

## Scenario 142

### SC ON OTHER KARACHI ISSUES

There was an underlying feeling in some MQM circles that the superior judiciary, especially the Supreme Court of CJP Iftikhar M Chaudhry, might have some lingering anger about the role of the MQM *on 12<sup>th</sup> May 2007* when the CJP was not allowed to enter Karachi. But another view was that the MQM had washed its negative image when it stood up against the NRO and practically blocked it from being moved in parliament, a decision which paved the way for the Supreme Court to strike the law as void *ab initio*.

The MQM's bold stand that it was not afraid of re-opening of any or all of its cases in courts, and the party's underlying confidence in judiciary had restored some comfort between MQM and the judges. MQM was not much worried about the developing situation in Karachi, especially in the aftermath of the *Ashura* bombings and the calculated loot and plunder supported by elements in the administration.

MQM leaders were confident of the way things were moving, no matter how shrewdly PPP played the good-cop, bad-cop game. The MQM leadership was going along, fighting hard where needed and playing soft when required. It appears the future was clear in their eyes and they knew the roadmap but they were proceeding with caution and confidence. [Shaheen Sehbai's analysis in 'the News' of 10<sup>th</sup> January 2010 is referred]

*In the first week of May 2012*, PPP's PM Yousuf Raza Gilani was sent home by the CJP Iftikhar Chaudhry's Supreme Court. How many prime ministers would be sacrificed; Pakistanis were still experimenting with democracy – a new type of judicio-democratic history was in the making.

No doubt, CJP Iftikhar Chaudhry's era was a unique kind of judicial activism but the fact also remained that it was an executive failure. That is, the judiciary was filling in the void of performance left by the executive through its institutions.

The incumbent PPP government spent its four years, 2008-12, in hedging against its dissolution because of the NRO while the higher judiciary took those four years to expand its perimeter of influence in the public. Thus,

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not the writ of the government but the say of the higher judiciary was conspicuous. In fact, the writ of the state is normally executed more through the executive and less through the higher judiciary – but in Pakistan, the ground of credit was lost by the PPP government and the superior judiciary brewed enormous benefits out of the odd situations.

After 2008, democracy functioning in Pakistan failed due to recurring ethnic clashes in Karachi. Papering over ethnic cracks was one policy but addressing problems permanently was a different proposition; thus Karachi remained victim of the *'ad hocism'* adopted by the Centre and provincial governments both.

Politics in Karachi had increasingly gone both fractious and fractured. The ethnic conflict was an expression of the aspirations for grabbing more economic space. One side intended to outclass the other. It was a perpetual struggle for survival. The population explosion was one of the causes; mismanagement in distribution of resources was another.

In Karachi target killing was again rampant and civil liberties were at stake but the PPP government was still failing to address the problems. The failure left the space open for the higher judiciary to step in. In 2011, the *suo motu* notice on city's precarious law & order situation taken by the higher judiciary was more to do justice to Karachiites than to grant politico-economic space to any aggrieved political or ethnic party. Karachiites felt obliged to the higher judiciary.

Marriage of convenience between the PPP and PML[Q] was another case of study during 2008-13. In the PPP-MQM deceitful compromise, the adverse prospects of violence in Karachi were overlooked, while in the liaison between the PPP and the PML[Q], the undesirable implications of corruption were disregarded. Pervaiz Elahi's becoming deputy prime minister was a useless stake for both sides and simply a burden on public funds.

The successive governments of the PPP and PML[N] since 2008 did not care for Karachi and Balochistan because they were not having significant stakes there. In Karachi, they had selective political ventures and in Balochistan, the PPP had less to lose politically whereas the incoming PML[N] successfully negotiated with the Baloch winners for half and half term.

SC ON KARACHI'S VOTER LIST:

To understand the whole matter, one would have to go back a little.

Notably, there was an electoral list available on record, prepared for the general elections of 2002; according to which the number of voters was 71.86 million whereas in the electoral list which was later prepared, the number of voters were shown to be 52.102 million; a difference of about 20 million votes.

