

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Jawwad S. Khawaja
Mr. Justice Amir Hani Muslim

Civil Miscellaneous Applicaton No.6882/13 in Constitution Petition No.77 of 2010
(Letter by Election Commission of Pakistan dated 12.11.2013)

President Balochistan High Court Bar Association ... Petitioners
Versus
Federation of Pakistan and others ... Respondent

For the Petitioner: Nemo.

For the Applicant: Mr. Ishtiak Ahmed Khan, Secretary, ECP
(CMA-6882/13) Syed Sher Afgan, Addl. Secretary

On Court's Notice: Mr. Muneer A. Malik, Attorney General for Pakistan
Mr. Abdul Latif Yousafzai, AG, KPK
Mr. Khalid Javed Khan, AG, Sindh
Mr. Muhammad Hanif Khattana, Addl. AG, Pb.
Mr. Muhammad Farid Dogar, AAG, Balochistan

Date of hearing: 13.11.2013

ORDER

Iftikhar Muhammad Chaudhry, CJ.- In pursuance of letter dated 12.11.2013 by the Election Commission of Pakistan, the instant matter was directed to be listed in the Court. Contents of the said letter are reproduced hereinbelow:-

"The Registrar the 12th November, 2013, Islamabad
Supreme Court of Pakistan,
Islamabad.

Subject: **REQUEST FOR EXTENSION OF POLL DATES FOR**
HOLDING LOCAL GOVERNMENT ELECTIONS IN
THE PROVINCES AND CANTONMENT AREAS

Dear Sir,

In continuation of the earlier letter of even date, it is pointed out that on account of certain practical and technical difficulties, the Election Commission of Pakistan has proposed revised poll programme/dates for the Local Government Elections in the Provinces and in the Cantonment areas in terms as follows:-

Sr.No.	Province/Area	Date
1.	For the Province of Punjab	30.01.2014
2.	For the Province of Sindh	18.01.2014
3.	For the Province of KPK and Cantonment Areas	In the month of February, 2014

2. *As far as the Province of Balochistan is concerned, polling shall take place on the date, which has already been fixed i.e. 07.12.2013.*
3. *This may kindly be brought to the notice of the Hon'ble Supreme Court of Pakistan.*
4. *This issue with approval of Election Commission of Pakistan.*

*Yours sincerely,
-Sd-
(Syed Sher Afgan)
Additional Secretary"*

It is to be noted that prior to receipt of the above letter on the even date another letter was received from the Election Commission of Pakistan (ECP) highlighting the difficulties being faced by the ECP in holding the local bodies elections on the date which have already been fixed for the Provinces of Sindh and Punjab. This Court, as back as on 5th April, 2012 while hearing a case relating to the law and order situation in the Province of Balochistan, noted that the main problem of the Province is of socio-economic nature which can only be solved if the general public of the Province is empowered by holding elections of local bodies which otherwise is an constitutional obligation of the Government in terms of Article 32 of the Constitution. As it is obligation of the Government to adhere to the constitution in letter and spirit and no one can be allowed in any manner, to deviate from any of its provisions particularly in view of the fact that the Constitution is a binding document as it has been given by 18Crore people of this Country to themselves. Therefore, its provisions particularly relating to the general public empowering them politically, administratively and financially through their chosen representatives by establishing the system of the local government in terms of Articles 32 and 140A of the Constitution should be strictly observed. However, preceding to the above observations, orders were repeatedly passed by this Court calling upon the Provincial Governments as well as the Federal Government to hold local bodies elections as early as could be possible as it is the command of the Constitution and no deviation from the Constitution is possible.

2. In the meanwhile, another petition was filed by Raja Rab Nawaz, learned Advocate of this Court and subsequent thereto directions were issued to the Federal Government of Pakistan to hold elections in the Cantonment Areas. As for the last 18 years election of local bodes have not been conducted in Cantonment areas whereas the Local bodies in the Provinces were dissolved on the following dates, and since then there is no local government in the Provinces despite of mandatory provisions of the Constitution.

Sr. No.	Name of the Province	Date of dissolution of Local Bodies in the Province
1.	Balochistan	09.01.2010
2.	Khyberpakhtunkhwa (KPK)	30.01.2010
3.	Punjab	23.02.2010
4.	Sindh	24.02.2010

3. It is to be noted that the Governments of Balochistan, Sindh as well as Punjab had placed on record copies of the following letters, with the request to ECP to hold local bodies elections in their Provinces.

