

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition Nos. **D-3990 (Rehman Khan v Federation of Pakistan & Others)**
Along with CP Nos. D- 3991, 3993, 3994, 3995, 4002, 4010, 4016, 4017, 4018, 4019, 4020,
4030, 4037, 3972, 3973, 3974, 3979, 3980, 3981, 3982, 3983, 3984, 4009, 4022, 4023, 4024,
3986, 3987, 4005, 4006, 4025, 4026, 4027, 4028, 4029,
4032 & 4041 of 2022

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Amjad Ali Sahito

For Petitioners in all Petitions:

M/s. Shah Imroze Khan, Tassaduq Nadeem, Anwar Kamal, Mehjabeen Rajpoot, M. Naseer Khan, Muhammad Sagheer Khan, Farhan Khaliq Anwar, Raja Rashid Ali, Abdul Latif Leghari, Ch. M. Saeed-uz-Zaman, Farhan Sardar, Saeed Ahmed, Ghulam Nabi Shar, Advocates.

For Respondents:

(Federation of Pakistan and others)
Mr. Ali Safdar Debar, A.A.G.
Mr. Kafeel Ahmed Abbasi, DAG and
Mr. Muhammad Ahmed, Asstt. Attorney General.
Mr. Sarmad Sarwar, Law Officer, ECP and
Hamid Hussain, District Election Commissioner, West.

Date of hearing:

30.06.2022.

Date of Order:

30.06.2022.

ORDER

Muhammad Junaid Ghaffar, J: All these Petitions involve a common question regarding rejection of nomination papers filed for Local Government Elections (Phase-II) being held on 24.7.2022, and therefore, were heard together and are being decided through this common order. The Nominations filed by the Petitioners have been rejected by the Returning Officers as well as respective Appellate Authorities on the ground that either, the Proposer(s); or the Seconder(s), of the Petitioners are not registered as voters in the same Electoral area or Ward from which the Petitioners are contesting. It is the case of the Petitioners that such defect, if any, is a curable defect; hence, the Returning Officers were obligated to permit the

petitioners to file another nomination in terms of Rule 18(3) of the Sindh Local Council (Election) Rules, 2015, whereas, proper lists were not provided by the Election Commission of Pakistan (“ECP”); and therefore, the petitioners were not at fault. They have contended that the impugned orders of the forums be set-aside and a final chance be given to the petitioners to cure the defect, if any. In support they have relied upon the cases reported as ***Khalid Ahmed Memon V/s. Deen Muhammad Talpur and 2 others (2016 MLD 1527)***, ***Abdul Latif and others V/s. The Appellate Authority for Local Councils Khairpur/The District and Sessions Judge and others (2016 CLC 855)***, ***Muhammad Yousif V/s. Federation of Pakistan through Election Commission of Pakistan, Islamabad and another (2016 MLD 1464)***, ***Haji Khan Bhatti V/s. Province of Sindh through Provincial Election Commission and others (2016 SCMR 1970)*** and an unreported Order of Division Bench of this Court passed in ***C.P No.D-3088/2015 and two others dated 13.11.2015***.

3. On the other hand, Orders of the forums below are supported by the Law Officer of the Election Commission of Pakistan.

4. We have heard all the learned Counsel and perused the record. Though there are various different petitioners before us and have impugned separate orders of the Returning Officers and the Appellate Tribunal; however, all these cases involve a common question inasmuch as their nomination forms for Local Government Elections, 2022, have been rejected on the ground that either their proposer or the seconder is not a registered voter of the Ward for which the Petitioners are contesting the Elections. It would be advantageous to refer to the relevant provisions of the Sindh Local Government Act, 2013 i.e. Section 37 which reads as under:-

“37. **Prohibition on dual membership.** (1) Save as otherwise provided under this Act, no person shall, at the same time, be a member of more than one Council :

¹[* * * * *]

²[(2) (a) Candidate for the District Council, membership, may contest the election from any Union Council of the District.

(b) Candidate contesting for membership of Town Committee or Municipal Committee, may contest the election from any ward of the respective Committee.

Provided that the proposer and seconder as in clause (a) and (b) shall be registered voters of the concerned Union Council or ward as the case may be.]

(3)

(4)

(5)

(6)

5. From perusal of the above provision including Sub-Section 2(b) and the Proviso thereof, it reflects that in case a Candidate is contesting for membership of Town Committee or Municipal Committee, he can contest the same from any ward of the respective Committee; however, it is subject to that the proposer and seconder, as the case may be, shall be registered voters of the concerned Union Council or ward as the case may be. Admittedly either the proposers or seconders of the respective Petitioners are not the registered voters of the same ward, for which the Petitioners have filed their Nomination Papers. The argument that proper lists were not provided and the Petitioners were unable to find out the correct ward of their proposer or seconder does not appear to be convincing inasmuch it was incumbent upon the candidates to first check all these aspects and obtain a valid list of voters of their area and only then file nomination papers. Seeking a recommendation and endorsement from a proposer and a seconder is a serious business and cannot be taken in a casual manner. It is the candidates foremost duty to ensure that his proposer and seconders are qualified for such purposes and his candidature would not be rejected because of their disqualification. As to non availability of valid list showing correct Ward numbers, it may be observed that firstly, no concrete material has been shown to us to substantiate such claim; secondly, ECP has shown us various lists which have been prepared Union Council wise on Form-9 read with Rule 21(5) of the Election Rules, 2017, which clearly shows the Block Code of a voter and then his correct and correlated Ward Number. In view of such factual position we are unable to agree with the arguments of the Petitioners Counsel to this effect. It has also been argued that the petitioners had taken assistance from SMS service through 8300 and in this regard it would suffice to observe that the same is only a facility initiated by the ECP for the benefit of general public; but is neither binding nor is supported by any Statutory Provision or Rule, and therefore, we cannot accept that merely on such basis, the Nominations can be accepted. Secondly, the SMS facility very clearly states that the information is provisional and for that a proper confirmation has to be obtained from ECP. Moreover, it is also subject to change as and when required. In our considered view the petitioners / candidates were required to first inquire as to the status and exact addresses as well Ward Numbers of their proposers and or seconders, and only thereafter, ought to have filed their Nomination Papers. It may also be observed that pursuant to Rule 16(5) of the Sindh Local Council (Election) Rules, 2015, a maximum of five nominations can be

filed by a Candidate, so that if any of the nominations are rejected, the candidate can contest on any other valid nomination. Admittedly, none of the petitioners have opted to file more than one nominations.

6. As to the arguments that it is a curable defect, and in terms of Rule 18(3)(d)(ii) *ibid*, the Returning Officer or the Appellate Authority or for that matter, this Court must allow and give permission to cure such defect is concerned, the same also appears to be misconceived and is in direct conflict with the dicta laid by the Hon'ble Supreme Court in the case reported as ***Rana Muhammad Tajammal Hussain V/s. Rana Shaukat Mahmood (PLD 2007 Supreme Court 277)***. , wherein it has been held that such a provision¹ is mandatory in nature, and neither the Returning Officer, nor the Appellate Authority or for that matter, this Court can cure such defect, which is not of curable nature but is of a substantial nature. Insofar as reliance on the case law cited (*supra*) is concerned, we are of the view that same are not relevant for the present purposes as different facts were involved; hence, distinguishable. Moreover, once the Hon'ble Supreme Court has held that it is not a curable defect, then the said judgment of the Hon'ble Supreme as above, is binding on this Court as against the judgments of the High Court.

7. In view of the above facts and circumstances of the case and after hearing all learned Counsel for the Petitioners as well as Representative of ECP we had dismissed all these Petitions by means of a short order in the earlier part of the day and these are the reasons thereof.

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¹ Sections 12 and 14 Representation of the Peoples Act, 1976, which is similar to the provision in hand.