

BEFORE THE ELECTION COMMISSION OF PAKISTAN**PRESENT:****MR. NISAR AHMED DURRANI
MR. SHAH MUHAMMAD JATOI****MEMBER
MEMBER****Case No. F.2(1)/2019-LGE-B****In ref: LOCAL GOVERNMENT ELECTIONS TO BE HELD IN THE PROVINCE OF
BALOCHISTAN****On Commission's Notice****For Government of Balochistan: Mr. Ahmed Raza, Secretary, Local Government
Mr. Khadim Hussain, Secretary Local Councils
Election Cell****For the ECP: Zafar Iqbal Hussain, Special Secretary, ECP
Muhammad Raziq, DG (LGE)
Khurram Shahzad ADG (law)
Abdul Hafeez, Director (LGE)
Usman Zakir Abbasi, Dy. Director (LGE-Bal.)****Date of hearing: 03.11.2021****ORDER****Nisar Ahmed Durrani, Member:** The instant matter was previously taken up for hearing by this Commission on 21.10.2021, and following directions were given:-

"4. We have heard the stance of the parties. Since the term of Local Government Balochistan has expired on 27.01.2019 and the Election Commission as well as Balochistan Government are duty bound under the law to conduct the LG Elections within time. Moreover, under Article 220 of the Constitution of Islamic Republic of Pakistan, 1973 all the executive authorities in the provinces as well as in federation are mandated to assist the Commission for discharging its duties/functions. From perusal of record, it is revealed that vide order 14.09.2021, four weeks time was given to the respondents to do the needful but they have failed. However, lenient view is taken and request qua meeting with DG (Law) etc. with Advocate General is allowed. The meeting be convened first on 28.10.2021 at ECP Secretariat Islamabad then the respondents should appear in person and submit the overall progress report in the matter on the date fixed. Case to come up on 03.11.2021."



2. The meeting of the representatives of the province of Balochistan with the officers of this Commission pursuant to the above order, was held in this Election Commission Secretariat on 28.10.2021, wherein following decision was taken:-

"9. It was unanimously decided that the representatives of the provincial government present today, as well as the Chief Secretary, Balochistan shall place the issues before the newly elected Chief Minister for their resolution and they shall appear and file over-all progress report in the subject matter before the Hon'ble Commission on 03.11.2021, as per the previous directions of the Hon'ble Commission."

3. Prior to this, pursuant to the meeting of this Commission held on 10th August, 2021 with the representatives of the provincial government with regard to the subject matter of conduct of local government elections in Baluchistan, the following decisions were taken by the Commission: -

- "i. Provincial Government shall within one month make necessary legislation and provide the required notification, information/data to ECP and PEC, Baluchistan.
- ii. In case of non-compliance, after one month, the matter will be placed before the Commission for regular hearing and notice shall be issued to the Chief Secretary, Baluchistan to appear in person before the Commission."

4. The above minutes of meeting containing decision of the Commission were sent to the concerned quarters of the provincial government Balochistan on 16th August, 2021, for compliance. However, no compliance was made. The matter was taken up for hearing by the Commission on 14.09.2021 by issuing notice to the Chief Secretary, Balochistan, Secretary Local Government Balochistan, Advocate General, Balochistan and the Attorney General for Pakistan. Except the Chief Secretary, Balochistan, the Additional Attorney General, the Advocate General Balochistan and the Secretary Local Government attended the hearing. On the said date, the following directions were issued by the Commission:-

"9. In light of submissions made by the representatives of the Provincial Government, seeking three weeks' time for effecting amendments in the Local Government Act as well as for provision of requisite data/notifications to the Commission for delimitation purposes is allowed to the respective government. In case of no-compliance, the matter shall be re-fixed for hearing before the Commission after four weeks and the Chief Secretary shall appear in person for clarification and justification on 14th October, 2021."

The matter was again taken up by the Commission on 14.10.2021, on which date, no one appeared on behalf of the province and following order was passed by the Commission:-

"2. In such view of the matter and circumstances, notice be served upon Chief Secretary, Balochistan and Secretary, Local Government to appear in person in any manner on 21.10.2021 and in case of failure, proceedings shall be initiated against them in accordance with law."



