

P L D 2014 Supreme Court 72

Present: Iftikhar Muhammad Chaudhry, C.J., Gulzar Ahmed and Sh. Azmat Saeed, JJ

Ch. NASIR IQBAL and others---Petitioners

Versus

**FEDERATION OF.PAKISTAN through Secretary Law and others---
Respondents**

Constitutional Petitions Nos. 39 and 90 of 2011, heard on 26th and 29th April, 2013.

(a) Constitution of Pakistan---

---Art.17 (2)---Right to vote---Scope---Every citizen has right under Art.17 of the Constitution to vote to participate in governance of country through their chosen representatives---Law provides people of country, irrespective of their social ethnical status and religious affiliation, to choose their representative in whom they repose confidence---Every eligible individual should be allowed to utilize the right to vote, irrespective of his caste or creed or any other consideration.

(b) Constitution of Pakistan-

---Arts.17, 89 & 184(3)---Representation of the People Act (LXXXV of 1976), S. 103-A [as amended by Election Laws > (Amendment) Ordinance (IV of 2013)]---Electoral Rolls Act (XXI of 1974), Ss.47-A,47-B, 47-C, 47-D, 47-E, 47-F, 47-G, 47-H, 47-I, 47-J & 47-K [as amended by Electoral Laws (Amendment) Ordinance (IV of 2013)]---Fundamental rights---Voting rights of overseas citizens---Logistic arrangements, deficiency of---Scope---Overseas Pakistanis enjoyed the right to participate in election process in terms of Art.17 of the Constitution being dignified citizens of country---Though residing outside the territory of .Pakistan, such citizens could not be denied rights to vote on technical grounds i.e. logistic arrangements made outside the country for casting their votes---Once on having recognized that the facility could be extended to expatriates to exercise right of franchise, further efforts/input of Election Commission of Pakistan was required to achieve the object in forthcoming General Elections conveniently---Supreme Court directed Election Commission of Pakistan to make all possible efforts to achieve the object, so the expatriates could also participate in forthcoming General Elections in exercise of their fundamental rights conferred under Art.17(2) of the Constitution---Petition was disposed of accordingly.

Mian Najeeb-ud-Din Owaisi v. Amir Yar C.M.A. 1535 of 2013 etc.; Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416; Muhammad Nawaz Sharif v. Federation of Pakistan PLD 1993 SC 473 and Miss Yasmin Khan and another v. Election Commission of Pakistan, Islamabad through Secretary and another 1994 SCMR 113 ref.

Mian Abdul Rauf, Advocate Supreme Court for Petitioners (in C.P.No.39 of 2011).

Nemo for Petitioners (in C.P.No.90 of 2011).

Ifran Qadir, Attorney General for Pakistan and Dil Muhammad Khan, Alizai, D.A.G. On Court's Notice.

Muhammad Munir Paracha, Advocate Supreme Court and Syed Sher Afghan, D.T. (Elections) for the ECP.

Rana Muhammad Farooq, Advocate Supreme Court, Dr. M. Sarwar Zahid, Chief, Fayyaz Ahmed Malik, Deputy Chief and Khurram Shiraz, L.O. OPF for M/o Overseas and OPF.

Afnan Karim Kundi, Advocate Supreme Court, Tariq Malik, Chairman and Saqib Jamal, Sr. LO for NADRA.

Iftikhar Anjum, D.G. Overseas Pakistanis for M/o Foreign Affairs.

Sadaqat Ahmed, SO (L) for M/o Finance.

Dates of hearing: 26th and 29th April, 2013.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.---The listed Constitution Petitions were disposed of vide short order dated 29-4-2013 with the observations that let the ECP make all possible efforts to achieve the object, so the expatriates may also participate in the General Elections in exercise of their fundamental rights conferred under Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973.

