IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal**, **JJ**.

CP D 7286 of 2019	:	Abdul Rauf Nizamani vs. Election Commission of Pakistan & Others
CP D 7287 of 2019	:	Shakeel Ahmed & Another vs. Election Commission of Pakistan & Others
CP D 7288 of 2019	:	Farooque Jameel Durrani vs. Province of Sindh & Others.
CP D 7384 of 2019	:	Masrur Ahsan Ghouri vs. Province of Sindh & Others
CP D 7385 of 2019	:	Faiz Ali vs. Karim Bux & Others
CP D 7386 of 2019	:	Faiz Ali vs. Election Commission of Pakistan & Others
CP D 7387 of 2019	:	Faiz Ali vs. Election Commission of Pakistan & Others
CP D 7388 of 2019	:	Abdul Kareem & Another vs. Election Commission of Pakistan & Others
CP D 7389 of 2019	:	Farooq Jameel Durrani vs. Election Commission of Pakistan

For the Petitioners	:	Mr. Tahseen A H Qureshi, Advocate Ms. Naveen Merchant, Advocate Mr. Ghulam Nabi Shar, Advocate Mr. Salman Yousuf, Advocate
For the Interveners	:	Mr. Jhamat Jethanand, Advocate Mr. Safdar Hussain Leghari, Advocate Mr. Dilawar Qureshi, Advocate
For the Respondents	:	Barrister Shabbir Shah Additional Advocate General Barrister Jawad Dero Additional Advocate General
Dates of hearing	:	11.12.2019, 18.12.2019, 20.01.2020 27.01.2020, 03.02.2020, 10.02.2020 17.02.2020
Date of announcement:		09.03.2020

JUDGMENT

Agha Faisal, **J**. The petitioners herein seek to perpetuate their tenure of elected office, pursuant to the Sindh Local Government Act, 2013 ("Act"), despite having lost the confidence of the majority of their respective houses. These petitions impugn the amendment in Section 27 of the Act ("Impugned Amendment") vide the Sindh Local Government (Amendment) Act 2019 ("Amendment Act"), whereby it was legislated that a mayor, deputy mayor, chairman or vice chairman may be removed from office by a vote of no confidence passed by virtue of a simple majority, in substitution of the earlier stipulation of a two third majority. The petitioners have challenged the vires of the Impugned Amendment and the validity of the relevant notifications issued in pursuance thereof ("Impugned Notifications"). It is considered illustrative to reproduce the successive statutory provisions herein below:

Per the Impugned Amendment

"27(1) A Mayor, Deputy Mayor, Chairman or Vice Chairman except the Chairman or Vice Chairman of Union Committee or Union Council, shall be removed from office if a vote of no confidence is passed against him or her by **simple majority** of the total number of the Members of the Council concerned."

Pre amendment provision

"27. Vote of no confidence against office bearers.-
(1) A Mayor, Deputy Mayor, Chairman or Vice Chairman except the Chairman or Vice Chairman of Union Committee or Union Council, shall be removed from office if a vote of no confidence is passed against him or her in the prescribed manner by **two-third majority** of the total number of the Members of the Council concerned…"

(Underline added for emphasis.)

Since the issues raised in the petitions are common, *inter se*, therefore they were heard and reserved conjunctively and shall be determined vide this common judgment.

2. The respective learned counsel for the petitioners submitted that the Impugned Amendment was colorful legislation; *ultra vires* of Articles 4 and 25 of the Constitution; contrary to vested rights, hence, liable to be struck down. It was further argued that the Impugned Notifications were incompetently issued in contravention of the law, thus, may be quashed. The crux of the petitioners' case was that even it if was demonstrated that they had lost the confidence of the majority of the members of the house, they ought not to be removed from office.

3. Learned AAG spearheaded the case of the respondents and submitted that the petitioners' sole objective was to perpetuate the usurpation of an

elected office, for which they had admittedly lost the mandate. It was demonstrated that the Impugned Amendment was in consonance with the general principles of the law and the Constitution and that there was no question of any retrospective effect and/or *mala fide* whatsoever. In so far as the issue of the Impugned Notifications is concerned it was demonstrated from the record that the specific issue had been adjudicated by an earlier Division Bench of this Court and it was held that there was no infirmity in respect hereof. In this regard it was argued that the judgment of the earlier Division Bench is binding upon this Court as well. The learned counsel for the interveners adopted and amplified the arguments advanced by the learned AAG Sindh.

