

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C.P No. D-1438 of 2022

- Petitioners : Syed Anwar Ali Shah and others through, Mian Raza Rabbani, Salim Salam Ansari, Zeeshan Abdullah, Adnan Abdullah and Sidra Hussain, Advocates.
- Respondent No.1 : Province of Sindh through Sandeep Malani, Asstt. Advocate General, Sindh along with Saleem Shaikh, Assistant Commissioner on behalf of Administrator /DC, Mirpurkhas.
- Respondent No.3 : Mirpurkhas Municipal Corporation, through Abdul Rauf Arain, Advocate.
- Respondent No.4 & 5 : Muhammad Ishaq & another, through Muhammad Nishat Warsi, Advocate.
- Respondents Nos.6 to12 : Mumtaz and others, through Salahuddin Ahmed and Nadeem Ahmed, Advocates.
- Date of hearing : 27.10.2022

ORDER

YOUSUF ALI SAYEED, J - The Petition impugns Notification Nos. RO(LG)/Misc./4(20)/ 2021 dated 13.12.2021 and RO(LG)/E.Com/14(03/2021 dated 31.12.2021 (hereinafter referred to collectively as the “**Impugned Notifications**”) issued by the Government of Sindh (the “**Government**”) under the Sindh Local Government Act, 2013 (the “**2013 Act**”), as amended vide the Sindh Local Government (Amendment) Act, 2015.

2. Through the first of those Notifications, the Municipal Committee Mirpurkhas was upgraded to the status of a municipal corporation, namely the Municipal Corporation Mirpurkhas (the “**Corporation**”), and a total of 16 Dehs, including Deh Phadro, Mubarak, 107-A, Kaak, Manjri and Khandar the “**Subject Dehs**”), which had earlier been part of either UC Dolatpur, UC Kaak or UC Makhan Samoon, as were in turn a part and parcel of Taluka Shujabad (“**Shujabad**”), were declared to be urban areas and excluded from the jurisdiction of District Council Mirpurkhas so as to be made a part of the Corporation. Thereafter, through the second Notification, the Government went on to notify the number of Local Councils and Wards in Mirpurkhas District, including those falling in the domain of the Corporation.
3. The Petitioners, who are residents of the Subject Dehs, profess to be aggrieved by the recategorization and consequent measures, hence have sought that the Impugned Notifications be declared unlawful and void *ab-initio* to that extent, and that the Subject Dehs be restored as part of the affected UCs within the remit of Shujabad.
4. Following issuance of notice in the matter, comments were filed on behalf of the Government so as to oppose the Petition, and various private persons claiming to be residents of the UCs also came forward as interveners through separate Applications under Order 1, Rule 10 CPC whilst expressing their opposition and seeking to be added as respondents. Two of those Applications, being CMA Nos. 12664/22 and 12335/22), were allowed by consent, with the two sets of intervenors being joined as the Respondents Nos. 4 and 5 and 6 to 12 respectively.

5. Proceeding with his submissions, learned counsel for the Petitioner pointed out that Sections 8, 13 and 17 of the 2013 Act dealt with the subject of categorization, and argued that the common thread running through those provisions was conversion required the areas in question to be contiguous and to form a compact block. Moreover, objections were to be invited from the public, so that those liable to be affected could be heard prior to such a step being taken.

6. On that subject, it was submitted that the letter dated 25.11.2021 written by the Deputy Commissioner, Mirpurkhas, to the Director, Information, Government of Sindh, stated that the required Public Notices were to be published in *Daily Dawn*, *Daily Jang* and *Daily Kawish*, but the same were instead published in *Masawat*, *Sindh Line*, *Ekta*, *Awami Awaz*, *National*, *Ebrat*. He argued that while the three specified publications were widely published, the dailies in which the notices had appeared enjoyed very limited or no circulation. Furthermore, the Public Notices were published on 30.11.2021 and called for objections within a mere three days, that too without any date or time for hearing. He submitted that the Impugned Notifications were therefore hit by Sections 8(3), 13, and 17 of the 2013 Act.

7. Additionally, it was submitted that the rationale put forward for the step taken by the Government was that the character of the Subject Dehs had undergone a change through urbanization, hence their status merited recategorization. Attention was drawn to a letter dated 24.12.2021 written by the Deputy Commissioner, Mirpurkhas to the Secretary, Local Government in that regard and to the comments filed by the Government of Sindh, stating as much on the basis that a number of

housing societies and colleges, etc, had come to be established in those areas. Learned counsel submitted that neither the approvals of those housing schemes nor the demand, if any, of the people of the area for recategorization had been placed on record, and argued that as per the scheme of the 2013 Act, the sole criterion for categorizing an area to be urban or rural or vice-versa was population alone. He submitted that, therefore, the mere presence of housing schemes etc. did not make qualify an area to be categorized as urban.

