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**BEFORE THE ELECTION COMMISSION OF PAKISTAN
ISLAMABAD**

Representation No: _____ / 2018

SALEH MUHAMMAD Son of Ghulam Rasul, Resident of Village Dhurnaka, Tehsil and District Mianwali. *[PP-86 Mianwali – II]*.

PETITIONER

VERSUS

THE DELIMITATION COMMITTEE FOR PUNJAB, [District Mianwali] Provincial Election Commission, Punjab, 10 - Court Street, Lahore.

RESPONDENT

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REPRESENTATION:

Under Section 21(3) of the Election Act 2017 read with Rule 12 of the Election Rules 2017, against the Impugned Delimitation of the Constituencies of District Mianwali. *[mainly PP-86 Mianwali – II and PP-87 Mianwali – III]*, carried out by the Respondent Committee and proposed in their Preliminary Report and List of Constituencies, published by the ECP for inviting Objections.

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RESPECTFULLY SHEWETH: -

1. That the addresses of the parties as given in the head note of the titled petition are correct for the purposes of their service, etc.
2. That the petitioner being resident and registered voter of District Mianwali. *[PP-87 Mianwali – III]*, have a right to object to the delimitation of his constituency, for the purposes of the ensuing General Election in the District Mianwali, on general seats. *Copies of the CNIC and Voters Extract Certificate are ANNEXURES – A/1 and A/2 respectively.*

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3. The respondent Delimitation Committee has unilaterally prepared the Preliminary Delimitation and List of Constituencies, therefore, it was full of errors and omissions. Moreover, the **mandatory provisions** of delimitation under **section 20 of the Election Act 2017 and Rule 10 of the Election Rules 2017** i.e., distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies, **have been grossly violated**. Hence, the impugned preliminary delimitation is not sustainable. ***Copies of the "Preliminary List" Published for delimiting the Constituencies of "Mianwali District"; and the Marked Map published by the ECP on the basis of delimitation carried out by the respondent Delimitation Committee are ANNEXURES – B and C respectively.***
4. The petitioner is aggrieved of the **Impugned Preliminary Delimitation** of the Constituencies of District Mianwali [**PP-87 Mianwali – III**] carried out by the Respondent Committee and proposed in their Preliminary Report and List of Constituencies, published by the ECP for inviting Objections. Therefore, he **wishes setting aside of the impugned Preliminary Delimitation**; and issuance of the **Final Report and List of Constituencies**, only after revising the Impugned Delimitation / Preliminary List of the newly delimited Constituency, by **making / incorporating necessary amendments, alterations, and modifications**, as proposed by the petitioners, as follows:

**PRELIMINARY LIST OF PP-87 MIANWALI – III
by the Delimitation Committee**

- a. *Mianwali Tehsil excluding the following QHs:*
- (1). *Chakrala (97098);*
 - (2). *Daud Khel (121975);*
 - (3). *Rokhri (90536);*
 - (4). *Mianwali – II (301);*
 - (5). *The following PCs of Musa Khel QH:*
 - (i). *Bori Khel (7834);*
 - (ii). *Ghundi (10797);*
 - (iii) *Musa Khel (40406);*
 - (6). *MC Daud Khel (28593),*

of Mianwali District.

Total Population: 3,69,590.

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SUGGESSTIONS / PROPOSAL

That in order to rectify above mentioned illegalities and infringements of principles of delimitation, following suggestions are made:

Areas Proposed to be Excluded from PP-86 Mianwali – II:

(By inclusion in PP-87 Mianwali – III.)

The following PCs of Chakrala QH:

- (a) Nammal PC (Population: 9,655);
- (b) Dhebba PC (Population: 15,343);

of Tehsil and District Mianwali.

Total Population: 24,998

WITH THE PROPOSED EXCLUSION & INCLUSION:

(District Quota: 3,86,573)

Total population of PP-86 Mianwali – II:

Reduced from 3,97,540 to 3,72,542.

Total population of PP-87 Mianwali – III:

Enhanced from 3,69,590 to 3,94,538.

