

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C.P No. D-4361 of 2022

Petitioner : Shafiq ur Rehman Khanbati,
through Haq Nawaz Talpur,
Advocate.

Respondent No.1 : The Returning Officer, Ward No.2,
Municipal Committee, Thatta.

Respondent No.2. : District Returning Officer,
Regional Election Commissioner
Thatta

Respondent No.3. : Provincial Election Commissioner,
Sindh through Saifullah, Assistant
Advocate General, Sindh.

Respondent No.4. : Election Commission of Pakistan
through Abdullah Hanjrah, and
Sarmad Sarwar, Law Officers

Date of hearing : 12.08.2022

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution so as to impugn a Letter dated 15.07.2022 issued by the District Returning Officer/Regional Election Commissioner, Thatta, to the Returning Officer, MC Thatta & UC No.06 to UC 10 (the "**Impugned Letter**") on the ground that it denies his right to contest the forthcoming Local Government Election for the seat of Member, Municipal Committee Thatta, from Ward No.2.

2. The Impugned Letter apparently addressed a request made by the Returning Officer vide his letter dated 14.07.2022, seeking the reprinting of ballot papers of Ward No.2 so as to reflect the name of the Petitioner. The respective pieces of correspondence read as follows:

**“OFFICE OF THE RETURNING OFFICER, MUNICIPAL
COMMITTEE THATTO & UC NO.06 TO 10”**

No.10

Dated: 14.07.2022

To,

The Provincial Election Commissioner,
Sindh.

Through

The District Returning Officer,
Regional Election Commissioner,
Thatta.

Subjected:- **SUBMISSION OF REVISED FORM-VIII.**

Respected Sir,

The Shafiq ur Rehman son of Abdullah Khunbati filed his nomination papers from Ward No.02 and ward No.4 of Municipal Committee Thatta. On 17.06.2022, the nomination forms were scrutinized and accordingly accepted. The said orders of acceptance of nomination form were assailed before the election tribunal through election appeal No.108 & 109 (copies enclosed) filed by Ishfaq Ahmed s/o Iqbal Ahmed Shaikh. However, the nomination papers of the respondent from Ward No.04 were rejected vide order No.108 & 109 (copies enclosed). Hence ward No.02 were not rejected.

This office inadvertently and due to rush of work, not placed the name of the aforesaid candidate in the final list from ward No.2 and accordingly the aforesaid candidate is deprived of the fundamental rights to contest the election. In the peculiar circumstances, in the interest of justice revised final list is hereby issued.

Therefore, your good office is requested that all consequential arrangements may be made (ie printing/reprinting of ballot papers etc), so that the aforesaid candidate may be able to contest the election from ward No.02 MC Thatta.

MUHAMMAD RAHIM SOOMRO,
DISTRICT EDUCATION OFFICER (PRIMARY)
RETURNING OFFICER
M.C THATTO & UC NO.06 to 10.

Copy to:

1. The District Election Commissioner Thatta”

“No. F-3(1)/2022 L.G.E/REC/Tht/572

OFFICE OF THE
REGIONAL ELECTION COMMISSIONER, THATTA
Near Passport Office, Makli @ Thatta

Thatta, the 15th July, 2022

To,

Muhammad Rahim Soomro
Returning officer
MC Thatta & UC No.06 to UC 10
Thatta.

Subject **SUBMISSION OF REVISED FORM-VIII.**

Reference to your office letter No.10 dated 14.07.2022 on the subject cited above wherein you have requested to arrange Reprinting of Ballot Papers in respect of Ward # 2 of M.C Thatta.

2. Whereas, the mentioned appeal(s) filled in the appellate authority, the authority clearly verdict that according to Section 35(1) (c) of The Sindh Local Government Act, 2013 clearly mentioned that any contesting candidate in any jurisdiction must be enrolled as a voter in the said constituency.

3. In the case referred above Mr. Shafiq ue Rehman Khambati, belongs to Ward # 08 rather than Ward #2 or Ward # 4, however he have applied for nomination in the Ward # 2 and Ward # 4 of M.C Thatta.

4. Accordingly he cannot contest in the said constituencies of Ward # 2 or Ward # 4.

Encl: As above

(ABDUL REHMAN ARAIN)
District Returning Officer/
Regional Election Commissioner,
Thatta

Copy forwarded for information to:

1. The Provincial Election Commissioner (Sindh), Karachi
2. The District Election Commissioner, Thatta.”

3. Learned counsel for the Petitioner submitted that the Impugned Letter was bad in law, arguing that a registered voter of any Ward could contest the election from any other Ward. In that regard, he referred to Section-37 (2) (a) & (b) of the Sindh Local Government Act 2013 (the “**SLGA**”), and placed reliance on three as yet unreported Orders made by different Division Benches of this Court, the first being an Order dated 24.06.2022 made by a Bench at Sukkur in C.P No. 644/2022 (Re: Shujauddin Khan v. Federation of Pakistan and others), and the other two being Orders made at the Principal Seat at Karachi on 30.06.2022 and 14.07.2022 in C.P. No: D-3990/2022 (Re: Rehman Khan v. Federation of Pakistan and others) and C.P. No: D-4160/2022 (Re: Ghulam Haider v. Federation of Pakistan and others) respectively. He argued that the Impugned Letter ran contrary to the principle of law laid down in those Orders and the District Returning Officer had thus overstepped his authority so as to violate the Petitioner’s fundamental right of candidature. He prayed that the Impugned Letter be set aside and directions issued for reprinting of the ballot papers of the constituency so as to reflect the name of the Petitioner as a contesting candidate.

