

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ

Mr. Justice Jawad Akbar Sarwana

(1) C.P. No. D-2918 of 2023

Naeem ur Rehman Khan

versus

Province of Sindh & others (Respondent)

(2) C.P. No. D-3005 of 2023

Shah Muhammad Zaman Advocate

Versus

Government of Sindh & others

(3) C.P. No. D-3086 of 2023

Muhammad Amir Khan

Versus

Province of Sindh & others

A N D

(4) C.P. No. D-3120 of 2023

Saifuddin

versus

Province of Sindh & others

Date of Hearing: 19.09.2024, 02.10.2024, 11.10.2024,
18.10.2024, 01.11.2024 and 04.11.2024

Petitioner in C.P. No. D- 2918 of 2023: Through M/s. Ali Nawaz Khuhawar and Naqash Siddiqui, Advocates

Petitioner in C.P. No. D- 3005 of 2023: None present.

Petitioner in C.P. No. D- 3086 of 2023: Through Mr. Tariq Mansoor, Advocate,

Petitioner in C.P. No. D- 3120 of 2023: Through Mr. Raja Qasit Nawaz Advocate.

Respondent No.1 Province of Sindh in all petitions: Through Mr. Hassan Akbar, Advocate General Sindh and Mr. Zeeshan Adhi, Additional Advocate General (Sindh) a/w Mr. Bilal Ashar, Mr. Saifullah and Mr. Mehran Khan, Assistant Advocate General (Sindh)

Respondent KMC in all petitions: Through M/s Muhammad Umar Lakhani and Ishfaq Ahmed, Advocates

Respondent No.4 in C.P. Through M/s. Muhammad Haseeb Jamali,
No. D-2918 of 2023: Syed Saad Khurram, Muhammad Shahrukh
Siddiqui and Zorain Nizamani, Advocates

Respondent No.6, 3 and 4 Through M/s. Haider Waheed, Romain
in C.P. No. D-2918, D- Qamar and Fahad Ali Hashmi, Advocates.
3086 & D-3120 of 2023:

Respondent No.7 & 5 in Through M/s. Irtafa-ur-Rehman and Bilal
C.P. No. D-2918 & D-3120 Ahmed Advocates.
of 2023:

Respondent No.8 in C.P. Through M/s. Mr. Waqar Ahmed and
No. D-2918 of 2023: Abdullah Azzaam Naqvi Advocates

Respondent No.9 and 10 Through M/s. Gazain Z. Magsi, Rameez
in C.P. No. D-2918 of Adnan Ansari and Daanish Ghazi Advocates
2023:

Respondent No.14 in C.P. Through M/s. Talha Abbasi and Waseem
No. D-2918 of 2023: Iqbal, Advocates.

Respondent No.15 and 16 Through M/s. Jaffer Raza, Asif Ali Khawaja
in C.P. No. D-2918 of and M. Yahya Iqbal, Advocates.
2023:

Respondent No.17 in C.P. Through M/s. Zain A. Soomro and Abdul
No. D-2918 of 2023: Basit Essani, Advocates.

Applicant/intervener in Through Mr. Syed Ghulam Shabbir Shah
C.P. No. D-2918 of 2023: Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, CJ.- Petitioners are aggrieved of the impugned amendment brought by the legislature and notified via notification dated 24.05.2023, whereby Section 18 of the Sindh Local Government Act, 2013 was re-tuned to its previous effect by omitting certain clauses of Section 18 and by inserting Section 18-B. Petitioners being aggrieved of such amendment have brought these petitions as according to them it infringes upon the petitioners' fundamental right to "have a head of Government a person elected by the Community".

