

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 Application No.5959/2013

(For extension of time in holding elections in Cantonment)

IN

Constitution Petition No.65 of 2009

Raja Rab Nawaz Vs. Federation of Pakistan and others

AND

Civil Misc. Application No.5508/2013 in CRP-Nil/2013

(For permission to file and argue the CRP)

IN

CMA-3258/2013 in Constitution Petition No.65 of 2009

For the petitioner(s): Nemo.

For the applicant: Mr. Muneer A. Malik,
Attorney General for Pakistan with
Mr. Asif Yaseen Malik, Secy. Defence
(In CMA-5959/2013)

Syed Zafar Abbas Naqvi, AOR
(In CMA-5508/2013)

For Respondent No.3: Nemo.

For ECP: Mr. Abdul Rehman, Addl. D.G. (L)

AND

Constitution Petition No.77 of 2010

(Only to the extent of holding local government elections)

President High Court Bar Association, etc. ... Petitioner(s)

Versus

Federation of Pakistan and others ... Respondent(s)

For the Petitioner(s): Nemo.

For the Applicant: Dr. M. Salah ud Din Mengal, ASC
Raja Abdul Ghafoor, AOR (CMA-6723/13)

On Court's Notice: Mr. Muneer A. Malik,
Attorney General for Pakistan

For the Federation: Mr. Shah Khawar, Addl. AGP

For Govt. of Balochistan: Mr. Nazim ud Din, AG
Mr. Abdul Latif Kakar, AAG

For Govt. of KPK: Mr. Abdul Latif Yousafzai, AG

For Govt. of Punjab: Mr. Muhammad Hanif Khattana, Addl. A.G.

For Govt. of Sindh: Mr. Qasim Mirjat, Addl. AG

For ECP: Mr. Muhammad Akram Sheikh, Sr. ASC
Mr. Mehmood A. Sheikh, AOR
Mr. Sher Afghan, Addl. Secy (Elections)

Date of hearing: 05.11.2013

ORDER

Iftikhar Muhammad Chaudhry, CJ. By means of instant order, we have to dispose of matters pertaining to the Local Bodies Elections which are required to be held under the command of Article 140(A) of the Constitution relating to:-

- a) Elections of the Cantonment Boards;
- b) Islamabad Capital Territory; and
- c) Khyber Pakhtunkhwa.

2. As far as elections of Cantonment Boards are concerned, a Constitution has been filed under Article 184(3) of the Constitution by Raja Rab Nawaz who is an Advocate of Supreme Court as well as former Member – Vice Chairman of Quetta Cantonment Board. This petition came up for hearing on 3.1.2013 and was disposed of with directions to the Federal Government *“not allow further extension in the variation of composition of the Cantonment Boards in terms of Section 14(1)(b) of the Act, after 5th May, 2013 unless conditions noted in these provisions are required to be in service compulsorily and in the meanwhile, steps shall be taken to ensure that the elections of the Cantonment Boards are held after completing the process of delimitations of the wards, etc., as per the Cantonment Ordinance, 2002 read with the Cantonments Local Government (Elections) Rules, 2012, as the Election Commission is also willing and ready to undertake the process of the election”*. Unfortunately, despite of passing of above order, elections were not held and in the meanwhile, on 7th May, 2013, CMA No. 3258/13 was filed for the extension of time. This

application came up for hearing on 2.7.2013 when following order was passed:-

"19. Hereinabove are the detailed reasons of our order of even date, relevant paras there from 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 holds elections, following statement his 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 140A) 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."

3. Detailed reasons of the above order were dictated which now have been published in the case titled Raja Rab Nawaz vs. Federation of Pakistan (2013 SCMR 1629). We have painfully noted that despite of above statement of the Secretary Defence, noted hereinabove, the elections were not conducted. However, CMA No.5959/13 was filed wherein request was made for further extension of time. It may be noted that in this application, plea has been taken that Federal Government contemplates to bring some amendments in the Cantonments Local Government (Elections) Ordinance, 2002, therefore, time may be extended for holding of Local Bodies Elections in the Cantonment Boards. In the meanwhile, Provincial Government of Balochistan, Punjab and Sindh have already made request to the ECP for holding of the Local Bodies Elections in their provinces and they have made respective requests in writing. As far as the Province of Sindh is concerned, on its behalf, it has been desired the elections shall be held on 27th November, 2013 whereas the Provinces of Balochistan and Punjab are ready to conduct elections on 7th of December, 2013.