4. We have heard the arguments of the respective learned counsel at length and have also considered the documentation and authority to which our surveillance was solicited. In order to adjudicate this *lis* it is considered appropriate to frame the following points for determination:

1. *Whether the Impugned Amendment has been demonstrated to be ultra vires of the Constitution.*

2. *Whether a de novo deliberation in respect of the Impugned Notification is merited in view of the earlier judgments of a learned Division Bench of this Court.*

Impugned Amendment

5. The Impugned Amendment was legislated vide the Amendment Act, which was passed on 23.01.2019 and assented to by the Governor Sindh on 20.02.2019. The notification of the Amendment Act was demonstrated to have taken place on 27.02.2019.

6. The Supreme Court has consistently maintained that the superior courts retain the jurisdiction to declare a legislative enactment as void or unconstitutional and the parameters in such regard were comprehensively enunciated in the *Imrana Tiwana case*[1], wherein the following principles were required to be applied when considering the vires of a legislative enactment[2]:

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[1] Per *Mian Saqib Nisar J.* in *Lahore Development Authority vs. Imrana Tiwana* reported as *2015 SCMR 1739*.

[2] Reliance was placed upon *Province of East Pakistan vs. Sirajul Haq Patwari* reported as *PLD 1966 SC 854; Mehreen Zaibun Nisa vs. Land Commissioner* reported as *PLD 1975 SC 397; Kaneez Fatima vs. Wali Muhammad* reported as *PLD 1993 SC 901; Multiline Associates vs. Ardeshir Cowasjee* reported as *1995 SCMR 362; Ellahi Cotton Mills Limited vs. Federation of Pakistan* reported as *PLD 1997 SC 582; Dr. Tariq Nawaz vs. Government of Pakistan* reported as *2000 SCMR 1956; Mian Asif Aslam vs. Mian Muhammad Asif* reported as *PLD 2001 SC 499; Pakistan Muslim League (Q) vs. Chief Executive of Pakistan* reported as *PLD 2002 SC 994; Pakistan Lawyers Forum vs. Federation of Pakistan* reported as *PLD 2005 SC 719; Messrs Master Foam (Pvt.) Ltd. vs. Government of Pakistan* reported as *2005 PTD 1537;*

a. There was a presumption in favor of constitutionality and a law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two;

b. Where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favored validity;

c. A statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt. A reasonable doubt must be resolved in favor of the statute being valid;

d. A Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds;

e. A Court should not decide a larger Constitutional question than was necessary for the determination of the case;

f. A Court should not declare a statute unconstitutional on the ground that it violated the spirit of the Constitution unless it also violated the letter of the Constitution;

g. A Court was not concerned with the wisdom or prudence of the legislation but only with its Constitutionality;

h. A Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution; and

i. Mala fides should not be attributed to the Legislature.

7. This Division Bench has also considered the general principles applicable when considering the *vires* of legislation in the *Shabbir Bijarani case*[3]. The judgment, authored by *Muhammad Ali Mazhar J.*, encapsulated the prevailing law[4] and maintained as follows:

Watan Party vs. Federation of Pakistan reported as *PLD 2006 SC 697; Federation of Pakistan vs. Haji Muhammad Sadiq* reported as *PLD 2007 SC 133; Dr. Mobashir Hassan and others vs. Federation of Pakistan & Others* reported as *PLD 2010 SC 265* & *Iqbal Zafar Jhagra vs. Federation of Pakistan* reported as *2013 SCMR 1337*.

[3] *Mir Shabbir Ali Khan Bijarani & Others vs. Federation of Pakistan 7 Others* reported as *PLD 2018 Sindh 603*.

