

## **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

### **Before:**

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Zulfiqar Ali Sangi

- C. P. No. D-328 of 2022 : *Zulfiqar Ali Malik v. The Election Commission of Pakistan & others*
- C. P. No. D-329 of 2022 : *Shahid Ikram Malik v. ECP & Others*
- C. P. No. D-337 of 2022 : *Nek Muhammad Markhand v. ECP & Others*
- C. P. No. D-338 of 2022 : *Raza Hussain & another v. ECP & Others*
- C. P. No. D-339 of 2022 : *Rashid Ali v. ECP & Others*
- C. P. No. D-354 of 2022 : *Burhan Ahmed v. Federation of Pakistan & Others*
- C. P. No. D-359 of 2022 : *Ansar Ali v. ECP & Others*
- C. P. No. D-365 of 2022 : *Hamz Ali alias Dost Muhammad v. ECP & Others*
- C. P. No. D-368 of 2022 : *Abdul Hayee Khuhro & Others v. P.O.Sindh & Ors*
- C. P. No. D-371 of 2022 : *Arif Hussain Bhatti v. Federation of Pakistan & Ors*
- C. P. No. D-374 of 2022 : *Allah Dino & another v. Fed. of Pakistan & Others*
- C. P. No. D-391 of 2022 : *Ghulam Fareed Chang v. ECP & Others*
- C. P. No. D-392 of 2022 : *Saleemullah Solangi & Others v. P.O Sindh & Ors*
- C. P. No. D-417 of 2022 : *Mushtaq Ahmed v. Chief Elec. Comm of Pak. & Ors*
- C. P. No. D-421 of 2022 : *Adv. Ali Akbar v. Delimitation Committee & Ors*
- C. P. No. D-431 of 2022 : *Ghulam Mustafa Arain v. P.O. Sindh & Others*
- C. P. No. D-432 of 2022 : *Nazeer Ahmed v. P.O.Sindh and Others*
- C. P. No. D-437 of 2022 : *Zaair Hussain v. ECP & Others*
- C. P. No. D-438 of 2022 : *Ashiq Ali & another v. ECP & Others*
- C. P. No. D-439 of 2022 : *Naveed Akhtar v. ECP & Others*
- C. P. No. D-440 of 2022 : *Ali Jan Khoso v. ECP & Others*
- C. P. No. D-446 of 2022 : *Muhammad Panjal v. ECP & Others*
- C. P. No. D-447 of 2022 : *Nizamuddin & Others v. P.O Sindh & Ors.*
- C. P. No. D-452 of 2022 : *Abdul Salam & Others v. ECP & Others*
- C. P. No. D-456 of 2022 : *Aijaz Ali v. P.O. Sindh & others*
- C. P. No. D-461 of 2022 : *Illahi Bux & Others v. P.O. Sindh & others*
- C. P. No. D-484 of 2022 : *Mujeeb u Rehman v. Sec. Elec. Commission & Ors*
- C. P. No. D-485 of 2022 : *Qamar Abbas v. Fed. of Pakistan & Others.*
- C. P. No. D-506 of 2022 : *Sharafuddin & Ors v. Delimitation Committee & Ors*
- C. P. No. D-512 of 2022 : *Hazar Khan & Ors v. Delimitation Committee & Ors*

M/s Nisar Ahmed Bhanbhro, Muhammad Juman Sahito, Manzoor Hussain N. Larik, Shah Muhammad Bango, Asadullah Ghumro, Khan Muhammad Sarohi, Safdar Ali Bhatti, Achar Khan Gabol, Ayaz Ali Shaikh, Amir Mustafa Kamario, Syed Jaffar Ali Shah, Sohail Ahmed Khoso, Sheeraz Fazal, Sunder Khan Chachar, Irfan Mehdi Soomro, Athar Hussain Abro, Abdul Raheem Mahar, Waqar Ali Phulpoto, Syed Naimat Ali Shah, Liaquat Ali Shar, Rizwana Jabeen Siddiqui, Mukhtiar Ahmed, Zulfiqar Ali Shah and Abdul Rauf Abro, Advocates for the Petitioners.

