

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitutional Petition No.D-633 of 2022.

Before:

Mr. Justice Adnan-ul-Karim Memon,
Mr. Justice Abdul Mobeen Lakho,

Petitioner : Asif Ahmed Khoso.

Respondents : Deputy Commissioner, Kamber-Shahdadkot at Kamber
& others.

Mr. Khadim Hussain Khoso, advocate for the petitioner.

Mr. Munawar Ali Abbasi, Asst. Advocate General.

Mr. Mohammad Imran Abbasi, Asst. Attorney General.

Date of hearing : 27.07.2022.

Date of order : 27.07.2022.

ORDER

ADNAN-UL-KARIM MEMON, J.- The grievance of the petitioner, who was one of the contesting candidates in the Local Bodies Elections (Phase-1) for the seat of District Councilor from Ward-16 Allah Abad, Taluka Mirokhan, in this petition is against shifting of two Census Block Codes No.316020303 and 316020304 from polling station GPS Rab Wato to GPS Pholro of Taluka Mirokhan, District Kamber-Shahdadkot at Kamber.

2. At the outset we asked the learned counsel to satisfy this court about the maintainability of the instant petition on the premise that the first portion of the election process of Local Bodies Elections, 2022 (Phase-I) has already been completed and this petition has become infructuous.

3. Mr. Khadim Hussain Khoso, learned counsel for the petitioner, has replied to the query and submitted that the respondent No.1/District Returning Officer, Kamber-Shahdadkot at Kamber despite being approached in black and white by the petitioner did not restore the aforementioned two census block codes to their original location, whereby undue favor has been extended by the official respondents to the opponent candidates of the petitioner. He further contends that due to the shifting of said two census block codes, the voters of the said blocks will face inconvenience; besides there is the apprehension of rigging as well as the creation of bad law and

order situation because of the opponent candidate of the petitioner belonging to the ruling party of the province.

4. The learned Asst. Attorney General as well as the learned Asst. A.G. Sindh have unanimously stated that since the election process of Local Bodies Elections, 2022 (Phase-I) is over, this petition has become infructuous and is liable to be dismissed accordingly.

5. We have heard learned Counsel for the parties and have perused the material made available before us.

6. As the question has also been raised as to the propriety of interfering in Constitutional Petition under Article 199 of the Constitution with orders passed by the Election Authority, as discussed supra, as election process of Local Bodies Elections, 2022 (Phase-I) has already been concluded with the announcement of the results, now the vires of the process could be assailed before the Election Tribunal constituted by the Election Commission of Pakistan. On the aforesaid analogy, we express our opinion that the jurisdiction of this Court to issue writ, at this stage, against the order of the election authority, after the election process, is liable to be assailed before the Election Tribunal, for the simple reason that it is well settled that where there is another remedy provided, the Court may properly exercise its discretion in declining to interfere under Article 199 of the Constitution. However, it should be remembered that under the election law, as amended up to the day, Constitutional petition could be dismissed on the aforesaid preliminary ground; and, the correctness of the decision of the District Returning Officer could not be challenged before the Election Tribunal.

7. The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity, but is a purely statutory proceeding. It is also well-settled that it is a sound principle of natural justice that the success of a candidate who has won an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law, as discussed supra.

8. In this view, it would be a proper exercise of discretion under Article 199 of the Constitution to decline to interfere with such an election process in terms of the provision of Appeal under the Sindh Local Bodies Election Rules 2015, against the declaration of result of the returned candidate. As it is well-settled law the Courts and Tribunals are constituted to decide the matters between the parties within the confines of statutory limitations and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. Besides the above, the order dated 23.6.2022 passed by this Court has been complied with by the District Returning Officer vide order dated 24.6.2022, which decision is available on record.

9. We are, therefore, of the view that this petition does incur dismissal on the ground that the petitioner has to avail of his legal remedy before the Election Tribunal, by raising all his pleas, as agitated in the instant petition.

10. This petition is dismissed.

JUDGE

JUDGE