

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

**C.P.Nos.D-3836, 3989, 3927, 3990, 4030,
4031 & 4032 of 2018**

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

**Present: Mr. Justice Muhammad Ali Mazhar
Mr. Justice Omar Sial**

- (1) Syed Tahir Hussain Shah & another (in C.P. No.D-3836/2018)
- (2) Abdul Hafeez Kalhoro & another (in C.P.No.D-3989/2018)
- (3) Ghulam Ali Abbas & another (in C.P. No.D-3927/2018)
- (4) Jam Ikramullah Khan Dharejo (in C.P.No.D-3990/2018)
- (5) Ghulam Hyder (in C.P. No.D-4030/2018)
- (6) Imdad Ali (in C.P. No.D-4031/2018)
- (7) Muhammad Shaban (in C.P. No.D-4032/2018).....Petitioners

V/s

Election Commission of Pakistan & othersRespondents

Dates of hearing: 22.06.2018 & 28.06.2018

Mr. Asfandyar advocate for the petitioner in C.P. No.D-3836 of 2018.

M/s. Ali Almani, Jam Zeeshan Ali and Sami ur Rehman Khan advocates for the petitioner in C.P. No.D-3989 & 3990 of 2018 and intervener in C.P. No.D-3836 of 2018.

Mr. Abdul Jabbar Belai advocate for the petitioners in CP. No.D-3927/2018.

Mr. Sikandar Ali Junejo advocate for the petitioner in C.P. No.D-4030, 4031 & 4032 of 2018 and intervener in C.P. No.D-3836/2018.

Mr. Mukesh Kumar Karara advocate for the interveners in C.P. No.D-3836, 3927, 4030, 4031 & 4032 of 2018.

Mr. Salahuddin Khan Gandapur advocate for the Election Commission of Pakistan.

Mr. Shaikh Liaqat Hussain, DAG.
Mr. Jawwad Dero, Additional Advocate General

Ms. Rukhsana Mehnaz Durrani, State Counsel.

Imtiaz Ahmed Kalhor, District Election Commissioner,
Hyderabad.

Mr. Muhammad Yousuf, District Election Commissioner, Karachi
Central/Member Delimitation Committee, Sindh.

Muhammad Ali Mazhar, J: These Constitution Petitions have been brought to challenge the order dated 24.04.2018 passed by the learned Election Commission of Pakistan on the representations filed with regard to delimitation of constituencies-2018, Sukkur district. It appears from the impugned order that 14 individual representations were filed which were disposed of by ECP through a consolidated order. Keeping in mind some suggestions given by persons in their representations, certain modifications were made by ECP in the final delimitation order for NA-206 and NA-207 as well as in PS-22, PS-23 and PS-25.

2. Learned counsel for the petitioners in C.P. No.D-3836/2018 pointed out the representation and the name of petitioner which is appearing at Sr. No. 14 in the order. He placed some proposals in his representation for PS-22 and PS-25. Learned counsel argued that the impugned order on the face of it seems to be in violation of Section 20 of the Elections Act, 2017 and Rule 10(5) of Election Rules, 2017. He further argued that the exercise of delimitation was not started from the Northern end. It was further contended that in order to facilitate the communication and public convenience, TC Shahpur and Sadhuja should be shifted from PS-25 to PS-22. He further argued that delimitation of the constituencies should have been done impartially in order to avoid allegation of gerrymandering. A serious allegation has been

leveled that ECP has completed the exercise of delimitation to strengthen the Pakistan People's Party Parliamentarian. He further argued that in order to avoid the act of gerrymandering, ECP should be directed to shift T.C. Arkohar and Sangrar from PS-22 to PS-23 with further directions against respondent No.2 to merge T.C. Rohri and Municipal Committee Rohri in PS-25. He has further sought the directions against the respondent No.2 to restore the preliminary list of provincial constituencies for district Sukkur and conduct the elections on the basis of preliminary list of constituencies.

