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SINDH ORDINANCE NO.XLVI OF 2002

THE SINDH LOCAL GOVERNMENT (EIGHT AMENDMENT) ORDINANCE, 2002

[23rd November, 2002]

An Ordinance to further amend the Sind Local Government Ordinance, 2001.

Preamble.

WHEREAS it is expedient to amend the Sindh Local Government Ordinance, 2001, in the manner hereinafter appearing;

AND WHEREAS the Provincial Assembly stands dissolved in pursuance of the Proclamation of the fourteenth day of October, 1999, and the Provisional Constitution Order No.1 of 1999;

AND WHEREAS the Governor of Sindh is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the aforesaid Proclamation and Provisional Constitution Order read with Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of Sindh is pleased to make and promulgate the following Ordinance:—

Short title and commencement.

1. (1) This Ordinance may be called the Sindh Local Government (Eight Amendment) Ordinance, 2002.

(2) It shall come into force at once and shall be deemed to have taken effect on the 1st day of July, 2002.

Amendment of Section 1 of the Sindh Ordinance No.XXVII of 2001.

2. In the Sindh Local Government Ordinance, 2001, hereinafter referred to as the said Ordinance, in section 1, in sub-section (3), for the proviso, the following shall be substituted: -

"Provided that the order of the Governor in section 120-D(6) shall remain in force as notified.".

Amendment of Section 2 of the Sindh Ordinance No.XXVII of 2001.

3. In the said Ordinance, in section 2, in clause (xxvii-b), for the words "the expenditure charged upon the Provincial Consolidated Fund", the word "monies" shall be substituted.

Amendment of Section 55 of the Sindh Ordinance No.XXVII of 2001.

4. In the said Ordinance, in section 55, the word "District" shall be omitted.

5. In the said Ordinance, in section 67-A, in clause (o), the semi colon and the word "and" shall be substituted by the full stop.

Amendment of Section 67-A of the Sindh Ordinance No.XXVII of 2001.

6. In the said Ordinance, in section 107, in sub-section (1), for the words "Taluka Fund, Town Fund and Union Fund", the words "Taluka Local Fund, Town, Local Fund and Union Local Fund" shall respectively be substituted.

Amendment of Section 107 of the Sindh Ordinance No.XXVII of 2001.

7. In the said Ordinance, in section 108, for the word "officer", the word "official" shall be substituted.

Amendment of Section 108 of the Sindh Ordinance No.XXVII of 2001.

8. In the said Ordinance, in section 110, in clause (b), for the words "Union Fund", the words "Union Local Fund" shall be substituted.

Amendment of Section 110 of the Sindh Ordinance No.XXVII of 2001.

9. In the said Ordinance, in section 111 -

Amendment of Section 111 of the Sindh Ordinance No.XXVII of 2001.

(i) in sub-section (2), for the word "respective", the article "a" shall be substituted;

(ii) sub-section (3) shall be omitted and the existing sub-sections (4), (5), (6) and (7) shall be re-numbered as sub-sections (3), (4), (5) and (6) respectively and in sub-section (4) as so re-numbered for the words "Local Government", the word "Nazim" shall be substituted.

10. In the said Ordinance, in section 112 -

Amendment of Section 112 of the Sindh Ordinance No.XXVII of 2001.

(i) for the existing sub-sections (5), (6), (7), (8) and (9), the following shall be substituted: -

"(5) A budget shall not be approved if –

(a) the sums required to meet estimated expenditures exceed the estimated receipts; and

(b) the constraints specified in section 119 have not been complied with.

(6) No other business shall be taken up by a Council during the budget session.

(7) In case a budget is not approved by a Council before the commencement of the financial year to which it relates, the concerned Local Government shall spend

money under various heads in accordance with the budgetary provisions of the preceding financial year for a period not exceeding thirty days on prorata basis:

Provided that a local government shall not spend funds or make commitments for any expenditure, under any Demand for Grant or Appropriation, in excess of eight percent of the amount budgeted in the preceding year within the thirty days period.

(8) In case the budget is not passed within the extended period as specified in sub-section (7) the budget shall be prepared, approved and authenticated by the Government for the full year.

(9) After approval by the Council, the respective Nazim shall authenticate by his signature a Schedule specifying the –

(a) grants made or deemed to have been made by the District, Taluka, Town or Union Council; and

(b) the several sums required to meet the expenditure charged upon the District Fund, Taluka, Town or Union Local Fund;";

(ii) after sub-section (11) the following new sub-section shall be added: -

"(12) At any time before the expiry of the financial year to which a budget relates, a revised budget for the year shall be prepared by a local government and approved by its council.";

(iii) in sub-section (11), for the word "Office" the word "official" shall be substituted.

