

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J
MR. JUSTICE IJAZ AHMED CHAUDHRY
MR. JUSTICE GULZAR AHMED

CIVIL MISC. APPLICATION NO. 3258 OF 2013
(For extension of time)

IN
CONSTITUTION PETITION NO. 65 OF 2009

Raja Rab Nawaz ... PETITIONER

Versus

Federation of Pakistan through Secretary, Defence & others

.... RESPONDENTS

Petitioner : In person

On Court notice : Mr. Muneer A. Malik
Attorney General for Pakistan
with Maj. General Tahir Masood, D.G.
Dr. Naeem Chaudhry, Director
Mr. Kaleemullah, L.O.

Date of hearing : 02.07.2013

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.- This

Civil Misc. Application has been filed on behalf of the respondent Federation through Secretary, Ministry of Defence, Government of Pakistan for seeking extension of time in the holding of Cantonment Elections in respect whereof, this Court, *vide* judgment dated 03.01.2013 had directed to complete the process of elections up to 05.05.2013.

2. Brief facts of the case are that the petitioner approached this Court by filing a petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan, *inter alia*, with the following prayer: -

"It is, therefore, respectfully prayed that keeping in view the above submissions, the respondent No.1 may kindly be directed to issue Notification for the purpose of de-limitation of the wards in Cantonments and further be directed to prepare electoral roll of the wards in Cantonment and further be directed to hold election of the Cantonment Board forthwith in accordance with law."

The petitioner's case was that under Article 32 read with Article 140A of the Constitution, it is incumbent upon the State to encourage Local Government Institutions comprising elected representatives of the area concerned with special representation of peasants, workers and women. It was not disputed that the elections to the Cantonment Boards, as required under section 14(1)(b) of the Cantonment Act, 1924 [Act, 1924] were not conducted for about last 14 year on one pretext or the other.

3. During hearing of the matter, it was stated on behalf of the respondent Federation that in pursuance of provisions of section 14(1)(b) of Act, 1924, a summary had been moved to the Chief Executive/Prime Minister of Pakistan on 05.05.2012 with the proposal that it was necessary to vary the composition of 31 Cantonment Boards for a period of one year commencing from 05.05.2012, which was about to expire on 04.05.2013. It was also stated that as soon as approval was accorded by the Prime Minister allowing the Election Commission of Pakistan to hold elections to the Cantonment Boards, necessary administrative arrangements would be made in that behalf. Furthermore, by means of CMA No.5232/2012 it was, *inter alia*, stated that *in compliance of order of the Apex Court dated 17.12.2012, it is submitted that this Ministry has no intention to seek further*

extension (which is still 04.05.2013), in the existing Boards sought earlier vide section 14(1) of Cantonment Act, 1924. This Court *vide* order dated 03.01.2013 disposed of the petition with the direction that the Federal Government may not allow further extension in variation of composition of Cantonment Boards in terms of section 14(1)(b) of the Act, 1924 after 05.05.2013 unless conditions noted therein were required to be pressed into service compulsorily and in the meanwhile steps would be taken to ensure that the elections of Cantonment Boards were held after completing the process of the limitations of wards, etc., as per the Cantonment Ordinance, 2002 read with the Cantonments Local Government (Elections) Rule, 2012 as the Election Commission was also willing and ready to under the process of election.

4. By this Misc. Application for extension of time in the holding of Cantonment Boards Elections is being sought, *inter alia*, stating therein that a request for holding elections for the local government in the Cantonment areas was sent to the ECP *vide* letter dated 21.12.2012, but the ECP *vide* its letter dated 18.03.2013 raised certain legal questions/observations and advice of Law & Justice Division was sought thereon. It is stated that pending the clarification of the said legal issues and the fact that the ECP was busy in holding general elections in the country, it was not possible to hold the Cantonment Boards elections by the target date fixed by this Court.

5. A written statement signed by the Secretary, Ministry of Defence was filed in Court, wherein he had requested for extension of time for holding of elections of the Cantonment Boards and undertaken that the entire process of elections in all

the Cantonment Boards would be completed on or before 15.09.2013.

6. Learned Attorney General appeared and explained that the Government is contemplating essential amendments in the relevant laws for the purpose of holding Cantonment Boards elections and since the process is likely to consume some time, therefore, extension of time in holding the elections be allowed.