3. Mr. Sikandar Ali Junejo advocate appeared for the Interveners Muhammad Saleh (CMA No.19357/2018) and Muhammad Saleem (CMA No.19358/2018). Learned counsel argued that his interveners individually filed no proposal through representation to the ECP but they have directly approached this court with fresh proposal through their interveners' application even they did not bother to file their independent petition at principal seat, however, in the supporting affidavit of both the interveners, they admitted that they have filed petition at Sukkur Bench of this court and also mentioned the number of petition i.e. 998/2018 which is pending according to them. The interveners should have pursued their remedy in their own petition rather than filing these interveners' application not to oppose the present petitions but to place on record their own proposal in the constitutional jurisdiction without filing representation before ECP.

4. Mr. Mukesh Kumar Karara advocate appeared for interveners and filed applications under Order I Rule 10 C.P.C. Learned counsel argued that the petitioners did not file their objections to the preliminary delimitation conducted by the ECP. He fully supported the impugned order and argued that wherever

some modification was required in the preliminary delimitation, the learned ECP has already taken due care and after proper consideration accepted the logical proposals. He concluded that there is no justification to interfere and disturb the ECP's order.

5. M/s. Ali Almani and Jam Zeeshan Ali advocates appeared for the two interveners and filed CMA No.18684/2018. Learned counsel argued that in the impugned order ECP shifted TC Shahpur from PS-22 to PS-25 in view of the representation filed by their interveners and if the impugned order is set aside with the order to shift Shahpur from PS-25 to PS-22 this will directly affect the interest of interveners. Despite their opposition to the main petition, learned counsel concluded that they are supporting the case of petitioner only for shifting of TC Arkohar and Sangrar from PS-22 to PS-23.

6. In C.P. No.D-3927/2018, the same order is under challenge. Mr. Abdul Jabbar Belai learned counsel for the petitioner adopted the arguments of the petitioner's counsel in C.P. No.D-3836/2018.

7. In C.P. No.D-3989/2018 learned counsel for the petitioner did not challenge the order as a whole but confined his arguments to the extent that the inclusion of TC Rohri in PS-23, TC Arkohar and TC Sangrar in PS-22 is unlawful. They have further sought the directions against the respondents to include TC Naureja and TC Hingoro in PS-22, TC Arkohar and Sangrar in PS-23 and TC Rohri in PS-25 and then notify the final delimitation of provincial assemblies of district Sukkur. The same learned counsel also appeared in C.P. No.D-3990/2018. The facts and the grounds pleaded in this petition are almost same as pleaded in C.P. No.D-3989/2018. Learned counsel articulated the same arguments in this C.P.

8. In C.P Nos. D-4030, 4031 & 4032 of 2018 Mr. Sikandar Ali Junejo advocate appeared for the petitioners. All the petitioners in their separate petitions challenged the one and the same order dated 24.04.2018 passed by the ECP in connection with the delimitation of constituencies-2018, district Sukkur. Learned counsel argued that while carrying out the exercise of delimitation the prime consideration and principles enunciated under Section 20 of the Elections Act, 2017 were not taken into consideration. The tenets of Rule 10(5) of Election Rules, 2017 have also been violated. Learned counsel made much emphasis to set aside the impugned order but at the same time he prayed to this court to pass order for exclusion of Old Sukkur and Charge-I, Charge-II and Circle-1, 2, 3 and 4 to Charge-IV from PS-25 and same may be included in PS-24 due to their alleged administrative attachments. Learned counsel in all three petitions have submitted joint submissions as narrated above.