*On 4<sup>th</sup> October 2007; the ECP had stated before the apex court that in pursuance to the directions of this Court, the exercise had been completed and 27 million voters were added in the electoral rolls for Karachi.*

*It was further stated that there were a total of 80 million people who were eligible for exercising the right of vote but some more time would be required to complete the printing and publication of the electoral lists in accordance with the rules.*

*Accordingly, ECP was directed to complete the printing / publishing exercise up to 25<sup>th</sup> October 2007 where after the list was to be placed on the website of the Commission.*

*On 7<sup>th</sup> April 2011; Imran Khan, Chairman Pakistan Tehrik e Insaf [PTI] approached the apex court with his petition [No. 31 of 2011] praying that the ECP be directed to prepare fresh electoral rolls eliminating all bogus votes and incorporating the new eligible votes who could be verified from the relevant database of NADRA; and to include the names of the voters, as per their addresses given in their NICs.*

On 4<sup>th</sup> July 2011, the Secretary ECP appeared before the SC and stated that a form had been designed allowing the voter to exercise his / her option to vote either at the permanent place of residence or where he / she would temporarily be residing on account of his / her place of work, and the option so exercised would be printed in the voters' list.

In the meanwhile, one Workers Party Pakistan [*insignificant – never heard of in any election*] filed another petition [No. 87 of 2011] with the prayer that the prevailing electioneering practices involving wealth, power and influence were against the mandate of the Constitution and were an impediment to a free, fair, just and honest elections; thus remedy was required.

The SC passed a judgment on that petition [PLD 2012 SC 681] wherein it was held and directed that:

*“To achieve the goal of fair, free, honest, and just elections, ..... we direct the ECP to undertake door-to-door checking of voters’ lists and complete the process of updating / revision of the electoral rolls by engaging Army and the Frontier Corps to ensure transparency, if need be.”*

Thereafter, another petition [No. 111 of 2012] was filed on behalf of Syed Munawwar Hassan of *Jamat e Islami* [JI] with the prayer that the electoral rolls prepared by the ECP which were tainted with irregularities and errors in the Province of Sindh, especially Karachi, be declared illegal, unlawful and that the respondents be directed *‘to revise the electoral rolls and to correct the same on the basis of the present address of the voter in the city where he is residing.’*

Mr Saleem Zia of PML[N] Sindh filed a similar petition [No. 123 of 2012] with an identical prayer. All these matters were heard together. The main grievance raised before the SC was that the above noted judgment of the apex court had not been complied with in its letter and spirit by the ECP; there were gross errors and irregularities in the preparation of the Electoral Roll of Karachi wherein a large number of voters had been disenfranchised and their names were removed from the Electoral Roll.

In response to the above concerns, the ECP could not come forward with a convincing reply. The petitioner’s counsels placed credible material before the bench, including an instance of comparative statement of the Electoral Rolls, wherein 663 electors were registered to be the residents of House No:E-43, PECHS, Block-II, Karachi, constructed on a 120 square yards plot.

Dr M Shamim Rana, the counsel for PML[N], confirmed that names of a large number of voters were deleted from the Electoral Roll of Karachi and shifted to different parts of the country arbitrarily. To further demonstrate his pleas, he also referred to relevant material filed by him through CMA No.4830 of 2012. He claimed that *“My own vote has been shifted to Punjab without my consent, while my family members’ votes are registered in Karachi.”*

Mr Hamid Khan of PTI, Sr ASC contended that while revising the voter lists, as per commitment of the Secretary ECP made in SC’s order dated 4<sup>th</sup> July 2011, the ECP electoral staff could only approach 10% of the city’s population due to deteriorating law & order all over.

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In the petitions, it was prayed that the Election Commission of Pakistan [ECP] be directed to update the computerized / electronic voters lists to encompass the names of all persons entitled to vote in terms of Article 51(2) of the Constitution and the condition of National ID Cards [NIC] for registration of eligible voters should be declared as without lawful authority and of no legal effect.

The Election Commission had submitted its comments, with a schedule for the additional entries in the computerized electoral roll 2006-2007, according to which a process was commenced from 3rd August 2007 to be lasted for 140 days. However, the ECP was directed to complete that job within 30 days by increasing the number of staff twice or thrice; certain advisory directions were also issued to proceed with the job.