5. On 21.10.2021, the representatives appeared before this Commission and requested for holding a meeting of the Advocate General, Balochistan with the Director General (Law) of this Commission in order to discuss the issues purportedly being faced by them. The said request was allowed. The meeting was held on 28.10.2021, wherein, the following issues were raised by the representatives: -

- i. The subject of delimitation of constituencies of local governments is very much sensitive as demographical, geographical and political factors are involved therein and the province is in a better position to delimit the constituencies of the local governments;
- ii. Article 142 (a) of the Constitution of Islamic Republic of Pakistan gives exclusive powers to Majlis-e-Shoora (Parliament) to make laws with respect to any matter in the Federal Legislative List whereas the subject of delimitation is not included in the Federal Legislative List therefore, the Parliament cannot make law in respect of delimitation and it is prerogative of the province.

6. The Director General (Law), attended to the above issues/arguments of the representatives and made them realized that there are three judgments of the Hon'ble Courts on this subject. In one judgment reported as "2014 CLC 335" titled "*M.Q.M. and others vs. Province of Sindh and others*", the Hon'ble High Court of Sindh had annulled the entire delimitation exercise carried out by the delimitation officers as the same was conducted in violation of Sections 10, 11, 12 & 13 of the Sindh Local Government Act, 2013, and said sections were declared as *ultra vires* of the Constitution. The Hon'ble Court had termed the said delimitation exercise as "*gerrymandering*". In other two judgments, reported as PLD 2014 Supreme Court 531 "*Province of Sindh vs. MQM & others*" (*upholding the judgment supra i.e. "2014 CLC 335"*) and PLD 2014 Supreme Court 668 "*Election Commission of Pakistan through Secretary Vs. Province of Punjab through Chief Secretary and others*", the august Supreme Court while interpreting the Article 222 of the Constitution held that Parliament is competent to make law for delimitation of constituencies including law for delimitation of constituencies of the local governments and delimitation of constituencies is part of the election process and it should be done by the Election Commission. The Director General (Law) had further informed the representatives that the above issues raised/argued by them pertain to the interpretation of law and the Election Commission is not the forum and they may agitate the same before the appropriate forum. He had further made them realized that the delimitation process is carried out by the Delimitation Committees and Delimitation Authorities which comprise officers (Deputy Commissioners/Assistant Commissioners) of the concerned provinces as well as the officers from the Election Commission. The Deputy Commissioners/Assistant Commissioners taking part in the delimitation process are well aware about the sensitivity of delimitation process and demographical, geographical and political factors involved therein. At the end, the Director General (Law) and Mr. Muhammad Raziq, DG (LGE) had made the representatives realized that if the provincial government do not cooperate and assist in conduct of local government elections, the Election Commission will explore all possible options including moving to the august Supreme Court for its directions in the matter. Further, the proposed amendments which the provincial government was intending to effectuate are without definite period and the Election Commission cannot wait more



indefinitely as it has to fulfill its legal and constitutional duty. After thorough discussion, it was decided that the Chief Secretary, Balochistan shall place the issues before the newly elected Chief Minister for their resolution and they shall appear and file over all progress report in the subject matter before the Commission on 03.11.2021, as per the its previous directions given on 21.10.2021.

