

IN THE HIGH COURT OF SINDH, KARACHI

SUITS No.1065/2020, 1160/2020,
1316/2020, 20/2018 & 1647/2017

BEFORE:
Mr. Justice Arshad Hussain Khan

Mr. Salman Talibuddin Advocate General Sindh for Plaintiff in
Suit No.1065/2020.

Mr. Altamash Faisal Arab Advocate for Plaintiffs in
Suit Nos.1647/2017 & 1160/2020.

Mr. Nadir Khan Burdi Advocate along with Mr. Shaukat M. Ali
Advocate for Plaintiffs in Suit No.1316/2020.

Mr. Muhammad Riaz Abbasi Advocate for Plaintiffs in
Suit No.20/2018.

Khawaja Shamsul Islam and Mr. M. Mansoor Mir Advocates
for Defendant No.1 in Suit No.1065/2020 and Defendant No.5
in Suit No. 1316 of 2020.

Mr. Abdul Razzaq Advocate for Defendant No.2 in Suit
No.1065/2020, Defendant No. 1 & 3 in Suit No.1160/2020 and
Defendants No. 1 to 4 in Suit No.1316/2020

Mr. Iqbal Khurram Advocate for Defendant Nos.2 & 4 in
Suit No.1160/2020.

Date of Hearing: 22.09.2020, 23.09.2020 and 30.09.2020

JUDGMENT

ARSHAD HUSSAIN KHAN-J., All the above suits have been clubbed together as the controversy involves in the suits, more or less, pertains to the election and appointment of Diocese of Karachi, Synod, Karachi Diocesan Council of the Church of Pakistan.

2. Although the above cases were fixed for hearing of interlocutory applications, however, at this stage, during the course of arguments, all the learned counsel appearing for the parties in all the suits have agreed and consented to the disposal of the above suits by one and the same order. Hence, this single order will dispose of the above suits, however, instead of mentioning the facts of each of the case, only prayer clauses have been cited herein below, a perusal whereof will reflect the case and reliefs sought by the respective parties:

Suit No.1065 of 2020Advocate General Sindh vs. Rt. Rev. Sadiq Daniel and another.

The Plaintiff, Advocate General Sindh, has filed the present suit on 02.09.2020 against the Defendants with the following prayers:-

- a) A declaration that Defendant No.1 shall stand retired from the office of Bishop of Karachi including Baluchistan Province with effect from 04.09.2020;
- b) A permanent injunction restraining Defendant No.1 from taking any step or action whatsoever designed to prevent the Moderator [Defendant No.2] of the Church of Pakistan or his Commissary / Representative from taking over charge of the Karachi Diocese including Baluchistan Province from Defendant No.1 on 04.09.2020 and conducting election for the new Bishop thereafter;
- c) An order directing Defendant No.1 to hand over peaceful vacant possession of his office and the residential premises in his occupation to Defendant No.2 or his representative within one month of the date of his retirement;
- d) Any other better relief(s) may be granted, which this Honourable Court may deem fit and proper under the circumstances of the case;
- e) Ad-interim orders are also solicited.

Suit No. 1160 of 2020Victor Dass and other vs. Mr. Humphrey Sarfaraz Peter & 3 others.

This suit was filed on 14.09.2020 with the following prayer :-

- A. Immediately restrain the Defendants their agents, servants and all other persons from holding the election of bishop of Karachi on 19.09.2020 and/or 26.09.2020, which is in stringent violation of Constitution of Church of Pakistan.
- B. To declare that the tenure of the Synod held in May 2017 and the tenure of Karachi Diocesan Council held in April 2017 have expired, as such they are not legally competent and authorized to hold and conduct election of bishop.
- C. To direct the Defendants to hold/convene Synod Church of Pakistan and the Karachi Diocesan Council within a period of 15 days and/or 1 month, as any election held by the expired Synod and the expired Diocesan Council shall be unconstitutional illegal, unlawful and of no legal effect.
- D. To direct the Defendants to conduct / perform the election of bishop of Karachi strictly in accordance with the provisions and procedure provided in the Constitution of the Church of Pakistan and the Rules of Election and Appointment of Bishops framed thereunder.
- E. To grant any other relief or reliefs, as deems fit and proper in the circumstances of the case.

F. To grant cost of suit.

Suit No.1316 of 2020

Pervez Bhatti and others vs. Church of Pakistan and 5 others

This suit was filed on 02.09.2020 with the following prayers:-

- A. Declare that issuance of Letter dated 21.08.2020 by Defendant No.3 and letter dated 28.08.2020 by Secretary of Defendant No.2 is illegal, unlawful, malafide, motivated, based on ill will and bad faith and quash the same forthwith.
- B. Declare that unless commissary is appointed or new Bishop is elected charge or Office of Defendant No.6 cannot be taken by Defendant No.3 or any of his representatives or any commissary illegally appointed by Secretary of Defendant No.2 from Bishop of Karachi.
- C. Declare that being Moderator Defendant No.3 is only authorized to chair/get the elections of Defendant No.1 held and is not entitled or competent for any other purposes;
- D. Direct the Defendant No.1 to Defendant No.4 to act strictly in accordance with constitution of Defendant No.1, so also, in accordance with constitution of Defendant No.6.
- E. Direct Defendant No.1 and Defendant No.2 to consider the continuation of 05 years to Bishop of Karachi to hold office of Defendant No.6.
- F. Permanently restrain Defendant No.1 to Defendant No.3, their officers, attorneys, representatives or anybody acting on their behalf from taking any adverse action against Bishop of Karachi or against Defendant No.6 pursuant to letter dated 21.08.2020 and letter dated 28.08.2020.
- G. Cost of the suit.
- H. Grant any other further and better relief(s) which is deemed fit and appropriate by this Hon'ble Court in the circumstance of the case.

Suit No. 20 of 2018

Pastor Shafiq and another vs. Zafar Iqbal and 14 others.

This suit was filed by the Plaintiffs on 08.09.2017 with the following prayers:-

1. Declare the impugned 15th Triennial Synod Meeting, dated 15th May 2017, 17th May 2017, to be illegal, unlawful and unconstitutional.
2. Declare all decisions made during and Officers appointed / elected / installed in the said impugned meeting to be null, defunct and void.
3. To Direct the Defendants to reschedule the 15th Triennial Synod Meeting on its constitutional/lawful date.

4. To Direct the Defendants to not increase the retirement age of Clergy and Bishops and other offices of the Church of Pakistan of further.
5. To grant permanent injunction against the Defendants thereby restraining their agents, servants, colleagues, person or persons and Officers working under decisions / laws / rules passed / made in the said impugned meeting dated 15th May 2017 to 17th May 2017. And restrain the Defendants appointing / nominating / electing / posting any of their family members / relatives / friends in each individual Diocesan Council and thereafter the Synod and also restrain the Defendants from usurping / selling / renting / altering / defacing / creating third party interests in properties and assets mentioned in Point No.23.
6. To Grant any other relief(s) deemed fit and proper by this Honorable Court.
7. Cost of the suit

Suit No.1647 and 2017

Revd. Parvez Barkat and others vs. The Synod Church of Pakistan and 11 others

This suit was filed by the Plaintiffs on 22.06.2017 with the following prayers :-

- A. Immediately restrain the Defendants their agents, servants, appointees, assignees, etc. particularly the Defendant Nos. 1 to 4 from acting, claiming and / or stating themselves as Officers of the Synod Church of Pakistan.
- B. Direction may be issued to the Defendants to place on record proceedings / minutes of impugned Synod meeting Conducted on 16.05.2017 and 17.05.2017, for appropriate orders of this Honorable Court.
- C. To declare that the Synod meeting conducted on 16.05.2017 and 17.05.2017 is unconstitutional hence illegal, unlawful and of no legal effect.
- D. Direction may be issued to the Defendants i.e. last elected Officers of the Synod Church of Pakistan to conduct 15th Triennial Meeting of the Synod strictly in accordance with the provisions provided in the Constitution of the Church of Pakistan, particularly in accordance with provisions envisaged in Chapter XI, Article 7 thereof.
- E. To grant any other relief or reliefs, as deems fit and proper in the circumstances of the case.
- F. To grant cost of suit.