[4] *2003 SCMR 370; 2005 SCMR 186; 2013 SCMR 642; PLD 2014 SC 389; 2014 CLC 335.*

> "13. Ultra vires is a Latin phrase and expression which means "beyond the powers". If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it carries out shorn of authority, it is ultra vires. Acts that are intra vires may unvaryingly be acknowledged legal and those that are ultra vires illegal. The validity of the subordinate or delegated legislation can be challenged on the ground of being ultra vires the enabling or parent Act. If the subordinate or delegated legislation is found in excess of the powers conferred by the parent Act or is made without following the procedure to be followed, the delegated or subordinate legislation may be declared invalid. It is a well settled that constitutionality of any law can be scrutinized and surveyed. The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictive competence or found in violation of fundamental rights. It is also established law that the vires of delegated legislation may be subject to judicial review. At the same time it also well-known through plethora of dictums laid down by the superior courts that the law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation unless ex facie violative of a Constitutional provision"

8. *Mian Saqib Nisar J.* underscored[5] the Constitutional importance of local government as an institution, however, specifically observed that while the province was under an obligation to establish a local government system and devolve political, administrative and financial responsibility on the local government, however, in doing so it was not denuded of its executive and legislative authority. The legislative authority of the province in local government matters could not be curtailed or limited. The Constitution contemplated a process of participatory democracy, where the two governments (provincial and local) acted in harmony with one another to develop the province and Article 140A of the Constitution could not be used to render the provisions of Articles 137 and 142 of the Constitution either subordinate to it or otiose.

It was further observed that the creation of a local government system, and the conferment upon the local government of certain political. administrative and financial responsibilities did not deprive the province of authority over its citizens and did not deny its role in the progress, prosperity and development as creation of a local government system did not spell the end of the provincial government. On the contrary it strengthened the provincial government by entrenching democracy at the grass root level.

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[5] *Lahore Development Authority vs. Imrana Tiwana* reported as *2015 SCMR 1739*.

The legislative role of the province was highlighted by the honorable Supreme Court and it was observed that even after insertion of Article 140A of the Constitution, the province would continue to have the authority to enact / amend statutes and make general or special laws with regard to local government and local authorities.

9. The role of the provincial legislature to enact and / or amend statutes with respect to local government stands determined, therefore, there would be no cavil to the legislative capacity of the Provincial Assembly to amend the Act vide the Amendment Act. The Supreme Court has maintained[6] that an amendment, with respect to local government, may be called into question if it is demonstrated that the province overstepped its legislative or executive authority to make the local government powerless.

In the present facts and circumstances it was never the case of the petitioners that the Impugned Amendment had any adverse impact upon the local government system of governance. On the contrary the grievance was restricted to that of specific occupants of elected office in local government.

10. It was argued[7] before us that the Impugned Amendment had been given retrospective effect as the petitioners had a vested right to remain in office for the entire tenure unless removed by a no-confidence motion carrying the weight of a two third majority, since that was the law in force when the petitioners were elected. It was also argued that since the petitioners were required to have been elected by a two third majority, hence, it was their inalienable right to be removed in the very same manner[8]. Respectfully, we find ourselves unable to entertain this line of argument.

Learned counsel were repeatedly called upon to demonstrate the law before the court by virtue whereof they were required to be elected upon receiving two thirds of the votes of the house, however, counsel was unable to point out any such law. On the contrary the counsel was confronted with the provisions of the Act requiring election to take place on the basis of adult franchise, i.e. universal suffrage; one man one vote, and queried as to whether there was any doubt that the same equaled election by simple majority. The said question was answered in the negative.

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[6] Per *Mian Saqib Nisar J.* in *Lahore Development Authority vs. Imrana Tiwana* reported as *2015 SCMR 1739*.
[7] Mr. Tehseen A H Qureshi, Advocate.
[8] Ms. Naveen Merchant, Advocate.

The principle of *nova constitutio futuris formam imponere debet, non praeteritis* denotes that a new law ought to regulate what is to follow and not the past[9]. A plain reading of the Impugned Amendment demonstrates that it is to have prospective effect, hence, the argument with respect to its retrospective application is misconceived. It is *prima facie* apparent that the application of the Impugned Amendment could only take place prospectively, however, under no stretch of imagination could the principle be interpreted to mean that the Impugned Amendment would not have any effect upon the incumbent holders of elected office.