2. The petitioners have impugned the legislative competence of the Provincial Legislature to amend the laws in derogation of the enabling Article being Article 140A of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred as “the Constitution”). The petitioners asserted that the legislative competence of the government is “subject to Constitution” and consequently cannot be in derogation of any of the fundamental rights identified therein. It is their case that the impugned amendment has brought the composition of the Council in such a way that the Council having been elected, directly as is the case with franchise or indirectly, as is the case with reserved seats, entitled to elect “any person” to exercise executive authority. Such person under the impugned amendment may not be a member of the council being a condition precedent under the pre-amendment laws.

3. Learned counsel for petitioners submitted that this is a direct attack on the fundamental rights being taken away by way of imposing an unelected executive over the community. It is their (petitioners’) case that the subject amendment is the influence of Article 91(9) and 130(9) of the Constitution which was criticized by one of the jurists in his book called “Judicial Review of public actions”.

4. M/s Ali Nawaz Khuhawar and Tariq Mansoor, learned counsel for petitioners in connected petitions in addition to above also argued on the similar line that the impugned amendment to the extent of “any person” is a person specific and the legislature in their wisdom has purposely avoided to cater a balanced scheme for the local government. It is argued that the Constitution provides a separate mechanism for local government in terms of Article 140A read with numerous Articles wherein fundamental rights are enshrined. It is argued that Article 91 and 130 would not come to support the structure as now framed under the impugned amendment and the same is ultra vires to the Constitution

such as Article 91, 140A and 130 of the Constitution. It is further argued that Article 90 cannot be read in isolation. With this background it is further urged that any departure from system under basic democracy's order would offend the fundamental rights to be ruled through elected executives.

5. Raja Qasit Nawaz Khan Advocate has also argued that this amendment cannot be given a retrospective effect to the election, which notification was issued on 31.12.2021. Hence, for all intent and purposes the amendment at the most could have a prospective effect but not on the election which was notified prior to the amendment, made part of the Sindh Local Government Act, 2013, much later to above date.

6. Mr. Haider Waheed, learned counsel for respondent No.6 and Mr. Zeeshan Adhi, learned Addl. Advocate General, have opposed the contention that the subject amendment is ultra vires the Constitution and/or that it could not be applied to the elections of Mayor. Mr. Haider Waheed, learned counsel, gave us details of the scheme of elections and has argued that this cannot be considered as of "person specified" amendment as anyone could have participated in the election of Mayor. In fact the amendment has broadened the horizon of a possible candidate who could have contested for the post of Mayor under the impugned amendment.

7. We have heard learned counsel and perused record.

8. The Constitution is the basic document and on the touchstone whereof all laws are to be adjudged. Certain provisions of the Constitution are self-executing and others require the aid of sub-constitutional legislation. Sindh Local Government Act, 2013 is a sub-constitutional legislation to support the mechanics of the Constitution. The requirement of an enactment, such as, SLGA 2013 is found in Article

140A of the Constitution. Article 140A for the convenience is reproduced as under:

*“140A. Local Government—(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) ...”*

9. Article 140A provides power to the province to legislate in respect of local government and its functions. There are new dimensions of democracy as seen and provided by 18th Amendment and screened by Supreme Court in the case of District Bar Association¹. The concept of being elected after being selected is not an alien concept in our redesigned Constitution via wisdom of legislature. It seems that the provisions similar to the one inserted under 18-B (amended Section impugned in the instant petition) are present in the Constitution for the federal and provincial ministers who, if so appointed, are required to be elected within span of six months. To understand the concepts of the aforesaid Articles, it may be pointed out that any Muslim member of the National Assembly can be elected as Prime Minister of the country hence even a Muslim individual from reserved seats (who are not directly elected) can theoretically be Prime Minister of Pakistan. Similarly the Chief Ministers could be any one from amongst the members of the provincial assembly hence any individual from the reserved seats including the woman and minority can theoretically be elected as Chief Minister.

10. The 18th Amendment to the Constitution brought a new regime that introduced Article 90, 91, 130, 130(9) and 140A. It indicates the structure of three tiers of the government. It has been consistently argued that the Constitution and the fundamental rights inuring to its citizen thereunder stood infringed by persons unelected who sought to

¹ PLD 2015 SC 401 (District Bar Association v. Federation of Pakistan)

exercise executive powers. In fact the Constitution, as stated, stands as a bulwark against such infringements.

