SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT
Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.
Masood A. Sheikh, J.

1. Civil Appeal No. 7 of 2016
(PLA filed on 18.01.2016)

Azad Jammu and Kashmir Council through Secretary, Azad Jammu and Kashmir Council Secretariat, having office at Kashmir Council Secretariat, Sector F-5/2, Islamabad.

…. APPELLANT

VERSUS

1. Azad Jammu and Kashmir Government through its Chief Secretary, New Civil Secretariat, Muzaffarabad.
2. Secretary Law, Justice & Parliamentary Affairs Department, Azad Jammu and Kashmir Government, New Civil Secretariat, Muzaffarabad.

3. Legislative Assembly, Azad Jammu and Kashmir through Secretary Legislative Assembly, Assembly Secretariat, Muzaffarabad.
4. Secretary, Election Commission, Azad Jammu and Kashmir, New Civil Secretariat, Muzaffarabad.
5. President, Azad Jammu and Kashmir through Secretary Presidential Affairs, President Secretariat Jalalabad, Muzaffarabad.
6. Chief Secretary, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.

…… RESPONDENTS

1. Chaudhary Tariq Farooq, Member Legislative Assembly Azad Jammu and Kashmir, Deputy Opposition Leader Azad Jammu and Kashmir Legislative Assembly.
2. Dr. Najeeb Naqi, Member Legislative Assembly, Azad Jammu and Kashmir.
3. Raja Sajjad Ahmed Khan, Advocate Supreme Court, Muzaffarabad.

…… PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 12.01.2016 in Writ Petition No. 2740/2015)

FOR THE APPELLANT: Mr. Sadaqat Hussain Raja and Raja Kahlid Mehmood Khan, Advocates.

FOR THE RESPONDENTS: M/s. Mansoor Pervaiz Khan, Advocate-General, Ch. Shaukat Aziz, Additional Advocate-General, Raja Muhammad Hanif Khan, Raja Inamullah Khan and Barrister Humayun Nawaz Khan, Advocates.

2. Civil Appeal No. 8 of 2016
(PLA filed on 20.01.2016)

1. Chaudhary Tariq Farooq, Member Legislative Assembly Azad Jammu and Kashmir, Deputy Opposition Leader Azad Jammu and Kashmir Legislative Assembly.
2. Dr. Najeeb Naqi, Member Legislative Assembly, Azad Jammu and Kashmir.
3. Raja Sajjad Ahmed Khan, Advocate Supreme Court, Muzaffarabad.

…… APPELLANTS

VERSUS

1. Azad Jammu and Kashmir Government through its Chief Secretary, New Civil Secretariat, Muzaffarabad.
2. Secretary Law, Justice & Parliamentary Affairs Department, Azad Jammu and Kashmir Government, New Civil Secretariat, Muzaffarabad.
3. Legislative Assembly, Azad Jammu and Kashmir through Secretary Legislative Assembly, Assembly Secretariat, Muzaffarabad.
4. Azad Jammu and Kashmir Council through Secretary AJ&K Council, having office at Kashmir Council Secretariat Sector F-5/2, Islamabad.
5. Secretary, Election Commission, Azad Jammu and Kashmir, New Civil Secretariat, Muzaffarabad.
6. President, Azad Jammu and Kashmir through Secretary Presidential Affairs, President Secretariat Jalabad, Muzaffarabad.
7. Chief Secretary, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.

…… RESPONDENTS

(On appeal from the judgment of the High Court dated 12.01.2016 in Writ Petition No. 2740/2015)

FOR THE APPELLANTS:	Raja Muhammad Hanif Khan and Raja Inamullah Khan, Advocates.
FOR THE RESPONDENTS:	Mr. Mansoor Pervaiz Khan, Advocate-General, Ch. Shoukat Aziz, Additional Advocate-General, Sadaqat Hussain Raja and Raja Khalid Mehmood Khan, Advocates.

3. Civil Appeal No. 11 of 2016
(PLA filed on 21.01.2016)

1. Azad Government of the State of Jammu & Kashmir through Prime Minister of Azad Jammu & Kashmir, Muzaffarabad.
2. Secretary Law, Justice & Parliamentary Affairs, Government of Azad Jammu & Kashmir, Muzaffarabad.
3. Legislative Assembly of Azad Jammu & Kashmir through Secretary Legislative Assembly, Muzaffarabad.

4. President of Azad Jammu & Kashmir through Secretary / Presidential Affairs, President House, Muzaffarabad.

…..APPELLANTS

VERSUS

1. Ch. Tariq Farooq, Member/Deputy Opposition Leader Legislative Assembly of Azad Jammu and Kashmir Muzaffarabad.
2. Dr. Najeeb Naqi, Member Legislative Assembly of Azad Jammu and Kashmir, Muzaffarabad.
3. Raja Sajjad Ahmed Khan, Advocate Supreme Court, Muzaffarabad.
4. Azad Jammu & Kashmir Council through its Secretary having its office at AJ&K Council Secretariat, Sector F-5/1, Islamabad.