Mr. Zeeshan Haider Qureshi, Law Officer of Election Commission of Pakistan along with Aijan Anwar Chohan, Provincial Election Commissioner (Sindh), Khuram Shehzad, ADG (Law), ECP Secretariat, Islamabad, Azizullah Abbasi, Regional Election Commissioner Sukkur, Naveed Aziz, Regional Election Commissioner Shaheed Benazirabad, Abdullah Hanjrah, Senior Law Officer (Sindh) ECP, Waseem Akhtar, District Election Commissioner Sukkur, Muhammad Yousif, District Election Commissioner Khairpur, Muhammad Imran, District Election Commissioner Ghotki and Niaz Ahmed, District Election Commissioner Naushahro Feroze.

Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

M/s Shafi Muhammad Chandio, Additional Advocate General Sindh, Ali Raza Baloch, Mehboob Ali Wassan and Asfandyar Kharal, Assistant Advocates General Sindh.

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Date of hearing : 24-05-2022 & 26-05-2022

Date of decision : 26-05-2022

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – All these Petitions though involve a bit of factual contentions as to the delimitation of respective Union Councils, however, while arguing the matter, the lead Counsel Mr. Nisar Ahmed Bhanbhro, whose submissions have been adopted by all other learned Counsel, has candidly admitted that their submissions would be confined only to legal propositions regarding the exercise of delimitation carried out by Election Commission of Pakistan (ECP).

2. All Petitioners before us except three (3) have impugned orders passed by the Delimitation Authority (“**Authority**”) constituted by ECP for deciding their objections on the proposed delimitation of their respective Union Councils. As to the remaining three, it has been informed that no representation was made to the Authority; hence, no orders have been passed. It has been contended by the Petitioners’ Counsel that the exercise carried out by the Authority / ECP is in violation of Sections 8, 9 and 10 of the Sindh Local Government Act, 2013 read with Sections 17 to 20, 221 and 236 of the Elections Act, 2017 read with Election Rules, 2017. It has been further argued that a learned Division Bench of this Court in the case reported as Syed Hafeezuddin v. Province of Sindh through Chief Secretary and 5 others (PLD 2016 Sindh 63), in identical situation though pertaining to earlier elections, had categorically held that as and when any exercise of delimitation is to be carried out, the same shall be done at least six (06) months before the election or its schedule is announced. According to them, no such timely exercise has been carried out; whereas, stereotype impugned orders have been passed, and the mandatory provisions of the above laws have been violated so as to create distortion in population of respective Union Councils, which ultimately is a favour to a particular person. According to them, a uniform and fixed fund is allocated to every

Union Council, and therefore, any distortion and non-uniformity of population amounts to discrimination and deprivation to the people of that Union Council where in lesser population has been delimited.

3. Mr. Jaffar Ali Shah appearing in C. Ps. No. D-392 and 497 of 2022 has argued that insofar as these two cases are concerned, the entire Union Councils have been abolished, which cannot be done by ECP as in terms of Section 8(3) of the 2013 Act, it is the mandate of the Government of Sindh which has not been exercised; hence, the delimitation carried out in respect of these Petitioners is without lawful authority and jurisdiction. They have relied upon M.Q.M. and others v. Province of Sindh and others **2014 CLC 335** and Syed Hafeezuddin v. Province of Sindh through Chief Secretary and 5 others **PLD 2016 Sindh 63**.

