, while both; the *Majlis-e-Shoora* and Provincial Assemblies had jurisdiction in the matters enumerated in the Concurrent Legislative List and the residuary matters were left with the Provincial Assemblies. Article 143, provides the situation where there is dispute in respect with the inconsistency between the Federal and Provincial Legislative Lists. No such provision is contained in the Act, 1974.

22. The scope of distribution of legislative powers under Articles 141, 142 and 143 of the Constitution of Pakistan, 1973, came under consideration of the Supreme Court of Pakistan in the case reported as *Shamas Textile Mills Ltd. and others vs. The Province of Punjab and 2 others* [1999 SCMR 1477], wherein it was observed as under:-

“It may be reiterated that under Article 141 (ibid) *Majlis-e-Shoora* (Parliament) may make laws for the whole or any part of Pakistan and a Provincial Assembly may make laws for the province or any part thereof. Under Article 142 (Ibid) *Majlis-e-Shoora* (Parliament) has exclusive powers to make laws with respect to any matter in the Federal Legislative List and *Majlis-e-Shoora* (Parliament) and a Provincial Assembly also have powers to make laws with respect to any matter in the Concurrent List. Under Clause (c) of Article 142 (ibid) a Provincial Assembly shall and *Majlis-e-Shoora* (Parliament) shall not have power to make laws with respect to any matter”... not enumerated in either the Federal Legislative List or the Concurrent Legislative List.....”

22. From the scheme of the Constitution, i.e. Act, 1974, it appears that the Azad Jammu & Kashmir Legislative Assembly has legislative authority over the subject matters, topics and activities not enumerated in the Council Legislative List. Is the Council Legislative List conclusive and it covers all the matters which fall in the legislative competence of the Council?, had the case been so then there was no need to incorporate entry No.51 which provides that “the matters which under the Act are within the legislative competence of the Council or related to the Council”. It appears that the Council Legislative List is not conclusive and entry No.51 is entered for covering the matters which are in the legislative competence of the Council but are not enumerated in the Council Legislative List. One of such like example is section 50-A of Act, 1974, relating to the Auditor General. Section 50-A of Act, 1974 is reproduced as under:-

“50-A. **Auditor General.**- (1) There shall be an Auditor-General of Azad Jammu & Kashmir who shall be appointed by the President on the advice of the Council.

(2) Before entering upon office, the Auditor-General shall make before the Chief Justice of Azad Jammu & Kashmir oath in the form set out in the First Schedule.

(3) The terms and conditions of service, including the terms of office, of the Auditor-General shall be determined by Act of the Council and, until so determined by rules made by the Council.

(4)

(5)

(6)”

Sub section (3) of section 50-A of Act, 1974 in clear terms provides that the terms and conditions of service including the terms of office of Auditor General shall be determined by the Act of the Council. The section confers powers for legislation relating to the terms and conditions of Auditor General in the Council but it is not entered in the Council Legislative List. Mere absence of a specific matter in the Council Legislative List does not debar the Council from legislation in the matter, if otherwise the matter falls within the legislative competence of the Council according to the scheme and spirit of Act, 1974. For determining the legislative competence in respect of the matters not enumerated in the Council Legislative List, we have to consider the pith and substance of the matter. For determining the pith and substance of law relating to the Chief Election Commissioner, we have to resort back to the history of Election Commissioner. As has been observed hereinabove that the office of Election Commissioner was for the first time provided under the Azad Jammu & Kashmir Government Act, 1970 and section 4 of the Azad Jammu & Kashmir Electoral Rolls Ordinance, 1970, provided for appointment of the Election Commissioner. On the enforcement of Act, 1974 under section 50, it was provided that the Chief Election Commissioner shall be appointed by the President on the advice of the Council. It was also provided that the terms and conditions of appointment of Chief Election Commissioner may be prescribed. Under section 50 of Act, 1974, like section 50-A, it is not provided that as to who has the legislative competence, nor the

appointment of Chief Election Commissioner appears in the Council Legislative List. From 1974 till 1992, no law was made in respect of the terms and conditions of Chief Election Commissioner and without prescribing any mode, the Chief Election Commissioners were appointed. For the first time, law relating to the Chief Election Commissioner, the Azad Jammu & Kashmir Chief Election Commissioner (Terms and Conditions) Act, 1992 was passed by the Azad Jammu & Kashmir Legislative Assembly which still exists on the Statute Book. In the light of the said Act, Justice (R) Sardar Muhammad Ashraf Khan was appointed as Chief Election Commissioner and thereafter Justice (R) Muhammad Siddique Farooqi was appointed as Chief Election Commissioner. Thereafter, Act, 2000 was passed by the Azad Jammu & Kashmir Council for providing the appointment (terms and conditions) of Chief Election Commissioner.

