

## **BEFORE THE ELECTION COMMISSION OF PAKISTAN**

Mr. Sikandar Sultan Raja  
Mr. Nisar Ahmed Durrani  
Mr. Shah Mohammad Jatoi  
Mr. Babar Hassan Bharwana  
Mr. Justice Ikram Ullah Khan

Chairman  
Member  
Member  
Member  
Member

### **Case No. 3(1)/2022-LGE-(Sindh)**

In Ref: **CONDUCT OF LOCAL GOVERNMENT ELECTIONS IN KARACHI & HYDERABAD DIVISIONS.**

#### **NOTICE**

Secretary Ministry of Interior, Pakistan Secretariat, Islamabad.  
Dr. Muhammad Sohail Rajput, Chief Secretary Government of Sindh.  
Mr. Ghulam Nabi Memon Inspector General of Police, Government of Sindh.  
Mr. Najam Ahmed Shah Secretary Local Government of Sindh.  
Mr. Imran Khan Chairman PTI  
Mr. Bilawal Bhutto Zardari Chairman PPP  
Mr. Hafiz Naeem-ur-Rehman From Jamaat-e-Islami  
Mr. Khalid Maqbool Siddiqui from MQM-P

#### **Present:**

For Secretary M/o, Interior, Islamabad	: Muhammad Ramzan Malik JS, Ministry of Interior, Islamabad.
Chief Secretary Sindh	: In Person
Secretary Local Government Sindh	: In Person
For Imran Khan	: Dr. Shahab Imam Advocate along with Husnain Ijaz Advocate.
For Bilawal Bhutto Zardari	: Mr. Murtaza Wahab Siddiqui Advocate.
For Jamaat-e-Islami	: Hafiz Naeem-ur-Rehman along with Saif-ud-Din Advocate.
For MQM-P	: Mr. Waseem Akhtar along with Rana Imran Farooq Advocate.
For the ECP	: Mr. Omar Hamid Khan Secretary, ECP.
	: Mr. Zafar Iqbal Hussain, Special Secretary, ECP.
	: DG (LGEs), ECP, Islamabad.
	: Mr. Zainul-Abi-deen Shah, DD LG (Sindh) ECP, Islamabad.
Date of Hearing	: 15.11.2022

#### **ORDER**

**Sikandar Sultan Raja, Chairman.** — The Election Commission of Pakistan hereinafter referred as (The Commission) is charged with the duty to organize and

Election

conduct elections and to make such arrangements as are necessary to ensure that election is conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against under Article 218(3) of the Constitution of Islamic Republic of Pakistan ( hereinafter referred as "the Constitution" ). The Commission is also charged with the duty to hold local Government Elections Under Article 140-A(2) and 219(d) of the Constitution. The Commission is under obligation to hold the local government elections within 120 days after the expiry of the term of the local governments under section 219(4) of the Elections Act, 2017 (hereinafter referred as "the Act"). The term of the local governments in the province of Sindh expired in August 2020. The Commission before the expiry of the term of the local governments had approached the provincial government of Sindh for consultation and timely conduct of the local Government elections in the province to fulfill its Constitutional obligations. It was made clear to the Provincial Government that Article 140A(1) also casts duty on the Provincial Government to establish Local Governments in the Province.

2. Brief detail of the matter is that the term of the local governments in Sindh expired on 30.08.2020 and this Commission was under constitutional and legal obligation to hold elections within 120 days after the expiry of term of local governments. The Commission vide notification dated 31.08.2020 issued schedule for carrying out delimitation of Union Councils, Union Committees and Wards in Sindh province. Soon after the issuance of schedule of delimitation, applications of Mr. Taj Haider and Nisar Khoro were received on 08.09.2020 in this Commission requesting therein to defer the delimitation process for the time being till the final/official publication of the results of Census 2017. The Commission after hearing the case at length, decided to postpone the delimitation process vide order dated 08-09-2020 due to non-provision of requisite information/data, maps etc. and till the publication of official results of Census 2017. The Election Commission took the matter with the Federal Government for publication of official results of Census 2017 and with the Provincial Government for provision of requisite information/data, maps etc. The Election Commission vide order dated 08-09-2020 deferred the delimitation process due to non-provision of above-said data and till the publication of official results of Census 2017. Resultantly, the official results of Census 2017 were published on 6<sup>th</sup> May 2021. It is worthwhile to mention here that the Commission prior to and after the expiry of the term of the local governments, has



been insisting on 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, and finally the delimitation was published on 24.03.2022.