11. Article 90 of the Constitution provides what the Federal Government consists of. It provides that subject to the Constitution the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, consisting of the Prime Minister and the Federal Ministers, which shall act through the Prime Minister, who shall be the chief executive of the Federation.

12. Article 91 provides the cabinet consisting of ministers with the prime minister as its head to aid and advise the president in exercise of his functions. Since the vires of Section 18 of Sindh Local Government Act, 2013 as it amended has been attacked to the extent of “any person”, as has been added, we may for the purpose of understanding go through the sub-clause 9 of Article 91 which provides that a Minister who for any period of six consecutive months is not a member of the National Assembly shall, at the expiration of that period, cease to be a Minister and shall not before the dissolution of that Assembly be again appointed a Minister unless he is elected a member of that Assembly. This is not so when minister enjoys as being member of Senate. A similar scheme is devised for the provincial cabinet in terms of Article 130(9) which is almost *pari materia* scheme to Article 91(9). It provides that a Minister who for any period of six consecutive months is not a member of the Provincial Assembly shall, at the expiration of that period, cease to be a Minister and shall not before the dissolution of that Assembly be again appointed a Minister unless he is elected as a member of that Assembly.

13. The analysis of the counsel for the petitioners seems to have challenged the wisdom of the legislature. This attempt could only succeed if amendment falls beyond the basic frame of the Constitution and not otherwise. It is thus to be seen whether in facts and

circumstances an unelected representative is made to rule which otherwise is not contemplated under any provision of the constitution including but not limited to Article 91(9), 130(9) and 140A of the Constitution, or through any subordinate legislation.

14. Thus, the law can only be struck down on the grounds of lack of legislative competence, secondly, being violative of fundamental rights preserved by the Constitution and if it offends any article of the Constitution. By virtue of Article 140A of the Constitution, the local government system made subservient to provincial legislature. The impugned amendment is specifically in relation to the local government system only and for that reason the pith and substance of the amendment is the local government and the legislative domain. Thus, the same has not encroached upon nor could it be deemed to be in personam. In order to understand the provincial legislative frame, Article 140A is very material and is already reproduced above.

15. Insofar as the legislative competence is concerned, the amendment impugned cannot be attacked on the ground of lack of legislative competence, as it has such competence, except if the legislative product encroaches upon and/or infringes fundamental rights of the citizens.

16. The Supreme Court in the case of Baz Muhammad Kakar² has laid down the following principles in case the legislative competence is challenged:

96. From the above discussion in the case-law, following principles are deduced:--

(a) The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant.

(b) In other words, it is the substance of the Act that is material and not merely the form or outward

² PLD 2012 SC 923 (Baz Muhammad Kakar v. Federation of Pakistan)

appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation.

(c) The legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or, limited by fundamental rights created by the Constitution.

(d) The idea conveyed by the expression 'colourable legislation' is that although apparently a Legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise.

(e) Where a challenge is made on this ground, what has to be proved to the satisfaction of the Court is that though the Act ostensibly is within the legislative competence of the Legislature in question, in substance and in reality it covers a field which is outside its legislative competence.

(f) The whole doctrine of colourable legislation resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant:

(g) It is only when a legislature which has no power to legislate frames a legislation so camouflaging it as to appear to be within its competence when it knows it is not, it can be said that the legislation so enacted is colourable legislation.

(h) If in pith and substance the legislation does not belong to the subject falling within the limits of its power but is outside it, the mere form of the legislation will not be determinate of the legislative competence.