23. It was vehemently contended by Raja Muhammad Hanif Khan, Advocate that entry No. 51 when read with entry No. 52 makes it clear that the Council has power to legislate for terms and conditions of the Chief Election Commissioner and since the Chief Election Commissioner is appointed on the advice of the Council and the issuance of advice is an executive function, therefore, the legislation in respect of the terms and conditions of Chief Election Commissioner is a matter which relates to the Council. His argument is that the entries in the Schedule when read with other provisions of

Constitution, i.e. sections 19 and 31 of Act, 1974, make it clear that it is only the Council which has power to make law for terms and conditions of Chief Election Commissioner. The argument appears to be misconceived. We respectfully agree with the rule of law laid down in the cases titled *Syed Mumtaz Hussain Naqvi & 9 others v/s Raja Muhammad Farooq Haider Khan & 4 others* [2014 SCR 43] and *Dossani Travels Pvt. Ltd. v/s Messrs Travels Shop (Pvt.) Ltd. & others* [PLD 2014 SC 1], that the Constitution shall be read as an organic whole and while interpreting the Constitution, the whole scheme of the Constitution has to be considered. In the Act, 1974 not only the Chief Election Commissioner but the appointments in the other offices are made on the advice of the Council which include the appointment of Chief Justice and Judges of the Azad Jammu and Kashmir Supreme Court, the Chief Justice and Judges of the Azad Jammu and Kashmir High Court and the Auditor General. Under section 42-D of Act, 1974, the Assembly and the Council; both are empowered to legislate in respect of the powers of the review of the Supreme Court but the matter is not enumerated in the Council Legislative List. The Council has no executive authority over these offices. The pith and substance is material for determining the legislative ambit. The functions of Chief Election Commissioner are to prepare the electoral rolls under the Azad Jammu and Kashmir Electoral Rolls Ordinance, 1970, conducting elections to the Azad Jammu and Kashmir Legislative Assembly under Azad Jammu and Kashmir Legislative Assembly (Elections) Ordinance, 1970. The

elections to the Azad Jammu and Kashmir Council find mention in entry No. 25 in the Council Legislative List appearing in the third schedule. The Azad Jammu and Kashmir Government is exercising authority in respect of the matters relating to the Chief Election Commissioner, budget, budgetary provisions of Chief Election Commissioner, are provided by the Azad Jammu & Kashmir Government. The staff is managed by the Azad Jammu & Kashmir Government and all the expenses for preparation of voter lists and the general elections are borne by the Azad Jammu & Kashmir Government. Thus, it is clear that the major functions of the Chief Election Commissioner, except elections to the Council, relate to the matters falling in the legislative competence of Azad Jammu & Kashmir Legislative Assembly.

24. The Act, 1974 has unique character unlike the Constitution of Pakistan, 1973. The Judges and Chief Justice of the Supreme Court and High Court are appointed by the President on the advice of the Council. In the Constitution of Pakistan, 1973, there is a specific prohibition that only *Majlis-e-Shoora* shall make laws for conferring jurisdiction upon the Supreme Court but jurisdiction is conferred upon the Supreme Court of Azad Jammu and Kashmir by the Legislative Assembly. For example, under the provisions of Azad Jammu & Kashmir Islamic Penal Laws (Enforcement) Act, 1974, the Azad Jammu & Kashmir Family Courts Act, 1993, and the Azad Jammu & Kashmir Legislative Assembly (Elections) Ordinance,

1970, a right has been provided to file appeal to the Supreme Court. Mere power to issue advice cannot confer Legislative Authority in the Council. Here it may be observed that the advice cannot be issued on its own or in vacuum. The advice can be issued whenever the appointing authority seeks the advice. This Court in the case reported as *Muhammad Younas Tahir and another vs. Shoukat Aziz, Advocate Muzaffarabad and others* [PLD 2012 SC (AJ&K) 42] has observed as under:

“33. The phraseology employed in section 43(2-A) of the Act, 1974 when analyzed in the light of referred authorities, denotes that before issuing the appointment order, the President has to consult the two Chief Justices and seek advice from the Council....”

