PAKISTAN SENATE
House of the Federation

RULING OF THE CHAIR

Subject: HOLDING OF LOCAL GOVERNMENT ELECTIONS IN ISLAMABAD IN PURSUANCE OF A DRAFT AMENDMENT BILL

The Election Commission of Pakistan in the various notifications and circulars, that have been issued in respect of, or with reference to, the local bodies elections in the ICT, has coined a new phraseology in law i.e. "section 20 of the draft legislation". It appears from use of this phraseology that the Election Commission has placed in juxta position, a proposal for legislation which has been moved under Article 70, Constitution, 1973, and is pending before either House of Parliament with a Bill becoming a law in terms of clause (3) of Article 75 of the Constitution, 1973. If such a precedent is allowed to develop, it shall not only have horrific, horrendous and chaotic consequences but shall negate the entire process stipulated under Article 70 of the Constitution, 1973, and the Rules of Procedure framed under Article 67 of the Constitution, 1973. The Election Commission in some of the said notifications and circulars refers more particularly to the Order of the Supreme Court of Pakistan dated 10.3.2015 passed in CMA No.18/2014.

2. In the ordinary, I refrain from offering any comment or observation on an Order or Judgment passed by the Superior Courts, more particularly through a Ruling. In the instant case I exercised restrain as the matter was first raised by Senator Kalsoom Parveen, PML(N), in the 116th Session, in the sitting held on 15th June, 2015. Then again by Senator Saeed Ghani, PPPP, on the 17th June, 2015, in the same Session through a Privilege Motion stating therein, that the Election Commission of Pakistan has breached the Privilege of the House by issuing various notifications and circulars for the Local Bodies elections in Islamabad, drawing their legal legitimacy from a proposal of legislation

pending before a Standing Committee of the House, which proposal is not law in terms of clause (3) of Article 75, Constitution, 1973. The Senate Secretariat has also received notice of an Adjournment Motion moved by Senator Javed Abbasi, PML(N) on the subject.

3. The Federation, Election Commission of Pakistan and other persons acting through or under them, are bring into operation various provisions of a legislative proposal passed by the National Assembly, but yet not passed by the Senate of Pakistan. They draw legitimacy for such actions by hiding behind the veil of the Order dated 4-3-2015, passed in CMA 18/2014 by the Supreme Court of Pakistan. As Chairman Senate, I am under oath under clause (2) of Article 53 read with Article 61 in the form set out in the Third Schedule, Constitution, 1973 to preserve, protect and defend the Constitution. This line of reasoning and argument adopted by the Federation and the Election Commission of Pakistan, amounts to hinder Parliament in performing its duty to legislate and, casts a serious shadow on the concept of trichotomy of power as enunciated in the Constitution, 1973.

4. The short point involved in the issue of the "Islamabad Capital Territory Local Government Bill, 2015" is, whether the Federal Government or any other Body or Institution working or functioning through or under the Constitution, 1973, can draw legal legitimacy for actions or procedures undertaken on the basis of a legislative proposal pending in a House of Parliament, using the Order dated 10/3/2015, passed in CMA No.18/2014, by the Supreme Court as the raison d'etre.

5. The relevant facts in this context are:-

(i) *The Supreme Court in CMA No. 18/2014, passed an Order dated 4-3-2015, in para 6, of the said Order, it dealt with local bodies elections in ICT, the same is reproduced as under:*

"6. As far as the local government elections in ICT are concerned, we have been informed by the Secretary, ECP that presently there is no law in place of the local bodies elections in ICT. The learned Attorney General has, however, informed us that a Bill for local bodies elections in ICT has been approved by the relevant Committee of the National Assembly and also by the Federal Cabinet. The Bill is to be tabled at the earliest opportunity and is likely to be passed in the forthcoming Session of the National Assembly. The Bill itself provides for the manner of holding local bodies elections in ICT. Keeping in view the provisions of the Constitution, mentioned above, and also bearing in mind that the ECP has been charged with the duty for holding local bodies elections. The ECP shall forthwith commence the process for holding elections in ICT in view of the anticipated legislation our judgment of November, 2013, has also held that "constitutional provisions cannot be allowed to be not adhered to for want of sub-constitutional legislation."

(ii) In the Order, dated 6-3-2015, para 2 is reproduced.

