

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. SIKANDAR SULTAN RAJA, CHAIRMAN
MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MOHAMMAD JATOI, MEMBER

Case No. 16(1)/2021-LGE –KP

In ref: **RE-SCHEDULE OF 2ND PHASE OF LOCAL GOVERNMENT ELECTION
IN KHYBER PAKHTUNKHWA SCHEDULE FOR 19TH JANUARY,
2022**

1. Mr. Murtaza Javed Abbasi, MNA, A-108, Parliament Lodges, Islamabad
2. Sardar Muhammad Yousaf, MPA, Provincial Assembly of KPK, R/o Sardar House, near Post Graduate College, Mansehra

...Applicants

For the Applicants : Mr. Jahangir Khan Jadoon, ASC
For the Local Government, KPK : Mr. Shakeel Ahmed, Secretary,
Local Government, KPK
Date of Hearing : **30.12.2021**

ORDER

Sikandar Sultan Raja, Chairman — The instant application has been moved by the applicants for rescheduling/deferment of 2nd phase local government elections in remaining 18 districts of the Khyber Pakhtunkhwa wherein elections were scheduled by this Commission in the last week of January, 2022. They seek deferment of elections till April, 2022, on the grounds that due to topographic and weather conditions in remaining districts of KPK like Abbottabad, Mansehra, Battagram, Kohistan, Torghar, Swat, Shangla, Chitral, Lower Dir & Upper Dir and in other hilly areas, it would not be possible for the electors to come out and vote for the candidates as entire region is covered with snow. Due to blockage of roads and other communication modes, process of


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election may be affected and about 80% voters may be deprived of voting due to lack of transportation and other communication modes.

2. On the other hand, Mr. Shakeel Ahmed, Secretary, Local Government has also been heard today. He has also endorsed the request of the applicants in the instant case and has requested for holding elections of 2nd phase in May, 2022 or if not possible then in the end of March, 2022, before Ramdhan.

3. Since, in the connected matter of Sadeed ur Rehman, this Commission while considering the request of the applicants in that case and the provincial government, has decided to hold 2nd phase local government elections on 27th March, 2022 therefore, the instant application stands allowed in terms of order made in the connected case.

4. Office shall make necessary arrangements accordingly.


Sikandar Sultan Raja,
Chairman


Nisar Ahmed Durrani
Member


Shah Muhammad Jatoi
Member



BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. SIKANDAR SULTAN RAJA, CHAIRMAN
MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MOHAMMAD JATOI, MEMBER

Case No. 14(1)/2021-Law

In ref: **APPLICATION UNDER SECTION 219 (5) OF THE ELECTIONS ACT, 2017
READ WITH RULE 165 OF THE ELECTIONS RULES, 2017 AND SECTION
75 OF THE KPK LOCAL GOVERNMENT ACT, 2013 R/W RULE 8 (c) OF
KPK LOCAL GOVERNMENT (CONDUCT OF ELECTION) RULES, 2020
FOR APPROPRIATE DIRECTIONS/ORDERS REGARDING LOCAL
GOVERNMENT ELECTIONS IN KPK**

1. Sadeed-ur-Rehman s/o Said Fareen r/o Sair Dandai, Tehsil Bisham, District Shangla, KPK;
2. Ihtisham Khursheed s/o Khurshid Alam, r/o Muhala Dab, District Mansehra;
3. Ajmal Khan s/o Muhammad Ali Khan, r/o Thakot, Tehsil & Distt Battagram; &
4. Syed Zeb s/o Muhammad Hehan Zeb, r/o Sunni gram, Tehsil Gagra, Distt Buner

...Petitioners (s)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Local Government, Peshawar;
2. Provincial Election Commissioner, KPK;
3. District Election Commissioner, Distt Shangla,
4. District Election Commissioner District Mansehra; &
5. District Election Commissioner, Battagram

... Respondent (s)

For the Petitioner (s) : Barrister Gohar Ali Khan, ASC
For the Govt. of KPK : Mr. Shakeel Ahmed Khan, Secretary,
Local Government

Date of Hearing : **30.12.2021**



ORDER

Sikandar Sultan Raja, Chairman.— The instant petition has been filed under section 219 (5) of the Elections Act, 2017 read with Rule 165 of the Elections Rules, 2017 and Section 75 of the KPK Local Government Act, 2013 read with Rule 8 (c) of KPK Local Government (Conduct of Election) Rules, 2020 with the following prayer (s):