4. Mr. Zeeshan Haider Qureshi, Advocate / Representative of Election Commission of Pakistan has raised an objection as to maintainability of these Petitions by placing reliance on Section 236 of the Elections Act, 2017, and has contended that there is a bar of jurisdiction on this Court; hence, the Petitions are liable to be dismissed. According to him, the legislature has chosen not to give any right of appeal against the orders of the Delimitation Authority; hence, exercise of writ jurisdiction by this Court against such orders is in violation of the dicta laid down by the Hon'ble Supreme Court in the case reported as President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others **2020 SCMR 260** and an unreported judgment dated 16-04-2022 passed by the Baluchistan High Court in **C. P. No. 58 of 2022** (Muhammad Akbar v. Government of Baluchistan and others). He has further argued that Section 17 to Section 20 of the Elections Act, 2017 provides a mechanism which has been followed by ECP, and therefore, the impugned orders even on merits are correct in law. He has further argued that in some Petitions, no representation was made to the Delimitation Authority; whereas, in at least four (04) Petitions, detailed reasoned orders have been passed, hence, the objection to this effect is also misconceived. He has also placed reliance on Bahadur Ali and others v. Election Commission of Pakistan through Secretary and others **PLD 2018 Sindh 636**, Rustam Ali and others v. Election Commission of Pakistan and others **PLD 2018 Sindh 631**, Raza Muhammad Gorar and others v. Election Commission of Pakistan through Chairman and others **2018 CLC 1777**, Abdul Qadir Patel v. Chief Election

Commissioner and 2 others 2013 CLC 1712 and Export Promotion Bureau and others v. Qaiser Shafiullah 1994 SCMR 859.

5. Learned AAG Sindh has argued that insofar as the conduct of Election Commission vis-à-vis the impugned orders in question is concerned, the same falls short of any legal support inasmuch no reasons have been assigned while rejecting the objections of the Petitioners. According to him, to that extent, the case of the Petitioners is supported. He has further argued that as to maintainability of these Petitions, it has been held in a number of cases that delimitation is a serious business affecting the fundamental rights, and therefore, it cannot be said that the Petitioners are to be nonsuited by any bar of jurisdiction. He has also referred to the judgment reported in the case of **Syed Hafeezuddin (supra)**, and submits that the six (06) months' period for carrying out delimitation before announcing election schedule is mandatory and ought to have been followed by ECP, and therefore, the impugned orders cannot be sustained, and till such time the objections are properly decided the elections shall be deferred. In support, he has relied upon M.Q.M. and others v. Province of Sindh and others 2014 CLC 335, Province of Sindh through Chief Secretary and others v. M.Q.M. through Deputy Convener and others PLD 2014 Supreme Court 531, Syed Hafeezuddin v. Province of Sindh through Chief Secretary and 5 others (PLD 2015 Sindh 63), Workers Party Pakistan PLD 2012 Supreme Court 681 and unreported order dated 26-10-2020 passed by the Hon'ble Supreme Court in Constitution Petition No.24 of 2017 (MQM (Pakistan) and others v. Pakistan through Secretary Cabinet Division, Government of Pakistan and others).

6. Learned DAG submits that on the last date of hearing, the Regional Election Commissioner had candidly admitted that all impugned orders were passed in a short span of time due to rush of work, and therefore, proper reasons were not assigned; hence, the matters must be remanded to the Delimitation Authority for passing appropriate orders in accordance with law.

7. We have heard the Petitioners' Counsel as well as learned AAG Sindh, DAG and the Law Officer of Election Commission of Pakistan and perused the record.

8. As noted earlier, all these Petitions have been filed by respective Petitioners being aggrieved by the exercise of delimitation carried out by

ECP, whereby in most of the cases the requirement of uniform population in Union Council has been dispensed with, and after their objections, the Delimitation Authority has passed stereotype orders, and in fact, an attempt has been made to nonsuit the Petitioners more on technical grounds instead of attending to the basic objections including determination of facts as to the mapping of the Union Council as well as maintaining of uniform population as required in law. It would be advantageous to refer to the relevant provisions of delimitation provided in the 2013 Act in Sections 8 to 10, which reads as under:

**8. Local areas.** – (1) Government shall, by notification in the official Gazette, categorize a District into urban area and rural area.

(2) For purposes of the Act, Government shall, by notification, declare a local area consisting of –

- (a) urban area in a District, as a Metropolitan Corporation, Town Municipal Corporation, Municipal Corporation, Municipal Committee, Town Committee, Union Committee and Ward;
- (b) rural area in a District, as a District Council and Union Council.

(3) Government may, by notification in the official Gazette, after inviting public objections and suggestions, alter the limits of a local area and declare that any area shall cease to be a Union Council, District Council, Municipal Committee, Corporation, Town Committee, Union Committee and Ward.

