

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

**C. P. No. D-4954 of 2022**

Pakistan Tehreek-e-Insaf & others.....Petitioners

Versus

Province of Sindh & others.....Respondents

**C. P. No. D-5041 of 2022**

Monem Zafar Khan & another.....Petitioners

Versus

Election Commission of Pakistan & others.....Respondents

Abdul Wahab Balouch, Mumtaz Gopang, Abdul Lateef and Muhammad Imran Qureshi, Advocates, for the Petitioners in CP No. D-4954 of 2022. Usman Farooque and Saifuddin Advocates for the Petitioner in C. P. No. D-5041 of 2022.

Kazi Abdul Hameed Siddiqui, DAG along with Zia Arif Janjua, Law Officer, Pakistan Rangers, Sindh.

Hassan Akbar, Advocate General, Sindh, Muhammad Jawwad Dero, Zeeshan Adhi, and Ch. Muhammad Rafique Rajorvi, Additional Advocates General, Sindh, Saifullah, Assistant Advocate General, Sindh, along with Muhammad Sohail Rajput, Chief Secretary, Sindh, Ghulam Nabi Memon, Inspector General of Police, Fazal Hussain, Additional Secretary, Local Government.

Aijaz Anwar Chohan, Provincial Election Commissioner, Sindh, Ali Raza Sial, Joint Provincial Election Commissioner, Abdullah Hanjrah, Sr. Law Officer and Sarmad Sarwar, Law Officer, Election Commission of Pakistan,

Tariq Mansoor, Ahmed Zameer and Naeem Siddiqui, Advocates, along with Khawaja Izhar-ul-Haq and Waseem Akhtar, for the MQM Pakistan, the Intervener.

Date of hearing : 14.11.2022

## **ORDER**

**YOUSUF ALI SAYEED, J.** - The captioned Petitions pertain to the 2<sup>nd</sup> Phase of the Local Government Elections to be held in the Province, specifically Karachi and Hyderabad/Thatta Divisions (the “**Election**”), as have been repeatedly postponed from time to time, without any fresh polling date presently being notified. As such, the Petitioners have invoked the jurisdiction of this Court under Article 199 of the Court, seeking that the Election Commission of Pakistan (the “**ECP**”) be directed to conduct the Election without further delay, or at least announce the fresh date for polling in that regard.

2. Through Notification No.F.3(1)/2022-LGE(S) dated 29.04.2022, the ECP had initially designated 24.07.2022 to be the day that polling in respect of the Election was to take place, but the same was put off to 28.08.2022 vide the ECP’s subsequent Notification No.F.3(1)/2022-LGE(S) (Vol-1.1) dated 20.07.2022, stating as follows:-

### **ELECTION COMMISSION OF PAKISTAN**

#### **NOTIFICATION**

**Islamabad, the 20<sup>th</sup> July, 2022.**

**No.F.3(1)/2022-LGE(S) (Vol-1.1):**-- In pursuance of the Order of the Election Commission of Pakistan dated 20<sup>th</sup> July 2022 and in partial modification of this Commission’s notifications of even number dated 29<sup>th</sup> April 2022 and 10<sup>th</sup> June 2022, and in exercise of the powers under Article 218 (3) of the Constitution of the Islamic Republic of Pakistan read with Sections 58 and 229 of the Elections Act 2017 and all other powers enabling it in that behalf, the Election Commission of Pakistan is pleased to postpone the 2<sup>nd</sup> phase of local government elections in Karachi and Hyderabad/ Thatta divisions to the extent of poll date. The poll shall now be held on **28<sup>th</sup> August, 2022.**”

3. While the Notification dated 20.07.2022 itself was silent on the reason for postponement, an underlying letter dated 18.07.2022 addressed by the Provincial Election Commissioner to the Secretary Election Commission of Pakistan, Islamabad has been filed alongwith C.P No. D-4424 of 2022, which reflects that such action was taken due to the forecast of thunderstorms and torrential rain in Karachi and Hyderabad Divisions in the wake of the widespread flooding that had already blighted other parts of the Province. Whilst that postponement was nonetheless challenged before this Court through Constitutional Petitions Nos. D-4424/22 and D-4670/22, the same were dismissed by this very Bench vide an Order dated 22.08.2022, as we were satisfied that there was valid cause for such postponement at that point in time and the functionaries of the ECP in attendance had even otherwise stated during the course of proceedings that the Election was intended to take place on 28.08.2022, as per the revised schedule. The relevant excerpt from the aforementioned Order made in those Petitions reads thus:

