

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CONSTITUTION PETITION NO.48 OF 2019

(Asad Ali Khan and others v. Province of Punjab through Secretary Government of Punjab and others)

AND

CONSTITUTION PETITION NO.7 OF 2020

(Daniyal Aziz v. Province of Punjab through Chief Secretary, Civil Secretariat, Lahore and others)

AND

CMA NO.6762 OF 2020 IN CIVIL APPEAL NO.20 OF 2014.

(Administrator Municipal Corporation, Peshawar v. Taimur Hussain Amin and others)

For the Petitioner(s): Mr. M. Nawazish Ali Pirzada, ASC
Syed Rifaqat H. Shah, AOR
(in Const.P.48/19)

For the Respondent(s): Barrister Qasim Ali Chohan,
Addl. A. G. Punjab.
Ch. Abrar Ahmed, Director Law,
Local Government, Punjab.
(in Const.P.48/19)

On Court's Notice: Mr. Khalid Jawed Khan,
Attorney General for Pakistan
Mr. Sohail Mehmood, Addl. AGP.

For ECP: Mr. Afnan Karim Kundi, ASC.
Mr. Sajeel Sheryar Swati, ASC.
Dr. Akhter Nazir, Secretary ECP.
Mr. M. Arshad, D.G. Law ECP.
Ms. Saima Tariq Janjua, Deputy
Director, ECP.

Mr. Zahid Sultan Khan Minhas,
ASC.
(in Const. P.07/2020)

Date of Hearing: 25.03.2021.

JUDGMENT

GULZAR AHMED, CJ.- Elections under the Punjab Local Government Act, 2013 (**the Act of 2013**) were held in phases in the year 2015-2016. Under Section 30(1) of the Act of 2013, the term of office of the local governments were provided to be five years commencing from the date on which it holds its first meeting. It is stated that first meeting under the Act of 2013 was held in January, 2017 and the local governments were to complete their term of office in January, 2022. On 30.04.2019, the Punjab Local Government Act, 2019 (**the Act of 2019**) was promulgated by the Provincial Assembly of Punjab. By Section 312 of the Act of 2019, the Act of 2013 was repealed. Section 3(1) of the Act of 2019 dissolved all local governments constituted or continued under the Act of 2013. Sub-Section (2) thereof provided that as soon as may be but not later than one year of the commencement of the Act of 2019, the Government shall constitute succeeding local governments in accordance with the provisions of Section 15 of the Act of 2019. Section 3(2) of the Act of 2019 was amended by the Punjab Local Government (Amendment) Act, 2020, published on 02.07.2020, by inserting the words "twenty one months" in place of "one year".

2. The petitioners have filed these constitution petitions under Article 184(3) of the Constitution, *inter alia*, challenging the *vires* of Section 3 of the Act of 2019 on the ground that in terms of Articles 140A, 7, 17 and 32 of the

Constitution, the Provincial Government had no power to dissolve the elected local governments, whose term of office has not expired.

3. Learned counsel for the petitioners in Constitution Petition No.48 of 2019 has contended that the local governments in Punjab were elected under the Act of 2013 and they were to remain in office for five years but such period of the local governments' was abruptly brought to an end by the promulgation of the Act of 2019. Section 3 thereof prematurely dissolved all local governments in the province of Punjab. He has contended that Section 3 of the Act of 2019 is *ultra vires* the Articles 140A, 7, 17 and 32 of the Constitution and relied upon the case of Mian Muhammad Nawaz Sharif vs. President of Pakistan and others (PLD 1993 SC 473). He has further contended that the term "the State" is defined in Article 7 of the Constitution and has been given meaning of the Federal Government, Majlis-e-Shoora (Parliament) a Provincial Government, a Provincial Assembly and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess. He has contended that the local government is a third tier of Government after Federal and Provincial Governments. This third tier of government was elected under the Act of 2013. The Provincial Assembly was not competent to dissolve this third tier of elected Government. In this regard learned counsel has relied upon the cases of Government of Sindh through Secretary Health Department and others vs. Dr. Nadeem Rizvi and other (2020

SCMR 1) and Lahore Development Authority through its DG vs. Imrana Tiwana and others (2015 SCMR 1739). He has further contended that the act of the Provincial Government of dissolving local governments is demonstratively not fair as is apparent from the fact that Section 3(2) of the Act of 2019 initially provided one year for constituting of succeeding local governments but it was not done, rather the period of one year was extended to twenty one months by amending sub-Section (2) *ibid* but during this extended period also local governments were not constituted and even after expiry of twenty one months, there is no sign of constitution of local governments in Punjab.