7. It may be observed that prior to the Partition of the Subcontinent, the territory of Indo-Pak remained under the foreign domination for a long period, during which its traditional institutions were badly mutilated if they escaped extinction. The vast majority of people in the country lived in villages and small towns; therefore, it was required to evolve a system that would increasingly associate them with the ordering of their affairs. This could only be achieved through decentralization of the authority which had been vested in the District Officer under the British rule. In that scenario, a system was required to be evolved which has its roots in the public and after building a strong base goes on to construct the structure above. It had to be different from the system which had beautifully trimmed structure with all the frills of parliamentary democracy but hollow from within and without any base below. For a real democracy, it is necessary that all the inhabitants must have a say in their affairs. With the prevailing level of political consciousness, they can fully understand their immediate problems and requirements and evaluate what is of immediate good and what is not. There is little reason, therefore, why advantage of this should not be taken by involving them in the management of their affairs through directly chosen

representatives. For a villager it is, perhaps, not possible to assess with any degree of accuracy the qualities and disabilities of rival candidates from distant cities who may make periodic appearances at the time of elections, but he is surely a good judge of a fellow villager who may canvass for his vote for a local council.

8. After long time a solution was provided in the year 1979 in the shape of respective Local Government Ordinances for each province. The procedure for conduct of election of the Local Government was provided. However, by means of respective Local Government Elections Ordinance, 2000, new mechanism was provided for conducting the elections. Later, the local government laws were repealed through fresh Local Government Ordinance, 2001. The said Local Government Ordinances contain the procedure for the conduct of elections for each local area. For reference, the relevant provisions of Punjab Local Government Ordinance, 2001 are reproduced hereinbelow: -

12. Local governments for local areas.— (1) For each local area, there shall be a local government comprising—

- (a) District Government and Zila Council in a district or a City District;
- (b) Tehsil Municipal Administration and Tehsil Council in a tehsil;
- (c) Town Municipal Administration and Town Council in a town; and
- (d) Union Administration and Union Council in a union.

(2) In case of a district consisting of a single Tehsil, the Government may dispense with setting up of Tehsil Council and holding of election of Tehsil Nazim and Naib Tehsil Nazim in such Tehsil and in that case the Tehsil Municipal Administration shall function directly under Zila Nazim and the functions of Tehsil Council shall be performed by the Zila Council.

(3) In case of a Tehsil consisting of a single Union, the Government may dispense with setting up

of Tehsil Council and holding of election of Tehsil Nazim and Tehsil Naib Nazim in such Tehsil and in that case the functions of the Tehsil Municipal Administration shall be performed by the Union Administration and the functions of Tehsil Council shall be performed by the Union Council.

148. Franchise.— (1) Members of a Union Council, including Union Nazim and Naib Union Nazim shall be elected through direct elections based on adult franchise and on the basis of joint electorate.

(2) The Electoral College for the election of Zila Nazim and reserved seats of women, peasants and workers, and minorities in the Zila Council shall be all the members of Union Councils in the District, including Union Nazims and Naib Union Nazims.

(3) The electoral college for the election of a Tehsil Nazim, Town Nazim and reserved seats of women, peasants and workers, and minorities in the Tehsil Council and Town Council, shall be all the members of the Union Councils in the Tehsil or, as the case may be, Town, including Union Nazims and Naib Union Nazims:

Provided that for the election for reserved seats for women in Zila Council proportionately divided among Tehsils or Towns, shall be all members of the Union Councils in a Tehsil or, as the case may be, Town.

Explanation.— For the purpose of this section, all members of Union Councils, notified as returned candidates in the elections held under this Ordinance, shall be deemed to be members of the Electoral College.

150. Election Commission to conduct local government elections.— (1) The Election Commission shall conduct the local government elections.

(2) In this Ordinance, "Election Commission" means the Election Commission constituted under Article 218 of the Constitution of the Islamic Republic of Pakistan.

151. Delimitation of electoral wards.— (1) The electoral ward for the election of a Zila Nazim, shall be a District, for a Tehsil Nazim, a Tehsil, for a Town Nazim, a Town, and for a Union Nazim and a Naib Union Nazim, a Union.

(2) The electoral ward for the election of a Naib Zila Nazim, Naib Tehsil Nazim and Naib Town Nazim shall be the respective Council.

(3) The Union shall be a multi-member ward for election of members of a Union Council.

154. Elections of Nazims, etc.— (1) A candidate for the office of Zila Nazim and a Tehsil Nazim or a Town Nazim securing highest number of votes in their

respective wards against other candidates, shall be declared elected.

(2) A Union Nazim and Naib Union Nazim as joint candidates, securing highest number of votes in their electoral ward against other joint candidates, shall be declared elected.

