

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER

MR. SHAH MOHAMMAD JATOI, MEMBER

Case No. 3(2)/2020-LGE-ICT

In Ref: **LOCAL BODIES ELECTIONS TO BE HELD IN THE ISLAMABAD
CAPITAL TERRITORY**

ON NOTICE

For Federal Government:

Mr. Yousaf Naseem Khokhar,
Secretary, M/o Interior

Mr. Amer Ali Ahmed, Chief
Commissioner, Islamabad

Mr. Hamza Shafqat, Deputy
Commissioner, Islamabad

For Advocate General, ICT

Mr. Dawood Iqbal, State Counsel

For the ECP:

Mr. Zafar Iqbal Hussain, Special
Secretary, ECP

Mr. Muhammad Arshad, Director
General (Law)

Mr. Abdul Hafeez, Director (LGE)

Mr. Ghulam Abbas, DD (LGE-B/ICT)

Date of Hearing

:

05.10.2021

ORDER

Mr. Nisar Ahmed Durrani, Member.— At the very outset, the Special Secretary of this Commission apprised the Commission of the importance of holding of local government elections, expiry of tenure of local governments of Islamabad Capital Territory (ICT) and all the steps taken by the Election Commission in this respect. He contended that the term of the ICT local governments has been expired on 14.02.2021 and it is the duty of Election Commission to hold the elections within 120 days in terms of section 219(4) of the Elections Act, 2017. That Election Commission vide letter dated 09.12.2020 asked the Federal government through Secretary Interior Division to make amendments in the Islamabad Capital Territory Local government Act, 2015 and Rules framed there

under in order to bring them in conformity with the Elections Act, 2017. That reminder in this respect was also issued on 29.01.2021. That the Election Commission vide letter dated 13.01.2021, asked the Secretary, Ministry of Interior to provide necessary documents, notifications, maps and requisite data so that the process of delimitation could be commenced in the ICT and task of holding of such elections on time could be accomplished. That a meeting of the Election Commission was held on 02.02.2021 wherein Joint Secretary, Ministry of Interior apprised the Commission that Chief Commissioner, ICT has been asked for provision of maps etc and same will be provided. However, he took the stance that delimitation cannot be carried out on the provisional results of Census, 2017. That Ministry of Interior vide letter dated 04.02.2021 provided old copies of the ICT Local Government Act, 2015 and Rules. That Election Commission vide letter dated 12.02.2021 asked the Secretary, Ministry of Interior for substantial amendments in section 7 (1) and 17 (3) of the ICT Local Government Act, 2015 and further asked for provision of maps and Notification for the purpose of delimitation. While augmenting his submissions he further contended that in the meanwhile, Federal Government appointed Administrator, Metropolitan Corporation Islamabad on 16.02.2021 for a period of six months w.e.f. 15.03.2021. That in compliance of letter of Election Commission dated 24.02.2021, Federal Government provided documents required for delimitation. However, Provincial Election Commissioner, Punjab vide letter dated 15.03.2021 intimated that documents provided by the Ministry of

Interior bear discrepancies. That Form-I-A bears no signature; map is not authenticated by any office; and it is neither readable nor clearly showing the boundaries of Revenue Units. He further intimated that on the basis of said inappropriate documents, process of delimitation cannot be carried out. He then referred the judgment of the august Supreme Court of Pakistan passed in C.M.A. No. 6762/2020 in CA 20 of 2014 dated 15.03.2021 wherein it has, inter alia, been observed that *"We dispose of this matter with regard to holding of Local govt. Election in Islamabad Capital Territory..."* That Election Commission on 26.03.2021 for the third time asked the Ministry of Interior for provision of authenticated maps and the relevant data. That meeting of Commission in this regard was held on 05.04.2021 wherein Deputy Secretary, Ministry of Interior apprised that the Federal Government is working on preparation of maps and same will be provided shortly. He further apprised that matter with regard to proposed amendments in the ICT Local Government Act, 2015 will be placed in next meeting of the Cabinet. However, representative of the Ministry of Interior clarified that currently 50 Union Councils exist in the ICT and in case of increase in numbers of said UCs same would be communicated to the Election Commission. That in such view of the matter and clarifications, Election Commission appointed Delimitation Committees and Delimitation Authorities vide notification dated 30.04.2021. He further emphasized that Ministry of Interior vide letter dated 18.05.2021 confirmed that election may be conducted on existing UCs. That ultimately, Ministry of Interior provided information/documents required for