7. That Prior to the expiry of tenure of local governments, this Commission initiated the process of consultation with the local government vide letter dated 09.10.2018, asked the Secretary, Local Government Balochistan to make amendments in the 'Balochistan Local Government Act, 2010' in order to bring it in conformity with the 'Elections Act, 2017' and also to provide details of local government institutions/tiers, maps and other relevant data. The Commission vide a D.O. letter on 18.10.2018, had asked the Chief Secretary, Balochistan for provision of required information/data. The Provincial Election Commissioner convened a meeting on 09.01.2019 during which the representatives of the Balochistan Government shared old tiers of the local governments. This Commission vide letter dated 16.01.2019, reiterated to the Provincial Election Commissioner, Balochistan for taking up the matter with Government of Balochistan and obtaining necessary documents and data who vide letter dated 17.01.2019 asked the Chief Secretary, Balochistan for provision of standard copies of maps of districts in Balochistan. This Commission notified Delimitation Committees with timelines for delimitation on 17th January, 2019 on the basis of provisional census data. According to the said notification, delimitation was to start on 10.01.2019 and to conclude on 30.03.2019. Through a D.O. letter on 18.01.2019 to the Chief Minister, Balochistan, he was informed that this Commission will conduct local government elections within the time frame under the law. Another meeting of the Provincial Election Commissioner and the Secretary Local Government was held on 22.01.2019, wherein the Secretary assured for provision of the required data/information to the Commission. Meanwhile, a C.P. No. 143/2019 titled "*Balochistan High Court Bar vs. FOP etc*", was filed before the Hon'ble High Court of Balochistan on 11.02.2019, with the prayer that "*to constrain the ECP from carrying out the delimitation process keeping in view the disproportion/incompatibility between the existing population of rural and urban councils of districts of Balochistan and the Balochistan Local Government Act, 2010 and directions be issued to the Chief Secretary Balochistan and Secretary LG Balochistan to take up matter in the provincial cabinet for deliberation and then further approval from the floor of the Balochistan Assembly.*" On 12.02.2019, the Hon'ble High Court suspended the above referred notification of this Commission regarding Delimitation Committees issued on 17.01.2019. This Commission vide letter dated 09.12.2020 sent a draft proposal to the Provincial Government for bringing necessary amendments in the Balochistan Local Government Act, 2010 and Rules in order to bring it in conformity with the Elections Act 2017 & Rules.

8. On 02.02.2021, in the meeting of the Commission, Chief Secretary, Balochistan took stance that delimitation cannot be carried out by the Commission in the absence of official publication of results of census, 2017. In the meeting, *inter alia*, the Provincial Government was directed by the Commission to expedite the process of legislation/amendments in the Local Government Act and Rules. The Secretary, Ministry of Inter Provincial Coordination, was called for assistance of the Commission in the hearing on 11.02.2021 regarding publication of official result of census 2017 who informed that meeting of Council of Common Interest (CCI) is likely to be held in the first or second week of March, 2021 and matter of

official publication of census results, 2017 is at agenda item No.1. The Chief Secretary, Balochistan, appeared on 12.02.2021 before this Commission with the stance that the Commission cannot carry out delimitation in accordance with section 17(2) of the Elections Act, 2017 in the absence of final publication of results of census, 2017. This Commission after hearing all the concerned parties had deferred the delimitation process till the meeting of CCI on 12.02.2021.

9. In the meanwhile, the August Supreme Court of Pakistan while hearing a Civil Miscellaneous Application (CMA) bearing number 6762/2020 "*Administrator Municipal Corporation, Peshawar vs. Taimur Hussain Amin and others*" took *suo moto* notice of non-holding of local government elections in the provinces. With regard to holding elections in the province of Sindh, Balochistan, Khyber Pakhtunkhwa and the Islamabad Capital Territory, the august Court was pleased to dispose of the said CMA with the following observations/directions on 15.03.2021:-

"19. Under the circumstances it is clear that this matter may be bifurcated into two; one with regard to the province of Punjab and the other with regard to the other provinces and the Islamabad Capital Territory. We dispose of this matter with regard to the holding of local government elections in the province of Balochistan where their term expired on 27 January 2019, Khyber Pakhtunkhwa where their term expired on 28 August 2019, Sindh, where their term expired on 20 August 2020 and the Islamabad Capital Territory, where their term expired on 4 March 2021 in terms of the assurance of the Commission that it is ready to hold local government elections therein. It is pointed out that all executive authorities in the Federation and in the provinces are mandated by Article 220 of the Constitution to assist the Commissioner and the Election Commission in the discharge of his or their functions. Therefore, we expect that local government elections will be held in these three provinces and the Islamabad Capital Territory as soon as possible."