4. Conversely, while opposing the Petition, the learned AAG and law officers of the Election Commission of Pakistan invited attention to the comments of the Respondent No.2, the District Returning Officer/Regional Election Commissioner Thatta, so as to point out and submit as follows:
 - (a) that the Petitioner had submitted his nomination papers as a candidate from Wards Nos.2 and 4, both of which were accepted by the Returning Officer;

- (b) that two separate appeals, bearing Appeals No.108/2022 and 109/2022, were filed by one Ishfaq Ahmed before the Appellate Authority, being the District & Sessions Judge, Thatta, assailing the acceptance of those nominations on the ground that the Petitioner was a registered voter of Ward No.8, therefore was ineligible to contest the election as a candidate from either Wards Nos.2 or 4 as per Section 35 (1) (c) of the SLGA;
 - (c) that both the Appeals were allowed vide separate Orders dated 25.06.2022 and the nomination papers of the Petitioner in respect of both the Wards thus stood rejected, hence his name was not included in Form-VIII dated 30.06.2022 reflecting the contesting Candidates of Ward No.2;
 - (d) that the Returning Officer then wrongly revised the Form-VIII in violation of the Rules and also wrote the letter dated 14.07.2022 for reprinting of the ballot papers of Ward No.2 so as to unduly favour the Petitioner;
 - (e) that at the time of filing of the Petition, the Petitioner had deliberately withheld his nomination papers and the Orders made in Appeals No.108/2022 and 109/2022 so as to suppress the fact that his nomination stood rejected from both Wards Nos.2 and 4.
5. Furthermore, it was submitted that the Orders made in the respective cases of Rehman Khan and Ghulam Haider (Supra) were distinguishable on the facts and as the same did not entail a consideration of Section 35(1)(c) of the SLGA, whereas the Order made on that note by the learned Division Bench at Sukkur in Shujauddin Khan's

case (Supra) was contrary to the principle laid down by the Honourable Supreme Court in the case of Haji Khan Bhatti v. Province of Sindh and others 2016 SCMR 1970. It was submitted that, Civil Petition Nos.846-K of 2022 had thus been preferred before the Apex Court, which was disposed of vide an Order dated 05.08.2022, reading thus:

“Learned ASC for the petitioners contends that in the case of **Haji Khan Bhatti vs. Province of Sindh and others** (2016 SCMR 1970) this Court has decided that if the candidate is contesting elections for a Council, he could be a voter of any of the Wards which fall within the ambit of that Council but in case he is contesting elections for a Ward, then he should be a candidate from that very Ward. Contrary to this position, the High Court in the impugned judgment has held that even for contesting elections for a Ward, candidate could be from any other Ward which is not only in conflict with the judgment of this Court but also against the statutory provisions of Section 35 (1) (c) of the Sindh Local Government Act, 2013. However, since the elections has been finalized, therefore, this Petition has become infructuous. We feel that now this is a question of academic nature and could be decided in appropriate proceedings and the petitioner or any other aggrieved person would be at liberty to agitate this point afresh which would be decided in the light of the case of Haji Khan Bhatti (*supra*). These petitions stand disposed of in the foregoing terms.”

6. Exercising his right of reply, learned counsel for the Petitioner sought to contend that as the Orders of both Appeals No.108/2022 and 109/2022 mentioned only Ward No.4, the nomination in respect of Ward No. 2 remained unimpaired. Furthermore, he argued that the principle laid down in Haji Khan Bhatti (Supra) would not apply in the instant case for the same reasons as the learned Division Bench of this Court in Shujauddin Khan had held that matter to be distinguishable with reference to Section-37 (2) (a) & (b) of the SLGA.

7. We have considered the arguments advanced at the bar in light of the material placed on record.

8. It is striking that the Petitioner had not filed his nomination papers along with the Petition or made any mention of Appeals No.108/2022 and 109/2022, let alone annex copies of the Orders made by the appellate forum. Having gone through those Orders as well as the Memos of both the Appeals after having verified the same directly from the Appellate forum via the office of the Member Inspection Team-II of this Court, we have satisfied ourselves that the former matter was in respect of Ward No. 2 and the latter in respect of Ward No.4, with the acceptance of the Petitioner's nomination from both Wards being challenged on the same ground - that he was not a registered voter of either of the Wards but was instead a registered voter of Ward No.8, therefore did not fulfill the qualification criterion in terms of Section 35(1)(c) of the SLGA. As both the Appeals were allowed on that very ground with the nomination paper in question being rejected in each case, it is manifest that the reference to Ward No.4 in the relevant introductory paragraph of the respective Orders made in both the Appeals was obviously a typographical error and did not afford any valid basis for the Petitioner or the Returning Officer to contend or portray that the nomination from Ward No.2 continued to subsist. Needless to say, such an interpretation beggars belief, and when the Appellate Orders are viewed in their true light it is evident that the very substratum of the Petitioner's case stands completely shorn away. The Petitioner's failure to mention the appellate proceedings in the memo of Petition or file the documents relating thereto is also a matter of concern as it reflects and indicates that the approach to this Court has been made with unclean hands.