3. **Learned Advocate General Sindh [A.G]**, the Plaintiff in Suit No.1065/2020, in his arguments while referring to Section 92 CPC has submitted that a suit in respect of a trust property can be brought either by the Advocate General of a Province himself or by two or more

persons having obtained the consent of the A.G. in order to safeguard the rights of the public in a trust and insofar as the nature of the trust is concerned, it is submitted that the trust is in the nature of a 'constructive trust' formed for a religious purpose. In this regard, he has referred to Trust Act, 1882 [Chapter-1], Corpus Juris Secundum [Volume 89], Black's Law Dictionary [7th Edition] and the Religious Endowments Act, 1863. Learned A.G, while referring to different provisions of the Constitution of the Churches of Pakistan [**The Constitution**], Minutes of the 15th Triennial Synod Church of Pakistan, held on 16th & 17th of May, 2017, at Lahore, as well as Rules and Procedures for the Election / Appointment and Consecration of an Assistant or Area Bishop, Diocesan and Coadjutor / Bishop Designate, has contended that Defendant No.1 [Rt. Rev. Sadiq Daniel] assumed the charge as Diocesan Bishop of Karachi and Baluchistan Province on 04.09.2002 and was to be retired on 04.09.2020 upon attaining the age of superannuation i.e. 70 years. It is argued that the Synod, comprising all the Dioceses, is the supreme supervisory and legislative body of the Churches under the Constitution and it has to meet at least once in a period of three years and those meetings are called as ordinary meetings. Further argued that the Synod comprises a Moderator, a Deputy Moderator, a General Secretary and a Treasurer being its officers. As per Article 8(b) of Chapter XI of the Constitution, the above officers are elected by balloting of the Synod with Moderator and Deputy Moderator being elected from amongst the Diocesan Bishops. As per Article 8(d) of Chapter XI of the Constitution, the Moderator shall be presiding officer of the Synod and of its Executive Committee. It is also argued that Article 8(c) of the Constitution provides that all officer of the Synod shall be elected during each ordinary meeting of the Synod and shall hold office from the close of the meeting till the close of the next ordinary meeting of the Synod. It is contended that the last ordinary meeting of the Synod was held on the 16th and 17th of 2017. It is further contended that no ordinary meeting could be held in the month of May, 2020, or thereafter due to Covid-19 pandemics and as such the elected officer of the Synod including the present Moderator, who under the law shall continue in office until the time next ordinary meeting is held. It is argued that amongst the decisions those were taken in the last ordinary meeting of

the Synod held on the 16th and 17th of May 2017, was setting the retiring age of all Bishops and Clergies of the Church of Pakistan at 70 years, which was a two-year increase in the earlier retiring age of 68, the said increase was done at the request of Defendant No.1 (Mr. Sadiq Daniel). It is contended that on 21.08.2020, the present Moderator wrote to Defendant No.1 thanking him for service rendered informing him the date of his retirement i.e. 04.09.2020, either Defendant No.2 or his representative shall come to Defendant No.1's office to take over the charge from him until the Synod appoints a new Bishop for the Diocese of Karachi and Baluchistan Province, instead of gracefully accepting that he shall stand retired on 04.09.2020. Defendant No.1 in utter breach of the Constitution sent a legal notice dated 25.08.2020 to Defendant No.2, contents of the said legal notice shows the malafide intentions of Defendant No.1 for illegally continuing as Bishop of Karachi and Baluchistan for his personal and illegal benefit. It is further contended that in the legal notice, threat was extended to the Moderator for dire consequences if he comes to Karachi for the purpose of taking over charge from him. It is next contended that in view of the fact that Defendant No.1 shall stand retired on 04.09.2020 by letter dated 28.08.2020, the Moderator has appointed the Bishop of Hyderabad as his commissary / representative under Article 7(c) of Chapter IX of the Constitution for Diocesan of Karachi to take over the charge and further Diocese of Karachi shall stand vacant on 05.08.2020, elections for the new Bishop of Karachi have been announced to be held within 30 days. It is argued that Defendant No.1 stood retired from his office on 04.09.2020 and is no longer entitled to hold the office of Bishop. It is also argued that as per the Constitution, the officers of the Synod shall be a Moderator, a Deputy Moderator, a General Secretary and a Treasurer and Moderator and Deputy Moderator are to be elected from amongst the Diocesan Bishops. Per learned A.G, at present, there is no Bishop of Karachi and Baluchistan Province, therefore, in case the Synod meets to hold its election first in time, it will not be properly constituted as there will be no Bishop for the Diocese of Karachi and Baluchistan Province at the meeting. Similarly, if elections of the Karachi Diocesan Council are held first in time, the council will not be properly constituted since there is presently no Bishop, who is the Ex-Officio president of the Council. It

is also argued that the election for the office of Bishop of Karachi and Baluchistan may be held first in time so that the Bishop, who is elected may be able to represent the Diocese of Karachi and Baluchistan. It is also argued that Defendant No.1 has handed over the charge to the Commissary appointed by Defendant No.2 and further all necessary steps have been taken to conduct election for the office of Bishop of Karachi & Baluchistan in accordance with the revised election procedure brought by the amendment. Thus, in order to avoid any delay to fill-up the vacant position of Diocesan Bishop of Karachi and Baluchistan, the elections may be directed to be held as early as possible. Learned A.G. Sindh, in support of his stance in the case has relied upon the cases of Kandawala Trust through Trustees and another v. The State [2013 MLD 640], Khawaja Muhammad Ali and 6 others v. Sir Jehangir Kothari Trust through Trustees and 16 others [PLD 2013 Sindh 592], Ejaz Inayat v. Rt. Rev. Dr. A.J. Malik and others [PLD 2009 Lahore 57], Mahmud Illahi v. The DAWN Trust and another [PLD 1950 Sindh 25], Federation of Pakistan and others v. Mian Muhammad Nawaz Sharif and others [PLD 2009 SC 284], The Hub Power Co. v. WAPDA [1999 CLC 1320], Al-Jamiaul Arabia Ahasanul Uloom and Jamia Masjid and others v. Syed Sibte Hasan and others [1999 YLR 1634], State of Uttar Pardesh v. Bansi Dhar and others [AIR 1974 SC 1084], Sheikh Abdul Kayum and others v. Mulla Alibhai and others [AIR 1963 SC 309], Phulchand Lakhmichand Jain and Ors. v. Hukumchand Gulabchand Jain and Ors. [AIR 1960 Bombay 438], Deoraj v. State of Maharashtra and others [2004 4 S.C. Cases 697], Nelatooru Venkatarangacharyulu and another v. Nedathur Krinamacharyulu and others [AIR 1914 Madras 593], S. Subramania Aiyar and another v. Venkatachala Vadhyar and others [AIR 1918 Madras 1179].

4. **Mr. Abdul Razzak Advocate** for Defendant No.2 in suit No.1065 /2020, Defendants No. 1 & 3 in Suit No.1160/2020 and Defendants No. 1 to 4 in Suit No.1316/2020, in his arguments while reiterating the statement in writing filed in Suit No.1065/2020, supported the stance / arguments of the learned Advocate General Sindh and contended that the suit filed by the Learned A.G. to secure religious body whose functions are governed under the Constitution,

which is purely in the nature of trust and the A.G. Sindh is competent to file the suit to secure the larger interest of people as well as to secure the interest of Diocese of Karachi. Learned counsel has submitted that the election of Bishop must be scheduled within 30 days from the announcement by Secretary Synod Church of Pakistan who announced it on 5th September, 2020, and election was announced for 26th September 2020, but the election was again adjourned in compliance of status quo order passed by this Court. It is also argued that the validity of the Synod is still intact till the next Triennial meeting, which is scheduled to be held in the end of October 2020. Furthermore, it is nowhere mentioned in the Constitution that if election is not held in the period of three years, the function of Synod will have no legal authority. It is also argued that the election of Diocese of Karachi is being held strictly in accordance with election Rules 2007, which are protected by the Constitution as it was approved by all Diocese Council in Pakistan and subsequently it was approved by supervisor legislative body [Synod]. It is also argued that four elections have been held in all Dioceses by following these rules. It is argued that in compliance of this Court order dated 02.9.2020, Rt. Rev. Sadiq Daniel has handed over the charge to Bishop Kaleem Irshad John upon completion of his age / tenure. It is argued that election of Bishop of Karachi Diocese may be directed to be held immediately as any delay in holding the same would cause serious prejudice to the entire christen community of Pakistan. He has relied upon cases of *Shah Ghulam Qadir v. Iqbal Razzaq Butt and 3 others* [1999 MLD 1933 SC (AJK)], *Agha Qurban Ali and others v. Election Commission of Pakistan through Chief Election Commissioner and others* [2020 CLC 1], *Al-Tamash Medical Society through Secretary v. Dr. Anwar Ye Bin Ju and 9 others* [2019 CLC 1], *Abdul Jabbar Motiwala v. Ismail Abdul Shakoor Securities (Pvt.) Ltd. through Chief Executive Officer and 4 others* [2019 CLC 994] 2007 15, SCC 766, 1996 6 SCC 303, *S.T. Muthusami v. K. Natarajan and Ors.* [AIR 1988 S.C. 616], and *Boddula Krishnaiah and Ors. V. State Election Commissioner A.P and Ors.* [AIR 1996 SC 1595].

5. **Mr. Iqbal Khurram, Advocate** for Defendant No.2, (Bishop Kaleem Irshad John) and Defendant No.4 (Diocese of Karachi through

its Secretary Zafar Iqbal), in Suit No. 1160/2020 while supporting the stance of learned A.G. as well as Mr. Abdul Razzak Advocate submits that the Plaintiffs in Suit No.1160/2020 have no legal character to file the suit as they are neither Members of Karachi Diocese Council nor Synod Church of Pakistan and as such this suit is liable to be dismissed on this count alone. Further argued that the Plaintiffs through instant suit have attempted to compel the answering Defendants (2 and 4) to postpone the election of Diocesan Bishop Karachi, scheduled to be held on 26.09.2020 as per Rules, which is contrary to law as entire arrangement has already been made to hold such election and in case the election is postponed christen community will be prejudiced and will suffer irreparable losses. It is argued that Rules and Procedure for Election/Appointment and Consecration of an Assistant or area Bishop, Diocesan and Coadjutor/Bishop Designate was finally approved at the emergent Synod meeting on 21.03.2007. These rules, which were approved by all Councils and Synod replacing the old rules, stands as part of the Constitution. Furthermore, last many elections were held as per these rules. It is also argued that in the month of May 2017 in the Synod meeting, it was agreed that the next meeting will be planned near the Golden Jubilee, i.e., 1st November 2020. Per learned counsel the Synod already issued notice confirming the 16th Triennial meeting of the Synod will be held on 20 and 21 October 2020. It is also argued that although under the Constitution the Synod meeting was to be held within a period of three years, however, due to Covid-19 pandemic the Synod meeting has been delayed. But, this is not the first time the meeting was delayed, earlier also the meetings either delayed or held earlier. In this regard, details reflecting dates due and meeting held were referred. It is also argued that upon expiry of the tenure, the Synod does not cease *ipso facto* and their directions/orders will not be held void and after expiry of the period, the Synod can continue its functions as per protection provided under the Constitution. It is further argued that the election of Karachi Diocese Council is required to be held before the Triennial Synod meeting as per relevant articles of Diocese of Karachi. It is further argued that the entire case of the Plaintiffs (Suit No. 1160/2020) is misconceived and it is just to pressurize the governing and supervising legislative body of the Church of Pakistan to delay the election of Bishop of Karachi Diocese, which is

believed to be just for their personal interest / benefits, which would cause serious prejudice to the Diocese of Karachi as well as Synod / Church of Pakistan and christen community in the entire Pakistan will suffer irreparable loss, if election of Bishop of Karachi Diocese is not held immediately. In support of his stance, learned counsel has relied upon Constitution of Church of Pakistan viz. Chapter-III (A), Chapter X (C), Chapter-XI (B), 7(f), 8(a)(b) and (c) 9(a) and Chapter XVII. Current Election Rules approved in the year 2006-2007, Bishop Ejaz Innayet v. Rt. Rev. Alexander John Malik [PLD 2017 Sindh 528], Atco Lab. (Pvt.) Limited v. Pfizer Limited and others [2002 CLD 120], Messrs Synergy Advertising (Pvt.) Ltd. through Manager Administration v. All Pakistan Newspaper Society through Executive Director and 3 others [2012 CLC 721], Puri Terminal Ltd. v. Government of Pakistan through Secretary Ministry of Communication and Railways, Islamabad and 2 other [2004 SCMR 1092], Al-Tamash Medical Society through Secretary v. Dr. Anwar Ye Bin Ju and 9 others [2019 CLC 1], Mrs. Rozina Ali through attorney and others v. Karachi Metropolitan Corporation through Administrator and 4 others [2019 CLC 1081], Abdul Jabbar Motiwala v. Ismail Abdul Shakoore Securities (Pvt.) Ltd. through Chief Executive Officer and 4 others [2019 CLC 994] and Mst. Roshan Bano and 5 others v. Pakistan Defence Officers Housing Authority through Administrator and 7 others [PLD 2016 Sindh 445].

6. **Whereas M/s. Khawaja Shamsul Islam and Mr. M. Mansoor Mir Advocates**, appearing for Defendant No.1, [Rt. Rev. Sadiq Daniel in Suit No.1065/2020 and Defendant No.5 in suit No. 1316/2020], while referring to different provisions of the Constitution, Religious Endowments Act, 1863, Rule of Business Sindh and Specific Relief Act, have contended that Suit No. 1065/2020 is not maintainable as Section 92 CPC does not apply at all in the instant case. It is contended that the provisions of Section 92 have a specific and limited scope and can only be invoked in the case of an express or implied trust and that too when someone alleges a breach of trust or seeks a direction of the court for administration of the trust; admittedly there is no trust in this case nor has there been any allegation of any breach or any relief claimed for directions of the court to administer the trust. It is further

