

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**C. P. No. D – 586 of 2022**

Date of hearing	Order with signature of Judge
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**Hearing of case (priority)**

1. For orders on office objection at Flag-A
2. For orders on CMA No.2303/2022 (S/A)
3. For hearing of main case

**01-06-2022**

Mr. Achar Khan Gabol, Advocate for the Petitioners.

Mr. Nisar Ahmed Bhanbhro assisted by Mr. Sheeraz Fazal,  
Advocates for Respondent No.5.

Mr. Zeeshan Haider Qureshi, Law Officer of Election Commission of  
Pakistan.

Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

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Through this Petition, the Petitioners have impugned order dated 23-05-2022 passed by the Appellate Tribunal, Naushahro Feroze in Election Appeal No.25 of 2022, whereby the Appeal has been allowed and the order of the Returning Officer dated 20-05-2022 has been set aside.

Notice was ordered and Counsel for Respondent No.5 has effected appearance and has vehemently opposed this Petition on maintainability. However, it appears that Respondent No.5 was initially aggrieved by change of his electoral rolls from Town Committee Tharu Shah to Town Committee Kandiyaro and had filed C. P. No. D-509 of 2022, which was disposed of vide order dated 17-05-2022 by directing the District Election Commissioner, Naushahro Feroze, to decide his pending application (present Respondent No.5) for change of electoral rolls in accordance with law. Though such order was passed on the very next day i.e. 18-05-2022, whereby such application was dismissed on the ground that the same was belated; whereas, after announcement of the Election program, such an application cannot be entertained; however, despite this, nomination was filed in Town Committee, Tharushah, and the Returning Officer on 18-05-2022 passed order to the effect that the nomination form of the candidate is provisionally accepted as the matter is pending with the High Court, Sukkur Bench, and the name will be displayed in scrutiny list of candidates. It further appears that the Returning Officer thereafter on 20-05-2022, pursuant to order of the District Election Commissioner, rejected the nomination, and

the Respondent No.5, being aggrieved, filed Election Appeal as above and the impugned order has been passed in his favour. The operative part of the impugned order reads as under:

*“Appellant has submitted nomination paper to contest election of Member of Ward No.4 Town Committee Tharushah which has been provisionally accepted by the Returning Officer and since his nomination form has been provisionally accepted, therefore, instant appeal has been filed.*

***Since the application filed by the appellant has not been decided properly by the District Election Commissioner inspite of order of the High Court, therefore, the right to contest the election can not be taken away from the appellant as he is aggrieved person and his voter list name has been deleted from the voter list of town committee Tharushah to Town Committee Kandiaro.***

*Therefore, impugned order is set-aside and appellant is allowed to contest the election from the Town Committee Tharushah.*

*The District Election Commissioner shall issue such provisional vote list containing name of the appellant as voter of Town Committee Tharushah and his name shall be deleted from the list of town committee Kandiaro.*

*The nomination form of appellant is accepted.”*

On perusal of the aforesaid order, it appears that the Election Tribunal was misdirected in observing that the application filed by Respondent No.5 has not been decided properly by the District Election Commissioner. Such finding was unwarranted inasmuch as the Election Tribunal had no jurisdiction to record the same as it was for Respondent No.5 to agitate and challenge the order dated 18-05-2022 passed by District Election Commissioner in appropriate proceedings. This, in fact, has already been done by Respondent No.5 as informed today. Insofar as the nomination and its acceptance is concerned, once an order was passed by District Election Commissioner on 18-05-2022, then Respondent No.5 could only have filed his nomination in respect of Town Committee where his vote was registered whether rightly or wrongly. Despite passing of an order by the District Election Commissioner, the tribunal has allowed the appeal without any lawful justification.

As to the objection regarding maintainability of this Petition, we are of the view that since at the outset the order of the Returning Officer was in accordance with Rule 18(iii) of the Sindh Local Council (Election) Rules, 2015, whereby, the nomination was rejected, there could not have been any objector before the Returning Officer; nor any Appeal could have been filed

by anyone except Respondent No.5; and it is only after passing of the order by the Tribunal that anyone including the petitioners could have been agreed. It has been informed that at least in respect of ward No.4 of Town Committee, Tharu Shah, Petitioner No.2 is a candidate on the seat of General Councillor; therefore, in our considered view, he can maintain this petition. There is another aspect of the matter as well. The issue here is not of any disqualification of Respondent No.5 on merits or as to ineligibility due to failure to meet any of the prescribed conditions of being a valid candidate. It is just because of the fact that an attempt has been made by him to contest elections in a Town Committee where his vote is not registered. In that case, he stands disqualified for the entire Town Committee, irrespective of any objections to that effect.

In our view, the entire exercise conducted in the filing of nomination; its provisional acceptance first; then its rejection and lastly, allowing of the Appeal by way of impugned order of the Tribunal, amounts to gross illegality by the forums below, and cannot be brushed aside on a mere technical objection; therefore, we do not subscribe to this objection regarding maintainability.

In view of such position, this Petition is **allowed**. The order passed by the Appellate Tribunal dated 23-05-2022 stands set aside and that of the Returning Officer initially passed on 18-05-2022 also stands set aside. The nomination of Respondent No.5 stands rejected. Office to communicate this order to the Election Commission.

J U D G E

J U D G E

Abdul Basit