delimitation in ICT and Election Commission in pursuance therefore decided to carry out delimitation on the basis of official results of Census published on 06.05.2021 and timeline in this respect was issued by Election Commission on 21.06.2021. To carry out the process of delimitation the limits of administrative units were frozen on 25.06.2021. That in the meanwhile, when the process of delimitation was underway, Ministry of Interior vide letter dated 06.07.2021 withdrawn its letter dated 18.05.2021 wherein the number of UCs were communicated. Thereafter, meeting of the Election Commission was held on 05.08.2021 wherein the Secretary, Ministry of Interior apprised that Official results of Census, 2017 have been published and keeping in view the increase in population, the government intends to increase the number of UCs in the ICT. Further apprised that spade work is underway to enact new Local Government Act for ICT and these two assignments require one month time. That time was allowed however, after one month period reminder was issued vide letter dated 07.09.2021 addressing the Secretary, Ministry of Interior for provision of necessary legislation, documents and information required for delimitation and conduct of Local government elections which received no positive response.

3. Mr. Muhammad Arshad, Director General (Law) of this Commission emphasized that it is constitutional obligation of the Election Commission to hold local government elections in the provinces as well as in the Islamabad Capital Territory and Election Commission under such constitutional obligation and duty cannot shy away from such duty. In support of his contentions, he

referred para 3 of the Preamble and Article 7 of the Constitution of Islamic Republic of Pakistan. He further referred to Article 32 of the Constitution which binds the State to promote local government institutions. Furthermore, if the *ibid* Article is read with Article 140-A, it becomes clear that the Constitution makers cast duty on the Election Commission to hold local government elections. In both these Articles, the word 'shall' is used, which makes it mandatory for the Election Commission to hold elections in time. Similarly, such duty is repeated in various provisions of the Constitution with almost the same language such as Article 218(3) and 219(d). Election Commission's duty was further elaborately defined in the case of Raja Rabnawaz reported as 2013 SCMR 1629. He further referred to judgment reported in 2014 SCMR 1.

4. Mr. Yousaf Naseem Khokhar, Secretary, Ministry of Interior appeared in person and contended that Federal Government is fully committed to conduct Local Government Elections in the Islamabad Capital Territory within shortest possible time. He further contended that the Federal Cabinet has approved the re-determination of UCs on 17.08.2021. That after the publication of final census results, the population of Islamabad Capital Territory has become doubled, therefore, Union Councils will be required to increase and revised notification to this effect will be communicated to the Election Commission within shortest possible time. That ICT and MCI have been asked to re-demarcate the ICT areas/Union Councils. He further contended that Federal Government has presented the Islamabad Capital Territory Local Government Act, 2021 and the same has been approved and it has

been is sent to the Law and Justice Division for legal vetting. That after vetting, the draft will be submitted to the Cabinet Committee for Disposal of Legislative Cases (CCLC) for their recommendations and further submission to the Cabinet for rectification.

5. Mr. Dawood Iqbal, State Counsel appearing on behalf of the learned Advocate General, ICT contended that they we will comply with the orders/directions of the Election Commission and shall provide assistance in the matter in letter and spirit.

6. We have heard the submissions and have perused the record. It is admitted that the Election 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 140-A of the Constitution, the Local Government Election in the Islamabad Capital Territory 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) (reproduced hereunder) stipulates that the elections to the local governments shall be held within one hundred and twenty days of the expiry of term of a local governments.

"219. Commission to conduct elections:

(1).....

(2).....

(3).....

(4) The Commission shall hold elections to the local governments within one hundred

and twenty days of the expiry of the terms of local government of a province , cantonment, Islamabad Capital Territory or Federally Administered Tribal Areas”

From plain reading of the above, Election Commission of Pakistan is duty bound to hold the local government within one hundred and twenty days. The term of the local governments of the ICT has already expired on 14.02.2021 and despite repeated directions and reminders of this Commission, Federal Government is dilly-dallying the matter on one pretext or the other for the reasons best known to it. Moreover, there are number of judgments highlighting the importance of local government elections. Reference is made to 2014 SCMR 1. Relevant part of the judgment provides the following:-

“5. Needless to observe that as per the provisions of Articles 32 and 140A of the Constitution, as repeatedly emphasized, the Federal Government is duty bound to hold elections in the Federal Area and Provincial Governments in the Provinces to ensure in the Provinces in order to ensure participation of the general public in the administrative, political and financial affairs of the Government by establishing local bodies system. As far as sub-Article 2 of Article 140A is concerned, it cast a duty upon the Election Commission to hold the election of local bodies in terms of sub-Article 140A (1). Therefore, it should always remain prepared to meet the challenges and whenever any request by the Federal or the Provincial Government is made for holding elections, the ECP should comply with the same at the earliest.”