4. Learned counsel for the petitioner in Constitution Petition No.7 of 2020 adopted the arguments advanced by the learned counsel for the petitioners in Constitution Petition No.48 of 2019.

5. On the other hand, learned Additional Advocate General, Punjab (**AAG**) has supported the Act of 2019. He has contended that the Act of 2013 was a defective law containing separate multi-tiered local governments for urban and rural areas at District level and the Act of 2019 was promulgated by the Provincial Assembly of Punjab, in order to refine the local government structure and introduce the City Government Model, where directly elected Mayor will be responsible to deliver on all interrelated Urban City Model. Learned AAG has further contended that the Provincial Assembly of Punjab is a competent legislative body in terms of

Article 140A of the Constitution in enacting the Act of 2019, repealing the Act of 2013 and dissolving the local governments. He in support of his submission has relied upon Imrana Tiwana's case (supra).

6. Learned Attorney General for Pakistan (**AGP**), who has appeared on Court's Notice, has argued that the very constitution petitions of the petitioners before this Court were not maintainable, for that, the petitioners had remedy of challenging the same under Article 199 of the Constitution before the High Court and it is not shown as to why such remedy in the first instance was not availed by the petitioners. He has referred to Article 243U of the Indian Constitution and contended that had similar Article been provided in our Constitution, Section 3 of the Act of 2019 would have been adjudged *ultra vires* the Constitution. He has contended that as provision similar to the Indian Constitution is not available in our Constitution, thus, Section 3 of the Act of 2019 could not be adjudged *ultra vires*. He has further contended that the Act of 2019 is made by the competent legislation, i.e. the Provincial Assembly of Punjab, which could not be struck down on the ground of unreasonableness. He has contended that even if Section 3 of the Act of 2019 is struck down, the only recourse available is that of holding of fresh elections of local governments in Punjab. In support of his submissions the learned AGP has relied upon the case of Federation of Pakistan and others vs.

Haji Muhammad Saifullah Khan and others (PLD 1989 Supreme Court 166).

7. As the learned AGP has raised the question of maintainability of the instant constitution petitions under Article 184(3) of the Constitution, we would decide such issue in the first place. For reference, Article 184(3) of the Constitution is as follows: -

"184.Original jurisdiction of Supreme Court.-

(1)

(2)

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article."

8. The Question of maintainability of the constitution petition before this Court under Article 184(3) of the Constitution has elaborately been dealt with by a 11-Member Bench of this Court in Miss Benazir Bhutto's case (supra). In this reported case, the amendment made in the Political Parties Act 1962 being violative of Articles 17 and 25 of the Constitution besides, *vires* of the Freedom of Association Order, 1978 and also the constitutionality of Article 270A of the Constitution, were challenged. This Court observed as follows:-

"Therefore, there can be no doubt that when the impugned legislation by reference to its provisions is ex facie violative of Fundamental Rights of an individual or political parties or associations or unions, proceedings lie for the enforcement of those rights irrespective of the fact whether any prejudicial order has been passed by the Executive

under the law as the Constitution treats the Fundamental Rights as superior to ordinary legislation and for that reason sub-Articles (1) and (2) of Article 8 of the Constitution have been enacted which clearly reflect the object and intention of the framers of the Constitution, that is, to keep the Fundamental Rights at a high pedestal and to save their enjoyment from legislative infractions. Sub-Article (1) of Article 8 lays down that any law in so far as it is inconsistent with the rights conferred by this Chapter" shall, to the extent of such inconsistency, be void. This could not have been without a purpose but to preserve and protect the Fundamental Rights. Sub-Article (2) of Article 8 places a restriction on the Legislature not to make law which take away or abridges the rights so conferred, and any law made in contravention of this clause shall to the extent of such contravention, be void. Article 199(1)(c) authorises the High Court to enforce the Fundamental Rights of an aggrieved person and to declare that so much of the law which is inconsistent with the Fundamental Rights shall be void. Therefore, there is the power to declare the law to be void and the power to enforce the Fundamental Rights which are violated by the law itself. Article 184(3) of the Constitution empowers the Supreme Court to enforce the Fundamental Rights where the question of public importance arises in relation thereto. And if looked at from this angle it is hardly of any importance whether the Executive has passed a prejudicial order or not when the infraction of the Fundamental Rights takes place by the operation of the law itself. In this context what would be relevant would be the language of the provisions of the impugned Act itself. It will then not be a question of the Court merely granting a declaration as to the validity or invalidity of law in the abstract. Reference in this connection may be made to K.K. Kochunni v. State of Madras, A I R 1959 S C 725,"

