

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No. 883 & 3823 of 2022

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Amjad Ali Sahito

Petitioner in CP No. D-883/2022:

Khalid Maqbool Siddiqui & Others,
Through M/s. Dr. Farogh Naseem, Dr.
Shahab Imam, Yousuf Ali & Ms. Saima
Anjum, Advocates.

Petitioner in CP No. D-3823/2022:

Pakistan Tehreek-e-Insaaf ("PTI") &
Others ,
Through Ch. Atif Rafiq, Advocate.

Respondents:

Province of Sindh & Others.
Through Mr. Khaleeq Ahmed, DAG.
Mr. Irfan Ali, DAG.
Mr. Sandeep Malani, Asst. A.G. Sindh.
Mr. Khurram Shahzad, Additional
Director General (Law) ECP.
Mr. Aijaz Anwer Chohan, Provincial
Election Commissioner.
Mr. Asif Ali Yaseen, Deputy Director,
Electoral Roll ECP.
Mr. Sarmad Sarwar, Law Officer ECP.

Date of hearing:

24.06.2022.

Date of Order:

24.06.2022.

JUDGEMENT

Muhammad Junaid Ghaffar, J: Both these petitions involve a somewhat similar legal controversy; hence, at the request of the Petitioner's Counsel in CP No.D-3823 of 2022, they were heard and decided together on 24.6.2022 and were dismissed by means of a short order with all pending applications. Through these Petitions, the Petitioners have prayed for the following reliefs:-

"C.P. No. D-883/2022

In the light of the reasons, facts and circumstances as mentioned above, it is most respectfully prayed that this Honourable Court may be pleased to pass judgment and decree in favour of Petitioner and against the Respondents:-

- i) To direct the respondents furnish comments before this Hon'ble Court for their policy regarding Delimitation along with previous policy along with reason for not calling objections in this regard.

- ii) To declare notification dated 31.12.2021 is without lawful authority, void, illegal based on malafide intention and is in violation of Hon'ble Supreme Judgment reported in PLD 2014 SC 531.
- iii) To declare that Town demarcation as made on ethnic linguistic and malafide consideration further rule of Sub-Division rule of lower limit and upper limit of population and principles of contiguity have been violated therefore notification dated 31.12.2021 is illegal.
- iv) Respondent may be directed to recall the notification dated 31.12.2021 or to accept the suggestions of Petitioner and re demarcate the towns.
- v) To suspend the operation of notification dated 31.12.2021 till final disposal of this petition.
- vi) Any other relief or reliefs which this Honourable Court may deem fit and proper in the circumstances of the case may also be awarded to the Petitioner in the interest of justice & equity."

C.P. No. D-3823/2022

- i) Set aside the Election Commission of Pakistan's Notification dated 11.5.2022 scheduling the first phase of local government elections with balloting on 26.06.2022 and Notification dated 29.4.2022 scheduling the second phase of local government elections with balloting on 24.7.2022;
- ii) Declare that any elections held for local bodies in Sindh prior to compliance with the directions of Hon'ble Supreme Court detailed in its Judgment dated 1 February 2022 passed in CP No. 24 of 2017 would not constitute elections to elect "representatives of the local government" within the meaning of Article 140-A of the Constitution;
- iii) Direct the Sindh Government to ensure that the Sindh Local Government Act, 2013 is brought in line with the requirements of Article 140-A of the Constitution and the Judgment dated 1 February 2022 passed by the Honourable Supreme Court in CP No. 24 of 2017;
- iv) Restrain the Respondent No. 3 from announcing schedule of elections for local government in Sindh before delimitation of constituencies in Sindh is completed and electoral rolls are prepared;
- v) Direct the Respondent No. 3 to expeditiously hold elections to the local government within the meaning of Article 140-A of the Constitution after the directions regarding devolution made by the Hon'ble Supreme Court in the aforesaid Judgment are complied with and the process of delimitation is completed;
- vi) Any other order that may be in the interest of justice;
- vii) Costs of the Petition."

