

ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
W.P. No. 68931 of 2022

Bakhtiar Mahmud Kasuri Vs. Election Commission of Pakistan, etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
	20.02.2023	<p>Sardar Abdul Jabbar Tibbi and Mr. Ahsan Amjad, Advocates for petitioner. Sardar Qasim Farooq Ali, Advocate for petitioner in W.P. No.77636 of 2022. Mr. Shamail Arif, Advocate vice counsel for petitioner in W.P. No.75257 of 2022. Mr. Mudassar Farooq, Advocate for petitioner in W.P. No.61013 of 2022. M/s Hafiz Muhammad Saleem, Imran Arif Ranjha, Hafiz Adeel Ashraf and Ch. Umer Hayat, Legal Advisors of Election Commission of Pakistan. Mir Haroon-ul-Rasheed, Assistant Attorney General for Pakistan.</p>

This consolidated order shall dispose of Writ Petition Nos. 68931, 77636, 75257 and 61013 of 2022 as common questions of facts and law are involved. In all the afore-referred petitions, question of delimitation of constituency Nos. NA-131 and NA-132 of National Assembly, District Kasur is involved whereas in W.P. No.61013 of 2022 delimitation of constituency Nos.PP-175 and PP-176 for District Kasur is also involved.

2. Main grievance raised by the petitioners in the afore referred petitions is that Election Commission of Pakistan (E.C.P.) for conducting general elections started delimitation proceedings for constituencies of National Assembly and Provincial Assembly of Punjab, wherein Form-5 under rule 10(7) of Election Rules, 2017 ('Rules') i.e. proposed draft for delimitation of constituency

Nos. NA-131 and NA-132 in District Kasur was notified and published by E.C.P., to which petitioners and some respondents and applicants in the connected petitions raised objections whereupon extensive hearings have been held at Islamabad and objections were decided on 19.07.2022 and Form-7 relating to final delimitation of constituencies in terms of rule 14 was notified by E.C.P. on 5th August, 2022 which was also uploaded on their official website, however, subsequently respondent No.2 i.e. Deputy Director Law of E.C.P. issued two impugned corrigenda both dated 12th August, 2012 whereby delimitation of constituency Nos. NA-131 and NA-132 of tehsil and District Kasur that had been finalized on 5th August, 2022 by majority members of E.C.P. was modified. The petitioners claim that same was not permissible as E.C.P. by issuance of Form-7/final list of constituencies had become *functus officio* and neither the Election Commission nor any of its officers could thereafter change the final list. Further it is claimed that constituency Nos. NA-131 and NA-132 were horizontally divided through Form-F7 issued on 5th August, 2022 whereas through corrigendum issued on 12th August, 2022 same was divided vertically which completely changed the compactness and contiguity of areas, rationalization and demography of population of the constituencies and the same could not be done by Deputy Director Law of E.C.P. through simple corrigendum which act has no backing of law.

3. On the other hand, learned counsel for respondents have defended impugned order on the

ground that some errors had crept in the original Form-7 i.e. final list of delimitation of constituency Nos. NA-131 and NA-132 issued on 05.08.2022 which were rectified by exercise of powers vested under Section 22 of Election Act, 2017 ('Act') resultantly corrigendum dated 12.08.2022 was issued by Deputy Director Law of E.C.P. which according to them was permissible under the law, therefore, it is claimed that delimitation of constituency Nos.NA-131 and NA-132 through Form-7 issued on 5th August, 2022 had rightly been modified through corrigendum dated 12.08.2022. The applicants of applications under Order I rule 10 C.P.C. in the connected petitions have also been heard in detail, some of whom have defended the impugned orders whereas others have called the validity of the same in question, hence, their grounds and objections have also been considered by treating them as parties to the petitions.