JUSTIFICATION:

1. *That there is no road link between the Nammal and Dhebba PCs and rest of the area of PP-86, whereas its natural boundary is linked with PP-87 and also linked with the main road.*
2. *Due to the preliminary delimitation, the constituency of PP-86 has been demarcated / carved out in such an unreasonable manner, that the residents of Nammal and Dhebba PCs, in order to travel to other areas of PP-86, would have to first cross Mauza Bazar of PP-87 into Mauza Musa Khel Mauza and then to Mauza Abba Khel and then to Mauza Lahu Khel and then to Mauza Yaro Khel, and then to Mauza Watta Khel Pucca, and from there to cross three Wards of Municipal Committee Mianwali, from where they would enter in PP-86 through Mauza Shahbaz Khel. Moreover, the route from Nammal and Dhebba PCs to other areas of PP-86 is a hilly terrains, and crosses through river, lakes canals and nallahs.*
3. *The HQ of PP-86 is situated at about 100 kms from its Nammal and Dhebba PCs.*
4. *Whereas, the Mianwali HQ of PP-87 is also the HQ of the Mianwali District which is situated at about 25 kms.*
5. *The Nammal and Dhebba PCs being part of UC Nammal remained part of the areas currently falling in PP-87 long ago.*
6. *The Nammal and Dhebba PCs not share common natural boundary with PP-87 but the inhabitants of both the areas also share common social,*

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economic, ethnic relations and even the language dialect is one and the same.

7. The inclusion of Nammal and Dhebba PCs in PP - 87 would also result in maintaining proper and ideal population parity in all the constituencies of the District, as follows:

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|-------|----------|------------------|----------|
| (i) | PP - 85: | remain unchanged | 3,75,026 |
| (ii) | PP - 86: | from 3,97,540 to | 3,72,542 |
| (iii) | PP - 87: | from 3,69,590 to | 3,94,538 |
| (iv) | PP - 88: | remain unchanged | 4,03,938 |

8. By exclusion of Nammal and Dhebba PCs from PP-86 would not affect the population quota of PP-86.

9. In the preliminary delimitation, the area of PC Musa Khel (population of 40,406) was excluded from the old PP-45 (now PP-87) thereby reducing the population of 40,406 from PP-87 and enhancing the population of PP-86 which is more than 10% quota (38,657 of the total 3,86,573) of the District, however, to balance the population, no area was included in PP-87 by excluding from PP-86. Therefore, the proposed exclusion of Nammal and Dhebba PCs (population 24,998) would balance the population.

10. By the proposed inclusion of Nammal and Dhebba PCs in PP-87, both the constituencies of PP-86 and PP-87 would become homogeneous due to distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors.

11. The marked map is inconsistent with the Preliminary list, whereby PC Musa Khel has been broken.

Copy of the petitioner's Proposed Shaded Map; the Petitioner's Proposed List of Constituencies, and the Relevant Census Report, are ANNEXURES - D, E and F respectively.

5. That in order to make the impugned delimitation consistent with the law, and the rules, it would be appropriate to revise the impugned delimitation as per the proposal / suggestions of the petitioner. Hence, this Representation.
6. The Impugned Preliminary Delimitation, carried out by the Respondent Committee and proposed in their Preliminary Report and List of Constituencies, published by the ECP for inviting Objections, is liable to be set aside; and the Final Report and List of Constituencies is required to be issued only after revising the Impugned Delimitation / Preliminary List of the newly delimited Constituency, by making / incorporating necessary amendments, alterations, and modifications, as proposed by the petitioners, inter-alia on the following:

GROUNDS

- (a) The **Impugned Preliminary Delimitation**, carried out by the Respondent Committee and proposed in their Preliminary Report and List of Constituencies, published by the ECP for inviting Objections, is **unsustainable**, for being carried out in violation of the object and spirit as well as the **mandatory requirements and principles** of delimitation laid down under the **Law and the Rules**. Hence, liable to be set aside.
- (b) That in order to make the impugned delimitation consistent with the law, and the rules, it would be appropriate to revise the impugned delimitation as per the **proposal / suggestions** of the petitioner.
- (c) The impugned delimitation has been carried out, **without giving due regard to the foremost principles of delimitation**. Moreover, the **mandatory provisions** of delimitation under **section 20 of the Election Act 2017 and Rule 10 of the Election Rules 2017** i.e., distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies, **have been grossly violated**. Therefore, the impugned preliminary delimitation is **full of errors and omissions**, hence, not sustainable.
- (d) As required under **Rule 10(5)** of the Election Rules, 2017, the delimitation was required to start from the Northern end of the district and then proceed **clock-wise in zig-zag manner**, however, the Preliminary Report and Marked Map prepared by the Delimitation Committee reflects that the said provision has been grossly violated.
- (e) That **neither any representations were invited or considered nor any inquiry was conducted or any evidence recorded before preparing and publishing the preliminary report and list of constituencies, as mandatorily required under Section 21 (1) of the Election Act 2017**, which has resulted in a preliminary delimitation totally alien to the **ground realities**.