"2. As noted in our order of 4.3.2015, the basis for holding elections in ICT are already included in the Bill to rationalize and reorganize the Local Government System in the Federal Capital. The Bill has already passed the committee stage and has also been approved by the Federal Cabinet and we have been informed by the learned Attorney General that it will be placed for enactment in the forthcoming session of the National Assembly. We have already stated in our Order of 4.3.2015, that the Election Commission shall conduct Local Government Elections in the Federal Capital (ICT) based on the contents of the aforesaid Bill because the holding of such elections is mandated by the Constitution which also charges the ECP with the holding of Local Government Elections, under

Article 219 (d) of the Constitution. In the aforesaid order of 4.3.2015, we have reproduced the extract of our judgment of 5.11.2013, that constitutional provisions cannot be allowed to be thwarted for want of sub-constitutional legislation. The appropriate schedule for Local Government Elections in ICT shall be submitted on 10.3.2015. Let him justify every day from today onwards required for holding of polls in the ICT."

(iii) In the Order dated 10.3.2015, para 3 is reproduced;

"3. The Local Government Election in the Islamabad Capital Territory are to be held on 25.07.2015 (polling day) in accordance with the schedule (CMA-1116 of 2016) submitted by ECP."

6. The conjunctive reading of the orders dated 4.3.2015, 6.3.2015 and 10.3.2015 passed by the Supreme Court, leads to the conclusion, that the Court was informed by the Federation to the extent that, the said Bill has been approved by the Federal Cabinet and passed by the Standing Committee of the National Assembly. It's passage by the National Assembly is a foregone conclusion, it was not brought to the notice of the Court that the following amongst other stages of amendments and passage of the Bill, under the Rules and the Constitution, 1973, require to be travelled before the Bill falls in the category of a law under clause (3) of Article 75, Constitution, 1973, and attains a finality in its text, unless subsequently amended.

7. Article 70 of the Constitution, 1973, provides that a Bill with respect to any matter in the Federal Legislative List may originate in either House, accordingly, the "Islamabad Capital Territory Local Government Bill, 2015", originated in the National Assembly on 9th December, 2013. Rule 122 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007, (hereinafter referred to as "the Rules, 2007") provides that upon introduction, a Bill, other than a Finance Bill, shall stand referred to the Standing Committee concerned, the said Bill was referred to the Standing Committee in the same

sitting i.e. on 9th December, 2013, for consideration and amendments if any. Thereafter, the Report of the Standing Committee was laid before the House on 5th December, 2014. After the presentation of the Report, the Bill had to be fixed on the Orders of the Day for consideration and passage under rule 124 of, "the Rules, 2007". In terms of rule 129 of, "the Rules, 2007", when a motion that a Bill be taken into consideration is carried, any Member may propose an amendment to the Bill, which will be then put to the vote of the House. In the instant case the Bill was considered by the House on 26th March, 2015, and was passed without amendment in the same sitting.

8. That clause (1) of Article 70 of the Constitution, 1973, provides that a Bill shall, if it is passed by the House in which it originated, be transmitted to the other House; and, if the Bill is passed without amendment, by the other House also, it shall he presented to the President for assent. In the instant case, a message in terms of clause (1) of Article 70 of the Constitution, 1973, was received in the Senate of Pakistan on 3rd April, 2015.

9. The Senate under rule 119 of the Rules of Procedure and Conduct of Business in the Senate, 2012, (hereinafter referred to as "the Rules, 2012") received Notice from the Minister concerned on 14.4.2015. The said Notice was circulated to the Members on the same date. That under rule 120 of, "the Rules, 2012", the Bill was placed on the Orders of the Day and under rule 121 of, "the Rules, 2012", it was referred to the Senate Standing Committee on 16.4.2015. Rule 194 of, "the Rules, 2012", provides that a Standing Committee shall lay its Report before the House within a period of sixty days. In the instant case owing to the urgency and keeping in view the observations of the Supreme Court, the Chairman Senate directed the Committee to lay its Report within one month from the first day of its meeting i.e. on or before 11th June, 2015. It is pertinent to mention that fifty percent new members of Senate and the Chairman Senate took oath on 12th March, 2015. In terms of rule 174 of "the Rules, 2012", the Standing Committees were to be constituted within a period of sixty days after the election of the Chairman and Deputy Chairman.

Accordingly the Standing Committee on Interior and Narcotics Control was constituted on 20th April, 2015 (well before the given time). In terms of rule 175 of "the Rules, 2012", the election of the Chairman of each Committee shall take place within thirty days after the election of the Committee. The first meeting of the Standing Committee on Interior to elect its Chairman was held on 12th May, 2015. The Standing Committee constituted a sub-committee to evaluate the said Bill on 28.5.2015.

(i) The Standing Committee on 9.6.2015, asked for a further extension in time owing to the fact that a large number of public petitions with reference to the Bill were to be processed and in certain cases to be given a public hearing. The extension was granted till 26.6.2015.

(ii) Then again on 24.6.2015, the Standing Committee sought a further extension of time till 10.7.2015 on the basis referred hereinabove. The extension was granted till 5.7.2015.