In the referred case it was further observed as under:-

“35. The process of appointment of a Judge in the High Court has to be initiated by the Chief Justice of the High Court when the President seeks panels for the purpose of consultation. The Chief Justice shall immediately send the panel of eligible persons to the President who shall send the same to the Chief Justice of Azad Jammu & Kashmir and after seeking the panel from him, seek the advice from the Council for issuing the appointment orders.”

25. The argument of Raja Muhammad Hanif Khan, Advocate, counsel for the Council, that Act, 2000 is occupying the field for the last more than 15 years and the appointments of Chief Election Commissioner are being made in the light of said Act and the Azad Government has surrendered its authority before the Council in the matter, therefore, it is estopped to turnaround and claim that the Council has no legislative competence in the matter. The Azad Jammu

and Kashmir Legislative Assembly passed the Act, 1992 in relation to the terms and conditions of Chief Election Commissioner. The said Act still holds the field. The appointments were made in the light of said Act. In presence of such Act, the Azad Jammu and Kashmir Council passed the Act, 2000 on the same subject. In the Constitution of Pakistan, 1973, under Article 143, if there are two Acts on the same subject, one passed by the *Majlis-e-Shoora* and the other by the Provincial Assembly, the Act of *Majlis-e-Shoora* shall prevail and the Act passed by the Provincial Assembly shall give way but neither is such like provision in Act, 1974, nor the Council has such superior controlling authority like the *Majlis-e-Shoora*. It does not need any authority that there is no estoppel against law. We have also considered the case titled *Justice Rtd. Muhammad Siddique Farooqi vs. Azad Jammu & Kashmir Council & others* (Writ Petition No.24/2001, decided on 28.02.2001). In the said case, the petitioner challenged the vires of Act, 2000 but later on, he requested for withdrawal of the writ petition. The High Court instead of allowing him to withdraw the writ petition decided the same only after hearing the counsel for Council. It is worth mentioning that the Azad Jammu and Kashmir Legislative Assembly was not a party in the said writ petition. No written statement was filed on behalf of the Azad Jammu and Kashmir Government. The High Court observed that ex-parte proceedings have been ordered against the Government. Later on, the High Court ordered the Secretary Law, Justice, Parliamentary Affairs & Human Rights Department of the Azad Government of the State of

Jammu and Kashmir to file written statement. The written statement was filed by the same Advocate who filed the written statement on behalf of the Council. The High Court while relying upon entries No. 51 and 52 of the Council Legislative List set out in the third Schedule of Act, 1974, observed that the advice appearing in section 50 of Act, 1974, when read with entries No. 51 and 52, makes it clear that the Council is competent to legislate in the matter and observed that the Government has filed the written statement and admitted that the Council is competent to legislate law in the matters. The High Court also observed that the advice of Chairman, Azad Jammu and Kashmir Council is binding under section 7 of Act, 1974.

Section 7 of Act, 1974, relates to the advice of the Prime Minister of Azad Jammu and Kashmir and not the Chairman Azad Jammu and Kashmir Council. We are unable to endorse the view expressed by the High Court in *Muhammad Siddique Farooqi's* case.

The contention of Mr. Abdul Rashid Abbasi, Advocate that word “or” appearing in entry No. 51 of third Schedule may be read as “and” but we do not need it necessary to resolve the same, however, from the combined reading of sections 19, 21, 31, 50, 50-A and 42-D of Act, 1974 and while considering the pith and substance of the matter, we have drawn the conclusion that the matter does not fall in the legislative competence of the Azad Jammu and Kashmir Council. It is a residuary matter and the Azad Jammu and Kashmir Legislative Assembly is competent to legislate for the appointment

(Terms and Conditions) of Chief Election Commissioner, as is the requirement of section 50 of Act, 1974.

Point No.ii:

“Under Section 43(7) of the Interim Constitution Act, 1974, Judge High Court is not entitled to hold any other office of profit in the service of Azad Jammu & Kashmir if his remuneration is thereby increased or he cannot occupy any other position carrying the right to remuneration for rendering any service. In this context whether a serving Judge of the High Court can be appointed as Chief Election Commissioner?”

28. Mr. Abdul Rashid Abbasi and Raja Muhammad Hanif Khan, Advocates, appearing on behalf of the referring authority and the Council, submitted that a serving Judge of the High Court may validly be appointed as Chief Election Commissioner. For proper appreciation, we deem it proper to reproduce sub-sections 7 and 8 of section 43 of Act, 1974, which read as follows:

- “43. (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7) A judge of the High Court shall not:

(a) hold any other office of profit in the service of Azad Jammu and Kashmir if his remuneration is thereby increased; or

(b) occupy any other position carrying the right to remuneration for the rendering of services, but this sub-section shall not be construed as preventing a Judge from holding or managing private property.

