

ELECTION COMMISSION OF PAKISTAN

PRESENT:

Mr. Sikandar Sultan Raja,
Mr. Babar Hassan Bhawana,
Mr. Justice (r) IkramUllah Khan,

Chairman
Member
Member

Case No. 3(1)/2023-LGE-(S).

In ref: APPLICATION AGAINST THE DECISION OF ECP FOR PROSPECTIVE USE OF DOUBLE ELECTORAL ROLLS (i.e OLD OBJECTED ELECTORAL ROLLS OF 07-05-2022 FOR LOCAL GOVERNMENT AND NEW ELECTORAL ROLLS FINALIZED AND PUBLISHED ON 07-10-2022) TO BE USED SIMULTANIEOUSLY IN THE FORTH COMING PHASE-II OF THE LOCAL GOVERNMENT ELECTIONS IN SINDH PROVINCE(INCLUDING KARACHI, HYDERABAD AND THATHA DIVISION) IN VOILATION OF SECTION 23,39 AND 42 OF THE ELECTIONS ACT,2017, READWITH RULE 37,38(2),25(2) AND RULE45 OF THE ELECTION RULES,2017 FURTHER READWITH ARTICLE 17,4,5,2,10-A,9,213 TO 226 OF THE CONSTITUTION OF PAKISTAN,1973.

&

APPLICATION FILED BY ADVOCATE GENERAL SINDH,IN PURSUANCEOF THE ORDER OF THE HONOURABLE SUPREME COURT OF PAKISTAN,IN CP NO.841-K/2022 DATED 17-08-2022

&

APPLICATION BY RAJA ARIF SULTAN MINHAS AGAINST APPOINTMENT OF ADMINISTRATOR IN KARACHI AND HYDERABAD BY THE GOVERNMENT OF SINDH IN VOILATION OF THE CODE OF CONDUCT ISSUED FOR THE CONDUCT OF 2ND PHASE LOCAL GOVERNMENT ELECTIONS IN SINDH.

&

APPLICSTION DATED 27TH DECEMBER,2022,FOR ENSURING CONDUCT OF 2ND PHASE LOCAL GOVERNMENT IN SINDH ON 15-01-2023.

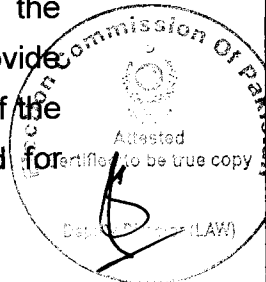
For Petitioner No.1 (MQM).	:	Mr. M. Tariq Mansoor, Advocate
For Petitioner No.2 (Advocate General).	:	Additional Advocate General Sindh
For Petitioner NO 3 (JI)	:	Mr. Raja Arif Sultan
For ECP	:	Mr. Zafar Iqbal Hussain, Special Secretary along with DG (Law), DG (LGE) and ADG (Law)



Date of hearing

: 06.01.2023**ORDER**

Sikandar Sultan Raja, Chairman: -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 election schedule for the Second phase Of Local Government Elections (hereinafter referred as LG 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 agencies 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 and after hearing the participants of the meeting decided to postpone the election vide order dated 18.10.2022. Another letter dated 22.10.2022 was received 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 30th 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. A report from the Chief Secretary Sind was sought 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 WIP(s) dignitaries of the defense exhibition in Karachi. The local Government Elections in Sindh were significantly delayed and the Commission fixed the matter for hearing on 15-11-2022 and after hearing the parties the Commission decided that, Local Government Elections in Karachi and Hyderabad Divisions will be held on 15th January 2023.

02. The instant four applications have been moved by MQM (P) dated 30-12-2022, Advocate General of Sindh dated 19-12-2022 and Jamat-e-Islami dated 21-12-2022 and 27-12-2022. MQM in its application has raised objections regarding use of fresh/new Electoral Rolls for the conduct of 2nd phase LG elections in Sindh which was published on 07-10-2022. However, Advocate General Sindh wrote a letter regarding implementation of judgment passed by the august Supreme Court in C.P. No. 841-K dated 17-08-2022 while Jamat-e-Islami through their two applications has insisted upon the timely conduct of 2nd phase LG elections in Sindh and issuance of directions for the Sindh Government regarding posting transfer of administrators in violation of Code of Conduct.

03. After perusal of all the four above mentioned applications, matter has been fixed for hearing and notices were issued to all the petitioners to appear before the Commission for 06-01-2023.