8. Learned counsel for the Petitioners submitted that the Impugned Notifications did not arise from a case where the indigenous population of Taluka Mirpurkhas had increased to the threshold prescribed in Schedule- of the 2013 Act, but had been artificially inflated by amalgamating the Subject Dehs. He argued that Shujabad had historically been a contiguous block, comprising of 1 Town Committee and 9 UCs, comprising 46 Dehs, and that the separation of the Subject Dehs through their recategorization (i.e. from rural to urban) for purpose of forming the Corporation violated Sections 8, 10, 11, 12, 13, 15 and 17, the 2013 Act. He argued that Shujabad, as a Taluka, qualified to be a Municipal Committee in its own right on the basis of its population, which was more than 169,000, as compared to the threshold of 50,000 set out in Schedule-I of the 2013 Act.
9. He submitted that the Subject Dehs were not contiguous and did not form a compact block, as a railway track, road and canal, crisscrossed through and between them and Mirpurkhas, thus the Impugned Notifications offended Sections 8(3) and 12 of the 2013 Act. Reference was made to a map that had been placed on record by the Petitioners after filing of the Petition, under cover of a Statement dated 13.05.2022.

10. Learned counsel argued that the entire exercise was *mala fide*, as in reality the underlying purpose was that of gerrymandering the constituencies of Local Bodies as well as the Provincial and National Assemblies. He pointed out that the Government had unilaterally carried out a delimitation exercise in respect of the same area in the year 2013 to the exclusion of the ECP, giving rise to CP No. D-5098/2013 before this Court, which was decided by learned Divisional Bench vide a judgment dated 26.12.2013, since reported as MQM & others v. Province of Sindh & others 2014 CLC 335, whereby such exercise was declared to be unlawful and void ab- initio. Being aggrieved, the Government had preferred a Civil Petition for Leave to Appeal before the Honourable Supreme Court, which upheld the DB Judgment vide its Order reported as Government of Sindh v. MQM & others PLD 2014 SC 531. It was argued that through the Impugned Notifications, the Government has sought to replay and/or re-enact those past events through a process of categorization so as to undermine those judicial pronouncements with the *mala fide* intent of manipulation and gerrymandering by presenting the ECP with a *fait accompli* in order to achieve an outcome that it could not earlier attain through its own exercise of delimitation. In that regard, it was submitted that when objections were invited by the ECP at the time of delimitation, the Petitioners had filed objections, but the same were disposed of by the ECP vide an Order dated 21.3.2022, stating that the subject of categorization was not within its purview. It was submitted that the categorization was also in violation of the dictum laid down by the learned Division Bench in the MQM case (Supra), where it has been observed that such exercise ought to take place 18 months prior to the holding of local government elections, whereas the same has been undertaken less two months prior to the elections in the instant case.

11. Conversely, the learned AAG as well as learned counsel for the Respondents Nos. 6 to 12 submitted that as per section 8 and 14 of the 2013 Act, the Provincial Government was empowered to declare and notify urban and rural areas within a district and to further classify them, *inter alia*, as a Municipal Committee or a Municipal Corporation. Furthermore, as per section 10 of the 2013 Act, the Government was empowered to determine the number of Union Councils, Union Committees and Wards to be included in any Municipal or Town Committee and to delimit the Union Councils, Union Committees and Wards themselves. On the other hand, delimitation for electoral purposes - whether it be for local, provincial or national elections is carried out under the authority of the Election Commission of Pakistan as per Article 222 of the Constitution read with Sections 17 and 221 of the Election Act 2017 and Section 10(2) of the 2013 Act. As such, with reference to the judgment rendered by the learned Division Bench in the MQM case (Supra), it was submitted that the delimitation carried out by the Government at that time had been set-aside as violating Section 10 to 13 of the 2013 Act, but was of no relevance in the instant case where the Municipal Committee has been upgraded to a Municipal Corporation following the relevant provisions.

