

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Const. Petitions Nos.D-2918, 3005, 3086 and 3120 of 2023

Date	Order with signature of Judge
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1. For hearing of Misc. 14340/2024.
2. For hearing of Misc. 14344/2024.
3. For hearing of Misc. 14848/2023.
4. For hearing of main case.

23.10.2024

Mr. Ali Nawaz Khuhawar, for petitioner in Const. Petition No.D-2918/2023.

Mr. Tariq Mansoor, advocate alongwith petitioner in Const. Petition No.D-3086/2023.

Mr. Asif Ali Khawaja, for respondent No.3 in Const. Petition No.D-3086/2023.

Raja Qasit Nawaz Khan, for petitioner in Const. Petition No.D-3120/2023.

Mr. Zeeshan Adhi, Addl. AG Sindh alongwith Mr. Jawwad Dero, Add. AG Sindh

Syed Ghulam Shabbir Shah, Addl. AG Sindh.

Messrs Muhamma Shahrukh Siddiqui and Saad Khurram, for respondent No.4 in Const. Petition No.D-2918/2023.

Mr. Haider Waheed, for respondent No.6 in Const. Petition No.D-2918/2023.

Barristers Gazain Magsi and Rameez Adnan, for respondent No.10 in Const. Petition No.D-2918/2023.

Mr. Jaffer Raza, for respondents Nos.15&16 in Const. Petition No.D-2918/2023 alongwith Mr. Abdullah Azam Naqvi, advocate.

Messrs Zain A. Soomro and Abdul Basit Essani, advocates for respondent No.17 in Const. Petition No.D-2918/2023.

Messrs Muhammad Umar Lakhani and Ishfaq Ahmed, for KMC in all the matters.

Mr. Wasim Iqbal, for respondent No.14 in Const. Petition No.D-2918/2023.

Mr. Irfan-ur-Rehman, advocate.

Riaz Ahmed, Director (Law), Sarmad Sarwar, Assistant Director (Law) and Abdullah Hanjhra, Deputy Director (Law), on behalf of Election Commission of Pakistan.

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At very outset, Mr. Tariq Mansoor, advocate submits that by virtue of the latest amendment to the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”), under the Constitution (Twenty-sixth Amendment) Act, 2024 (“Act XXVI of 2024”) these matters could only be heard by a Constitutional Bench of the High Court. He has relied upon the newly framed Article 202A read with Article 175A(2) of the Constitution as it stands now today (introduced under Sections 17 and 7 of the XXVI Act of 2024, respectively). We are not in agreement that as of now the matter ought to be entrusted to a Constitutional

Bench of the High Court. Sub-clause (7)(b) of Article 202A of the Constitution suggests otherwise. Section 17 of the XXVI Act of 2024 reads as under:

“17. **Insertion of Article 202A of the Constitution.**—In the Constitution, after Article 202, the following new Article 202A shall be inserted, namely:—

202A. **Constitutional Benches of High Courts.**—(1) There shall be Constitutional Benches of a High Court comprising such Judges of a High Court and for such term as may be nominated and determined by the Judicial Commission of Pakistan as constituted under clause (5) of Article 175A, from time to time.

(2) ...

(3) ...

(4) ...

(5) ...

(6) Notwithstanding anything contained in the Constitution but subject to an Act of Majlis-e-Shoora (Parliament) in respect of the Islamabad High Court and an Act of Provincial Assembly in respect of other respective High Courts, a High Court may make rules regulating the practice and procedure of the Constitutional Benches.

(7) This Article shall come into force, if in respect of—

(a) ; and

(b) a High Court, the respective Provincial Assembly,

through a resolution passed by majority of the total membership of the joint sitting or the respective Provincial Assembly, as the case may be, give effect to the provisions of this Article.”

According to Article 202A(7) of Act XXVI of 2024, it shall come into force in respect of:

“(a) ...; and

(b) a High Court, the respective Provincial Assembly,

through a resolution passed by majority of the total membership of the joint sitting or the respective Provincial Assembly, as the case may be, give effect to the provisions of this Article.”

We are of the view that up until passing of such resolution by the Provincial Assembly, the rosters assigned to different Benches of the High Court

would continue to operate and at this point of time there is no impediment for this Bench to hear and conclude the left over arguments of the learned counsel. Be that as it may, only as an indulgence the matters are adjourned to 01.11.2024.

Ad-interim order passed earlier to continue till the next date of hearing.
Office to place a signed copy of this order in the connected matters.

CHIEF JUSTICE

JUDGE

Ayub