(8) A person who has held office as a Judge of the High Court shall not hold any office of profit in the service of Azad Jammu and Kashmir not being a judicial or quasi-judicial office or office of the Chief Election Commissioner or of Chairman or Member of the Public Service Commission, before the expiration of two years after he ceased to hold that office.

(9)

A perusal of clause (a) of sub-section 7 specifically debars a Judge of High Court from holding the office of profit in the service of Azad Jammu and Kashmir, if his remuneration is thereby increased. A Judge of the High Court may be appointed as Chief Election Commissioner in the light of the provisions contained in Act, 1992 and Act, 2000, both passed by the Azad Jammu and Kashmir Legislative Assembly and Azad Jammu and Kashmir Council, respectively. It is provided that if a serving Judge is appointed as Chief Election Commissioner, he will not receive his remuneration in addition to the salary, he is already receiving. The phraseology imposed an embargo on appointment of Judge of High Court for holding the office of profit in the service of Azad Jammu and Kashmir with the condition “if his remuneration is thereby increased.” The embargo is qualified with the word “if”. What appears after the word, “if”, that his remuneration is thereby increased. According to the

Black's Law Dictionary (Eighth Edition), the meanings of the remuneration are:-

“(1). Payment, compensation, (2). The act of paying or compensating.”

In the *Law Terms & Phrases*, dictionary the meanings of remuneration are as follows:-

“If a man gives his services, whatever consideration he gets for giving his services seems to me a remuneration for them. Consequently, I think if a person was in receipt of a payment, or in receipt of a percentage, or any kind of payment which would not be actual money payment, the amount he would receive annually in respect of this would be remuneration.”

30. Under the constitutional provisions it is provided that a Judge of the High Court in addition to his salary, if receives the salary as Chief Election Commissioner, then his appointment cannot be made, but if the law provides that the Chief Election Commissioner shall receive only one salary then a serving Judge of the High Court may be appointed as Chief Election Commissioner. Clause (b) of sub-section 7 of section 43 of Act, 1974, does not relate to the office of profit in the service of Azad Jammu & Kashmir. It relates to any other position like a sitting Judge of the High Court cannot hold the office of Director of a Company which carries the right of remuneration. Clause (b) of sub-section 7 of section 43 of Act, 1974, does not relate to the office of Chief Election Commissioner because it does not relate to the service of Azad Jammu and Kashmir. A sitting Judge of the High Court can validly be appointed as Chief Election

Commissioner. Similar is the position in the provisions relating to Chief Election Commissioner in the Constitution of Islamic Republic of Pakistan where a Judge of the High Court or Supreme Court or a person qualified to be appointed as Judge of the Supreme Court or the High Court may be appointed as Chief Election Commissioner.

Point No.iii:

“If a serving Judge of High Court is appointed as Chief Election Commissioner in addition to his duties as Judge High Court and he has ceased to function in term of Section 5 of Act, 2000. Whether any term is left after ceasing to function as Chief Election Commissioner on retirement as Judge High Court and if any term is available, whether that can be given in parts?

31. Raja Muhammad Hanif Khan and Mr. Abdul Rashid Abbasi, Advocates, counsel for the referring authority and the Azad Jammu and Kashmir Council, submitted that there is no concept of appointment of the Chief Election Commissioner for the remaining period and Chief Election Commissioner cannot be appointed for the remaining period. Raja Muhammad Hanif Khan, Advocate, submitted that there is no concept of appointment for the remaining period. The proviso to section 5 of the Act, 2000 is ultra vires the Constitution.

Section 5 of the Act, 2000 is reproduce as under:-

“5. Term of office of Chief Election Commissioner- (1) The Chief Election Commissioner shall hold office for a term for three years from the

day he enters upon his office and the term of Chief Election Commissioner shall be extendable for a further period of one year on the advice of the Council:

Provided that when a judge of the High Court or a Judge of the Supreme Court is appointed as the Chief Election Commissioner, in addition to his functions as a Judge, he shall on his retirement as the Judge of the High Court or the Supreme Court as the case may be, shall also cease to function as Chief Election Commissioner.

Provided further that the person holding the office as Chief Election Commissioner and functioning as such immediately before the commencement of this Act shall cease to hold office on such commencement.