“Under the circumstances, it is apparent the Notification for postponement has been issued for due cause and it is a matter of public record that there has been heavy rainfall across the Province, causing widespread devastation, and several district have been declared to be calamity hit areas. Indeed, as it transpired, the weather conditions on the 24<sup>th</sup> and 25<sup>th</sup> of July were such as would have completely undermined any meaningful voter turnout. As such we see no cause for interference on that score, especially when the functionaries of the Election Commission in attendance have also stated that the Elections are intended to take place as per the present schedule.”

[underlining added]

4. However, vide a letter dated 23.08.2022 addressed to the Provincial Election Commissioner, Sindh, Karachi, a request for further postponement was made by the Government of Sindh on the ground that due to ongoing relief operations in flood affected Districts, it would be difficult to retrieve a sufficient number of police personnel from those areas to bolster security at the polling stations in Hyderabad and Karachi Divisions, hence it would be administratively difficult to hold the Election on 28.08.2022, with it being sought that the date thus be reconsidered. In response, the Provincial Election Commissioner, Sindh, Karachi, issued Notification No.F.3(1)/2022-LGE(S) (Vol-III) on the very next day, once again postponing the Election, but on this occasion without announcing any future date, prompting the respective Petitioners to file the present Petitions. That Notification dated 24.08.2022 provided as follows:-

**ELECTION COMMISSION OF PAKISTAN**

**NOTIFICATION**

**Islamabad, the 24<sup>th</sup> July, 2022.**

**No.F.3(1)/2022-LGE(S) (Vol-III):--** In partial modification of this Commission's notifications of even number dated 29<sup>th</sup> April 2022, 10<sup>th</sup> June 2022 and 20<sup>th</sup> July 2022 and in exercise of the powers under Article 218 (3) of the Constitution of the Islamic Republic of Pakistan read with Sections 58 and 229 of the Elections Act 2017 and all other powers enabling it in that behalf, the Election Commission of Pakistan is pleased to postpone the 2<sup>nd</sup> phase of local government elections in Karachi and Hyderabad Divisions to the extent of poll date i.e. 28<sup>th</sup> August 2022 till normalization of situation in the public interest, on the request of Sindh Government, other law enforcement agencies and Provincial Election Commissioner, Sindh, due to heavy rainfall, engagement of law enforcement agencies in relief operations, destruction of infrastructure, restriction of mobility of people, logistic issues, forecast of heavy rainfall on 24<sup>th</sup> to 26<sup>th</sup> August, 2022 which will create logistical problems for later days for all concerned."

5. The comments filed on behalf of the ECP in response to the Petitions emphasized that the exercise required large scale arrangements with the help and assistance of the Provincial administration and law enforcement agencies, in the absence of which the same could not be carried out in a free, fair and transparent manner. It was stated that while the ECP was fully committed and prepared to hold the Election, it thus seemed impossible in the present circumstances for it to conduct the Elections as per its mandate. That being said, a Statement then came to be filed under the signature of the Provincial Election Commissioner, reflecting that a Notification dated 16.09.2022 had been issued by the ECP so as to reschedule the polling date to 23.10.2002. However, through a subsequent Notification dated 18.10.2022, the poll date once again stands deferred indefinitely. That Notification is reproduced below:

“ELECTION COMMISSION OF PAKISTAN

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**NOTIFICATION**

Islamabad, 18<sup>th</sup> October, 2022

**No.F.3(1)/2022-LGE(S):-** In partial modification of this Commissioner’s notifications of even number dated 16<sup>th</sup> September 2022, and in exercise of the powers under Article 218(3) of the Constitution of the Islamic Republic of Pakistan read with Section 58 of the Elections Act 2017 and all other powers enabling it in that behalf, the Election Commission of Pakistan is pleased to postpone the 2<sup>nd</sup> phase of local government elections in Sindh province to the extent of poll date i.e. 23<sup>rd</sup> October 2022, on the request of Government of Sindh, other law enforcement agencies and Provincial Election Commissioner, Sindh, till availability of adequate security and until further orders.”