11. In the said Ordinance, in section 114 - **Amendment of Section 114 of the Sindh Ordinance No.XXVII of 2001.**

(i) for sub-section (1), (2) and (3), the following shall be substituted: -

"(1) The accounts of the receipts and expenditure of Local Government shall be kept in such form and in accordance with such principles and methods as the Auditor General of Pakistan may, with the approval of the President prescribe:

Provided that the accounts of Receipts and Expenditure of Taluka (Town) Municipal Administration and Union Administration shall be kept in such form and in accordance with such principles and methods as the Government may prescribe, till such time that adequate capacity is developed to conform to the national accounting system prescribed by the Auditor General of Pakistan.

(2) The following arrangement for maintaining of Accounts shall be followed-

(a) the District Accounts Officer (or a Treasury Officer where a DAO does not exist) shall maintain the accounts of each District Government;

(b) the Taluka or Town Accounts Officer and Union Accountant shall maintain the accounts of the Taluka or Town Municipal Administration or the Union Administration as the case may be; and

(c) the District Accounts Officer, Taluka or Town Accounts Officer and the Union Accountant shall perform pre-audit of all payments from the Funds of the District, Taluka or Town and Union, as the case may be, before approving the disbursements of monies.

(ii) The existing sub-section (2), (3) and (4) shall be re-numbered as sub-sections (4), (5) and (6) and in sub-section (6) as so re-numbered for the words, bracket and figure "sub-section (3)", the words, bracket and figure "sub-section (5)" shall be substituted.

Amendment of Section 115 of the Sindh Ordinance No.XXVII of 2001.

12. In the said Ordinance, in section 115 -

(i) for sub-sections (1), (2) and (3), the following shall be substituted: -

"(1) The Auditor General of Pakistan shall, on the basis of such audit as he may consider appropriate or necessary, certify the accounts, compiled and prepared by the respective Accounts Official of the local government for each financial year, showing under the respective heads the annual receipts and disbursements for the purposes of each local government and shall submit the certified accounts with such notes, comments or recommendations as he may consider necessary to the respective Nazim:

Provided that the auditor of the Taluka Municipal Administration, Town Municipal Administration and Union Administration shall be conducted by the Local Fund Audit Department in the prescribed manner till such time that adequate capacity is developed to conform to the national audit system notified by the Auditor General of Pakistan.

(2) The Nazim shall cause the Audit Report to be submitted to the respective Council and the Council shall refer it for examination to its Accounts Committee.

(3) The Auditor General in the case of District Government and Director Local Fund Audit in the case of Taluka, Town and Union Administration, as the case may be, shall have authority to audit and report on the accounts of stores and stock kept in any office of a local government.

(4) The Auditor General in the case of District Government and Director Local Fund Audit in the case of Taluka, Town and Union Administration, as the case may be, shall -

(a) audit all expenditure from the local government Fund to ascertain whether the maries shown in the accounts as having been disbursed were legally available for, and applicable to, the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it;

(b) audit all transactions of a local government relating to Public Accounts;

(c) audit all trading, manufacturing, profit and loss accounts of a local government; and

(d) to audit all receipts which are payable into a local government Fund and to satisfy himself that all such receipts which are payable into a local government Fund have been properly and correctly deposited and rules and procedures relating to such receipts have been fully observed."

(ii) The existing sub-section (4) shall be re-numbered as sub-section (5) and the sub-section (5) as so re-numbered, the words and colon "The Auditor General shall have the authority:", the words and commas "The Auditor General in the case of District Government and Director Local Fund Audit in the case of Taluka, Town and Union Administration, as the case may be, shall have the authority" shall be substituted;

(iii) in sub-section (5) as so re-numbered –

(a) in clause (a), for the words "District Government", the words "a local government" shall be substituted; and

(b) in clause (d), for the words "officer In-charge of any office or Department", the word "officials" shall be substituted;

(iv) for sub-sections (5) and (6), the following shall be substituted: -

"(6) Upon request of a Nazim, the Auditor General in the case of District Government and Director Local Fund Audit in the case of Taluka, Town and Union Administration, as the case may be, shall cause a special audit of that local Government's accounts to be undertaken and shall forward his report to the Nazim who shall cause the same to be submitted to respective Council for necessary action.