17. Similarly, in the case of Sui Southern Gas Company³ the Supreme Court observed that there is always a presumption in favour of the constitutionality of a legislative enactment unless ex facie it appears to be violative of any of the Constitutional provisions and in a case where two opinions with regard to the constitutionality of an enactment are

³ 2018 SCMR 802 (Sui Southern Gas Co. v. Federation of Pakistan)

possible, the one in favour of the validity of the enactment is to be adopted.

18. We do not see if any case of legislative incompetence is made out, nor could it be regarded as violation of any of the fundamental rights.

19. With regard to retrospective application of the law, it is inevitable to discuss the timeline events which are as under:-

Timeline of events	Section 18 (related portion) Pre-Amendment	Post 2023 Amendment
25th November 2022- Election Commission of Pakistan announced 15th January 2023 as revised date for local government elections (second phase) in all the districts of Karachi and Hyderabad/Thatta.	<p>(3) (Town Municipal Corporation in a Metropolitan Corporation). There shall be a (Town) Municipal Corporation for each (Town) in a Metropolitan Corporation and shall comprise of the following members-</p> <p>(a) all the elected Vice Chairman of the Union Committee falling within that (Town);</p> <p>(b) reserved seats to the extent of (33%) for women members, (5% for youth members (at least one), 5% for non-Muslim members (at least one), 5% for labourer or peasant members (at least one), 1% for person with disabilities. members (at least one) and 1% transgender person members (at least one) elected in the manner as may be prescribed.</p> <p>(c) the (Town) Municipal Corporation so constituted shall elect a Chairman and Vice Chairman respectively from amongst its members elected by (show of hands).</p>	Clause (c) omitted.
15th January 2023- Elections for local government were conducted.	<p>(4) Metropolitan Corporation. A Metropolitan Corporation shall comprise of the following members:-</p> <p>(a) all the elected Chairman of the Union Committees of respective (Town)</p>	Clause (c) omitted.

	<p>(b) reserved seats to the extent of (33%) for women members, (5% for youth members (at least one), 5% for non-Muslim members (at least one), 5% for labourer or peasant members (at least one), 1% for person with disabilities members (at least one) and 19% transgender person members (at least one) elected in the manner as may be prescribed;</p> <p>(c) the Metropolitan Corporation so constituted shall elect a Mayor and Deputy Mayor from amongst its members elected by (show of hands).</p>	
3. 3rd March 2023- Election results were announced by Election Commission of Pakistan.	<p>(6) District Council. There shall be a District Council which shall comprise of the following members:-</p> <p>(a) One member from each Union Council of the district to be directly elected on the basis of adult franchise by electors falling within the respective Union Councils;</p> <p>(b) reserved seats to the extent of (33%) for women members (5% for youth members (at least one), 5% for non-Muslim members (at least one), 5% for labourer or peasant members (at least one), 1% for person with disabilities members (at least one) and 1% transgender person members (at least one) elected in the manner as may be prescribe;</p> <p>(c) the District Council so constituted shall elect a Chairman and a Vice Chairman as joint candidates from amongst its members by (show of hands).</p>	Clause (c) omitted.
4. 11th May 2023- Sindh Local Government (Amendment) Act, 2023 amended the Sindh Local Government Act, 2013 with effect from 31" December 2021.	<p>(7) Municipal Corporations. There shall be many Municipal Corporations as may be determined by Government and shall comprise of the following members:-</p> <p>(a) Committees: (Chairman) elected by Union</p> <p>(b) reserved seats to the</p>	Clause (c) omitted.

