

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 Ministry of Interior

Mr. Amer Ali Ahmed, Chief  
Commissioner, Islamabad

For the ECP:

Mr. Zafar Iqbal Hussain, Special  
Secretary, ECP

Mr. Muhammad Raziq, DG (LGE)

Mr. Abdul Hafeez, Director (LGE)

Date of Hearing:

**10.11.2021**

ORDER

Nisar Ahmed Durrani, Member.— On the previous date of hearing i.e. 05.10.2021 held in the instant matter, this Commission had passed the following directions:-

"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

*[Handwritten signature and date 15/11/21]*

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."

2. Due to non-compliance of above directions, the matter has been placed before us for passing of appropriate orders. Today, Secretary Ministry of Interior is before us with the request to grant them further time for legislation and provision of data i.e. documents, notifications, maps to the Commission required for the delimitation of the ICT constituencies. He is unable to give any timeframe for doing the needful.
3. It is to be noted that the term of the ICT local governments has expired on 14.02.2021 and it was duty of this Commission to hold the local government elections within 120 days in terms of section 219(4) of the Elections Act, 2017. This Commission prior to and after the expiry of the term of the local governments has been insisting the concerned authorities i.e. Ministry of Interior and Chief Commissioner Islamabad for provision of requisite data i.e. documents, notifications, maps required for the delimitation of the ICT constituencies as well as for completion of legislation process. In this regard, letters of this Commission dated 09.12.2020, 13.01.2021, 29.01.2021, 12.02.2021, 24.02.2021, 26.03.2021 and 07.09.2021 are significant. A series of meetings of this Commission i.e. on 02.02.2021, 05.04.2021, 05.08.2021 were also held with the

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concerned authorities. In the referred meeting dated 02.02.2021, Ministry of Interior objected the delimitation on the pretext that it cannot be carried out in the absence of officially notified results of census. Vide letter dated 04.02.2021, Ministry of Interior provided old copies of the ICT Local Government Act, 2015 and Rules. Thereafter, in another meeting on 05.04.2021, Deputy Secretary, Ministry of Interior informed the Commission that Federal Government is working on preparation of maps and same will be provided to it shortly. He also informed that the proposed amendments in the ICT Local Government Act, 2015 are to be placed in next meeting of the Federal Cabinet. On such developments, this Commission appointed Delimitation Committees and Delimitation Authorities vide notification dated 30.04.2021. In furtherance, Ministry of Interior vide another letter dated 18.05.2021, confirmed that election may be conducted on the existing determined Union Councils and ultimately, they provided requisite data/documents required for delimitation. The Commission decided to carry out delimitation on the basis of official results of census published on 06.05.2021 and timeline in this regard was also issued on 21.06.2021. To carry out the process of delimitation, the limits of administrative units were frozen on 25.06.2021. In the meanwhile, when the process of delimitation was underway, Ministry of Interior vide letter dated 06.07.2021 withdrew its letter dated 18.05.2021 wherein the number of UCs were communicated. Thereafter, meeting of

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this Commission was held on 05.08.2021 wherein the Secretary, Ministry of Interior stated that in view of increase in population after census results, government intends to increase the number of UCs in the ICT and spade work is underway to enact new Local Government Act for ICT and these two assignments require one month time. On their request, one month was allowed to the government for doing the needful. However, after one month no progress was made and another reminder was issued on 07.09.2021 for enactment and provision of necessary data which received no positive response. Thereafter, the instant matter was fixed for hearing before this Commission on 05.10.2021.

4. 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 and ICT. 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

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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."

5. It is also worthwhile to mention here that during hearing of the above matter on 15.03.2021, the learned Attorney General for Pakistan representing the Federal Government categorically and unequivocal had stated/submitted before the august Supreme Court 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 elections in the Islamabad Capital Territory, therefore there is no issue with regard to holding of elections in the Islamabad Capital Territory."

6. Despite all best efforts of the Commission and clear statement of the learned Attorney General before the august

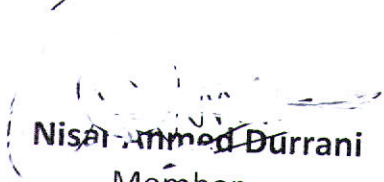
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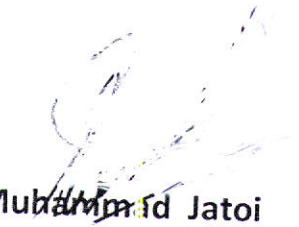
Supreme Court, the required assistance of the Federal Government still lacks and the Federal Government's varying stances for gaining more and more time prima facie show that the said Government apparently is not serious in holding the local government elections. The term of the local governments in the ICT has already expired on 14.02.2021 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 and the ICT 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 of local government elections. It was held by the august Supreme Court in Constitution Petition No. 77 of 2010 "*Balochstian High Court Bar vs. FOP etc*" and *Raja Rab Nawaz's case* (2013 SCMR 1629) that "the Provinces may have

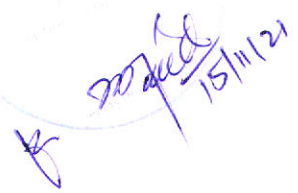
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power to legislate in respect of conduct of local government elections but if there is no legislation or if there is defective legislation, the Election Commission is not absolved from performing its duties under the Constitution and further that Constitutional 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 Secretary, Ministry of Interior to provide the necessary legislation/enactment and the Chief Commissioner, Islamabad to provide the requisite data/notifications to the Commission within 10 days positively. Alternatively, the Commission shall initiate the delimitation process on the already determined/notified 50 Union Councils (Urban 27, Rural 23) in the ICT with effect from 25.11.2021 under the applicable local government law i.e. the Islamabad Capital Territory Local Government Act, 2015 and Rules framed there under. In the meanwhile, the concerned office shall chalk-out delimitation plan/schedule for the constituencies of ICT for perusal and approval of the Commission.

  
Nisar Ahmed Durrani  
Member

  
Shah Muhammad Jatoi  
Member

  
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