…… RESPONDENTS

5. Ch. Anwar-ul-Haque, Former Speaker of Legislative Assembly of Azad Jammu & Kashmir r/o Bhimber, City Bhimber, Azad Kashmir.
6. Mrs. Shaheen Kausar Dar, Member/Deputy Speaker, Legislative Assembly of Azad Jammu & Kashmir, Muzaffarabad.
7. Chief Secretary of Government of Azad Jammu & Kashmir, Muzaffarabad.

8. Secretary Election Commission of Azad Jammu & Kashmir, Muzaffarabad.

…… PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 12.01.2016 in Writ Petition No. 2740/2015)

FOR THE APPELLANTS: Mr. Mansoor Pervaiz Khan, Advocate-General and Barrister Humayun Nawaz Khan, Advocate.

FOR THE RESPONDENTS: M/s. Sadaqat Hussain Raja and Raja Khalid Mehmood Khan, Advocates.

Date of hearing: 25.01.2016.

ORDER:

Mohammad Azam Khan, C.J —. The Chief Election Commissioner of Azad Jammu and Kashmir is appointed under Section 50 of the Azad Jammu and Kashmir Interim Constitution Act, 1974 (hereinafter to be referred as Constitution Act) by the President on the advice of the Council. The Azad Jammu and Kashmir Council issued an advice for the

appointment of Mr. Justice (R) Munir Ahmed Chaudhry, former Judge High Court as Chief Election Commissioner on 7.9.2015. The advice was returned by the President. The Chairman AJ&K Council on 16th November, 2015, withdrew the advice relating to the appointment of Mr. Justice Munir Ahmed Chaudhry and issued the advice for appointment of Mr. Justice Ghulam Mustafa Mughal, Chief Justice High Court as Chief Election Commissioner.

2. The Azad Jammu and Kashmir Assembly amended the Chief Election Commissioner (terms and conditions) Act, 1992 (hereinafter to be called as Act, 1992) through the amending Ordinance XIX of 2015 and introduced Section 6-A which reads as follows:-

> "6-A. Acting Chief Election Commissioner.- At any time when:-
>
> (a) the office of Chief Election Commissioner is vacant or;
>
> (b) the Chief Election Commissioner is absent or unable to perform the functions of his office due to any other cause;
>
> the person eligible under Section 3 shall be appointed by the President in

consultation with the Chief Justice as Acting Chief Election Commissioner."

3. The President while acting under section 6-A, of the amending Ordinance, 2015, after consultation with the Chief Justice of Azad Jammu and Kashmir, issued the orders for appointment of Acting Chief Election Commissioner on 29.12.2015.

4. The appellants in civil appeal No.8/2016 filed a writ petition whereby they challenged vires of the amending section 6-A of the Ordinance XIX of 2015 being ultra vires the Constitution and also prayed for setting aside the appointment order of the Acting Chief Election Commissioner and also prayed for issuance of order on the advice issued by the Chairman of the Azad Jammu and Kashmir Council dated 16th November, 2015 in conformity with the Section 50 of Constitution Act. The AJ&K High Court accepted the writ petitions declaring the section 6-A ultra vires the Constitution and also observed that the President shall send a penal of eligible persons for appointment of Chief Election Commissioner after

consultation with the Leader of the House and the Leader of Opposition. Three appeals have been filed from the said judgment.

5. Since the matter is of public importance therefore, the appeals are being disposed of through the following short order for the reasons to be recorded later:-

(a) There is no procedure prescribed for initiation of the process for appointment of the Chief Election Commissioner. The advice issued by the Azad Jammu and Kashmir Council on 16th November, 2015 of an eligible person who qualifies to be appointed as Chief Election Commissioner under the Act, 1992 is a valid advice.

(b) Under Section 50 of the Constitution Act, the Chief Election Commissioner has to be appointed by the President on the advice of the Council and section 6-A of the amending Ordinance XIX of 2015, provides appointment of Chief Election Commissioner without the

advice of Council, therefore, this provision offends the Section 50 of Constitution Act.

(c) Since we have drawn the conclusion that the advice issued by the Council on 16th November, 2015 is valid and legal which is holding the field, therefore, in view of the conclusion reached at in civil appeal No.7/2016 titled *AJ&K Council vs. AJ&K Govt. & others*, in presence of the advice for appointment of permanent Chief Election Commissioner, Acting Chief Election Commissioner cannot be appointed.

Consequently, the civil appeal No.7/2016 titled *AJ&K Council vs. AJ&K Govt. & others* is accepted. The civil appeal No. 8/2016 titled *Ch. Tariq Farooq & others v. Azad Govt. & others* has become infructuous in the light of the conclusion drawn in civil appeal No.7/2016 titled *AJ&K Council vs. AJ&K Govt. & others*, hence stands dismissed whereas the civil appeal No.11/2016 titled *Azad Govt. & others vs. Ch. Tariq Faroq & others* is partly accepted to the extent

of modification in the impugned judgment of the High Court.

CHIEF JUSTICE J U D G E J U D G E J U D G E
Mirpur,
25.1.2016.