All the counsels appearing in those petitions were very senior and respectable ones, who further alleged that about 50% votes of the electors of Karachi had been shifted to other parts of the country and in their places, names of unverified voters were inserted; thus rigging in the forthcoming elections was eminent.

The fundamental right of actual / real voters, whose names stand verified for the last 2/3 general and bye-elections was clearly jeopardized. The exercise of re-verification of the names of voters on door-to-door basis in accordance with the Constitution and the Law through their CNIC was strongly urged once again.

Contrarily, Dr Farogh Naseem of MQM had contended that:

*".....the exercise of preparation of the Electoral Rolls in Karachi has been completed and until the elections are announced, they can be varied and altered at the behest of the individual voter only, and not on the request of any political party and there is no ground for fresh revision of Electoral Roll nor will it be just."*

However, the SC did not agree with the above contention saying that:

*".....the objection raised by Dr Farogh Naseem, learned ASC appears to be misconceived and the judgments relied upon by him are irrelevant in the facts and circumstances of the case."*

Munir Paracha, appearing for the ECP had contended that the exercise of preparing the Electoral Rolls of Karachi had already been completed. Moreover, the annual revision of the Electoral Rolls of Karachi at that stage was

not permitted by law and such revision could only be carried out in the next year. He, however, contended that *'individual grievances, if raised in accordance with law, can always be entertained and redressed until elections are announced'*. Mr Alizai DAG also adopted the arguments of Mr Paracha – in fact an endorsement of MQM's stance.

The SC reminded the ECP about its responsibilities under Article 218(3) that the Election Commission of Pakistan is charged with the duty to ensure free, fair and just elections in the country, be it a general election or bye-election. Whereas, under Article 219 of the Constitution, the Election Commission of Pakistan is also commanded to revise the electoral list annually, object of which is none else, except that free and fair elections are held.

Earlier, the ECP, during the hearing of CMA No.4654 / 2012 admitted that:

*"..... reasons enforced ECP and NADRA to align their databases with respect to addresses according to New Census Blocks. For this purpose, a Performa was devised to capture and link current location of families with newly created Census Blocks. These Performas were filled by enumerators during Housing Census - 2011 conducted in April-May 2011 countrywide."*

The primary basis for the Electoral Lists was the Housing Census carried out in April - May 2011; thus even after the preparation of the Final Electoral Rolls, the necessity of a further door to door verification was accepted and undertaken by the ECP by saying:

*"...voters having different current and permanent address can be re-verified through subsequent door to door verification along with fresh CNIC registrations."*

On 13<sup>th</sup> January 2012; the Supreme Court refused to extend the time given to the Election Commission [ECP] to prepare new voters lists and issued notices to 23 parliamentarians elected in by-elections.

*"The democratic system is totally based on transparent and free elections, which are not possible without a new and flawless voters' list,"* the chief justice observed. He directed the ECP and NADRA to prepare new voters' lists before 23<sup>rd</sup> February that year and to report compliance in the court.

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The four-member bench comprising CJP Iftikhar M Chaudhry, Justice Tariq Pervaiz, Justice Khilji Arif Hussain and Justice Sarmad Jalal Usmani was hearing the case.

Counsel for the petitioner Hamid Khan told the apex court that according to the ECP, new voters' lists could be completed by May 2012 but not before that. The stance of the EC was that it was not possible for it to meet the deadline. It tried to shift the blame to the National Database and Registration Authority [NADRA]. ECP's Joint Secretary Sher Afgan said after receiving the lists from NADRA, the ECP would proceed further and display them at 55,000 registration centres set up all over the country.

On 22<sup>nd</sup> November 2012; Karachi was once again became spotlight in the Supreme Court – but this time, it was pre-poll rigging under scrutiny rather than the law and order situation.

Almost all the political parties, including the ruling party PPP, backed a petition demanding that NEW VOTERS LISTS in Karachi be prepared. It was prayed therein that THREE MILLION voters who had moved to Karachi from all over Pakistan, had been left registered in their original hometowns – though they reside in Karachi since decades. The petition squarely pinned the blame on the *Muttahida Qaumi Movement* [MQM], and alleged that the party had completely hijacked the city.