9. In the case in hand also, the petitioners have raised the question of very constitutionality of Section 3 of the Act of 2019, being violative of Articles 17, 140A, 7 and 32 of the Constitution. Combined reading of these Articles shows that they have weaved the very fabric of the local government system and Article 17 *ibid* has provided the bedrock on which

the local government system stands or rests. Infraction of Article 17 *ibid* fragments and tears apart the whole local government system and the local governments established by it. Thus, the very relevance of Article 17 of the Constitution, which guarantees to the citizen fundamental right, *inter alia*, to form and be a member of a political party, surely raises the question of public importance with reference to the enforcement of the fundamental rights. Thus, the petitions before this Court under Article 184(3) of the Constitution will be maintainable.

10. The petitioners in Constitution Petition No.48 of the 2019 were all elected and chosen representatives of the people of Punjab in their respective local governments under the Act of 2013 and their term of office was for the period of five years. Their term of office was abruptly brought to an end by promulgation of the Act of 2019, in that, Section 3 thereof has dissolved all local governments in the province of Punjab without allowing them to run their period provided in law. The petitioner in Constitution Petition No.7 of 2020 is also a public spirited person and voter for electing local government in the province of Punjab and striving for establishment of rule of law and good governance in the Country.

11. The grievance of the petitioners is that the elected local governments, which were elected under the Act of 2013, could not have been dissolved before the expiry of their term of five years as provided by law by making provision of Section 3 in the Act of 2019. It was asserted before this Court

that such manner of dissolution of local governments is not permissible under the mandate of the Constitution, more particularly, the provisions of Articles 17, 7, 32 and 140A of the Constitution. Article 140A of the Constitution is as follows: -

"140A. Local Government. Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

(2) Elections to the local governments shall be held by the Election Commission of Pakistan."

12. The reading of the above provision of the Constitution demonstratively envisages the establishment of local government system by law to be made by the provinces. It also require devolving of political, administrative and financial responsibility and authority to the elected representatives of the local governments. Under this very provision of the Constitution, the province of Punjab has promulgated the Act of 2013 for the establishment of a local government system in province of Punjab and devolving of political, administrative and financial responsibility and authority to the elected representatives of the local governments. Election Commission of Pakistan is mandated to hold elections of local governments. Under the Act of 2013, elections of the local governments were held in the province of Punjab in phases in the years -2015-2016, as a result of which local governments in the province of Punjab were elected and by Section 30 of the Act of 2013, a local government was to remain in office for a period of five years

from the date it holds its first meeting. There is no dispute that the first meeting of the local governments in Punjab was held in January, 2017 and thus, the local governments were to remain in office until January, 2022. Section 3 of the Act of 2019 is as follows: -

“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.

(2) As soon as may be but not later than one year of the commencement of this Act, the Government shall constitute succeeding local governments in accordance with the provisions of section 15 of this Act.”

Sub-Section (2) *ibid* provided that as soon as may be but not later than ‘one year’ of the commencement of the Act of 2019, the Government shall constitute succeeding local governments in accordance with the provisions of Section 15 of the Act of 2019. The said Sub-Section was amended by the Punjab Local Government (Amendment) Act, 2020, by inserting the words “twenty one months” in place of “one year”. It is not necessary for us to go into the implication of Section 15 of the Act of 2019, for it deals with the constitution of the local governments.

13. There is no dispute that the local government’s elections, held under the Act of 2013 in the years 2015-2016, were on political party basis. Thus, the question arises whether local governments elected under the Act of 2013 could at all be dissolved and whether the provision of Section

3 of the Act of 2019, which has dissolved the local governments, is at all *ultra vires* the Constitution.

