

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Gulzar Ahmed
Mr. Justice Sh. Azmat Saeed

CONSTITUTION PETITION NO.39 OF 2011
AND
CONSTITUTION PETITION NO.90 OF 2011

Ch. Nasir Iqbal and others

(in Const.P.No.39)

Imran Khan, Chairman, PTI etc.

(in Const.P.No.90)
Petitioner(s)

VERSUS

Federation of Pakistan through Secretary Law and
others

(in both cases)
Respondent(s)

For the Petitioner (s) : Mian Abdul Rauf, ASC
On Court's Notice : Mr. Shafi Muhammad Chandio, DAG
For the ECP : Mr. Muhammad Munir Piracha, Sr. ASC
Syed Sher Afgan, DG (Elections)
For M/o Overseas : Mr. Fiaz Ahmed Malik, Deputy Chief
Mr. Islam-ud-Din, Assistant Chief.
For the OPF : Raja Muhammad Farooq, ASC
Date of Hearing : 27.03.2013

ORDER

In response to our order dated 19.03.2013, reply (CMA No.1584 of 2013) has been submitted to the proposal pointed out by the Court, perusal whereof indicates that the alleged difficulties/problems highlighted by the ECP mainly relate to three areas: -

Firstly, amendment in the Representation of the People Act, 1976 and signing of MOUs with the countries where ECP proposed to extend the facility of voting to Overseas Pakistanis on the plea that in some of the countries such congregations are prohibited. Attending to this aspect of the case, we observe that as at present interim Government is functioning, the amendments so desired or required can be made by adhering to the procedure of temporary legislation, as provided under Article 89 of the Constitution. So far as signing of MOUs is concerned, no law has been cited, however, in this behalf if need be, the ECP can solicit opinion from the Ministry of Foreign Affairs;

Secondly, the issue of non-availability of software, which shall be used by the Overseas Pakistanis for the purpose of extending facility/benefit to cast their votes and if the Ministry of I.T is taken into confidence or independently the I.T experts are engaged with the mandate to prepare such software under the instruments as early as possible but in any case much before the date of polling this difficulty can also be overcome; and

Thirdly, the issue of identification of the voters/electors who are living in different countries. Again this issue relates to NADRA and on taking on board the authorities of NADRA,

the issue being faced by the ECP can conveniently be resolved.

2. We are constrained to observe that these petitions are pending since 2011 onward and much time has already been given to the ECP to do the needful, but so far no progress in this behalf has been made except analyzing suggestions which were put forward by the Court itself and offering explanation to convince the Court that extending the right of franchise to the Overseas Pakistani Citizens is not possible this time but we are not persuaded because as has been observed time and again that these difficulties are not insurmountable and could conveniently be solved within a shortest possible time if there is a coordinated effort between the ECP, Ministry of Foreign Affairs, Ministry of Law & Justice, NADRA and other authorities relevant in this behalf in order to achieve the object and all possible efforts must be made to allow an opportunity to the Overseas Pakistanis so they may participate in the election of their representatives in National and Provincial Assemblies.

3. The learned counsel for the petitioner, stated that he has been informed by the learned Attorney General for Pakistan that the process of extending the facility of exercising the right to vote by the Overseas Pakistanis is possible but as the Attorney General is appearing before another Bench of this Court, therefore, we direct that let a meeting be convened in the office

of the learned Attorney General on 28.03.2013, which shall be attended by the Incharge Secretary Ministry of Law & Justice, the Secretary Ministry of Foreign Affairs, the Secretary Ministry of I.T, Chairman NADRA as well as the Representative of ECP and they should thoroughly deliberate and submit comprehensive report on 29.03.2013 and further orders, if required will be passed by this Court to ensure the fundamental right of the Overseas Pakistanis to participate in the formation of Federal and Provincial Government(s), which shall be responsible ultimately for good governance as well as for protection of their life and property.

4. Adjourned to 29.03.2013.

Chief Justice

Judge

Islamabad
27.03.2013
Hashmi

Judge