

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P.Nos.D-3648, 3952 & 4169 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before:-

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Omar Sial

- (1) Raza Muhammad Gorar & others (in C.P. No.D-3648/2018)
(2) Syed Jalal Mehmood (in C.P. No.D-4169/2018)
(3) Abdul Rehman & another (in C.P.No.D-3952/2018)..Petitioners

V/s

Election Commission of Pakistan & othersRespondents

Date of hearing: 20.06.2018

Mr. Kashif Paracha advocate for the petitioners in C.P. No.D-3952/2018.

M/s. Rasheed A. Razvi, Tahmasp Rasheed Razvi and Abbas Rasheed Razvi advocates for the petitioners in C.P. No.D-3648/2018, assisted by Mr. Shoaib Ali and Mr. Agha Mir Mustafa Durrani advocates.

Mr. M. Luqman-ul-Haq advocate for the petitioner in C.P. No.D-4169/2018, assisted by Mr. Asadullah Shah advocate.

Mr. Raja Jawad Ali Saahar advocate for the respondent No.3 in C.P. No.D-3648/2018

Mr. Murtaza Wahab advocate for the Interveners in C.P. No.D-3648/2018, assisted by Mr. Asad Iftikhar advocate.

Ms. Memona Nasreen advocate for the Election Commission of Pakistan.

Ms. Rukhsana Mehnaz Durrani, State Counsel.

Mr. Abdullah Hanjra, Law Officer, Election Commission a/w. Sain Bux Channer, Director (H.Q), Imtiaz Ahmed Kalhoro, District Election Commissioner, Hyderabad, Zaheer Ahmed Sehto, District Election Commissioner, Kashmore/Member Delimitation Committee.

Muhammad Ali Mazhar, J: These Constitution Petitions have been brought to challenge the order dated 27.04.2018 passed by the learned Election Commission of Pakistan on the representations filed with regard to delimitation of constituencies-2018, Jamshoro district.

2. The impugned order reflects that total ten (10) representations were filed with different proposals for delimitation of constituencies Jamshoro district PS-80, PS-81 and PS-82. The petitioners in C.P. No.D-3648/2018 filed their representations with some proposals and their names are reflecting at Sr. No. 9 of the impugned order. The grievance of the petitioners in this petition is that the preliminary delimitation of provincial assembly constituency district Jamshoro was wrongly modified through final delimitation. The learned counsel for the petitioners argued that the impugned order is contrary to well established principles of delimitation. The principles of maintaining equality of votes have been violated. The Election Commission of Pakistan (ECP) considered the convenience of the candidates rather than voters. There is acute likelihood of gerrymandering, whereby, certain

political persons/parties have been given preference in order to ensure their success.

3. Mr. Raja Jawwad Ali Sahar advocate appeared for the respondent No.3 who supported the final delimitation order and argued that STC Manjhand Tappa Unerpur, Tapa Lakha, Tappa Manjhand were unlawfully excluded from PS-82 Jamshoro-III in preliminary delimitation, therefore, the ECP rightly excluded these areas from PS-80 and included again in PS-82. He further argued that the ECP after hearing the objections of all objectors including the persons filed their representations decided the applications in accordance with law. It was further contended that the total population of district Jamshoro was about 993142, therefore, the requirement of each constituency for provincial seat is about 331047 and in the preliminary delimitation the population was imbalance as the population of PS-80 Jamshoro-I was about 347402 and population of PS-82 Jamshoro-III was about 318108 but after passing final delimitation order the population has been equalized.

4. Mr. Murtaza Wahab advocate appeared for interveners who also filed their representations before the ECP and their names are also appearing at Sr. No. 4, 5 & 6 of the impugned order. Learned counsel argued that Taluka Manjhand is a part of district Jamshoro as per notified census and as per preliminary proposals the Taluka Manjhand was divided into two parts. Taluka

Manjhand has been made part of PS-81 which predominantly comprises of Thana Bulla Khan. He further argued that there is no physical communication between Taluka Manjhand and Thana Bulla Khan as both the Talukas are naturally divided by mountains and there is no road directly connecting the two Talukas. The person from Thana Bulla Khan to reach Taluka Manjhand would have to first exist district Jamshoro then he has to enter in district Thatta and through Kotri he will get access to Taluka Manjhand which fact is also confirmed by the letters issued by Deputy Commissioner, Jamshoro and Executive Engineer Highways, Jamshoro.

5. Learned counsel for the petitioners in C.P. No.D-4169/2018 referred to the same impugned order. The name of petitioner is mentioned at Sr. No. 2. He also pointed out page No.75 where proposal of the petitioner placed before the ECP is available. Learned counsel argued that TC Lakhri is part and parcel of STC Manjhand which is also in PS-80 Jamshoro-I and TC Lakhri may be included in PS-80 Jamshoro-I and excluded from PS-82 Jamshoro-II. He further argued that the ECP should have considered the convenience of people and geographical features including the communication and public convenience.