contended that Defendant No.1 is not a trustee nor is the Karachi Diocese or the Church of Pakistan a trust by any stretch of imagination or any cannon of interpretation. Further contended that from bare perusal of the Constitution, it appears that the Church of Pakistan is nothing more than a Church simplicitor or a Kaleesa that exists as a physical manifestation and a spiritual extension of the Body of Jesus Christ, providing the members with a portal or a gateway to Jesus Christ, as such it will be governed under Religious Endowment Act, 1883. Further contended that the Plaintiff has misapplied the provisions of Section 92 to instant case and misused the powers of the office of Advocate General Sindh as he is well aware and conscious of the fact that he has lost all legal character and legitimacy after expiry of the Synod's tenure in the month of May, 2020, hence the Synod is no longer legally effective and no valid and binding decision can be taken by Defendant No.2 particularly for removal or appointment of any Bishop to any Diocese. It is also contended that the reliefs sought in Suit [1065/2020] by the A.G. Sindh are in direct conflict with the provisions of the Constitution of the Church of Pakistan as he seeks the removal of Defendant No.1 from his spiritual office. Further contended that Article 5, Chapter IX of the Constitution provides an exhaustive list of functions and responsibilities of a bishop and from a plain reading of Article 5, it is quite clear that the office of the bishop is not that of a trustee but that of a teacher, a preacher and a spiritual leader, hence his removal under the provisions of Section 92 CPC is completely illegal and uncalled for. It is also contended that the issue at hand is concerned with the election of the Bishop and his tenure under the Constitution, and not that of a trust as alleged by the A.G. Sindh. It is also contended that learned A.G, in sheer abuse of his power under Section 92 CPC has thrown the support of his office behind a Synod and its officers whose respective terms lapsed in the month of May 2020. It is argued that the Diocesan Bishop is an elected office, and under Article 7(a) Chapter IX of the Constitution, the Bishop is elected through an Electoral College comprising of a total of 16-20 members coming from the Synod and the concerned Diocese in equal numbers. Further argued that no tenure has been prescribed anywhere in the Constitution for the office of Bishop, and Article 7 (c) Chapter IX provides for the appointment of a Commissary by the Moderator only

in cases of emergency and that too under rules framed by the Synod. It is also argued that in instant case, both mandatory and restrictive injunctions have been passed ex-parte by this Court, without considering the mandatory provisions of Order 39 Rule 3 CPC, and hearing the Defendants, which renders the said order nullity in the eyes of law. Further argued that Defendant No.1 has honestly and diligently discharged all the functions of his office to the best of his abilities and has earned the love and gratitude of the people for his services. It is also argued that during the arguments learned A.G. conceded that he was not seeking removal of the Bishop as a Trustee, he has merely sought a declaration as to the retirement age of the latter, this declaration cannot be sought or granted under Section 92 CPC as the same pertains to an election dispute, which is outside the scope of Section 92. In the last, they have prayed that the suit may be dismissed as being not maintainable under Section 92 CPC and the status of Defendant No.1 be restored to that of the Bishop of Karachi Diocese until such time that his successor, duly elected through a legally constituted electoral college, replaces him in line with the provisions of the Constitution of Church of Pakistan. In support of their arguments they have relied upon the cases of Kathiawar Cooperative Housing Society Ltd. v. Macca Masjid Trust [2009 SCMR 574], Mr. Afroz Shah and another v. Advocate General Sindh and 11 others [2020 CLC 785], Gulistan Textile Mills Ltd., v. Askari Bank Ltd. and others [PLD 2013 Lahore 716], Government of Sindh through Secretary Education v. Begum Aisha Ahmed Ibrahim Bawani and another [PLD 2018 Sindh 431], Mst. Khadija through Attorney v. VIIIth Additional Sessions Judge (East) Karachi [PLD 2020 Sindh 74], Faridullah Khan v. Masood Asghar Mian [2017 CLC 1736], Shah Ahmad Khan v. Government of Punjab through Chief Secretary, Punjab and another [PLD 2007 Lahore 191], Pak Turk Enterprises (Pvt.) Ltd. v. Turk HAVA Yollari (Turkish Airlines Inc) [2015 CLC 1], K- Electric Limited v. Federation Of Pakistan and others [PLD 2014 Sindh 504], Walia Steel Industries PLC v. M/s. Saga Shipping & Trading Corporation No.1 Ltd. [SBLR 2019 Sindh 128], Lithuanian Airlines v. Bhoja Airlines (Pvt.) & others [SBLR 2004 Sindh 61], Giorgio Beverly Hills Inc. v. Colgate Palmolive Pakistan Ltd. [1999 MLD 3173], Messrs Muhammad Ismail through Managing Partner and 6 others v. Messrs

Sir Jahangir Kothari Trust through Trustees and 16 others [2011 CLC 1847].

7. **Mr. Altamash Faisal Arab, Advocate** for Plaintiffs in Suit Nos. 1047/2017 and 1160/2020, while arguing his case has submitted that the governing and supervising legislative body of the Church of Pakistan is called the 'Synod' of the Church of Pakistan and each territorial unit is called 'Diocese' whereas every territorial jurisdiction is governed by its Council, which is referred to as 'Diocesan Council'. The Diocesan Council promulgates its own Bye-Laws and further appoints officers, executive committee and sub-committees to conduct and regulate its affairs but in accordance with the Constitution of Church of Pakistan. He has submitted that in Pakistan, the Synod being national body whose members are constituted from representatives of all the Dioceses in Pakistan and that the Diocese of every jurisdiction is divided into further territorial limits, which is called the Parishes / Churches and every Parish conducts its affairs through its Parish Committee, which is called Pastorate Committee. Further the Parishes / Pastorate Committees, Diocesan Councils, their officers, Executive Committee, Sub-Committees and the Synod and its Executive Committee and Sub Committees and Panels comprises two types of members i.e. the Clergy and the Laity or Representative. The Clergy comprises of Priests, while the Laity comprises of Communicant members. It is argued that Priest are those persons who undergo proper training of Priest-hood whereas communicant members are chosen and earmarked but they don't undergo the training of Priest-hood. It is also argued that each Diocesan Council is headed by a Bishop, who is to be elected according to the procedure prescribed in Constitution of the Church of Pakistan and Rules framed thereunder for the election and appointment of Bishops in the Churches of Pakistan. Further argued that the tenure of Pastorate Committees, Diocesan Councils and the Synod of the Church of Pakistan is 03 years and after expiry of 03 years' period from the date of their election, the said house is constitutionally required to be constituted afresh through the process of election and not by selection or nomination. It is argued that the Plaintiffs [in Suit Nos. 1047/2017 and 1160/2020] being the members of the Church of Pakistan, Diocese of Karachi as such all the Plaintiffs

have direct interest and right to ensure that the affairs of Diocese and the Synod of the Church of Pakistan should be conducted strictly in accordance with the provisions envisaged in the Constitution of Church of Pakistan as well as the Constitution and Bye Laws of the Karachi Diocesan Council. The last Bishop in office stood retired on attaining the age of 70 years and handed over charge to Bishop Kaleem Irshad John (Defendant No.2 in suit 1160/2020) on 04.09.2020 on the directions of this Court dated 02.09.2020, passed in Civil Suit No.1065/2020, filed by A.G. Sindh and now the Defendant No.2 who is Bishop of Hyderabad Diocese is officiating as Commissary Bishop and as per the Rules and the Constitution, the election of the Bishop of Karachi is to be held. It is further argued that under Rules for election and appointment of Bishops in the Church of Pakistan, the process for the election of Bishop is of 90 days whereas in the above mentioned Suit No.1065/2020, it was misrepresented to this Court that elections would be conducted in 30 days as reflected in order dated 02.09.2020. It is argued that in complete defiance and contradiction to the provisions of the Constitution and the Rules for election and appointment of Bishop, the Defendants have announced the date for election i.e., 26.09.2020. It is also argued that as per the provisions of the Constitution, half of the voters / electors shall be from the Synod i.e. the upper house and half by the Diocesan Council i.e. lower house and the present Synod and its officers i.e. Defendants 1 & 2 [Humphrey Sarfraz Peters and Bishop Kaleem Irshad John], who were nominated instead of being elected on 16th & 17th May, 2017, have completed their tenure of 03 years in May 2020 as such the present officers and the Synod have no lawful and constitutional mandate to conduct the election of Bishops as their 03 years tenure has been expired and they are inadequately delaying holding election of the Synod. Learned counsel further submitted that the election of Diocesan Council of the Karachi Dioceses was held in the month of April, 2017, and its tenure too has been completed, yet the Defendants are deliberately avoiding to convene and conduct the Diocesan Council and are attempting to conduct the election of Bishop by the expired Synod & expired Diocesan Council. It is further argued that the provisions of the Constitution clearly provide that the electoral body shall consist of not fewer than sixteen and not more than twenty whereas the Defendants

are conducting impugned election wherein more than 50 voters of upper and lower house have been declared as electoral body. Further argued that since the tenures of both the Synod, being the upper house of the electoral body, and the Diocesan Council, being the lower house of the electoral body, have been expired, the Defendants should first hold the election of the Synod and the Diocesan Council and shall then proceed and hold the election of Bishop. Further argued that the intention of the Plaintiffs is to ensure that the election is conducted as per the Constitutional & Rules framed thereunder so that the result of the election is not challenged and dragged in marathon litigations and in the event Constitutional Procedure Rules for holding the election is deliberately violated, it will be of grave disadvantage of entire members of Karachi Diocese. Further argued that the malicious intention of Defendants is to elect a person of their choice, who is not even on the role of Church of Pakistan for which instead of following the procedure and Rules the Defendants are conducting the process of election in complete defiance and violation of the Constitution in haste. It is argued that the alleged amended Rules filed by the Defendants along with their Counter Affidavit explicitly affirm that the adequate and due procedure for the amendment / alteration in the Constitution i.e. Chapter XVII, 1 to 4 has not been adopted by the Defendants as such the amended Rules for Elections of Bishops, submitted by the Defendants are absolutely unlawful, unconstitutional and void. In this regard, learned counsel while referring to the provision relating to alterations in the Constitution has urged that the required process has not been adopted, therefore, so-called enactment of Rules for Elections of Bishops is of no legal or constitutional consequence, as such the same is unconstitutional. It is urged that learned Advocate General Sindh has very rightly and appropriately invoked the provisions of Section 92 CPC, as the office of the Bishop is a 'public office'. It is further argued that there is only one issue on which the Plaintiffs [in Suit No.1160/2020] disagree and oppose the A.G. Sindh that the Synod of the Church of Pakistan in its present condition is competent to hold election of Bishop of Karachi Diocese. It is argued further that the present officers of the Synod had been nominated instead of being elected, which is against and in violation of the Provisions of the Constitution. Thus, it would be in the interest of justice and the

members of the Church of Pakistan to hold first an undisputed and uncontroversial election of both the Houses upper and lower, Synod and the Diocesan Council respectively and then the election of the Bishop shall be held. He has prayed that appropriate orders may be passed in order to ensure that election of Bishop of Karachi is conducted strictly in accordance with mandatory provisions of the Constitution of Church of Pakistan, Constitution and Bye-Laws of the Karachi Diocesan Council, Rules for Election and Appointments of Bishops and Procedure framed thereunder and the Houses / Voters in order and not by the expired Houses / Voters and under the elected and not the nominated officers of the Synod. Learned counsel in support of his stance has relied upon an unreported order dated 28.1.1993 passed by this Court in suit No.736 of 1992.

8. **Mr. Muhammad Riaz Abbasi Advocate** for Plaintiffs in Suit No.20/2018, while supporting the arguments of Mr. Altamash Faisal Arab Advocate, has contended that office of Bishop of Karachi and Baluchistan was held by Rt. Rev. Sadiq Daniel, who has been retired w.e.f. 04.09.2020 and the seat is lying vacant since 05.09.2020 and the Bishop of Hyderabad Diocese [Defendant No.9 in Suit No.20/2018], has been appointed Commissary over the Diocese of Karachi and who has assumed administrative charge over the affairs thereof till a new Bishop is elected. It is argued that the Constitution provides the procedure for the election of a Bishop. Further argued that the officer appointed in the impugned 15th Triennial Synod meeting have breached the mandate of the Constitution and have failed to hold the 16th Triennial meeting within the mandated time. It is also argued that after expiry of the tenure of the 15th Synod it has become infructuous in such circumstances the offices of the Synod have become defunct as well and the officers are necessarily deemed to be de-facto. Learned counsel further submitted that the unlawful exercise by the members of the impugned 15th Triennial Synod makes it prima facie clear that the same is being conducted to deprive the Diocese of Karachi of fair elections whereby a Bishop is elected by popular vote of the representatives of the congregation of the Diocese. The members of the impugned 15th Synod are intended to appoint an individual of their own choice in gross violation of the Constitution. It is also contended that due to

unlawful exercise of holding an illegal election, the real candidates for the seat of the Bishop, including Plaintiff No.1 [Suit No.20/2018] are deprived of a fair chance to contest a valid election. Lastly contended, it would be in the interest of justice and the members of the Church of Pakistan to hold an undisputed and uncontroversial election by both the Houses upper and lower, Synod and the Diocesan Council respectively. The said elections may be directed to be convened first and then the election of the Bishop shall be held. He has relied upon the cases of *Syed Mahmud Alam v. Syed Mehdi Hussain and 2 others* [PLD 1970 Lahore 6] and *Syed Chiragh Hussain and 10 others v. Begum Muhammad Usman Khan through Legal Heirs* [PLD 2003 Peshawar 114].

9. **Mr. Nadir Khan Burdi Advocate** for Plaintiffs in Suit No.1316/2020, while supporting the arguments of Khawaja Shamsul Islam and Mansoor Mir Advocates and also Mr. Altamash Faisal Arab, has argued that the Plaintiffs are members of Karachi Diocesan Council Church of Pakistan as such all Plaintiffs have a direct interest and right to ensure that affairs of the Karachi Diocesan Council as also the Synod are conducted strictly in accordance with the operative bye-laws, constitutions and settled conventions and practices. It is also argued that Rt. Rev. Humphrey Sarfaraz Peters and Secretary of Synod, Church of Pakistan [Defendant No.3], have illegally and with mala fide intention issued letters dated 21.08.2020 and 28.08.2020 for taking over the office of Diocese of Karachi [Defendant No.6]. It is argued that the Constitution for appointment of a Commissary, Chapter IX Part-B Clause 7(c) provides the procedure except that there is no rules through which Commissary could be appointed. Further argued that the Plaintiffs [in Suit No.1316/2020] do not want a specific person as their Bishop rather they want the Constitution may be followed as present Synod members / moderator and other officers are illegally sitting for the last 03 years whose holding office too is challenged in the connected suit, nevertheless, their period too has come to an end, hence, they cannot act on behalf of Synod. It is also argued that some of members of Synod are sitting illegally and not in accordance with the Constitution whereas some are not even members of Church of Pakistan, yet holding office of Bishop and sitting as member of Synod, which is in violation of the Constitution. Furthermore, these persons

were not elected rather only nominated and took over charge of Synod that too their period has come to an end. It is also argued that the elections of Bishop are to be held in accordance with the constitution. Lastly, learned counsel has prayed that it may be declared that commissary is not appointed in accordance with Constitution of Church of Pakistan and Election cannot be held unless Electoral is completed and the illegal Commissary may be directed to hand over back the charge of the Diocese of Karachi (Rt. Rev. Sadiq Daniel).

10. From the pleadings and arguments advanced by learned counsel for the parties, it appears that in all the above suits, core controversy pertaining to the elections and appointment of Diocese of Karachi, the Synod and Karachi Diocesan Council of Church of Pakistan is involved.

Learned counsel for defendant No.1 (Rt. Rev. Sadiq Daniel) in Suit No. 1065 of 2020, in his arguments have mainly emphasized on the maintainability of the said suit, on the premise that constitution of the Church of Pakistan does not constitute a trust, hence the Suit is outside the scope of Section 92 of CPC.

The question whether a church constitutes a trust or not has been discussed in detail in the case of *Farcisus Mascarenhas Vs. The State of Bombay* [1960 (62) BOMLR 790] wherein the learned Division bench of Bombay High Court while dilating upon the issue, inter alia, has held as under:

“14. Now, the learned Judge of the Court below has held that since no church can be erected without the explicit permission in writing from the Ordinary and Divine worship cannot be held therein till it is consecrated or at least blessed by the Ordinary, the church must be deemed to have been constituted by virtue of an express trust. We find it difficult to accept his conclusion that where a church comes into existence in this manner an express trust is constituted because, clearly, all the conditions set out in Section 3 of the Trusts Act are not satisfied. We would, therefore, proceed on the basis that a Roman Catholic parish church is not an express trust.

