F.10(1)/2020-LGE-KP

ELECTION COMMISSION OF PAKISTAN

Subject: CONDUCT OF LOCAL GOVERNMENT ELECTIONS IN THE PROVINCE OF KHYBER PAKHTUNKHW.

ORDER
21-10-2021

WHEREAS, Article 218(3) of the Constitution of Islamic Republic of Pakistan mandates the Election Commission of Pakistan to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against;

And WHEREAS, the Election Commission of Pakistan is under obligation in terms of Articles 140-A (2), 219(d) of the Constitution, read with Section 219 of the Elections Act, 2017 to hold Local Governments Elections in the Provinces, Islamabad Capital territory and the cantonment boards;

And WHEREAS, it is the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions in terms of Article 220 of the Constitution;

And WHEREAS, the apex Court in the case of Sheikh Rasheed Ahmed vs. Federation of Pakistan reported in PLD 2010 page 573, has held that:-

"The provisions of Article 220 of the Constitution also reflect to be in pari materia with the provisions of Article 190 of the Constitution according to which all the executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. That the independence of Election Commission shall be fully secured and on the touchstone of the aforesaid provision of Constitution, the net result that comes out is that the Chief Election Commissioner and the Election Commission are absolutely independent with exclusive jurisdiction, while performing duties within the terms of Part-VIII of the Constitution in which no interference is allowable by any of the parties. All the concerned quarters, namely Federal and Provincial Government, Law enforcing Agencies are under an obligation to ensure that the Chief Election Commissioner/Election Commission functions independently and to see that they are properly strengthened enabling them to discharge their Constitutional commitments fairly, freely and without any hindrance and pressure of whatsoever nature”.

And WHEREAS, the term of Local Governments in the Province of Khyber Pakhtunkhwa expired on 28-08-2019 and the Election Commission in terms of Section 219(4) of the Elections Act, 2017, was under legal obligation to conduct such Local Government Elections within a period of one hundred and twenty days (120 days) of the expiry of the term of such Local Governments, which period has since expired;
And WHEREAS, the Provincial Government was informed well within time, by this Commission for consultation on conduct of Local Government Elections in terms of Section 219(3) of the Elections Act, 2017.

And WHEREAS, the meeting dated 10.08.2021 was held by this Commission with the representatives of the Provincial Government wherein it was, inter alia, decided that the matter of holding local government elections in the province may be placed by the Provincial Government before the Cabinet and decision thereof shall be communicated to this Commission. During the said meeting, the Provincial Government on account of Covid-19 cases, weather conditions and security related issues, proposed poll date of March, 2022, which was not acceded to by the Commission.

And WHEREAS, this Commission held hearing in the matter on 21.09.2021 by calling the representatives of the Provincial Government and in view of their statements regarding conduct of elections in phases i.e. first phase of elections in November-December, 2021, they were directed to share the action plan with the Commission indicating therein the districts/constituencies wherein elections would be conducted in first phase and also the plan of phase wise elections in other districts without waiting for the formal orders/instructions from it;

And WHEREAS, various meetings and hearings were held in connection with the conduct of elections which culminated in the last meeting held on 14-10-2021, with the representatives of the Provincial Government comprising of the Minister, Chief Secretary, Advocate-General and Secretary Local Government;

And WHEREAS, the Provincial Government proposed the conduct of elections to the Village/Neighbourhood Councils in two phases i.e. first in first week of December, 2021 and second in May, 2022, and elections to the Tehsil Councils to be decided subsequently. The Election commission while disagreeing with the proposal decided to conduct the elections to the Village/Neighbourhood Councils along with the elections to the Tehsil Councils in first phase and further on the request of the Provincial Government, one-week time was allowed for provision of details of election to be conducted in the second phase;