2. Dr. Farogh Naseem learned Counsel appearing on behalf of the Petitioners in C. P. No. D-883 of 2022 has contended that the Judgment of the Hon'ble Supreme in the case of ***MQM Pakistan & Others Vs. Pakistan*** dated 1.2.2022 in Constitutional Petition No. 24 of 2017 decided under Article 184(3) of the Constitution of Islamic Republic of Pakistan ("**Constitution**") is being violated and not adhered to by the Government of

Sindh as well as Election Commission of Pakistan (“ECP”); that through impugned notification dated 31.12.2021 various Local Councils have been notified which are in violation of various provisions of the Election Act, 2017 (“Elections Act”) as well as Sindh Local Government Act, 2013 (“SLGA, 2013”); that the Government of Sindh has done so to favour itself by manipulating the formation of these Councils on the basis of its vote bank; that ECP has constituted Delimitation Committees wherein no Government Officer can be a member of such Delimitation Committee; that in terms of Section 222(2) of the Election Act they can only assist ECP; that the First Schedule (Part-“B”) of Section 10 of the SLGA 2013 are contrary to each other inasmuch as the limits of population provided thereunder are not in conformity with the basic provision of said Act; that this conduct of the Government of Sindh amounts to Gerrymandering, whereby, distortion has been created in the range of population in respect of Municipal Committees, Union Councils, Wards etc. etc.; that presently, pursuant to the Supreme Court Judgment as above, a Select Committee has been constituted by the Provincial Assembly and all Political Parties are working on various amendments in SLGA, 2013; hence, the elections of Local Government being conducted by ECP on 24.6.2022 and 24.7.2022 must be put in abeyance till such time the necessary amendments are made in the said Act; that in terms of Section 23 of the Election Act, only one electoral roll is to be prepared, whereas, presently the Website of the Election Commission and the SMS facility via 8300 provided to a voter, reflects that there are two lists in field which is a cause of confusion and till such time appropriate and final electoral roll has been prepared, no elections including that of the Local Government can be conducted; that it is the fundamental right of the Petitioners and the Political Parties under Article 17 of the Constitution to contest elections and form a Political Party, and such right is being violated by the conduct of ECP; that Section 52 of the Election Act is also being violated; that the Election Rules particularly Rule Nos. 16 to 18 of the Election Rules 2017, are in violation of the various provisions of the Election Act; that as to delay, if any, in approaching the Court, per settled law when a provision by itself is unconstitutional then laches do not apply; that the entire exercise of Delimitation carried out by ECP is contrary to law and has been done in an arbitrary manner; hence, cannot be sustained; that until SLGA, 2013 is suitably amended, no Elections of Local Government can be held; hence, ECP be restrained from conducting Elections being held on 26.6.2022 and 24.7.2022. In support of his contention he has relied upon various cases¹.

¹ Syed Hafeezurddin Vs. Province of Sindh through Chief Secretary and 5 others ([PLD 2015 Sindh 63](#)), Arshad

3. Mr. Choudhry Atif Rafiq learned Counsel appearing for the Petitioners in C.P. No. D-3823 of 2022 while adopting the arguments of Dr. Farogh Naseem, has further contended that the Judgment of the Hon'ble Supreme Court in the case of **MQM Pakistan** (supra) is being violated and till such time this Judgment is implemented in letter and spirit, no election for Local Government ought to be conducted; that the Petitioners had earlier approached the Hon'ble Supreme Court under Article 184(3) of the Constitution and after objections on the maintainability of such petition, the Petitioner has been asked to approach this Court; hence, this Petition; that until the powers are devolved upon the Local Government and Councils in conformity with Article 140A of the Constitution, no elections for Local Government could be held.

4. Mr. Khurram Shahzad, Additional Director General (Law), ECP has contended that in terms of Section 219(4) of the Election Act, the elections for Local Government are to be mandatorily conducted within 120 days after expiry of its previous term, and since there was a census issue prior to this along with certain litigation; hence, the elections were delayed; that presently, the elections are being conducted after consultation with all Provincial Governments, including Government of Sindh which has consented to the conduct of the elections and even suggested for an extension in the election date which was accepted; that around 27,000 candidates are contesting these elections and 30 million ballot papers have already been printed, whereas, all political parties and their candidates including the Petitioners before this Court are contesting these Elections without raising any objection including the Delimitation issue;