9. It may be observed that initially, the Cantonment Act, 1924 was promulgated to consolidate and amend the law relating to the administration of cantonments. Later on, the said Act was superseded by the Cantonment Ordinance, 2002. As per definition of Cantonment provided in section 3 of the Ordinance, 2002, the Government may, by notification in the official Gazette, declare any place or places in which any part of the armed forces of Pakistan is quartered or where defence installation or defence production units are located or which, being in the vicinity of any such place or places, is or are required for the service of such forces to be a cantonment for the purposes of the Ordinance and of all other enactments for the time being in force, and may, by a like notification, declare that any cantonment shall cease to be a cantonment. The Government may, by a like notification, define the limits of any cantonment for the aforesaid purposes. When any place is declared a cantonment for the first time, the Government may, until a local government is constituted in accordance with the provisions of the Ordinance, by order make any provision which appears necessary to it either for the administration of the Cantonment or for the constitution of the local government. The Government may, by notification in the official Gazette, direct that in any place declared a cantonment under subsection (1) the provisions of any enactment relating to local government other than the Ordinance shall have effect only to such extent or subject to such modifications, or that any authority constituted under any such enactment shall exercise authority

only to such extent, as may be specified in the notification. Section 57 of the Ordinance provides that members of union councils, including union Nazims and Naib Union Nazims, shall be elected through elections based on adult franchise and on the basis of a joint electorate. The Electoral College for elections of Vice-President and reserved seats for women, peasants, workers and minorities in the Board shall, be all members of Union Councils in the cantonment including Union Nazims and Naib Nazims. For reference relevant provisions of the Ordinance are reproduced hereinbelow: -

57. Franchise.-(1) Members of Union Councils including Union Nazims and Naib Union Nazims shall be elected through elections based on adult franchise and on the basis of joint electorate.

(2) The Electoral College for election of Vice-President and reserved seats of women, peasants and workers and minorities in the Board shall, be all members of the Union Councils in the cantonment including Union Nazims and Naib Nazims.

Explanation.-For the purpose of this section, all members of Union Councils notified as returned candidates in the elections held under this Ordinance, shall be deemed to be members of the Electoral College.

58. Authority for local government elections.-(1) All elections to the Union Council and the Board shall be organized and conducted by the President according to the rules made under this Ordinance and such rules may provide for all matters connected therewith or incidental thereto, including the time of holding the elections by-elections, corrupt or illegal practices and other election offences and the submission, trial and disposal of election petitions.

Provided that in a cantonment where no Board has been constituted, the function of President under this sub-section shall be performed by the Officer Commanding the station.

(3) [*sic.*] The Government may authorize any of its officers to exercise any of its powers and to perform any of its functions under this Ordinance.

61. Non-party elections.--Local government elections in the cantonment shall be held on non-party basis.

62. Joint candidacy and elections. - (1) A Union Nazim and Naib Union Nazim shall contest elections in their respective wards as joint candidates:

Provided that on occurrence of a casual vacancy a candidate for the office of a Union Nazim or Naib Union Nazim shall contest the election for such office in his individual capacity;

(2) Union Nazim and Naib Union Nazim securing the highest number of votes, as joint candidates shall be declared elected.

10. It is to be noted that under the Cantonment laws, total number of 43 Cantonments have been created in Pakistan, which are as under: -

Balochistan

- (1) Khuzdar Cantonment
- (2) Loralai Cantonment
- (3) Ormara Cantonment
- (4) Quetta Cantonment
- (5) Zhob Cantonment

Khyber Pakhtunkhwa

- (6) Abbottabad Cantonment
- (7) Bannu Cantonment
- (8) Dera Ismail Khan Cantonment
- (9) Kohat Cantonment
- (10) Mardan Cantonment
- (11) Nowshera Cantonment
- (12) Peshawar Cantonment
- (13) Risalpur Cantonment
- (14) Havelian Cantonment
- (15) Kala Bagh/Murree Galies Cantonment

Punjab

- (16) Attock Cantonment
- (17) Sanjwal Cantonment (adjacent to Attock Cantt)
- (18) Bhawalpur Cantonment
- (19) Chaklala Cantonment
- (20) Gujranwala Cantonment
- (21) Jhelum Cantonment
- (22) Kamra Cantonment
- (23) Kharian Cantonment
- (24) Mangla Cantonment
- (25) Multan Cantonment
- (26) Murree Hills Cantonment
- (27) Okara Cantonment
- (28) Rawalpindi Cantonment
- (29) Sargodha Cantonment
- (30) Shorkot Cantonment (PAF Rafiqui)
- (31) Sialkot Cantonment
- (32) Taxila Cantonment

- (33) Lahore Cantonment
- (34) Wah Cantonment
- (35) Walton Cantonment (Created out of the southern parts of the original Lahore Cantt.)

Sindh

- (36) Clifton Cantonment, Karachi
- (37) Faisal Cantonment, Karachi
- (38) Hyderabad Cantonment
- (39) Karachi Cantonment
- (40) Korangi Creek Cantonment, Karachi
- (41) Malir Cantonment, Karachi
- (42) Manora Cantonment, Karachi
- (43) Pano Aqil Cantonment

11. It is pertinent to mention here that despite a clear mandate of law, elections of the Cantonment Local Government, i.e. Members of Union Councils including Union Nazims and Naib Nazims, have not been held for the last 14 years. Similarly, Federal and Provincial Governments have also failed to hold elections of the Local Governments in all the Provinces and Islamabad Capital Territory through election Commission of Pakistan.

12. It may be observed that the life of a community is essentially the creation of its particular environment. It is difficult to establish an organization that would effectively look after the well being of all the social groups in a country. Only such political system can succeed which is essentially indigenous. Therefore, establishment of democratic institutions at the grass root level is basic requirement for the welfare of the society. The Local Self-Government institutions lay the foundation of such a system. They are based upon the recognition that the only way to respond to the needs of the individuals is to associate them with the process of authority. In this regard, it would be appropriate to quote Sydney Webb's remarks who said that any system of

government, however mechanically perfect, would fail to take roots in the midst of the masses of people, unless it was in some way grafted on to the spontaneous grouping of the people themselves. As such, the broad masses of people are to be genuinely associated with the management of their affairs and encouraged to work for their own welfare. Essentially, the institutions at local/grass root levels protect the human dignity of common man to which he is entitled.

13. Local Government or Municipal Government is a form of public administration, which in a majority of contexts, exists as the lowest tier of administration within a given state or district. In many countries, it usually comprises the third tier of government, often with greater powers than higher-level administrative divisions. The question of municipal autonomy is a key question of public administration and governance. It is noteworthy that Local Governments generally act within powers delegated to them by legislation or directives of the higher level of government. The political analysts have always emphasized on the importance of local self-government. There are two principles underlining the establishment of Local bodies. Firstly, local bodies enjoy extensive powers to act in a way they like for the betterment of the community unless restricted by law in any sphere of activity. Secondly, local bodies cannot go beyond the specific functions delineated to them in various acts and statutes.

14. The concept of participation of ordinary people in the conduct of public affairs was advanced by the liberal philosopher John Stuart Mill as early as the mid 19th century. He considered the broad involvement of citizens to be the most effective

guarantee of a well-functioning democratic polity, counterbalancing the threats posed by an over-powerful and interventionist state. In his view, the citizen's opportunity to articulate his views and assert his rights afforded him the best protection against any abuse of these rights by the state.

15. In general, this tier of government is responsible for decision-making in those policy areas which have a direct impact on the lives of local citizens, e.g. urban regeneration, housing, schools, employment and social security, health, arts, culture and sport, local public transport, water and energy, and regional planning. These are the areas where the local citizens must have the opportunity to exert direct influence on policy-makers and thus participate in the decision-making process. Thus, local self-government not only has a legal and a political dimension, but it also has sociological connotations, namely, it directly affects community life within a demarcated locality. It is pertinent to mention here that in the developed democracies, local self-government has contributed substantially to social and economic development and the emergence of a civil society and its importance for democratic development has been recognized consistently all over the world.

16. It is important to bear in mind that local government is the most vital element in a democracy, though not generally recognized as such. Existence of local bodies is important for strengthening the process of democracy. In the recent years, local self-government has been playing a vital role in the establishment of good governance and community development. The local bodies, at one end, provide services to the local community and,

on the other, act as an instrument of democratic self-government. The existence of local self-government provides mechanism for the enforcement of Fundamental Rights of the people. Such government bodies are helpful for development including education, health, social services as well as in improving law and order situation. In short, the local self-government is necessary not only for strengthening democracy in country but also for securing good governance, which is essential to ensure the welfare of the citizens. This tier of government is always appreciated by the general public because it remains within their approach, as such they get involved in the decision making process.

