

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-2771 of 2022

(Muhammad Yaqoob & another v Provincial Election Commissioner & others)

Date	Order with signature of Judge
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- 1) For orders on CMA No. 14717/2022.
- 2) For orders on CMA No. 14688/2022.
- 3) For hearing of CMA No. 10237/2022.
- 4) For hearing of main case.

21.06.2022.

Mr. Aamir Zaheer Mirza, Advocate for Petitioners.
Mr. Mehran Khan, Assistant Advocate General Sindh.
Mr. Faisal Ahmed A. Memon, Advocate for Applicants / Interveners.
Mr. Sarmad Sarwar, Law Officer, ECP.

Through this Petition, the Petitioners have impugned order dated 21.03.2022 passed by the Delimitation Authority pursuant to objections raised by the Petitioners against the orders passed by the Delimitation Committee.

We have heard the Petitioners Counsel and have also gone through the comments filed on behalf of Election Commission. Section 222 of the Election Act, 2017 (“Act”) permits the Election Commission to appoint 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. The said determination of the Delimitation Committee can be objected to before the Delimitation Authority in terms of Section 223(3) of the said Act which provides that a voter may, within fifteen days of the delimitation of constituencies by the Delimitation Committee, may 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. Similarly, Rule 21 of the Election Rules, 2017, provides the manner in which the objections are to be filed and decided by the Authority. If the objections are properly filed, then the Delimitation Authority can even hold inquiries, summon witnesses and record evidence as it may deem necessary.

In the instant matter, on the last date of hearing, we had confronted the Petitioners Counsel as to the objections raised by the Petitioners and he had referred to the same on record but on examination, it had transpired that they were in Sindhi language and today on our directions, statement has been filed along with translation of the said objections. When the same are perused, it

appears that no proper objections as required under Section 223(3) of the Act read with Rule 21 *ibid* had been raised; rather a simple request was made to transfer the votes from one place to another. We have confronted the Petitioners Counsel as to how and in what manner we can exercise discretion in this matter when apparently, the remedy as provided in law has not been properly availed and the requirement as provided in the Act and the Rules has not been fulfilled by the Petitioners and to this, he has not been able to satisfactorily respond except that law has been violated. We are aware, that law must always be followed in its spirit; but at the same time a person seeking intervention of a Court under Article 199 of the Constitution of the Islamic Republic of Pakistan must also come before it after availing the alternate remedy in a manner prescribed therein. In the instant matter, we are afraid no proper objections as mandated under Section 223(3) of the Act read with Rule 21 of the Election Rules 2017 were filed by the Petitioners and in that case we do not see any reason to exercise our discretion in this matter under our Constitutional Jurisdiction. If proper objections had been filed, then perhaps even an appropriate order to the satisfaction of the Petitioners could have been passed.

Nonetheless, on perusal of the record and merits of the case it seems that the Delimitation Authority has provided proper and appropriate reasons on this account as well. It has been held that if the prayer of the petitioners is accepted, then the population of the other Union Council will cross the prescribed upper limit as provided under the Law; hence, no case for indulgence is made out and therefore, instant Petition being misconceived was dismissed by us in the earlier part of the day by means of a short order and these are the reasons thereof.

J U D G E

J U D G E

Arshad/