04. Today, M. Tariq Mansoor, learned counsel for the Petitioner No.01 (MQM) appeared and argued that the notification regarding issuance of schedule for the conduct of 2nd phase LG elections in Sindh was issued on 29-04-2022 with poll date 24-07-2022. He further argued that subsequent modifications have been made thrice in the election schedule and poll dates were changed. He further added that the Commission in exercise of its powers conferred under Article 218(3) issued fresh poll date for 15th January 2023. He extended his arguments and argued that applications dated 26-12-2022 and 30-12-2022 were written to the Hon'ble CEC, PEC which were forwarded to the Chief Secretary Sindh as well. He while referring to the applications emphasized upon Para No. 2 and 3 in which prayer regarding use of fresh /new Electoral rolls was made. He also added that C.P. No. 3585 of 2022 regarding the similar issue is pending before Sindh High Court, Karachi, in which one of the prayers is regarding Electoral Rolls. He in support of his arguments referred to Articles 2,5, 6, 9,17, 218(3), 219(d) and 218(2) of the Constitution. He further

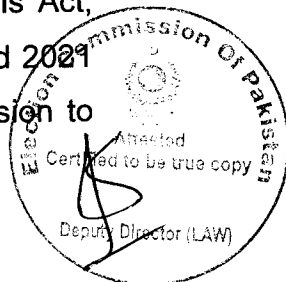


referred Chapter-4 Sections 23,26,27,35 and 42 of the Elections Act, 2017. He also added that the Commission cannot simultaneously use two electoral rolls for the conduct of LG elections. In support of his arguments he referred to a press release issued by the Commission dated 06-10-2022 and argued that it is clearly mentioned in the press release that the new finalized/revised electoral rolls will be used for next forth coming elections. He further argued that it is the power of the Commission to prepare and revise Electoral Roll however, he added that it is also the duty of the Commission to ensure fair elections. He submitted that during the period in which elections were postponed, a large number of people have been migrated to other areas or constituencies, people have died and new voters have been registered. He elaborated his arguments that right of vote is a fundamental right and according to him voters will be disfranchised in case old electoral rolls are used for 2nd phase LG elections. He prayed to use new finalized electoral rolls for the conduct of LG elections scheduled to be held on 15th January 2023.

5d 05. Additional Advocate General Sindh appeared on behalf of Advocate General Sindh and requested for an adjournment. He further stated that he has not been instructed to argue the matter as he does not have the brief with him. Due to urgency of the matter and shortage of time, the request for adjournment is declined.

06. In respect of two applications filed by Jamat-e-Islami Mr. Raja Arif Sultan appeared and submitted that his grievances regarding transfer of administrators against the provisions of code of conduct, has been redressed by the Provincial government and all the transfer orders have been withdrawn. He prayed for timely conduct of 2nd phase local government elections in Sindh scheduled to be held on 15th January 2023. He further prayed that elections have been postponed thrice and further delay would not be in the interest of the public.

07. Mr. Zafar Iqbal Hussain, Special Secretary ECP, Director General and Additional Director General (Law) appeared and emphasized for timely conduct of LG elections. They also highlighted the important steps and efforts taken by the Commission and also mentioned the hurdles faced in this regard. DG (Law) emphasized the importance of conduct of LG elections as per Section 219(4) of the Elections Act, 2017 and placed reliance on the judgments reported in PLD 2010 SC 573 and 2021 SCMR 714. He also added that directions have been given to the Commission to

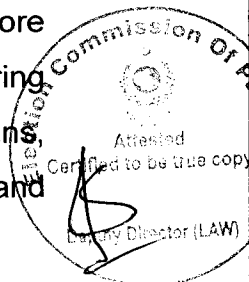


conduct LG elections in ICT and all four provinces. He also submitted that every provision in Constitution and law shall be read as whole and not in isolation. Special Secretary and DG(Law) argued that Section 39 of the Elections Act, 2017 restrains for the transfer of votes after issuance of schedule for elections. In this regard they have referred the judgment reported in PLD 2016 Peshawar 170 and added that law favors the vigilant and not the indolent. They requested for the rejection of the application filed by Petitioner No.01 and the request of Petitioner No.03 may be accepted.

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

09. From the perusal of the record it reveals that this Commission has done all possible efforts for the conduct of LG Elections in Sindh Province but every time the hurdles have been faced by the Commission from the Government of Sindh or the Political parties to delay the conduct of LG elections on one or the other pretext. The Election Commission of Pakistan has been 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 election 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.

