

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-3608 of 2018
C.P.No.D-3834 of 2018

Date Order with signature(s) of Judge(s)

Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Omar Siyal

(1) Agha Shams-uddin Khan

(2) Shaharyar Khan Mahar.....Petitioners

Versus

The Delimitation Committee, Sindh

& others.....Respondents

13.06.2018

M/s Salahuddin Ahmed and Choudhry Atif Rafiq,
Advocates for Petitioner in CP No.D-3608/2018.

Mr.Ahmed Masood, Advocate for Petitioner in CP No.D-
3834/2018.

Syed Mureed Ali Shah, Advocate for Intervenor Abdul
Rasheed Shar.

Mr. Haseeb Jamali, Advocate for Intervenor Imtiaz Ahmed
Shaikh.

Mr. Shaikh Liaquat Hussain, DAG.

Mr. Qazi Muhammad Bashir, AAG alongwith Ms.
Rukhsana Durrani, State Counsel.

Ms. Maamoona Nasreen, Legal Advisor Election
Commission of Pakistan.

Mr. Abdullah Hanjrah, Law Officer alongwith Nadeem
Haider REC,

Shaheed Benazirabad, Imtiaz Ahmed Kalhoro,DEC,
Hyderabad and Zaheer Ahmed Setho, DEC Kashmore

Muhammad Ali Mazhar, J: This common order will dispose of
the aforesaid petitions.

2. The petitioner in C.P.No.D-3608 of 2018 has prayed for
directions to the respondents to notify the final delimitation to
provincial assembly constituencies in District Shikarpur afresh

and shift Tapa and Town Committee Khanpur to PS-8 and Tapa Zarkhail and Tapa Garhi Budhal to PS-7. Whereas the Petitioner in CP No.D-3834 of 2018 has prayed for directions to the respondents to notify the final delimitation for provincial assembly constituencies in District Shikarpur afresh and shift Tapa Jhali Kalwari to PS-8 and Tapa Zarkhail and Tapa Garhi Budhal to PS-7 or in alternate separate Taluka Lakhi and Taluka Khanpur for purposes of delimitation of the provincial constituencies.

3. It is an admitted fact by the learned counsel for the petitioners that the proposals which the petitioners have brought through these petitions were never placed before the Election Commission of Pakistan at the time of delimitation. The Election Commission passed a consolidated order dated 16.4.2018 on 22 representations filed in respect of NA-198, NA-199, PS-7, PS-8 and PS-9, District Shikarpur. Petitioner Agha Shamsuddin Khan has been cited as petitioner No.21 and petitioner Shaharyar Khan Mahar has been cited as petitioner No.19 in the order passed by the Election Commission of Pakistan but the proposal given by both the petitioners were different than the proposals brought through these constitution petitions. So for all intent and purposes these petitions are not against the delimitation order dated 16.4.2018 but for accepting fresh proposals through these petitions.

4. We have partly heard this case on 11.6.2018. The learned counsel for the petitioners argued that the proposals brought forward through these petitions were not placed before the E.C.P. through representation but the E.C.P. in terms of Section 20 of the Election Act, 2017 is bound to carry out the delimitation and the Delimitation Committee under Rule 10 of the Election Rules, 2017 was also obliged to prepare draft proposal for delimitation of a constituency in accordance with the principles of delimitation laid down under Section 20 and the guidelines provided by the Commission from time to time.

5. Learned counsel for the Interveners in both the petitions have raised serious concerns that when these proposals/objections were never placed before the Election Commission of Pakistan for consideration then how these petitions can be entertained. If these petitions are accepted and the matter is remanded back to the Election Commission of Pakistan then the entire delimitation process will be disturbed and the matter will be heard afresh which will affect all constituencies without any justification.

6. Arguments heard. Under Rule 12 of the Election Rules 2017 the manner for filing representation is provided wherein the voter of any constituency within a period of 30 days from the publication of the preliminary proposal may make representation to the Commission in respect of the delimitation of the constituency. Representation may be filed in the form of memorandum alongwith the grounds for such representation. Under Rule 13 of the Election Rules 2017 procedure for hearing and disposal of the representation by the Commission is provided and on the basis of the proposal the Commission may hold an enquiry and, if so required, may summon any record or witness as may be necessary for the disposal of the representation. Even there is a provision under Rule 21 of the Election Rules 2017 for filing objections before the Authority. In a nutshell, the objections or issues relating to the delimitation of any constituency require factual examination and adjudication and this was the reason that various provisions have been incorporated in the Rules for deciding the representations by E.C.P.

7. We have no doubts in our mind that at the time of delimitation, the principles envisaged and expounded under Section 20 of the Election Act, 2017 are to be followed and the Delimitation Committee has to comply with the principles laid

down in Section 20. According to the letters of the law the delimitation as far as practicable is to be carried out 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. As we have already pointed out that 22 representations were decided through a consolidated order in respect of NA-198 and NA-199 as well as PS-7, PS-8 and PS-9, District Shikarpur and in order to provide reasonable and evenhanded opportunity to submit different proposals by the voters of the constituency ample rules have been framed with equal opportunity and unless the proposals are tabled before the E.C.P. with some rational for delimitation of boundaries this court in writ jurisdiction cannot inquire the niceties of delimitation nor can give directions to E.C.P. to revisit and shuffle any area at the whims and wishes of the petitioners.

8. In view of above, we do not find any merit in these petitions which are accordingly dismissed in limine.

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