

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, C.J.

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

Muhammad Younas Tahir, J.

1. Civil Appeal No.95 of 2021

(PLA filed on 04.06.2018)

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.

.....APPELLANTS

VERSUS

1. Inhabitants of Municipal Committee Hajira through Raja Manawar Hussain Kiani, Tehsil Hajira, District Poonch, Rawalakot.
2. Raja Shujaat Ali Khan, Advocate, Supreme Court, General Secretary AJ&K Supreme Court Bar Associations, Muzaffarabad.
3. Majid Khan, Advocate Supreme Court, General Secretary AJ&K High Court Bar Association, Muzaffarabad.
4. Haroon Riaz Mughal, Advocate Supreme Court, General Secretary Central Bar Association, Muzaffarabad.
5. Syed Bazil Ali Naqvi, Ex-Minister Information, President PPP AJ&K, District Muzaffarabad.
6. Sardar Muhammad Javed Ayub Khan, Ex-Minister Forest Secretary Information, PPP AJ&K.
7. Ch. Rasheed, Ex-Minister PWD Highway, Azad Jammu & Kashmir.
8. Muhammad Hanif Awan, Ex-Minister Agriculture, AJ&K.
9. Umer Khan s/o Mir Zaman r/o Ghumat Ghana, Tehsil Naseerabad, District Muzaffarabad.
10. Majaz Shah s/o Mehram Shah r/o Bela Noor Shah, Tehsil and District Muzaffarabad.
11. Mir Fazal-ur-Rehman s/o Mir Fateh Muhammad r/o Karshan, Rehmanabad, Tehsil Naseerabad, District Muzaffarabad.

.... RESPONDENTS

[On appeal from the judgment of High Court dated 12.06.2018 in writ petitions No.861, 878 and 879 of 2017]

FOR THE APPELLANTS: Mr. Muhammad Sajid Malik, Asst. Advocate General.

FOR THE RESPONDENTS: Raja Khalid Mehmood Khan, Advocate.

2. Civil Appeal No.94 of 2021
(PLA filed on 30.05.2018)

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

.....APPELLANTS

VERSUS

1. Commissioner Poonch Division (Appellate Authority) Rawalakot.
2. Deputy Commissioner/Halqa Bandi Officer, Bagh, District Bagh.
3. Inhabitants of Mohallah Ghakkar, Kot Gujran, through Haji Muhammad Saeed Khan s/o Shahab-ud-Din Khan, Village Thub, District Bagh.

.... RESPONDENTS

[On appeal from the judgment of High Court dated 03.04.2018 in writ petition No.1610 of 2017]

FOR THE APPELLANTS: Ch. Shoukat Aziz,
Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Sajid
Malik, Asst. Advocate
General.

3. Civil Appeal No.96 of 2021
(PLA filed on 04.06.2018)

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.

.....APPELLANTS

VERSUS

1. Azad Government of the State of Jammu and
Kashmir through Secretary Local Government
and Rural Department Muzaffarabad having his
office at New Secretariat, Muzaffarabad.
2. Secretary Local Government & Rural
Development Department, having his office at
New Secretariat Muzaffarabad.

3. Election Commissioner, Government of AJ&K having his office at New Secretariat, Muzaffarabad.
4. Appellate Authority/Commissioner Poonch Division, Rawalakot.
5. Officer Delimitation (Halqa Bandi) Deputy Commissioner, Bagh.
6. Assistant Officer Delimitation, District Bagh.

.... RESPONDENTS

[On appeal from the judgment of High Court dated 04.04.2018 in writ petition No.379 of 2018]

FOR THE APPELLANTS: Nemo.

FOR THE RESPONDENTS: Mr. Muhammad Sajid Malik, Asst. Advocate General.

Date of hearing: 21.12.2021

JUDGMENT

Raja Saeed Akram Khan, C.J.– Through these appeals the appellants have called in question the judgments of the High Court dated 12.06.2018, 03.04.2018 and 04.04.2018.

2. The Government has issued a notification on 19.04.2017 regarding the delimitation of Local Council Constituencies and appointment of Assistant/Delimitation Officer and Appellate

Authority. Another notification dated 21.04.2017 describes the minimum and maximum population for Constitution of Wards of Union Council, Municipal Corporation, Municipal Committee and Town Committee, whereas, the notification dated 03.05.2017 states that the delimitation of Local Council Constituencies shall be held on the basis of projected population of 1998 census. The respondents in Civil Appeal No.95 of 2021 challenged all the aforesaid notifications by filing separate writ petitions before the High Court. The learned High Court through judgment dated 12.06.2018 not only set aside the aforesaid notifications but also directed that the elections to the Local Bodies shall be conducted on the basis of previous census. The other two appeals are related to the change of name of ward "Kot Gujran" as "Ghakhar" and establishment of new ward "*Nikka Nara*".

2. During the proceedings of the case, keeping in view the importance of the matter, the Secretary Local Government and Rural

Development Department was directed to come with a definite and uniform stance in relation to the minimum and maximum population for constitution of Wards of Union Council, Municipal Corporation, Municipal Committee and Town Committee. In compliance of direction of this Court the Secretary Local Government, on the previous date of hearing, placed on record the draft of amended Notification, wherein the term 'multi member' ward was introduced, which generated more complications, hence, he was directed to re-draft the notification by adopting a uniform policy. Today, the learned Assistant Advocate General assisted by Secretary Local Government appeared and placed on record the copy of the notification dated 20.12.2021. It would be advantageous to reproduce the same as under:-

**“AZAD GOVERNMENT OF THE STATE OF
JAMMU & KASHMIR
SECRETARIAT LOCAL GOVERNMENT &
RURAL DEVELOPMENT**

“Muzaffarabad”
Dated 20-12-2021

Notification:

No.SLJ/Section-II/14118-30/2021. In exercise of the powers conferred by Section 89 of Azad Jammu and

Kashmir Local Government Act, 1990, the Government is pleased to direct that the following further amendments shall be made in the Azad Jammu & Kashmir Local Government Rules, 1983:-

In the aforesaid Rules;

- (a) In rule 7, in clause (c) of sub-rule (1), for the figures “5,000” and “12,000”, the figures “10,000” and “15,000” shall be substituted respectively.
- (b) In rule 7, clause (c) of sub-rule (6) shall be substituted as follows:-
 - “(c) (i) that where a ward is single-member ward of Union Council its population shall not be less than 1,500 and more than 2,000;
 - (ii) that where a ward is a single member ward of Municipal Corporation its population shall not be less than 3,500 and more than 5,000’;
 - (iii) that where a ward is a single member ward of Municipal Committee its population shall not be less than 3,000 and more than 4,000’;
 - (iv) that where a ward is a single member ward of Town Corporation its population shall not be less than 2,000 and more than 3,000;

2. Notification issued vide No.SLG/ Section-II/6543-55/2017 dated 21.04.2017 shall stand repealed.

Section Officer
Local Govt. & Rural Development”

In our estimation, the aforesaid notification is well-reasoned and strictly in accordance with the guidelines given by the Court during the proceedings of the case. On Court’s query, the learned Assistant Advocate General as well as the Secretary Local Government stated that

a reasonable time of at least two months be granted for completion of the process of delimitation in the light of amended notification. A query was also made regarding the holding of elections to Local Bodies; the learned Assistant Advocate General submitted that, as per the given instructions, the Government is intended to hold the elections within a period of six months, not beyond August, 2022. 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 this appeal 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.

These appeals are disposed of in the above terms with no order as to costs.

CHIEF JUSTICE JUDGE JUDGE JUDGE

Mirpur,
21.12.2021