

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MR. JUSTICE GULZAR AHMED

MR. JUSTICE SH. AZMAT SAEED

CONSTITUTION PETITIONS NOS.39 & 90 OF 2011

Const.P.39/2011 Ch. Nasir Iqbal and others Vs.
Federation of Pakistan through Secretary
Law and others.

Const.P.90/2011. Imran Khan, Chairman, P.T.I., etc. Vs.
Federation of Pakistan.

For the petitioner (s): Mr. Haroon-ur-Rasheed, ASC
Mr. Mehmood A. Sheikh, AOR
Mr. Hamid Khan, Sr. ASC
Mian Abdur Rauf, ASC

On Court notice: Mr. Irfan Qadir,
Attorney General for Pakistan

For the Federation: M. Dil Muhammad Alizai, DAG

For the ECP: Mr. Muhammad Munir Paracha, Sr. ASC
Mr. Adbur Rehman Khan, Addl. DG (L)

For M/o Overseas: Mr. Nadeem Ashraf, Secy
Mr. Mehboob Alam, Dy Chief
Mr. Islam Din, Asstt. Chief
Mr. Khurram Sherazi, LO (OPF)

Date of hearing: 14.02.2013.

ORDER

These petitions have been filed *inter alia* by the Overseas
Citizens of Pakistan and Imran Khan, Chairman, Pakistan Tehrik-e-

Insaf (In Constitution Petition No.90 of 2011), wherein relief has been claimed to the following effect:-

“In view of the above circumstances and facts, it is humbly prayed that this Hon’ble Court may kindly be pleased to issue appropriate direction to the Respondents to make arrangements enabling the overseas Pakistanis as well to exercise their right of franchise as per mandate of the Constitution of Pakistan by preparing and updating electoral rolls and devising provisions for making it possible for Overseas Pakistanis to cast their votes in the forthcoming elections within the framework and scheme of the Constitution of Pakistan. It is further prayed that Respondents may kindly be directed to make appropriate measures for making it possible for the Overseas Pakistanis to cast their vote in Pakistan consulates and embassies like many other developed/developing countries do so.

Any other relief deemed appropriate under the circumstances of the case may also be granted.”

2. A similar relief has also been claimed by Ch. Nasir Iqbal and others (In Constitution Petition No.39 of 2011), which is reproduced herein below.

“It is therefore most humbly prayed that the instant petition may kindly be accepted and respondents be directed to take all those steps which are necessary for implementation of the fundamental right of vote to all overseas Pakistanis including arrangements in Consulate and Embassies of Pakistan all over the world before the next General Election for National and Provincial Assemblies and an opportunity be

provided to overseas Pakistanis of casting their votes.”

3. During hearing of the petitions from time to time in presence of the learned counsel for the parties except making different suggestions for making arrangements to evolve a mechanism so that the Overseas Citizens of Pakistan may exercise their right of franchise, no concrete progress was made.

4. In the circumstances, we had to issue notice to the learned Attorney General for Pakistan to assist the Court. Mr. Irfan Qadir, learned Attorney General has appeared and stated that his predecessor Molvi Anwar-ul-Haq, former Attorney General for Pakistan had made a statement during hearing of these petitions that an appropriate legislation would need to be adopted by the Parliament enabling the Overseas Citizens of Pakistan to exercise their right of vote during the general or by-elections in the country, therefore, now he would take up the matter with the high-ups to make progress before the forthcoming elections.

5. We may point out that during the previous hearings, an impression was also given to us that the Cabinet is taking necessary steps to promulgate the law on the subject. When the case was taken up, Mr. Nadeem Ashraf, Secretary, Government of Pakistan, Ministry of Overseas Pakistanis, who was present in the Court in connection with hearing of some other case, entered appearance and

stated that Ministry of Overseas Pakistanis has already proposed legislation on this subject but so far no further progress has been made.