- 1. Nos.PS/Secy:Law/2013/66-70 dated 24.10.2013 (Balochistan)
- 2. No.SOR(LG)38-12/2013 dated 23.10.2013 (Punjab)
- 3. No.RO(LG) 4(18)/2013 dated 23.10.2013 (Sindh)

Contents of one of the above letters (at Sr. No.1) read as under:-

*"The Secretary,
Election Commission of Pakistan,
Islamabad.*

*Subject: HOLDING OF LOCAL GOVERNMENT ELECTIONS IN
BALOCHISTAN*

Dear Sir,

Reference the captioned subject. Government of Balochistan is ready for holding Local Government Elections on 7th December, 2013, as already committed before the Hon'ble Supreme Court of Pakistan. In this regard, the delimitation process of 31 out of 32 Districts has been completed and 28 Districts notified. The delimitation of Quetta has administrative, security and political dimensions and efforts are underway to develop consensus amongst the stakeholders for amicable solution regarding a decision at the higher level. The Local Government Act and related Rules have been framed.

*(Safdar Hussain)
Secretary."*

It seems that in view of the request made in the above letter, election schedule was fixed by the ECP as on 27.11.2013 for Sindh Province which was subsequently changed to 7th December, 2013 in pursuance of the request so made by the Provincial Government, through CMA-6797/2013 filed before this Court through Advocate General which was sent to the Election Commission of Pakistan for appropriate orders. Contents of the said order reads as under:-

“This application has been filed on behalf of the Govt. of Sindh through the learned Advocate General Sindh under Order 33 Rule 6 of the Supreme Court Rules, 1980 seeking change of date from 27th November, 2013 to 7th December, 2013 for holding local bodies’ election. The learned Advocate General, Sindh emphasized, inter alia, that one of the reasons for seeking extension is that the process for holding local government elections has commenced w.e.f. 9.11.2013 and the holidays of Ashora Muharram ul Haram fall on 14.11.2013 to 15.11.2013, therefore, it was constrained to postpone the elections. Similarly, representatives of the Ahle Tashi Community also met the Chief Minister, Sindh and expressed serious constraints and requested the Government to move application for adjustment of date of local government elections in Sindh. He also added that a large number of other representative groups from different communities have also met the Chief Minister with the same request. He further added that the Govt. of Sindh is fully committed to honour the orders passed by the Court to observe the constitutional obligations. We have pointed out to the learned Advocate General that the dates for local bodies’ elections are to be fixed by the Commission in pursuance of the request so made by the Provincial Governments. We are of the considered opinion that the Provincial Government had a constitutional obligation to hold local bodies’ election for the purpose of allowing the citizens of the country to show their participation in the political, administrative and financial responsibilities and authority through their representatives of the local government. Therefore, by taking into consideration the request so made by the Provincial Govt. of Sindh, we refer this application to the Election Commission of Pakistan for considering the application and may accommodate them because in the other Provinces like Punjab, and Balochistan the elections are scheduled to be held on 7th December, 2013. The learned Advocate General may, therefore, appear before the ECP during course of the day with the instant CMA and this order for passing appropriate orders by the Election Commission of Pakistan. The CMA is disposed of accordingly.”

However, in the meanwhile no request for change of election schedule has been made either by the Province of Balochistan or by the Punjab Province. As far as the Province of KPK is concerned, despite of knowing its constitutional obligations no request has been filed for holding local bodies elections.

4. Learned Attorney General for Pakistan stated that as far as the local bodies election in the Cantonment Areas is concerned, the Federal Government has

requested to the ECP for holding the elections in the Cantonments and the ECP has asked the Federal Government to fulfill certain requirements and the same will be done in the meanwhile.

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 sub Article 2 of Article 140A is concerned, it cast a duty upon the Election Commission to hold the elections of local bodies in terms of sub Article 140A(1). Therefore, it should always remain prepared to meet the challenge 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.

6. Be that as it may, as a revised Poll Programme noted herein above has been issued for holding local bodies elections in the Provinces of Punjab, Sindh and KPK and local bodies elections in Balochistan will also take place on 7th December, 2013 as already fixed, therefore, we are of the opinion that the Election Commission and the Provincial Governments have shown their commitment to the Constitution. Thus, without making further observation, instant matter stands disposed of.

Chief Justice

Judge

Judge

Islamabad

13th November, 2013

M. Azhar Malik

Approved for reporting.