6. Learned counsel for the petitioners in C.P. No.D-3952/2018 pointed out the representation of his petitioner available at page No. 127. He argued that in the best interest of voters and public

convenience, it was quite feasible that TC Bada be excluded from constituency PS-81 and be inserted into PS-82 and TC Manjhand be included in the constituency PS-81. Learned counsel argued that without giving proper reasoning, the ECP overturn its preliminary delimitation which tantamount to commit gerrymandering to benefit certain political persons/parties to ensure their success in the upcoming general elections. He further argued that while finalizing the delimitation through impugned order the ECP failed to consider the principles of delimitation enshrined under section 20 of the Elections Act, 2017 and Rules 10 of the Election Rules, 2017. The Delimitation Committee had already considered the geographically compactness, physical features and existing boundaries of administrative units including the facilities of communication and public convenience and also started the delimitation from Northern end so there is no justification to upset the preliminary delimitation.

7. Heard the arguments. Perusal of record reflects that in the preliminary delimitation carried out by the delimitation committee, the population of PS-80 was 347402, PS-81 was 327632 and PS-82 was 318108, whereas in final delimitation the population of PS-80 is 314898, PS-81 is 345993 and PS-82 is 332251. There is also some variance in the number of constituencies as PS-81 is now PS-82 and PS-82 is PS-81. The ECP officials vehemently argued that despite making some

changes through final delimitation order by ECP there is no variance in the population and the threshold of 10% variation in the population has been maintained and virtually the variation is below 10%. As far as the allegation raised by the petitioners collectively that ECP has made some changes to favour some political figures and influential persons to commit gerrymandering, we would like to observe here that mere leveling allegations cannot prove anything except some concrete and cogent reasons are placed to prove the allegation of gerrymandering. What we have noticed that no petitioner in his petition has given any specific details to prove this allegation. The delimitation has been carried out by the ECP which is an independent constitutional body. Without any proper details and the substance in allegation, we recuse ourselves to give any findings on this point which is nothing but exploitation.

8. We have seen the impugned order which shows the pros and cons of the proposals placed before the ECP and after examining the record and map produced by the petitioners and members of delimitation committee, the ECP felt it expedient to make some changes in the preliminary delimitation and excluded STC Uner pur, STC Bada, Town Committee Jamshoro and TC Lakhri from PS-81 and included in PS-82 and Town Committee Manjhand, STC Lakha, Uner pur and Manjhand were excluded from PS-80 and included in PS-82, whereas, Bholari and TC Vee and Bholari and Raheer excluded from PS-82 and included in PS-81.

9. It appears from the order that there was no justification to include STC Uner Pur and STC Bada in PS-81 due to huge mountain in between, therefore, these changes were made for the public convenience and the boundaries were again carved out accordingly. Much emphasis were made by the learned counsel for the petitioner that on 26.03.2018 and 28.03.2018 the Additional Deputy Committee-I district Jamshoro and Executive Engineer Highways Division, Jamshoro submitted a report to the District Election Commissioner, Jamshoro that there is no communication between Thana Bulla Khan and Taluka Manjhand. We had been shown the maps made out on the basis of preliminary delimitation for PS-80, PS-81 and PS-82, Jamshoro. Earlier Taluka Manjhand, Uner Pur STC and Bada STC including some other areas were part of PS-81 but in the final delimitation Taluka Manjhand, Uner Pur and Bada all have been carved out from PS-81 and included in PS-82 so the grievance lodged by the learned counsel for the petitioners that there is no road or access for general public from Manjhand and Thana Bulla Khan has already been redressed after excluding Taluka Manjhand, Uner Pur and Bada from PS-81 and included in PS-82. We have also noted that earlier Lakhri was part of PS-81 which is now in PS-82. In our view, it was rightly shifted to PS-82 with other areas such as Uner Pur, Bada and Taluka Manjhand due to big mountains and desert in between PS-81 and PS-82. The principles of delimitation are provided under Section 20 of the

Elections Act, 2017 in which as far as practicable, the constituencies may be delimited 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. It is further provided in the same section that as far as possible, variation in population in constituencies of an Assembly shall not ordinarily exceed ten percent and if it is exceeded in exceptional circumstances, the Commission shall record reasons in the delimitation order.

10. What we have observed here that there is no variation of population in all constituencies of district Jamshoro which is well within the allowable variation of 10%. We have also noted that ECP honoured the reasonable and sensible proposal placed before them and even in the final delimitation order they directed to shift some areas from one constituency to another keeping in mind the public convenience, geographically compactness and homogeneity. There is also no issue that the delimitation was not started from the Northern end and failed to proceed clockwise in zigzag manner keeping in view the population among the constituency as provided under sub-Rule (5) of Rule 10 of the Election Rules, 2017. Though the law provides rights to submit proposals by means of representation to ECP for making some changes and modification in the preliminary delimitation but

after considering all cognate factors, it is the sole responsibility of ECP to finalize the delimitation. One cannot claim vested right that whatever proposal placed by him should be accepted by ECP in letter and spirit nor any person can claim unbridled right to carve out/delimit a constituency according to his desires, proposals and wishes. After going through the impugned order and the record available before us, we do not find any illegality in the impugned order.

11. As a result of above discussion, the aforesaid petitions are dismissed.

Judge

Karachi
Dated: 05.07.2018

Judge