14. As noted above, Article 140A of the Constitution has mandated on each province by law to establish local government system. This is a mandatory provision, which every province has to implement. In Article 7 of the Constitution, the term 'State' has been defined as Federal Government, Majlis-e-Shoora (Parliament) a Provincial Government, a Provincial Assembly and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess. By this very definition of the term State, the local government has been given status of a State and apparently, it is a third tier of government in the Federation of Pakistan. Article 17 of the Constitution provides for Freedom of Association and gives rights to every citizen to form associations, unions, or form or be a member of a political party. Further, Article 32 of the Constitution is part of a Principles of Policy of the State and it provides that the State shall encourage local government institutions composed of elected representatives of the area concerned and in such institutions, special representation will be given to peasants, workers and women, in the establishment of the local government system by law. Thus, Article 140A read with Articles 7, 17 and 32 are complementary to each other and work as a syntheses for the establishment and functioning of the local governments.

15. Article 32 of the Constitution, as part of Principles of Policy, although is not enforceable by Court nor it can be made basis alone for adjudging any law to be void but in making law, the State is required to be guided by the directives of the Principles of Policy and has to ensure that these directives of Principles of Policy are duly reflected in making of law, for these Principles of Policy are the pronounced objectives of the State for the socio-economic development of the citizens for the ultimate establishment of an egalitarian society. These directives Principles of Policy of the State have a place in overall working of the State, and all acts of the State organs and the functionaries of the State have to be in consonance with these directives of the Principles of Policy. No inconsistency in this regard can be made by the State or State Organs in performance of its functions.

16. Article 17 enjoins upon the citizens right to form associations, unions, or form or be a member of a political party. This is a fundamental right given to the citizen by the Constitution. The right to form or be a member of a political party, nurtures in itself principles of democracy and liberties, which inheres in itself establishment of a popular government at the level of the State. Thus, the right to form or be a member of a political party inherently implies in it right to form or be a member of a political party and to contest elections and in succeeding such elections, to hold elected office for a duration provided by law. Therefore, the local

government system established under Article 140A of the Constitution through Provincial Legislation, when translates into an elected local government for a specified period of time by law, cannot be dissolved before the period of its expiry, as such action will directly come in conflict with Article 17 of the Constitution read with Articles 140A, 7 and 32 of the Constitution.

17. There is no cavil to the proposition that Provincial Legislation is competent to make law and the Act of 2019 has been made by competent legislation. The difficulty is only with regard to Section 3 of the Act of 2019, where it brings about total dissolution of the local governments in Punjab and all elected representatives are sent home packing without allowing them to complete their term of office, which otherwise was allowed to them under the Act of 2013.

18. As noted above, the trampling of elected local governments, which has come with its mandate and with promise to the people of their constituencies, cannot be dissolved by Section 3 of the Act of 2019, for it is in direct conflict with Articles 17 read with Articles 140A, 7 and 32 of the Constitution. The dissolution of the local government has also disenfranchised the people, who have voted for their representatives in the local governments.

19. So far the Act of 2013 is concerned, though it provides for law for removal of elected representatives from the office of local government and reasons and procedure for it is also provided but the provision for very dissolution of the

local government as contained in Section 126 was omitted by the Punjab Local Government (Amendment) Act, 2017. So the power of very dissolving the local governments was not possessed by the Province in the Act of 2013. Section 233 of the Act of 2019 makes provision for suspension or dissolution of a local government and it provides for giving of reasons by the government, and manner and procedure to be adopted for this purpose. This very Section itself admits and recognizes that the local governments cannot be suspended or dissolved on mere desire of the Province.

20. Article 137 of the Constitution provides that subject to the Constitution, the Executive Authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws. At the same time, Article 8 of the Constitution, contained in Chapter 1 of Part II thereof, under the heading of Fundamental Rights, provides that any law, custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by the said Chapter, shall to the extent of such inconsistency be void and the State shall not make any law, which takes away or abridges the rights so conferred, and any law made in contravention of the said clause to the extent of such contravention be void.

21. In Mian Muhammad Nawaz Sharif's case (supra) this Court while dealing with Article 17 of the Constitution, observed as follows: -

“Accordingly, the basic right “to form or be a member of a political party” conferred by Article

17(2) comprises the right of that political party not only to form a political party, contest elections under its banner but also, after successfully contesting the elections, the right to form the Government if its members, elected to that body, are in possession of the requisite majority. The Government of the political party so formed must implement the programme of the political party which the electorate has mandated it to carry into effect. Any unlawful order which results in frustrating this activity, by removing it from office before the completion of its normal tenure would, therefore, constitute an infringement of this Fundamental Right.

