

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Review Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, C.J.
Kh. Muhammad Nasim, J.
Raza Ali Khan, J.
Muhammad Younas Tahir, J.

1. Civil Review No.08 of 2022

(Filed on 20.01.2022)

1. Raja Muhammad Farooq Haider Khan, Ex-Prime Minister, Azad Jammu and Kashmir presently Member AJ&K Legislative Assembly from constituency No.6, District Neelum Valley.
2. Farooq Ahmed Tahir, Ex-Minister Law, Justice and Parliamentary Affairs, AJ&K Legislative Assembly.
3. Shoukat Hussain Gohar, s/o gohar Khan.
4. Kamran Liaqat s/o Sardar Liaqat Ali, r/o Islam Nagar, P/O Mang, Pattan Sher Khan, Tehsil Mang, District Sudhnuti.

... PETITIONERS

Versus

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Azad Govt. of the State of Jammu & Kashmir having his office at New Secretariat, Muzaffarabad.
2. Secretariat Local Govt. & Rural Development through Secretary Local Government and Rural Development having his office at New Secretariat, Muzaffarabad.
3. Chief Executive/Prime Minister of AJ&K, through Principle Secretary Prime Minister of AJ&K, having his office at New Secretariat, Muzaffarabad.

4. Minister Incharge Local Government and Rural Development Department having his office at New Secretariat, Muzaffarabad.
5. AJ&K Local Government Board through its Secretary having his office at Upper Chatter, Muzaffarabad.
6. Director General Local Government and Rural Development having his office at Upper Chatter, Muzaffarabad.
7. Election Commission of Azad Jammu and Kashmir through Secretary Election Commission of AJ&K, having his office at New Secretariat, Chatter.
8. Inhabitants of Municipal Committee Hajira through Raja Manawar Hussain Kiani, Tehsil Hajira, District Poonch, Rawalakot.
9. Raja Shujaat Ali Khan, Advocate, Supreme Court, General Secretary AJ&K Supreme Court Bar Associations, Muzaffarabad.
10. Majid Khan, Advocate Supreme Court, General Secretary AJ&K High Court Bar Association, Muzaffarabad.
11. Haroon Riaz Mughal, Advocate Supreme Court, General Secretary Central Bar Association, Muzaffarabad.
12. Syed Bazil Ali Naqvi, Ex-Minister Information, President PPP AJ&K, District Muzaffarabad.
13. Sardar Muhammad Javed Ayub Khan, Ex-Minister Forest Secretary Information, PPP AJ&K.
14. Ch. Rasheed, Ex-Minister PWD Highway, Azad Jammu & Kashmir.
15. Muhammad Hanif Awan, Ex-Minister Agriculture, AJ&K.

16. Umer Khan s/o Mir Zaman r/o Ghumat Ghana, Tehsil Naseerabad, District Muzaffarabad.
17. Majaz Shah s/o Mehram Shah r/o Bela Noor Shah, Tehsil and District Muzaffarabad.
18. Mir Fazal-ur-Rehman s/o Mir Fateh Muhammad r/o Karshan, Rehmanabad, Tehsil Naseerabad, District Muzaffarabad.
19. Inhabitants of Village Kot Gujran through:-
 1. Muhammad Ayub s/o Ali Akbar,
 2. Muhammad Afsar s/o Nassar Din,
 3. Muhammad Shabbir s/o Baggah,
 4. Muhammad Mahroof s/o Muhammad Saddique,
 5. Muhammad Nazir s/o Nizam Di,
 6. Abdul Jabbar s/o Ali Hassan,All residents of village Kot Gujran, Tehsil and District Bagh
20. Inhabitants of Village Nikka Nara Bani Pasari through.
 1. Sardar Muhammad Pervaiz Iqbal Khan s/o Maqbool Khan,
 2. Haji Muhammad Ilyas Khan s/o Ashraf Khan,
 3. Sardar Muhammad Khurshid Khan s/o Mehboob Khan,
 4. Chaudhary Muhammad Nazir Khan s/o Chaudhary Ghulam Hussain.
 5. Muhammad Maqsood Khan Sabir s/o Mehmood Khan r/o Village Nikka Nara Bani Passari, Municipal Corporation Bagh, Tehsil and District Bagh.