	<p>extent of (33%) for women members, (5% for youth members (at least one), 5% for non-Muslim members (at least one), 5% for labourer or peasant members (at least one), 1% for person with disabilities members (at least one) and 1% transgender person members (at least one) elected in the manner as may be prescribed;</p> <p>(c) the Municipal Corporations so constituted shall elect a Mayor and Deputy Mayor respectively as joint candidates from amongst its members by (show of hands).</p>	
5. 24th May 2023- Election Commission notified the schedule for election for mayor/ deputy mayor and chairmen/ vice chairmen.	<p>(7-A) Town Municipal Corporation in a Municipal Corporation. There shall be a Town Municipal Corporation for each Town in a Municipal Corporation and shall comprise of the following members:-</p> <p>(a) all the elected Vice-Chairman of the Union Committees falling within that Town;</p> <p>(b) reserved seats to the extent of 33% for women members, (5% for youth members (at least one), 5% for non- Muslim members (at least one), 5% for labourer or peasant members (at least one), 1% for person with disabilities members (at least one) and 1% transgender person members (at least one) elected in the manner provided in section 14- A:</p> <p>(c) the Town Municipal Corporation so constituted shall elect a Chairman and Vice Chairman respectively from amongst its members elected by (show of hands).</p>	Clause (c) omitted.
6. 9th-10th June 2023- Filing of Nomination papers as per the Election Commission Notification.	<p>(8) Municipal Committees. There shall be as many Municipal Committees consisting of single member wards as may be determined by Government and shall comprise of the following members:-</p> <p>(a) each member elected from its respective ward;</p> <p>(b) reserved seats to the extent of (33%) for women members, (5% for youth members (at least one), 5%</p>	Clause (c) omitted.

	<p>for non-Muslim members (at least one), 5% for labourer or peasant members (at least one), 1% for person with disabilities members (at least one) and 1% transgender person members (at least one) elected in the manner as may be prescribed;</p> <p>(c) the Municipal Committee 50 constituted shall elect a Chairman and a Vice Chairman as joint candidates from amongst its members by (show of hands).</p>	
<p>7. 15th June 2023-Elections were conducted. CHI</p>	<p>(9) Town Committees. There shall be as many Town Committee as may be determined by the Government and shall comprise of the single member wards falling within that Town Committee. The Town Committee shall comprise of the following members:-</p> <p>(a) each member elected from its respective wards;</p> <p>(b) reserved seats to the extent of 33% for women members, (5% for youth members (at least one), 5% for non- Muslim members (at least one), 5% for labourer or peasant members (at least one), 1% for person with disabilities members (at least one) and 1% transgender person members (at least one) elected in the manner as may be prescribed;</p> <p>(c) the Town Committees 50 constituted shall elect a Chairman and a Vice Chairman as joint candidates from amongst its members elected by (show of hands).</p>	<p>Clause (c) omitted.</p>
<p>8. 16th June 2023- Results announced by the Election Commission of Pakistan.</p>		<p>Inserted Section 18-B.</p> <p>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,</p>

		Chairman and Vice Chairman by show of hands: Provided any person 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.
9. 5th November 2023- By-Elections conducted of Sindh Local Government Elections for Sukkur Hyderabad, Mirpurkhas and Karachi.		
10. 17 November 2023- List of elected candidates announced by Election Commission."		

20. So, for the retrospective application of the impugned amendment, suffice it to say that the Amendment took place on 11.05.2023 whereas the election schedule for the post of "Mayor, Deputy Mayor, Chairman/Vice Chairman" was notified on 24.05.2023, i.e. after the impugned amendment, followed by the elections conducted in June 2023. Thus, such elections of the Mayor/Deputy Mayor etc. on the ground of retrospectivity, cannot at all be disturbed. There appears to be no legitimacy in asserting that it was done to accommodate some individuals. Thus, since the petitioners have not been able to demonstrate any element of vested rights being affected in pursuance of the impugned amendment, its retrospective and/or prospective effect could not be questioned as is held in the case of *Millat Tractors Ltd.*⁴ relevant part of which is reproduced as under:-

"It is settled law that a change in substantive law which divests and adversely affects vested rights of the parties shall always have prospective application unless by express word of the legislation and/or by necessary intendment/implication such law has been made applicable retrospectively. As a cardinal principle of interpretation of statutes, tax statutes operate prospectively and not retrospectively unless clearly indicated by the legislature, therefore, retrospectivity cannot be presumed. Where an

⁴ 2024 SCMR 700 (Commissioner Inland Revenue Lahore v. Millat Tractors Ltd.)

insertion or deletion of any provision in the rules or the law is merely procedural in nature, the same would apply retrospectively but not if it affects substantive rights which already stood accrued at the time when the un-amended rule or provision was in vogue. A provision curtailing substantive rights does not have retroactive operation unless the legislature elects to give it retrospective effect."