Learned counsel for the petitioners were called upon to demonstrate the existence of any right, vesting in an elected member of the offices under scrutiny, whereby the said member could perpetuate his occupation of the said office despite having lost the confidence of the house. No such right could be demonstrated before us.

11. Learned AAG had drawn our attention to a pioneering tome in the Constitutional history of Pakistan, *Fundamental Law of Pakistan*, wherein the late illustrious luminary *Mr. A. K. Brohi* had reasoned with regard to the doctrine of the rule of majority in the following manner:

> "Sufficient has been aid to show that the Cabinet which is under our constitution to be the repository of executive power has to be drawn from and is collectively responsible to the Legislature. If the Prime Minister who is to be at the Head of the Cabinet and who is to command the confidence of the majority of the members of the national Assembly before he can be appointed, loses that confidence, he is liable to dismissal or in the language of clause (6) of ART. 37, "he shall cease to hold office." If the President is satisfied that the Prime Minister does not command the confidence of the majority of the members of the National Assembly, he can exercise his power under this clause, and when he does exercise that power the consequence will be that the Prime Minister will cease to hold his office. This shows that it is a condition precedent for the continuance of a Prime Minister in office that he, at all material times, is able to command the confidence of the Majority of the members of the National Assembly. Whether the President exercises his power under this clause or as a result of any legislative process the Prime Minister is thrown over by the National Assembly, the resulting situation arises from the principle of Parliamentary Democracy, namely, that the executive envisaged by the Constitution is dependent on the continued support of the majority of the members of the National Assembly[10]…
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[9] Per *Mian Saqib Nisar J.* in *Zila Council Jhelum vs. Pakistan Tobacco Company Limited & Another* reported as *PLD 2016 SC 398*.

[10] *Fundamental Law of Pakistan at page 65*, *A.K.Brohi*.

> These reflections also suggest the justification for accepting the doctrine of rule by the majority: since all men are equal, the only method of resolving conflicting view-points after a general discussion is held, is to determine by appeal to the majority-principle on what side the weight of the national opinion is. It is a good working definition of democratic principle to say that it embodies the belief in the capacity of the average man to establish a system of institutions and procedures whereby political decisions could be amicably reached: Democratic method enables its votaries to secure political decisions by resorting to some well established procedures for resolving conflicts in the viewpoints of the members of the State. "A government by the people, for the people and of the people" is the definition of Democracy offered by one of the greatest democrat of all times–Abraham Lincoln–and none has been offered since the day he first voiced it which could be said to have improved upon it. "A majority", said he in his First Inaugural Address, "held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments is the only true sovereign of the people". It was in much the same spirit that Jefferson, in his First Inaugural Address (March 4, 1801) had stated as one of the "essential principles" of U.S. Government the demand that there be "absolute acquiescence in the decisions of majority, the vital principle of republics from where the court is invited to interfere with acts of a co-ordinate department like the Executive and the Legislature[11]."

12. Our surveillance was also solicited to the debates[12] in the National Assembly pertaining to the framing of the 1973 Constitution wherein the doctrine of majority rule was held paramount. We were also acclimated with the law in other commonwealth nations[13] to demonstrate the universal democratic application of the majority principle. In the present context the Constitution demonstrates the recognition of the said principle as it is a simple majority by virtue whereof a no-confidence motion may be carried in respect of the prime minister[14], chief minister[15], speaker[16] etc.

After due consideration of the law placed before us we are of the irresistible view that there is no right that vests in the holder of elected office, under scrutiny before us, to retain the said office after having demonstrably lost the majority of the said house.

13. It was argued[17] before us that the Impugned Amendment was contrary to Article 143[18] of the Constitution as federal law was required to prevail over

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11 *Fundamental Law of Pakistan at page 80*, *A.K.Brohi*.
12 National Assembly of Pakistan (Constitution Making) Debates, Volume 1, Debates no. 1 to 14.
13 Confidence Motions, House of Commons Library, Briefing Paper no. 02873, 14th March 2019; Commentary on the Constitution of India, 9th Edition, Durga Das Basu.
14 Article 95 of the Constitution.
15 Article 136 of the Constitution.
16 Article 53 of the Constitution.
17 Ms. Naveen Merchant, Advocate.

provincial law. Upon query, the learned counsel was unable to identify any federal law that regulated local governments in Sindh.