12. It was submitted that Mirpurkhas city is the divisional headquarters of Mirpurkhas division, and had grown in size over time. It was submitted that the Subject Dehs were contiguous to Mirpurkhas city and had become urbanized along with other adjoining rural areas of the city, with numerous housing societies, petrol pumps, marriage halls, restaurants, medical and other colleges, large public and private schools and other commercial areas. As such, their inhabitants required municipal

services and municipal regulation of a scale and nature more suited for urban areas. By way of illustration, it was pointed out that the Muhammadi Medical College, Bhitai Dental College, the new District Headquarter Hospital Mirpurkhas, Public School Mirpurkhas, Polytechnic Hospital STEVTA and City School Main Branch were all located outside the original municipal limits of Mirpurkhas, and in the Subject Dehs there are 32 private housing and commercial schemes. It was also argued that the urban area of Mirpurkhas city (inclusive of the Subject Dehs) has a total population of 349,332 as per the 2017 census, making it the fifth largest city of Sindh, and more amenable to being governed through a municipal corporation. Thus, upon longstanding demand of the people of the area, the Government had issued the Impugned Notifications after following procedure prescribed under the 2013 Act, including inviting public objections in various newspapers and affording an opportunity hearing. However, the Petitioners had failed to participate in that process. It was also argued that the Petitioners were not aggrieved persons within the contemplation of Article 199, but were proxies of persons with vested interests who had put them forward in an endeavour to redraw the electoral boundaries to suit their own purposes.

13. We have considered the arguments advanced in light of the pleadings and the material placed on record.
14. Whilst the main thrust of the arguments advanced on behalf of the Petitioner was the Impugned Notifications had been issued for purpose of gerrymandering, no such ground has been specifically emphasised through the pleadings, where while raising certain technical objections, it has merely been stated *inter alia* as follows:

“6. That, there is an element of hardship for the Petitioners and other residents of the said three UCs, inasmuch-as, while they were a part of Taluka Shujabad, there civic and municipal problems were solved at the office of the said Taluka, which was at a short walkable distance. Now, the said residents will have to cover a distance of approximately 15 km to reach the office of the Municipal Corporation Mirpurkhas.

(i) That, in terms of the development expenditure, while being a part of Taluka Shujabad, the funds were released by the Respondents to the said Taluka, which distributed them amongst the Nine UCs. As a consequence, of the impugned Notifications, the funds will be released to the Municipal Corporation Mirpurkhas, therefore, the share of the said UCs shall be accordingly reduced.

7. That, as a consequence of the impugned Notifications, the contiguity required, under the Elections Act, 2017, and the Sindh Local Government Act, 2013, as amended by the Sindh Local Government Act, 2021, of Taluka Shujabad, is being affected as the said three UCs in future delimitations for Local Body, Provincial and National Assembly elections, will be bifurcated.”

15. In fact, as it transpires, following issuance of the Impugned Notifications, the Petitioners contested the local government election for seats falling within the Subject Dehs, with some of them being successful in their endeavour.

16. As to the argument that the Impugned Notifications have been issued with mala fide intent in order to replay the very events of 2013 as were struck down vide the judgment rendered by the learned Division Bench in the MQM case (Supra), the two cases appear distinguishable on the facts and in our view the cited precedent does not serve to control or curtail the scheme of the 2013 Act, as applicable to the matter at hand.

17. Moreover, it merits consideration that while objections were admittedly invited via publication in various newspapers, the Petitioners did not participate, with the argument raised before us on that score gravitating around the assertion that such publication appeared in obscure newspapers and envisaged a short timeframe. In our view, that of itself does not provide sufficient cause to strike down the Impugned Notifications, while the further points entail competing submissions as to the geography, topography and demographics of the Subject Dehs, raising factual questions that cannot be properly determined in the present proceedings. Indeed, it was observed on that note by the Honourable Supreme Court in the Order dated 17.08.2022 made in Civil Petitions Nos.841-K of 2022 and 2843 of 2022 pertaining to the subject of delimitation that:

3. ...Whether the process, criteria and the steps taken by the said authorities are one, adequate and two, comprehensive to comply the legal mandate of the Act 2013 and the Act 2017 on the subject of composition and delimitation of local government constituencies in a matter on which we cannot comment. This is because in the first instance, the material placed before us involves questions of fact, which should be appraised and analyzed by a forum that is competent to do so. The superior Courts may thereafter adjudicate the questions of law that arise on the basis of the complete record.

6. The upshot of the proceedings is that the petitioners who have raised questions regarding the vires and the fair implementation of the provisions of Section 10(1), Section 10(2) and 10(3) of the Act, 2013 should in the first place approach the concerned ECP and provincial government authorities to secure an accurate factual perspective of the situation. With the benefit of such information, their legal challenges can be better framed with reference to the considerations and factors that are relevant for the determination of the composition and limits of local government constituencies. A competent forum or court of law may then be facilitated to decide a legal dispute, if any, that is based on a realistic factual matrix. The petitioners are thus at liberty to approach the competent forum to voice their challenges articulated in the context of the afore-noted authority provisions.

18. In view of the foregoing, we dismiss the Petition, leaving the Petitioners to approach the Provincial Government, if so desired.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: