

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P.NO.D-3672, 3931 & 4155 of 2018

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

Before:-

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Omar Siyal

- (1) Bahadur Ali & others (C.P. No.D-3672/2018)
(2) Syed Kazim Ali Shah (C.P. No.D-3931/2018)
(3) Munawar Ali Wasan (C.P. No.D-4155/2018).....Petitioners

V/s

Election Commission of Pakistan & others.....Respondents

Dates of hearing: 08.06.2018 & 12.06.2018

Mr. Farooq H. Naek advocate for the petitioners in C.P. No.D-3672 of 2018. Assisted by M/s. Muhammad Usman and Muzammil Soomro advocates.

Mr. Nisar Ahmed Bhambhro advocate for the petitioner in C.P. No. D-3931 of 2018.

Mr. Obaid ur Rehman Khan advocate for the petitioner in C.P. No.D-4155 of 2018

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

Mr. Shaikh Liaquat Hussain, DAG.

Ms. Rukhsana Mehnaz Durrani, State Counsel

Mr. Abdullah Hanjra, Law Officer, Election Commission a/w. Nadeem Haider, Regional Election Commissioner, Shaheed Benazirabad, Imtiaz Ahmed Kalhoro, District Election

Commissioner, Hyderabad, Zaheer Ahmed Sehto, District Election Commissioner, Kashmore/Member Delimitation Committee and Muhammad Yousuf, District Election Commissioner, Karachi Central.

Muhammad Ali Mazhar, J: These Constitution Petitions have been brought to challenge the order dated 24.04.2018 passed by Election Commission of Pakistan on the representations put on record by different petitioners before the Election Commission of Pakistan concerning the delimitation of constituencies-2018 district Khairpur.

2. The twelve petitioners in C.P. No.D-3672/2018 had filed a joint representation to ECP on 26.03.2018. By dint of this petition, they want declaration that division of Khairpr and Kingri into different National Assembly and Provincial Assembly constituencies is illegal and entreated for directions to ECP to include Khairpur and Taluka Kingri in one National Assembly and Provincial Assembly constituencies. They have sought further declaration that exclusion of Koro Phulpoto and Khanpur from Khairpur PS-26 is illegal.

3. In C.P. No.D-3931 of 2018, the proposal of petitioner is described in paragraph No.5 of the petition. The pith and substance of the proposal leading to an assertion that Ranipur Town Committee is located at National Highway, Tapedar Circle Ranipur which is a part of U.C Gadeji located on the South-Western side of Ranipur. The people of Tapedar Circle Gadeji, Tapedar Circle Pir Taj Muhammad and Tapedar Circle Ranipur are affiliated with Ranipur Town in terms of business. The delimitation carried out by Election Commission had divided the homogeneity amongst the people of U.C. Gadeji, UC Setharja Bala and Town Committee Ranipur in two constituencies of National Assembly in violation of principles of delimitation.

4. In C.P. No. D-4155 of 2018, the representation was filed by the petitioner to the ECP on 02.04.2018. The petitioner wants us to give directions to the ECP through this petition to include the Tapedar Circle Jhando Mashaikh in PS-27 Khairpur-II and keep intact the remaining Tapedar Circle of PS-27 as maintained by the Delimitation Committee vide order dated 05.03.2018.

5. The learned counsel for the petitioners argued that impugned order is factually incorrect and liable to be set aside which seems to have been passed in due haste without providing any logical justification to dismiss the representations. They further argued that the delimitation of the district Khairpur has been carried out in grave violation of Section 20 of the Elections Act, 2017 and Rule 10(5) of Election Rules, 2017. Learned counsel also opposed the exclusion of Tapedar Circle Bhulgari from PS-27 Khairpur-II. It was further averred that Kotiji has attained the status of administrative unit in terms of Section 20 of the Elections Act, 2017 and its existing boundaries should remain intact. The inclusion of Tapedar Circle Jhando Mashaikh in PS-27 will suffice the principle of homogeneity as this Tapedar Circle remained the part of Taluka Kotiji since decades. It was further contended by the learned counsel for the petitioners that delimitation of district Khairpur for National Assembly and Provincial Assembly was not carried out from Northern end as envisaged in Rule 10(5) of the Election Rules, 2017. The non adherence to the principles of starting delimitation from the Northern end lead to favoritism to some influential individual. The proposed delimitation has separated Taluka Khairpur and Taluka Kingri which was previously one Tehsil. The amalgamation of these two Taluka would serve the purpose of public convenience and ensure equitable distribution of population. The boundaries of constituencies of PS-27 Khairpur-I have been disturbed and its parts have been included in three different constituencies such as PS-27, PS-31 and PS-32 without taking into consideration the

public convenience, homogeneity and geographical features. It was further argued that there is a big Nara Water Canal flowing in Taluka Nara but there is no facility of communication/road to reach from one end to other end. It was further contended that people of Faiz Ganj would be facing extreme inconvenience from passing district Nawabshah and district Sanghar to reach Taluka Nara PS-29.