6. Mr. Hamid Khan, learned counsel stated that in the neighbouring country by means of subordinate legislation i.e. The Registration of Electors Rules, 1960, the Electors, who are residing outside India had been registered as voters and according to him in different countries, different modes have been adopted to afford an opportunity to their Overseas Citizens to cast their votes in the election which includes arrangement for the polling, by extending such facilities at the Diplomatic Missions for Personal Voting, Postal Ballots, Proxy Voting, Electronic Voting or Fax Voting.

7. Mr. Muhammad Munir Paracha, learned counsel for the Election Commission of Pakistan stated that according to the database provided by the NADRA on the basis of NICOP Cards, Pakistan Origin Cards and Identity Cards, 4 million Overseas Pakistanis have been registered. The Secretary, M/o Overseas Pakistanis pointed out that according to the data available with the said Ministry, there are 7.5 million Overseas Pakistanis and according to the information of the said Ministry, 5.2 million Overseas Citizens of Pakistan have been registered by the NADRA and NICOP Cards have been issued to them. On having heard all the parties, we are of the opinion that:-

- (1) The Election Commission of Pakistan must ensure that all the Overseas Citizens of Pakistan, who are qualified/eligible for the registration of their votes in accordance with the Electoral Rolls Act, 1974 and the Rules framed there under must be registered as early as possible before the forthcoming elections.
- (2) The NADRA and the Ministry of Overseas Pakistanis may cooperate with the Election Commission of Pakistan for registration of Overseas Citizens of Pakistan as voters and if need be NADRA may also issue to eligible Overseas Citizens of Pakistan, NICOP Cards, as completing this exercise would be helpful in registering their names as voters, if their names have not been entered in the Electoral Lists so far. The Ministries of Law and Overseas Pakistanis as well as the Election Commission of Pakistan may convene a meeting to adopt a mechanism either by adopting an Electronic Voting System for which perhaps no legislation may be required. The possibility should also be explored for declaring Pakistani Diplomatic Missions (Embassies and Consulates, etc) as Polling Stations by the Election Commission of Pakistan where requisite information and data regarding Electoral Lists and Constituency-wise candidates could be made available electronically by the Election Commission of Pakistan, NADRA and M/o Overseas Pakistanis and after due identification and authentication of Overseas

Citizens of Pakistan may be provided the facility to cast their votes either electronically or through a ballot paper issued at such Diplomatic Mission so that they can exercise their Constitutional right of franchise. The ballot papers cast at the Diplomatic Mission could be placed in a sealed envelope and thereafter sent to the Election Commission of Pakistan for the purpose of onward transmission to the respective Returning Officer/Presiding Officer of the relevant Constituency, which can be noted on the said envelope containing the ballot papers.

- (3) Similarly, the Election Commission of Pakistan, as per the directions of this Court in the case of Worker's Party Pakistan v. Federation of Pakistan (PLD 2012 SC 681) can intimate all the Overseas Pakistanis, whose votes have already been registered, who are residing outside the Country about the details of their votes so they may make arrangements well before the time to report to any of the Diplomatic Mission for the purpose of casting the vote if the procedure tentatively discussed and noted hereinabove is adopted.
- (4) However, any other procedure or method which is acceptable under the law and requires no legislation can be adopted and if legislation is required, the concern authorities with the cooperation of the learned Attorney General for Pakistan may do the needful expeditiously before the forthcoming General Elections, so that all the

Overseas Citizens of Pakistan are given an opportunity to cast their votes.

8. The learned Attorney General for Pakistan stated that he needs some time to hold a meeting with all the concerned authorities i.e. Ministries of Law and Overseas Pakistanis as well as the Election Commission of Pakistan, therefore, the case is adjourned for 22nd February, 2013, enabling all concerned to consider the options noted hereinabove and in the meantime, the learned Attorney General for Pakistan shall contact all concerned quarters for the purpose noted hereinabove.

Chief Justice

Judge

Judge

Islamabad, the
14th February, 2013.