6. In the given backdrop, it falls to be considered that Article 140-A of the Constitution provides for the establishment of a local government system in the following terms:

**140-A. Local Government**—(1) 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 held by the Election Commission of Pakistan.

7. The importance of an elected local government was emphasised by the Honourable Supreme Court in the case reported as M.Q.M. (Pakistan) and others v. Pakistan through Secretary Cabinet Division, Government of Pakistan and others PLD 2022 Supreme Court 439, with the establishment of a local government system and the election of the local government being considered a matter of enforcement of the fundamental rights enshrined in the Constitution and the arrogation of the relevant powers/functions by a Provincial government being deprecated. The Apex Court referred to its earlier judgment in the case reported as Raja Rab Nawaz v. Federation of Pakistan through Secretary, Defence and others 2013 SCMR 1629, where it was observed that:

“12. It may be observed that the life of a community is essentially the creation of its particular environment. It is difficult to establish an organization that would effectively look after the well being of all the social groups in a country. Only such political system can succeed which is essentially indigenous. Therefore, establishment of democratic institutions at the grass root level is basic requirement for the welfare of the society. The Local Self-Government institutions lay the

foundation of such a system. They are based upon the recognition that the only way to respond to the needs of the individuals is to associate them with the process of authority. In this regard, it would be appropriate to quote Sydney Webb's remarks who said that any system of government, however mechanically perfect, would fail to take roots in the midst of the masses of people, unless it was in some way grafted on to the spontaneous grouping of the people themselves. As such, the broad masses of people are to be genuinely associated with the management of their affairs and encouraged to work for their own welfare. Essentially, the institutions at local/grass root levels protect the human dignity of common man to which he is entitled.

13. Local Government or Municipal Government is a form of public administration, which in a majority of contexts, exists as the lowest tier of administration within a given state or district. In many countries, it usually comprises the third tier of government, often with greater powers than higher-level administrative divisions. The question of municipal autonomy is a key question of public administration and governance. It is noteworthy that Local Governments generally act within powers delegated to them by legislation or directives of the higher level of government. The political analysts have always emphasized on the importance of local self-government. There are two principles underlining the establishment of Local bodies. Firstly, local bodies enjoy extensive powers to act in a way they like for the betterment of the community unless restricted by law in any sphere of activity. Secondly, local bodies cannot go beyond the specific functions delineated to them in various acts and statutes."

The Court then went on to observe further that:

"15. In general, this tier of government is responsible for decision-making in those policy areas which have a direct impact on the lives of local citizens, e.g. urban regeneration, housing, schools, employment and social security, health, arts, culture and sport, local public transport, water and energy, and regional planning. These are the areas where the local citizens must have the opportunity to exert direct influence on policy-makers and thus participate in the decision-making process. Thus, local self-government not only has a legal and a political dimension, but it also has sociological connotations, namely, it directly affects community life within a demarcated locality. It is

pertinent to mention here that in the developed democracies, local self-government has contributed substantially to social and economic development and the emergence of a civil society and its importance for democratic development has been recognized consistently all over the world.

16. It is important to bear in mind that local government is the most vital element in a democracy, though not generally recognized as such. Existence of local bodies is important for strengthening the process of democracy. In the recent years, local self-government has been playing a vital role in the establishment of good governance and community development. The local bodies, at one end, provide services to the local community and, on the other, act as an instrument of democratic self-government. The existence of local self-government provides mechanism for the enforcement of Fundamental Rights of the people. Such government bodies are helpful for development including education, health, social services as well as in improving, law and order situation. In short, the local self-government is necessary not only for strengthening democracy in country but also for securing good governance, which is essential to ensure the welfare of the citizens. This tier of government is always appreciated by the general public because it remains within their approach, as such they get involved in the decision making process.”

8. Article 219 (d) of the Constitution provides that the ECP shall be charged with the duty of holding Local Government elections, while Article 220 of the Constitution stipulates that “it shall be the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions”. Looking to that very framework, the Honourable Supreme Court of Pakistan was pleased to hold in the case reported as Sheikh Rasheed Ahmed vs Government of Punjab & others PLD 2010 SC 573 that:



“Thus it is quite evident that the Constitution places upon the Chief Election Commissioner an obligation to organize the election. Article 220 of the Constitution provides that “it shall be the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions; conceptually placing the position of Commissioner and Election Commission upper most while discharge their functions requiring the executive authority to assist; in other words “to aid” the Commissioner and the Election Commission. In that course, the executive authority shall have no option but, to offer, unhesitatingly, its assistance to make the way for the Commissioner or the Election Commission smoother rather than to make it difficult; either to stop, postpone or slow down their pace in the discharge of duties, in this case holding election for seat to question. The provision of Article 220 of the Constitution also reflects to be in pari materia with the provision of Article 190 of the Constitution according to which “all executive and judicial authorities throughout Pakistan shall act in aid of Supreme Court”; which hold the Supreme Court upper most in the hierarchy of the judiciary for which the Constitution envisages that its independence shall be fully secured. Thus, to sum up, testing on the touchstone of afore-referred provisions of Constitution, the net result that comes out is that the Chief Election Commissioner and the Election Commission are absolutely independent with exclusive jurisdiction while performing duties within terms of Part-VIII of the Constitution in which no interference is allowable by any of the parties interested by resorting to any manner and mode, as was done in the present case. All the concerned quarters, namely Federal and Provincial Governments, the Law Enforcing Agencies as well, are under an obligation to ensure that Chief Election Commissioner/Election Commission function independently; and see that they are properly strengthened enabling them to discharge their constitutional commitments fairly, freely and without any hindrance and pressure of whatsoever nature.”

9. In the same vein, in the case reported as Administrator Municipal Corporation, Peshawar and others v. Taimur Hussain Amin and others 2021 SCMR 714 it was held by the Apex Court that:

“The matter of holding local government elections lies within the domain of the Commission as per Article 219(d) of the Constitution and a province cannot dictate to the Commission, if and/or when, the same can be held. On the contrary, Article 220 of the Constitution mandates that, “*It shall be the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions.*” In case the Federation and/or the Province(s) create hurdles in the way of the Commission holding elections, they will be violating the Constitution, which may attract serious consequences.”

10. Proceeding with their submissions, learned counsel appearing on behalf of the Petitioners essentially submitted that the Provincial administration had virtually hijacked the democratic process and were holding the ECP hostage by deliberately withholding support for purpose of the Election. They argued that the repeated postponements of the Election were *mala fide* and unwarranted, with it being incumbent upon the ECP to hold the Election and the Provincial administration to provide the necessary support.
  
11. Conversely, the functionaries of the ECP submitted that they remained cognizant of their responsibilities and could conduct the Election within a period of 15 days, subject to reasonable security arrangements being made available. On that note, the learned Advocate General, accompanied by the Chief Secretary, Sindh, assured us of the Provincial Government’s positive intent to ensure that the Election took place in a safe and secure manner, and the Inspector General of Police also submitted that the police administration would play their role to the fullest extent towards that end.

12. The MQM Pakistan, albeit not a party to either Petition, nonetheless sought to be heard in the matter as a political stakeholder, with it being argued that various Petitions had been filed by the party on the subject of devolution and delimitation, and the Election ought not to be held until those cases were decided.
13. As it transpires, C.P. Nos. D-883 & 3823 of 2022 had earlier been filed before this Court on behalf of certain members of the MQM Pakistan seeking postponement of the Local Government Elections on the ground that directions of the Honourable Supreme Court of Pakistan regarding devolution were to firstly be complied with and the exercise of delimitation and updating of electoral rolls was to be completed. These Petitions were dismissed vide an Order dated 24.06.2022, with reference being made by the learned Divisional Bench to the earlier judgment of the Honourable Supreme Court of Pakistan in the case brought by that party (i.e. as reported at PLD 2022 SC 439), and it being held as follows:-