2. In the meanwhile as it has been noted above, the Election Commission of Pakistan (ECP) took up the matter with the concerned Government Authorities and ultimately the President of Pakistan, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, promulgated the Election Laws (Amendment) Ordinance, 2013 [Ordinance No. IV of 2013], published in the Extraordinary Official Gazette on 9-5-2013, to amend the Representation of the People Act, 1976 (LXXXV of 1976) [ROPA] as well as the Electoral Rolls Act, 1974 (XXI of 1974) [ERA]. By means of section 2 of the Ordinance, 2013, Chapter V-B titled "Out of Country Voting", containing sections 47-B to 47-K, was inserted in ROPA. The said provisions are reproduced hereinbelow: -

"Chapter V-B Out of country Voting

47-B. Polling Station.---(1) The Commission, at least fourteen days before the day fixed for poll abroad, shall establish polling stations with as many polling

booths as may be necessary in the premises of an Embassy, a Mission or a Consulate or any other public place notified by the Embassy, Mission or Consulate, in the countries as may be determined by it;

Provided that the Ministry of Foreign Affairs have obtained consent of such host country for establishment of the polling stations.

47-C. Appointment of Presiding Officers, etc.---The Commission from amongst the officers of the Federal Government or Autonomous Bodies under the Federal Government, preferably posted abroad, shall appoint as many Presiding Officers as the number of polling stations and as many Assistant Presiding Officers as the number of polling booths established in an Embassy, Mission, Consulate or public place notified for the purpose.

47-D. Registration of Pakistani citizens living abroad.---(1) A Pakistani who lives abroad and is in possession of National Identity Card for Overseas Pakistanis issued under the National Database and Registration Authority Ordinance 2000 (VIII of 2000) may, not later than ten days before the day fixed for poll abroad, register himself as an elector in the Embassy, Mission or Consulate, as the case may be, where he intends to cast his vote;

(2) For the purpose of registration, a Pakistani living abroad may make an application through courier or in person, in the format provided by the Commission on its website, to the authorized officer who shall issue a receipt to the elector containing the information of the constituency in which he is registered in Pakistan if the applicant applies in person.

(3) The application through courier must be received at the Embassy or Mission at least ten days before polling day and the authorized officer shall send a receipt to the applicant at his address given in the application:

Provided that any Pakistani living abroad shall not be entitled to be registered as elector if he:

(i) is not registered as voter in any constituency in Pakistan;

(ii) is in possession of National Identity Card for Overseas Pakistanis issued to him for one country and he applies for registration from another country;

(iii) does not produce the original National Identity Card for Overseas Pakistanis or such card has expired;

(iv) seeks registration on the basis of Pakistan Origin Card.

(4) The authorized officer shall electronically mark the elector in the voters' list whereupon the elector shall become entitled to vote and such list shall be made available to the Presiding Officer at the Polling Station established abroad.

Explanation:---The authorized officer means any officer authorized by the Commission for the purpose of this section.

47-E. Voting procedure.---(1) Where an elector presents himself at a polling station abroad, the Presiding Officer shall issue him a ballot paper, after satisfying himself about the identity of the elector and for that purpose may require him to produce his National Identity Card for Overseas Pakistanis;

(2) Before a ballot paper is issued to an elector, the Assistant Presiding Officer shall:

(i) verify the number and name of the National and Provincial Assembly constituency in Pakistan of the elector where his name appears in the electoral rolls database, with the help of his National Identity Card for Overseas Pakistanis;

(ii) call out the name of the elector and his constituency number;

(iii) mark the entry relating to the elector on the electoral roll to indicate that the elector has cast his vote;

(iv) print a ballot paper with counterfoil containing the particulars of the elector and obtain the thumb impression of the elector on the counterfoil;

(v) stamp the ballot paper on its back with the official mark and sign it;

(3) After receiving the ballot paper the elector shall mark the ballot paper with Marking Aid Stamp at any place within the space containing the name and symbol of the contesting candidate for whom he wishes to vote and insert it in the ballot box.

47-F Election Monitors.---The Commission shall appoint as many independent monitors as may be necessary at a polling station abroad to ensure the conduct of free, fair and transparent poll.

47-G Poll Day.---(1) For the purpose of out of country voting the poll day or days shall be the day or days fixed for polling abroad by the Commission.

(2) The Commission shall fix the day or days and hours which shall not be less than eight hours, during which the poll shall be held and the Presiding Officer shall give the public notice for the day or days and hours so fixed and hold the poll accordingly.

47-H Supply of election material.---The Commission shall provide well in advance, the election material as may be required for the purpose at the relevant polling stations established abroad.

47-I Close of poll.---(1) At the close of poll, the Presiding Officer shall open the ballot boxes and take out all the ballot papers and segregate them National and Provincial

Assembly constituency-wise; count the ballot papers and prepare statement of count in respect of each candidate in the presence of the monitors and the Assistant Presiding Officers.

(2) The Presiding Officer shall put the ballot papers in separate temper-evident bags constituency-wise and shall place a copy of the statement of count in each bag duly signed by the Presiding Officer and the monitors.

(3) The Presiding Officer shall send through diplomatic bag, all the temper-evident bags containing the marked ballot papers, statement of the count and ballot paper account to the Commission.

(4) The Commission on receipt of the diplomatic bag from the Presiding Officer shall take out all the temper-evident bags and send to the Returning Officer concerned the respective temper-evident bags so as to reach him before the consolidation of results.

47-J Application of laws.---(1) Subject to the provisions of this Chapter, the provisions of this Act and the provisions of the Representation of the People (Conduct of Election) Rules, 1977 shall mutatis mutandis apply to our of country voting.

(2) The provisions of this Ordinance shall not apply to fill a casual vacancy in the Assembly which has fallen vacant for any reason after general elections, 2013.

47-K Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Commission may make such provision or pass such order not inconsistent with the provisions of this Act for the removal of the difficulty as the Commission may deem fit."

Similarly, by means of section 3 of the Ordinance, 2013, certain amendments were made in section 103A of ROPA to the following effect:--

"3. Amendment of section 103A, Act LXXXV of 1976.---In the Representation of the People Act, 1976 (LXXXV of 1976), in section 103A, for the words, comma, figures and brackets 'the Contempt of Court Act, 1976 (XLIV of 1976), the words, comma, figures and brackets 'the Contempt of Court Ordinance, 2003 (V of 2003)' shall be substituted."

Lastly, by means of section 4 of the Ordinance, 2013, subsection (6) was added to section 7 of the in ERA, which reads as under: -

"(6) Any person holding National Identity Card for Overseas Pakistani and living abroad for any purpose shall be deemed to be resident in the electoral area in which he would have been resident if he had not been abroad."

In this way the order of the Court was implemented by the authorities.

3. We must assert that political good governance depends on the participation of the masses in the electoral process; hence, the role of every voter is very much important in bringing a true democracy. It is participation of each and every individual which would bring about a positive change. Individuals use their right of vote to choose their representatives, which is provided in the Objectives Resolution.. In order to achieve the Constitutional objective of democracy; we have to bear in mind the importance of every single voter as the primary stakeholder in the process of conducting elections.

4. It is only the power of ballot which has the capacity to create a change in a country. Theodore Roosevelt, the 26th President of the United States (1901-1909), has highlighted this point by asserting that "a vote is like a rifle; its usefulness depends upon the user." Similarly, Lyndon B. Johnson, the 36th President of the United States (1963-1969), has said that "the vote is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men."

5. Sir Winston Churchill, the Prime Minister of the United Kingdom from 1940 to 1945, said that "at the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil making a little cross on a little bit of paper no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point". It is in this context that we have time and again asserted that every necessary and possible step needs to be taken in order to encourage the people to participate in this process.

6. Under Article 17 of the Constitution every citizen has right to vote to participate in the governance of the country through their chosen representatives. The law provides the people of this country, irrespective of their social ethnical status and religious affiliation, to choose their P representative in whom they repose confidence. Hence, every eligible individual should be allowed to utilize the right to vote irrespective of his caste or creed or any other consideration. The Supreme Court of Pakistan adjudged many cases on the aspect of access of voters to the credentials of the contesting candidates. Reference in this behalf may be made to the case of Mian Najeeb-ud-Din Owaisi v. Amir Yar (C.M.A. 1535 of 2013 etc.) wherein this Court held as under:

"The voters who are about to elect their representatives are one of the most important stakeholders, therefore, to achieve the object of honest, just and fair elections, they would not constitutionally and legally allow a candidate to manage to sneak into Parliament without proving that he is qualified to represent them as such representative has to perform the noblest and honourable job of making policies and laws for the Nation."

Reference may also be made to the case of Benazir Bhutto v Federation of Pakistan (PLD 1988 SC 416) wherein it has been observed that Article 17(2) provides the basic guarantee to the citizen against usurpation of his will to freely participate in the affairs of the governance of Pakistan through political activity relating thereto. The said observation was also reaffirmed by this Court in the Case o: Muhammad Nawaz Sharif v. Federation of Pakistan (PLD 1993 SC 473). Thus, objection raised by learned Attorney General on the maintainability of petition under Article 184(3) of the Constitution, is overruled.

7. It is now settled in almost all countries of the world that every citizen of a country, irrespective of his place of residence, must be allowed to participate in and contribute to the democratic process of his country, though the manners and the extent of the right to vote differ from country to another. Countries including Austria, Belgium, Croatia, France, Italy and Norway allow voting to all the categories of non-resident citizens, including those permanently residing abroad while Bosnia and Herzegovina, Denmark, Germany and United Kingdom are countries that allow the right to vote to certain categories of citizens residing abroad.

8. It is to be noted that there is no distinction between the citizens living within Pakistan or outside the country, with regard to the right to vote in terms of the Article 17 of the Constitution. The only difference is that the citizens living within the country have been provided the facilities to cast their vote in the elections, i.e. the Elections of National and Provincial Assemblies, Local Bodies and others, whereas citizens living abroad are yet to be extended the mentioned facilities. It warrants to mention that the right to vote has not been denied to the overseas Pakistanis, who are as much important as those living inside the country, but only the facilities to vote, which provides the sense of ownership and participation in the governance of the country, has not been extended to them. Needles to observe that the Pakistani citizens living abroad earn money by working there and then send the same in the shape of foreign remittances to the country. In this manner, they contribute to the welfare of the state, well being of the citizens and good governance of the country by providing financial support through their families living inside Pakistan.

9. It must be clarified here that the overseas Pakistanis, as noted hereinabove, enjoy the right to participate in the election process in terms of Article 17 of the Constitution being dignified citizens of the country, though residing outside its territory, as such they cannot be denied the same rights on technical grounds, i.e. logistic arrangements made outside the country for casting their votes.

10. This matter need not to be discussed any further on the strength of Constitutional provisions as well as the law discussed hereinabove, and importantly the government itself having realized this aspect of the issue, promulgated an Ordinance on 9-5-2013 making the necessary amendments in the Election Laws. However, the only issue remains the implementation of the law and converting it into an Act of the Parliament, for providing permanency to its provisions, thereby ensuring fairness in all kinds of elections including the elections of National and Provincial Assemblies as well as Local Bodies in terms of Articles 32 and 140A of the Constitution.

11. It is vital to note, however, that during hearing of the listed petitions, the Court insisted the Election Commission of Pakistan as well as the Federal Government to ensure the participation of Overseas Pakistanis in the General Elections of 2013, but the Ordinance, whereby the required amendments were made in the Election Laws, was promulgated and gazetted on 9-5-2013, only two days prior to the date of holding of General Elections, therefore, necessary arrangements could not have been made to extend the facility of voting to the Overseas Pakistanis.

12. Now as the General Elections are over and a newly elected Government is in power, while, elections of Local Bodies are approaching, the Executive/Federal Government is bound to discharge its Constitutional/legal obligations to ensure that the citizens/voters living outside the country are enabled to participate in all kinds of elections in future including the forthcoming elections of Local Bodies.

13. Needless to observe that notwithstanding the fact that an Ordinance has been issued which is likely to be made an Act of the Parliament, but if, for any reason, the said Ordinance lapses, not being made an Act of Parliament, it shall be deemed that Article 17 of the Constitution continues to insist upon the Federal Government to extend the facility of voting to overseas Pakistanis in the election of the Parliament as well as Local Bodies.

14. These are the reasons of our short order of even date, which is reproduced hereinbelow:--

"These Constitution Petitions have been filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973, on behalf of Ch. Nasir Iqbal and other Expatriate Pakistanis and by Mr. Imran Khan, Chairman, PTI and others, instituted as back as on 21-4-2011 and 19-12-2011. The relief claimed in both the mentioned Constitution Petitions is somehow an identical, therefore, from one of the Constitution Petition bearing No.39 of 2011, the same has been reproduced herein below:--

"It is therefore most humbly prayed that the instant petition may kindly be accepted and respondents be directed to take all those steps which are necessary for implementation of the fundamental right of vote to all overseas Pakistanis including arrangements in Consulates and Embassies of Pakistan all over the world before the next General Election for National and Provincial Assemblies and an opportunity be provided to overseas Pakistanis of casting their votes."

2. Both the said petitions came up for hearing before this Court on different dates commencing from 21-12-2011 when an order in the Constitution Petition No.90 of 2011, was passed. As we intend to dispose of both these Constitution Petitions for the reasons to be recorded later but consider it appropriate to reproduce the order noted herein before in extenso for the sake of comprehending the background of the issues involved in the matters:--

"This petition has been filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan. The issue being raised herein is about declaring that the citizens of Pakistan in terms of Article 51 of the Constitution but living outside the country, have the fundamental right of franchise, therefore, denying such right to the citizens, who are reportedly about eight millions living outside the country, raises the question of public importance.

2.(sic) It may be noted that the citizens may be within or outside the country have a right to elect their representatives for the Parliament and any such person who is not residing in the country at the time when the polling takes place, cannot be

denied the right of franchise solely for the reason that he is not available in the country.

3. Learned counsel appearing for the petitioner states that there are three categories of the citizens residing outside the country and are being deprived of their right of franchise. He has explained the three categories as follows:--

(a) Those who are citizens of Pakistan but living outside the country or born outside the country being national of Pakistan and the passport is issued to them by the Government of Pakistan, and they are earning their livelihood outside the country and making remittances to support their dependants in the country;

(b) The Officers/Officials of the Diplomatic service;

(c) Those citizens, who were originally Pakistanis but have acquired the nationality of the other country and maintaining/ holding both the nationalities.

4. He has also pointed out that as back as in the year 1993, Constitution Petition No.26 of 1993 was filed before this Court claiming the same relief as it has been prayed for by him and in that matter, a larger Bench of this Court vide judgment dated 15-11-1993 had forwarded the matter to the Government of Pakistan for consideration. According to him till date there had been correspondence between different Ministries but so far no final decision in this regard has taken place. He has read before us paras 8, 9 and 10 of the judgment. For the sake of convenience, the same are reproduced herein below: -

"8. The learned counsel for the petitioner finally suggested that this matter which has already been brought to the notice of the Chief Election Commissioner and the Government should in the first instance be examined in depth by the Chief Election Commissioner and finally by the Government with a view to facilitate the exercise of franchise by the eligible Pakistanis living abroad. In this context the provisions on the subject contained in the other comparable Federal Constitutions may also be examined and appropriate steps taken depending upon the extent of resources of the Government.

9. We consider that this is a reasonable suggestion and before dealing with the question in the abstract on the legal and constitutional plane, it would be proper that this exercise is 9. undertaken in the first instance by the authorities constitutionally entrusted with the task.

10. As regards the extra territoriality of the laws, we may point out that the Constitution already provides that "obedience to the Constitution and the Laws is the obligation of every citizen wherever he may be". This suggests the Pakistanis living abroad to the laws of the land even those which do not have extra territoriality. With these observations, the Petition is disposed of."

