ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4005 of 2023
Malik Muhammad Akram Kanhoon
Versus
Election Commission of Pakistan and others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
04	**15.12.2023**	**Petitioner in person.** **Barrister Saman Mamoon along with Mr. Shabbir Abbas, REC, Faisalabad, ECP.** **Ms. Faiza Tariq Janjua, Advocate for respondents No.45 and 46.** **Mr. Mehran Habib, Advocate for respondents No.47 and 49.** **Barrister Ayesha Siddiqe Khan and Barrister Raheel Ahmed, for respondents No.62 and 63.**

Through the instant writ petition, the petitioner, Malik Muhammad Akram Kanhoon, who is a registered voter in the Provincial Assembly constituency No.PP-224, assails order dated 06.11.2023 passed by the Election Commission of Pakistan (“ECP”), whereby the representations / objections to the preliminary report of the Delimitation Committee filed by a number of applicants / objectors were decided.

2. The petitioner’s grievance is that the impugned order dated 06.11.2023 has resulted in two Patwar Circles (“PCs”), namely (i) Basti Lang and (ii) 78-M to be broken and this has resulted in violation of the first proviso to Rule 10(4) of the Election Rules, 2017 (“the 2017 Rules”) which provides that a Patwar Circle *“shall be the basic unit for delimitation and it shall not be broken under any circumstances.”*

3. The petitioner appeared in person and drew the attention of the Court to the first proviso to Rule 10(4) of the 2017 Rules and submitted that the said proviso mandates *inter alia* that under no

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circumstances, could a PC be broken; that the impugned order passed by the ECP is such that it has resulted in the above-mentioned two PCs to be broken; and that this is apparent from paragraph-66 of the impugned order passed by the ECP.

4. Furthermore, it was submitted that the 2017 Rules mandate that efforts should be made for there to be an equilibrium in the population of the constituencies; that presently, the disparity in the population of Provincial Assembly constituencies PP-223 and PP-224 is in excess of 41,000; that presently the population of PP-224 is 4,26,424 whereas that of PP-223 is 4,67,046; and that if the ECP were to have acted in accordance with the first proviso to Rule 10(4) of the 2017 Rules and kept the above-mentioned two PCs intact, the disparity in the population of the said constituencies would have been negligible in that the population of PP-224 would be 4,46,318, whereas that of PP-223 would be 4,47,152. In making his submissions, the petitioner placed reliance on the order dated 13.04.2023 passed by this Court in W.P.No.3046/2022. The petitioner prayed for the writ petition to be allowed and the impugned order dated 06.11.2023 to be set-aside.

5. On the other hand, learned counsel for ECP submitted that neither PC Basti Lang nor 78-M have been broken as a result of the impugned order dated 06.11.2023; that in passing the impugned order for the delimitation of Provincial Assembly constituencies PP-223 and PP-224, the ECP has relied on the district maps along with description duly authenticated by Pakistan

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Bureau of Statistics as mandated by Rule 10(2) of the 2017 Rules; that PC 78-M comprises of five Chaks, namely Chaks No.77-M, 78-M, 79-M, 80-M and 81-M, whereas PC Basti Lang consists of just one Chak, also called Basti Lang; that all the five Chaks of PC 78-M are in constituency PP-223, whereas Chak Basti Lang is also in the said constituency; and that the disparity in the population of the two constituencies comes to only 9.5% which is within the permissible limit prescribed in the second proviso to Rule 10(5) of the 2017 Rules. Learned counsel for ECP prayed for the writ petition to be dismissed.

6. I have heard the contentions of the petitioner and the learned counsel for ECP and have perused the record with their able assistance.

7. The first question that needs to be determined is whether the ECP, in its order dated 06.11.2023 pertaining to the delimitation of Provincial Assembly constituencies PP-223 and PP-224, has violated the first proviso to Rule 10(4) of the 2017 Rules by breaking any PC.

8. The petitioner's assertion was that two PCs, namely PC 78-M and PC Basti Lang have been broken as a result of ECP's order dated 06.11.2023.

9. Learned counsel for the ECP, while relying on the population and household detail from block to district level issued by the Pakistan Bureau of Statistics pertaining to District Multan, has submitted that PC 78-M comprises of five Chaks, whereas PC Basti Lang comprises of one Chak, all of which are included in constituency PP-223.

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While carrying out the process of delimitation, the Delimitation Committee is to place reliance on district maps along with description duly authenticated by the Pakistan Bureau of Statistics or from the district head of the Revenue Department.

10. Although the document relied upon by the ECP from the Pakistan Bureau of Statistics shows that PC 78-M comprises of four Chaks but even if it is assumed that it comprises of five Chaks (as asserted by the petitioner), the maps of the constituencies PP-223 and PP-224 show that all the five Chaks of PC 78-M (i.e., Chaks No. 77-M, 78-M, 79-M, 80-M and 81-M) fall in constituency PP-223. The said document also shows that PC Basti Lang also entirely falls in constituency PP-223. The documents on the record do not show any Patwar Circle to be overlapping more than one constituency. Therefore, I find that the order dated 06.11.2023 passed by the ECP does not violate the mandate in the first proviso to Rule 10(4) of the 2017 Rules.

11. As regards the petitioner's contention that there is an enormous disparity in the population of the constituencies PP-223 and PP-224, the statistics show that the population of PP-223 is 4,66,989, whereas the population of PP-224 is 4,26,481. This makes the difference in the population of the said constituencies to be 40,508 which comes to 9.5%. Since this difference in population is less than 10%, the ECP, while passing the impugned order dated 06.11.2023, has not violated the second proviso to Rule 10(5) of the 2017 Rules. Even otherwise, the

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employment of the word "ordinarily" in the second proviso to Rule 10(5) implies that it is not in every case where the disparity in the population of the constituencies is more than 10% that this Court should interfere with a delimitation order passed by the ECP. In exceptional cases, a variation in the population beyond 10% is permissible but there has to be reasons recorded for such a variation.

12. Since the impugned order dated 06.11.2023 passed by the ECP does not suffer from any illegality, the instant petition is dismissed with costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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