(2)

(3)

(4)”

From plain reading of section 5 of Act, 2000, it is clear that the Chief Election Commissioner shall hold the office for a term of three years and proviso to sub-section (1) of Section 5 says that if a Judge of the High Court or Supreme Court is appointed as Chief Election Commissioner in addition to his functions as a Judge, he shall on his retirement cease to function as Chief Election Commissioner. When a serving Judge is appointed once in addition to his duties as a Judge and he reaches the age of superannuation before expiry of period of three years, at his retirement he is not entitled to continue as Chief Election Commissioner for three years. Under the proviso to sub-section (2) of section 7 of Act, 2000, if a serving Judge is appointed as Chief Election Commissioner and the term of office of

Chief Election Commissioner is expired, he will continue to function as Judge of the said Court. The proviso has overriding effect on the main provision. The effect of proviso was considered by this Court in the case reported as *M/s Ashraf and Akbar & another vs. Kh. Abdul Khaliq and others* [1995 SCR 196], whereby it was observed as under:-

“..... A proviso by its very nature has overriding effect if its contents are inconsistent with the main provision to which a proviso is attached. Legislature does not employ words like “notwithstanding contained to the contrary” to demonstrate its overriding nature unless it is designed to override provisions which do not immediately precede a proviso and are contained elsewhere.”

The effect of proviso is that if a serving Judge of the High Court or Supreme Court is appointed as Chief Election Commissioner for a period of three years and if his service remains more than three years, then he will remain Chief Election Commissioner for three years and if his service remains less than three years and retires from the office of Judge of the High Court or the Supreme Court, he will cease to function as Chief Election Commissioner. Both; the provisos i.e. attached with section 5 and section 7 of Act, 2000 make it abundantly clear that there is no concept of reappointment of the Chief Election Commissioner for the remaining period.

Point No.iv:

“Whether in term of Section 7(2) of the Act, 2000, a retired Judge, who has held office of Chief Election Commissioner in addition to his office as Judge High Court, is eligible for re-appointment as Chief Election Commissioner before expiry of two years from date of his ceasing to function as Chief Election Commissioner?”

32. Mr. Abdul Rashid Abbasi and Raja Muhammad Hanif Khan, Advocate, submitted that a person who has held the office of Chief Election Commissioner shall not hold any post or office of profit in the service of Azad Jammu and Kashmir before expiration of two years if he has ceased to hold that office. Raja Muhammad Hanif Khan, Advocate, contended that the provisos attached to sections 5 and 7 of Act, 2000 are ultra vires the Constitution. Mr. Abdul Rashid Abbasi, strengthen his argument while referring to sub-section (8) of section 43 of Act, 1974 and submitted that an exception has been created for the Judge of High Court. A prohibition is imposed on the judge of the High Court that he shall not hold any office of profit in the service of Azad Jammu and Kashmir till the expiry of a period of two years but an exception has been created for the judge that he may be appointed as Chief Election Commissioner or Chairman or Member of Public Service Commission, when he ceases to be a Judge of High Court. No such exception for the Chief Election Commissioner has been provided in Act, 2000 or in the Constitution. Clause (a) of section 7 of Act, 2000, specifically imposes a condition

on the Chief Election Commissioner that he will not hold the office of profit in the service of Azad Jammu and Kashmir. Sub-section (2) of section 7 of Act, 2000 debars a person who has held the office of Chief Election Commissioner that he shall not hold any office of profit in service of Azad Jammu and Kashmir before the expiration of two years from the date he ceases to hold the office of Chief Election Commissioner. The office of Chief Election Commissioner is an office of profit in the service of Azad Jammu & Kashmir. The language of sub-section (2) is clear. The plain meaning has to be assigned while interpreting the statutory provisions. A person who has held the office of Chief Election Commissioner cannot be reappointed as Chief Election Commissioner before the expiry of 2 years from the date, he ceases to hold the office of Chief Election Commissioner.

On having dilated upon the questions referred to by the President of Azad Jammu & Kashmir and detailed reasons recorded hereinabove, our opinion is as follows:-

Question No.i: The matter of terms and conditions of the Chief Election Commissioner is within the legislative competence of the Azad Jammu & Kashmir Legislative Assembly.

Question No.ii: A serving judge of the High Court can be appointed as Chief Election Commissioner.

Question No.iii: A person, who remained Chief Election Commissioner for some period, after ceasing

from functioning as such, he cannot be reappointed for the remaining period.

Question No.iv: A person, who remained Chief Election Commissioner, cannot be reappointed till the expiry of two years from date of his ceasing to function as Chief Election Commissioner.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

Mirpur,
21st October, 2015.