10. In respect of the objection raised by the Counsel for the Petitioner No.01 regarding the use of fresh/new electoral rolls published on 07-10-2022, it is highlighted that the conduct of LG elections in the province has already been delayed for more than 2 years and during this period various cases have been initiated by different political parties at different forums i.e. august Supreme Court and hon'ble High Courts etc. Petitioner No.01 remained the party in most of the litigations and they have never raised the issue regarding the electoral rolls before any forum including the Commission. Commission has fixed the matters for hearing regarding the issue of delimitation, postponement of election due to heavy rains, flood and non-availability of security forces in which MQM(P) was on notice and

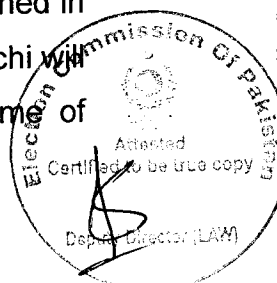


every time they were given proper opportunity of hearing to present their stance. However, they never agitated the issue of electoral rolls before the Commission although at that time new electoral rolls dated 07-10-2022 were in field. The question was also placed before the counsel for MQM-P that whether they have raised any objections regarding electoral rolls prior to this hearing before any forum including this Commission or not. In response he replied that it is the first time that the issue regarding electoral rolls is being raised before this Commission as the Commission is the competent forum.

11. There is a proper mechanism for the correction of Electoral Rolls provided in Chapter 4 of the Elections Act, 2017. Section 25 of the Act, provides that the National Database and Registration Authority (NADRA) shall transmit relevant data of every fresh National Identity Card issued by it to the Commission for registration of the card-holder as a voter in the electoral roll of the electoral area in which his permanent or temporary address is located, in accordance with the option indicated by him in the application for issuance of the National Identity Card. And NADRA shall also transmit the data of every cancelled or modified ID card regarding deceased voters. Any person whose name is not included in an electoral roll and who claims that he was or is entitled to be enrolled on that roll, may apply to the appropriate Registration Officer and any person may apply to the Registration Officer for the correction of any entry in an electoral roll. No revision of or correction in an electoral roll of an electoral area or inclusion or transfer of a vote from the electoral roll of an electoral area to the electoral roll of another electoral area can be made after the issuance of election schedule.

12. In the instant matter schedule for conduct of 2nd phase LG elections was announced on 29-04-2022 which is still intact and only poll date was changed due to unavoidable circumstances. However before that Updation of electoral rolls is a continuous process.

13. We have also gone through the press release pointed out by the Counsel dated 06-10-2022 and it reveals that the periodical revision of electoral rolls is the prime duty of the Commission which was done accordingly. The electoral roll was specifically revised for the upcoming General Elections for which media campaigns were carried out by the Commission for its correction. It is categorically mentioned in the last para of the said press release that the conduct of LG elections in Karachi will be held on old/previous electoral rolls. It is also emphasized that at the time of

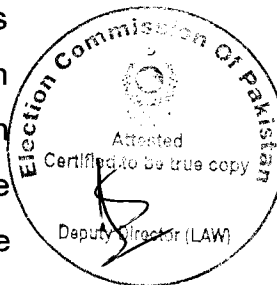


issuance of schedule for the conduct of 2nd phase LG elections in Sindh province, old electoral rolls were in field and in accordance with the provisions of Section 39 of the Elections Act, 2017, these electoral rolls were freezed at that stage. Moreover every time when LG election was postponed in the province only poll date was changed and the schedule remained intact. Had the schedule been changed/withdrawn by the Commission then the elections on new electoral rolls could have been held. There was no change in schedule hence the old electoral rolls will be used for the Conduct of 2nd phase LG elections in Sindh in line with Section 39 of the Elections Act, 2017. The argument advanced by the Counsel for Petitioner No.01 regarding simultaneous use of two electoral rolls is totally incorrect and misconceived.

14. It is also mentioned here that in the judgment passed by the august Supreme Court in C.P. No.841-K for which implementation has been sought by the Petitioner No.02, the august Court has directed the Commission to conduct the election in Sindh as per schedule. Similarly, 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:

"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."

15. 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.

Keeping in view the above, the application filed by the Petitioner No.01 (MQM through its convener Khalid Maqbool Siddiqui) is rejected and application filed by Petitioner No.03(JI) is accepted. The 2nd phase of LG elections will be held on 15th January 2023 as per schedule. Chief Secretary, IG Sindh and other law enforcement agencies are directed to properly assist the Election officials for free and fair conduct of LG elections in Sindh.

(Sikandar Sultan Raja)
Chairman

(Babar Hassan Bharrwana)
Member

(J(R) Iqbal Allah Khan)
Member

ANNOUNCED ON. 09-01-2023

