

Sardar Tanveer Ilyas VS

Ch. Muhammad Yaseen &
others

PRESENT:

Mr. Tahir Aziz Khan, Kh. Ansar Ahmed, Sardar M. R. Khan and Haroon Riaz Mughal, Advocates for the appellant.

Raja Muhammad Hanif Khan, Ch. Shoukat Aziz, Kh. Attaullah Chak and Syed Zulqarnain Raza Naqvi, Advocates for the respondents.

Kh. Muhammad Maqbool War, Advocate General on Court's notice.

ORDER:

For the reasons to be recorded later on, we are intended to dispose of this appeal in the following manner:-

(a) That Article 16(3) of the Azad Jammu and Kashmir Interim Constitution, 1974 provides that:-

"If the Assembly is in session at the time when the Prime Minister resigns his office, the Assembly shall forthwith proceed to elect a Prime Minister, and if the Assembly is not in session the President shall for that purpose summon it to meet within fourteen days of the resignation"

The Article (supra) has been divided into two limbs to deal with two eventualities, i.e. (i) if the Assembly is in session at the time when the Prime Minister resigns his office, the Assembly shall forthwith proceed to elect a Prime Minister; and (ii) if the Assembly is not in session, the Worthy President shall for that purpose summon it to meet within fourteen days of the resignation. We are of the unanimous view that in the light of peculiar facts

and circumstances of this case, after resignation of the Prime Minister of Azad Jammu and Kashmir on 14.04.2022, the resolution for vote of no confidence had automatically come to an end. As at the time of resignation by the Prime Minister, the Assembly was not in session, hence, as per the Constitution, the President of Azad Jammu and Kashmir has to summon the meeting of the Assembly within fourteen days of the resignation. In this state of affairs, there was no occasion for the Speaker of the Assembly to continue the proceedings of the Assembly for the purpose of election to the office of Prime Minister. The learned High Court was therefore justified in issuance of impugned restraint order.

- (b) It appears that the learned High Court through the impugned order has directed the respondents to stay their hands from taking 'any proceedings' regarding election to the office of the Prime Minister of Azad Jammu and Kashmir, whereas, in our opinion such observations amount to make the constitutional provisions redundant. We are conscious of the fact that the office of the Prime Minister cannot be kept vacant for an indefinite period and presently the office is working as a stop gap arrangement, furthermore, both the

parties are in agreement that the election to the office of the Prime Minister should be conducted in accordance with the constitutional provisions, hence, we deem it appropriate to direct the Secretary Law, Justice, Parliamentary Affairs and Human Rights as well as the Principal Secretary to the Prime Minister, to immediately take measures for enabling the Worthy President to summon the session of the Assembly for the purpose of election to the office of Prime Minister.

- (c) In view of the facts of instant case, the session of the Assembly summoned on 15.04.2022, shall be deemed prorogued. Resultantly, the writ petition filed by the respondents has also become infructuous.

The office is directed to immediately send the copy of this order to the Secretary Law, Justice, Parliamentary Affairs & Human Rights, Principal Secretary to the Prime Minister and Secretary to the Worthy President, for compliance.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

Muzaffarabad,
16.04.2022