5. The learned counsel has also referred to a write-up, purported to have been issued by the Electronic Government Directorate, Ministry of IT & Telecom, Government of Pakistan and has referred to its different captions which are as under: -

(a) Grant of Right of vote to Overseas Pakistanis;

(b) Representations of Overseas Pakistanis in the National and Provincial Assemblies;

(c) Action taken on the issues.

From the last mentioned caption 'action taken on the issues' following items being important and relevant to subject are noted for reference:-

(i) Giving a right to vote to citizens residing overseas has precedent in many countries, e.g. France, United States, etc.

(ii) Determination/delimitation of a constituency for each Province (as proposed in the said summary) may not be possible for Overseas Pakistanis citizens.

(iii) Many Overseas Pakistanis especially in the United States are not allowed to keep their Pakistani citizenship if they become naturalized citizens there, in such a situation, they will not be able to vote for representation in Pakistani legislatures.

(iv) The Election Commission of Pakistan has re-constituted the Special Committee on right of vote to overseas Pakistanis under the Chairmanship of Secretary, Election Commission of Pakistan including the representative from Prime Minister's Secretariat, Ministry of Overseas Pakistanis, M/o Foreign Affairs, M/o Law and Justice, M/o Parliamentary Affairs, M/o Finance, National Database and Registration Authority (NADRA), Overseas Pakistanis Foundation (OPF) and offices of Election Commission of Pakistan.

6. Learned Attorney General for Pakistan, however, requests that he needs some time to consult Ministry of Law and Justice, Ministry of Foreign Affairs, Ministry of Overseas Pakistanis and the Election Commission of Pakistan and states that after taking instructions from these departments, he would be in a better position to make his submissions.

7. In above view of the matter, the case is adjourned. In the meantime, office is directed to issue notice to the respondents to file their replies/concise statements to the petition within a period of two weeks. Copy of this order along with memo of the petition and its annexures be supplied to the respondents during course of the day. On receipt of replies/concise statements from the respondents, office shall put up the matter in Court for hearing.

3. A perusal of the above order finds mentioned an earlier effort made by the overseas Pakistanis in the case of Miss Yasmin Khan and another v. Election Commission of Pakistan, Islamabad through Secretary and another (1994 SCMR 113) when the said

Constitution Petition was admitted to regular hearing on 4-10-1993, and notices were issued to all concerned. Finally, by a Larger Bench of this Court, the above petition was disposed of on 15-11-1993. The relevant para therefrom is reproduced hereinabove.

4. Syed Sher Afgan, Director General (Elections), ECP, stated that according to his knowledge the observations of this Court in the case of Yasmin Khan (ibid) were considered by the Cabinet in 1996-1997 but approval was not granted for extending the Right to Expatriate Pakistanis but refused to extend them Right of Franchise, to be exercised outside the country. However, he had not placed on record any such decision. If same is available, he may place the same on record so we may incorporate the same in the reasons, which shall be recorded later.

5. It is to be noted that the ECP; following the background of the matter commencing from the judgment in the case of Yasmin Khan (ibid), constituted a Committee in October, 1997, to consider these issues. Unfortunately, the final decision could not be taken, as it is reported that on the part of the Government, no progress could be made.

6. Again on 17-11-2009, a Special Committee was constituted to consider the following two questions:--

"(i) Whether right of vote to overseas Pakistanis should be granted to them and if so, what method including personal voting and voting through fax, etc. should be adopted after examining the feasibility of the method so agreed upon by the Committee;

(ii) Whether granting representation to overseas Pakistanis in the National and Provincial Assemblies by reserving seats therein and electing the representatives of overseas Pakistanis on such seats through proportional representation system is a suitable option."

7. This Committee, headed by the Secretary, ECP, had furnished 'its report on 20-1-2012, we are not aware regarding the proceedings or implementation of the recommendations of the Committee subsequent thereto, thus, we asked the Director General (Elections), ECP, to place the same on record. In the meanwhile, from time to time, hearing continued and on 25-4-2013, CMA No.2389 of 2013, was presented under the signature of the learned Attorney General for Pakistan, wherein as many as 27 concerns were shown for consideration of this Court.