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- (f) The **failure** of the Delimitation Committee to **exercise the power and authority vested** in them under the Law and the Rules, has rendered the whole exercise of impugned delimitation / Preliminary Report and List of Constituency etc., as **null and void**.
- (g) That in order to **disenfranchise the petitioner and oust him from the electoral process**, the impugned delimitation has been conducted illegally and malafidely to **deliberately delimit / bifurcate the constituency in order to dilute his majority and ousting him from the electoral process**, which amounts to **pre-poll rigging**. Hence, the petitioner has been discriminated which is not only illegal and unconstitutional but also violative of the principles laid down by the hierarchy of the judgments of the superior courts of Pakistan.
- (h) The impugned delimitation is **politically motivated** to give undue advantage to the local MNAs and MPAs and malafidely cause political damage and deprive the constituents of this area from electing the local representatives of their own choice. The notification of the Preliminary Delimitation itself **exhibits substantial difference / variation in the population**. Whereas, the marked MAP shows **odd shaped wards with substantial variation in sizes**.
- (i) That, the impugned acts / delimitation / notifications are illegal, perverse and tantamount to abuse of law authority as well as the **infringement of constitutional and fundamental rights of the petitioner** ensured under the Constitution of Pakistan. Hence, are void, unfair, unjust, unwarranted, arbitrary, malafide, illegal, unconstitutional and ineffective qua the rights of the petitioner.
- (j) That the impugned delimitation shows that the same have been finalized and published by the Delimitation Committee **on political pressure, and in just mechanical obedience to the illegal dictates of the political bosses, without application of their independent mind** and without even realizing that the said delimitation is not only illegal but also against the public interest. Hence, they failed to discharge their duties as per exigencies of their statutory responsibilities and acted in excess of their lawful authority and in violation of law and the constitutional mandate. Therefore, the conduct of the respondents are violative of the dictates of

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the Hon'ble Supreme Court laid down in Zahid Akhtar's case reported as (PLD 1995 SC 530) titled: "Zahid Akhtar - Vs. - Government of Punjab and 2 others", as well as the case reported as (2008 SCMR 105) titled: "Iqbal Hussain - Vs. - Province of Sindh and others." and needs to be judicially reviewed by this Hon'ble Court, as they have acted in mechanical obedience to the illegal, unwarranted and whimsical directions of their political bosses.

- (k) That in order to ensure fair, free and transparent elections as well as to guard against the corrupt and illegal practices, it is the duty of the the Election Commission of Pakistan to ensure that the impugned delimitation is carried out strictly in accordance with the **mandatory Principles of Delimitation** provided under the provisions of **section 20 of the Election Act, 2017** read with the **Rules 8 and 10 of the Election Rules.**
- (l) That the impugned delimitation has been **conducted in oblivion of the Law and Rules, which smacks malafide on the part of the respondent Delimitation Committee and also clearly reflects ulterior considerations and extraneous reasons as well as connivance and collusion with the petitioner's political opponents and the predetermination to politically victimize the petitioners and other prospective candidates.** Hence, the impugned acts / decisions / delimitation are clear disregard of the law laid down in **PLD 1969 SC 14, and 2011 SCMR 11,** wherein, it has been held that: "*Manner of exercising of power in violation of law is also termed as malafide.*". Hence the impugned acts / delimitation are liable to be set aside on this ground also.
- (m) That the impugned acts and delimitation are also **flagrant violation of the well-entrenched principle of administration of justice that provides that if the law requires a thing to be done in a particular manner, it must be done in that manner only and not otherwise. [Reliance is placed on 2008 SCMR 1148, 2005 SCMR 177, 2010 SCMR 421, PLD 2010 SC 759, 2010 SCMR 1437, PLD 2011 Lahore 44.]**
- (n) That it would not be out of place to mention here that it is well established principle that the Competent Authorities have **no unbridled powers in exercise of their discretion,** rather the Administrative discretion has to be structured, reasoned, rational, logical and objective, so much so, the

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exercise of discretion is bound by the rules of reasons, which must be guided by law and must not be exercised in an arbitrary or fanciful manner. [Rel. 1997 SCMR 641, 2004 SCMR 1747, 2010 PLC (CS) 240, PLD 2010 Lahore 546, 2011 PLC (CS) 455.]