.... RESPONDENTS

[In the matter of review from judgment of this Court dated 21.12.2021 in Civil Appeals No.94, 95 and 96 of 2021.

FOR THE PETITIONERS: Sardar Abdul Hameed Khan and Raja Ayaz Ahmed, Advocates.

FOR THE RESPONDENTS: Kh. M. Maqbool War, Advocate General and Mr. Tahir Aziz Khan, Advocates.

2. Civil Review No.07 of 2022
(Filed on 20.01.2022)

1. District Bar Association Rawalakot through President DBA, Poonch, Rawalakot.
2. Sardar Javed Sharif, Advocate, Ex-Pakistan District Bar Association.

... PETITIONERS

Versus

1. Azad Government of the State of Jammu and Kashmir through Secretary Local Government and Rural Development having his office at New Secretariat, Muzaffarabad.
2. Chief Executive/Prime Minister of AJ&K Govt. of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
3. Minister In charge of Local Government and Rural Development, having his office at New Secretariat, Muzaffarabad.
4. Local Govt. & Rural Development Department through its Secretary, having his office at New Secretariat, Muzaffarabad.

5. AJ&K Local Government Board through its Secretary having his office at Upper Chatter, Muzaffarabad.,
6. Secretary Local Government Board of the State of Jammu & Kashmir having his office at Chatter, Muzaffarabad.
7. Director General Local Government and Rural Development having his office at Upper Chatter, Muzaffarabad.
8. The Election Commissioner Local Bodies having his office at New Secretariat, Muzaffarabad.
9. Deputy Commissioner Poonch, Rawalakot.
10. Assistant Commissioner / Administrator Municipal Committee Hajira, District Poonch.
11. Inhabitants of Village Kot Gujran through Raja Munawar Hussain Kiani, Tehsil Hajira, District Poonch.
12. Raja Shujaat Ali Khan, Advocate Supreme Court, General Secretary AJ&K Supreme Court Bar Association, Muzaffarabad.
13. Majid Khan, Advocate Supreme Court, General Secretary AJ&K High Court Bar Associations, Muzaffarabad.
14. Haroon Riaz Mughal, Advocate Supreme Court General Secretary Central Bar Association, Muzaffarabad.
15. Syed Bazil Ali Naqvi, Ex-Minister Information, President PPP AJ&K, District Muzaffarabad.
16. Sardar Muhammad Javed Ayub Khan, Ex-Minister Forest Secretary Information, PPP.
17. Ch. Rasheed Ex-Minister PWD, Highways.
18. Muhammad Hanif Awan, Ex-Minister Agriculture.

19. Umer Khan s/o Mir Zaman r/o Ghumat Ghana, Tehsil Naseerabad, District Muzaffarabad.
20. Majaz Shah s/o Mehram Shah r/o Bela Noor Shah, Tehsil and District Muzaffarabad.
21. Mir FAzal ur Rehman s/o Mir FAteh Muhammad r/o Karshan, Rehamanabad, Tehsil Naseerabad, District Muzaffarabad.
22. Muhammad Ayub s/o Ali Akbar,
- 23.. Muhammad Afsar s/o Nassar Din,
24. Muhammad Shabbir s/o Baggah,
25. Muhammad Mahroof s/o Muhammad Saddique,
26. Muhammad Nazir s/o Nizam Di,
27. Abdul Jabbar s/o Ali Hassan, residents of village Kot Gujran, Tehsil and District Bagh
28. Commissioner Poonch Division (Appellate Authority), Rawalakot.
29. Deputy Commissioner/Halqa Bandi Officer, Bagh District, Bagh.
30. Inhabitants of Mohallah Ghakkhar, Kot Gujran, through Haji Saeed Khan s/o Shahab-ud-Din Khan, Village Thub, District Bagh.
31. Sardar Muhammad Pervaiz Iqbal Khan s/o Maqbool Khan.
32. Haji Muhammad Ilyas Khan s/o Ashraf Khan.
33. Sardar Muhammad Khursheed Khan s/o Mehboob Khan,
34. Chaudhary Muhammad Nazir Khan s/o Chaudhary Ghulam Hussain.
35. Muhammad Maqsood Khan Sabir s/o Mehmood Khan r/o Village Nikka Nar Bani Passari, Municipal Corporation, Bagh, Tehsil and District Bagh.