On 2<sup>nd</sup> December 2012; MQM Chief Altaf Hussain, speaking from London, hit out at the Supreme Court's order and termed the apex court's ruling regarding fresh delimitation of constituencies in Karachi as an attempt to '*snatch his party's mandate*', adding that the people of Karachi would never allow such '*conspiracy*' to succeed.

Altaf Hussain added that:

*"His party accepted fresh delimitation of constituencies but that measure would be in contravention of law and the Delimitation of Constituencies Act, 1974 if it is done to stop a single party from having a monopoly.*

*Why the same orders had not been issued in Balochistan and Khyber Pakhtunkhwa where the law and order situations were similar to that of Karachi."*

On 6<sup>th</sup> December 2012, a 3-member bench of the Supreme Court of Pakistan, headed by the Chief Justice Iftikhar M Chaudhry; Justice Gulzar Ah-

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med and Justice Sh Azmat Saeed being the other two, announced its judgment in Constitutional Petitions no:45/2007, 31/2011, 111 & 123/2012. The first petition [no: 45/2007] was moved by Benazir Bhutto but Imran Khan, Syed Munawar Hassan and one Saleem Zia raised the same voice later. *The bench on 28<sup>th</sup> November reserved its judgment on the matter.*

*[At the last hearing on 28<sup>th</sup> November 2012, the apex court had suggested that the army and the FC should be used to re-launch the verification campaign in Karachi. It was of the opinion that the exercise would also help identify and weed out unscrupulous and criminal elements responsible for the breakdown of law and order in the country's largest city.*

*When the MQM and the ECP opposed the idea, the court reserved its final word on the question. The MQM said it would support it only if the exercise covered the entire country, and not only Karachi.]*

The SC observed that the grievance raised primarily with reference to Karachi through the above noted petitions must necessarily be examined in the backdrop of serious law & order situation there.

The ECP wrongly stated before the apex court that door-to-door verification of 82% voters in Karachi had been effected - which was in fact NOT carried out. This fact was obvious from the discrepancies and flaws identified by the petitioners by way of examples like of 663 voters registered at a house measuring 120 Sq Yards.

The apex court observed that the consequences were serious if three million votes had been dislocated to other districts. It directed the Election Commission of Pakistan [ECP] to examine the voters' lists, saying that the complaints were credible and that votes should not have been shifted to other districts without the consent of voters.

**KARACHI CONSTITUENCIES' CASE:**

Vide PLD 2011 SC 997; the SC had issued categorical directions for delimitation of the constituencies of Karachi in the following terms:

*"...the court further observe that to avoid political polarization, and to break the cycle of ethnic strife and turf war, boundaries of*



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*administrative units like police station, revenue estates, etc. ought to be altered so that the members of different communities may live together in peace and harmony, instead of allowing various groups to claim that particular areas belong to them and declaring certain areas as NO-GO areas under their fearful influence.*

*Subsequent thereto, on similar considerations, in view of relevant laws, delimitation of different constituencies has also to be undertaken with the same object and purpose, particularly to make Karachi, which is the hub of economic and commercial activities and also the face of Pakistan, a peaceful city in the near future. The Election Commission of Pakistan may also initiate the process on its own in this behalf."*

BUT the above directions were not implemented by the ECP.

The SC had noted with concern that the police had detected a torture cell [during hearing of the case in 2011] at Karachi and had succeeded in getting video clips of the most heinous, gruesome, brutal, horrible and inhuman acts of the criminals, who were found cutting throats of men and drilling their bodies. Subsequently, more such cells were detected in different parts of Karachi. The apex court had observed that:

*".....the injured or wounded persons have been countless in number in all the disturbed areas of Karachi where different political parties have got dominant population on the basis of the language being spoken by them.*

*It may be noted that the objective of above noted brutal and gruesome incidents is to terrorize the citizens of Karachi and keep the entire society a hostage."*

The SC, in its judgment had indicated the necessary steps to bring peace and tranquillity in the metropolis; for instance:

- The Government, with full commitment and sincerity, should collect illicit arms from the criminals.
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- The law enforcing agencies, especially the police, should be de-politicized with immediate effect. As per statement of IGP, 30% to 40% of the police has been politicized.
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- The law enforcing agencies should be trained and boosted for recovery of illicit arms under a proper programme to be launched by the Government.
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- Reportedly, 2.5 million aliens are in Karachi. It is more alarming compared to the activities of the criminals involved in heinous crimes, like target killing, etc; a burden on the national economy in addition.
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- The illegal foreigners living in Karachi directly affect the delimitation of the constituencies; therefore, the Government should take immediate action against them under the Foreigners Act.
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- NADRA and the Police must undertake a careful cleansing process of those foreigners, must have separate records and computer files based on proper evidence.
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- Signs & impression of NO GO Areas from the whole city of Karachi should immediately be removed.
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- Political parties, barring a few, have militant groups; these groups have to be dissolved so that life and property of the citizen is protected.

An accurate Electoral Roll was considered a *sine quo non* for holding of free, fair and transparent elections, a fundamental right of the citizens, which appeared to have been compromised *qua* the residents of Karachi.

The relevant portion of the SC's order dated 4<sup>th</sup> July 2011 contained that, as per confirmation made by Ishtiaq Ahmed Secretary ECP, NADRA had removed certain categories of unverified voters [*given in Table 3 of SC's orders*] from its database. In place of those removed voters, 36 million new voters were entered in the database and verification of both the categories was to be carried out by visiting the house of each voter by the representative of the ECP.

This exercise was to be commenced from 18<sup>th</sup> July 2011 and likely to be completed within 30 days; to be followed by procedure of publishing / displaying of those lists as the next step. In that respect, the ECP told the SC that comprehensive plans were already with them.

The then Secretary ECP had told the SC that the whole procedure was likely to be completed by 16<sup>th</sup> December 2011 and thereafter the lists were to be handed over to NADRA for scanning and printing.

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This process was undertaken in May 2011 but the final notification could be issued not earlier than May 2012; in Pakistan, the commitments made before the Superior Courts do not carry 'much weight'.

On 11<sup>th</sup> December 2012; Ahmed Bilal, President PILDAT raised the issue of fresh delimitation of constituencies in Karachi before the media and asked for careful reconsideration by the ECP. He pointed out that in its judgment in the *suo motu* case on the law and order situation in Karachi in October 2011, the Supreme Court, in paragraph 131 of the 132-para judgment, had mentioned delimitation of constituencies as one of the solutions:

No particular time frame for the delimitation was given in the aforementioned judgment, thus it could be interpreted to mean that whenever the new population census results were officially available, the Delimitation of Constituencies Act, 1974, would be applied to delimit constituencies in light of the Supreme Court judgment.

Delimitation of Constituencies Act 1974 demands that a new exercise of delimitation is carried out either when the report of the new population census becomes available or if and when the number of seats allocated to each province is changed.

The latest delimitation was carried out in Karachi before the 2002 general election as the 1998 population census results had become available. In addition, Gen Musharraf's government had increased the total number of seats of national and provincial assemblies. Section 9 of Delimitation of Constituencies Act, 1974 sets out the principles of delimitation:

*"9. (1) All constituencies for general seats shall, as far as practicable, be delimited having regard to the distribution of population in geographically compact areas, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies...."*

*Section 2 defines 'population' as "the population in accordance with the last preceding census officially published".*

Although Section 10-A of the Constituencies Act, 1974 empowers the ECP to make amendments, alterations or modifications in the final list of constituencies "as it thinks necessary" would it be in line with the principles of natural justice to make arbitrary modifications to delimitation of constituencies without the new census? It is also worth mentioning that Section 10-A was inserted in 1984 through an ordinance under martial law government.

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After 1998, the next population census, due in 2008, had not taken place before general election; the number of seats for the assemblies was also not changed. Apparently, therefore, there was no sound basis to alter the physical limits of national and provincial constituencies at this stage.