8. Notice of the above CMA was issued to the Chairman, NADRA, who had submitted reply. The relevant para therefrom is reproduced hereinbelow:--

"6. NADRA has already requested Election Commission of Pakistan through its letter dated 1st April 2013 to convey its final decision of opting e-Voting solution or otherwise before 5th April 2013. With each passing day, smooth and seamless deployment of proposed solution is becoming an increasingly challenging task. From 1st April till date i.e. 26th April 2013, NADRA has yet to receive a green signal from ECP. Hence, the resultant loss of time which was the most precious commodity in our hands. However, holding the Honourable Supreme Court in

highest esteem and considering it a privilege to be of assistance in enabling overseas Pakistanis to exercise their right of adult franchise, NADRA remains unwavering in its resolve and wholeheartedness to comply with any direction passed by the Honorable Supreme Court of Pakistan."

9. The Ministry of Foreign Affairs in its reply finally gave its reaction in respect of the concerns shown on behalf of the ' Government, which reads as under:--

"The Ministry of Foreign Affairs, reassures the Honourable Court that it will use all of its available resources to implement the decision of the Honourable Supreme Court and the Election Commission of Pakistan (ECP), on granting the right to vote to Overseas Pakistanis.

The Ministry has previously also submitted to the Honourable Supreme Court its position on the subject in C.M.A. No.1973/2013 on 11 April, 2013.

In this regard, in anticipation of the decision of the honourable Supreme Court and the ECP, the Ministry of Foreign Affairs has already taken practical steps which include, seeking the necessary permission from the governments of the nine short-listed countries enumerated by the ECP.

In this context, the following 7 countries have already conveyed their permission for conducting polling in their respective territories with the proviso that the date and timing of the election should be conveyed to them in a timely manner in order to enable them to make the necessary security/ administrative arrangements. The 7 countries which have conveyed their permission are:

- (i) Australia;
- (ii) Bahrain;
- (iii) Canada;
- (iv) Kuwait;
- (v) Oman;
- (vi) Saudi Arabia; and
- (vii) UK.

The response of the remaining two countries - UAE and USA - is awaited. Our Heads of Mission in these two countries are in touch with the concerned host authorities.

The Ministry of Foreign Affairs being an integral part of the overall governmental machinery was consulted in drafting of the C.M.A. No.2389 of 2013. The apprehensions and reservations contained therein, relate to the capacity limitations of the Missions. It

was therefore, deemed necessary to apprise the Court about the constraints, which may impede the smooth conduction of the polling process. Therefore, bringing these capacity issues to the attention of the Honourable Court was considered necessary and is in conformance with the duty of the Foreign Ministry.

Nonetheless, the Ministry of Foreign Affairs reiterates its commitment and reassures the Honourable Court and the ECP that it stands ready with all its resources at its disposal to carry out any task assigned to it for the realization of the right to vote to Overseas Pakistanis."

10. The Ministry of the Overseas Pakistanis disclosed as under:-

"10. It is again submitted that the Ministry of Overseas Pakistanis is in coordination with the relevant Ministries and would provide all possible assistance through its CWA Missions working under the respective Heads of Missions i.e.

Ambassadors/High Commissioners in line with the directions of the Honourable Supreme Court."

11. On behalf of Ministry of Finance, Mr. Sadaqat Ahmed, Section Officer (Litigation) appeared and stated that the Finance Ministry is ready and willing to provide funding as per the direction of this Court or the ECP.

12. Syed Sher Afgan, Director General (Elections), ECP, stated that the issue under discussion had been considered by the Chief Election Commissioner as well as by the Commission, which is reproduced hereunder:

"6. In view of the above, if the learned Members agree, we may respectfully inform the Supreme Court tomorrow that although we welcome their observations in relation to giving Overseas Pakistanis the right to vote, the ECP is of the considered view that this initiative should not be hurriedly implemented for the forthcoming elections."

