

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Maqbool Baqar

Civil Misc. Application Nos. 6762 and 2797 of 2020

(Non compliance of this Court's order dated 11.2.2014
passed in Civil Appeal No. 20 of 2014)

in

Civil Appeal No. 20/2014

*Administrator Municipal Corporation, Peshawar.
Taimur Hussain Amin and others.*

(in CMA 6762/20)

(in CMA 2797/20)

... Petitioners

Versus

Taimur Hussain Amin and others.

(in CMA 6762/20)

Administrator Municipal Corporation, Peshawar, etc.

(in CMA 2797/20)

... Respondents

On Court's Notice

For the Federation:

Mr. Khalid Javed Khan,
Attorney General for Pakistan and
Maulvi Ijaz-ul-Haq, DAG

For Government of
Balochistan:

Mr. Arbab Muhammad Zahir,
Advocate General and
Mr. Fareed Dogar,
Additional Advocate General

For Government of Khyber
Pakhtunkhwa:

Mr. Shumail Ahmed Butt, Advocate General
& Mr. Atif Ali Khan, Add'l Advocate General

For Government of Punjab:

Mr. Qasim Ali Chohan, Add'l Advocate
General with Mr. Noorulamin Mengal,
Secretary Local Government.

For Government of Sindh:

Nemo

For Election Commission of
Pakistan:

Mr. Afnan Karim Kundi, ASC
With Hon'ble Mr. Sikandar Sultan Raja,

Chief Election Commissioner & Members:
Hon'ble Mr. Altaf Ibrahim Qureshi,
Hon'ble Mrs. IrshadQaiser,
Hon'ble Mr. Shah Muhammad Jatoi and
Hon'ble Mr. Nisar Ahmed Durrani.
Dr. Akhtar Nazir, Secretary and
Mr. Muhammad Arshad, D.G. (Law)

For the Applicant
(in CMA No. 2797/2020):

Syed Rifaqat Hussain Shah, AOR

Date of Hearing:

04.02.2021

ORDER

Further to the last order the Hon'ble Election Commission of Pakistan ('**ECP**') has filed CMA No. 492/2021, Province of Punjab has filed CMA No. 483/2021, Province of Balochistan has filed CMA No. 488/2021 and Province of Khyber Pakhtunkhwa has filed CMA No. 497/2021. There is no representation of the Province of Sindh nor has any CMA been filed on its behalf despite issuance of notice to the learned Advocate-General Sindh and asking him to submit his government's position '*with regard to the holding of local government elections*'. In view of their failure we now direct the Government of Sindh, through Chief Secretary and Secretary Local Government, to submit the Government of Sindh's position through the Advocate-General Sindh, who should be in attendance on the next date or ensure that his office is competently represented. Some of those who are present have stated that the local government elections can not be held on account of one or more reasons as mentioned hereinbelow.

2. The census held in the year 2017 is still awaiting approval by the Council of Common Interests ('**CCI**') where after it will be notified. In this regard the learned Attorney-General for Pakistan ('**Attorney-General**') states that the Chairman of the CCI is the Prime Minister who will be convening a meeting of the CCI soon with regard to the census and requests that this mater may be adjourned to a date after three weeks. He further points out that the Government of Sindh has objected to the census results, particularly with regard to the provincial capital Karachi alleging that the numbers counted are considerably less than what they should be. He states that once the census is approved by the CCI and consequently notified the delimitation of constituencies of local

governments as mentioned in Article 222(b) of the Constitution of Islamic Republic of Pakistan (**'the Constitution'**) will take place in accordance with Chapter III of the Election Act, 2017. Reference was also made to sub-article (5) of Article 51 and to its proviso. The learned Attorney-General to submit minutes of the meeting of the CCI with regard to this matter.

3. Mr. Afnan Karim Kundi, the learned counsel representing the ECP, states that the delimitation in the Province of Punjab and in the Province of Khyber Pakhtukhwa has been done. The learned Additional Advocate General, Punjab supports his statement. However, the learned Advocate General, Khyber Pakhtunkhwa disputes it with regard to his province and states that the exercise carried out by the ECP does not conform to the law and is subject to the CCI accepting the census results. Mr. Kundi responds by referring to sections 17(2) and 19(6) of Election Act, 2017 read with section 6(5)(e) of the Khyber Pakhtunkhwa Local Government Act, 2013. The learned Advocate General, Balochistan states that the Balochistan Local Government Act, 2010 was amended, however, it is proposed to be further amended in view of the guidelines provided by the ECP.