- (a) *To issue necessary and appropriate directions for holding of 2nd Phase of Election only after finalization of the Electoral Rolls which is due by 20.02.2022 as per direction of this Hon'ble Commission dt. 10-09-2021;*
- (b) *To direct that Election Program for 2nd Phase be issued in March 2022 to ensure due participation of local people in those affected districts so that no voter is disenfranchise especially women in those areas;*
- (c) *To hold and direct that election for Chairman tehsil Council and Village Council being on 'party and non party' basis be held on separate Polling Days as per mandate of Section 79 (1A) of the KPK Local Government ACT, 2013;*
- (d) *Without prejudice to the foregoing, the 1st Phase Election Program may kingly be modified to the extent of "deletion" of District Buner where election may be directed to be held when election is held in other adjoining districts of Malakand Division;*

2. While hearing of the instant petition on 02.12.2021, the learned counsel had withdrawn prayers clauses (c) & (d) of the petition reproduced above and had confined his prayer to clauses (a) and (b) only. During hearing today, the learned counsel has again confined his prayer to clause (b) only qua holding of 2nd phase elections in March, 2022.

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3. This Commission on 25th October, 2021, had decided to hold local government elections in KPK in two phases i.e. 1st phase on 19.12.2021 and 2nd phase on 16.01.2022. The elections of 1st phase in 17 districts have already been held on 19th December, 2021. The learned counsel for the petitioners at this stage is seeking only postponing of 2nd phase elections scheduled for 16.01.2022 and is requesting for their holding in March, 2022. The crux of the grounds/request of the learned counsel for deferment of the elections, inter alia, is that the petitioners are residents of Districts Shangla, Mansehra, Batgram and Buner of Khyber Pakhtunkhwa Province where they enjoy high reputation as political workers. They strongly believe in holding of free, fair, just, honest and transparent election including local government election and due participation therein. That the local governments and elections thereof, no doubt, are the backbone of any democratic set-up especially in Pakistan when it is mandate of Art.32 and Article 140A(D) of the Constitution. The Constitution, in order to ensure, due participation of all citizens in the process and representation obligates the Election Commission under Art.140A(2) and Art.219(d) to "hold elections to local governments". Under Art.218(3) it is also duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against. That the Election Program for the 2nd Phase for the remaining districts including District Shangla, District Mansehra and District Battagram to which the Petitioners Nos. 1 to 3 belong, is yet to be announced by the Commission. Hence, they invite attention of the Commission towards important matters that could material affect the holding of free, fair, just, honest and

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transparent elections which is its mandate. He highlighted that the districts where the Election Program is yet to be announced are all districts where routine activities come to almost a standstill between December and March due to, inter alia, cold weather. In the local government election, there is always high turnout' because 'local people at the local level get involved'. This requires that where participation of local people could be adversely affected due to cold weather or heavy snow, this Commission can fairly reconsider 'adjust of 2nd Phase of election in the month of May 2022" He further stated all Political workers, Party workers and all supporters of the petitioners too in the whole area would be adversely affected if appropriate adjustment for holding of election at such stage' is not made by this Commission. The constitutional right of the petitioners, inter alia, under Article 17 would be affected.

4. On the other hand, Mr. Shakeel Ahmed, Secretary, Local Government has also been heard today. He has endorsed the request of the applicants in the instant case as well as in the connected matter and has requested for holding elections of 2nd phase in May, 2022 or if not feasible then in the end of March, 2022, before *Ramdhan*.


5. This Commission for the conduct of 2nd phase elections has already been held a number of meetings with the representatives of the provincial government, KPK. The Chief Secretary, Government of KPK through his letter dated 29th December, 2021, has again drawn attention of the Commission towards difficulties which might be faced during elections of 2nd phase. He has highlighted that most of the districts where 2nd phase elections are to be conducted, will be snow-bound during the months of January and February, 2022, making the election process almost


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impossible. He in his letter has also referred to the report of Deputy Commissioners of 18 districts, whereby they have reported to him that almost 1/3rd of the VCs/NCs would be inaccessible to the electors due to snow and adverse weather conditions.

6. No doubt, it is constitutional duty of the Election Commission to hold elections and to make such arrangements as are necessary to ensure that election is conducted honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against. Right of vote is also a fundamental right and this Commission has to ensure that no voter who is entitled to cast vote by law is disenfranchised by any mean and maximum participation of the electors in the electoral process, while holding free and fair elections. Therefore, this Commission in exercise of its inherent powers accedes to the request of the petitioners in the instant matter and orders holding of 2nd phase elections on 27th March, 2022, instead of 16th January, 2022.

7. Office to make necessary arrangements accordingly.


Sikandar Sultan Raja,
Chairman


Nisar Ahmed Durrani
Member


Shah Muhammad Jatoi
Member