36. Election Commissioner Government of AJK having his office at new Secretariat, Muzaffarabad.
37. Assistant Office Delimitation, District Bagh.

.... RESPONDENTS

[In the matter of review from judgment of this Court dated 21.12.2021 in Civil Appeals No.94, 95 and 96 of 2021.

- FOR THE PETITIONERS: Sardar M. Suleman Khan & Sardar Iftikhar Ahmed, Advocates.
- FOR THE RESPONDENTS: Kh. M. Maqbool War, Advocate General and Mr. Tahir Aziz Khan, Advocates.

3. Civil Review No.12 of 2022
(Filed on 04.02.2022)

1. Jamila Akhta, Advocate d/o Muhammad Akbar Khan r/o Village & Union Council Jandali, P/O Chottagal, Tehsil Rawalakot, District Poonch.
2. Sardar Muhammad Haleem Khan s/o Muhammad Rafique Khan r/o Village & Union Council Boanjonsa, Tehsil Rawalakot, District Poonch.
3. Sardar (Rtd.) Muhammad Aslam Khan s/o Ali Muhammad Kahn r/o Village & Union Council Hussain Kot, Tehsil Rawalkaot, District Poonch.
4. Imtiaz Hussain Khan s/o Muhammad Hussain Khan r/o Village & Union Council Jandali P/O Chottagal, Tehsil Rawalakot, District Poonch.
5. Muhammad Latif s/o Muhammad Hussain r/o Village & Union Council Banjonsa, Tehsil Rawalakot, District Poonch.

6. Aamir Shafique s/o Muhammad Shafique Khan r/o Village & Union Council Jandali, P/O Chottagala, Tehsil Rawalakot, District Poonch.
7. Muhammad Sheraz Khan s/o Muhammad Khan r/o Village & Union Council Jandali P/O Chottagal, Tehsil Rawalakot, District Poonch.
8. Aqib Nazir s/o Muhammad Nazir Khan r/o Village & Union Council Jandali P/O Chottagal, Tehsil Rawalakaot, District Poonch.
9. Qadeer Hussain s/o Muhammad Nazir Khan r/o Village & Union Council Banjonsa, Tehsil Rawalakot, District Poonch.
10. Haq Nawaz s/o Muhammad Aslam r/o Village & Union Council Banjonsa, Tehsil Rawalakot, District Poonch.
11. Muhammad Asghar Khan s/o Gulzar Khan r/o Village & Union Council Hussain Kot, Tehsil Rawalakot.

... PETITIONERS

Versus

1. Azad Government of the State of Jammu and Kashmir through Secretary Local Government and Rural Development having his office at New Secretariat, Muzaffarabad.
2. Chief Executive/Prime Minister of AJ&K Govt. of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
3. Minister In charge of Local Government and Rural Development, having his office at New Secretariat, Muzaffarabad.
4. Local Govt. & Rural Development Department through its Secretary, having his office at New Secretariat, Muzaffarabad.