Mehmood Vs. Commissioner / Delimitation Authority, Gujranwala and others ([PLD 2014 Lahore 221](#)), Muhammad Ilyas Vs. Retuning Officer and others ([PLD 2016 Lahore 179](#)), Muhammad Mubeen-us-Salam and others Vs. Federation of Pakistan through Secretary of Defence and others ([PLD 2006 SC 602](#)), Cannon Products Ltd. Vs. Income Tax Officer, Companies Circle, Karachi and 2 others ([PLD 1985 Karachi 572](#)), Imran Khan and others Vs. Election Commission of Pakistan and others ([PLD 2013 SC 120](#)), Sheikh Rashid Ahmed Vs. Government of Punjab and others ([PLD 2010 SC 573](#)), Muhammad Azhar Siddique and another Vs. Government of Punjab and 18 others ([PLD 2010 Lahore 138](#)), Federation of Pakistan and others Vs. Haji Muhammad Saifullah Khan and others ([PLD 1989 SC 166](#)), Mian Muhammad Nawaz Sharif Vs. President of Pakistan and others ([PLD 1993 SC 473](#)), M.Q.M and others Vs. Province of Sindh and others ([2014 CLC 335](#)), Mr. Fazlul Quader Choudhry and others Vs. Mr. Muhammad Abdul Haque ([PLD 1963 SC 486](#)), Dawood Baloch Vs. Muhammad Saleem through Attorney and 2 others ([2017 YLR 1916](#)), Pakistan Post Office Vs. Settlement Commissioner and others ([1987 SCMR 1119](#)), Suo Motu Case No. 13 of 2009 ([PLD 2011 SC 619](#)), Province of Sindh through Chief Secretary and others Vs. M.Q.M. through Deputy Convener and others ([PLD 2014 SC 531](#)), Election Commission of Pakistan through Secretary Vs. Province of Punjab through Chief Secretary and others ([PLD 2014 SC 668](#)), Muhammad Ashraf Tiwana and others Vs. Pakistan and others ([2013 SCMR 1159](#)), Mayzone Pak International Vs. Additional Secretary, Government of Pakistan ([2022 CLC 388](#)), Income Tax Officer (investigation) Circle III, DACCA and another Vs. Shaikh Nasim Anwar ([1966 PTD 657](#)), Director Food, N.-W.F.P. and another Vs. Messrs Madina Flour and General Mills (Pvt.) Ltd and 18 others ([PLD 2001 SC 1](#)), Inamur Rehman Vs. Federation of Pakistan and others ([1992 SCMR 563](#)), Muhammad Saleem Shaikh and others Vs. Province of Sindh and others ([2020 PLC \(C.S.\) 1156](#)), Sakrand Sugar Mills Vs. Federation of Pakistan and others ([PTCL 2014 CL. 154](#)), Dr. Mobashir Hassan and others Vs. Federation of Pakistan and others ([PLD 2010 SC 265](#)), Dr. M.A. Mahboob and another Vs. Mrs. Nawab Begum ([1995 SCMR 339](#)), Dr. Raja Aamer Zaman Vs. Omar Ayub Khan and 9 others ([2015 SCMR 890](#)), Xolile David Kham and 7 others Vs. Electoral Commission of South Africa and another ([2016 SCMR 563](#)) and Muhammad Saeed and 4 others Vs. (1) Election Petitions Tribunal, West Pakistan, (2) Mehr Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others ([PLD 1957 SC \(Pak.\) 91](#))

that approximately an amount of Rs. 500 million has already been spent and therefore no case for staying the election has been made out; that insofar as the Electoral Roll and two lists as contended by the Petitioners Counsel is concerned, ECP is preparing a final Electoral Roll for the purpose of the next General Elections to be held in 2023 and it has got no nexus with the elections of the Local Government which are being held on the basis of the Electoral Roll already prepared; that in term of Section 42 of the Election Act an existing Roll remains in field until a new and final Electoral Roll is prepared and notified; that message (SMS) service via 8300 is only a mode and manner of assistance and facilitation and is not a creation of any law or rule; hence, even if there is any discrepancy, the same cannot be a ground to challenge the entire Electoral Roll; that the Delimitation exercise has already been carried out and the Petitioners are not aggrieved persons, within the contemplation of the Election Act, as only a voter can challenge the same before Delimitation Authority in terms of Section 222 of the Election Act; that it is the authority and mandate of ECP to carry out Delimitation with the assistance of the Revenue Officers, whereas, the Delimitation Committee is chaired by the officer of the ECP; that this Court has been approached at a very belated stage seeking stay of the elections which cannot be granted and therefore, both these Petitions are liable to be dismissed. In support he has relied upon various cases².

5. Learned Assistant Advocate General appearing on behalf of Government of Sindh has submitted that whatever orders are passed by this Court, the Government is bound to implement them, whereas, in compliance of the Judgment of Hon'ble Supreme Court in the case of **MQM Pakistan** (supra) a Select Committee has been constituted which is already deliberating to amend SLGA, 2013 and therefore, no violation of the directions of the Hon'ble Supreme Court has been committed by the Government of Sindh.