4. The perusal of the record shows that final list of constituencies Form-7 along with maps were issued on 5th Aug, 2022 by the E.C.P. which were based on two separate decisions by the E.C.P. both dated 19.07.2022 passed in two separate groups of fifteen petitions each in which the delimitation of constituency Nos.NA-131 and NA-132 were notified in Form-7 whereby the said constituencies were divided horizontally on the basis of order dated 19.07.2022 and the relevant operative part of paragraph No.18 onwards of one of said orders is provided as under:

"18. We have heard the arguments of all the learned counsel as well as the petitioners at length and have also perused the record and thoroughly

examined the maps displayed by the petitioners and the members of the delimitation committee. Now it is to be seen that whether the constituencies have been delimited in accordance with Section 20 of Election Act, 2017 and Rule 10 of Election Rules, 2017 and whether the principles and criteria for formation/delimitation of constituencies i.e. public convenience, communication facilities, compactness of areas and breaking of administrative units, have been considered and followed by the delimitation committee. Keeping in view the above principles in mind and after careful perusal of record, the decision of the Commission is as under:-

(National Assembly)

The cases of the petitioners i.e. Mr. Khalid, Ahmed Raees, Shabaz Ahmed, Mehr Liaquat Ali and Muhammad Arshad at sr. No. 5, 7, 12, 13 and 14, pertain to NA-131, 132, 137 & 138 of District Kasur Having examined all the available material and record we have observed that the representations filed by the petitioners at sr. 5 & 7 and proposals offered by them are reasonable and in accordance with the principles of the delimitation. The delimitation committee has overlooked the necessary factors and has erred in delimiting the constituencies in question. Therefore, the representations filed by the petitioners 5 & 7 stand accepted. Resultantly, the representations of the petitioners at sr. No. 12, 13 and 14, in respect of NA-132, to the extent allowed in the cases of the petitioners at sr. 5 & 7, also stand to allowed partially. The Delimitation Committee is make following changes in the constituencies in question as proposed by the petitioners 5, 7, 12, 13 and 14 in their representations:

- i. *To restore the old delimitation of NA-137 & 138 (now proposed as NA-131 & 132) carried out in 2018, in vertical shape instead of horizontal line, in order to avoid bifurcation of coherent population, convenience and interconnectivity of the voters as well as justified bifurcation of urbanized and rural areas.*
- ii. *Qanungo Halqa Khudian be excluded from proposed NA-131 and it be restored at its previous position. Likewise, TC Khudian also be excluded from NA-132 and it be restored at its previous position, in order to avoid bifurcation of homogeneous.*
- iii. *Ultimately, the following areas shall be included in NA-131 & 132:-*

NA-131, Kasur	<p><i>Kasur Tehsil excluding the following areas</i></p> <ul style="list-style-type: none"> (i) MC Mustafa Abad (ii) MC Raja Jang; and (iii) The following Qanungo Halqas of Kasur Tehsil <p><i>(a)Raja Jang; Mustafa Abad Kasur-I except the following Patwar Circles;</i></p> <ul style="list-style-type: none"> (i) Kasur Beroon, (ii) Kot Murad Khan (d) The Following Patwar Circles of Bhilla Hithar Qanungo Halqa:
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	<ul style="list-style-type: none"> (i) <i>Bhalla</i> (ii) <i>Bhilla Hithar</i> (iii) <i>Gaggar</i> (iv) <i>Tode Pur; and</i> (v) <i>Theh Sheikham</i>
NA-132, Kasur	<ul style="list-style-type: none"> (a) <i>Kot Radha Kishan Tehsil</i> (b) <i>MC Mustafa Abad</i> (c) <i>MC Raja Jang</i> (d) <i>The following QH of Kasur Tehsil;</i> (i) <i>Mustafa Abad</i> (ii) <i>Raja Jang; and</i> (iii) <i>Kasur-I excluding the following Patwar Circles:</i> <ul style="list-style-type: none"> (a) <i>Kasur Beroon; and</i> (b) <i>Kot Murad Khan</i> (vi) <i>The following Patwar circles of Bhilla Hithar:</i> <ul style="list-style-type: none"> (a) <i>(Bhalla)</i> (b) <i>Bhilla Hithar</i> (c) <i>Gaggar</i> (d) <i>Tode Pur; and</i> (e) <i>Theh Sheikham</i> (iv) <i>The following Patwar circle of Khudian Qanungo Halqa:</i> <ul style="list-style-type: none"> (a) <i>Kale; and</i> (b) <i>Hanke Naul Of district Kasur.</i>