According to the ECP report of the breakdown of the number of complaints against delimitation in 2002, in Balochistan 97 complaints were received for 14 NA and 51 PA constituencies as compared to 238 complaints for 61 NA and 130 PA constituencies in Sindh; Khyber PK and Punjab were equating Sindh in number of complaints whatsoever. These statistics roughly indicated that there was nothing extraordinary in the number of objections raised against delimitation in Sindh.

Karachi could demand a greater number of seats on the basis of a disproportionately high rate of increase in its population due to migration from upcountry since 1998. The revision of delimitation of constituencies at this stage when general election of 2013 was about six months away could hamper the prospects of polls on time.

Earlier, ahead of the 2008 election, the ECP had declined all requests for fresh delimitation *"on the grounds of census-related embargo on fresh delimitation of constituencies / reallocation of seats contained in Article 51(3) the constitution as well as section 7(2) of the Delimitation of Constituencies Act 1974"*.

On 9<sup>th</sup> January 2013; the Supreme Court had admitted for hearing a petition filed by the MQM against the fresh delimitation of Karachi's constituencies before the upcoming general elections of May 2013. Senator Farogh Naseem appeared before the court and submitted the petition after removing objections raised by the registrar's office; the MQM had held that the process of fresh delimitation could only be initiated after a fresh census was conducted.

The stance had been shared by Chief Election Commissioner [CEC] Justice [rtd] Fakhruddin G. Ibrahim.

*[Earlier on 22<sup>nd</sup> January 2013, CEC Fakhruddin G. Ebrahim had categorically stated that delimitation of constituencies in Karachi before general elections was not possible and pointed out that the absence of fresh census might make it impossible to implement the Supreme Court order in this regard.*

*On 26<sup>th</sup> November 2012, a five-member bench of the apex court had observed that the constituencies in Karachi should be delimited*

*in a manner that they comprise "mixed population" to avoid political polarisation.]*

On 25<sup>th</sup> February 2013; the MQM withdrew its two petitions against the Supreme Courts earlier observation regarding the delimitation of Karachi's constituencies whereas the ECP's review petition regarding the electoral delimitation of constituencies was admitted in the apex court. A larger bench of the apex court headed by Justice Anwer Zaheer Jamali resumed the hearing over Karachi law and order implementation case at the Supreme Court's Karachi registry.

Barrister Dr Farogh Nasim, representing the MQM withdrew the party's petitions submitted in the court against the delimitation of Karachi's constituencies before a fresh census was conducted.

Giving his remarks Justice Sarmad Jalal Osmany said that the court had already issued its decision over delimitation matter in Karachi.

During the same days of February 2013, Gen Kayani had invited prominent print and electronic media men on lunch and gave them an off-the-record 4-hour briefing. In his four-hour talk he, *interalia*, referred to the weakness of the ECP in his own way by recalling the famous meeting between him and Fakhru Bhai in which a briefing was given by the army to the CEC for over two hours but at the end Fakhru Bhai met Gen Kayani but saying that *'he could not recognize the COAS in fact.'*

By referring to Fakhru Bhai and speaking about his age and his capacity, Gen Kayani indirectly expressed doubts that he was able to handle such a massive task of holding the general elections of 2013 and that too complying with the SC's instructions.

Gen Kayani also knew that two big political parties, PPP & PML[N], had nominated the other four members of the ECP and being the political nominees, they would definitely aspire and try to play games for their sponsors who had sent them in the Election Commission.

The media anchors had the feelings that when Gen Kayani said *'..... the elections must be fair and free'*, he actually was shifting the blame to the civilians while knowing that they would definitely do the mischief in their own ways. He was not aiming to interfere; rather had refused to provide army cover to the polls saying *'he cannot spare 200,000 troops.'*

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Never mind; the politicians gave deaf ears to the army chief, as nothing was going to change. Gen Kayani would retire in ending 2013 and shrewd politicians like Nawaz Sharif could cut that period even short by announcing his replacement five months ahead, as was done with Gen Aslam Beg in early 1990s by announcing Gen Asif Janjua's name.

*"After the SC verdict on non compliance of its order by ECP, remaining credibility of election referee is drained,"* Babar Awan had said in his tweet.

