

ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

C.P. No. D — 213 of 2020.

DATE

ORDER WITH SIGNATURE OF JUDGE

26.02.2020.

FOR ORDERS ON OFFICE OBJECTION.
FOR HEARING OF M.A. 1297/2020.
FOR ORDERS ON STATEMENT.

Barrister Zameer Hussain Ghumro Advocate for petitioner.

Mr. Muhammad Humayoon Khan D.A.G. along with Mr. Abdullah Hanjrah, Legal Officer Election Commission.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

The petitioner who claimed to be a resident of Umerkot and a registered voter of the constituency No.PS-52 Umerkot-II, has impugned the Notification of 13th February 2020, being a revised schedule of election of the subject constituency.

Petitioner's counsel Mr. Barrister Zameer Hussain Ghumro rests his case on Article 224(4) of the Constitution of Islamic Republic of Pakistan, and submits that except by dissolution of the National Assembly or Provincial Assembly, when a Seat has fallen vacant in any such Assembly not later than 120 days before the term of that Assembly is due to expire, an election to fill the seat shall be held within 60 days of the occurrence of the vacancy. It is argued that the vacancy was notified on 22nd of January 2020, and the first Notification disclosing schedule of election of the said constituency was issued first on 12th of February 2020. The program as disclosed in the said Notification was to commence from 14th February 2020, and the polling day set as 17th of March 2020. Immediately thereafter, on 13th February 2020, this Notification was revised and in terms of the revised schedule the public notice is to be issued on 29th of February 2020, followed by filling of the nomination papers, publication of names, scrutiny etc and the polling to be held on 15th of April 2020. This

delay is shown to have been caused on account of administrative reasons with regard to ongoing work of revision of electoral rolls.

The notice of this petition was issued and the Secretary Election Commission of Pakistan was pleased to file the parawise comments.

Mr. Muhammad Humayoon Khan learned Deputy Attorney General submits that on the administrative ground as mentioned in the revised Notification, the election schedule is extended and is likely to commence from 29th February 2020, with a lapse of 15 days. He submits that originally a public notice was required to be issued on 14th of February 2020 which is now being issued on 29th of February 2020. In the parawise comments it is also claimed that this delay was also caused on account of printing of "electoral rolls" in absence of which free and impartial election would not have been possible. Perhaps they mean printing of ballot papers. Learned D.A.G. has also relied upon Article 254 of the Constitution of the Islamic Republic of Pakistan whereby a failure to comply with the time constraint requirement, it does not render the act invalid.

We have heard the learned counsel and perused the material available on record.

There is no cavil to this proposition that in terms of Article 224 of constitution, when a Seat has fallen vacant, be it of National Assembly or Provincial Assembly with not later than 120 days before the term of that Assembly is due to expire, seat in such Assembly is to be filled by holding election within 60 days from the occurrence of such vacancy. The vacancy was notified by the Secretary Provincial Assembly on 22nd of January 2020, and consequently after a delay of about 20 days a Notification for holding election in the said constituency was issued wherein public notice was required to be issued on 14th of February 2020, and the polling day was set as 17th of March 2020. On 13th of February 2020, this schedule was redesign having effective date of public notice as 29th of February 2020 and the polling to be held on 15th of April 2020. This delay shown to have been caused due to administrative reason with regard to ongoing work of revision of electoral rolls. This excuse as

notified in the subsequent Notification dated 13th of February 2020, lost its force when the District Election Commissioner Umerkot himself issued a letter to the Provincial Election Commissioner on 8th February 2020 disclosing that the revision of the electoral rolls 2019 to 2020 Forms 15, 16, 17 fresh CNIC and Section 34 of Election Act 2017 has been completed and no work is pending in this regard. The excuse was thus not available to delay this process. In the parawise comments they raised an excuse that the delay was also caused on account of delayed printing of the electoral rolls (perhaps ballot paper). This negligence could hardly be expected from an Authority who holds elections throughout Pakistan. It seems that the office of the Provincial Election Commission took it lightly before announcing the schedule on 12th of February 2020, firstly they made an excuse that on account of revision of the electoral rolls it was delayed which effect was diluted by a letter of 8th February issued by District Election Commission himself. The subsequent excuse of non-availability of printed ballot papers also does not justify a delay as it demonstrate inefficiency on the part of the officials of Provincial Election Commission. Article 254 of the Constitution of the Islamic Republic of Pakistan is available to rescue the officials from a situation when any act or thing that is required to be done within a particular period is delayed for any bonafide reason. The purpose of Article 254 of Islamic Republic of Pakistan is not to grant a license to defeat the mandate of the Constitution. It is a valve available only where constitutional mandate is not honoured on account of any bonafide excuse and not for any extraneous reason.

Prima facie it shows slackness on the part of the officials of the Provincial Election Commission and we do not expect this slackness or negligence on their part as these are very sensitive issues and may ultimately lead to raising of the eyebrows. We are of the view that the delay is not satisfactorily explained by the learned D.A.G. as it is not at all transparent hence we don't consider it to be a legitimate excuse.

Be that as it may, in terms of the revised schedule only 03 days are left for the issuance of the public notice and we left with no other option but to enforce the revised schedule strictly.

We dispose of this petition with the direction that the election be held strictly in terms of the revised schedule and the official respondents shall be careful in future as no such delay shall be acceptable in compliance of Article 224 of the Constitution of Islamic Republic of Pakistan unless a legitimate excuse is available in terms of Article 254 of the Constitution of Islamic Republic of Pakistan.

JUDGE

JUDGE

A.