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10. Assistant Commissioner / Administrator Municipal Committee Hajira, District Poonch.
11. Inhabitants of Village Kot Gujran through Raja Munawar Hussain Kiani, Tehsil Hajira, District Poonch.
12. Raja Shujaat Ali Khan, Advocate Supreme Court, General Secretary AJ&K Supreme Court Bar Association, Muzaffarabad.
13. Majid Khan, Advocate Supreme Court, General Secretary AJ&K High Court Bar Associations, Muzaffarabad.
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15. Syed Bazil Ali Naqvi, Ex-Minister Information, President PPP AJ&K, District Muzaffarabad.
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19. Umer Khan s/o Mir Zaman r/o Ghumat Ghana, Tehsil Naseerabad, District Muzaffarabad.
20. Majaz Shah s/o Mehram Shah r/o Bela Noor Shah, Tehsil and District Muzaffarabad.
21. Mir FAzal ur Rehman s/o Mir FAteh Muhammad r/o Karshan, Rehamanabad, Tehsil Naseerabad, District Muzaffarabad.
22. Muhammad Ayub s/o Ali Akbar,
- 23.. Muhammad Afsar s/o Nassar Din,
24. Muhammad Shabbir s/o Baggah,
25. Muhammad Mahroof s/o Muhammad Saddique,
26. Muhammad Nazir s/o Nizam Di,
27. Abdul Jabbar s/o Ali Hassan, residents of village Kot Gujran, Tehsil and District Bagh
28. Commissioner Poonch Division (Appellate Authority), Rawalakot.
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31. Sardar Muhammad Pervaiz Iqbal Khan s/o Maqbool Khan.
32. Haji Muhammad Ilyas Khan s/o Ashraf Khan.
33. Sardar Muhammad Khursheed Khan s/o Mehboob Khan,
34. Chaudhary Muhammad Nazir Khan s/o Chaudhary Ghulam Hussain.
35. Muhammad Maqsood Khan Sabir s/o Mehmood Khan r/o Village Nikka Nar Bani Passari, Municipal Corporation, Bagh, Tehsil and District Bagh.

36. Election Commissioner Government of AJK having his office at new Secretariat, Muzaffarabad.

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.... RESPONDENTS

[In the matter of review from judgment of this Court dated 21.12.2021 in Civil Appeals No.94, 95 and 96 of 2021.

FOR THE PETITIONERS: Sardar M. Suleman Khan & Sardar Iftikhar Ahmed, Advocates.

FOR THE RESPONDENTS: Kh. M. Maqbool War, Advocate General and Mr. Tahir Aziz Khan, Advocates.

Date of hearing: 10.02.2022

JUDGMENT

Raja Saeed Akram Khan, C.J.– All the titled petitions have been filed for review of judgment of this Court dated 21.12.2021, whereby, Civil Appeals No.94, 95 and 96 of 2021 were disposed of in the following manner:-

“...In the light of issuance of the notification dated 20.12.2021 and statements made by the Assistant Advocate General as well as the Secretary Local Government, we are intended to dispose of these appeals in the following terms:-

- (i) As the amended Notification dated 20.12.2021 has been issued, hence, the Chief Election Commissioner is directed to start the process of delimitation and complete the same within a period of 45 days from today in the light of amended Notification and submit a compliance report before this Court through Registrar.
- (ii) In the light of statement made by the Assistant Advocate General and the Secretary Local Government, the Government is directed to make arrangements for holding free, fair and transparent elections within a period of six months from the completion of process of delimitation, not beyond August, 2022. It is further observed that the elections shall be conducted in the light of census conducted in the year 2017.
- (iii) So far as the impugned judgments passed by the High Court are concerned, in order to discourage any further litigation, we would like to clarify that the amended notification dated 20.12.2021 has been issued on the direction of this Court and same is well-reasoned, hence, stands protected. In this state of affairs, the judgments of the High Court will not be a hurdle in the process of delimitation.”

2. Some of the petitioners are renowned politicians, whereas, others are members of the District Bar Association, Bagh. For review of the

impugned judgment, the learned counsel for the petitioners raised the following grounds:-

- (i) That in the judgment under review a direction has been issued that the elections shall be conducted in the light of Census, 2017, whereas, no such census has been notified.
- (ii) That in the judgment under review the notification dated 20.12.2021 has been protected which has created an anomalous situation by conveying an impression that the doors of Courts have been closed for the litigants to challenge the disputes relating to the illegalities committed during the process of delimitation.

Additionally, Sardar Muhammad Suleman Khan and Sardar Iftikhar Ahmed, Advocates, submitted that an important legal aspect of the matter has not been looked into by this Court that the Azad Jammu and Kashmir Local Government Election Rules, 1983 are not in consonance with the parent Act, hence, the same are liable to be declared ultra vires. Raja Ayaz Ahmed, Advocate, stated on behalf of the petitioner (Raja Farooq Haider Khan) that the Government as well as the opposition wants holding of elections well in time, however, according to him the elections should be

held on the basis of delimitation already conducted in the year 1991.

