

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P.Nos.D-4225, 4358 & 4364 of 2018

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

Before:-

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Omar Sial

- (1) Sardar Muhammad Usman Almani (in C.P. No.D-4225/2018)
(2) Syed Mureed Ali Shah & another (in C.P. No.D-4358/2018)
(3) Syed Zafar Ali Shah (in C.P. No.D-4364/2018).....Petitioners

V/s

Election Commission of Pakistan & othersRespondents

Date of hearing: 21.06.2018.

Ch. Atif Rafiq advocate for the petitioner in C.P. No.D-4225/2018.

Mr. Syed Mureed Ali Shah petitioner in person in C.P. No.D-4358/2018 and for interveners in C.P. No.D-4225/2018.

Mr. Ali Asghar Buriro advocate for the petitioner in C.P. No.D-4364/2018.

Ms. Memona Nasreen advocate for the Election Commission of Pakistan.

Mr. Shaikh Liaqat Hussain, DAG.

Ms. Rukhsana Mehnaz Durrani, State Counsel.

Zaheer Ahmed Sehto, District Election Commissioner,
Kashmore/Member Delimitation Committee.

Muhammad Ali Mazhar, J: These Constitution Petitions have been brought to challenge the order dated 26.04.2018 passed by the learned Election Commission of Pakistan on the representations moved by different persons with regard to delimitation of constituencies of Naushahro Feroz. It seems from the impugned order that 29 representations moved by different persons were decided through a consolidated order and after considering pros & cons, the learned Election Commission of Pakistan made some modification in the preliminary delimitation with regard to NA-211 and NA-212 as well as in PS-33, PS-34 and PS-35, Naushahro Feroz.

2. Learned counsel for the petitioner in C.P. No.D-4225/2018 pointed out the name of the petitioner appearing at Sr. No.4 of the impugned order to show that he filed representation before Election Commission of Pakistan (ECP). Learned counsel for the petitioner argued that the proposal given by the petitioner to the ECP was partially accepted but through this petition, he insists the shifting of Gher Gaju from PS-34 to PS-35 which is according to him closer to Naushahro Feroz headquarter as opposed to Bhiriya Taluka. He further argued that population of PS-34 in the final delimitation has crossed the limit of 10%, therefore, shifting of this area back to PS-35 will balance population. He further proposed the shifting of Town Committee Tharu Shah and TC Mad Alim from PS-35 to PS-33 which will in line with guidelines for delimitation in which preference has to be given to maintain

administrative boundaries. He further argued that the impugned order is violative of Section 20 of the Elections Act, 2017 and Rule 10(5) of the Election Rules, 2017. Learned counsel requested for the directions to the respondents to shift the TC Gher Gaju from PS34 to PS-35 for Provincial Assembly and in alternate NA-211 to NA-212. Further directions have been sought against the respondents to shift Tharu Shah and Mulhan from PS-34 along with Mulhan from PS-35 to PS-33 and TC Mulhan from NA-212 to NA-211. Lastly, he requested for the directions to shift the entire STC Halani from PS-33 to PS-34.

3. The petitioner in C.P. No.4358/2018 in person pointed out his appearance in the impugned order at Sr. No. 7 and Sr. No.25. He moved representation for the purpose of modification in NA-211 and NA-212 as well as PS-34. The petitioner argued that the final delimitation of constituencies PS-34 and PS-35 is disproportional which can be rationalized with minor changes. He proposed exclusion of TC Mad Alim from PS-34 and its inclusion in PS-33, exclusion of TC Gher Gaju and Tharu Shah from PS-34 and inclusion in PS-35. He himself admitted that in the impugned order, changes were made to maintain ratio of population criteria in NA-211 and NA-212, PS-33, PS-34 and PS-35 but at the same time, he argued that due to said changes, the population of NA-211 and PS-34 exceeded the limit and disturbed the geographically compactness and homogeneity which is the violation of Elections Act.

4. Learned counsel for the petitioner in C.P. No.D-4364/2018 argued that some directions may be issued to the respondents to consider the representation of petitioner afresh under the guidelines of Elections Act, 2017 and Election Rules, 2017. He pointed out that the petitioner submitted two representations; one for NA-212 and the other for PS-33 as his name is appearing in the impugned order at Sr. No. 12 and 13. He also argued that the present form of delimitation has been carried out in violation of Section 20 of the Elections Act, 2017 and Election Rules, 2017. The petitioner through his representation placed all relevant facts and figures regarding distribution of population in geographically compactness, facilities of communication, public convenience and homogeneity but the proposals placed by the petitioner were not considered as a whole. The petitioner wants shifting of Mad Alim from PS-34 to PS-33 and exclusion of Tharu Shah from PS-34 to PS-35.

5. Heard the arguments. We have examined the impugned order minutely which shows that 29 representations were filed for delimitation with different proposals to the ECP for the constituencies of district Naushahro Feroz. Learned ECP jot down all proposals separately which are highlighted in the impugned order in paragraph No. I to XVI. It is also reflecting from the impugned order that the Commission afforded reasonable opportunity of hearing and also perused the maps. While

considering the principles of delimitation and necessary factors, ECP accepted some proposals which were considered viable to meet the criteria of public convenience and facilities and accordingly TC Gher Gaju was excluded from NA-212 and included in NA-211, TC Mad Alim and TC Tharu Shah were excluded from NA-212 and included in NA-211, TC Vhorti was excluded from NA-211 and included in NA-212. As far as constituencies of Provincial Assemblies are concerned, TC Mad Alim and TC Tharu Shah were excluded from PS-35 and included in PS-34, TC Vhorti was excluded from PS-33 and included in PS-35, TC Gher Gaju was excluded from PS-35 and included in PS-34 and TC Behlani was excluded from PS-34 and included in PS-33. Learned ECP further observed in the order that the population of PS-34 slightly exceeded up to the limit 12.9% which is allowable to maintain geographically compactness and to cater homogeneity and cognate factors. In view of the above modification, all the representations were disposed of by ECP.

6. The representative of ECP shown us the relevant maps in presence of the petitioner's counsel and according to their representations all PS constituencies mostly comprising entire Taluka/Tehsil. Tehsil is an administrative unit with all necessary communication system, government offices and courts which shows the area is homogenous and physically compact. In only one PS there is slight variation of population more than 10% which has been highlighted in the order of ECP with clear

justification and reasons. The official of ECP further stated that all polling stations will be established at a distance of 1 to 2 k.m. from main areas/villages which will not cause hurdle to the public nor to disenfranchise the voters. The population of NA constituencies are well within the range of 10% criteria of population. TC Mad Alim is part of Taluka Bhiriya which has been rightly included in PS-34 keeping in mind the revenue system. Record reflects that according to the final delimitation, the population of PS-33 is 385952, PS-34 436,014, PS-35 397023 and PS-36 393384. The petitioners want shifting of Tapa Mad Alim from PS-34 to PS-33. The total population of TC Mad Alim is 27659 which the petitioner wants to raise in PS-33, whereas the population of TC Tharu Shah is 10,769 which is presently in PS-34 but the petitioner wants its shifting in PS-35. Similarly, the population of Tappa Gher Gaju is 17337 which is presently in PS-34 but petitioner wants its shifting in PS-35. They also want that the Gher Gaju which is presently in NA-211 be shifted in NA-212. In totality they want ECP to carry out totally fresh exercise of delimitation. This is not a simpliciter a case of shifting one T.C from one PS to another PS or NA constituencies but it will change the entire complexion of delimitation which will badly affect the criteria to maintain homogeneity and population among the constituencies. The petitioners want us to remand back the matter to the ECP for fresh exercise of delimitation when the nomination forms have already been accepted and the

constituencies have been carved out. The population of Tappa Molhan is 11541 which again petitioners want that this should be included in PS-34 instead of PS-35. We have also considered the total population of the areas in which there is no variation more than 10% except in one PS for which the ECP has already provided the reasons while allowing variation from 10% to 12.9%.

7. The principles of delimitation are provided under Section 20 of the Elections Act, 2017 in which as far as practicable, the constituencies may be delimited having regard to the distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies. It is further provided in the same section that as far as possible, variation in population in constituencies of an Assembly shall not ordinarily exceed ten percent and if it is exceeded in exceptional circumstances, the Commission shall record reasons in the delimitation order. There is also no issue that the delimitation was not started from the Northern end and failed to proceed clockwise in zigzag manner keeping in view the population among the constituency as provided under sub-Rule (5) of Rule 10 of the Election Rules, 2017. Though the law provides rights to submit proposals by means of representation to ECP for making some changes and modification in the preliminary delimitation and after considering all cognate factors, it is the sole responsibility of

ECP to finalize the delimitation but at the same time one cannot claim vested right that whatever proposal placed by him should be accepted in letter and spirit nor any person can claim to contest elections in the constituency carved out according to his desires, wishes and proposals. After going through the impugned order and the record available before us, we do not find any illegality in the impugned order.

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

Judge

Karachi
Dated: 05.07.2018

Judge