

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P No.10992 of 2023

Ikhlaq Haider Chattha

Versus

Caretaker Chief Minister Punjab & others

JUDGMENT

Date of Hearing.	07-06-2023
PETITIONERS BY:	M/s. Tipu Salman Makhdoom, Mubeen ud Din Qazi, M. Akbar Baba, Moeen Ahmed, Muhammad Arshad Kundi, Mirza Saleem Baig, Mian Najam us Saqib, Ali Raza Warraich, Muhammad Ayub Khan, Saeed Ahmad Cheema, Arslan Nawaz Cheema, Muhammad Yasir Ibrahim, Ahmad Raza Khalid, Rana Muhammad Afzal Razzaq Khan, Ch. Tahir Mahmood, Ahmad Sardar Khan Niazi, Rohail Rahman Qazi, Zubair Ali Butt, Ch. Sabir Ali, Dr. Zia Ullah Ranjha, Muhammad Usman Gondal, Waseem Abbas, Umar Sameed, Bilal Rasheed and Muhammad Naeem Chaudhry, Advocates.
RESPONDENTS BY:	Ms. Sheeba Qaiser, A.A.G. with Ch. Muhammad Umer, Director Legal, ECP, Muhammad Haroon Kasi, Director Law, ECP and Saif Ahmad Bhatti, Law Officer, BoR.

Shahid Karim, J:-. This order will decide the instant petition and cluster of petitions *viz.* W.P No.11674 of 2023, W.P No.11173 of 2023, W.P No.11675 of 2023, W.P No.11677 of 2023, W.P No.11857 of 2023, W.P No.12181 of 2023, W.P No.12573 of 2023 and W.P No.11673 of 2023 which engage a common question of law. The challenge is to a notification dated 15.02.2023 issued by the order of the Governor of Punjab pursuant to the decision of the Provincial Cabinet in its meeting held on 09.02.2023. The impugned notification is to the following effect:

“In pursuance of Provincial Cabinet decision taken in its meeting held on 09.02.2023, the earlier Notification of Board of Revenue bearing No.2829-2022/5093- DIR

(*DEV&G*), dated 14.10.2022 regarding creation of new district Wazirabad in Gujrat Division is hereby suspended till the holding of general elections in the Punjab Province.”

2. The impugned notification has been issued by the Caretaker Cabinet which was put in place after the dissolution of the Provincial Assembly of Punjab. The impugned notification suspends and puts on hold the earlier notification dated 14.10.2022 which sought to create a new district of Wazirabad and which was divided into Tehsils/ Sub-Divisions specified in column No.1 and revenue estates mentioned in column No.3. The notification of 14.10.2022 was issued in exercise of the powers conferred upon the Governor Punjab under Section 6 of the Punjab Land Revenue Act, 1967 and in supersession of all previous notifications.

3. These petitions should receive a short shrift and may be decided on the short question that revolves around the interpretation of section 230 of the Elections Act, 2017 which provides that:

“230. Functions of caretaker Government.— (1) A caretaker Government shall—

(a) perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government;

(b) assist the Commission to hold elections in accordance with law;

(c) restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and

(d) be impartial to every person and political party.

(2) The caretaker Government shall not—

(a) take major policy decisions except on urgent matters;

(b) take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;

(c) enter into major contract or undertaking if it is detrimental to public interest;

(d) enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case

(e) make promotions or major appointments of public officials but may make acting or short term appointments in public interest;

(f) transfer public officials unless it is considered expedient and after approval of the Commission; and

(g) attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

(3) The Prime Minister, Chief Minister or a Minister or any other members of a Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B and the Commission shall publish the statement of assets and liabilities in the official Gazette.

(4) In this section, 'caretaker Government' means the caretaker Federal Government or a caretaker Provincial Government.