Reference is also made to CMA No. 6762 and 2797/2020 in Civil Appeal No. 20/2014 (Administrator Municipal Corporation, Peshawar vs. Taimur Hussain Amin) passed by august Supreme Court of Pakistan vide judgment dated 15.03.2021, wherein august Supreme Court was pleased to hold as under:

"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 Federal Government and the Provincial Governments under the law are duty bound to assist the Chief Election Commissioner and the Election Commission in conducting the local government elections within time. It is also worthwhile to mention here that during of the subject case on 15.03.2021, the learned Attorney General for Pakistan representing the Federal Government

categorically and unequivocal had stated that the Federal Government shall fully cooperate in the holding of local government elections in the ICT. The relevant paragraph of the order is reproduced hereunder:-

“7. Mr. Kundi on behalf of the Commission states that the tenure of the local government in Islamabad Capital Territory has expired recently and points out that the learned Attorney-General had already stated that the Federation will fully cooperate in the holding of the local government CMA No. 6762/2020 etc. elections in the Islamabad Capital Territory, therefore there is no issue with regard to holding of elections in the Islamabad Capital Territory.”

Record reveals that the Secretary, Ministry of Interior in a meeting held on 05.08.2021 had apprised the Commission that entire process of legislation and provision of requisite data will be completed within one month but today he was unable to give the time line and informed that it will take six months more. From perusal of record it further transpires that Election Commission vide letter dated 09.12.2020 had asked the Federal Government through Secretary Interior Division to make amendments in the Islamabad Capital Territory Local Government Act 2015 and Rules framed there under in order to bring them in conformity with the Elections Act, 2017 and subsequent reminders were repeatedly issued but Federal Government has failed to do the needful. It is quite interesting to note that Secretary, Ministry of Interior in the above referred meeting of 05.08.2021 had apprised the

Commission that entire pending process will be completed in one month but today he has a different stance. Despite all best efforts of the Commission, the required assistance of the Federal Government still lacks and the Federal Government's varying stances for gaining more and more time *prima facie* show that the said Government is apparently not serious in holding the local government elections which is in violation of Articles 140A and 219(d) of the Constitution of Islamic Republic of Pakistan as well 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, referred *supra*. This Commission is under obligation in terms of Articles 140A(2), 219(d) of the Constitution, read with Section 219(4) of the Elections Act, 2017 to hold local government elections in the Provinces, the Islamabad Capital territory and the cantonment boards within a period of 120 days of the expiry of their term. 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. The august Supreme Court in the case of Sheikh Rasheed Ahmed vs. Federation of Pakistan reported in PLD 2010 page 573, was pleased to hold 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”.

The term of the local governments in the ICT has already expired on 14.02.2021 and six months further time to the Federal Government cannot be allowed as the same would be in violation of the provisions of the Constitution of Islamic Republic of Pakistan, 1973 and Elections Act, 2017.

7. In light of above and keeping in view the expiry of term of the local governments, this Commission under the command of the Constitution and law, directs the Secretary, Ministry of Interior and the Chief Commissioner, Islamabad to provide the requisite data i.e. documents, notifications, maps required for the delimitation of the ICT constituencies as well as to complete the legislation process within a period of two weeks. In case of failure,

this Commission is empowered to make appropriate orders and take steps including issuance of schedule of delimitation of ICT local constituencies under the existing ICT Local Government Act, 2015 and Rules framed thereunder. Office is directed to fix the matter before the Commission after two weeks in case of non-compliance with notice to the Secretary, Ministry of Interior and Chief Commissioner, ICT who shall appear in person and justify the inaction and non-compliance of directions.

S/d
(Shah Ahmed Durrani)
Member

S/d
(Shah Muhammad Ali)
Member

Islamabad
The 25th October, 2021