“9. From perusal of the aforesaid findings of the Hon’ble Supreme Court and the directions contained therein it appears that what the Petitioners Counsel have argued in support of their plea that Elections of the Local Government be stayed is on the face of it contrary to the dicta laid down by the Hon’ble Supreme Court. The above finding does not support their plea of staying the Elections for want of proper Delimitation as desired. It has been held by the Hon’ble Supreme Court that presently the Local Governments are **not functional**, whereas, the functions of the Local Government are being performed by the Government of Sindh which cannot be accepted, whereas, Article 140-A<sup>7</sup> of the Constitution casts a mandatory obligation on the Provinces to establish Local Government possessing meaningful authority. It is further provided that ECP shall hold Elections of

the Local Government, whereas, pursuant to Section 219(4) of the Election Act, ECP shall hold Elections to the Local Government within *one hundred and twenty days of the expiry of the terms of the Local Governments*. Admittedly, the present Elections of the Local Government in the Province of Sindh are being held much beyond this period of 120 days. In that case if the Local Government system has to be established in a fixed period of time or for that matter expeditiously and as soon as possible, then perhaps, the request for staying the Elections being held in two phases on 26.6.2022 and 24.7.2022 in the Province of Sindh does not appear to be in consonance with the directions of the Hon'ble Supreme Court of which the implementation is being sought by the Petitioners. It further appears that the Hon'ble Supreme Court was pleased to declare that Section 74 & 75(1) of SLGA 2013 are against the principles enshrined in the Objectives Resolution and the fundamental rights as provided in Articles 9, 14 & 25 of the Constitution and are also contrary to and in direct conflict with Article 140A of the Constitution; hence, declared as ultra vires and accordingly struck down. Section 74 & 75 of the SLGA 2013 at the relevant time read as under:-

**“74. Transfer of functions from Councils to Government and Vice Versa.-**

Notwithstanding anything contained in any other law for the time being in force, Government may –

- (a) take over the management and control of any institution or service maintained by a Council; and
- (b) transfer the management and control of any institution or service maintained by Government to a Council.

**[75. Commercial schemes. – (1)** Government may set up a Board, Authority or any corporate body to perform any one or more functions of any Council, singly or jointly with any public or private body, and may acquire, continue, manage or operate any commercial venture or activity as deemed necessary in the public interest.

(2) Any commercial operations or venture jointly with any private body or person in existence at the time of commencement of this Act shall continue to do so.

(3) The Council may, with the prior permission of Government, promote, administer, execute or implement schemes for undertaking any commercial, business enterprise or enter into public private partnership.]”

10. From perusal of the above it clearly reflects that through both these Sections the Government of Sindh had taken over the entire functions and working of the Local Government System, whereas, no Elections were being held on one pretext or the other, and therefore, MQM Pakistan approached the Hon’ble Supreme Court under Article 184(3) of the Constitution and sought a prayer that this conduct of the Government of Sindh is contrary to law and the Constitution and therefore, the Hon’ble Supreme Court while allowing the Petition was pleased to hold that the functions of Local Government cannot be performed by the Government of Sindh on its own sweat will and choice. Therefore, the only inference which can be drawn from the judgment of the Hon’ble Supreme Court in **MQM Pakistan** (Supra) is, (and this is notwithstanding the fact that whether appropriate amendment(s) have been made or not in SLGA, 2013, pursuant to the above directions), the primary purpose and the intention behind issuing directions in the **MQM Pakistan** (Supra) case was, that immediately Elections of Local Government be held in the Province of Sindh; functions of the Local Government as provided in the law read with Article 140A of the Constitution be handed over to the Elected Representatives; that they shall no more remain in the hands of the Government of Sindh and that is why Sections 74 & 75 ibid have been declared as ultra vires. Therefore, we are of the considered view that any effort for seeking a restraining order in respect of the Elections in question would be in direct violation of the dicta laid down by the Hon’ble Supreme Court as above. In fact, in the above situation this Court instead of exercising any discretion under Article 199 of the Constitution; would rather be implementing the judgment of the Hon’ble Supreme Court in **MQM Pakistan** (Supra) in terms of Article 187(2)<sup>8</sup> of the Constitution; hence, the request for immediate interim relief of staying the Elections appears to be too far fetched and is in direct conflict with the spirit of the directions of the Hon’ble Supreme Court as above.”