On 2<sup>nd</sup> March 2013, the SC in its 27-page verdict on Karachi Case noted that its remarks on delimitation were not just observations but were part of the judgement and were needed to be implemented. ECP could be held in contempt otherwise; Fakhru Bhai talked to Babar Awan on phone saying: *"I would not talk to you; everything [a long time acquaintance] is over."*

But Babar Awan was more explicit in his remarks on the situation; on Twitter he wrote: *"Woh dastaan jo masaib mein dafan hai ab tak..., Zubaan e khalq peh jab aa gayi to kya ho ga?"* [The tales which are buried in problems so far, What will happen when they become talk of the town].

On 3<sup>rd</sup> March 2013; the Chairman CEP Fakhruddin G Ebrahim asked Senator Babar Awan, the former Law Minister, to help him in coping with SC's order about delimitation of Karachi constituencies; if the SC's verdict to carry out the delimitation was correct. Strange U-turn it was as, on 22<sup>nd</sup> January, the ECP had told the media that:

*'Delimitation of constituencies in Karachi before general elections was not possible and had pointed out that the absence of fresh census might make it impossible to implement the Supreme Court order in this regard.'*

After the SC's observation on 26<sup>th</sup> November 2012, the ECP had unanimously decided on 13<sup>th</sup> December to carry out the given orders. Two days later the Chairman surprised many when he made a statement that he was personally opposed to the idea.

The Chairman ECP then met all political parties, and all except MQM were ready for the delimitation exercise. In exercise of its powers under Section 10-A of the Delimitation of Constituencies Act 1974, the ECP asked the Sindh Election Commission to submit full proposals to carry out the delimitation within 15 days. Suddenly the CEC turned around at 180 angle; many believed that it was his age factor and the environment of stress to face the challenge of holding fair and free elections; Fakhru Bhai was 85 then.

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Referring to Shaheen Sebai's column in *'the News'* of 4<sup>th</sup> March 2013, a senior writer and columnist, Haroon Rashid had also hinted at something basically murky in a recent column when he said:

*'Fakhru Bhai was part of some kind of a collusion (Gath Jor). What he meant by it was not explained.'*

On 12<sup>th</sup> March 2013, the Chief Justice Iftikhar M Chaudhry, wondered as to why the ECP deemed itself weak; *'would it [ECP] look towards the Law Ministry for making decisions?'*

The CJP made the above remarks while heading a 3-judge bench of the SC hearing a case pertaining to electoral reforms. During the proceedings, the SC Registrar presented before the court a note relating to the amendments proposed by the ECP for nomination papers. The CJP inquired if there was any dispute over the issue of nomination papers between the ECP and Law Ministry; *'..then why the Federation was not extending its cooperation to the Election Commission?'* the CJP asked the Attorney General Irfan Qadir.

The Supreme Court sought reports from the ECP and Federation over the implementation of its order issued on 8<sup>th</sup> June 2012; as all the executive authorities were bound to act upon the orders of Article 190 of the Pakistan's Constitution.

The ECP was asked to submit a reply detailing the steps taken for holding transparent elections in the country for which there were lots of criticism amongst the media and other forums.

On 21<sup>st</sup> March 2013; ECP approved recommendations for delimitation in Karachi in a meeting held under the chairmanship of CEC Fakhruddin G. Ibrahim, it was decided that boundaries of three national assembly constituencies and eight provincial assembly seats in Karachi would be redrawn before the forthcoming general elections of May 2013; the seats singled out for delimitation were: NA-239, NA-250, NA-254, PS-89, PS-112, PS-113, PS-114, PS-115, PS-116, PS-118 and PS-124.

Election Commission of Pakistan issued Notification No. No. F.2(3)2013-Cord 22nd March 2013 and also announced the election schedule.

Workers and supporters of the MQM flocked to the offices of the Sindh Election Commission to lodge a strong protest against the delimitation of 11 national and provincial assembly constituencies in Karachi, and the MQM vowed to challenge the decision in the Supreme Court. The PPP also an-

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nounced to challenge new delimitation of Karachi constituencies' orders in the court.