The August Court was further pleased to observe in paragraph 6 of the order as follows:-

"6. The matter of holding local government elections lies within the domain of the Commission as per Article 219(d) of the Constitution and a province cannot dictate to the Commission, if and/or when, the same can be held. On the contrary, Article 220 of the Constitution mandates that, 'It shall be 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 case the Federation and/or the Province(s) create hurdles in the way of the Commission holding elections, they will be violating the Constitution, which may attract serious consequences."

10. The Hon'ble High Court of Balochistan vide order dated 22.02.2021 vacated its stay order in the abovementioned C.P No 143/2019, whereby the Delimitation Committee's notification was suspended on 12.02.2019. The Government of Balochistan vide letter dated 19.03.2021, requested the Commission to withdraw its notification dated 21.01.2019, whereby revenue limits and number of local government institutions were frozen which was acceded to vide notification dated 31.03.2021. The Commission reminded Provincial Government vide letters on 01.04.2021 and 03.05.2021 for expediting the issue of incorporation of proposed



amendments in Local Government Act as were recommended by it. Vide another letter dated 03.05.2021, government was asked for provision of maps and other relevant data for carrying out delimitation of local government institutions. In the meanwhile, Pakistan Bureau of Statistics notified official results of census-2017 on 06.05.2021 and the Commission again issued a reminder to the Secretary, Local Government, Balochistan on 20.05.2021 regarding provision of maps and other relevant data. After official publication of results of census, 2017, Commission notified Delimitation Committees and Delimitation Authorities on 31.05.2021. In the meeting held on 27.05.2021 under the Chairmanship of the Secretary ECP, the Secretary, Local Government, Balochistan informed that the proposed amendments have been placed before the Provincial Cabinet and in view of increased population in census, 2017, changes are required to be made in the existing types/tiers and number of seats in the local governments. The Commission again convened a meeting on 10.06.2021 with the Chief Secretary, Balochistan, Secretary, Local Government, Balochistan and PEC, Balochistan regarding the conduct of local government elections in the province.

11. The Provincial Government again took stance that amendments proposed by the Commission have been placed before the Provincial Cabinet and in view of increased population in census, 2017, changes are required to be made in the existing types/tiers and numbers of seats in the local governments. Thereafter, Commission issued a reminder to Secretary, Local Government, Balochistan on 30.06.2021 regarding provision of maps/notification for delimitation of local government constituencies which was followed by another reminder on 08.07.2021 to the Chief Secretary, Balochistan regarding provision of the requisite data (maps/notifications) for delimitation of local governments. Thereafter, Commission once again issued a reminder on 04.08.2021 for expediting the process of amendments in the Local Government Act and Rules. The Commission convened another meeting on 10.08.2021 with the Chief Secretary, Secretary, Local Government, and PEC, Balochistan, regarding conduct of elections in the province. In the said meeting, the Provincial Government was given time frame of one month for making necessary legislation and provision of required notifications, data to this Commission and PEC, Balochistan. In case of non-compliance, after one month, the matter was ordered to be placed before the Commission for regular hearing.

12. It is highlighted that the process of delimitation of the constituencies of the local governments of Balochistan initiated by the Commission on 27.01.2019, remained under suspension w.e.f. 11.02.2019 till 22.02.2021 in the abovementioned Constitution Petition No. 143/2019, filed by the Balochistan High Court Bar Association. It is also worthwhile to mention here that this Commission for the official publication of census results of 2017, prior to the initiation of process of delimitation and even after that had approached all the concerned authorities including the highest functionaries i.e. the Prime Minister, Secretary, Ministry of Law and Justice, Secretary, Parliamentary Affairs, Secretary, Senate of Pakistan, Secretary, National Assembly and Pakistan Bureau of Statistics as delimitation on the basis of provisional census data was objected by all the provinces including Balochistan. Finally, the Pakistan Bureau of Statistics notified the census results of census on 20.05.2021. Despite all the above efforts of the Commission staring from 19.10.2018 before the expiry of term of the local governments towards holding local government elections in the province, this Commission is still unable to fulfill its legal and constitutional duty cast upon it by Articles 140A(2), 219(d) of the Constitution read with section 219(4) of the Elections Act, 2017.