3. Kh. Muhammad Maqbool War, Advocate General accompanied by Mr. Tahir Aziz Khan, Advocate, placed on record the copy of the notification according to which the Census, 2017 was notified and submitted that the argument relating to non-publication of census in the official gazette is misconceived. They further added that in the impugned judgment the word 'protection' only refers to the criterion/formula laid down in the notification dated 20.12.2021, which was issued as per direction of this Court. Even otherwise, the argument advanced by the learned counsel for the petitioners in this context is against the ground realities as the Delimitation Authority established under the relevant law is fully working and hearing the petitions. So far as the argument relating to the declaration of the AJ&K Local Government Election Rules, 1983 as ultra vires the parent Act is

concerned, this point is beyond the scope of the review jurisdiction.

5. We have heard the learned counsel for the parties and gone through the record. The burning argument raised by the learned counsel for the petitioners in this petition is that this Court has directed the concerned to hold elections in the light of Census, 2017 which, in fact, has not been notified. This argument has strongly been objected to by the learned Advocate General by producing a copy of the notification according to which the Census, 2017 has been notified. However, during the course of arguments a suggestion was put to the learned Advocates that if the general elections can be held on the basis of electoral rolls, for removal of ambiguities why the elections of local bodies cannot be conducted in the like manner; they unanimously agreed that if this clarification is made they would be satisfied.

6. It has been forcefully argued at bar that this Court in paragraph 2(iii) of the judgment under

review has protected the notification dated 20.12.2021, due to which the Courts below are not treating the disputes arising out of the process of delimitation. We are afraid, this argument is not only misconceived but also against the ground realities. The notification dated 20.12.2021 was issued under the guidelines of this Court whereby a criterion/formula has been fixed for the purpose of delimitation. Through the judgment under review only the formula laid down in the notification has been protected and no clog has been put on the remedy against the illegalities if committed during the process of delimitation. Even otherwise, the Election Commission has appointed the Delimitation Authorities under section 125-E of the Azad Jammu and Kashmir Elections Act, 2020 for deciding the objections against the delimitation carried out by the Delimitation Committee. The said Authorities are working at full swing. Almost 900 petitions have been filed before the Delimitation Authorities and a number of those have already been decided. It has also been brought into the notice of the Court that

some of the petitioners have also approached the concerned Authorities, hence, in our opinion the argument raised by the learned counsel for the petitioners is devoid of any force.

7. So far as the argument raised by Sardar Muhammad Suleman Khan and Sardar Iftikhar Ahmed, Advocate, that the AJ&K Local Government Election Rules, 1983 are ultra vires the parent Act, is concerned, such an argument cannot be considered in this review petition as the same was not the dispute before us at the time of hearing the appeals. It has been held in a number of cases that the scope of review petition is very limited and confined only to the extent of an error or mistake apparent on the face of record, whereas, no such eventuality exists in this case.

8. So far as the request advanced by Raja Ayaz Ahmed Khan, Advocate, on behalf of the petitioner (Raja Farooq Haider Khan) regarding holding the elections on the basis of delimitation conducted in the year 1991 is concerned, we have

made a query to the Secretary Election Commission in this regard who brought into the notice of the Court that in the year 1991 no delimitation process was conducted rather the elections were held on the basis of delimitation conducted in the year 1987 which was also subsequently cancelled. In this scenario, the request made by the learned counsel for the petitioner cannot be accepted.

9. For the above stated reasons, we dispose of this review petition with the following clarifications.

- (i) That the elections shall be conducted on the basis of electoral rolls prepared, updated and maintained as per the spirit of section 125-B of the Azad Jammu and Kashmir Elections Act, 2020; and
- (ii) That this Court has only protected the notification dated 20.12.2021 to the extent of formula laid down therein and no clog has been put for availing the remedy before the Delimitation Authorities established by the Election Commission.

CHIEF JUSTICE JUDGE JUDGE JUDGE

Muzaffarabad,
16.02.2022