

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-2918 of 2023

Date	Order with signature of the Judge
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Priority

1. For order on Misc. No. 14292 of 2023 (1 rule 10)
2. For order on Misc. No. 14237 of 2023 (1 rule 10)
3. For order on Misc. No. 1414236 of 2023 (1 rule 10)
4. For order on Misc. No. 14373 of 2023 (1 rule 10)
5. For order on Misc. No. 13955 of 2023 (stay)
6. For hearing of main case.

14.06.2023

Taimur Ali Mirza advocate for the Petitioner

Hassan Akbar, Advocate General, Sindh, along with Saifullah, AAG, Rafiq Rajouri, A.A.G, Sandeep Malani, A.A.G, Syed Mohsin Hassan Shah, A.A.G/Focal Person for Chief Secretary, Government of Sindh, Riaz Ahmed, Director (Law), Abdullah Hinjrah, Senior Law Officer on behalf of Election Commission of Pakistan

Haider Waheed, Shabbir Ahmed Shah, Ayaz Hussain Tunio, Ali Nawaz, Muhammad Haseeb Jamali, Barrister Gazain Magsi and Barrister Ramez Adnan, Advocates, for the Interveners

1-4. Deferred.

5&6. The Petitioner is apparently an elected member of Union Council No.08, North Nazimabad District Central, Karachi, and has preferred the captioned Petition so as to impugn the *vires* of the Sindh Local Government (Amendment) Act 2023 (the “**2023 Act**”) promulgated by the Provincial Assembly of Sindh and Notification No.F.3(5)/2022-LGE-S dated 24.05.2023 (the “**Notification**”) issued by the Election Commission of Pakistan (the “**ECP**”), setting out the schedule for the Election of Mayor and Deputy Mayor, Chairman and Vice Chairman of the Metropolitan Corporation, Municipal Corporations, Town Municipal Corporations, Municipal Committees, Town Committees and District Councils relating to the Province (the “**Election**”), with 15.06.2023 being specified as the polling day.

Vide CMA No. 13955/23, the Petitioner has elicited interim relief, seeking suspension of the Notification on the ground that it is ultra vires the Constitution of Pakistan, 1973, without lawful authority and of no legal effect and to restrain the Respondents, viz – the Province, the ECP and the Karachi Metropolitan Corporation, from taking any action pursuant to Section 18-B of the 2023 Act. Learned counsel for the Petitioner and the learned Advocate General have advanced their submissions in respect of that miscellaneous Application.

Learned counsel pointed out that the 2023 Act inter alia amended Section 18 of the Sindh Local Government Act 2013 (the “**SLGA**”) addressing the composition of councils and prescribing the method in which the post of Chairman/Mayor was to be filled, with Section 3 of the 2023 Act inserting Section 18-B into the SLGA, providing as follows:-

“18-B. Appointment of Mayor and Deputy Mayor, Chairman and Vice Chairman. Notwithstanding any other law for the time being in force, the Metropolitan Corporation, Town Municipal Corporation, Municipal Corporation, District Council, Municipal Committee and Town Committee, so constituted shall elect any person as a Mayor and Deputy Mayor, Chairman and Vice Chairman by show of hands:

Provided any so elected as the Mayor, Deputy Mayor, Chairman, or Vice Chairman of the council shall not continue to hold the said office unless he is elected as a Member of the respective council within a period of six months of taking oath of office”

He pointed out that Section 18 had hitherto made the membership of the corporation/council a sine qua non vis-à-vis the eligibility of a person seeking to be elected to the post of Chairman/Mayor, and prior to the 2023 Act it was necessary that a person go through the rigors of a direct electoral process to then be eligible to contest the Election for either of those posts. However, through the insertion of Section 18-B, the 2023 Act had effectively dispensed with such requirement so as to allow “any person” to be elected. He argued that Section 3 Act of the 2023 Act thus offended the fundamental precept of representative democracy at the local government level, premised on the vesting of executive authority with persons who are elected representatives of the people, as enshrined in Article 140-A of the Constitution.

Conversely, the learned AG raised objections as to the locus standi of the Petitioner and the maintainability of the Petition. He submitted that the Petitioner belonged to a political party whose elected representatives in the Provincial Assembly had voted in favour of the 2023 Act, which, per the learned AG, had been passed unanimously. He pointed out that the 2023 Act had been passed by the Provincial Assembly on 11.05.2023 and received the assent of the Governor on the same day, whereafter it had been published in the Sindh Government Gazette on 12.05.2023. He submitted that the Petition had, however, been held back as a tactical measure so as to be presented on 07.06.2023, only a week or so prior to the polling day. He argued that it was within the legislative competence of the Provincial Assembly to promulgate the 2023 Act and that its provisions did not in offend any Constitutional provision(s). He submitted that the operation of the SLGA, as amended, could not be suspended pending final determination of the question of constitutionality, and the same ought to be given effect till then. In that regard, he placed reliance on the judgments of the Supreme Court in the cases reported as *Federation of Pakistan v. Aitzaz Ahsan and another* PLD 1989 Supreme Court 61, and *Aijaz Ali Khan Jatoi v. Liaquat Ali Khan Jatoi* 1993 SCMR 2350. He and learned counsel for the intervenors were ad-idem on the point that the result of the Election would be subject to the final outcome of the Petition and the eligibility of any person under shelter of Section 18-B and any result in his/her favour would be washed away if the Petition were to succeed.

We have considered the arguments advanced. The submissions of learned counsel for the Petitioner to the extent of the Application for interim relief are based on the 2023 Act being ultra vires as having violated Article 140-A of the Constitution, with the matter yet to be fully argued on the constitutional plane and the merits of the challenge brought on that score yet to be properly determined. Needless to say, as held in the *Federation of Pakistan v. Aitzaz Ahsan and another* PLD 1989 Supreme Court 61, and *Aijaz Ali Khan Jatoi v. Liaquat Ali Khan Jatoi* 1993 SCMR 2350, the operation of the 2023 Act and the amendments thereby made to the SLGA cannot be suspended as an interim measure. Furthermore, on query posed to learned counsel as to whether it

was within the jurisdiction and competence of the ECP to issue the Notification, he conceded that it was so. As such, the question of forestalling the election does not arise and the law is to be given effect and allowed its normal operation until such time as it is held to be ultra vires, if at all.

Under the circumstances, no case for interim relief stands made out. The listed miscellaneous Application thus stands dismissed, but with the observation that that the result of the Election would remain subject to the final outcome of the Petition.

As we have already heard the arguments for purpose of the listed application, let the main case be listed for hearing on 22.06.2023, to be taken up at 11:30 A.M.

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