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5. It has been claimed by counsel for the petitioners that the paragraph No.18(a)(iii) of the afore-referred order, reproduced above, provides the final delimitation of constituency Nos. NA-131 and NA-132 by specifically mentioning areas forming the said constituencies which were also notified through Form-7 with corresponding maps attached and notified in accordance with law having finality attached to the same and the said delimitation could not be changed through corrigendum issued on 12.08.2022 by the Deputy Director Law of E.C.P. The operative part of the corrigenda issued by E.C.P. relating to the afore-referred two constituencies of National Assembly whereby the same were changed from horizontal division to vertical division is as under:-

“CORRIGENDUM

The sub-paragraph (i) appearing at page 20 of the final order of the Election Commission dated 19.07.2022, in respect of District Kasur, stand omitted on account of inadvertent oversight, typographical mistake to the extent of constituencies of NA-131 Kasur-I and NA-132 Kasur-II (in respect of missing areas of QH Khudian, TC Khudian and Usman Wala) and are substituted with paragraph as per following detail:-

- i. *Old delimitation of NA-137 & 138 (now proposed as NA-131 & 132) in vertical shape instead of horizontal line, shall be restored in order to avoid bifurcation of coherent population, convenience and interconnectivity of the voters as well as justified bifurcation of urbanized and rural areas;*
- ii. *Ultimately, the following areas shall be included in NA-131 & NA 132:-*

NA-131 Kasur-I

(a) Municipal committee Kasur	
(b) Municipal committee Mustafa abad	
(c) The following Qanungo Halqas of Kasur Tehsil;	
(i) Ganda Singh wala	
(ii) Mustafa Abad	
(iii) Kasur II	
(iv) Kasur I excluding following Patwar circle	
a. Athil Pur	
b. Aurara	
(v) The following Patwar circle of Bheela Hithar QH	
(a) Bheela Hithar	
(b) Bhalla	
(vi) The following Patwar circles of Raja Jand Qanungo Halqa (QH)	
(a) Khara	
(b) Lakanke	
Of Kasur District	871,011

NA-132 Kasur-I

(a) Kot Radha Kishan Tehsil;	
(b) MC Khudian	
(c) MC Raja Jang;	
(d) The following Qanungo Halqas of Kasur Tehsil;	
(i) Khudin	
(ii) Usman wala	
(iii) Raja Jang Qanungo Halqa excluding the following patwar circle	
(a) Khara	
(b) Lakanke	
(iv) Bheela Hithar QH excluding following patwar circles;	
(a) Bheela Hithar	
(b) Bhalla	
(v) The following Qanungo Halqas of Kasur-I QH;	
(a) Athil pur	
(b) Arara	
Of Kasur District	823,095

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Emphasis supplied

6. Another corrigendum was also issued on the same day and published on the website of the E.C.P. with somewhat different areas and population of the said constituencies with vertical division of the aforesaid constituencies, details of which have not been reproduced herein to avoid

unnecessary details. However, the delimitation provided in paragraph No.18(a)(iii) of the order dated 19.07.2022 reproduced above has been changed by the corrigenda by providing areas ultimately forming constituencies Nos.NA-131 and NA-132. It is claimed by petitioners that there is no order passed by the E.C.P. itself on the basis of which corrigenda have been issued whereas the counsel for E.C.P. claims that Deputy Director Law of E.C.P. has issued the said corrigenda on behalf of E.C.P. to rectify the mistakes in earlier order.