6. We have heard both learned Counsel for the Petitioners as well as Counsel for ECP and learned AAG and have also perused the record. Insofar as C.P. No. D-883 of 2022 is concerned, the same has been filed by five petitioners who claim to be the Covenanter and Deputy Convener

² Administrator Municipal Corporation Peshawar and others Vs. Taimur Hussain Amin and others (2021 SCMR 714), President High Court Bar Association and others Vs. Federation of Pakistan and others (2014 SCMR 101), Sheikh Rashid Ahmed Vs. Government of Punjab (PLD 2010 SC 573), Muhammad Arshad Abbasi Vs. Election Commission of Pakistan (2019 YLR 1481), Pakistan People's Party Vs. Government of Punjab and others (PLD 2014 Lahore 330), Abdul Hameed Panhwar Vs. Election Commission of Pakistan (PLD 2013 Sindh 300), Abdul Qadir Patel Vs. Chief Election Commissioner (2013 CLC 1712), Ahmad "Sheryar Khan Vs. Election Commission of Pakistan and others (WP 1354-A/2021) and Election Commission of Pakistan Vs. Fida Muhammad and others (Civil Petition No. 224/2022)

and other authorized persons of MQM Pakistan as well members of National and Sindh Assembly. These petitioners have, in essence, primarily impugned Notification dated 31.12.2021 issued by the Government of Sindh under Section 10(1) of SLGA 2013 on the ground that the same has been issued without lawful authority, is void, illegal and based on malafide intentions. The said Notification determines and notifies the number of Local Councils including Metropolitan Corporation, Town Municipal Corporations and Union Committees of **Karachi Division**. It may be noted that it has got nothing to do with the entire Province of Sind as contended on behalf of the Petitioners. It may also be of relevance to observe that the entire arguments of the Petitioners Counsel in CP No.D-883 of 2022 are beyond the main prayer in this Petition; rather nothing has been submitted before us as to the main prayer in the petition. It is a matter of record that this Petition was presented before this Court on 12.02.2022 and was never pursued diligently, inasmuch as on 21.02.2022 a notice was ordered by the Court, and thereafter, it is only on 02.06.2022 when a new Counsel was engaged by the Petitioners who appeared and filed his Vakalatnama before the Court and the matter was then adjourned to 06.06.2022. On such date Counsel for the Petitioners stated before the Court that an application under Order 6 Rule 17 of the Code of Civil Procedure will be filed for amendment of the pleadings. On 20.06.2022 notice was waived on this application when the law officer of Election Commission of Pakistan as well as DAG sought time to file objections. The said application bearing CMA No. 16652 of 2022³ remained pending and had never been granted; however, the learned Counsel for the Petitioners has made his entire arguments on the basis of the said amendment application as if it has already been granted. Through the said application, further challenge has been made in respect of various other notifications issued by the Government of Sindh and ECP. In fact, the prayer so made is so complexed; vague and generic in nature, that at least it cannot be entertained in terms of Order 6 Rule 17 CPC so as to allow an amendment in a pending petition, more so when it is entirely

³ Prayer in amendment application.

^{viii} Declare the notifications dated 13.04.2022 and 10.06.2022 issued by the ECP (**Annex L-9 and L-10**), notifications of the Government of Sindh bearing Nos. RO(LG/E.Com/14(20)/2021 and RO(LG/E.Com/14(03)/2021 both dated 31.12.2021 (**Annex L-11 to L-30**), corrigendum and letters issued by the Government of Sindh and its officers dated 31.12.2021, 06.01.2022, 10.01.2022, 12.01.2022, 21.01.2022, 29.01.2022, 31.01.2022, 04.02.2022, 21.02.2022, 22.03.2022, 16.05.2022, 08.06.2022 and 21.03.2022 (**Annex L-31 to L-63**), sections 8, 9, 10, 12, 13 and 14 of the SLGA, 2013, two notifications of the ECP both bearing Nos.F.6(3)/2020-LGE(S) both dated 1.6.2021 (**Annex L-64 and L-65**), Parts B and C of Schedule I to SLGA, 2013 (as amended), notifications dated 29.4.2022 and 11.5.2022 (**Annex L-67 and L-68**), ECP's letter dated 1.6.2021 (**Annex L-65**), to be completely without jurisdiction, unconstitutional, unlawful, void ab initio and of no legal effect, while annulling the entire delimitation process, all delimitation orders, the entire local government elections for Sindh;

ix) permanently and pending disposal of the main petition restrain the Respondents, their officers and agents, from holding or conducting the local government elections in Sindh."

irrelevant and diacritic to the main prayer. Nonetheless, and notwithstanding the fact that this application was yet to be granted; nor any amended petition was before the Court, if the arguments so made by the Petitioners Counsel are looked into, even then to the extent of amended prayer, it appears that no case has been made out.