(7) The Auditor General in the case of District Government and Director local Fund Audit in the case of Taluka, Town and Union Administration as the case may be, shall have access to all the books and documents pertaining to the accounts and may also examine any public servant or premises of the local Government concerned.

(8) The Auditor General in the case of District Government and Director Local Fund Audit in the case of Taluka, Town and Union Administration, as the case may be, shall perform functions and exercise power in relation to audit of the accounts of the companies, authorities, bodies or corporations owned or managed by a local government.".

Amendment of Section 115 of the Sindh Ordinance No.XXVII of 2001.

13. In the said Ordinance, section 115-A shall be omitted and section 15-B shall be re-numbered as section 115-A.

Amendment of Section 116 of the Sindh Ordinance No.XXVII of 2001.

14. In the said Ordinance, for section 116, the following shall be substituted: -

"116 (1) A council may levy taxes, cesses, fees, rates, rents, tolls, charge, surcharges and levies specified in the Second Schedule:

Provided that the Government shall vet the tax proposal prior to the approval by the concerned Council:

Provided further that the proposal shall be vetted within thirty days from the date of receipt of the proposal failing which it would be deemed to have been vetted by the Government.".

(2) No tax shall be levied without previous publication of the tax proposal and after inviting and hearing public objections.

(3) A Council may, subject to the provisos under sub-section (1), increase any tax.

(4) A Council may reduce, suspend, abolish or exempt a tax.".

Amendment of Section 117 of the Sindh Ordinance No.XXVII of 2001.

15. In the said Ordinance, in section 117, for sub-section (2), the following shall be substituted: -

"(2) The Taluka Council or Town Council as the case may be, shall subject to the provisions of section 116, determine the rate of Property Tax in an area within the Taluka or Town:

Provided that in the areas within a Taluka or Town where rate has been determined, the rate shall remain as zero.

Amendment of Section 118 of the Sindh Ordinance No.XXVII of 2001.

16. In the said Ordinance, in section 118, for sub-section (1), the following shall be substituted: -

"118 (1) All taxes, levied under this Ordinance shall be collected as prescribed:

Provided that the Property Tax shall be collected by the District Government:

Provided further that the District Government shall retain ten percent of the total proceeds of the Property Tax collected as collection charges the transfer promptly the balance ninety percent to the respective Taluka or Town on collection basis.

Amendment of Section 119 of the Sindh Ordinance No.XXVII of 2001.

17. In the said Ordinance, in section 119 -

(a) in sub-section (3), for the words, brackets and figures "section 10 (6) (a)", the words, brackets and figures "section 109 (6) (a)" shall be substituted;

(b) in sub-section (5), for the words "pursuant to", the words "by the cut off date specified in" shall be substituted;

(c) in sub-section (8), for the word "officer", the word "official" and for the words and brackets "a Union Secretary (in charge finance)", the words "one of

the Union Secretaries" shall be substituted respectively;

(d) for sub-section 9, 10 and 12, the following shall be substituted: -

"(9) The identified schemes shall be included in the budget before submission to the concerned Council.

(10) The statement referred to in sub-section (7) above shall be approved by a simple majority of the members in the budget session of the respective Council.

(12) Subject to sub-section (10), the Accounts Official of the respective Local Government shall release funds in the prescribed manner in accordance with the schedule of expenditure.".

Amendment of Section 120-B of the Sindh Ordinance No.XXVII of 2001.

18. In the said Ordinance, in section 120-B, for sub-sections (1) and (2), the following shall be substituted: -

"120-B (1) The Finance Commission shall consist of ten members, including the Chairman as under –

(a) four members shall be ex-officio, namely:

(i) the Minister for Finance of the Province, who shall be the Chairman of the Finance Commission, and in his absence for what-so-ever reasons, the members may elect one of the members present to be Chairman in the manner prescribed for the duration of his absence;

(ii) the Secretary to the Government, Local Government and Rural Development Department;

(iii) the Secretary to Government, Finance Department (as Member/Secretary); and

(iv) the Secretary to the Government, Planning and Development Department;

(b) three professional members from the private sector to be appointed in the manner stated in the Seventh Schedule; and

(c) one Zila Nazim, or Taluka or Town Nazim

and one Union Nazim.

Explanation: For the purpose of this Chapter "private sector person" means a person who is not in the Service of Pakistan or any statutory body or any other body which is owned or controlled by the Federal Government or the Provincial Government or a Local Government.