7. The perusal of the afore-referred orders and maps attached with the said order show that there appears to be a complete change in constituencies in both the said orders where horizontal division in order dated 05.08.2022 has been changed to vertical division through corrigendum dated 12.08.2022. The question whether the said constituencies have been actually modified or corrigendum was issued only by correcting the errors that had earlier crept in the said order is not clear by bare perusal of the areas mentioned in the constituencies, earlier finalized by Form-7 and modified by the corrigendum issued thereafter, however, discrepancies are apparent from the details of areas mentioned in both lists and corresponding maps, which maps and list issued on 05.08.2022 according to representative of E.C.P. were not proper depiction of what has actually been decided by E.C.P. in its order dated 19.07.2022. The said discrepancies cannot be summarily resolved without deeper appreciation of disputed facts and resolution of actual

controversies pointed out by the parties which even otherwise cannot be done in constitutional jurisdiction of this Court. Moreover, it is observed that before passing order for modification of constituencies notice in terms of Section 22(2) of the Act has not been issued to the parties which had contested the matter before E.C.P. which resulted in passing of order dated 19.07.2022, hence, the parties in whose favour the said order was passed have apparently been condemned unheard. The question that whether first delimitation of constituency was correct or not or second delimitation of constituencies issued through corrigendum related to change of constituencies or the same was only providing for corrections in terms of order passed by E.C.P. is a debatable question and further the question that how delimitation of constituencies has been done requires deeper appreciation, which may not be possible under constitutional jurisdiction of this Court and although the petitioners have prayed that this Court may pass an appropriate order regarding final delimitation of constituencies without referring the same to the E.C.P., yet this Court, for the reason that factual controversy is involved which cannot be decided summarily and the matter itself cannot be resolved merely on the basis of legal grounds raised by the parties, deems it appropriate to set aside the orders dated 19.07.2022, 05.08.2022 and 12.08.2022 relating to delimitation of NA-131 and NA-132 only and remand the matter to E.C.P. to re-hear the parties and decide the matter relating to said constituencies afresh on its own merits strictly in

accordance with law, which exercise shall be carried out as expeditiously as possible.

8. As regards Writ Petition No.61013 of 2022 is concerned, the same besides delimitation of NA-131 and NA-132 for National Assembly in District Kasur also relates to delimitation of constituency Nos.PP-175 and PP-176 relating to Provincial Assembly of Punjab in District Kasur. The claim of learned counsel for the petitioner in the said petition is that principles laid down in Section 20 of the Act have not been kept in consideration while issuing Form-7 as the constituency No.PP-176 has been placed in center of constituency No.PP-175 breaking the contiguity of PP-175 wherein areas alien to the said constituency are falling within center of said constituency. The counsel for respondents as well as for E.C.P. in the said petition have defended the impugned order, however, it is observed that in view of Section 20 of the Act delimitation of constituencies has to be made with regard to the distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facility of communication and public convenience and other cognate factors to ensure homogeneity in creation of constituencies. In the present case constituency Nos. PP-175 and PP-176 had been originally proposed to be delimited through Form-5, which provided for constituency No.PP-176 to be at Southern side of constituency No.PP-175 where-after when final list of delimitation/Form-7 had been issued, said constituency No.PP-176 falls within center of constituency No.PP-175 whereby contiguity of constituency No.PP-175 seems to

have been disrupted, which is apparently not in accordance with the principles of delimitation of constituencies provided in Section 20 of the Act and in these circumstances it would be appropriate to set aside final delimitation of constituencies through order dated 19.07.2022 and 05.08.2022 to the extent of constituency Nos. PP-175 and PP-176 only and remand the matter to E.C.P. for deciding the same afresh after providing proper opportunity of hearing to all the parties.

9. With the above observations, all the above referred Writ Petitions are **allowed** in the aforementioned terms.

(Muzamil Akhtar Shabir)
Judge

*Muzamil Mohsin**