9. Heard the arguments. We have minutely examined the final delimitation order passed by ECP which is basically impugned in all petitions, however, some of the interveners supported the impugned order and their counsel argued for the dismissal of the aforesaid petitions. It is clearly reflecting from the impugned order that learned ECP provided an opportunity of hearing to the parties, perused the record and also thoroughly examined the maps produced by the petitioners and members of the Delimitation Committee. They were also mindful to the principles of delimitation provided under Section 20 of the Elections Act, 2017 and Rule 10(5) of the Election Rules, 2017 and after taking in view the basic principles of delimitation such as distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facilities and contiguity, they accepted some proposals hence TC Sadhuja, Nindapur and Shahpur of STC Pannu Aqil were excluded from

NA-206 and included in NA-207 as well as TC Rohri was excluded from NA-207 and included in NA-206. As far as Provincial Assemblies constituencies are concerned, TC Sadhuja, Nindapur and Shahpur of STC Pannu Aqil were excluded from PS-22 and included in PS-25. Similarly TC Rhoari was excluded from PS-25 and included in PS-23, whereas TC Arkohar and Sangrar were excluded from PS-23 and included in PS-22. The ECP officials made presentation through maps in presence of learned counsel for the petitioners and according to them, no TC was broken and law does not prohibit to make changes in case TC and Municipal Committee both have the same name. We have also noted the total population in different PS constituencies. The population in PS-22 is 3,61,272, PS-23 3,81,484, PS-24 3,88,260 and PS-25 3,56,871. On the face of it, there is no violation of population variation in all PS seats. So for all intents and purposes, we are satisfied that the threshold of 10% variation in the population has been strictly followed. The population of Arkohar is 19245, whereas the population of Sangrar is 30,074 but the petitioners want that these two areas should be excluded from PS-22 and be included in PS-23. According to the map produced before us it does not seem to be possible that only these two TCs alone could be shifted in PS-23 but in order to shift them a large area should have required to be included in PS-23 without which their merger was not possible in PS-23. If it is done naturally it will upset the entire criteria of population and threshold of 10% variation could not be maintained. Petitioners also want that the Noureja and Hingoro are presently in PS-25 be shifted in PS-22 Sukkur-I. The population of Noureja is 14195, whereas the population of Hingoro is 33002 which makes the total population 47197 if such a huge population is again carved out from PS-25 and shifted to PS-22 then again it will affect the some more areas which should be included in PS-22. The ECP cannot shift any particular area through jumping from one area to another but the boundaries of

adjoining areas are also to be kept in mind. If at this stage, any TC is broken which is otherwise not permissible under the law then it will amount to change the complexion of entire delimitation. If we see in totality, the petitioners want changes in the delimitation at a large scale and shuffling of different areas from one PS to another PS which will drastically affect the entire delimitation of PS-22, PS-23, PS-24 & PS-25. The ECP in their final delimitation order have already considered various aspects. The logical proposals were given due weightage and as far as found possible and practicable, ECP has already modified the preliminary delimitation. So far as the allegation raised by the petitioners collectively that ECP has made some changes to favour a particular political party to commit gerrymandering. In this regard, we would like to observe here that mere leveling of allegations cannot prove anything except some concrete and cogent reasons are placed on record to prove the allegations of gerrymandering. The delimitation has been carried out by the ECP which is an independent constitutional body. Without any proper details and substance in the allegations of favoritism or biasness, we recuse ourselves to give any findings on this point.

10. No doubt according to the principles of delimitation laid down under Section 20 of the Elections Act, 2017, a mandate has been given for delimitation keeping in mind the rudimentary components encompassing the distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facilities of communication, public convenience and other cognate factors to ensure homogeneity in the creation of constituencies with a rider that as far as possible, variation in population of constituencies of an Assembly shall not ordinarily exceed 10 percent and if the limit of 10 percent is exceeded in an exceptional case, the Commission has to record reasons in the delimitation order. Much emphasis

have been made by the learned counsel for the petitioners while signifying sub-Rule (5) of Rule 10 of the Election Rules, 2017 that as far as possible, the delimitation should start from the Northern end of the district and proceed clock-wise in zigzag manner keeping in view the population so that the constituencies shall remain as close as may be practicable to the quota. According to first proviso attached to sub-Rule (5), the quota shall be determined by dividing total population of the district or the agency with number of seats allocated to that district or agency. It is sine qua non under the tenets of second proviso that variation in population between two or more constituencies should not ordinarily exceed 10 percent and if in exceptional circumstances the variation has to exceed the limit then the Delimitation Committee has to record the reasons.