4. Another reason stated for not holding local government elections is the prevalence of the Covid-19 virus. When we enquired from the learned Attorney-General whether this was a valid reason to not hold such elections and he referred to recent bye-elections and the elections held in Gilgit-Baltistan, and further submitted that the law does not provide any exception in this regard.

5. It was also pointed out that the Balochistan High Court has suspended the operation of a local government notification dated 17 January 2019 *vide* its order dated 12 February 2019 passed in C. P No. 143/2019 and such interim order has been extended from time to time and continues. However, the learned Judges of the High Court had noted on 7 October 2020 that, *'the issue of notification of the census is pending before the CCI and upon approval, would be notified'*. It is now almost two years since the said interim order was passed. We may observe that

election matters and those cases which prevent constitutional functionaries from carrying out their constitutional duties must be decided as soon as possible, particularly when a stay order has been issued the effect of which deters the holding of elections. Copy of this order and order dated 28 January 2021 be sent to the Registrar of the High Court of Balochistan for the kind attention of the Hon'ble Chief Justice for early fixation and disposal of the said petition and for the communication of the decision to this Court.

6. Reference was also made to C. P. No.D-2948/2020 before the High Court of Sindh, Karachi which has been filed against the ECP. However, no injunctive order has been passed in such petition and order dated 26 January 2021 states that the 2017 census results have '*been approved by the Federal Cabinet*' on 22 December 2020 and that the '*matter has been forwarded to the CCI for final approval*'. The order also records that the representative of the CCI had said that a '*meeting of CCI will be convened within two weeks*', which means by or before 8 February 2021. Copies of this order and order dated 28 January 2021 be sent to the Registrar of the High Court of Sindh and it be placed on the record of the said petition; however, it is clarified that the matter before this Court should not be used as a pretext for not hearing and deciding the petition before the Hon'ble High Court, which we expect will be done as soon as possible.

7. Whilst the tenure of the local governments in the provinces of Balochistan, Sindh and Khyber Pakhtunkhwa expired the subsisting tenure of the local representatives elected by the people of Punjab, we are informed by the learned Additional Advocate General, Punjab ('**AAG Punjab**'), was brought to an end by virtue of section 3(1) of the Punjab Local Government Act, 2019, reproduced hereunder:

"3. Dissolution of existing local governments.-

(1) All local governments constituted or continued under the Punjab Local Government Act, 2013 (Act XVIII of 2013) are hereby dissolved."

Since no reason for the dissolution of the subsisting local governments was mentioned in the cited provision we enquired from the learned AAG Punjab to inform us about the reason which uprooted grassroots

democracy in the Province of Punjab, and he responded by stating that the dissolution has been challenged before this Court in CPLA Nos. 48/2019 and 7/2020. Since the learned AGP Punjab did not answer our query we then asked him to respond to a hypothetical query (and one which had nothing to do with the merits of the referred to pending cases): (1) Whether the Constitution, which mandates local governments, also envisages premature termination of local governments? (2) Whether local governments can be dissolved for no rhyme or reason? But, the learned AAG Punjab elected not to answer, and we are left to wonder whether his conscience prevented him from answering. Therefore, the Advocate-General Punjab is directed to be in attendance on the next date of hearing and is directed to submit a written reply to our aforesaid queries as well as to the following queries: (3) Whether the majority of the members of a provincial assembly can dissolve local governments when those who are elected are their opponents? (4) Whether by not holding local government elections within the prescribed one year period mentioned in sub-section (2) of section 3 of the Punjab Local Government Act, 2019 (later extended to 21 months) the dissolved local governments stand resurrected?

8. We also posed the aforementioned first question to the learned Attorney-General who was refreshingly candid to state that local governments are mandated by the Constitution and added that he has always disavowed arbitrary dissolution of any elected body and through his published articles had decried the erstwhile Article 58(2)(b) of the Constitution, which was used to dissolve Parliament.

9. To come up on **Monday 1 March 2021 at 11.30 am**. The office is directed to send copies of this order to all concerned.

Judge

Judge

Islamabad
04.02.2021
Rizwan