Though the opposition to delimitation of constituencies by both stake holding parties of Karachi was not likely to stand the test of scrutiny on Constitution and Law, but on political premise it came too late and too little and for some it was inappropriate and ill timed. They held that the scheme was not in compliance of the requirement of laws relating to delimitation of constituencies and the procedure prescribed for such exercise.

For some the notification for delimitation of 3 NA and 8 PA fell short of the letter and spirit of the law, procedure and also suffered from the basic principle of right of hearing enshrined in the dictum that "*no one shall be condemned unheard*". It seemed apparently that huge numbers of people were deprived of their right.

Astonishingly, for their own reasons, the PPP, MQM and even *Jamat e Islami*, all three had expressed their opposition and dislike for the ECP's notification of delimitation of constituencies. However, going to High Court was no solution. Delimitation of constituencies was done by ECP under relevant provisions of Article 51 (5) and delimitation laws framed under it.

Supreme Court held there was need for recourse to Delimitation of Constituencies in Karachi and also said that Constitution and the Law was clear on the direction of the Supreme Court; the ECP had acted according to law.

Petitions under Article 199 read with Article 187 (2) of the Constitution before Honourable High Court of Sindh, by MQM and PPP, contended that the notification of delimitation issued by the ECP dated 22<sup>nd</sup> March 2013 to be declared without jurisdiction, illegal, *malafide*, in breach of natural justice, unconstitutional, void *ab initio* and of no legal effect.

In run up to the elections, the re-drawing of constituencies, prima facie, was not going to affect the number of constituencies in the city, nor the electoral process but could create difficulties for the political parties in readjustment and gearing up for the election campaign.

As the electoral process was moving fast, the delimitation of constituencies in Karachi was passed but the Karachi Law and Order Case was sub-judice before the Supreme Court at Karachi Registry in which it was held that there was a situation that required redrawing / fresh delimitation in Karachi and Election Commission was empowered by law to redraw constituencies at any time anywhere in the country; the Election Commission had exercised those powers through valid reasons.



Again travelling a little back...

On 10<sup>th</sup> December 2012; the MQM, through its deputy convener Dr Farooq Sattar, officially rejected SC's decision regarding delimitation of constituencies and house-to-house verification of voters in Karachi alone terming it '*... a conspiracy against his party's mandate - however, the MQM will thwart this conspiracy*'.

On 14<sup>th</sup> December 2012; MQM Chief Altaf Hussain was issued a contempt of court notice by the Supreme Court; he was ordered to appear before the court in person on 7<sup>th</sup> January 2013. The apex court was hearing progress in the implementation of recommendations given by the SC in the Karachi unrest case of October 2011. A 3-member bench presided by CJP Iftikhar M Chaudhry issued the contempt of court notice under Article 204 of the Constitution & Section 3 of the Contempt of Court law.

Altaf Hussain, in his telephonic address to his followers in Karachi, had termed the judges' remarks "*unconstitutional & undemocratic*" and that they amounted to contempt for the mandate given by the people of Karachi and presented an "*open enmity for the metropolitan*". He had called on the CJP, President Zardari and the federal government to take notice of the judges' remarks, adding that constitutional action should be taken against those judicial officers who made comments.

The CJP Chaudhry held that the speech given by Altaf Hussain after the *delimitation order* was not only contemptuous but also held a note of threat. And that Altaf Hussain's speech contained unnecessary criticism and allegations against the judges.

On 7<sup>th</sup> January 2013; MQM Chief Altaf Hussain tendered an unconditional apology to the Supreme Court which was accepted the same day and the contempt notice withdrawn. The apex court remarked that '*...it welcomed the move and appreciated it*'.

MQM's lawyer Farogh Naseem conveyed the apology to the court. Altaf's nine-member legal team appeared before the court to defend him. Mr Naseem, heading the team, told the court that his client respected the court. In a written statement submitted before the court by Altaf, he retracted remarks he had made during his 2<sup>nd</sup> December speech. In the statement Altaf said, "*I leave myself at the mercy of the Supreme Court.*" MQM leader Farooq Sattar also tendered an unconditional apology.