3. The first phase of local Government Elections in Larkana, Sukkur, Shaheed Benazirabad and Mirpur Khas divisions were conducted by the Election Commission on 26-06-2022. The election schedule for the Second phase of Local Government Elections in Karachi and Hyderabad Divisions was announced on 29.04.2022 with poll date 24.07.2022. The said schedule was suspended by this Commission and the Local Government Elections in Karachi and Hyderabad division were postponed till 28.08.2022 vide order dated 20.07.2022 upon the requests from the contesting candidates on account of inclement weather including thunderstorm and torrential rains and Ashura in Karachi and Hyderabad. Due to heavy rain and flood situation in the province of Sindh, the elections were again postponed vide order dated 24.08.2022 till the normalization of situation and the poll date was again fixed on 23.10.2022. The Commission received a letter from Ministry of Interior dated 18.10.2022 in which it was stated that the required number of troops of the law enforcing agency are not available on account of engagement at border duty and flood relief and rescue activities. The Commission held a meeting on 11.10.2022 with Secretary Interior, Additional Secretary Defense, Chief Secretary and Inspector General of Police, and representative of Pakistan Army. The Commission heard the participants of the meeting and resultantly decided to postpone the election vide order dated 18.10.2022. The Commission received yet another letter dated 22.10.2022 from the Ministry of Defense Production of Pakistan wherein it was stated that due to international defense exhibition and seminar (IDEAS) at Karachi Expo Center, the law enforcing agencies will be engaged in the security arrangements of national and international VVIP'(s)(dignitaries), the letter further disclosed that any date for local government elections before 30<sup>th</sup> December, 2022 may cause serious impediments with regard to conduct of (IDEAS) as security personnel will not be able to ensure security for both the events i.e. (IDEAS) and local government elections. The Commission sought a report from





the Chief Secretary Sind with regard to conduct of local government elections in Karachi. In response to the said letter the government of Sindh sent a report dated 01.11.2022 along with report of the Inspector General of Police, Sindh (IGP-Sindh) showing their inability to provide sufficient security to the voters, polling staff and polling stations on account of the engagement of police in flood rescue operations, placement in Islamabad for maintaining law and order, Covid vaccination campaign in Sindh and providing security to the VVIP'(s) dignitaries of the defense exhibition in Karachi. The Commission convened internal meeting to examine the issue of shortage of law enforcement agencies. The Commission was mindful of the fact that the local Government Elections in Sindh have been significantly delayed and decided to fix the matter for hearing so that decision can be made after hearing the entire stakeholders.

4. Notices were issued to Chief Secretary, Inspector General of Police Sindh, Secretary Ministry of Interior, and heads of major Political Parties i.e. PTI, PPP, MQM-P and Jamat-e-Islami for hearing on 15.11.2022.

5. At the very outset of the hearing, Mr. Zafar Iqbal Hussain, Special Secretary of the Commission apprised the Commission of the important steps and efforts taken by the Commission for timely conduct of local government elections in Province of Sindh. He also highlighted the hurdles and nonchalant and casual attitude of the Provincial Government. He elaborated that conduct of local government (2<sup>nd</sup>-phase) elections in Province of Sindh have been delayed on one or the other pretext by the provincial government including amendments in the local government laws.

6. Muhammad Ramzan Malik Joint Secretary Ministry of Interior (MOI) stated that the Ministry has always assisted the Commission but due to flood situation in Sindh and law and order situation in Islamabad, the troops of civil armed forces cannot be provided for the conduct of local government elections.

