

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-4066 of 2022

Date Order with signature of Judge

FRESH CASE

- 1) For orders on Misc. No. 17560/2022. (Urgent)
- 2) For orders on Misc. No. 17561/2022. (Exp)
- 3) For orders on Misc. No. 17562/2022. (Stay/App)
- 4) For hearing of main case.

01.07.2022.

Mr. Iqbal A. Qureshi, Advocate for Petitioner.
 Mr. Sarmad Sarwar, Law Officer, ECP.

- 1) Granted.
- 2) Granted subject to all just exceptions.
- 3-4) Through this Petition, the Petitioner has impugned order dated 25.06.2022 passed by the Appellate Authority in Election Appeal No. 50/2022, whereby, the order of the Returning Officer, through which Nomination of the Petitioner was rejected, has been maintained. The reason so assigned is that the Proposer of the Petitioner was not a registered voter of the Ward, for which the Petitioner is contesting the elections in question. However, we have already decided this issue vide Order dated 30.06.2022, passed in C.P Nos. 3990 of 2022 and others, in the following terms:-

“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 provision 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.”

In view of above, instant Petition is hereby dismissed in limine with pending applications.

J U D G E

J U D G E

Ayaz