15. The question then is whether it is a constructive trust. In Halsbury's Laws of England, the word "trust" is defined as a confidence reposed in a person with respect to the property in his possession or over which he can exercise any power for the benefit of some other person or for a particular object.

16. Now, it has been pointed out in *Laxmanrao v. Govindrao A.I.R. [1950] Nag. 215*, that in order to constitute a constructive trust, it is enough if an obligation is annexed to the property in favour of religious

or charitable objects of public nature and the person having the custody of the property is legally and morally responsible for the administration of such property. Now, a church being a moral and a juridical person, has a right to hold property and the question is whether it is free to dispose of that property in any way it likes. It seems to us that it is not free to do so because there are several conditions attached to the ownership of that property. As already pointed out, the very object of bringing a church into existence is to enable the faithful to offer prayers and conduct divine worship. Now, in addition to this right, the Canon Law confers some more rights on the public with respect to the churches. The faithful have a right to go to a church for baptising their children. Similarly, Canon 1154 recognises their right of burial in the sacred places, which are consecrated for that purpose. They are also entitled to have the dead bodies taken to the church for the purpose of certain religious rites. It would thus follow from this that the rights of the faithful are annexed to the ownership of the property and consequently a constructive trust must be deemed to have resulted in favour of the faithful.

17. Apart from our view that, a parish church can be deemed to be a constructive trust in favour of the faithful, it seems to us that a parish church is at least a religious or a charitable endowment and thus falls within the definition contained under Sub-section (13) of Section 2. It is urged before us on the authority of a decision of the Division Bench in State of M.P. v. M.S. Convent School MANU/MP/0139/1958: AIR1958 MP 362 , that the existence of a "public trust" is a sine, qua non for a temple, math, mosque ,church or wakf, or a religious or charitable endowment to fall within the definition of "public trust" contained in Section 2(13) of the Act. The learned Judges in that case were called upon to construe a somewhat similar definition of public trust contained in the Madhya Pradesh Public Trusts Act-There also the opening words of the definition were as here: "Means an express or constructive trust for a public, religious or charitable purpose" and were followed by the words "includes a temple, a math etc....".

“18. For all the aforesaid reasons we hold, agreeing with the Court below that a Roman Catholic parish church falls within the definition of a "public trust" contained in Section 2(13) of the Act.”

[emphasis supplied]

Keeping in view the analogy laid down in the above case, I am of the opinion that the Church of Pakistan, constitutes a constructive trust, in the nature of public religious trust, and as such Suit 1065 of 2020 is within the scope of Section 92 of C.P.C. and is maintainable.

11. Adverting to the merit of the case, from the record, it transpires that Rt. Rev. Sadiq Daniel [Defendant No.1 in suit No.1065/2020] was elected and assumed charge as Diocesan Bishop of Karachi including the province of Baluchistan on 04.09.2002. It further transpires that initially the retiring age of the Bishop and Clergies was 68 years, however, in the 15th Triennial Synod Church of Pakistan meeting held on 16th & 17th of May 2017 at the Diocese of Raiwind, Lahore, a two-year increase in retiring the age was approved and by virtue of said

increase the age of retirement of all the Bishops and Clergies of Church of Pakistan was fixed as 70 years. For the sake of ready reference relevant portions of minutes of the 15th Synod Meeting is reproduced as under:

“Syn.22/17 **Discussion on two years extension in age to all Bishop and clergy**

-
- 12) The balloting for decision on two (2)years extension in retiring age of all the Bishops and Clergy was conducted. Total 97 votes were polled among them 55 being the majority of the house were in favour of two (02) years extension for the Bishops and Clergy’s retirement age. 41 votes were not in favour and 1 vote was cancelled. therefore, the retiring age for all the Bishops and Clergies of the Church of Pakistan as approved by the house will be 70 years.
- 13) Rt. Rev. Sadiq Daniel : expressed his gratitude to the house and thanked everyone. He assured the house that “he will request Zafar Iqbal of the Karachi Diocese to withdraw the case”. Zafar Iqbal himself assured the house that he will withdraw the case. He also thanked the house for support and extension of 02 years in the retirement age of the Bishops and the Clergies.”

In view of the above extension Rt. Rev. Sadiq Daniel was to retire on 04.09.2020, however, before he could reach at the retiring age, certain dispute arose in respect of handing over the charge of the Bishop, resulting which Suit No 1065/2020 and Suit No. 1316/2020 were filed and in pursuance of the order dated 02.09.2020 passed in Suit No.1065/2020, Ret. Rev. Sadiq Daniel on 04.09.2020 handed over the charge of Bishop Diocese of Karachi and Baluchistan to Rt. Rev. Bishop Kaleem John, being Moderator’s Commissary Karachi & Baluchistan Diocese, however, he retained the official residence of Bishop. Learned counsel representing Mr. Sadiq Daniel during the course of arguments submitted that Mr. Dainel has no lust for the office/post of Bishop, he however wants that fair and transparent election should be held under the Constitution of Church of Pakistan and whoever is elected shall hold the office/post of the Bishop of Karachi and Baluchistan.

12. Record also shows that the tenure of the Synod and Diocesan Council of Karachi also expired in the month of May 2020. Learned counsel for the parties though have agreed that the elections of Bishop

of Karachi and Baluchistan, the Synod and the Karachi Diocesan Council may be held as early as possible, however, they are at variance as to which election shall be held first. Plea of learned A.G. Sindh [Plaintiff in suit No. 1065/2020], counsel for Defendants No.2 in suit No.1065, counsel for the Defendants [in Suit No.1160/2020] and Defendants' No.1 to 4 [Suit No. 1613/2020] [**this set of counsel for the parties, for convenience's sake, hereinafter referred to as the counsel for Group 'A'**], are that the election for office of Bishop of Karachi and Baluchistan may be held first. **Whereas** the counsel for Defendants No.1 [in Suit No.1065/2020] and Defendant No.5 [Suit No.1316/2020], Plaintiffs' counsel [in Suits No. 1160/2020, 1076/2017 Suit No.20/2018 and 1316/2020] [**this set of counsel for the parties, hereinafter referred to as the counsel for Group 'B'**] demands that the election for the Synod and Karachi Diocesan Council may be held prior to the election of Bishop of Karachi and Baluchistan.

13. In view of the above, since the controversy in the above suits has been narrow down, hence in order to decide these matters following would be the points for consideration:

1. Whether election for the office of Bishop of Karachi and Balochistan shall be convened first or the Synod and the Karachi Diocesan Council?
2. What should the decision be?

14. Since no evidence is required to be lead in respect of above legal points, therefore, I proceed to decide these matters on the basis of the material available on the record and arguments advanced by learned counsel for the parties. I have heard all the learned counsel for the parties, perused the record and have gone through case law relied upon by each of the learned counsel and my findings on the points are as under:

Point No.1

15. Before adverting to the present dispute, it would be advantageous to reproduce hereunder the relevant provisions of the Constitution of Church of Pakistan, relied by learned counsel for the parties during their arguments.