4. The Caretaker Cabinet was appointed pursuant to Article 224 of the Constitution of Islamic Republic of Pakistan, 1973 (**the Constitution**) for the Province of Punjab after the Provincial Assembly was dissolved. A plethora of judgments of the superior courts, *inter alia*, **2013 SCMR 1205** define the periphery of powers of the Caretaker Cabinet which, in a nub, remains confined to running of day to day affairs. The explicitness of the powers of a Caretaker Cabinet has now been enacted in section 230 of the Act, 2017 which has been set out above. As the statutory wording makes clear a Caretaker Government shall perform its functions to attend to day to day matters which are necessary to run the affairs of

the Government and shall assist the Commission to hold elections in accordance with law. Further the Caretaker Government shall restrict itself to activities that are of routine, non-controversial, urgent and in the public interest. Finally the Caretaker Government is obliged to be impartial to every person and political party. By Sub-section (2) of Section 230, the Caretaker Government has been restrained from taking any major policy decisions except on urgent matters or to attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

5. The notification of 14.10.2022 was issued by an elected government and created a new district of Wazirabad. The said decision could not have been suspended by the Caretaker Government as it is tantamount to taking a major policy decision on an issue which was not an urgent matter within the contemplation of Section 230(2)(a). It also has the unpalatable effect to influence the elections and adversely affect the free and fair elections which are to be held for the Provincial Assembly of Punjab. The impugned notification is liable to generate controversy and is certainly not an activity of a routine nature to be within the competence of the Caretaker Government. It does not spell out any reasonable objective which prompted the Caretaker Cabinet to take such a decision which is clearly beyond the scope of the armoury of powers of the Caretaker Cabinet and casts doubt on the purpose for which the decision was taken.

6. The label ‘care-taker’ merely denotes a cabinet for a short duration constituted under peculiar circumstances and to fulfil a constitutional mandate. The distinction between the elected cabinet and a caretaker cabinet does not lie in the use of powers under the Constitution or the laws but in making decisions while using those powers and which must be limited to the purpose underlying their establishment. Thus, although Caretaker Cabinets exercise the same range of powers, their actions and decisions must comport with and not detract from their primary role as tenants of a regime infused with the exalted and core ingredients of neutrality and impartiality. So the curtailment by the courts over the years is regarding use of powers which has been circumscribed by the dicta of our courts and now finds expression in section 230 of the Act, 2017. It must be borne in mind that every power has legal limits and the powers of a Caretaker Cabinet are more limited than an elected cabinet. Section 230 of the Act, 2017 is an expression of the need to fence the decision-making powers of a Caretaker Cabinet. This concept is wedded to the notion of a Caretaker Cabinet which is obliged to act compatibly with the role assigned to it and to remain within the confines of its statutory powers.

7. Before I tear myself away, the role of Election Commission of Pakistan (ECP) must be flagged. Clause 3 of Article 218 of the Constitution provides that:

“218(3) It shall be the 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.

8. Thus, it is the duty of ECP to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly and fairly. A cumulative reading of Articles 218, 219 and 220 of the Constitution read with Section 230 of the Act, 2017 would make it abundantly clear that ECP exercises an overarching power over a Caretaker Cabinet during the time it is in place and whose sole object is to assist ECP to hold elections in accordance with law. There is no other role envisaged by either the Constitution or the law to inhere in a Caretaker Cabinet and this must be at the heart of any decisions made by the Caretaker Cabinet. It is important for ECP to engage proactively with a Caretaker Cabinet to supervise and oversee the decision-making process by a Caretaker Cabinet on its own volition and without instigation by the superior courts. The Constitution vests enormous powers in ECP to do so and there is no doubt that under Article 220 of the Constitution it is the duty of all executive parties in the Federation and in the Provinces to assist ECP in the discharge of its functions. Thus, ECP has to keep a close eye on all decisions being taken by a Caretaker Cabinet and to correct them if the Caretaker Cabinet falls outside its jurisdiction in any manner or takes decisions which infringe the mandate of Section 230 of the Act, 2017. Increasingly, cases land in this Court's docket that reflect a transgression of powers by the Caretaker Cabinet which is impermissible. ECP must come alive to its

duty to rein in the Caretaker Cabinet if it is found to be disloyal to its mandate and primary role.

9. In view of the above, these petitions are **allowed**. The impugned notification dated 15.02.2023 is set aside.

(***SHAHID KARIM***)
JUDGE

Approved for reporting.

JUDGE

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Raqfaqat Ali