13. Today, the representatives of province has again repeated the arguments/stance which they had placed before the meeting on 28.10.2021 to the effect that the subject of delimitation of constituencies of local governments is very much sensitive as demographical, geographical and political factors are involved therein and the province is in a better position to delimit the constituencies of the local governments and further that Article 142 (a) of the Constitution of Islamic Republic of Pakistan gives exclusive powers to Majlis-e-Shoora (Parliament) to make laws with respect to any matter in the Federal Legislative List whereas the subject of delimitation is not included in the Federal Legislative List therefore, the Parliament cannot make law in respect of delimitation and it is prerogative of the province. It may be observed that these legal issues were sufficiently addressed by the Director General (Law) of this Commission and are being raised again unnecessarily just to linger on the matter. We are in fully agreement with the view points of the Director General (Law) expressed in the meeting on 28.10.2021 including that the issues raised/argued by the province pertain to the interpretation of law and this is not the forum and the province may agitate the same before the appropriate forum. Therefore, we deem it inappropriate to make further discussion on it.

14. This Commission constituted under Article 218 of the Constitution of Islamic Republic of Pakistan is charged with the duty of conducting elections to the office of the President, Senate of Pakistan, National Assembly, Provincial Assemblies, local governments and the Cantonment Boards. In terms of Article 140A(1) of the Constitution, the local government election in the provinces is a requirement of the Constitution. Pursuant to Article 222 of the Constitution, the Federal Legislature has enacted the 'Elections Act, 2017' and section 219(4) stipulates that the elections to local governments shall be held within one hundred and twenty days of the expiry of term of a local government. In terms of Articles 7, 32 and 140A(1) of the Constitution, every province is also under constitutional obligation to establish local government system in the province and to devolve political, administrative and financial authority to the elected representatives. In terms of Article 220 of the Constitution, the Federal Government and the Provincial Governments are under constitutional obligation to assist the Chief Election Commissioner and the Election Commission and the Election Commission cannot be dictated by any executive authority of the Federation or provinces. There are also a number of judgments of the august Supreme Court which elaborate the constitutional duty of the Election Commission in respect of holding local government elections. It was held by the august Supreme Court in Constitution Petition No. 77 of 2010 "*Balochistan High Court Bar vs. FOP etc*" and *Raja Rab Nawaz's case* that "the Provinces may have power to legislate in respect of conduct of local government elections but if there is no legislation or if there is defective legislation, the Election Commission is not absolved from performing its duties under the Constitution and further that Constitutional provisions cannot be allowed to be not adhered to for want of sub-constitutional legislation. The term of the local governments in the Balochistan has already expired on 27.01.2019 and further delay in holding of local government elections would be in violation of the provisions of the Constitution of Islamic Republic of Pakistan, 1973, Elections Act, 2017 and various judgments/directions of the august Supreme Court. The census results of 2017 have also 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. If the provinces create hurdles in way of the Commission holding elections, they will be violating the Constitution as held by August Supreme Court in case title "*Administrator Municipal Corporation Peshawar vs Taimur Hussain Amin and others*".

15. This Commission therefore, under the command of Constitution and law, directs the Chief Secretary, Balochistan and the Secretary Local Government to provide the requisite details of all urban and rural tiers of local councils, criteria of constitution of councils along with maps and notifications to the Commission within two weeks positively. Alternatively, the Commission shall initiate the delimitation process in the province of Balochistan with effect from 06.12.2021 under the Constitution, Elections Act, 2017 existing applicable local government laws and tiers. In the meanwhile, the concerned office shall chalk-out delimitation plan for the province of Balochistan for the perusal and approval of the Commission.


Nisar Ahmed Durrani
Member


Shah Muhammad Jatui
Member

Islamabad
8th November, 2021