(2) The Finance Department shall act as the Secretariat of the Provincial Finance Commission.".

(b) The existing sub-sections (4), (5) and (6) shall be re-numbered as sub-sections (3), (4) and (5) respectively and for sub-sections (7) and (8), the following shall be substituted: -

"(6) A professional member shall be removed in the prescribed manner.".

Insertion of Section 120-C in the Sindh Ordinance No.XXVII of 2001.

19. In the said Ordinance, after section 120-B, the following new section shall be inserted: -

120-C. A professional member shall be eligible to be re-appointed for another term but shall not, in any case, be eligible for appointment in the Service of Pakistan or any Local Government for a period of two years, commencing from the date of relinquishment of his office.".

Substitution of Sections 120-C to 120-K of the Sindh Ordinance No.XXVII of 2001.

20. In the said Ordinance, for sections 120-C to 120-K, the following shall be substituted: -

"120-D. The functions, duties and powers of the Finance Commission shall be to make recommendations to the Governor for –

(a) a formula for distributions of resources including –

(i) distribution between the Government and the Local Governments out of the proceeds of the Provincial Consolidated Fund into a Provincial Retained Amount and a Provincial Allocable Amount respectively:

Provided that in no case shall the Provincial Allocable Amount be so determined that it is less than the funds transferred to local governments in the financial year 2001-2002 and the establishment charges budgeted for the functions of Local Governments in the same year, excluding transfers in lieu of Octroi and Zila Taxes:

Provided further that all the moneys received by the Government in lieu of Octroi and Zila Taxes shall be added to the Provincial Allocable Amount separately; and

(ii) distribution of the Provincial Allocable Amount amongst the District Governments, Taluka and Town Municipal Administrations and the Union Administrations as shares;

(b) the making of grants in aid by the Government to the Local Governments from the Provincial Retained Amount; and

(c) any other matter relating to finance for and of the Local Government referred to the Finance Commission by the Governor, or the Government, or by a Local Government.

(2) The recommendations shall be based on the principles of fiscal need, fiscal capacity, fiscal effort and performance.

(3) Before finalization of the recommendations under sub-section (1), the Finance Commission shall hold consultations with the relevant Departments of the Government, Local Governments and, in the discretion of the Finance Commission, with any other body or persons and this process may carry on during the currency of an Order made by the Governor under sub-section (5) of this section.

(4) The Finance Commission shall forward the provisional recommendations prepared under sub-section (1) to the Cabinet, which shall provide its views within two weeks failing which the Finance Commission shall make its recommendations to the Governor.

(5) The Finance Commission may review the recommendations on receiving the views of the Cabinet if any, and on finalization of its recommendations shall forward them to the Governor.

(6) As soon as may be after receiving the recommendations of the Finance Commission, the Governor shall by Order specify in accordance with the recommendations of the Finance Commission under clause (a) of sub-section (1), the Provincial Retained Amount and the Provincial Allocable Amount, and in turn the shares inter se of the Local Governments and that share shall be paid directly to the Local Government concerned promptly in accordance with the laid down procedure:

Provided that the Finance Commission may recommend an interim formula only on financial year 2002-2003.

(7) The Governor may, by Order, also make grants in aid of the revenues of the Local Government in need of assistance and such grants shall be an additional charged expenditure upon the Provincial Consolidated Fund after deduction of Provincial Allocable Amount.

Certain Institutional process of the Finance Commission.

120-E. (1) In every financial year, at least three months before the finalization of the Provincial Budget the Finance Commission shall require the Finance Department to submit a statement of estimated revenues and expenditures of the Government for the following financial year and shall also require a statement of the Provincial Allocable Amount and its distribution prepared in the light of the Order under section 120-D (6).

(2) The Finance Department shall provide the Finance Commission with a statement of the Provincial Allocable Amount and its distribution, prepared in accordance with the Order under section 120-D (6), on approval of the Provincial Budget.

(3) The Finance Commission may cause any information required for making assessments and decisions on fiscal transfers to be placed before it from any organization or office of the Government, or Local Government.

(4) The Finance Commission shall take all decisions by a majority of members present and voting:

Provided that at least a majority of the professional members are present:

Provided further that the Chairman shall have the casting vote.

(5) The Finance Commission shall present to the Government and local governments an annual report on fiscal transfers and local government resources.

(6) The Government shall cause a copy of the report to be laid before the Provincial Assembly and the local governments shall cause a copy of the report to be laid before the respective Councils.

Provincial Allocable Amount and composite balance.