(4) Any two or more adjoining Councils within a District may, after inviting public objections through a resolution passed by two-third majority of the total membership of each of the councils, make a proposal to Government for a change in their revenue boundaries subject to the condition that no revenue boundary shall be divided and the size of population in the relevant local area shall, as far as possible, be close to the average population of similar local areas in the District.

**9. Division and reconstitution of a council.** – (1) Government may, by notification in the official Gazette, divide a council into two or more councils or reconstitute two or more councils as one council or alter the limits of a council except a Union Council or Union Committee during the process of delimitation a council and may specify in the notification the consequences which shall ensue upon the publication of such notification.

(2) When, as a result of such division or reconstitution, any new council is constituted, in accordance with the provisions of the Act in the manner specified in the notification –

- (a) the existing members of any council so divided or reconstituted shall become the members of such council as the Government may, by notification, specify as if each such member had been elected to that Council; and

- (b) such council shall, to the extent and in the manner specified in the notification, be the successor of the council so divided or reconstituted.

*Provided that the limits of local area shall remain unchanged after announcement of election schedule by the Election Commission till the notification of returned candidate of the election.*

**10. Delimitation of Union Council, Union Committee and Ward.**

– (1) Government shall, by notification in the Official Gazette, determine the number of Union Councils, Union Committees and Wards in Municipal Committees and Town Committees in accordance with the First Schedule.

(2) After demarcation of the Councils under section 8 and determination of the number of Union Councils, Union Committees and Wards under sub-section (1), the Election Commission shall delimit the Union Councils, Union Committees and Wards.

(3) As far as possible –

(a) the area of a Union Council, Union Committee or a Ward, as the case may be, shall be a territorial unity;

(b) the population of the Union Councils, Union Committees or Wards, as the case may be, in a District shall be uniform;

(c) the boundaries of a Union Council, Union Committee or a Ward shall not cross the limits of a revenue taluka or as the case may be, a Metropolitan Corporation, District Municipal Corporation, Municipal Corporation, Municipal Committee and Town Committee;

(d) the principles laid down in the Elections Act, 2017 or any other law, for the time being in force, may be adhered to:

*Provided that the population in a specific case, Government may, for the reasons to be recorded waive the aforesaid conditions in this sub-section.*

(4) A Union Council or Union Committee shall consist of four Wards for general members and shall be an area consisting of one or more revenue dehs or wards, or one or more census blocks, as determined for the purpose of the last preceding census, or a census block or are venue deh, delimited and notified as such by the Election Commission.

(5) The Ward in an urban or rural area shall, as far as possible, consist of a census block or adjoining census blocks as determined for the purpose of the last preceding census or a census block or blocks and are venue deh or dehs delimited and notified as such by the Election Commission.

(6) Notwithstanding anything herein contained, the Election Commission while carrying out the delimitation, shall, as far as possible, conform to the delimitation carried out for local government elections held in 2015 under this Act.

9. Similarly, Sections 17 to 20 of the Elections Act, 2017 though primarily deals with delimitation of constituencies pertaining to Provincial

and National Assemblies, however, it also refers to variation in population of a constituency pertaining to Local Government. They read as under:

**17. Commission to delimit constituencies.**—(1) *The Commission shall delimit territorial constituencies for elections to the National Assembly, each Provincial Assembly and to the local governments in accordance with the provisions of the Constitution, this Act, the Rules and the applicable local government law.*

(2) *The Commission shall delimit constituencies after every census officially published.*

**18. Seats in the National Assembly and Provincial Assemblies.**—(1) *There shall be seats in the National Assembly allocated to each Province, Islamabad Capital Territory, and the Federally Administered Tribal Areas and seats reserved for women and non-Muslims, as specified in Article 51.*

(2) *There shall be seats in each Provincial Assembly consisting of general seats and seats reserved for women and non-Muslims, as specified in Article 106.*

**19. Delimitation of constituencies.**—(1) *For the purpose of election to the National Assembly, the Commission shall divide—*

(a) *each Province into as many separate territorial constituencies as the number of general seats allocated to that Province in Article 51; and*