7. The first objection which has been raised is to the effect that the Delimitation Committees have been constituted in violation of Section 222(2)⁴ of the Election Act; are corium-non-judice, as they also include the Revenue Officers. However, this argument does appear to be convincing at all. First and foremost is that no independent order of a Delimitation Committee is under challenge before us. Nonetheless, it appears to be an admitted position that the Delimitation Committees have been constituted by ECP in terms of Section 222(2) read with Rules 16⁵ & 17⁶ of the Election Rules 2017, by virtue of which Delimitation Committees are headed by the officers of the ECP, and not by the Revenue Authorities, whereas, they are only included to provide assistance as mandated under the Act. Therefore, we are not inclined to accept the Petitioners contention in this regard and are of the view that no illegality has been committed in the constitution of the Delimitation Committees. Moreover, we have not been assisted as to what dominating or overriding role as alleged has been performed by the Revenue Authorities, which could, *per-se*, be held to be in violation of the Election Act, and its Rules; therefore, this objection

⁴ 222. **Appointment of Delimitation Committee.**—(1) The Commission shall appoint a Delimitation Committee of reach district for delimitation of constituencies of the local governments in the district, including union councils, wards within a union council, or wards in municipal committees.

(2) Revenue or other executive officers posted in the district shall provide necessary assistance to the Delimitation Committee in carrying out delimitation of constituencies of the local governments in the district.

⁵ 16. **Appointment of Delimitation Committee.**—(1) For the purpose of delimitation of local governments, the Commission shall appoint a delimitation committee for each district or a part thereof (hereinafter referred to as “the Committee” in this Chapter) from amongst the officers of the Commission, the federal government or the provisional government, autonomous bodies controlled by the federal or provincial governments as it may deem appropriate;

Provided that the convener of the committee shall be the District Election Commissioner concerned as may be notified by the Commission.

(2) The Committee referred to in sub-rule (1) shall delimit the local governments, or, as the case may be, a ward within a local government, in accordance with the provisions of the Act, the applicable local government laws, the Rules and such other instructions as may be issued by the Commission from time to time.

⁶ 17. **Functions of the Committee.**— Subject to the principles of delimitation laid down in the Act, the Committee shall delimit the constituencies in accordance with the applicable local government laws, the Rules and such other instructions as may be issued by the Commission from time to time.

Provided that the constituencies so delimited for the local governments or, as the case may be, a ward within a local government shall as far as possible be equal in population among themselves and in case of variation in population difference shall not be more than ten percent and the census block shall not be broken;

Provided further that in case of variation exceeding ten percent, the Committee shall record reasons thereof.”

appears to be misconceived and is hereby repelled. Lastly, as already noted, the entire challenge to the formation of the Delimitation Committees appears to be vague, too generalized, and is without any specific details. The Petitioners have not taken recourse to the remedy as provided under the Election Act in terms of Section 223(3) by impugning the findings of the Delimitation Committee before the Delimitation Authority which is the proper forum for the said purposes. In terms of Rule 21(3) of the Election Rules 2017, the Delimitation Authority, may even hold inquiries, summon witnesses and record evidence while deciding the objections against delimitation by the Committees. Therefore, even if the amended prayer in the petition to the extent of any dispute regarding orders / findings of the Delimitation Committees is looked into, the very maintainability of CP No.883 of 2022 is a big question. The Petitioner has chosen to approach this Court, without first challenging the findings of the Delimitation Committees in accordance with the Elections Act and Rules, whereas, no individual person aggrieved of such delimitation has come before us to challenge any such findings. Therefore, the argument regarding any illegality in the constitution of the Delimitation Committees and their determination is not tenable; hence stands repelled.