17. All modern states have developed a system of self-governing local authorities. In many countries, the basic unit of local self-government is the municipality. Over the course of history, two types of self-governing units, namely, cities and municipalities have evolved at local level. The territorial boundaries of units of local self-government are defined by law. local self-government is presumed to be in existence where a local government is established as a legal, corporate and political institution with decision-making powers. One of the main traits of local self-government is that there must be a representative body, a council or an assembly, directly elected by local citizens through elections, with budgetary autonomy and power to make legislation at local level. The brief of local government structure in various countries is given hereinbelow: -

INDIA

In India the local government is the third level of government apart from the State and Central

governments. There are two types of Local Government in operation; firstly, Panchayats in rural areas and Municipalities in urban areas. The Panchayats are a linked-system of local bodies with village panchayats (average population about 5,000), panchayat samities at the intermediate level (average population about 100,000), and district panchayats (average population about 1,000,000). The local government bodies are the democratic institutions at the basic level.

FRANCE

In France there are three main tiers of local administration; namely, the commune, department and region. These are both districts in which administrative decisions made at national level are carried out and local authorities with powers of their own. A local authority is a public-law corporation with its own name, territory, budget, employees, etc. and has specific powers and a certain degree of autonomy vis-à-vis central government. In addition, there are France's overseas territories and regional bodies (collectivités territoriales) with special status (Paris, Marseille, Lyon, Corsica, Mayotte and Saint-Pierre-et-Miquelon).

JAPAN

Since the Meiji restoration, Japan has had a local government system based on prefectures. The national government oversees much of the country. Municipal governments were historical villages. There are 47 prefectures. They have two main responsibilities; one is mediation between national and municipal governments, and the other is area wide administration. Now mergers are common for cost effective administration.

TURKEY

Turkey has two levels of local government; provinces (*iller*) and districts (*ilçeler*). The territory of Turkey is subdivided into 81 provinces for administrative purposes. The provinces are organized into 7 regions for census purposes; however, they do not represent an administrative structure. Each province is divided into districts, for a total of 923 districts.

SOUTH AFRICA

South Africa has a two tiered local government system comprising local municipalities which fall into district municipalities, and metropolitan municipalities which span both tiers of local government.

PAKISTAN

Local government is the third tier of government in Pakistan, after Federal Government and Provincial Government. There are three types of administrative unit of local government in Pakistan; namely, District Government Administrations, Town Municipal Administrations and Union Council Administrations. There are over five thousand local governments in Pakistan. After the promulgation of Local Government Ordinance, 2001, there established democratically elected local councils, each headed by a *Nazim* (Supervisor or Mayor). Some of the districts consisting of large metropolitan areas are called City Districts. A City District often contains subdivisions called Towns and Union Councils. As per local government laws, elections of union councils are to be held after every four years. District Governments also include a District Coordination Officer (DCO), who is a civil servant in-charge of all devolved departments. Currently, the Powers of *Nazim* are also held by the DCO.

18. Thus, in the light of the above, it is imperative upon the Government to ensure that the local government bodies

elections as envisaged under the law must be held from time to time so that the representatives of the people are enabled to participate in managing their affairs at the gross root levels and the Fundamental Rights guaranteed under the Constitution are protected and enforced.

19. Hereinabove are the detailed reasons of our order of even date, relevant paras therefrom are reproduced hereinbelow: -

"2. After discussing the issue at length in presence of Secretary Defence and also seeking instructions from the Election Commission, who is responsible to hold elections, following statement has been placed on record: -

"STATEMENT OF SECRETARY DEFENCE/ RESPONDENT NO.1

I, the Secretary Defence, respectfully request for extension in time during which elections are to be completed in the Cantonments boards and undertake that the entire process of the elections in all the Cantonment Boards shall be completed on or before the 15th September, 2013.

Sd/-
Lt. Gen (Retd)
Asif Yasin Malik
Secretary Defence/Respondent No.1"

The petitioner also expresses his satisfaction on the above statement.

3. Thus, in view of commitment made on behalf of the Executive, we allow this application and extend the period of holding the elections in the Cantonment Boards up to 15th September, 2013. Copy of this order be also sent to the Election Commission of Pakistan to ensure holding of the elections in terms of Constitutional provisions (Article 32 read with Article 140-A) on or before the 15th September, 2013.

4. We extend our gratitude and place on record our thanks to learned Attorney General for Pakistan as on account of his intervention the Executive has agreed to

hold the elections of Cantonment Boards, after a period of about 14 years.

5. We may point out that in view of the constitutional provisions and the principles of good governance, local bodies have to play an important role to achieve the welfare and good governance for the citizens of the country. At the same time we are also hopeful that the provincial governments as well as the administration of Islamabad shall also make arrangements as early as could be possible to hold local bodies elections in accordance with law."

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
2nd July, 2013
Nisar/*

Approved For Reporting