

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali, HCJ
Mr. Justice Amir Hani Muslim
Mr. Justice Iqbal Hameedur Rahman

Civil Appeals No.760 to 765 of 2016.

(on appeal from judgment of High Court of Sindh, Karachi
dated 10.2.2016, passed in C.Ps No.D-540 to 543, 419 & 468/2016)

The Province of Sindh through Chief Secretary, etc

Appellants

Versus

Muttahida Qaumi Movement (MQM), etc (in CA-760 & 761/16)
Pakistan Muslim League (Functional), etc (in CA-762 & 763/16)
Pakistan Muslim League (N), etc (in CA-764/16)
Jam Abdul Karim Bijar, etc (in CA-765/16)

Respondents

For the appellants:	Mr. Farooq H. Naek, Sr.ASC. Mr. Mukesh Kumar Karara, Addl.A.G. Sindh. Raja Abdul Ghafoor, AOR.
For the respondents: (in CA-760 & 761/16) & For respondent No.1 (in CA-762-763/16)	Dr. Muhammad Farogh Naseem, ASC. a/w Mr. Waseem Akhtar, in person.
For the applicant:	Raja M. Ibrahim Satti, Sr. ASC (CMA-1758/16) Mr. Mubeen-ud-Din Qazi, ASC (CMA-2256/16)
For respondent No.9: (in CA No.760/16)	Dr. Babar Awan, ASC. Ch. Akhtar Ali, AOR. a/w Mr. Saeed Ghani, in person.
For ECP:	Mr. Babar Yaqoob Fateh Muhammad, Secretary
Other respondents:	N.R.
On Court Notice:	Mr. Muhammad Waqar Rana, Addl.AGP. Mr. Shakeel-ur-Rehman Khan, A.G Punjab. Mr. Abdul Latif Yousafzai, A.G KPK. Mian Abdul Rauf, A.G. Islamabad. Mr. Ayaz Swati, Addl.A.G Balochistan.
Dates of hearing:	4 th , 5 th , 6 th , 7 th , 12 th and 14 th April, 2016.

ORDER

Arguments in these connected appeals were heard on several dates of hearing, during which, on 12.4.2016, some suggestions were also exchanged between the learned ASCs for the appellant and respondents

No.1, 3 and 9. In response to it, following written formulations have been sent today by Dr. Muhammad Farogh Naseem, learned ASC.

“Formulation and Written Arguments on behalf of MQM and PML(F).

Further to write-up dated 6.4.2016 and the Addendum dated 7.4.2016 the Respondents are filing the present 2nd Addendum.

2. The undersigned appears on behalf of MQM and PML(F), whose instructions are as follows:-

- a) with regard to the issue of youth seats, neither MQM nor PML(F) filed any petition in the High Court and hence they are not aggrieved on this issue.
- b) with regard to women seats, both MQM and PML(F) are also neutral with regard to the percentage of the seats.

3. Both MQM and PML(F) are of the considered view that all indirect elections in the Local government elections, whether they pertain to Mayors, Deputy Mayors, Chairmen and Vice Chairmen should be conducted through secret ballot and not through show of hands. Also no bureaucratic transfer should be made by the government except upon permission from the ECP, after the announcement of the elections.

4. The distinction attempted to be brought about by the Appellant that the indirect elections for Mayors, Deputy Mayors, Chairmen and Vice Chairmen are separate elections is incorrect. All elections to the Local Government are part and parcel of each other, as one leads to another. It is settled law that election starts from the first step and includes all subsequent steps till the culmination. Hence, the law which was applicable on the first date of the announcement of elections i.e. 25.8.2015 (reference is invited to para 4 of the undersigned's first write-up) will be applicable right till the end when the elections of Mayors, Deputy Mayors, Chairmen and Vice Chairmen so also the reserved seats would culminate."

2. After hearing the learned ASCs for the parties at length, for the reasons to be recorded separately, these appeals are partly allowed in the following terms:-

- (i) The amendment brought into effect by the Province of Sindh vide Sindh Local Government (Third Amendment) Act, 2015 (Sindh Act No.XXXVIII of 2015) with effect from 25.8.2015, as regards introduction of 05 percent reserved seats for "Youth" and increase in the number of reserved seats for women from 22 percent to 33 percent, is held to be validly legislated; thus, to remain operative.

- (ii) With the consent of the appellant and respondents No.1, 3 & 9, all the reserved seats as prescribed under section 18 shall be filled up in terms of section 18A of the Sindh Local Government Act, 2013, which will be revived and such amendment will be brought into effect by the appellant immediately. In case requisite legislative amendment is not made within two weeks, these seats shall be filled up in the manner as otherwise prescribed by law.
- (iii) The elections for the posts of Mayor, Deputy Mayor, Chairman and Vice Chairman are to be held under the Constitution and the law i.e. the Sindh Local Government Act, 2013, therefore, it is within the competence of the Sindh Government to legislate law to hold such elections either through show of hands or secret ballot. However, in the present case, since such amendment has been brought into effect under section 18 (*ibid*) on 18.1.2016, after the announcement of Election Schedule on 26.8.2015, therefore, such amendment is of no legal effect, and as per the Sindh Act No.XXXVIII of 2015, the ensuing elections for these posts will be held through secret ballot.
- (iv) All notifications regarding transfers and posting of bureaucrats issued by the appellant after the date of announcement of Election Schedule for Sindh Local Bodies i.e. 30.5.2015, without prior approval from Respondent No.6, the Election Commission of Pakistan, are declared to be without jurisdiction and of no legal effect.
- (v) The Election Commission of Pakistan shall ensure completion of remaining election process of local bodies in Sindh for the reserved seats as well as for the office of Mayor,

Deputy Mayor, Chairman and Vice Chairman within 60 days from today.

3. The impugned judgment of the High Court is accordingly modified in the above terms.

4. A copy of this order be sent through Fax to the Secretary, Election Commission of Pakistan; Chief Secretary, Government of Sindh, and other concerned authorities for their information and compliance.

Chief Justice

Judge

Announced.
Islamabad,
15th April, 2016.

Judge

Chief Justice

Not approved for reporting.

﴿صداقت﴾