ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4018 of 2023
Nadeem Khan
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**	**Mr. Khurram Mahmood Qureshi, Advocate for the petitioners in WPs No.4018/2023 and 4019/2023.** **Mr. Zulfiqar Ahmad Sial, Advocate for the petitioners in WPs No.4023/2023 and 4026/2023.** **Mr. Waqas Rauf, Advocate for the petitioner in WP No.4027/2023.** **Barrister Saman Mamoon along with Mr. Aziz Bahadar, Joint Provincial Commissioner, KPK, ECP.** **Mr. Babar Khan Yousafzai, Barrister Waleed Ahmad Jadoon and Mr. Wasi Ullah Khan Surrani, Advocates for respondent No.11 in WP No.4027/2023.**

Through this order, I propose to decide writ petitions No.4018/2023, 4019/2023, 4023/2023, 4026/2023 and 4027/2023, since they are all against the order dated 26.11.2023 passed by the Election Commission of Pakistan (“ECP”) which pertains to the delimitation of the National and Provincial Assembly constituencies in District Lower Dir, Khyber Pakhtunkhwa.

2. Through the said order dated 26.11.2023, the ECP interfered with the report of the Delimitation Committee pertaining to the said constituencies. Objectors, which have been impleaded as respondents in the instant petitions, had questioned the report of the Delimitation Committee.

3. The petitioner’s primary grievance is that the ECP instead of interfering with the preliminary report of the Delimitation Committee on the ground that while carving out National and

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Provincial Assembly constituencies in District Lower Dir, the Delimitation Committee had violated any of the requirements of the Elections Act, 2017 (**"the 2017 Act"**) or the Elections Rules, 2017 (**"the 2017 Rule"**), the ECP interfered with the said report simply on the basis of an agreement arrived at between the objectors. The petitioner has also complaint about the decision of the ECP to make the boundaries of the National and Provincial Assembly constituencies in District Lower Dir exactly the same as they were in the delimitations carried out in 2022.

4. In the impugned order dated 26.11.2023, the ECP has explained that after the Pakistan Bureau of Statistics published on 07.08.2023 the final result of the 7th Digital Population and Housing Census-2023, the ECP in accordance with Section 17 of the 2017 Act and Rule 7 of the 2017 Rules initiated the process of delimitation afresh for the National and Provincial Assembly constituencies. The Delimitation Committee carried out the process of delimitation and its draft proposals were sent to the ECP. These draft proposals were published in the official Gazette on 27.09.2023. Several objections to these proposals have been filed before the ECP.

5. Objections were also filed with respect to the proposals of the Delimitation Committee pertaining to the National and Provincial Assembly constituencies in District Lower Dir. As per paragraph 7 of the impugned order dated 26.11.2023, during the course of the arguments before the ECP, all the objectors took the position that if their proposals are considered together,

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the delimitation of constituencies in the said District would become as they were notified in the final delimitation report of 2022. Apparently, the objectors had also submitted a written statement signed by 09 objectors praying for their proposals to be accepted.

6. In paragraph 8 of the impugned order dated 26.11.2023, the ECP observed that it was not bound to maintain the previous delimitation scheme of 2022 or even take it into consideration while deciding the objections before them. However, in paragraph 9 of the said order, the ECP decided that when all the objections / proposals are placed in juxtaposition, the composition and the boundaries of the constituencies would be as they were in the final delimitation report of 2022. On this basis, the ECP accepted the proposals of the objectors. For the purposes of clarity, paragraphs 9 and 10 of the impugned order dated 26.11.2023 are reproduced herein below:-

> ***"9. Contrary to the above but admittedly when all the separate proposals are put juxtaposed, then the conclusion which born is that petitioners have sought exclusion and inclusion of certain areas, which finally make the shape and composition of constituencies as it was finally published in 2022. Hence, keeping in mind the principle of delimitation, we are of the view that the proposals of petitioners are in accordance with the principle of delimitation which need consideration.***
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> ***10. For what has been argued as well as narrated in the memo of petitions, we while exercising powers under section 21 (4) of the Elections Act, 2017 read with Article 218 (3) of the Constitution of Islamic Republic of Pakistan, 1973 allow all the proposals. The Delimitation Committee is directed to make the final shape and composition of Provincial Assembly constituencies as it was finally published in 2022."***

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7. If the final delimitation of National Assembly and Provincial Assembly constituencies in a particular District has to be made by the ECP exactly in the nature of the delimitation of such constituencies carried out in 2022, the question that cropped out in the mind is why the need to go through an expensive and cumbersome exercise of carrying out the process of delimitation of constituencies after just one year. Learned counsel for the ECP tried to justify by submitting that the delimitation of constituencies carried out in 2022 are almost the same as the delimitation carried out this year. She also submitted that no new seats of the National or Provincial Assembly have been created or allocated by the Constitution, and therefore it is not necessary for the drawing or the boundaries of the constituencies to be changed.

