

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Bench - I:

Mr. Justice Sardar Tariq Masood, ACJ

Mr. Justice Syed Mansoor Ali Shah

Mr. Justice Athar Minallah

Civil Petition No.4305 of 2023

(Against the order of the Balochistan High Court, Quetta,
dated 12.12.2023, passed in C.P No.2010/2023)

Gul Khan & others

... Petitioners

Versus

Saeed ur Rehman & others

.... Respondents

For the petitioners: Mr. Afnan Karim Kundi, ASC.
Syed Rifaqat Hussain Shah, AOR.
Mr. Adeel Aftab, Advocate.

For respondent No.1: Mr. Kamran Murtaza, Sr.ASC.

For respondent No.3: Mr. Taimoor Aslam Khan, ASC.
Mr. Masoom Khan Kakar, ASC.
Mr. M. Amir Malik, AOR.

For respondents No.5-8: Mr. Muhammad Arshad, DG (Law), ECP.
Mr. Khurram Shahzad, ADG (Law), ECP.
Mr. Falak Sher, Legal Consultant, ECP.

Date of hearing: 18 December 2023

ORDER

Syed Mansoor Ali Shah, J.- The role of a judge in a constitutional democracy is of a guardian who protects both the constitution and the democracy. Democracy rests on the sovereignty of the people which is exercised through free and fair elections held on a regular basis. Elections are therefore of central importance without which the government is not democratic. Constitutional democracy is nurtured by free and fair elections, and timely elections are the hallmark of a functioning democracy. Elections are thus essential to maintain the democratic process and public trust in the system. Elections play a crucial role in upholding the principles of democracy; they ensure that the will of the people is respected and that leadership is accountable to the public. When

election programme is announced, it is important for any litigation or legal challenges related to elections to be resolved promptly. Delaying elections or prolonging legal disputes can undermine public confidence in the electoral process and the democratic system as a whole. It can also create uncertainty and potentially destabilize the political environment.

2. It is in the background of this significance of the elections in a constitutional democracy that we attend to the question before us: whether we should now proceed with and adjudicate upon the controversy of delimitation of constituencies or be mindful and lay our hands off this matter at present and take it up for adjudication after the general elections so that the electoral process set in motion is successfully completed without any hindrance.

3. Briefly, the facts that have given rise to the said question are that vide short order¹ dated 12.12.2023 the Balochistan High Court allowed the constitution petition of respondents No.1 to 4 and declared the delimitation order dated 26.11.2023 of the Election Commission of Pakistan (**“ECP”**) to be void and of no legal effect. The High Court further directed the ECP to notify the final delimitation (Form-7) for both constituencies, in the following terms:

PB-I (Sherani-cum-Zhob):

District Sherani plus Patwar Circles Babar and Murgha Kibzai of District Zhob

PB-II (Zhob):

District Zhob minus Patwar Circles Babar and Murgha Kibzai.

However, no such notification has yet been issued as per the statement of the counsel for the ECP.

4. Without touching the merits of the case, we note with concern that while the impugned order was passed on 12 December 2023, the ECP has on 15 December 2023 notified the Election Programme of the General Elections-2024, under Section 57(2) of the Elections Act 2017, for the National Assembly and the Provincial Assemblies with the elections to be held on 8 February 2024. As per the said programme, the Returning Officers of the notified constituencies are to give public notice tomorrow, i.e., on 19 December 2023, of the dates specified by the ECP for different

¹ For detailed reasons to be recorded later

actions required to be done for holding the elections. In the Election Programme, the dates fixed for filing the nomination papers with the Returning Officers by the candidates are 20 December to 22 December 2023. Earlier on 3 November 2023, this Court in the case of *Supreme Court Bar Association v. Federation of Pakistan*² held:

18. The President of Pakistan and the ECP have announced the date for holding of general election to the National Assembly and to the provincial assemblies. The Federal Government, the Provincial Governments and the Islamabad Capital Territory have concurred. The matter of the holding of general election on 8 February 2024 stands resolved. No one should now put forward any pretext to derail democracy.

21 ... Pakistan was established democratically, is a democracy and must remain one. When general elections are due they have to be held. ...

5. It is well-established in democratic systems that general elections are the cornerstone of representative governance, ensuring the people's right to choose their leaders and influence policy decisions. The periodic conduct of these elections is not merely a procedural necessity but a fundamental principle upholding the democratic ethos. On the other hand, the delimitation of a constituency, although significant for ensuring fair and effective representation, does not hold the same immediacy or overriding importance as the conduct of general elections. Delimitation, by its nature, is a detailed and often prolonged exercise, aimed at creating constituencies that reflect current demographic realities. While this is undoubtedly important for the health of a democratic system, it is not so critical that it should impede the timely conduct of general elections. In applying the principle of proportionality, it becomes evident that the larger good – the uninterrupted continuation of democratic processes and the assurance of the people's right to government formation – takes precedence. Postponing general elections to address constituency delimitation could lead to a vacuum in governance and a potential crisis of legitimacy. Such a situation would be antithetical to the principles of democracy and the larger good of the populace. Therefore, the principle of proportionality and the concept of the larger good demand that general elections be given primacy. Issues concerning the delimitation of constituencies, while important, should be addressed subsequent to the

² 2023 SCP 337: Constitution Petitions No. 32 and 36 of 2023 decided on 03.11.2023.

elections. This approach ensures the continuity of democratic governance and upholds the fundamental rights of the electorate, while still acknowledging the need for eventual and necessary adjustments in constituency boundaries. Therefore, if we proceed to adjudicate upon the issue of delimitation of the constituencies before us thereby re-examining or altering the notified constituencies by the ECP under challenge, we will invariably upset the timeline of the Election Programme and derail the electoral process already set afoot by the Election Programme announced on 15 December, 2023.

6. Applying the scale of proportionality, to us the constitutional importance of holding of General Elections in a constitutional democracy as per the Election Programme far outweighs the need for re-examining the delimitation of a constituency at this critical electoral juncture. Any intervention by us in revisiting the contours of delimitation of a constituency done by the ECP at this stage will open floodgates of similar litigation, resulting in choking the election process. Therefore, proceeding with this case at this stage when the electoral clock has started ticking, would undermine democracy and adversely affect the fundamental right to vote and form a political government of millions of voters and political workers countrywide. The importance of elections in a democracy and the fulfillment of the larger objective of holding a timely election should be given due consideration to ensure that the Court remains within its democratic remit, which in the present case necessitates organizing and conducting of free, fair and timely elections by the ECP.

7. In the present case, because of the crucial stage of the election process, we are of the considered view that holding of general elections is far more imperative and should be prioritized over the delimitation of constituencies. The holding of timely elections in the two constituencies is more important than insisting upon otherwise proper delimitation thereof. Therefore, it is best that the court lays its hands off this matter for the time being till the General Elections are successfully completed. We, therefore, suspend the operation of the impugned order and grant leave to appeal to consider *inter alia* the question: whether in the circumstances of the case, the judicial intervention by the High Court with the delimitation order of the ECP, in its discretionary jurisdiction under Article 199 of the

Constitution, was justified. The ECP shall organize and conduct the election in the two constituencies as per the final delimitation notified on 30 November 2023 and in accordance with the Election Programme notified on 15 December 2023. The controversy as to the delimitation of the two constituencies shall be decided after the elections, only for the purpose of future general elections if conducted on the basis of the population census of 2023. Office shall fix this case for hearing after the General Elections, 2024 are over.

Acting Chief Justice

Judge

Islamabad,
18 December 2023.

Approved for reporting

Sadaqat

Judge