7. Mr. Murtaza Wahab Advisor to Chief Minister Sindh appearing on behalf of Sindh Government and Pakistan People's Party, at the very outset submitted that the Government of Sindh has always provided assistance to the Commission. He elaborated that it was the proposal of Sindh Government to conduct local government elections in two phases for the reason that the services



of police officials can be effectively utilized in the field. He further added that the Government of Sindh is facing problems due to flood in the Province of Sindh. He also highlighted that 25 to 30 % area is still covered with flood water and it is not possible for the government to conduct local government elections for the time being. He pointed-out that the Sindh government in exercise of powers conferred upon it by second proviso of Section 34 of the Local Government Act, 2013 has by circulation approved the postponement of Local Government Elections for 90 days. He submitted that the situation is beyond the control of Sindh Government and this stance of the government has also been placed before the Hon'ble Sindh High Court along with reports from Rangers and law enforcement agencies. He also argued that there is shortage of troops/police personnel for the security of polling stations and 17 thousand appox. more police personnel are required to perform duties at highly sensitive and sensitive polling stations.

8. Chief Secretary Sindh stated that the 1<sup>st</sup> phase of local government elections in Sindh province have been conducted in a very peaceful manner because sufficient number of police was available for the purpose of security. He added that the Karachi city has its own dynamics and it is required to conduct the local government elections in Karachi with sufficient number of troops. He further elaborated that there is a short fall of seventeen thousand police personnel as the police force of Sindh Province is occupied in flood relief activities and a large number of police is deputed in Islamabad Capital Territory for Law and order situation. He concluded that due to the ground realities and problems being faced by the Sindh Government, conduct of Local Government Election in the province would not be possible. He added that 60 to 90 days would be required for basic settlement of flood affectees.

9. IG Police Sindh appeared and submitted that all the efforts were made for the conduct of first phase of local government elections in Sindh and sufficient number of police was available to maintain law and order and security at the polling stations. He further added that now the police officials are busy in flood relief activities and are providing security in flood affected areas as there are many cases of loot and plunder. There is a short fall of seventeen thousands five hundred police personnel.



10. Mr. Wasim Akhtar along with Rana Imran Farooq Advocate on behalf of MQM appeared and submitted that the tenure of Sindh Local Government has expired on 30-08-2018 and it was required to conduct local government elections within the period of 120 (one hundred and twenty) days but after lapse of two years the situation is still the same. He argued that they are fighting for their rights, funds and a petition was moved before the august Supreme Court of Pakistan, in which order has been passed but is still pending for implementation. He added that the people of Sindh have been ignored on each and every event such as during delimitation, preparation of electoral rolls etc. He concluded while submitting that subject to rectification of delimitation and electoral role, the party is ready to conduct local government elections etc.
11. Dr. Shahab Imam and Husnian Ijaz Advocates argued on behalf of Pakistan-Tehreek-Insaf. Dr. Shahab contended that the government of Sindh is intentionally delaying the matter of conduct of local government election in Sindh and using delaying tactics. He argued that the proviso added by the government in section 34 of Sindh Local Government Act, 2013 is against the principle of law as the proviso cannot override the section of statute/law. He further submitted that the government cannot amend the law without consultation with Election Commission of Pakistan. He elaborated that the request of the government for extension of 90 days period may be allowed but not beyond that.
12. Hafiz Naeem-ur-Rehman, Amir Jamt-e-Islami Sindh Chapter appeared on behalf of his party and negated the stance of Government in respect of shortage of police personnel and stated that more than two years have passed since the expiry of term of Local Government Sindh and the Government is continuously trying to delay the matter. In response to amendment made by the Government of Sindh in Section 34 of the Sindh Local Government Act 2013, he stated that the Election Act 2017 is a federal law which shall prevail in the subject matter. He further extended his submissions and stated that Jamat-e-Islami also has objections regarding final publication of Census result, delimitation of constituencies etc. He further argued and submitted that it is the responsibility of Election Commission of Pakistan for the conduct of Elections. He pointed out that IGP in his report himself has mentioned that a total of fourteen thousand police personnel are required at the polling stations and now the plea of shortage of police personnel is baseless. He also negated the stance of government of Sindh in respect of flood relief and rehabilitation activities





in the province. He submitted that he has been personally visiting the flood affected areas and most of the areas are clear now. He reiterated his stance of conduct of local government election without further delay and the Election Commission should announce the poll date for local government election in Karachi as the people of Karachi are facing problems due to non-availability of local bodies. While concluding his arguments he stated that the Commission should give maximum forty five days to the government in response to their request.