8. I am also of the *prima facie* view that the impugned order dated 26.11.2023 is not consistent with the views of this Court in the case of Fakhar-e-Alam Wazir Vs. Election Commission of Pakistan (2023 CLC 1435), paragraph 11 whereof is reproduced herein below:-

> ***"11. Since Rule 10(3) requires the Delimitation Committee to follow the principles of delimitation laid down in Section 20 of the 2017 Act, the procedure given in Chapter-III of the 2017 Rules and the guidelines provided by the E.C.P. from time to time, the E.C.P. cannot interfere with the draft proposals or a preliminary report of a Delimitation Committee unless the said Committee, while preparing the draft proposals for delimitation of constituencies, has violated the principles of delimitation laid down in Section 20 ibid or has not followed the procedure given in Chapter-III of the 2017 Rules or has not followed the guidelines provided by the E.C.P. from time to time."***

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9. Section 20(1) of the 2017 Act provides that 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. Section 21(1) provides that for the purpose of delimiting constituencies, the Commission may receive and consider representations, hold inquiries, summon witnesses and record evidence, and shall prepare and publish in the official Gazette a preliminary report and list of constituencies specifying the areas proposed to be included in each constituency. Section 21(2) requires ECP to invite representations in respect of the preliminary report within a period of thirty days from the date of publication. Section 21(4) requires ECP, after hearing and considering the representations, to *inter alia* make such amendments, alterations or modifications in the preliminary list of constituencies *"as it thinks fit or necessary."*

10. Chapter III of the 2017 Rules deals with the delimitation of constituencies. Rule 9 requires the ECP to constitute a Delimitation Committee which is to prepare draft proposals for delimitation of constituencies of National and Provincial Assemblies. Rule 10(1) requires the Delimitation Committee to obtain from the Pakistan Bureau of Statistics the population data of the last census officially published along with relevant maps. Rule

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10(2) requires the Delimitation Committee to obtain district maps along with description, duly authenticated by Pakistan Bureau of Statistics, or, as the case may be, the district head of Revenue Department. In preparing the draft proposals of the delimitation of the constituencies, Rule 10(3) requires the Delimitation Committee to follow the principles of delimitation as laid down in Section 20, the procedure in Chapter III of the 2017 Rules and the guidelines provided by ECP.

11. Rule 10(4) provides that the constituency for an assembly shall not ordinarily extend to more than one district except in exceptional circumstances for reasons to be recorded by the Delimitation Committee: provided that a Patwar Circle, shall be the basic unit for delimitation and it shall not be broken under any circumstances. It also provides that in case of urban areas, census circle shall not be broken under any circumstances. More particularly, Rule 10(5) provides that *"as far as possible"* the delimitation of constituencies of an assembly shall start from the northern end of the district, or, as the case may be, the agency and then proceed clock-wise in zigzag manner keeping in view that population amongst the constituencies of an assembly shall remain as close as may be practicable to the quota. The first proviso to the said Rule provides that the quota under the sub-rule shall be determined by dividing total population of the district or the agency with number of seats allocated to that district or agency. The second proviso provides that the variation in population

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between two or more constituencies shall not ordinarily exceed 10% and the Delimitation Committee shall record reasons if, in exceptional circumstances, the variation has to exceed the limit.

12. The reason why reference has been made to the above mentioned Sections and Rules is that the Delimitation Committee has to carry out the arduous task of preparing a delimitation report in accordance with the guidelines in the Rules referred to herein above. It is my view that it is only in cases where the Delimitation Committee, while preparing the preliminary delimitation report, violates any of the requirements under the provisions of the 2017 Act, the 2017 Rules or guidelines issued by the ECP that it would be justified to interfere with the same.

13. From the perusal of the impugned order, the reasons why the ECP interfered with the preliminary delimitation report of the Delimitation Committee cannot be discerned. In other words, the impugned order dated 26.11.2023 is bereft of reasons and therefore not in conformity with the requirements of Rule 24A of the General Clauses Act, 1897. Merely to state that the agreement arrived at between the objectors happens to be also in accordance with the requirements of the 2017 Rules is not sufficient to denude the preliminary delimitation report of its sanctity. Indeed, along with the instant petition, the petitioner has filed an agreement between the objectors before the ECP that the delimitation of constituencies be made in accordance with the delimitation report of 2022. Interference with the

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preliminary delimitation report cannot be made on the basis of a consensus between objectors. In the impugned order, the ECP has correctly held that it is not bound by the agreement between the parties, but has not stated with particularity as to which provision of the 2017 Act or the 2017 Rules or the ECP's guidelines had been violated by the Delimitation Committee in its preliminary delimitation report with respect to the National and Provincial Assembly constituencies District Lower Dir, Khyber Pakhtunkhwa. It is obligatory on the ECP while deciding objections to the preliminary delimitation reports to set out with particularity the error or omission in such reports so as to justify interference with the same.

14. In view of the above, all the petitions are allowed; the impugned order dated 26.11.2023 is set-aside; and the matter is remanded to the ECP for a decision afresh in accordance with the law and norms of proprietary. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

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