6. The Law Officer of the ECP and the Officer of the Delimitation committee have demonstrated us the actual position from maps in the open court in presence of the learned counsel for the petitioners. They addressed us that the delimitation has been carried out keeping in mind the principles of homogeneity and contiguity of areas and equality of population as laid down under Section 20 of the Elections Act, 2017 and Rule 10(5) of the Election Rules, 2017. They refuted the contention of the petitioners that the voter of Tapedar Circle Shadi Shaheed will have to travel to a considerable length to cast their votes. They vehemently submitted that ECP never established any polling station at a distance of 1 to 2 k.m. away from the villages or residence of voters, therefore, voters of Tapedar Circle Shadi Shaheed will not have to travel to Town Committee Kotiji to cast their votes. They further stated that population of Nara Taluka is very small hence cannot be made separate provincial assembly constituency as population of Taluka Nara does not suffice the requirement of becoming an independent constituency. Hence the best option available to Delimitation Committee to amalgamate one part of Taluka Nara with Taluka Faiz Ganj and other part with Taluka Thari Mirwah. It was further contended that the petitioners have tried to confuse the delimitation of general assembly seats with delimitation of local government system. The population variation amongst all three National Assembly constituencies finalized by ECP is 8% which is well within the prescribed limit of 10%. In case Tapedar Circle Jhando Mashaikh

is added in PS-27 and excluded from PS-30 the population of PS-30 will be decreased hence the Tepadar Circle Jhando Mashaikh with population of 20938 cannot be excluded from PS-30. The administrative boundaries of Taluka Kotiji have already been given due consideration so only one Tapedar Circle was excluded from PS-27 and included in PS-30 to rationalize the population. Much emphasis were made that due to increase of one PS constituency in district Khairpur, the present PS seat position is seven in number so on addition of one seat the delimitation of previous constituencies could not remain intact.

7. Heard the arguments. Vide impugned order dated 24.04.2018, ECP has decided 15 representations filed by different persons with different proposals for delimitation of constituencies-2018 district Khairpur. Apparently out of 15 petitioners before the ECP only present petitioners have approached this court for challenging the impugned order. This is not the case here that the ECP out rightly rejected all the proposals but partially accepted the representations filed by Bahadur Ali, Munawar Ali Pathan, Zohaib Ali, Abdul Haq, Syed Mashooq Moeenuddin Shah, Syed Inayat Ali Shah and Zahid Ali Bhanbhan. Consequently modified the delimitation on inclusion and exclusion of different territories in PS-26, PS-27, PS-28 and PS-29. The petitioners have alleged that the preliminary delimitation has been maintained disregard to the proposal of the petitioners with the sole aim to benefit some influential persons which amounts to gerrymandering but no name of any person or political party is mentioned in the petition to substantiate this allegation of biasness or favoritism against the ECP which is an independent entity. Placing of proposal to ECP by any person or voter of any constituency may invite the attention of the ECP to consider the proposal in accordance with law but at the same time, one cannot claim it as a vested right that whatever proposal placed by him should be considered and accepted in letter and spirit by ECP. To contest the election and

right of franchise is a fundamental right of a citizen but to contest the election on the basis of delimitation at the whims and leisure of a citizen is not a fundamental right. The impugned order unequivocally reflects that after considering all proposals and jotting down the details, the Election Commission has finalized the delimitation. It is also clear from the impugned order that the proposals given by the present petitioners have been mentioned in the impugned order separately but a plea has been advanced by the learned counsel for the petitioners before us that though the contentions with regard to their proposal have been recorded in the order but no separate discussion has been made one by one on each and every proposal. The court has to see the pith and substance of the order. Obviously in a short span of time when number of representations have been filed for each district so as a practical and sensible procedure, ECP decided all representations in a consolidated order rather than picking up and deciding each and every representation separately which would have consumed much time with an acute likelihood of passing conflicting orders for one and same district. In the nutshell what deciphered to us from the impugned order that the contentions have been recorded to demonstrate individual proposal and with the assistance of Delimitation Committee, the ECP has considered the pros and cons including the fundamental elements i.e. geographical proximity and impact of population variation.

8. The impugned order makes it obvious that wherever ECP considered the necessary changes and visualized the proposal meaningful and rationale, they issued directions for modification in the schemes of delimitation. One of the petitioners raised a plea that half portion of Nara has been amalgamated with the Taluka Faiz Ganj whereas other part with Taluka Thari Mirwah but there is no road leading or approaching to the half portion of Nara from Taluka Faiz Ganj which will cause colossal difficulties to the voters and there is also no facility of proper communication.

Insofar as this specific feature is concerned, we have already decided C.P. Nos.D-3848, 3872 & 4007 of 2018 in which this aspect was considered and resultantly, we directed the Convener, Delimitation Committee to physically examine as to whether there is any road for the purpose of public convenience and communication from Faiz Ganj to half portion of Nara included in PS 29. The Convener, Delimitation Committee was directed to inspect the area in presence of the District Election Commissioner, Khairpur and submit the report to the Election Commission, thereafter, Election Commission may pass necessary orders in accordance with law. So for all intent and purposes, this factor has already been taken due care by us in the above petitions therefore the directions given in C.P. Nos.D-3848, 3872 & 4007 of 2018 shall follow in these petitions also. For the remainder, we do not find any justification to upset the entire delimitation process. The petitions are disposed of along with pending applications accordingly.

Karachi
Dated.04.7.2018

Judge

Judge