8. As to the argument raised by both learned Counsel appearing on behalf of the Petitioners to the effect that Judgment of the Hon'ble Supreme Court in the case of **MQM Pakistan** supra is not being implemented and has been violated, it would be of relevance to refer to Para 46 of the said Judgment (the operative part), whereby, certain directions have been issued. It reads as under:-

“46. This very operative part of the judgment, given by this Court in the **Imrana Tawana's case** (*supra*), in our view, with full force applies to the present case also. As the controversy in the present petition also substantially revolves around the same subject, as has been dealt with by this Court and the judgment being a law declared by a 3-Member Bench of this Court, in terms of Article 159 of the Constitution, is the operative law of the land. We tend to agree with the operative part of the judgment of this Court in **Imrana Tiwana's case** (*supra*) and thus, would dispose of this petition in the following terms:-

(i) Elected Local Government are presently not in existence in the Province of Sindh. The Provincial Government through its agencies is performing their duties and functions. In the vacuum resulting from the absence of an elected Local Government in Sindh, the initiation, approval and execution of any of the duties and functions of the elected local government are allowed to be carried out by the provincial government and no new project following within the domain of the elected local government shall be undertaken by the provincial government or its agency without prior consultation and consent unless withheld without justified reasons, as the case may be of the elected local government in respect of such project.

(ii) Article 140A of the Constitution of Islamic Republic of Pakistan casts a mandatory obligation on the Provinces to establish Local Government

possessing meaningful authority and responsibility in the political arena, administrative and financial matters. It is the duty of a province through the Provincial Government and the Provincial Assembly to purposefully empower Local Governments in the province so as to comply with their mandatory obligation under Article 140A of the Constitution.

(iii) The powers in relation to master plan and spatial planning which historically belongs to the elected local government have been superimposed with similar functions vesting in the provincial laws. To the extent of conflict in the exercise of their respective powers and functions by the elected local government and the statutory authorities or on account of legal provisions having overriding effect, Article 140A of the Constitution confers primacy upon the authority vesting in an elected local government over the powers conferred by law on the provincial government or agency thereof. Notwithstanding the above, the provincial government in any case is "under a duty to establish harmonious working relationship with an elected local government" wherein respect is accorded to the views and decisions of the latter.

(iv) Thus, the laws made by the provincial government i.e. the Sindh Building Control Ordinance, 1979, KDA Order No.5 of 1957, Malir Development Authority Act, 1993, Lyari Development Authority Act, 1993, Karachi Water and Sewerage Board Act, 1996, Hyderabad Development Authority Act, 1976, Sehwan Development Authority Act, 1993, Larkana Development Authority Act, 1994, any dispensation pertaining to the Board of Revenue or the Master Plan Department or any other Development Authority in the province of Sindh and the Sindh Mass Transit Authority Act, 2014, the Sindh Food Authority Act, 2016, the Sindh Environmental Protection Agency Act, 2014, purporting to override and conflicting action taken by an elected local government are held to be against the scheme of the Constitution and the provincial government is directed to bring all those laws in accord with the mandate of Article 140A of the Constitution.

(v) The Government of Sindh shall ensure that all local governments in the province of Sindh do get their share in the divisible pool of funds by implementing the Provincial Financial Commission Award and also to ensure that no arrears in this regard are accumulated and if, there are arrears, the same are released.

(vi) Sections 74 and 75(1) of the Act of 2013 are against the principle enshrined in the Objectives Resolution and the fundamental rights enacted in Articles 9, 14 and 25 of the Constitution and are also contrary to and in direct conflict with Article 140A of the Constitution and thus, declared *ultra vires* and struck down.

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-A⁷ of the Constitution casts a mandatory obligation on the Provinces to establish Local

⁷ [140A. (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 be held by the Election Commission of Pakistan.]

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)⁸ 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.

11. As a matter of fact we have been informed by the Petitioners Counsel as well as learned AAG that pursuant to the aforesaid Judgment a Select Committee of the Provincial Assembly has been constituted and meetings have been held, whereas, consensus is being developed by all the political parties in the Provincial Assembly, to amend SLGA 2013 in conformity with the directions of the Hon'ble Supreme Court. In that case, apparently, the Judgment has been complied with and no case for its further implementation is made out for the present purposes; rather an assurance has been given to the Court by placing the minutes of the Select Committee that all meaningful efforts are underway to implement the Judgment of the Hon'ble Supreme Court. The cause of action in this regard, if at all, would only arise once the Select Committee has finalised its recommendation and SLGA, 2013 has been amended. Even otherwise, the process of carrying out amendments as per the dicta laid down by the Hon'ble Supreme Court in the case of ***MQM Pakistan*** (Supra) ought to