4. We have asked the learned Attorney General of Pakistan that in such like situation when constitutional provisions have to be followed what would be the effect if the elections in the Cantonment Boards are not held or organized particularly in view of the statement of the Election Commission which has been referred to hereinable from the order dated 2.7.2013 showing its readiness to hold the elections. The learned Attorney General appeared and stated that a Committee has been constituted vide letter No. 2635-SPM/13, dated 10th September, 2013 to examine the proposed amendments in the Cantonments Local

Government (Elections) Ordinance, 2002 by the Ministry of Defence with a view that public representation in the Local Government is both inclusive and meaningful and has placed on record a draft Bill. However, we have pointed out to him that the contents of the Bill depicts democratic vision of the Government headed by a political party but as far as existing laws are concerned unless the same are in field, it is not possible to cause delay in the enforcement of constitutional provisions (Article 32 read with Articles 17 and 140A of the Constitution). However, the government is always free to make amendments in the laws and can change the composition or constitutionality of the elected bodies, if need be with retrospective effect as well. He himself is of the opinion that this Court had not shown haste in passing any directions as it is evident from the proceedings because petitioner Raja Rab Nawaz has filed Constitution petition No. 65 as far back as in the year 2009 and it came up for hearing in presence of the representatives of the respondents Federation of Pakistan, Director General Military Lands, Cantonment Board on 29.5.2012, 1.6.2012, 7.11.2012, 3.12.2012, 10.12.2012, 17.12.2012 and 18.12.2012. As far as last mentioned date i.e. 18.12.2012 is concerned, on behalf of Ministry of Defence, Commander Hussain Shahbaz appeared and filed CMA 5232/12 wherein it has been stated that *"in compliance of the Hon'ble Supreme Court order passed on 7 December, 2012, in the subject petition, it is submitted that Ministry of Defence has submitted a summary to get approval of Prime Minister to request Election Commission of Pakistan to hold election of local bodies in the Cantonment Board all over the country. The approval is awaited. On receipt of the same, the Election Commission of Pakistan will be requested to hold election in accordance with the provision of Rule 8 of Cantonment Local*

Government Election Rules, 2012". It was further stated "this Ministry has no intention to seek further extension (which is till 04 May, 2013) in the existing Boards sought earlier vide Section 14(1) of Cantonment Act, 1924".

5. However, subsequently a statement in writing has also been made by the Secretary Defence representing the Federation, for holding the elections on or before upto 15 September, 2013 but despite of it the commitment has not been fulfilled.

6. Reluctance to enforce the constitutional provisions for one or the other reason is not understandable to us. Therefore, having left with no option, we have to issue notice of the Contempt of Court to the Secretary Defence. Such notice shall be dealt with separately.

7. Again it is a matter of surprise for us that the Federation who is responsible to ensure the elections in the Cantonment Boards has raised another issue for the postponement of the elections in the name of amendments in the Cantonments Local Government (Elections) Ordinance, 2002, reference of which has already been made hereinabove.

8. We are of the considered opinion that in the name of the amendment of the laws, constitutional provisions cannot be allowed to be not adhered to. Two or three options are available to the Federation as we have studied the relevant provisions of the law with the assistance of the learned Attorney General namely:-

- (i) Without any further delay, under the existing laws on the subject, command of the Constitution under Articles 17, 32 and 140A to be fulfilled immediately and as the other Provinces have already expressed their readiness to hold the elections, therefore, the polls must be held either on 27th November, 2013 or on 7th December, 2013 as these two dates have been agreed by the Provinces of Sindh,

Balochistan and Punjab respectively. It would be an ideal situation and will earn an appreciation for the general masses as they have to be empowered under Article 140A as per its command establishing a Local Government system would devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments and no discrimination to the electors who are residing in the Cantonment Boards shall be permissible qua the electors who are residing in the non-Cantonment Boards where local bodies elections are likely to be held. This decision has to take by the Federal Government as early as could be possible but not later than 7 days.

