

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI
C.P.No.D-3733 of 2016

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before:-

Mr.Justice Muhammad Ali Mazhar

Mr.Justice Agha Faisal

Muttahida Quami Movement (MQM) & others.....Petitioners

Versus

Province of Sindh & others.....Respondents

Priority

1.For hearing of CMA No.18594/2016.

2.For hearing of main case.

22-03-2019

Mr. Muhammad Aqil Zaidi, Advocate for the Petitioners.

Mr. Jawad Dero, Additional Advocate General Sindh.

Muhammad Ali Mazhar, J: The petitioners have sought the declaration against the respondent Nos.5 and 6 that they were bound to accept party ticket of MQM produced by the petitioner No.2. The next declaration has been sought that result of reserved seats dated 08.06.2016 issued by respondent No.6 was illegal and unconstitutional. Further directions have been sought against the respondent Nos.2 to 6 to accept the party ticket dated 04.06.2016 issued by MQM to the petitioner No.2 and carry out fresh indirect election against reserved seats for women, labour, youth and minority. They have also prayed for suspension of operation of the result dated 08.06.2016 for reserved seats. The learned counsel for the petitioners argued that the respondent Nos.5 and 6 unlawfully refused to accept the party ticket issued to the petitioner No.2. The petitioners were being harassed to change their political loyalty and they have been deprived of their fundamental rights and the right to franchise. It was further contended that the respondent Nos.5 and 6 have

violated the provisions of SLGA-2013 and being independent elected councillor in Local Body Election, the petitioners have right to join any political party of their choice.

2. We raised a query to the learned counsel for the petitioners that on refusal, any appeal was filed or not? He submits that an application was sent to the Election Commission of Pakistan, but no appeal or election petition was filed.

3. So far as the issue of non-acceptance of party ticket, that was to be considered at the time of scrutiny under Rule 18 of the Sindh Local Councils Election Rules, 2015. The Returning Officer may conduct summary enquiry for the acceptance or rejection of nomination paper and certain condition are already provided in the Rules. Under sub-rule (4) the Returning Officer is required to endorse on each nomination paper his decision accepting or rejecting it, and in the case of rejection, record reasons. Whereas under sub-rule (5) an appeal against the decision passed under sub-rule (4) may be challenged before the Appellate Authority appointed by the Election Commission of Pakistan.

4. The learned Additional Advocate General Sindh referred to the comments filed by Provincial Election Commissioner, Sindh on behalf of respondent Nos.2, 3 and 4 in which it is stated that for the Local Government Elections the Election Commission of Pakistan appointed District Returning Officer for each district. The Deputy Commissioner, Naushahro Feroze was appointed as District Returning Officer and Safdar Ali Bhugio, ADC-1 was appointed as Returning Officer for the seats reserved in the Town Committee Bhiria Road, Taluka Bhiria, District Naushahro Feroze, whereas the District & Sessions Judge, Naushahro Feroze was appointed as appellate authority to hear the appeals against the decisions with regard to acceptance and rejection of the nomination papers of the candidates. It is further stated that the

respondent No.2 issued election schedule for the election of Chairman/Vice Chairman of Municipal Committee, Town Committees and the District Council in District Naushahro Feroze to be held on 24.08.2016. After holding of Local Government Elections for the general seats, elections to the seats reserved for women, peasant, labourer, youth and minorities were held in which all independent returned candidates were provided opportunity to join political parties and confirmation to this effect issued by the authorized officer of respective political parties was required to be submitted to the returning officer.

5. According to the comments filed by the Deputy Commissioner, Naushahro Feroze (District Returning Officer) in which he clearly stated that the petitioner No.2 never approached him with any such grievance, however, two applications of petitioner No.2 were received from Deputy Director, Provincial Election Commissioner (Sindh) on 07.06.2016 and a complaint dated 10.06.2016 on which the report was called from the concerned returning officer who reported that applicant namely Muhammad Yousif Arain submitted his application and original party ticket of PPPP in his name issued by Mr. Taj Haider, General Secretary, Pakistan Peoples Party Parliamentarian (Sindh) on 04.06.2016 stating therein that he has joined PPPP. The returning officer further stated that the allegations levelled by the petitioners are baseless and the instant application merits no consideration against which the petitioners could have approached to the competent appellate authority. It is further stated that as per election schedule issued by Election Commission of Pakistan for independent returned candidates to join any political party, the last date was 06.06.2016.

6. The learned Additional Advocate General Sindh argued that instead of filing this petition, the petitioners should have filed election petition and in case of dismissal of the petition,

they should have filed appeal under Section 54 of Sindh Local Government Act, 2013.

7. Heard the arguments. The complicated and disputed questions of facts disclosed in this petition cannot be decided in the writ jurisdiction. The petitioners want that the result of reserved seats be declared illegal and restraining order against the respondents from carrying out Local Government Elections for Chairman and Vice Chairman of Town Committee Bhiria Road, District Naushahro Feroze. They further want that the result announced on the reserved seats may be suspended. The election disputes cannot be resolved through constitutional jurisdiction. Under Section 46 of the Sindh Local Government Act, 2013, it is clearly provided that the election to an office of a council shall not be called in question except by an election petition and the candidate may, in the prescribed manner, file an election petition before the Election Tribunal challenging an election under this Act. Likewise under Section 47 the Election Tribunal has been constituted which may exercise powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and shall be deemed to be a court. According to Section 54 of the Sindh Local Government Act, 2013, any person aggrieved by final order of the Tribunal within thirty days of the communication of such order may prefer an appeal to the High Court.

8. The appropriate remedies provided under the law have not been availed by the petitioners. As a result of above discussion, this petition is dismissed alongwith pending application. However, the petitioners may avail appropriate remedy in accordance with the law.

Judge

Judge