21. As to the plea taken by the petitioners that the individuals desirous to be elected on the subject posts must first become part of the Union Councils and were to face rigorous election process is concerned, the same is of no help to the petitioners as the legislation by way of impugned amendment has not demonstrated it as unconstitutional. Moreover, the incumbency advantage that is being impugned only comes into effect after all similarly placed candidates, do or are, enabled to contest an indirect election to the post of Mayor and only because of winning the indirect election to such post does the incumbency advantage accrue to any candidate or is earned by the same. Such advantage is earned by the winning candidate, who is consequently, placed dissimilar to other candidates in the subsequent direct election. If the petitions are accepted, there would be no concept of re-election and all incumbent office holders would be barred from contesting elections. Reliance is placed upon the case of Yasir Aftab⁵ which is also applicable insofar as the requirement of going through the rigors of electoral process is concerned, the relevant observations are reproduced as under:-

"In this context it is to be kept in mind that the awareness of candidates in local body elections of legal niceties and requirements may not be as sophisticated as that of candidates who contest elections at the national and provincial levels. Local bodies operate at the grass root level and candidates for such offices may more than make up any (supposed or actual) lack of legal sophistication in terms of their commitment to, and enthusiasm for, the local community. Such candidatures should be encouraged and stimulated and not denied or discouraged. At the same time it is also to be remembered that many regard local bodies as being, inter alia, nurseries for "higher" elective

⁵ 2023 SCMR 206 (Yasir Aftab v/s Irfan Gull)

office. Such nurseries should be allowed to flourish with maximal participation in the electoral process. Thirdly, the defect, even if properly determined to be of a substantial nature may be of an essentially technical nature."

22. The petitioners have also argued that the Impugned Amendment is prejudicial and detrimental to their fundamental and vested rights however we have noted that they have failed to bring on record any material to support such assertion except that they are already members of the Council which is immaterial as it has not debarred and/or ousted them to contest the elections. Indeed, the impugned amendment is an enabling provision and does not preclude or restrict any person or party from partaking in the election and/or to hold any of the subject posts/offices.

23. The Petitioners have also relied upon Articles 90-93 and 129-131 of the Constitution whereby they have attempted to assert the impugned amendment to be contrary to law and/or Constitution on the ground that the legislative framework of the Federal and Provincial Governments is the spirit of the democracy which has made the impugned amendment against the Constitution. It is however pertinent to note here that the Federal and Provincial Governments are constitutional constructs whereby they are governed by the provisions set out under the Constitution whereas the Local Government is a statutory construct which operates under the Provincial Government hence since the Local Government system is a statutory construct and operates on the basis of enactments by the Provincial Government, the same can be statutorily amended, which is well within the legislative competence of the Provincial Government.

24. Similarly, election of the subject posts/offices indirectly cannot be termed as against the democratic norms, as has been argued by the petitioners. Indeed, in terms of the impugned amendment any candidate

participating in the elections for the subject posts is elected by a show of hands thereby directly or indirectly elected by the Electoral College, chosen representatives of the people. A further obligation has been placed upon such candidates that they are required to be elected as a member of the respective Council within a period of six months and in case of failure they shall not continue to hold such office. Same is the case for the election of President of Pakistan who is indirectly elected by an Electoral College comprising of members elected by the general public, as envisaged in Article 41(3) of the Constitution and subsequently performs executive functions regardless of the same having been indirectly elected. Similarly, the members of the Senate can also be indirectly elected as envisaged in Article 59 of the Constitution.

