

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI  
MR. SHAH MUHAMMAD JATOI

MEMBER  
MEMBER

Case No. F.6(3)/2021-LGE-Sindh

In ref: LOCAL GOVERNMENT ELECTIONS TO BE HELD IN THE PROVINCE OF SINDH

On Commission's Notice

For Government of Sindh:	Mr. Najam Ahmed Shah, Secretary Local Govt.
For Jamate Islami:	Hafiz Naeem ur Rehman, <i>Ameer Jamate Islami</i> , Karachi alongwith Mr. Saifuddin Advocate
For the ECP:	Mr. Zafar Iqbal Hussain, Special Secretary, ECP Mr. Muhammad Raziq, DG (LGE) Abdul Hafeez, Director (LGE) Mr. Saif ur Rehman, DD (LGE-Sindh)

Date of hearing: 10.11.2021

ORDER

**Nisar Ahmed Durrani, Member:** The applicant Mr. Hafiz Naeem ur Rehman, *Ameer Jamate Islami*, Karachi alongwith Mr. Saifuddin Advocate are present for their application filed for impleadment as party in the instant matter/proceedings who have been heard. The application is allowed which is clubbed with the instant proceedings.

2. On the previous date of hearing in the subject matter on 06.09.2021, following directions were passed by this Commission:-

“6. In light of submissions made by the representatives of the Provincial Government, the learned Additional Attorney General and in view of plethora of judgments passed by the august Supreme Court in respect of conduct of local government elections highlighting the importance of establishment of local government systems, the Provincial Government of Sindh is directed to provide the requisite data/notifications to the Commission for delimitation purposes and also to affect the amendments in the Sindh Local Government Act within a period of one month. In case of non-compliance, the matter shall be re-fixed for hearing before the Commission after one month and the Chief Secretary shall appear in person for clarification and justification.”

3. Due to non-compliance of the above directions, the matter has been placed before us today for passing of appropriate orders. The Chief Secretary, Sindh despite directions has not turned up today. The Secretary, Local Government is present who requests for exemption of attendance of Chief Secretary as he is appearing on his behalf as well. This



Commission shows great displeasure towards non-serious attitude of the Chief Secretary. The Secretary submits that the provincial government is working on necessary legislation for which further time is required to it. He is unable to give any timeframe for doing the needful.

4. It is to be noted with concern that the term of the local governments in Sindh expired on 30.08.2020 and this Commission was under constitutional and legal obligation/duty of holding elections within 120 days of the expiry of term of local governments. This Commission vide notification dated 31.08.2020 issued schedule for carrying out delimitation of Union Councils, Union Committees and Wards in Sindh province. Soon thereafter, upon applications of Mr. Taj Haider and Nisar Khoro, deferred the delimitation process for the time being on 08.09.2020 till the provision of notifications and maps by the provincial government and a notification dated 17.09.2020 was issued to this effect. This Commission prior to and after the expiry of the term of the local governments, has been insisting the provincial government to provide maps and requisite data for delimitation. In this regard, letters of this Commission dated 10.04.2021, 10.02.2021, 08.06.2021, 14.06.2021, 24.06.2021 and 28.07.2021 are significant. A number of meetings i.e. 01.02.2021, 02.02.2021 and 23.08.2021 have also been held with the representatives of the provincial government in this regard. Three hearings by this Commission on 11.02.2021, 12.02.2021 and 06.09.2021 were held in the matter. All the said efforts of the Commission and progress on part of the provincial government have been detailed in our previous order, which are not required to be reiterated here.

5. It is also to be noted that 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."

6. Despite all best efforts of the Commission, the required assistance of the provincial government still lacks and its varying stances for gaining more and more time *prima facie* show that the said government apparently is not serious in holding the local government elections. The term of the local governments in the province has already expired on 30.08.2020 and further delay would be in violation of Articles 140A and 219(d) of the Constitution of Islamic Republic of Pakistan, the Elections Act, 2017, as well the above referred judgment of the august Supreme Court. 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 duty bound to assist the Chief Election Commissioner and the Election Commission in conducting the elections including local government elections 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."

7. This Commission therefore, under the command of Constitution and law, directs the Chief Secretary, province of Sindh to provide the necessary legislation/enactment and the requisite data/notifications to the Commission within two weeks positively. Alternatively, the Commission shall initiate the delimitation process in the province with effect from 1<sup>st</sup> December, 2021 under the applicable local government law i.e. the Sindh Local Government Act, 2013 and Rules framed thereunder. In the meanwhile the concerned office shall chalk-out delimitation plan/schedule for the constituencies of the local governments of Sindh for perusal and approval of the Commission.

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Member

Shah Muhammad Atooi  
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