

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:-

Ahmed Ali M. Shaikh, CJ &
Yousuf Ali Sayeed, J

C.P No. D-4887 of 2021

Anwar ZaibPetitioner

Versus

Returning Officer/The Cantonment Executive Officer
Clifton Cantonment Board and others.....Respondents

C.P No. D-4907 of 2021

Manzar Ali.....Petitioner

Versus

Election Commission of Pakistan and others.....Respondents

Muhammad Tariq Abbas, Advocate, for the Petitioner in
CP No. D-4887 of 2021. Syed Haider Imam Rizvi,
Advocate, for the Petitioner in C. P. No. D-4907 of 2021

Zaem Haider, Advocate, for Cantonment Board Clifton.

Abdullah Hanjrah, Sr. Officer, Election Commission of Pakistan.

Dates of hearing : 02.09.2021 and 03.09.2021

JUDGMENT

YOUSUF ALI SAYEED, J. - The Petitioners before us presented themselves as candidates for the Elections of Members of the Cantonment Board Clifton (“**CBC**”) on General Seats, but were apparently classified as defaulters of dues owed to the CBC on the basis that certain arrears stood reported against the properties mentioned by them as their place of residence, with their Nomination Papers consequently being returned/rejected by the Returning Officer for lack of qualification under the Cantonment Local Government (Election) Ordinance 2002 (the “**2002 Ordinance**”).

2. Election Appeals Nos. 5 and 6 of 2021 were then preferred before the Appellate Authority, being the District and Sessions Judge, Karachi (South), but failed to bear fruit in either case, culminating in dismissal vide separate orders dated 10.08.2021, with the Petitioners then invoking the Constitutional jurisdiction of this Court.

3. Learned counsel appearing on behalf of the Petitioners invited attention to the relevant qualificatory provision of the 2002 Ordinance – viz Section 13-J, which reads as follows:

“13. Qualifications for candidates and elected members. -- (1) A person shall qualify to be elected or to hold an elective office or membership of a Local Government, if he,

- (a) -----;
- (b) -----;
- (c) -----;
- (d) -----;
- (e) -----;
- (f) -----;
- (g) -----;
- (h) -----;
- (i) -----;
- (j) *has not been adjudged a wilful defaulter of any tax or other financial dues owned to the Federal, a Provincial, or a local government or any financial institution, including utility bills outstanding for six months or more;*”

4. They submitted that the Petitioners were tenants of the premises against which arrears had been said to be due and had also been and unaware of the existence of such liability, but for good measure had proceeded to promptly discharge the same by way of abundant caution albeit that such obligation had not been adjudicated and, as per Sections 65 and 92 of the Cantonments Act, 1924, was even otherwise primarily that of the owner. It was contended that under the given circumstances, neither of the Petitioners could be deemed to be a ‘wilful defaulter’ and certainly had not been ‘adjudged’ to be so, hence qualified in terms of the permissive language of the S.13.

5. Conversely, learned counsel appearing on behalf of the CBC, contended that the Petitioners were wilful defaulters of property tax and had only settled the outstanding liability after rejection of their Nomination Papers, which did not serve to cure the defect and lack of qualification as existed on the date of rejection. It was argued that the outstanding bills issued in that respect itself constituted an adjudicated liability, and it was submitted that the Nomination Papers had thus been rejected on legitimate grounds, as had been properly upheld on appeal, hence the matter did not warrant interference and the Petitions were liable to be dismissed.

6. We have heard and considered the arguments advanced in light of the material placed on record. Admittedly, certain arrears were pointed out at the time of scrutiny of the Nomination Papers submitted by the Petitioners, which were then settled by them the very next day. The quantum in either case is not a matter of significance in the context of S.13 of the 2002 Ordinance, nor is it necessary for purposes of this Petition for us to dwell into the question of whether the payment obligation lay primarily upon the Petitioners. Suffice it to say that the matter of their liability and the question of wilful default had never been adjudicated by a judicial forum, as was conceded by counsel for the CBC. Indeed, the impugned Orders of the fora below do not even allude to any such adjudication having taken place.

7. The term “adjudged a wilful defaulter” was considered in an analogous case reported as *Sardar Muqem Khan Khoso v. District Returning Officers and other* 2006 MLD 163 in the context of the qualifications for candidates and elected members of a local government then prevailing under Section 152 of the erstwhile Sindh Local Government Ordinance, 2001, where after considering a host of reported judgments a learned Division Bench of this Court held that:

On preponderance of the cases as referred to above. Disqualification in terms of section 152(j) of the Ordinance, 2001 is attracted the moment it is shown that a Court of a competent jurisdiction has “adjudged” the intending candidate or the returned candidate on the date of scrutiny, a defaulter and a judgment and decree is passed. It matters not whether the judgment and decree determining the liability is outcome of full-fledged adjudication, trial or may it be a result of compromise or settlement. Adjudication of intending candidate or the returned candidate being a defaulter or in arrears of outstanding loan by a Court of “competent jurisdiction” is sufficient to attract disqualification under section 152 (j) of SLGO, 2001. Once such disqualification is attracted, it is of not relevant for the purpose of SLGO 2001, whether any steps were taken by the Financial Institution for the recovery of the amount adjudged by the Court or not.”

8. Suffice it to say that such binding precedent is directly applicable to the matter at hand as the relevant provisions of the particular statutes are *in pari materia*.

9. Ergo, the captioned Petitions were allowed vide a short Order made in Court upon culmination of the hearing on 03.09.2021, with the Orders passed by the Returning Officer and Appellate Authority being set aside and the former being directed to accept the Nomination Papers of the Petitioners.

JUDGE

Karachi
Dated _____

CHIEF JUSTICE