

Presented on

15 JUL 2022

IN THE HIGH COURT OF SINDH, CIRCUIT COURT DADU

Constitution Petition No.D- 796 of 2022

Muneer Ahmed S/o Hafiz Muhammad Bachal Naich,
Muslim, Adult R/O Village Mir Khan Naich, Taluka K.N Shah,
District Dadu.

-----Petitioner

VERSUS

01. Returning Officer U.C 25, 26, 27, 28 Bughia, Boriri,
Kandhichukhi Kakar of Taluka K.N Shah, District Dadu.

02. Abdul Hameed S/o Abdul Haleem Junejo,
Resident of Village Boriri, Taluka K.N Shah, District Dadu.

03. Election Tribunal/ District and Sessions Judge Dadu.

04. Provincial Election Commissioner Sindh at Karachi.

05. Election Commission of Pakistan,
Secretariat G-5/2 Islamabad, through its Secretary.

06. Federation of Pakistan, through Secretary Election Commission
Of Pakistan G-5/2 Islamabad.

07. Secretary Local Bodies Department, Government of Sindh,
Secretariat Karachi.

08. Province of Sindh through its Secretary, Government of Sindh,
Karachi.

-----Respondents

CONSTITUTION PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN 1973.

The above named petitioner respectfully submits as
under:-

1. That, the petitioner is a law abiding citizen of Pakistan
and his fundamental right, honour and other privileges
are guaranteed under the Constitution of Islamic
Republic of Pakistan 1973.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA.

Constt. Petition No. D- 726 of 2022.

Before:

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

Petitioner : Muneer Ahmed Naich.
Respondents : Returning Officer U.C- 25 to 28 K.N. Shah & others.

Mr. Imtiaz Ali Mugheri, Advocate for petitioner.
Mr. Mohammad Imran Abbasi, Asst. Attorney General.
Mr. Abdul Hamid Bhurgri, Addl. A.G.
Respondent No.2 present.

Date of hearing : 20.07.2022.
Date of order : 20.07.2022.

ORDER

Abdul Mobeen Lakho, J.- Through instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, the petitioner has prayed to set aside the impugned order dated 25.06.2022 passed by the learned Election Tribunal/ District & Sessions Judge, Dadu in Election Appeal No.60/2022, whereby the petitioner has been non-suited to the contest the insuring Local Government Election 2022, which is scheduled to take place on 24.07.2022, on the premise that is father is defaulter of Sukkur Electric Power Company (SEPCO) bill.

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

We have also carefully examined the provisions of Rule 18(3) of Sindh Local Councils (Elections), Rules, 2015 concerning the second proviso which requires Returning Officer to allow the candidate to remove the defect which is not substantial. In the instant case, the petitioner has been disallowed to contest the election as discussed supra on the ground of non-payment of SEPCO dues against his father. We have seen the record and are of the considered view that in principle the petitioner is not actual defaulter; however, the respondents have alleged that his father who has passed away was defaulter, in whose name alleged dues are outstanding.



Keeping in view the above factual proposition as well as legal position of the case, we are of the considered view that the petitioner is eligible to contest the election, for the reason that, prima facie there is no default in respect of payment of the aforesaid charges in the petitioner and all the questions raised by the SEPCO could be attended by the learned Election Tribunal by recording evidence. Accordingly, the impugned order is set-aside. The Returning Officer concerned is directed to accept the nomination of the petitioner under the law. However, if anybody is aggrieved may approach the learned Election Tribunal. On the aforesaid proposition, we seek guidance from the decision rendered by the Honourable Supreme Court in the case of *Rana Muhammad Arshad V/s Additional Commissioner, Revenue, Multan, and others (1998 SCMR 1462)*.

Instant petition is hereby allowed in the aforesaid terms.

Judge


Judge

Ansari