11. At the stage of preliminary delimitation, a mechanism and course of action was laid down for the aggrieved person to file proposals in the form of a representation and on filing such representation, it turns out to be responsibility and obligation of ECP to decide it in accordance with law. Putting down a proposal to ECP by any voter or objector from any constituency may be considered an instrument to call attention of ECP to cogitate and dwell on the defects and shortcomings of preliminary delimitation if any. In unison, we are also sanguine that the letters of law does not reflect any such exposition that whatever proposal placed by the voter or objector should be accepted by ECP in the letter and spirit in all circumstances as a vested right. To contest the elections and right of franchise is a fundamental right but to contest the elections on the basis of delimitation at one's own philosophy and aspiration is not a fundamental right. The learned counsel for the petitioners referred to the case of **M.Q.M. and others vs. Province of Sindh**, reported in **2014 CLC 335** and **Arshad Mehmood vs. Commissioner-Delimitation Authority**,

Gujranawala and others, reported in **PLD 2014 Lahore 221**. It is obviously distinguishable that in both cases, elections of local governments and some delimitation issues including amendments made by provincial governments in the local government laws were under challenge. Prior to these judgments, no powers were vested in the ECP for the delimitation of boundaries/UCs in local government elections but here the position is altogether different as not only for the forthcoming general elections, the Elections Act 2017 is already in force/vogue but the Elections Rules 2017 have also been framed to deal with inter alia the issues of delimitation and in the present scenario the exercise of delimitation has been carried out by ECP as an independent Constitutional body and not by ruling parties as done in the case of local governments elections which action was under challenge in the above judgments.

12. The petitioners want that entire delimitation should be set aside and matter be remanded to ECP to decide afresh. If the proposals are accepted in its entirety, it will alter the entire complexion and facial appearance of all the constituencies. Here we would also like to express that the presentation given to us through maps makes it unequivocally translucent that all basic principles required to be cope with at the time of delimitation have been adhered to and we do not find any justification to disturb or interfere in the impugned order. At this juncture, we would like to refer to the judgment of apex court rendered in the case of **Federation of Pakistan and others vs. Haji Muhammad Saifullah Khan**, reported in **PLD 1989 S.C. 166** in which the apex agreed that the grounds contained in the President's Order dated 29th May, 1988, dissolving the National Assembly and dismissing the Federal Cabinet had no nexus with the preconditions prescribed by Article 58(2)(b) of the Constitution but was not inclined to grant the reliefs to restore the National

Assembly and reinstate the dissolved Federal Cabinet despite this finding. The reasons for so doing were stated thus:

“But we are not unmindful of the fact that the whole nation is geared up for elections and we do not propose to do anything which makes confusion worst confounded and creates a greater state of chaos which would be the result if the vital process of elections is interrupted at this juncture.

The Courts always keep in view the higher interest of Pakistan while resolving matters of national importance in accordance with the Constitution and law. National interests must take precedence over private interests and individual rights. The forthcoming elections are at hand and the people of Pakistan must be allowed to choose their representatives for the National Assembly on party basis, a right which is guaranteed to them under the Constitution.

The writ jurisdiction is discretionary in nature and even if the Court finds that a party has a good case, it may refrain from giving him the relief if greater harm is likely to be caused thereby than the one sought to be remedied. It is well settled that individual interest must be subordinated to the collective good. Therefore, we refrain from granting consequential reliefs, inter alia, the restoration of the National Assembly and the dissolved Federal Cabinet.”

13. As a result of above discussion, the aforesaid petitions are dismissed.

Judge

**Karachi
Dated: 06.07.2018**

Judge