(b) *Islamabad Capital Territory and the Federally Administered Tribal Areas into as many separate territorial constituencies as the number of general seats respectively allocated to the Islamabad Capital Territory and the Federally Administered Tribal Areas in Article 51.*

(2) *A Province shall be a single constituency for all seats reserved for women which are allocated to each Province in Article 51.*

(3) *The constituency for all seats reserved for non-Muslims in the National Assembly shall be the whole country.*

(4) *For the purpose of election to Provincial Assemblies, the Commission shall divide each Province into as many separate territorial constituencies as the number of general seats specified in Article 106.*

(5) *The constituencies for the seats reserved for women and non-Muslims in the Provincial Assemblies shall be such that each Province forms one constituency with as many such seats as are allocated to that Province in Article 106.*

(6) *For the purpose of election to the local governments, the Commission shall carry out delimitation with due regard to the applicable local government law.*

**20. Principles of delimitation.**—(1) *All constituencies for general seats shall, as far as practicable, 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.*

(2) For the purpose of delimiting constituencies for the general seats of the National Assembly for the Tribal Areas two or more separate areas may be grouped into one constituency.

(3) As far as possible, variation in population of constituencies of an Assembly or a local government shall not ordinarily exceed ten percent.

(4) If the limit of ten percent under sub-section (3) is exceeded in an exceptional case, the Commission shall record reasons thereof in the delimitation order.

10. Section 221 of the Elections Act, 2017 provides for delimitation of Local Government constituencies, and the same reads as under:

**221. Delimitation of local government constituencies.—**

(1) For the purpose of holding elections to the local governments, the Commission shall delimit constituencies of the local governments, including union councils, wards in a union council, a ward in a district council or ward in a municipal committee, as far as possible and subject to necessary modifications, in accordance with Chapter III of this Act and the Rules.

*Explanation.—A union council includes a union committee, a village council or, as the case may be, a neighborhood council.*

(2) For the purpose of delimitation of a union council—

- (a) the area of a union council shall be a territorial unity;
- (b) the boundaries of a union council shall not cross the limits of the local council of which the union council, being delimited, forms part; and
- (c) the population of union councils within a local government shall, as far as possible, be uniform.

(3) The Commission shall delimit a local government, if required, into as many wards as may be notified for the election of members on general seats by the concerned government.

(4) For the purpose of delimitation of a ward of a union council—

- (a) a ward shall consist of a village, one or more adjoining villages or, in case of an urban area, a census block or adjoining census blocks;
- (b) the boundaries of a ward shall not cross the limits of the union council; and
- (c) the population of wards within a union council shall, as far as possible, be uniform.

(5) The Commission shall delimit a municipal committee into such number of wards as notified by the concerned government for election of Members of the municipal committee on general seats.

(6) For the purpose of delimitation of a municipal committee—

- (a) a ward shall consist of a census block or adjoining census blocks;



- (b) *the boundaries of a ward shall not cross the limits of the municipal committee; and*
- (c) *the population of wards within a municipal committee shall, as far as possible, be uniform.*

(7) *The Commission shall delimit a tehsil council, where required, into as many wards as may be notified by the concerned government for the election on general seats to the tehsil council and district council.*

(8) *For the purpose of delimitation of a ward in a tehsil council—*

- (a) *the area of a ward shall be a territorial unity;*
- (b) *the boundaries of a ward shall not cross the limits of the tehsil council of which the ward, being delimited, forms part; and*
- (c) *the population of the ward within the tehsil council shall, as far as possible, be uniform.*

(9) *The Commission shall delimit a local government, if required, into as many constituencies as may be provided under the applicable local government law for the election of Members on general seats of the local government.*

11. Similarly, Section 222 deals with appointment of Delimitation Committee and Section 223 deals with the Delimitation Authority, and they read as under:

**222. Appointment of Delimitation Committee.**—(1) *The Commission shall appoint a Delimitation Committee for each district for delimitation of constituencies of the local governments in the district, including union councils, wards within a union council, or wards in municipal committees.*

(2) *Revenue or other executive officers posted in the district shall provide necessary assistance to the Delimitation Committee in carrying out delimitation of constituencies of the local governments in the district.*

**223. Appointment of Delimitation Authority.**—(1) *The Commission shall appoint from amongst its own officers or from the officers of the subordinate judiciary a Delimitation Authority for each district to hear and decide the objections against the delimitation carried out by the Delimitation Committee.*

(2) *An officer of the subordinate judiciary shall be appointed as Delimitation Authority in consultation with the Chief Justice of the High Court concerned.*

(3) *A voter may, within fifteen days of the delimitation of constituencies by the Delimitation Committee, file objections against the delimitation before the Delimitation Authority which shall decide the objections within thirty days from the date of delimitation of constituencies by the Delimitation Committee.*

12. Perusal of the aforesaid provisions reflects that in terms of Section 10(3)(b) of the 2013 Act, the population of the Union Council, Union

Committee or Wards, as the case may be, in a District shall be uniform. It has come on record that in various Union Councils of Khairpur, where population ought to have been on an average of 18000, in some it is 27000 and in some it is 10000 to 14000. Similar provisions has been provided under section 221(2)(c) of the Election Act 2017, that the population of union councils within a local government shall, as far as possible, be uniform. This was the main objection raised by the Petitioners in their representations before the Delimitation Authority, but apparently, in none of the orders, it has been attended to. In most of the Petitions, stereotype orders have been passed, which are verbatim same and generic in nature and have failed to attend the individual objections including the alleged violation of Section 8 of the 2013 Act as well as Section 20(3) & (4) of the Elections Act, 2017 which provides that as far as possible variation in population of constituency of National Assembly or Local Government shall not ordinarily exceed 10% and if the limit of 10% under Sub-section (3) is exceeded in an exceptional case, the Commission shall record reasons thereof in the delimitation order. We have neither been assisted that whether any such order was passed by the Commission or any reasons were assigned and as to what was the exception for population to exceed by more than 10% in different Union Councils. In terms of Rule 21(3) of the Election Rules 2017, the Delimitation Authority, may hold inquiries, summon witnesses and record evidence while deciding the objections against delimitation by the Committees. None of these have been resorted to. All these legal issues have not been attended to in any of the impugned orders passed by the Delimitation Authority.

13. On the last date of hearing, we had heard the Petitioners' Counsel as well as the Advocate / Law Officer of ECP in detail and had also confronted the Regional Election Commissioner present in Court, to which they had sought an adjournment to seek proper instructions. We had passed the following order while adjourning the matter for today:

*“Mr. Nisar Ahmed Bhanbhro representing various petitions has made submissions in detail which have been adopted by all other learned counsel for the petitioners, whereas Law Officer of Election Commission of Pakistan has made part submissions and while confronted with certain queries he requests for some more time to fully assist the court. At the same time Mr. Azizullah Abbasi, Regional Election Commissioner Sukkur is in attendance and he has also not been able to give any assistance as to our queries. He has submitted that impugned orders were passed in a hurry due to paucity of time and therefore, proper reasons have not been assigned in each individual case. As a last and final chance, reluctantly adjourned to **26.05.2022 at 11.30 a.m** when the Law Officer of Election Commission of Pakistan shall come with a reasoned and appropriate*

*response. Office is directed to place a signed copy of this order in the captioned connected matters.”*

14. The Regional Election Commissioner, while confronted, had conceded that the orders in question were passed in a slipshod manner due to rush and shortage of time as the election schedule has already been announced, and we exactly remember that we had asked the Representative of ECP to come up today with some instructions in view of such candid admission, but today, he has again argued on merits of the case, instead of any positive response from ECP so as to resolve the issue, arguments have been reiterated.

15. It may also be advantageous to refer to refer to the case of **Syed Hafeezuddin (supra)**, wherein a learned Division Bench of this Court, while allowing the Petition in Para-12 had observed as under:

*12. Before parting company with this order, we would like to state and that is based on our experience of dealing with these matters exhaustively that the process as contemplated under Sections 8 and 13 of 2013 Act shall commence at least 18 months before the schedule of local government elections is announced. That shall follow the exercise of determining the number of Union Councils, Union Committees etc. and demarcation of the Councils in terms of section 10 of 2013 Act. The delimitation process by the Commission shall start at least one year before the election- schedule. In the present context the delimitation process means and includes (but is not restricted to) preparing a preliminary report and making such amendments, alterations or modifications in the said report as are deemed fit and necessary after hearing and considering the representations, if any, and publishing in the official gazette the final report and list of constituencies under section 10 of 1974 Act and passing an order under section 3A if 1974 Act. Although the commission has power to make, at any time, on its own motion such amendments, alteration and modification in the final list of the constituencies in terms of section 10A of 1974 Act, but if such exercise is taken and completed at the most 6 months before the election-schedule, it would make a substantive difference insofar as the present grievances of the petitioners are concerned and would make things pertaining to election process much easier to deal with speedily than they are being done presently.*

16. It was categorically observed in the above judgment that the delimitation process means and includes (but is not restricted to) preparing a preliminary report and making such amendments, alterations or modifications in the said report as are deemed fit and necessary after hearing and considering the representations, if any, and publishing in the official gazette the final report and list of constituencies under section 10 of 1974 Act and passing an order under section 3A if 1974 Act. It was further held that though the commission has power to make at any time on its own such amendments, alterations and modifications in the final lists of the

constituencies in terms of 10(a) of 1974 Act and if such exercise is taken and completed at the most six months before the election schedule it would make a substantive difference insofar as the present grievance of the Petitioners is concerned and would make things pertaining to election process much easier, to deal with speedily than they are being done presently. Though the above observations were given in respect of the previous law regarding delimitation; however, the conclusion is very clear that no delimitation is to be carried out in a hurry or on emergent basis. We have confronted the Counsel for ECP as well as Regional Election Commissioner as to why this judgment was not followed and sufficient time period was not granted, and in response, it has been admitted that the entire exercise has been carried out on emergent basis to conduct the elections, and therefore, proper reasons could not be assigned while passing the impugned orders.

17. As to the objection regarding maintainability of these petitions, it would suffice to hold that since the orders impugned herein are bereft of any justifiable reasons, the petitioners cannot be non-suited, merely because of some bar in the Elections Act. Moreover, it has been settled in the case of **M.Q.M & Others v Province of Sindh (2014 CLC 335)** and upheld by the Hon'ble Supreme Court in the case of **Province of Sindh v M.Q.M (PLD 2014 SC 531)**, that the issue of election is that of a fundamental right of a citizen and not of a statutory right and in such cases the Court can exercise its Constitutional jurisdiction; hence, the objection is otherwise misconceived.

18. It is by now a settled proposition that any order which has been passed by an authority, the same firstly must be by an authority having jurisdiction in the matter, and secondly the order must be a reasoned order. Clause 24A of the General Clauses Act 1897 provides as under:-

**“24-A. Exercise of power under enactments.**---(1) *Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and to the advancement of the purposes of the enactment.*

(2) *The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially.”*

Perusal of the aforesaid provision reflects that firstly the authority who is empowered to pass any order under any enactment must exercise

such power reasonably, fairly, justly and to the advancement of the purposes of the enactment, and secondly, the authority, officer or person making an order under the powers conferred by or under any enactment shall so far as necessary or appropriate, give reasons for making the order and shall provide a copy of the order to the person affected prejudicially. Therefore, for an order to sustain, even otherwise, these two preconditions must be satisfied. There is a plethora of case law on the subject that when an order has been passed without fulfilling the mandate of Section 24-A of the General Clauses Act 1897, such order is a nullity in the eyes of law. In the case of ***M/s. Airport Support Services Vs. The Airport Manager Quaid Azam International Airport, Karachi*** (1998 SCMR 2268) the Hon'ble Supreme Court while dilating upon Section 24-A of General Clauses Act, 1897 has been pleased to observe that the rule is founded on the premise that public functionaries must act fairly, equitably and reasonably without element of discrimination, and deviations if any, in substance can be corrected through appropriate orders by the Courts while exercising jurisdiction under Article 199 of the Constitution. It has been further observed that the order or direction so far as necessary or appropriate must reflect reasons for its making or issuance, and where the same is lacking an affected person may demand the necessary reasons which in response should be furnished.