13. We have heard the arguments of the parties and their respective counsel and perused the record.

14. From the perusal of the record the Commission has done all possible efforts for the conduct of Local Government Elections in Sindh Province but every time the Government of Sindh has acted in a manner to delay the conduct of Local Government Elections on one pretext or the other. The Election Commission of Pakistan established under Article 218(2) of the Constitution of Islamic Republic of Pakistan and 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-(2) and Article 219(d) of the Constitution, the Local Government Elections in the provinces 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) thereof stipulates that the election to local governments shall be held within one hundred and twenty days of the expiry of term of a local government. The august Supreme Court in the cases of President Balochistan High Court Bar Association and Raja Rab Nawaz has held that after Eighteenth Constitutional Amendment that the ECP is charged with the duty of holding Local Government Elections in terms of Article 140A(2) read with Article 219(d) of the Constitution. The apex Court further held that the Provinces may have power to legislate but if there is no legislation or if there is defective legislation, the ECP is not absolved from performing its duties under the Constitution. The august Court further held that the Constitutional provisions cannot be allowed to be not adhered to, for want of sub-Constitutional legislation."



15. 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 clause 2 of Article 140-A 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."*

16. 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 reported in 2021 SCMR 714, wherein August Supreme Court was pleased to hold as under:

*"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."*

17. It is the Constitutional obligation of the Commission to organize and conduct elections in accordance with the Constitution and Law which entrust the Commission with exclusive, broad and extensive powers to fulfill its Constitutional





responsibilities. The August Supreme Court has also held in a number of judgments that Election Commission is bound by the Constitution and law to ensure timely conduct of elections. At the same time, it is the Constitutional responsibility of the provincial Governments to ensure establishment of Local Government System in terms of Article 140(A)(1) of the Constitution.


18. It is also mentioned that similar matter was pending before the Hon'ble Sindh High Court. The Hon'ble High Court while disposing off the writ petitions has directed that:


*We would not go so far as to dictate the date of the election or direct the manner in which the same ought to be conducted or policed, but would note that the ECP may notify the polling date, preferably within a period of 15 days from the date of this order, specifying a fresh polling date of this order, or indeed date(s) as a case may be in the event that it is deemed expedient to stagger the process, but so as to preferably conclude the overall exercise of the Election in any event within a total period of 60 days. For its part, the Government of Sindh is directed to ensure that requisite assistance, whether by way of adequate security or otherwise is rendered to the ECP in the matter, as per Article 220 of the Constitution, and the Chief Secretary of Sindh and the Inspector General of Police are to ensure that any preparatory or organizational steps as are required for the purpose of taken well in advance of the dates so that any and all impediment in that regard are surmounted by then.*

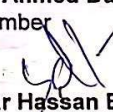
In view of the above it is decided that, Local Government Elections in Karachi and Hyderabad Divisions will be held on 15<sup>th</sup> Jan. 2023. Under Article 220 of the Constitution, the Government of Sindh, Chief Secretary and IG, Sindh are hereby directed to provide sufficient number of security personnel for election duty at the polling stations, offices of the District Returning Officers, Returning Officers, polling staff and transportation of polling material from and to the offices of the ROs. Further Federal Government through Secretary Ministry of Interior is directed to provide sufficient number of security personnel from other law enforcement




agencies, in accordance with the security plan for the conduct of Local Government Elections in Karachi and Hyderabad Divisions, in a peaceful manner. The office is directed to take further necessary action accordingly.

  
**Sikandar Sultan Raja,**  
Chairman

  
**Mr. Nisar Ahmed Durrani**  
Member

  
**Mr. Babar Hassan Bharwana**  
Member

  
**Shah Muhammad Jatoi**  
Member

  
**Justice(R) Ikram Ullah Khan**  
Member

Date of announcement: 22-11-2022