It was averred that the local government law prevalent in Islamabad, being a federal law, still required a no-confirmation vote to be carried by a two thirds majority, hence, the purported inconsistency with the provincial law. It is settled law that one Constitutional provision, unless it was so specifically provided, could not override the other and that Constitutional provisions must be harmoniously construed together. The local government law of Islamabad has no nexus with or application to Sindh, hence, there is no question of any inconsistency giving rise to Article 143 of the Constitution.

14. It was argued that the Impugned Amendment was in violation of Articles 4 and 25 of the Constitution, however, the learned counsel remained at a loss to demonstrate as to how such a violation was manifest. It has already been established that a person has no vested right to remain at the helm of a house after having lost the confidence thereof, hence, there is no demonstrable infringement upon any right whatsoever. Furthermore, the Impugned Amendment has province wide application and does not target any specific person, therefore, there appears to be no discrimination demonstrated whatsoever.

15. The petitioners' counsel had averred that the Impugned Amendment was *mala fide*. On the contrary the learned AAG had argued that the present petitions, seeking to impose the rule of a minority upon the majority, are actuated by *mala fides*. While we record the contention of the learned AAG without observation, it is our considered view that no *mala fide* has been demonstrated before us in so far as the legislation, Impugned Amendment, is concerned. Even otherwise the Supreme Court has consistently maintained that it is improper to impute *mala fides* to a legislature[19].

16. It is well settled law that if a statute was not ex facie repugnant to fundamental rights under the Constitution but was capable of being so administered, it could not be struck down unless the party challenging it could prove that it had actually been so administered. In the present circumstances

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[18] If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.

[19] Per *Mian Saqib Nisar J.* in *Lahore Development Authority vs. Imrana Tiwana* reported as *2015 SCMR 1739*.

the petitioners have not been able to demonstrate any repugnancy, per fundamental rights enshrined in the Constitution.

The anvil for calling legislative enactments into question has been condensed by the Supreme Court in the *Imrana Tiwana case*[20], and it our considered view that on the touchstone thereof no case has been made out by the petitioners for interference by this court with the Impugned Amendment in the exercise of its Constitutional jurisdiction.

Impugned Notifications

17. The next question before us is that of the Impugned Notifications. It is imperative to record at the very onset that a Division bench of this Court at Hyderabad was seized of a challenge to notifications[21], *pari materia* to the Impugned Notifications, and held[22] as follows:

> "The petitioner in CP D 562 of 2019 is Chairman of Municipal committee, Mirpurkhas while the petitioners in CP D 563 of 2019 are Chairman and vice Chairman of Town Committee, Jhudo respectively. Some of the Members/councilors have placed a 'Motion for No Confidence' before the concerned Chief Executive Officer of the Committee and subsequent to such 'No confidence Motion', Chief Secretary, Government of Sindh has issued a notification whereby the presiding officers have been nominated for presiding over the meeting regarding 'No Confidence Motion'…
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> ……..
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> 4. It is a fact that 'No Confidence Motion' is also a part of a democratic process and persons, who have democratically been elected for leading a house in any capacity, should be prepared to face any move of no confidence and try to defeat the same through a democratic process instead of taking refuge under technicalities on the plea of certain illegalities. In the present matter, the petitioners were elected Chairman and Vice Chairman and they have a right to continue that position as long as they enjoy the confidence of the Council. In any case, continuing confidence of Council would be a *sine qua non* for smooth functioning of the Local Council and once that is lost, the very foundation of the municipal system would be shaken and it would be next to impossible for a Chairman and Vice Chairman of a Council to continue such position after losing the confidence. We are of the view that being democratically elected the petitioners should not be shy of facing the 'No Confidence Motion' and they have a right to try to defeat such notion within the house instead of doing something else. We are of the view that since 'No Confidence Motion' is a process given in the Sindh Local Government Act, 2013 and the Notification of presiding officer for special meeting has been issued by the Sindh Government being No SO(C-IV) SGA&CD/4-1/18, Karachi dated 26th March, 2019, therefore, it would be not proper to restrain members of both the Councils from taking part in a process which is not only permissible under the law but also within the norms of democracy. More so, the petitioners have not been able to point out any illegality in the impugned process/notification and the violation of their fundamental rights in the wake whereof to justify interference by this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In the light of these discussions, both the above petitions are dismissed in limine."