“IX . THE MINISTRY OF THE CHURCH:

B. THE BISHOPS

- “5. (a) The episcopate shall be both constitutional and historic.
 (b) By constitutional is meant that bishops shall be appointed and shall perform their functions in accordance with the constitution of the Church.
 (c) By historic is meant the episcopate which is in historic continuity with that of the early Church. It is accepted as a means of expressing the continuity of the Church down the ages and also its unity all over the earth.
 (d) The Church is not committed to any one particular theological interpretation of episcopacy, nor does it demand the acceptance of such an interpretation from its ministers or members.
6. The Functions and responsibilities of Bishops are follows:-
 (a)
 (b)
 (c)
 (d)
 (e)
 (f)
 (g)
 (h) Diocesan Council and Synod:- The bishop of the diocese shall be president of the Diocesan Council, and of its Executive Committee, and shall have the right to take part in the proceedings of any standing committee, board or council of the diocese. He shall have the right of suspending the operation of any decision on a matter which he may judge to be one of faith and order, in accordance with Chapter XII, 4.
- Every Bishop of a diocese shall be ex-officio a member of the Synod of the Church of Pakistan.
7. (a) The diocesan bishops shall be elected, both the diocese concerned in any particular case and the authorities of the Church as a whole having an effective voice in their appointment. The election of bishops shall be by an electoral body of not fewer than sixteen or more than twenty persons. Half of this body shall be chosen by the Synod and half by the diocese concerned.
 (b) Nomination shall be by nomination papers, each signed by at least five per cent of the members of the Doicesan Council. These nomination papers shall be sent by a fixed date to the Secretary of the Synod. Thereafter those members of the electoral body that have been chosen by the Synod shall meet and may by voting add additional names. The election shall then take place, and shall be by the whole electoral body.
 (c) A commissary may be appointed by a diocesan bishop, or, in cases of emergency, by the Moderator, under rules framed by the Synod, to act during the bishop’s absence from the diocese or incapacity to discharge his duties, or under a special commission to perform some particular duty.
8. Assistant bishops may be appointed under rules framed by the Synod, when the Synod considers such appointment necessary.”

“X. THE POLITY OF THE CHURCH

A. THE DIOCESE

3. The organization of the Church is on a territorial basis. The unit of such territorial organization is the diocese. Each diocese is under the charge of a bishop and functions through a Diocesan Council. Every diocesan bishop is the bishop of defined territory, and has jurisdiction throughout that territory and no jurisdiction outside that territory. There should be no place in Pakistan where members of the Church of Pakistan are not under the jurisdiction of some bishop of that Church. It is the duty of every diocese acting as a whole to spread the knowledge of the Gospel throughout its territory and to provide for the spiritual needs of the members of the Church who reside within it.”

“C. THE SYNOD

5. The organ of the whole Church, comprising all the diocese, is the Synod, which is the supreme supervisory and legislative body of the Church.”

“XI. The ORGANIZATION OF THE CHURCH

B. THE DIOCESAN COUNCIL

5. Constitution of the Diocesan :-
The Diocesan Council shall consist of the following :
- (a) The Bishop of the Diocese,
 - (b) The assistant bishops, if any,
 - (c) All presbyters in active work in the diocese holding the bishop’s authorization, unless excluded under the provisions of Chapter IX, 14. No presbyter shall be at one time a member of more than one Diocesan Council.
 - (d) Lay Representatives: The appointment of lay representatives on the Diocesan Council shall be made in accordance with rules determined by the Diocesan Council, subject to any general regulations laid down by the Synod. The number of lay representatives shall not be less than the number of ordained members. All lay representatives must be members of the Church in full standing, and at least 21 years of age. Women shall be eligible for election or appointment as lay representatives.
 - (e) Presbyters with limited authorization, deacons, retired bishops and retired presbyters under rules framed by the Synod.
 - (f) The Bishop of the Diocese shall be ex-officio President of the Diocesan council and of its Executive Committee, and ex-officio member of all standing committees, Boards, and councils of the Diocese.
 - (g) The Quorum of a meeting of the Diocesan Council shall be one-third shall of its number of whom not less than one-third shall laymen and not less than one-third ministers.
6. The Powers and Duties of the Diocesan Council :-

- (a)
- (b)
- (c)
- (d) The Diocesan council shall be the ultimate financial authority of the Church in its diocese in all matters concerning its internal administration. The Bishop of the Diocese shall not, as bishop or as President of the Diocesan council, have any controlling authority over the finances of the diocese.
- (e) Every Diocesan Council shall appoint an Executive Committee and may appoint other committees, and may delegate to them such of its functions and duties as it may think fit, provided that it may not delegate to its Executive Committee the alteration of its own constitution.
- (f)
- (g) Every Diocesan Council shall meet at least once a year.
- (h)
- (i)
- (j) It shall vote on all constitutional matters. Subject to the provisions of the constitution, & Diocesan Council has power to frame, amend or alter its own constitution, provided that no diocesan constitution or any alteration therein shall be of force if the Synod shall rule that such constitution or alteration therein is at variance with anything.
- (k)
- (l)

C. THE SYNOD

7. Constitution of the Synod:-

- (a) All bishops of the Church, whether diocesan or assistant, and the officers of the Synod shall be ex-officio members of the Synod. Bishops without dioceses may be members of the Synod under rules framed by the Synod.
- (b) Every diocese shall be represented in the Synod by not fewer than two presbyters and two lay representatives, and shall have one additional presbyter and one additional lay representative for every 3,500 communicant members above 5,000 in the diocese, up to a maximum of five presbyters and five laymen representing any one diocese.
- (c) Every Diocesan Council shall hold fresh election of the ministerial and lay representatives of the diocese in the Synod for each ordinary meeting of the Synod, and these representatives shall hold office till the completion of the next ensuing election of such representatives.
- (d) Every Diocesan Council shall make rules for the election of the ministerial and lay representatives of the diocese in the Synod, provided that every such representative shall be a member of the Church in full standing of at least 21 years of age, and shall at the time of his election be resident or have his home in the diocese which he represents.
- (e) Every Diocesan Council shall make rules providing for alternative representatives (ministerial and lay) to take the place of representatives who during their term of office may cease to possess the qualifications necessary for a representative, or be unable to attend the meeting of the Synod.

- (f) The Synod shall meet at least once in three years.
- (g) The Quorum for a meeting of the Synod shall be one-third of its number, of whom not less than one third shall be laymen and not less than one-third ministers.
8. Officers of the Synod :
- (a) The officers of the Synod shall be a Moderator, a Deputy Moderator, a General Secretary and a Treasurer. The Synod shall appoint an Executive Committee and shall have power to appoint Standing Committees, the number of which shall be determined by the Synod, and the conveners of which shall be members of the next meeting of the Synod Vacancies among these shall be filled by the Executive Committee.
- (b) All the officers shall be elected by ballot of the Synod, the Moderator and Deputy Moderator being elected from among the Diocesan Bishops of the Church.
- (c) All the officers shall be elected during each ordinary meeting of the Synod, and shall hold office from the close of that meeting till the close of the next ordinary meeting of the Synod. They shall be eligible for re-election.
- (d) The Moderator shall be the presiding officer of the Synod and of its Executive Committee. He shall be the official representative of the church during his term of office in all relations with other Churches or organization.
- (e) The Deputy Moderator shall preside at the Synod and perform the other duties of the Moderator during the absence, illness or other incapacity of the latter.
- (f) The General Secretary shall keep a faithful record of all actions taken by the Synod, and shall keep its records and files. He shall conduct the correspondence of the Synod with the Diocesan Councils.
- (g) The Treasurer shall hold all moneys belonging to the Synod, and shall regularly, as directed by the Synod, submit accurate statements of its accounts and budgets to the Synod, or to such other bodies as the Synod shall direct.
9. The Powers and Duties of the Synod :-
- (a) The Synod shall be the supreme supervisory and legislative body of the Church within its region. The arrangements for the election and allocation of bishops shall be under its direction. It shall make arrangements for institutions serving more than one diocese. It shall deal with the relations of the Church with other Churches. It shall appoint a Court of Appeal (See also Chapter XIII).
- (b) The Synod shall have power to determine the number and boundaries of the dioceses, and to form new dioceses in the Church. It shall also have power to determine whether anything in the constitution of any diocese is at variance with the Constitution of the Church, and if it finds such variance, to rule that such part of the Diocesan Constitution is of no force.

