

Robkar-e-Adalat

VS Azad Govt. & others

PRESENT:

Raja Sajjad Ahmed Khan, Advocate and Kh. Muhammad Maqbool War, Advocate General and Haider Rasheed Mughal, Assistant Advocate General for the applicants.

M/s. Raja Amjad Ali Khan, Haroon Riaz Mughal, Raja Ayaz Ahmed, Raja Gul Majeed Khan and Waheed Bashir Awan, Advocates.

Secretary Election Commission and Secretary Local Government in person.

ORDER:

An application for extension in time for conducting the Local Bodies Elections has been filed on behalf of the Government, the prayer clause of which reads as under:-

"It is, therefore, most humbly prayed that while accepting the instant application, enlargement of time may kindly be allowed to conduct Local Bodies Election and extend the time upto March, 2023. Any other relief which the Hon'ble Court may deem fit may also be granted to the applicants."

Early in the morning, after hearing the learned Advocate General and Raja Sajjad Ahmed Khan, Advocate, the learned counsel representing the applicants, the time was given to them to consult

with the worthy Prime Minister and the other concerned quarters and come with a definite stance in clear terms that what is the real intention of the Government and how much time is required to arrange the requisite amount demanded by the Chief Election Commissioner because the main thrust of the counsel for the applicants was that presently the Government of Azad Jammu and Kashmir as well as Pakistan is facing the financial crisis.

After seeking instructions from the worthy Prime Minister and other concerned quarters, the learned Advocate General stated that it would be convenient for the Government to hold the elections in May, 2023, however, Raja Sajjad Ahmed Khan, Advocate insisted for holding of the elections after Ramzan. It is very amazing that in the application, they have prayed for grant of time till March, 2023, however, the stance taken by them in the Court is even against their own prayer.

M/s Haroon Riaz Mughal, President High Court Bar Association, and Raja Amjad Ali Khan, Advocate, appeared and stated that the Court has

already taken lenient view while extending the time more than once. There is no justification for further extension. It appears that the Government is not serious in holding the elections, however, if the Court comes to the conclusion that some further time is required then the extension should not be granted according to the wishes of the Government.

Raja Ayaz Ahmed Khan, Advocate, who represents the Vice Chairman of AJ&K Bar Council stated that the Government has come totally with a new stance which reflects that it has no intention to hold the elections rather it is an attempt to escape from its responsibilities. The application for extension in time has been filed at the stage when all the process has been completed, the election schedule has been announced and the public is mentally prepared to choose its representatives, hence, grant of further time will create an unrest in the society.

We have heard the learned Advocate General, Raja Sajjad Ahmed Khan, Advocate, for the applicants and other members of bar. After taking

into consideration the overall circumstances placed before the Court, we are very much concerned regarding the holding of elections in term of directions issued by this Court from time to time in the light of undertaking given by the Advocate General at different occasions after seeking instructions from the concerned quarters. However, from the arguments of learned counsel for the applicants it appears that the instant application for extension in time has been filed on the grounds of non-availability of funds, shortage of police force and pendency of cases before the High Court. So far as non-availability of funds is concerned, we are conscious of the fact that the Government of Azad Jammu and Kashmir and that of Pakistan is currently facing the worst financial crunch of the history, however, the holding of elections of the local bodies is the fundamental rights of people which cannot be ignored. It is also the matter of record that the amount which was demanded by the Chief Election Commissioner is Rs.98,00,000,00/- out of which an amount of Rs.30,00,000,00/- has already been released. Previously, the learned Advocate General

has stated before the Court that the approval has been accorded and the remaining amount shall also be released. Today, after seeking instructions from worthy Prime Minister and the concerned quarters, he once again reiterated his statement and ensured the Court that the Government is making every effort for availing the funds and the remaining amount shall be released as and when required by the Election Commission. In this way, it appears that the only problem is provision of funds in lump-sum and nothing is left regarding the financial crunch.

So far as the second argument regarding the insufficiency of the police force, is concerned, a suggestion was floated in the open Court that if the Court reviews its earlier direction of holding of elections in one go and not in bifurcations, the situation can be sorted out. We are convinced of this suggestion, hence, while exercising the inherent powers vested in this Court, we are intended to revisit our previous order and direct that the elections shall be conducted in three phases (i.e.,

division wise) with an interval between each phase, of not more than three days.

As far as the third argument pertaining to pendency of cases before the High Court, is concerned, to verify the position we have summoned the Registrar of the High Court, who appeared in Chamber and submitted the details of the cases. He apprised the Court that all the election cases pending before the High Court have almost been decided and only few newly instituted cases, which are not more than 2 to 4 in number, are pending and there is possibility that the same will be disposed of expeditiously. In this state of affairs, this argument of learned counsel for the applicants has also no substance.

Now, coming to the matter of extension of time for holding the elections. As stated hereinabove, the learned Advocate General as well as Raja Sajjad Ahmed Khan, Advocate, after seeking instructions from the worthy Prime Minister and the other concerned quarters requested for holding of elections in May, 2023 or after Ramzan, 2023,

however, amazingly their stance is against their own application wherein they have prayed for extension of time till March, 2023. It may be stated here that earlier this Court had fixed the time for holding the elections as 15th of October, 2022. In pursuance of direction of this Court the process of delimitation, correction of voter lists and other ancillary matters have almost been finalized, hence, there is no occasion to extend the further time, however, keeping in view the new developments, as discussed in the preceding paragraphs, in the interest of justice we are intended to extend the time till 30th of November, 2022. The Election Commission is directed to revisit the schedule, accordingly.

CHIEF JUSTICE

JUDGE

JUDGE

Muzaffarabad,
19.08.2022