120-F (1) The Provincial Allocable Amount reflected in the annual Budget of the Province shall be in accordance with the Order specified in section 120-D (6).

(2) All Local Government funds in a Province, except the Union Funds, shall form part of the Composite Balance of the Province only for the purpose of calculating the overdraft requirements of the province.

Formula and its application and revision.

120-G (1) The Provincial Allocable Amount and shares of the Local Government shall be determined in accordance with the Order and shall be paid on the basis of actual monthly receipts of the Government.

(2) The Order shall remain in force for a period of three years.

(3) At least six months before the expiry of the aforesaid period, the Finance Commission shall recommend the formula for the next period, in accordance with sub-section (1) of section 120-D, on the basis of evaluation of impact of fiscal transfers on the Local Governments and other relevant matters.

(4) Any evaluation similar to the objectives of sub-section (3) above carried out by an agency other than the Finance Commission may also be taken into consideration by the Finance Commission.

(5) In case the recommendation is not finalized before the expiry of the Order under section 120-D, the Order in force shall continue to serve as the determinant of the Provincial Allocable Amount and the shares of the Local Governments, as the case may be, till such time that a new Order is made.

Obtaining of data.

120-H (1) The data required for the formulation and application of the formula shall be obtained by the Finance Commission from the Federal, Provincial or Local Governments, and or from any authority, corporation, body, or organization established by or under law or which is owned or controlled by any Government or in which any of the Governments has a controlling share or interest or any other source.

(2) The Finance Commission may, where it deems appropriate, institute data collection or recommend such data collection to any agency and may also recommend to the Government to bear the cost of such data collection.

120-I The Government and the Local Governments shall provide reports to the Finance Commission in accordance with time frames and methodology for the flow of funds prescribed by the Finance Commission. **Ensuring flow of funds to local governments.**

120-J (1) The Finance Commission in consultation with the Government shall determine the requirements for certification of fiscal transfers. **Certification requirements for fiscal transfers.**

(2) Certifications under sub-section (1) shall, inter alia, include the following -

a) Provincial Allocable Amount and its calculation;

b) transfer of funds in accordance with determined shares to the District Governments, Taluka Municipal Administrations, Town Municipal Administrations and the Union Administrations in the Province.

c) transfer of funds in accordance with the decisions of the Finance Commission on references made to it from time to time; and

d) revenues and expenditures of the Government and Local Government.

(3) In cases where the institutional processes of the Government or the Local Governments generate data required for administration of fiscal transfers, the Finance Commission may recommend further requirements for certification.

(4) The certification required by the Finance Commission shall be furnished to the Finance Commission by the Government, Local Governments, any relevant agency connected with the Government or the Federal Government.

120-K. The Government or a Local Government may seek redress of grievances relating to any matter connected with fiscal transfers by the Government concerning itself or another Local Government by making a reference to the Finance Commission alongwith the grounds of such grievance whereupon the Finance Commission may take a decision for the purpose of redress of grievance provided that the decision so made shall not change the Order in force under sub-section (6) of section 120-D or the shares of the Local Government.

Reference by Provincial Government or Local Government to the Finance Commission.

120-L. Notwithstanding anything to the contrary contained in section 191 of the Ordinance, the Government shall make Rules of Business of the Finance Commission on the latter's recommendations.

Rules of Business.

120-M. Nothing contained in this Chapter shall be construed to impose limits on the powers of the Finance Commission under any law for the time being in force as regards calling for any information relating to the fiscal transfer formula and transfer of funds and shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act No.V of 1908).".

Procedural powers of the Finance Commission.

21. In the said Ordinance, for the existing Seventh Schedule, the following shall be substituted: -

Amendment of 7th Schedule of the Sindh Ordinance XXVII of 2001.

"Seventh Schedule
(see section 120-B)

Terms of Office of the Professional Members of the Finance Commission.

1. A member of the Finance Commission shall hold office for a minimum term of three years from the date of his entering upon office.

2. A member may resign his office under his hand addressed to the Governor.

3. No member shall be removed before the expiry of his term except as provided in the Ordinance.

4. Before entering upon office a member shall take oath in the form set out in a notification before the Governor.

5. On declaration of a vacancy in the Finance Commission by the Chairman, the Governor shall appoint a member within sixty days.

6. The remuneration of the professional members shall be in accordance with their status and experience and may be in the form of honoraria.

7. A member shall be provided all necessary support staff, resources and equipment for carrying out his functions.”.