- (o) The respondent Delimitation Committee has also ignored the settled principle of law that the public powers must be exercised in the best possible interest and for the most possible furtherance of objectives for which the powers has been conferred. Such exercise of powers must not be whimsical or capricious, rather it must be reasonable and logical, thus the impugned actions / decisions of the Delimitation Committee are against the principal of objectivity and intention of legislation. [Rel. 2011 PLC (CS) 37].
- (p) That the impugned notice as well as the proceedings are also a **gross violation of specific provisions of Section 24-A of the General Clauses Act**, which manifestly impresses upon the Authorities/Public functionaries to decide the cases after application of mind on the touchstone of reasonableness, which otherwise is lacking in the instant case. However, the respondent Delimitation Committee, while acting as well as proposing the impugned delimitation in the Preliminary Report and List of Constituencies, have failed to act reasonably, fairly and justly as required under the provision of Section 24-A of General Clauses Act, 1897. [Rel. 2010 SCMR 1778, 2010 SCMR 1495, 2010 SCMR 1475].
- (q) That this Hon'ble Authority to make necessary amendment, alteration and modification in the preliminary list of constituencies, for the purposes of issuing / publishing the final Report and List of Constituencies.
- (r) That the impugned acts, orders, and proceedings are also **violative of Article 4 which is a citadel of administrative and judicial governance in the country** and amounts to constitutional reminder especially conveyed to the Government and its functionaries to treat everyone in accordance with law. However, unfortunately, the **petitioner was treated differently instead of in accordance with law and rules, jeopardizing the lawful rights of the petitioner**. Hence, the petitioner's right to be dealt with in accordance with law has also been breached. [Rel. 1998 SCMR 1863, 2009 PLC (CS) 966, 2010 PLC (CS) 783].

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- (s) That, the impugned acts and orders / preliminary delimitation are illegal, perverse and tantamount to abuse of law, authority as well as the **infringement of valuable rights of the petitioner**. Therefore, the same are void, unfair, unjust, unwarranted, arbitrary, malafide, illegal, unconstitutional and ineffective qua the rights of the petitioners.
- (t) That the valuable rights have already been created in favour of the petitioner, who cannot be deprived of his valuable rights, without due course of law.
7. That the impugned delimitation and the Preliminary List are not sustainable, hence, need to be judicially reviewed by this Hon'ble Authority.
8. That in order to make the impugned delimitation consistent with the law, and the rules, it would be appropriate to revise the impugned delimitation as per the proposal / suggestions of the petitioner. **Hence, this petition / representation.**
9. That the Petitioner is personally aggrieved in this matter, besides however, a large number of other persons / voters / constituents / prospective candidates are also interested in the subject matter of this writ petition. Therefore, this matter also involves the public interest.
10. That grave miscarriage of justice has been done to the petitioner, and if the relief sought for in the titled representation / petition is not granted the petitioner shall also suffer irreparable loss.
11. That the petitioner has no other alternate remedy available for redressal of his grievances, therefore, he is left with no other alternate, efficacious and expeditious remedy except to invoke the jurisdiction of this honourable Authority.

PRAYER:

In view of the submissions made above it is respectfully prayed that the titled petition may graciously be accepted, and the **Impugned Preliminary Delimitation of the Constituencies of District Mianwali [PP-86 Mianwali - II and PP-87 Mianwali - III]**, carried out by the Respondent Committee and proposed in their Preliminary Report and List of Constituencies, published by

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the ECP for inviting Objections, may graciously be set aside / quashed.

It is further prayed that the Final Report and List of Constituencies may please be issued only after revising the Impugned Delimitation / Preliminary List of the newly delimited Constituencies of District Mianwali [mainly PP-86 Mianwali - II and PP-87 Mianwali - III], by making / incorporating necessary amendments, alterations, and modifications, as proposed by the petitioners

Any other relief which the petitioner is found to be entitled in the circumstances of the case may please also be granted.

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PETITIONER

THROUGH:

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(MUBEEN UDDIN QAZI)
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Dated: 31.03.2018

CERTIFICATE:

1. Certified as per instructions that this is the first Representation by the petitioner on the subject noted above.

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ADVOCATE

BOOKS:

1. The Constitution of Pakistan, 1973.
2. The Election Act 2017.
3. The Election Rules, 2017.