And WHEREAS, the Provincial Government through their letter dated 20th October, 2021, conveyed that section 79 of the Khyber Pakhtunkhwa Local Government Act, 2013 has been amended, empowering the Provincial Government to hold the local government elections separately for the Village/Neighbourhood Councils and Tehsil Councils. That the Election Commission is bound to conduct the said elections as per the amendment brought in the said Act and applicable local government laws. That the Provincial Government is ready to hold the elections of Village/Neighbourhood Councils in phase-1 on 15.12.2021 and of Chairman Tehsil Councils in phase-2 on 25.03.2022;

And WHEREAS, the above stance of the Provincial Government is based on a misreading of Article 140-A (1) concerning the powers of the provincial governments; as under the said Article of the Constitution of Islamic Republic of Pakistan, every province by law shall establish local government system and devolve political, administrative and
financial powers to the elected representatives while the Election Commission is empowered to conduct the local government elections in terms of Article 140-A(2) in the provinces. As also under Article 222 of the Constitution which, *inter alia*, provides legislation by the Parliament in respect of constitution of two Houses of Majlis-e-Shoora, Provincial Assemblies and local Governments in pursuance of Twenty-Second Constitutional Amendment but no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or the Commission. Moreover after the Eighteenth Constitutional Amendment, the Election Commission is charged with the duty of holding Local Government Elections in terms of Article 140-A(2) read with Article 219(d) of the Constitution. The Election Commission is bound to hold the local government elections after the expiry of the terms of the local government within 120 days under section 219(4) of the Elections Act, 2017. The contention of the provincial government as reflected in the letter dated 20-10-2021 amounts to extending the stipulated period of 120 days which is in conflict with the section ibid. The federal law prevails over the provincial law in terms of Article 143 of the Constitution of Islamic Republic of Pakistan and the Act of Provincial Assembly shall, to the extent of repugnancy, be void;

And WHEREAS, despite all best efforts of the Commission, the required assistance of the Provincial Government still lacks and the Provincial Government’s varying stances for gaining more and more time *prima facie* shows that the said Government is apparently not serious in holding the Local Government Elections which is in violation of Articles 140-A and 219(d) of the Constitution of Islamic Republic of Pakistan and the judgment of the August Supreme Court in the case of “Administrator municipal corporations, Peshawar versus Taimur Hussain Amin and others” dated 15-03-2021;

And WHEREAS, the issue of conduct of Local Government Elections was taken up by the Supreme Court in the case “Administrator Municipal Corporation, Peshawar Vs. Taimur Hussain Amin and others” supra in which the Advocate General Khyber Pakhtunkhwa had taken stance that the Local Government Elections cannot be conducted before the official publication of census result 2017;

And WHEREAS, the census results of 2017 have already been published officially in May, 2021 and there exists no legal reasons/hurdle in terms of section 17(2) of the Elections Act, 2017, in conduct of such local government elections;

And WHEREAS, the Supreme Court while deciding the matter referred to above observed that in case the Federation or the Provinces create hurdles in way of the Commission holding elections, they will be violating the Constitution and the Provinces cannot dictate the Commission;

And WHEREAS, the Constitutional duty of holding Elections and its importance has been elaborated by the August Supreme Court in the Workers Party Case reported in PLD 2012 SC 681;
And WHEREAS, in pursuance of various meetings, hearings, correspondences with the Provincial Governments and affording sufficient time to the Provincial Government, the process of consultation has been completed as provided in Section 219(3) of the Elections Act, 2017.

NOW THEREFORE, in view of the above and keeping in view the expiry of term of the local governments, this Commission under the command of Constitution and Law, is constrained to issue election program of the Local Government Elections to the Tehsil/City Councils and the Village/Neighborhood Councils in the Khyber Pakhtunkhwa province in seventeen districts (17) as provided by the Provincial Government, to be held in two phases i.e. first on 19th December, 2021 and second on 16th January, 2022, with the directions to the Provincial Government, Chief Secretary and Secretary Local Government to make all necessary arrangements and take requisite steps for free, fair and smooth conduct of elections in the province in assistance and aid of the Commission. Office to take all necessary steps in this regard, accordingly.

S. KANDAR SULTAN RAJA
Chairman

SHAH MAHMOOD JATOI
Member

NISSAK AHMED DURRANI
Member