13. It is to be noted that on 26-4-2013, the Court started dictating the order and meanwhile learned Attorney General for Pakistan so also Mr. Muhammad Munir Piracha, Sr. Advocate Supreme Court, for the ECP sought time to seek instructions in this behalf from the Election Commission of Pakistan. Now today (29th April) the learned Attorney General for Pakistan appeared and has presented under his signatures a statement (C.M.A. No.2454 of 2013) which is the outcome of a meeting held by him with the ECP. For convenience, the same is reproduced herein below:-

"1. That the undersigned held a meeting with the Chief Election Commissioner and all the members of the Election Commission of Pakistan (ECP). The ECP has appreciated the role of the Supreme Court of Pakistan (SCP) keeping in view the utmost concern, desire and expectation which the apex Court has with the former qua enabling the Overseas Pakistanis to cast their votes outside their constituency and country. On this premise the voters residing within their country but residing outside their constituency or province

deserve at the least a similar treatment. Surely all this is possible depending on finances and time frame.

2. That during the meeting, the ECP unanimously agreed to accomplish the desired task while requesting the Government of Pakistan to prepare requisite proposals for effecting the required legislation which may be made applicable to the aforesaid voters after the forthcoming General Elections in the country.

3. That the ECP has also expressed its satisfaction with regard to the efforts made so far by various departments of the federal government in carrying out the necessary steps in extending cooperation to achieve the desired results in the shortest possible time thereby enabling the ECP to agree to the applicability of the aforesaid legislative proposals in the above terms."

14. A perusal of the statement reproduced hereinabove clarifies that the ECP recognizes the right to exercise franchise to expatriate Pakistanis on well known principle of law that they deserve at least a similar treatment and facilitation qua the voters residing within the country but outside their constituency or province.

15. However, reservations for extending the facility to expatriate as expressed is the non-availability of the requisite legislation in respect whereof the ECP has agreed to accomplish the desired task by requesting the Government of Pakistan to do the needful but after the forthcoming General Elections in the country added with the reason of non-availability of finances and the paucity of time in view of the facts noted hereinabove. View point of the Ministry of Finance and other Ministries has categorically noted on the previous dates of hearing wherein they had expressed their desire to accomplish the task by providing finances as per the directions of this Court or the ECP and likewise Ministry of Foreign Affairs, Chairman NADRA and the Ministry of Overseas Pakistanis had also given positive response in this behalf. It is equally important to note that the ECP has expressed its satisfaction with regard to the efforts made so far by various departments of the Federal Government in carrying out the necessary steps in extending co-operations to achieve the desired results in the shortest possible time thereby enabling the ECP to agree to the applicability of the aforesaid legislative proposals in the above terms.

16. We have heard the learned counsel for the petitioners; the Representatives of the Ministries of Foreign Affairs, Overseas Pakistanis, Finance as well as the ECP and the learned Attorney General for Pakistan. However, the learned Attorney General for Pakistan, questioned the maintainability of the petitions, as according to him, neither the Fundamental Right of the petitioners is involved nor the ECP being an independent institution is obliged to provide them the facility to exercise the Right of Franchise outside the territory of Pakistan and, if any Overseas Pakistani comes on the day of polling he can exercise the Right of Franchise. The jurisdiction of this Court has also been objected to by him in granting the relief. He further argued that it is the job of the ECP to arrange the Elections, therefore, no direction can be issued to the ECP for providing the facilities to Expatriates to exercise their Right of Franchise outside the Pakistan. He further stated that as the legislation has to be promulgated and it is not the job of this Court but of the

National Assembly, which is presently stands resolved and until an Assembly is elected, no legislation is possible besides this Court cannot take upon itself to legislate the laws.

17. Thus, under the circumstances, we are of the opinion that once on having recognized that facility can be extended to the expatriates to exercise right of franchise, the ECP's further efforts/input is required to achieve the object in the forthcoming General Elections can conveniently be achieved.

"18. Therefore, for the reasons to be recorded later, we dispose of both the petitions with the observations that let the ECP make all possible efforts to achieve the object, as has been noted hereinabove so the expatriates may also participate in the forthcoming General Elections in exercise of their fundamental rights conferred under Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973."

MH/N-14/SC

Order accordingly.