

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

C. P No. D-752 of 2022

**Before:**

Justice Adnan-ul-Karim Memon  
Justice Abdul Mobeen Lakho

The petitioner	Atta Muhammad Sarki, Through Mr. Athar Ali Bhutto, advocate
Respondent No.1	Federation of Pakistan Through Mr. Muhammad Imran Abbasi, Assistant Attorney General,
Respondent No.2.	Province of Sindh, Through Mr. Abdul Hamid Bhurgri, Additional Advocate General
Respondents No.3 & 4	District Election Commissioner, Jacobabad & District Returning Officer Jacobabad Through Mr. Zeeshan Hyder Qureshi, Law Officer, Election Commission of Pakistan a/w Zahid Hussain Bhutto, District Election Commissioner, Jacobabad
Respondent No.5,	Mazhar Ali, Returning Officer, U.C No.41, Madad Ali Khoso, District Jacobabad.
Respondent No.6	Niaz Ahmed Khoso, Through Mr. Wazeer Hussain Khoso, Advocate

Date of hearing & order: 02-08-2022

.....

**ORDER**

**Adnan-ul-Karim Memon, J.** Through instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, the petitioner has prayed that corrupt and illegal practice performed by respondent No.6 be declared null, void, and vague and pass suspension order against respondent No.6 from the status of U.C Chairmanship of U.C 41 Madad Ali Khoso, Taluka Thull, District Jacobabad and petitioner be declared as elected Chairman of U.C

No.41, Madad Ali Khoso, Taluka Thull, District Jacobabad, inter-alia on the ground that he has been convicted by the learned Accountability Court, Sukkur vide order dated 13.11.2019, thus he is disqualified to be declared as a returned Candidate from the subject constituency.

2. Private respondent present in court has submitted that before the learned Returning Officer, nobody could come forward to submit such objection as pointed out by the petitioner in the present proceedings, however, submitted that since the Election process of Phase-1, has already been completed and Election Tribunal has already been constituted; and, it is for the Election Tribunal to decide in this regard if at all anybody is aggrieved against the declaration of result of the Election, whereby he has been declared as a Returning Candidate from the subject constituency.

3. The learned Asst. Attorney General assisted by Zeeshan Hyder Qureshi, Law Officer, Election Commission of Pakistan and returning officer, as well as the learned Additional A.G. Sindh have submitted that Election Tribunal has already been constituted and it is for the Election Tribunal to decide in this regard.

4. We have heard the learned counsel for the parties, perused the records, and also examined the case law on the subject.

5. A free and fair election based on a universal adult franchise is the basic; the concept of democracy as visualized by the Constitution presupposes the representation of the people in Parliament and state legislatures by the method of election. Principally, the super-authority in Election Matters is the Election Commission of Pakistan under the Constitution; and, the principal is the returning officer, whereas, the followers are the presiding officers in the polling stations and the electoral work conforms to the elaborate legislative provisions. In the present case, it seems that nobody raised any objection about the qualification of the private respondent in terms of the order dated 13.11.2019 passed by the learned Accountability Court Sukkur, to the effect that he has already entered into a plea bargain, which is deeming conviction under the NAB law.

6. The short question before us, is as to whether the private respondent was/is disqualified to contest the Election of Local Bodies 2022, in terms of order dated 13.11.2019 passed by the learned Accountability Court Sukkur, whereby he has been convicted under the NAB law.

7. Prima facie, the private respondent has been barred by the learned Accountability Court Sukkur, from holding any public office in the Federal or Provincial Governments or any state-owned organization as held by the Hon'ble

Supreme Court in the case of *The State through Chairman NAB V/S Hanif Hyder and another*, **2016 SCMR 2031**, wherein the Hon'ble Supreme Court was pleased to hold, inter alia, held as under :

“2. During the hearing of these proceedings, we have noticed that the NAB in the exercise of powers under section 9 of the NAB Ordinance has started taking cognizance of the petty matters and therefore, notice was issued to the D.G. NAB to submit report in regard to the inquiries and or investigations, which the NAB has undertaken in respect of the amounts involved less than 100 Million and References, if any, filed which involved amount less than 100 million. A list has been provided. It is evident from this list that prima facie the inquiries and investigations undertaken by the NAB are not of mega scandals and apparently petty matters have been enquired into on the complaints. This is not the wisdom behind the legislation of the NAB Ordinance. The NAB Ordinance was primarily legislated to counter mega scandals and book the persons who are involved in mega scandals of corruption and corrupt practices. 3. We have also noticed that the provisions of section 25(a) of the NAB Ordinance empower the NAB to accept the offer of an accused person of Voluntary Return of the assets or gains acquired by him. Once an accused who alleges to have plundered colossal sums of money, deposits a portion of such amount determined by Chairman NAB voluntarily, that too, in installments, stands discharged from all his liability in respect of the matter or transaction in issue and goes back to join his job. This frequent exercise of powers of "Voluntary Return" by the Chairman NAB has in fact multiplied corruption on the one side and defeated the object of the NAB Ordinance on the other side. The NAB Ordinance was introduced to eliminate corruption of large magnitude. Provisions of section 25(a) were not meant to allow corrupt "public servants" who mint money through corruption or corrupt practices to get a clean chit from the NAB authorities by paying a portion of such alleged amount in terms of section 25(a) of the NAB Ordinance. What is more shocking for us is that no departmental proceedings are initiated against any of such accused, who entered into Voluntary Return. The option of Voluntary Return by a public servant and or a civil servant falls within the ambit of "misconduct" and needs to be departmentally proceeded against once he admits that he had earned money by corruption. After admitting this fact, he cannot hold any public office either in Federal or in Provincial Government or in any state-owned organization.”

8. Primarily, the disqualification of the private respondent/candidate on account of deeming conviction in terms of section 25(a) of the NAB Ordinance, such a determination can only be made after following due process, which includes the appraisal of evidence, right of hearing, and a reasoned judgment after the proper application of mind.

9. The plea taken by the parties could not be agitated in Constitution petition, as this court is not in a position to look into the allegations and counter-allegation in an election matter, in terms of section 60 of the Election Act, 2017, which is also covered by Article 63 of the Constitution. Besides, there can be no cavil with the proposition that the declarations, prohibitions, directions, or requisitions in contemplation of Article 199(1) of the Constitution are essentially discretionary, for that the proper forum is the Election Tribunal, where all questions of alleged plea bargain/voluntary return could be attended to, if approached by the aggrieved party, till that time the notification of returned candidate/private respondent, from the subject constituency, shall remain in abeyance.

10. This petition stands disposed of in the above terms.

Judge

Judge