14. Thereafter, in Civil Petition No.841-K of 2022 and Civil Petition No.2843 of 2022 arising out of the judgment rendered by this Court in C. P No. D-883 & 3823 of 2022, while disposing of those matters, vide order dated 17.08.2022, the Honourable Supreme Court directed that:-

“As a result, it is directed the ECP shall proceed with the second phase of local government election as scheduled.”

15. As such, we see no force in the contentions of the Intervener, who even otherwise cannot collaterally mount any challenge to the Election through these Petitions.

16. Allegorically, much water has flowed since the advent of the floods, and it is questionable whether the continued preoccupation of law enforcement personnel in relief operations remains so emergent with the efflux of time as to constitute a valid cause for their being withheld from election duty. The Election has now been repeatedly postponed for almost 4 months on that pretext, with a definite future date still not being in sight. Suffice it to say that there has been considerable time for an appropriate solution to have been found, and the matter cannot indefinitely be kept in abeyance by the Provincial administration continuing to withhold the aid it is duty bound to provide to the ECP on the same pretext. Furthermore, the documents and reports placed on record show that while the Provincial Government took the stance at a high level meeting convened by the ECP on 11.10.2022 that there was a shortage of 16,786 police personnel, a large number of personnel have apparently been diverted to other duties, with the letter dated

01.10.2022 addressed on behalf of the Government of Sindh to the Provincial Election Commissioner reflecting that as many as 5,000 police personnel of Sindh Police have been placed at the disposal of IG Islamabad, while a significant number have been deployed towards the 11<sup>th</sup> International Defense Exhibition & Seminar (IDEAS-2022), as a number of national and international delegations are expected to visit and participate in that event. Without in any manner seeking to cast any aspersion on those deployments, we cannot help but question whether or not the smooth functioning of a democratic system is more imperative so as to place the security needs of the Election on a higher plane than those commitments.

17. Be that as it may, from what we have been told by the various functionaries in attendance today, we are sanguine that the ECP remains aware of the importance of discharging its functions vis-à-vis the Election in accordance with its mandate as a Constitutional body and that the Government and administration of this Province also remain fully committed to lending their support in the matter. Indeed, no less is expected, for as cogs in the wheel of democracy, it is their overarching obligation to find a way of advancing the democratic process.

18. On the subject of the way forward, we have perused the letter dated 12.10.2022 addressed to the ECP by the Provincial Government regarding the Election to the extent of Karachi Division, where it has *inter alia* been proposed that:

“03. If Election Commission of Pakistan does not decide to postpone the elections, it is requested that Local Government Elections in Karachi Division may be held in two phases i.e elections may be conducted in first phase in three districts of Karachi while the elections in remaining four districts of Karachi may be held subsequently in second phase. This will help Government of Sindh in concentrating available resources in two phases in order to ensure peaceful and transparent conduct of Local Government Election in Karachi.”

19. We would not go so far as to dictate the date of the Election or direct the manner in which the same ought to be conducted or policed, but would note that the ECP may notify the polling date, preferably within a period of 15 days from the date of this Order, specifying a fresh polling date, or indeed date(s) as the case may be in the event that it is deemed expedient to stagger the process, but so as to preferably conclude the overall exercise of the Election in any event within a total period of 60 days. For its part, the Government of Sindh is directed to ensure that requisite assistance, whether by way of adequate security or otherwise, is rendered to the ECP in the matter, as per Article 220 of the Constitution, and the Chief Secretary of Sindh and the Inspector General of Police are to ensure that any preparatory or organizational steps as are required for the purpose are taken well in advance of the date(s) so that any and all impediments in that regard are surmounted by then.
20. The Petitions along with all pending Miscellaneous Applications thus stand disposed of in the foregoing terms.

JUDGE

CHIEF JUSTICE