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[20] Per *Mian Saqib Nisar J.* in *Lahore Development Authority vs. Imrana Tiwana* reported as *2015 SCMR 1739*.

[21] *Farooque Jameel vs. Province of Sindh & Others (CP D 562 of 2019) & Shakeel Ahmed & Another vs. Province of Sindh & Others (CP D 563 of 2019)*.

[22] *Judgment dated 01.04.2019*.

18. The issue came before this High Court again and the Division bench observed[23] as follows:

> "2. The contention of learned counsel for the petitioners is that the entire process of 'No Confidence Motion' is contrary to section 27 the Sindh Local Government Act, 2013 as according to which, the 'No Confidence Motion' can only be succeeded by two/third majority …. He pointed out that only in the order to defeat the petitioners by the ruling party an amendment was made in the Sindh Local Government Act, 2013 by virtue of an Amendment Act, 2019. It is also his contention that since the process of 'No Confidence Motion' is contrary to law as Director Local Government Mirpurkhas was not present in the session held on 02.04.2019, which is requirement of the notification bearing No.SO(C-IV)SGA & CD/4-1/18, Karachi dated 26th March, 2019, therefore, it is illegal and unlawful.
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> 3. We have heard the arguments and have gone through the available material.
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> 4. During hearing of the instant petition, it came to our knowledge that the petitioners had also filed a petition bearing No.D-563 of 2019 whereby they challenged the process for Election of 'No Confidence Motion', however, the same was dismissed vide order dated 01.04.2019. In the instant petition, the petitioners have not only challenged the success of 'No confidence Motion' but also referred the amendment in the relevant provision of Sindh Local Government Act, 2013 in order to defeat the petitioners. We have already held that such 'No Confidence Motion' is a part of a democratic process and persons, who have democratically been elected for leading a house in any capacity, should be prepared to face any move of no confidence and try to defeat the same through a democratic process instead of taking refuge under technicalities on the plea of certain illegalities. Nevertheless, after dismissal of the said petition, special meeting/election on 'No Confidence Motion' held on 02.04.2019, the petitioners could not succeed and filed instant petition. We are of the view that it was a democratic process and the petitioners have failed to succeed in the same. However, for redressal of their grievance, the petitioners have available remedy to approach the Election Commission of Pakistan instead of questioning the election process under writ jurisdiction envisaged under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. As a result of our discussion, the above petition is dismissed in limine."

19. It is well settled law that an earlier judgment of the Division Bench of a High Court, on the same point, is binding upon the subsequent equal bench[24].

Notifications, *pari materia* to the Impugned Notifications, were assailed before earlier Division Benches of this Court and it was held that a no confidence motion is a process given in the Act and the notification of presiding officer for special meeting has been issued by the Sindh Government, therefore, it is not proper to restrain members of both the Councils from taking part in a process, which is not only permissible under the law but also within the norms of democracy. It was further maintained that no illegality had been demonstrated in the impugned process / notification and no case for infringement of fundamental rights was made out.

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[23] *Shakeel Ahmed & Another vs. Province of Sindh & Others (CP D 6643 of 2019); Judgment dated 17.04.2019*.

[24] Per *Sajjad Ali Shah CJ.* in *Multiline Associates vs. Ardeshir Cowasjee & Others* reported as *1995 SCMR 362*.

It is imperative to record that the learned counsel for the petitioners made no attempt to distinguish the aforementioned Division Bench judgments, hence, the same remain binding upon us[25].