Similarly in the case of ***Muhammad Amin Muhammad Bashir Limited Vs. Government of Pakistan*** (2015 SCMR 630) the Hon'ble Supreme Court while following an earlier decision in the case of ***Amanullah Khan and Others V. The Federal Government of Pakistan Through Secretary, Ministry of Finance, Islamabad and Others*** (PLD 1990 SC 1092) subsequently cited with approval in ***Abid Hasan V. PIAC*** (2005 SCMR 25) has reiterated the same by holding that *when the legislature confers such powers on the executive it must be deemed to have assumed that the power would be, firstly, exercised in good faith, secondly, for the advancement of the objects of the legislation, and, thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory power is to be exercised "reasonably, fairly, justly and for the advancement of the purposes of the enactment" and further clarifies that an executive authority must give reasons for its decision. Any action by an executive authority which is violative of these principles is liable to be struck down. No other view is permissible.* In the case of ***Capital Development Authority Vs. Shaheen Farooq*** (2007 SCMR 1328) it has been observed by the Hon'ble Supreme Court that *all*

*orders passed and acts performed by State / Public functionaries adversely affecting anyone must be in writing.*

19. In the instant matter the position which emerges after the discussion hereinabove is that in fact all orders are firstly, devoid of any plausible reasons; and secondly, even if there are reasons in some cases, they are verbatim same, and have not attended to the objections of the petitioners individually. Lastly, it has been admitted before us that these orders have been passed in rush of work and due to shortage of time. This alone is enough to hold that these orders cannot be sustained; and at the same time the petitioners cannot be non-suited pursuant to any bar of jurisdiction in this manner.

20. Per settled law, the Delimitation Authority was required to decide the objections in accordance with law, and keeping in consideration the provision of section 20(3) *ibid*, as well as the other objections raised by the petitioners, and in absence of a proper and reasoned order as provided under Section 24-A of the General Clauses Act, the same cannot be sustained. It is trite law that the authority deciding any matter must discuss the issue and give reasoning, and thereafter either accept the claim of the party, or reject it with cogent reasons. If not, then such order cannot be termed as an order in accordance with law being in violation of Section 24A of General Clauses Act, 1897.

21. Be that as it may, since apparently, all the impugned orders do not attend to the objections of the Petitioners in a meaningful manner by assigning proper reasons as to the factual as well as legal proposition raised by them, whereas, they are also well short of requirements of a reasoned order in terms of Section 24A of the General Clauses Act, 1897, we are of the view it would be appropriate that the Delimitation Authority shall pass orders afresh; hence, all these Petitions are **allowed / disposed of** in the following terms:

- (i) The impugned orders passed by the Delimitation Authority in all these Petitions are hereby set aside.
- (ii) The Delimitation Authority shall take up the objections of the Petitioners (already filed before it) and after giving them opportunity of presenting their case, pass appropriate reasoned orders after attending to the factual as well legal provisions as referred to by them hereinabove and shall also

comply with Section 24A of the General Clauses Act, 1897, while passing such orders.

- (iii) In case of petitioners, whose objections are not before the Authority, then these Petitions of such Petitioners shall be deemed to be their objections and the same shall also be decided in view of Para (ii) above.
- (iv) Such exercise be carried out by the Delimitation Authority by or before 10.6.2022.
- (v) Any Petitioner, who is further aggrieved, may take recourse to remedy, if any, as may be available in law.
- (vi) The elections schedule already announced for 26.6.2022 and its conduct shall be dependent on the above exercise which is to be carried out by the Delimitation Authority, and if any of the Petitioners are successful, then they would have their right to contest elections accordingly, and if needed, the schedule of such elections shall be altered or modified, by accommodating such petitioners.

22. Let copy of this order be issued to the learned DAG's office, AAG's office as well as Election Commission of Pakistan by fax and email as the case may be. Office is directed to place a signed copy of this order in the captioned connected matters.

J U D G E

J U D G E

Abdul Basit