

129

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C. P. No.D-489 of 2022.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
--------------------	---------------------------------------

1. For orders on office objection 'A'.
2. For hearing of main case.

**08.06.2022.**

Mr. Muhammad Afzal Jagirani, advocate for the petitioner .

Mr. Muhammad Imran Abbasi, D.A.G.

Mr. Abdul Hamid Bhurgri, and Miss Leela Kalapna,  
Additional A. G Sindh.

-.-.-.-.-

Mr. Abdul Ghaffar Shaikh, advocate files power on behalf of respondent No.5, taken on record. This petition pertains to Local Government Elections year 2022. The case of the petitioner in the matter pertains to election dispute, whereby the order of the appellate Authority being the District & Sessions Judge, Kashmore at Kandhkot, by way of Election Appeal No.27 of 2022, whereby the petitioner was disqualified, has been impugned. In the petition, it has been agitated that the banking decree based upon which the impugned order was made out was an ex-parte decree and that having come to know about the specific liability thereon, the same was paid and cleared by the petitioner. Learned counsel for the petitioner contends that the liability in its specific amount came before the petitioner at the appellate stage, whereas, no such petitioner were available before the Returning Officer and as such on the first opportunity of having come to know about said liability same was cleared. Learned Addl. A. G, however, contends that the petitioner is not liable to be considered as not having the knowledge as loan is admitted in the matter and although repayment was made the existence of liability having been in knowledge and not disputed was ever present. Learned counsel for the respondent No.5 contends that the Banking law applicable in respect of said liability presumes service on the petitioner and as such the existence of liability and its knowledge cannot be out rightly rejected.

Having heard learned counsel for the parties and gone through the record, learned counsel agree that the disqualification for the petitioner in respect of local election is prescribed under section 36



131

of the Sindh Local Government Act, 2013 and in this regard we have also been given order of Hon'ble Supreme Court of Pakistan in Civil Petition No.2976 of 2015 wherein disqualification of the Local Government before the Local body election has been considered similar to that of the Provincial Assembly. As such it is contended that case of the petitioner stood disqualified. We have gone through the relevant law as well as the requirements of nomination form which though require details of assets, but the element of liabilities are not found present. In the said circumstances the affidavit element covering the same as to the liability would not directly disqualify the petitioner. The disqualification portion of Sindh Local Government Act 2013, Act, by way of Section 36 requires determination of disqualification in said sub-section 'j' as following :

- (j) he is for the time being disqualified or chosen as a member of the Provincial Assembly under any law for the time being in force.

Apparently, the said disqualification was not determined and on the other hand we have observed that once the liability came forward before the learned Presiding Officer, no opportunity was provided to the petitioner to clear the liability, as such without going into further details we had allowed this petition and set aside the impugned order by declaring that the petitioner having cleared the liability qualifies for entertainment of being a candidate for the Local Government Election. The petition stood disposed of accordingly by our short order dated.08.06.2022 and these are the reasons of the same.

  
Judge

  
Judge