20. Learned counsel[26] for the petitioners had argued that the no confidence motion process was required to be conducted by the Election Commission of Pakistan and in such regard had placed reliance upon provisions with respect to elections at the national and provincial level. It was *prima facie* apparent that the cited provisions pertained to elections and not to motions of no confidence; and upon being so confronted the learned counsel was unable to dispel this fact. Learned counsel for the petitioners were specifically asked whether the Election Commission of Pakistan conducted the in-house proceedings of no confidence with respect to a prime minister, chief minister, speaker etc. and the said question was answered in the negative. It is thus considered safe to observe that no case was made out before us to suggest that a vote of no confidence, in respect of the elected offices under scrutiny, was required to be conducted by the Election Commission of Pakistan.

21. Learned counsel[27] for an intervener painstakingly drew our attention to the record[28] and demonstrated that subsequent in time to the amendment in the Act a no-confidence motion was moved against the petitioner. Thereafter the impugned notification was issued merely to nominate presiding officers and assistant presiding officers. The motion succeeded[29] and the relevant chairman was unseated[30]. The Election Commission of Pakistan declared[31] the seat vacant and announced[32] the schedule for election to the said office and also nominated the returning officers etc.

It was submitted the present petition was filed assailing the Impugned Amendment / Impugned Notifications, however, on the first hearing *ad interim* orders were rendered whereby it was ordered that the petitioner shall continue to hold the office, from where he was demonstrably removed much earlier. It was argued that in doing so this court effectively suspended the operation of a statute prior to any determination having been conducted in respect thereof.

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25 Per *Sajjad Ali Shah CJ.* in *Multiline Associates vs. Ardeshir Cowasjee & Others* reported as *1995 SCMR 362*.
26 Ms. Naveen Merchant, Advocate.
27 Mr. Jhamat Jethanand, Advocate.
28 In CP 7286 of 2019, being contextually representative *inter se*.
29 Denoted by the letter of the Deputy Commissioner Badin dated 10.06.2019.
30 Notification dated 12.06.2019 issued by the Local Government & Town Planning Department Government of Sindh.
31 Notification dated 20.06.2019.
32 Notification dated 20.06.2019.

Learned counsel read out the *Aitzaz Ahsan*[33] *case* and the *Aijaz Jatoi case*[34] and articulated that legislation is required to be treated as valid and operative till declared otherwise, hence, there was no lawful justification for effective suspension of the Impugned Amendment as an *ad interim* measure.

22. We have carefully considered the chain of events demonstrated before us, starting from the initiation of the motion of no confidence and culminating in the issuance of the schedule for fresh election by the Election Commission of Pakistan, and observe that the learned counsel for the petitioners have been unable to identify any infirmity therewith. Even otherwise we remain bound[35] by the judgments of earlier Division Benches of this Court, wherein the challenge to the Impugned Notifications was found to be devoid of merit, and are of the considered view that no *de novo* deliberation in respect of the Impugned Notifications is merited.

23. The writ jurisdiction of this Court is intended primarily to safeguard the fundamental rights enshrined in the Constitution. The learned counsel for the petitioners have been unable to demonstrate the infringement of any fundamental right of the petitioners that would merit the exercise of jurisdiction by this Court. On the contrary perpetuation of holding of an elected office, of the nature under scrutiny before us, despite having lost the confidence of the house is considered to be contrary to the scheme of law and the interests of justice.

24. In view of the reasoning and rationale herein encapsulated we are of the considered view that the petitioners has been unable to make out a case for intervention of this Court in the exercise of its Constitutional jurisdiction and as a consequence thereof the present petitions, including all pending applications, are hereby dismissed.

J U D G E

J U D G E

*Farooq PS/**

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33 Per *Muhammad Haleem CJ.* in *Federation of Pakistan vs. Aitzaz Ahsan & Others* reported as *PLD 1989 Supreme Court 61*.
34 Per *Shafiur Rehman J.* in *Aijaz Ali Khan Jatoi vs. Liaquat Ali Khan Jatoi* reported as *1993 SCMR 2350*.
35 Per *Sajjad Ali Shah CJ.* in *Multiline Associates vs. Ardeshir Cowasjee & Others* reported as *1995 SCMR 362*.