In this connection, the interpretation of the word "operating" in Article 17(2) given by my learned brother Shafiur Rahman, J. further clarifies this aspect of the matter. He has rightly pointed out that the term "operating" includes both healthy and unhealthy operation of a political party. While Article 17 contains limitations and checks against unhealthy operation of the political party; no provision exists therein in relation to its healthy operation. However, the mere omission to make any specific provision in regard to this aspect does not imply that Fundamental Right 17 does not also comprise this aspect of the matter. Indeed, a positive right implies, as part of the same right, a negative right and vice versa (see the views of Jackson, J. for the majority and Murphy, J. concurring in *West Virginia State Board of Education v. Barnette* (1942) 319 U.S. 624. Hence, if the lawful functioning of a Government of political party is frustrated (by its dismissal) by an unlawful order, such an order is an impediment in the healthy functioning of the political party and would, therefore, constitute an infringement of the fundamental right conferred by Article 17(2)."

22. Further, in Imrana Tiwana's case (supra), this Court while dealing with Articles 137 and 140A of the Constitution observed as follows:

"36. Articles 137 and 140A have to be read in harmony. Neither overrides the other. These provisions provide a scheme for a representative government and participatory democracy in the country. These provide a scheme to establish Local Government and articulate a framework within which the Provincial Government must function. The authority conferred on the Province and the responsibilities devolved on the Local Government

form part of a common scheme. These are not to be used as trumps. One cannot cancel the other. These are co-equal norms. They weave the constitutional fabric."

23. Admittedly, the local governments' offices in Punjab were political Governments and had fundamental right as provided in the Constitution to run for their duration as provided by law. As held in Imrana Tiwana's case (supra), the Province has no power to cancel local government created under Article 140A of the Constitution. The local governments as per law were entitled to function for the duration of five (05) years as provided in the Act of 2013 and implement the schemes, which they have promised to the voters from their constituencies. Such could not have been eroded by making provision of Section 3 of the Act of 2019, as it not only tramples the elected local governments but also tramples upon the fundamental rights of the citizenry, who have voted to elect the local governments. This could only be considered as an act for which the provision in Clauses (1) and (2) of Article 8, in Chapter 1 of Part II, of the Constitution, has been made.

24. For what has been stated above, the submissions made by the learned AAG, does not hold ground. So far the submission of the learned AGP with reference to Indian Constitution is concerned, the same is not relevant and is also distinguishable from the facts and circumstances of the present case. Further, the submission of the learned AGP on the basis of judgment in Haji Muhammad Saifullah Khan's case (supra), we note that in the said judgment, the very

action of the President under Article 58(2)(b) of the Constitution was found to have not been exercised in accordance with law but as the elections had been called and date for the same had been announced, the Court did not consider it fit to restore the Assembly. However, in the instant case neither the elections have been called nor the date of elections has been announced, therefore, the ratio of the said case is not applicable to the instant case.

25. For what has been discussed above, Section 3 of the Act of 2019 is declared to be *ultra vires* the Constitution. Consequently, the Local Governments as were existing in the Province of Punjab prior to promulgation of the said section stands restored and shall complete their term in accordance with law.

26. The above are the reasons of our short order of even date, which reads as under: -

“We have heard the learned ASC for the petitioners, the learned Additional Advocate General, Punjab so also the learned Attorney General for Pakistan on Court’s notice and have also gone through the record of the case.

2. For reasons to be recorded separately, Constitution Petition No.48 of 2019 is allowed and Section 3 of the Punjab Local Government Act, 2019 is declared to be *ultra vires* the Constitution and the Local Governments as were existing in the Province of Punjab prior to promulgation of the said section stands restored and it shall complete its term in accordance with law.

3. As Constitution Petition No.7 of 2020 is also for the same relief as in the Constitution Petition No.48 of 2019, the same is also disposed of in terms as noted in para-2 above.

C.M.A.No.6762 of 2020

4. In view of the disposal of Constitution Petitions No.48 of 2019 and 7 of 2020, this application has become infructuous and is disposed of."

Chief Justice

Judge

Judge

ISLAMABAD.

25.03.2021.

*Rabbani/**

'Approved For Reporting'