(c)

[Emphasis supplied]

“Section IV of Bye-laws of Karachi Diocesan Council

“IV. Officers:

A. The officers of the Council shall be :-

1. The Bishop, Ex Officio President of the Council
2. The Assistant Bishop, if any
3. The Vice President.
4. The Secretary and 5. The Treasurer

B. 1. The Vice-president, the Secretary and the treasurer shall normally be elected at every third ordinary meeting of the Council but the Council at its discretion may appoint a full-time Secretary or Treasurer and frame rules for his service.

2. These officers shall be full members of the council with voting rights.

3. The Council may elect other officers, if necessary.

5. These Officers shall normally hold office from the close of the meeting at which they are elected until the close of the ordinary meeting of the Council when officers are next elected.

6. An office may become vacant due to one of the following reasons:

(a) On his resignation to be signified in writing.

(b) On his death.

(c) On his suspension, on the passing of the resolution, by not less than three-fourth of the members of the Diocesan Executive Committee present in the meeting, that he has been negligent in duties.

(d) On his absence from Pakistan for a period of six consecutive months.

Any such officer who has been removed by action of the Executive Committee shall have the right to appeal against such decision to the “Court of the Diocesan Council”

6.

7.”

[Emphasis Supplied]

16. From perusal of the above provisions, it transpires that the organization of the Church is on a territorial basis. The unit of such territorial organization is the diocese. Each diocese is under the charge

of a bishop and functions through a Diocesan Council. Every diocesan bishop is the bishop of defined territory, and has jurisdiction throughout that territory and no jurisdiction outside that territory. The organ of the whole Church, comprising all the diocese, is the Synod, which is the supreme supervisory and legislative body of the Church.

A perusal of the above provisions further transpires that as per Chapter IX, Section B, Article 6(h) the Bishop of the Diocese shall be president of Diocesan Council, and of its Executive Committee, and shall have the right to take part in the proceedings of any standing committee, board or council of the diocese. Besides this, every Bishop of a diocese shall be ex-officio a member of the Synod of the Church of Pakistan. As per Chapter XI, Section C, Article 8 (a) to (d), the officers of the Synod shall be a Moderator, a Deputy Moderator, a General Secretary and a Treasurer. All the officers shall be elected by ballot of the Synod, the Moderator and Deputy Moderator being elected from among the Diocesan Bishops of the Church. Furthermore, all the officers shall be elected during each ordinary meeting of the Synod, and shall hold office from the close of that meeting till the close of the next ordinary meeting of the Synod.

17. Insofar as the question of holding elections of the Synod and Karachi Diocesan Council first in time prior to the election of the Bishop is concerned, learned counsel for group 'B' in support of their stance have mainly emphasized that upon expiry of the tenure of the Synod and Karachi Diocesan Council, their officers, having ceased to hold the office, have become *functus officio*, cannot be competent to hold the election of the Bishop and as such the elections of the Synod and the Council may be held first in time.

18. In the backdrop of the above arguments, if we examine the provisions of Constitution of Church of Pakistan and the Bye-Laws of the Karachi Diocesan Council of Church of Pakistan, relating to tenure of the Synod and Karachi Diocesan Council, that is, Chapter XI, Section C, Article 8 (c) of the Constitution and Section IV of Bye-laws of the Karachi Diocesan Council respectively [reproduced above], it transpires that the officers of the Synod and the Council shall hold the office from the close of the meeting at which they are elected until the

close of the next meeting when officers are next elected. Furthermore, neither in the Constitution nor in the Bye-laws of the Council are mentioned that upon expiry of the tenure of the offices of both the houses, the officers holding their offices shall cease to hold the office and would become *functus officio* automatically.

19. In the present case, upon retirement of Bishop (Rt. Rev. Sadiq Daniel), at present there is no Bishop of Karachi and Baluchistan, and as such, in the event if the Synod holds its election first in time, it will not be just and proper as there will be no Bishop for the Diocese of Karachi and Baluchistan in the meeting/election. Moreover, if the Synod is allowed to hold its election first in time, it would deprive the person to be elected as Bishop of Karachi and Baluchistan from the opportunity of offering himself for election as either Moderator or Deputy Moderator. This, would also be prejudicial to the beneficiaries and public at large associated directly or indirectly with Karachi and Baluchistan Diocese.

Similarly, if election of Karachi Diocesan Council is held first in time, the Council will also not be proper as presently there is no Bishop, who is the Ex-Officio President of the Council.

20. In the present case, it is an admitted position that although the tenure of the Synod and the Council was expired in the month of May 2020, yet on account Covid-19 Pandemic, the meetings as required under the law to elect the officers of both the houses could not be held. However, non holding the meetings in time does not ipso facto dissolve the office nor either officers of both the houses have become *functus officio*. Moreover, from the record it further appears that previously also the meetings to hold elections of the Synod and the Council were either delayed or held earlier. In circumstances, I am of the view that the present officers of the Synod and the Council are competent to hold the office till the close of the next meeting when officers are next elected.

The upshot of the above discussion it is expedient that the election of the Bishop shall be convened first in time, thereafter, the elections of the Synod and the Council shall be held. Point is answered accordingly.

21. Learned counsel for group 'B' during the course of arguments also raised objection in respect of 'Rules and Procedure for the Election, Consecration of an Assistant or Area Bishop, Diocesan and Coadjutor/Bishop Designate' [Rules-2007], submits that these rules are in contravention of the constitution of Church of Pakistan and as such the same being unconstitutional and void are not applicable and the elections may be directed to be held under the previous rules. It was also argued that since they first time came across these rules and as such the same were not challenged earlier. Whereas, learned counsel for group 'A' while controverting such assertion of learned counsel for group 'B', submit that under Rules-2007, a revised procedure of the election of Church of Pakistan was brought through amendments, which were passed by the majority as required under the law, and as such, the amendments/rules, for all intents and purposes, have attained finality and came into effect on 21.03.2007. It was also argued that to-date five elections have been held under the revised procedure brought through the amendments and as such, at this stage, these amendment/rules cannot be challenged. In the circumstances, since the validity of Rules-2007 is not challenged in the above suits, as such I am not inclined to pass any order in this regard. However, it may be observed that since it is not disputed that the amendment was never passed and pervious elections were not held under the said revised procedure besides, there is also nothing available on the record which could show that the said amendment/revised procedure was ever disputed and/or challenged after its approval in the year 2007, therefore, Rules-2007 appears to be holding the field.

22. **Point No.2**

In view of what has been discussed herein above, the above suits are decreed in the following terms:

- i. The election of Diocesan Bishop of Karachi and Baluchistan Province shall be convened within 30 days from the date of this order. The election schedule shall be announced within 10 days of this order.
- ii. Till the appointment of new Bishop, the Commissary already appointed shall continue to look after the routine administrative affairs of the Diocese of Karachi, Church of Pakistan.

- iii. After election of the Bishop of Karachi and Baluchistan Province, the elections of the Synod and Karachi Diocesan council shall be conducted within next twenty (20) days.
- iv. The aforementioned Elections shall be conducted in terms of the constitution of Church of Pakistan and the rules made thereunder, under the supervision of Nazir of this Court. The fee of the Nazir to carry out above exercise is fixed at Rs.100,000/- to be borne by the Diocese of Karachi, Church of Pakistan.
- v. Rt. Rev. Sadiq Daniel shall vacate the official residence of the Bishop of Karachi within fifteen days of this order to the Commissary already appointed, so that the possession of the same may be handed over to the newly elected Bishop.

Karachi;
Dated: 16.11.2020

JUDGE

Jamilkhan