25. As to the argument of petitioners that a Chief Executive must be elected directly, the same is unfounded. The term Chief Executive in the Constitution is only used for the Prime Minister hence cannot be extended for the Mayor (in context of understanding provided under the Constitution). The plea of the petitioners that since in terms of Section 79 of the 2013 Act the Mayor has executive powers of a Council, he shall be elected directly, as is in the case of Union Council, has no force. Section 79 to 81 of 2013 Act pertains to the executive powers and functions of the Chief Executive and Section 82 thereof defines different functionaries to be the chief executive of their respective councils and functions. One fails to understand as to how these sections are relevant with respect to the present controversy as if the Mayor was seen as the Chief Executive of a country, it does not in any way shape or form, lawfully mandate for the same to be directly elected, as is the case with the Prime Minister and Chief Minister, pursuant to the Constitution.

26. The mere mention of Article 91(7) and 130(9) in the Statement of Objects and Reason, only mentions such as a reference or inspiration.

The Statement of Objects does not in any case form part of the preamble or the impugned amendment hence cannot be referred to as substantive law. It has been signed by the Member In-charge and is the interpretation/understanding of the same and cannot be categorized as the intent of legislature by any stretch of imagination.

27. The reference can be made to the case cited as AIR 2019 Cal 183, wherein, an identical amendment had been impugned before the High Court of Calcutta whereby the impugned amendment permitted the "elected" Councilors of the Corporation to appoint "any individual" as the Mayor, subject to such individual getting elected within a period of six (06) months from the date of his initial appointment, under the Kolkata Municipal Corporation Act, 1980. The High Court of Calcutta in the aforementioned judgment observed that the concept, that a non-elected member is appointed to a post of governance on the condition that such person gets himself elected to the elected body, within a stipulated timeframe, is ingrained in the Constitution itself and there is nothing in the Constitution to suggest that the three tier governments cannot accommodate such a concept. Moreover, the appointment permitted by the impugned amendment is with regard to a "post" and not a "seat".

28. In furtherance of the aforesaid, the aforementioned judgment also observed that a person elected as Mayor under the mechanism provided by the impugned amendment remains answerable to the elected councilors. Moreover, any person elected as Mayor holds such office till he enjoys the confidence of the majority of the elected members of the council or a period of six (06) months if the same is not elected to a seat in the interregnum, whichever is earlier. Therefore, relying upon the same, it can be concluded that the Constitution, also carries similar provisions whereby persons can be appointed to subject posts of governance through indirect elections along with the

requirement of becoming a member of the concerned body within six (06) months upon failure of which such person shall cease to the concerned office.

29. The provisions of the Sindh Local Government Act, 2013, when read holistically (Sindh Local Government Ordinance, 2001, Section 148), make it evident that the referred Act itself embodies and acknowledges the concept of a candidate being "indirectly elected" to posts of eminence. Section 18(1) of the 2013 Act, states that, "a council shall consist of such number of directly or indirectly elected members, as provided in this Act or as from time to time be determined by the Government". Moreover, Section 21(1) governs the elections of office bearers, which states as follows:-

"Subject to the provisions of this Act, a council other than a Union Council and Union Committee shall after notification of Woman, youth, Non-Muslim, Laborer and Peasant members in terms of Section 18(A), elect the Mayor and Deputy Mayor, Chairman and Vice-Chairman, as joint candidates, as the case may be and a leader of the Opposition in the respective council".

30. In pursuance of the aforesaid proviso regarding the election of office bearers, which expressly includes the post of Mayor, it requires the candidate appointed to such post to be "elected" and makes "no distinction insofar as direct or indirect election" is concerned.

31. In view of above, we do not find the subject amendment, as impugned in these petitions, to be ultra vires to the Constitution and consequently the petitions merit no consideration and the same are accordingly dismissed along with pending applications.

32. Above are the reasons of our short order dated 04.11.2024.

Dated:

Chief Justice

Judge