⁸ 187 (2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province.

have been taken up by all the stakeholders immediately as the said judgment was announced on 1.2.2022, and till June 2022, only meetings of the Select Committee are going on. For this it is only the lawmakers who are to be blamed and not ECP as 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 held⁹. In fact, on the contrary, all executive authorities are to assist ECP in discharge of their functions, and if not, then they will be violating the Constitution attracting serious consequences. In the case reported as ***Administrator Municipal Corporation, Peshawar v Taimur Hussain Amir (2021 SCMR 714)*** the issue before the Hon'ble Supreme Court was that Local Government Elections could only be held once the Census carried out in the year 2017 is approved by Council of Common Interest; and the Elections of Local Government being held in Khyber Pakhtunkhwa was opposed on this very ground. The finding of the Hon'ble Supreme Court to this is very relevant for the present purposes and reads as under;

2. We are surprised to learn that the census carried out about four years ago has still not been approved, disapproved or otherwise resolved by the CCI. The CCI is a constitutional body and we are confident that it is aware of its constitutional responsibilities to the people of Pakistan under the Constitution of the Islamic Republic of Pakistan ('Constitution') and shall, without further delay, do the needful. We are also confident that the next scheduled meeting of the CCI will not, once again, be adjourned. The matters of State take priority over all other matters. To postpone indefinitely a constitutional requirement, of holding elections, because CCI, which comprises of the highest executive functionaries of the Federation and the provinces, can't be bothered to meet, violates the fundamentals of the Constitution. The Constitution cannot be permitted to be violated. If the excuse of the Government were to be accepted then elections to the National and provincial assemblies can also not take place, and that would be the end of democracy.

12. As to the conduct of the Petitioners in both the Petitions, it would suffice to say that no efforts have been made by them to approach this Court immediately after announcement of the Elections; rather, they have come too late in the day seeking a restraining order against ECP from conducting the Local Government Elections. The Petitioners in C.P. No. D-883 of 2022 had in fact never challenged the Elections and the Notifications issued thereof; rather made an attempt (again belatedly) somewhere in June 2022 by filing an application under Order 6 Rule 17 CPC for amendment of the petition. This conduct by itself lacks bonafides, which for seeking exercise of discretionary powers under Article 199 of the

⁹ Administrator Municipal Corporation, Peshawar v Taimur Hussain Amir (2021 SCMR 714)

Constitution is a *sine qua non*. It is settled law that constitutional jurisdiction under Article 199 of Constitution is discretionary in character, whereas, he who seeks equity must come with clean hands and must be vigilant qua his right to approach the Courts well in time¹⁰. In our considered view, entertaining the petitioner's prayer would *prima facie*, and unjustifiably, shelve the entire electoral process, intended to devolve the political, administrative and financial responsibility and authority upon the elected representative of a local government¹¹. Insofar as the Petitioners in C.P. No. D-3823 of 2022 are concerned, they have filed this Petition on 20.06.2022 and while confronted, we have been informed that earlier a Petition under Article 184(3) of the Constitution was filed before Hon'ble Supreme Court which was dismissed as being not maintainable, and thereafter, this Court has been approached. In that case the Petitioners are to blame themselves for this delay in approaching this Court belatedly, so late in the day for seeking a restraining order in respect of the Elections being held day-after-tomorrow. It is now well laid down that the High Courts can only interfere in the election matters if the interference is to sub-serve the election, election process and not to interrupt or interfere with the election or the election process.¹²

13. In view of hereinabove facts and circumstances of the case, in our considered view no case of indulgence was made out, and therefore, after hearing the arguments of all learned Counsel for the Petitioners, learned AAG and the Respondents Counsel we had dismissed both these Petitions by means of a short order on 24.06.2022 and these are the reasons thereof.

J U D G E

J U D G E

Arshad/

¹⁰ Muhammad Fiaz Khan v Ajmer Khan (2010 SCMR 105) & Syed Iqbal Hussain Shah Gillani v Pakistan Bar Council (2021 SCMR 425)

¹¹ Grand Democratic Alliance v Election Commission of Pakistan; Judgment dated 24.5.2022 in CP No.D-271-2022 (Sindh High Court)

¹² Abdul Qadir Patel v Chief Election Commissioner (2013 CLC 1712)