- (ii) Otherwise the Court would enforce the provisions of Section 15E of the Cantonments Act, 1924 which reads as under:-

“15E. Term of office of members.-*(1) Subject to the provisions of this Act, a member of a Board shall hold office for a period of four years from the date of the notification of his election or nomination or from the date on which the vacancy has occurred in which he is elected or nominated, whichever be later:*

Provided that, notwithstanding the expiry of his term, such member shall continue to function as a member until the election or, as the case may be, nomination of his successor is notified under sub-section (5) of section 13A.

(2) The term of office of an ex-officio member of a Board shall continue so long as he holds the office by virtue of which he is such member.

(3) The term of office of an elected member who fills a causal vacancy shall commence from the date of his election and shall continue so long only as the member in whose place he is elected would have been entitled to hold office if the vacancy had not occurred”.

And despite of reluctance of Federal Government of Pakistan to hold election of Local Bodies, we are of the considered opinion that elected parliamentary government would prefer to devolve the rights upon the electors as it has been noted under the constitutional command so the fresh representation of the local

government may deal with their affairs instead of following the compelling procedure.

- (iii) As after 5th of May, 2013, no permission has been obtained to vary constitution of Boards in terms of Section 14(1)(b) of the Act, 1924, therefore, the Court shall examine that under which authority of the law and how the expenditure etc. are being made from the funds of the Cantonment Boards and if satisfactory explanation is not offered, the Court would be free to protect the rights of the general public living in the Cantonment Boards by pronouncing appropriate orders.

9. The Secretary Defence, Government of Pakistan shall submit report on or before 11th November, 2013 about the compliance or otherwise of this Court's order to the Registrar for our perusal in Chambers and passing appropriate orders, if need be.

10. Turning towards the case of ICT, unfortunately despite of issuing directions to the Federal Government from time to time make arrangements for holding elections in the ICT as it is the requirement of the Constitution, but so far no progress has been made except that a Bill has been prepared which is likely to be tabled before the Assembly or an Ordinance on the subject has to be issued. Suffice it to observe that it is the duty of the State to enforce the Constitution in its letter and spirit and there should not be any discrimination in terms of Article 25 of the Constitution but discrimination amongst the citizen living in different Federating Units is not permissible as if in the Province of Punjab elections are being held but residents of ICT are being deprived from participating in governance at grass roots level. Therefore, we hope that no further delay shall be caused in this behalf and within 7 days as it has been directed in the case of Cantonment Boards, progress report

shall be sent to the Registrar of this Court for our perusal in Chambers and passing appropriate orders.

11. Now as far as the case of Khyber Pakhtunkhwa is concerned, the learned Advocate General stated that Assembly has already passed the Act. Draft rules of delimitation have been prepared and after getting the assent of the Governor, the Local Government Act shall be enforced. It has been pointed out to him that as it is the duty of the Provincial and Federal Governments to ensure holding of Local Bodies system and devolve political, administrative and financial responsibility and the authority to the elected representatives of the local bodies, thus no departure is possible from constitutional provisions nor any concession can be extended for its enforcement. Therefore, adherence of constitutional provisions has to be made as early as could be possible. The Advocate General shall also submit report in this behalf within 7 days to the Registrar of this Court for our perusal in Chambers and for passing appropriate orders.

12. **CMA No.6723/2013.** This application has been filed on behalf of applicants by Mr. Salahuddin Mengal, learned counsel. He has stated that the elections of the local bodies should be held throughout the country on the same day and his second grievance is that delimitation has not taken place and further the Election Commission is not being provided stationery etc. by the government.

13. We are not inclined to agree with the contentions of learned counsel because the Provincial Government has already given date for polls keeping in view its convenience to hold elections. As far as delimitation is concerned, as per stand of learned Assistant Advocate General, Balochistan, the Provincial Government is fully geared up to hold elections meaning thereby the process of de-limitation has been

completed. So far as non providing of stationery etc. is concerned, it is not the job of this Court to give directions to the government in this regard. But, if the applicants have any grievance, they should approach to the Federal Government or the Election Commission of Pakistan for the redressal of such grievance. Instant application is dismissed accordingly.

Case stands disposed of.

Chief Justice

Judge

Judge

Islamabad.
5th November, 2013
A. Rehman

APPROVED FOR REPORTING.