9. Furthermore, the Petitioner's case even otherwise derives no strength from the Orders made in the decided cases on which reliance was placed, as the matters of Rehman Khan and Ghulam Haider (Supra) proceeded on a quite different plane and were determined on distinct points of law, hence are distinguishable, whereas the decision in Shujauddin Khan's case is in apparent conflict with the law laid down by the Honourable Supreme in Haji Khan Bhatti, as was followed in an analogous matter decided by a learned Division Bench of this Court at Sukkur in C.P. No. D-585/2022 vide an earlier Order dated 31.05.2022, which *inter alia* reads as follows:

“Through this Petition the petitioner has impugned order dated 23.05.2022 passed by Election Tribunal Naushahro Feroze in Election Appeal No.24 of 2022, whereby while allowing the Appeal the Nomination Papers of the respondent No.5 has been accepted.

We have perused the said order and it appears that the Tribunal has failed to appreciate the provisions of section 35(1) (c) of the Sindh Local Government Act 2013, inasmuch as it has been provided therein that a person shall not be qualified to be elected or chosen as a Member of the Council unless he is enrolled as a voter in the Electoral Roll of the concerned Council or Ward. The use of the word *Council* and *Ward* is separated by the word “OR” and is disjunctive, and therefore only such person can file Nomination and contest who is also voter in that particular Ward. Admittedly respondent No.5 is registered as voter in ward No.4, whereas, his Nomination has been accepted in Ward No.3 by the Appellate Tribunal.

Moreover the controversy in hand has already been decided by the Hon'ble Supreme Court in the case reported as *Haji Khan Bhatti v. Province of Sindh through Provincial Election Commission and others (2016 SCMR 1970)*, wherein para 5 reads as under:-

“5. From the above discussion it is evident that the mandate of section 35(1)(c) of the Sindh Local Government Act, 2013 is that where a member is to be directly elected from a Ward of a Council then unless he is an enrolled voter of that very Ward, he cannot be a candidate from that particular Ward, the reason being that in case of direct election on the basis of adult franchise, every Ward of a Council should have its own representative on the Council. This is precisely the object with which Wards have

been created. On the other hand, where a member is to be indirectly elected on a reserved seat of a Council by its electoral college then unless he is an enrolled voter of any of the Wards falling within the local limits of that Council, he would not be qualified to contest the election, the reason being that every member who is to be indirectly elected on a reserved seat of a Council should be an enrolled voter of the area which falls with the constituency of that very Council. The representation on a reserved seat has to be from the local limits of that very Council and not from outside its area. No person can seek his election on a reserved seat of a Council unless he is enrolled as a voter in the electoral rolls of any of the Wards that fall within the limits of such Council. One who is not enrolled as a voter in any locality of Council's constituency, cannot be regarded as a true representative of that Council and, therefore, has not been allowed to be a candidate for its reserved seat by virtue of the provisions of section 35(1)(c) of the Sindh Local Councils Act, 2013. Thus where a member is to be directly elected from a Ward, his enrollment in that particular Ward is a mandatory requirement and where a member is to be indirectly elected, his enrollment in the local limits of that very constituency of the Council is a mandatory requirement. As the constituency of a District Council under section 15(b)(ii) of Sindh Local Government Act, 2013 is rural area of a District only and not beyond that, a candidate on its reserved seat must be an enrolled voter of any of the Wards falling in the rural area of the District. Only such candidate would qualify to contest election on a reserved seat and not the one who is an enrolled voter of a Council from urban area of the District. The electoral college of any Council does not enjoy the liberty to nominate a person on its reserved seat who is not an enrolled voter of any of the Wards falling within the local limits of such Council. Any nomination that is contrary to such a mode, would be in breach of the provisions of section 35(1)(c) read with Rule 50(1) of the Sindh Local Councils (Election) Rules, 2015 and would thus invalidate his candidature.

In view of the above the impugned order cannot be sustained, therefore it is hereby set-aside, the order of Returning Officer stands restored as a consequence thereof, the Petition is allowed and Nomination papers of Respondent No.5 stands rejected.”

10. In view of the foregoing and keeping in view the conduct of the Petitioner, as noted in paragraph 8 above, the Petition stands dismissed with costs of Rs.25,000/- to be deposited by the Petitioner towards the High Court Clinic within seven (7) days of announcement of this Order, with receipt to be submitted in the office.

JUDGE

CHIEF JUSTICE