(iii) That the Report of the Standing Committee on Interior and Narcotics Control laid in the House on 6th July, 2015.

10. That under rule 100 of, "the Rules, 2012", the Bill will be fixed on the Orders of the Day for further consideration and passage. Under rule 105 of, "the Rules, 2012", a Member may propose an amendment on the said date and, thereupon, the House will be called upon to vote to either accept or reject the said amendment. Subsequently, under rule 113 of, "the Rules, 2012", the House may pass the Bill as amended by the Standing Committee or as originally transmitted to it by the National Assembly or as amended on the floor of the House.

11. That under clause (2) of Article 70 of the Constitution, 1973, read with rule 125 of, "the Rules, 2012", in case the Bill is passed with amendments, it shall be transmitted back to the National Assembly for consideration.

12. That the National Assembly may either accept the amendments made to the said Bill by the Senate and pass it or in case it does not pass the Bill then under clause (3) of Article 70, Constitution, 1973, read with sub-rule (7) of rule 154 and rule 155 of "the Rules, 2007", it shall be referred to a Joint Sitting. The Speaker of the National Assembly shall request the President to summon a Joint Sitting of Parliament for consideration of the said Bill. It is then for the Joint Sitting to pass, reject or amend the Bill and send it under Article 70 to the President for assent where after, under clause (3) of Article 75, it shall become an Act of Parliament i.e. a law.

13. The upshot of the discussion hereinabove, is that the order dated 10.3.2015 and the prior two orders passed by the Supreme Court, and being relied upon as a direction to the Federation or Election Commission of Pakistan or both, were passed where the Federation or the ECP did not come with clean hands on the legislative journey yet to be covered. The text of the Bill on which reliance is being placed at the time of the passing of the said Orders was still pending before the National Assembly and, had yet to be passed by that House and after such passage be transmitted to the Senate, to be considered and passed with or without amendment, before being sent to the President for assent.

14. Further from the record in the instant case, it is evident that when the Orders were passed by the Supreme Court, the Federation or the Election Commission did not appraise the Court that even after approval of the Federal Cabinet and passage from the Standing Committee, the text of the Bill had not attained finality, as there are in the minimum four stages provided by the Rules and the Constitution for its amendment.

15. Therefore, any body or organization working or functioning through or under the Constitution, 1973, cannot lay reliance on a legislative proposal that has not been passed by the Parliament, if it so does, it will in violation of Article 70 and 75 of the Constitution, 1973, and the Rules framed under Article 67 of the Constitution, 1973, it will be impinging upon the sovereignty of Parliament to legislate without let or hindrance.

16. The obiter of the Supreme Court with reference to its judgment of November, 2013, that, if the Constitution requires for a certain act to be done and calls upon Parliament to legislate, yet Parliament fails to legislate, the command of the Constitution cannot be held in abeyance or ignored. I have no cavil with this proposition, but the command of the Constitution cannot be carried out and or implemented in a legal vacuum. In order to give pith to this proposition, as the Bill was still a legislative proposal pending before one of the Houses of Parliament, the said Order may have in such circumstances, despite my reservations that such an Order interferes with, and infringes the trichotomy of power provided in the Constitution, 1973, which has been, vividly defined and upheld by the Supreme Court, in various Judgments, more recently in Civil Appeal No.1646/2006 and Civil Appeal No.782/2009, it should have laid down the broad guidelines or parameters under which the Election Commission of Pakistan, could or should carry out and conduct the local bodies election in Islamabad, or in the alternative have directed the Federal Government to promulgate such a law, or issue a regulation or notification to provide a legal cover to the process of holding of such elections.

17. That the resort to anyone of the processes suggested in para 6, hereinabove, will tantamount to obstructing, restricting, infringing and impinging upon the sovereignty of the Parliament to legislate without let or hindrance.

18. That Parliament, cannot allow any fetters to be placed on the process of legislation provide under Article 70, Constitution, 1973, read with the relevant Rules.

19. As a consequence of the above discussion, it is inappropriate for any person, body or organization to use the Order dated 10-03-2015, passed in CMA No. 18/2014., by the Supreme Court, as a fig leaf for its actions or steps taken which otherwise are without the force of law as the Bill on which reliance is being placed upon, was at that time and continues till date to be a proposal for legislation not having the force of law as contemplated under Article 75, Constitution, 1973.

20. Before parting with this Ruling, the Senate Secretariat is directed to provide a copy of this Ruling to the office of the Speaker, National Assembly of Pakistan, Ministry of Law, Justice and Human Rights, Ministry of Parliamentary Affairs and the Election Commission of Pakistan.

MIAN RAZA RABBANI
NI
Chairman Senate

Announced in the House on : 6th July, 2015.