

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

C. P. No. D-4188 of 2022

Present:

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

Petitioner : Kamal Jakhro through Syed Mureed Ali Shah, Advocate.

Respondent No.1 : Chief Election Commissioner through Khaleeque Ahmed, DAG.

Respondent No.2 : District Returning Officer District Thatta; and

Respondent No.3 : Returning Officer, Town Committee Makli, District Thatta through Sandeep Malani, Assistant Advocate General, Sindh alongwith Abdullah Hanjrah, Sr. Law Officer, ECP.

Respondent No.4 : Farhan Shams, Advocate in person, is called absent.

Respondent No.5 : Hyder Ali Shah through Aizaz Hussain, Advocate

Date of hearing : 18.08.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution so as to impugn the candidature of the Respondents No.4 and 5 for the Seat of Member of Ward No.3, Town Committee Makli, District Thatta, in the forthcoming Local Government Election-2022.

2. The common ground advanced is that both the Respondents No.4 and 5 are residents of Ward No.2, hence ineligible to contest from the other Ward.

3. As it transpires, the challenge made as against the two Respondents is at variance to the extent that the Nomination Paper of the Respondent No.4 was initially rejected by the Returning Officer on the ground that his Proposer and Secunder were not the registered Voters of the relevant constituency, but vide order dated 25.06.2022 made by the District & Sessions Judge, Thatta/Appellate Authority for Local Bodies Election, Thatta/Sujjawal in Election Appeal No.95/2022, the Respondent No.4 was allowed to substitute his Proposer and Secunder, with it being directed that if he were to do so before 27.06.2022, his Nomination Paper would be deemed to have been accepted. On the other hand, the Nomination Paper of the Respondent No.5 was apparently accepted by the Returning Officer, without any objection or Appeal having been filed by the Petitioner so as to assail such acceptance.

4. Accordingly, we proceed to examine two cases from their distinct stand points.

5. As regards the matter of the Respondent No.4, suffice it to say that it is well settled that a Proposer and/or Secunder are required to be registered Voters of the relevant constituency, and a defect in that regard is of a substantial

nature, and incurable. If any authority is required, one need look no further than the order of a learned Division Bench made in C. P. No. D-3990 of 2022 (Rehman Khan vs. Federation of Pakistan & Others) alongwith other Petitions, the operative part of which reads as follows:-

“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.”

6. As for the matter of the Respondent No.5, the Petitioner did not file any objection to the candidacy of the said Respondent before the Returning Officer, nor filed any Appeal before the District & Sessions Judge working as Appellate Tribunal in terms of Section 225 of the Elections Act 2017. As such, a direct approach to this Court in exercise of the

Constitutional jurisdiction while bypassing the statutory remedies available under the law is not warranted, and the matter cannot be properly determined at this belated stage.

7. Under the given circumstances and in view of the foregoing discussion, the Petition is partly allowed, as against the Respondent No.4, with the order dated 25.06.2022 made by the District & Sessions Judge, Thatta/Appellate Authority in Election Appeal No.95/2022 being set aside and Nomination Paper of the Respondent No.4 for the Seat of Member of the Ward No.3, Town Committee Makli, District Thatta stands rejected.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: