

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Election Appeal No. 10 of 2023.

DATE: ORDER WITH SIGNATURE OF THE JUDGE(S)

Hearing / Priority Case.

1. For hearing of CMA No. 4231/2023 (U/O XXXIX Rule 1 & 2)
2. For hearing of main case.
(Notice issued)

02.06.2023.

Mr. Irshad Ali Shar, Advocate for Appellant.
Mr. Syed Mohsin Khan, Advocate for KMC.
Mr. Abdullah Hanjrah, Legal Officer Pakistan Election Commission.

MOHAMMAD ABDUR RAHMAN:- The Appellant has preferred this Election Appeal under Section 54 of the Local Government Act, 2017, impugning the Order dated 30 May 2023 passed by the Appellate Election Tribunal and District & Sessions Judge Karachi South in Election Appeal No. Nil of 2023.

The facts leading up to this Election Appeal are that the Appellant has filed his Nomination Papers on a “reserved” seat for local government elections that are being held for the Karachi Metropolitan Corporation under the Sindh Local Government Act, 2013. It is submitted that the Nomination Papers that were filed by the Appellant were rejected by the Returning Officer on various grounds, which are for the purposes of this Election Appeal quite immaterial. Being aggrieved and dissatisfied by the order of the Returning Officer, he chose to prefer an Election Appeal before the Election Tribunal which he considered had jurisdiction i.e. the Election Tribunal and District & Sessions Judge Karachi South. It is apparent from the impugned order that the Appeal was held not to be maintainable on account of the court lacking territorial jurisdiction as in the Nomination Papers submitted by the Appellant which are available at pg. 33 of the Appeal the “Zilla” or District for which the Appellant had filed his nomination was indicated as “Malir”. This issue was considered by the Appellate Election Tribunal and District & Sessions Judge Karachi South who returned the Appeal to the Appellant stating that it should have been presented before the Appellate Election Tribunal and District & Sessions Judge Karachi Malir who would be seized of the matter as per the notification

dated 23 May 2023 issued by the Election Commission of Pakistan under Sub-section (1) of Section 47 of the Sindh Local Government Act, 2013.

Mr. Irshad Ali Shar appearing on behalf of the Appellant has argued that the impugned order is not sustainable in law as the Notification dated 23 May 2023 has prescribed the jurisdiction of an Appellate Tribunal in the following terms:

“ ... for the disposal of appeals against the decisions of Returning Officers regarding acceptance or rejection of nomination papers in their respective districts for the ongoing elections to reserved seats of all local councils of Sindh Province.”

He impressed upon the Court that under sub-section (xvii) of Section 3 of Sindh Local Government Act, 2013, word “Council” has been defined as under:

“ (xvii) “Council” means a Corporation, Municipal Committee, Town Committee, District Council [Union Committee] or Union Council, as the case may be;”

He further contended that the word “Corporation” as mentioned in the definition of the word “Council” has also been defined in sub-section (xvi) of Section 3 of the Sindh Local Government Act, 2013 and which reads as under:

“ (xvi) Corporation” means a Metropolitan Corporation, Town Municipal Corporation or Municipal Corporation;”

He stressed that in respect of the “District” of Karachi there are no elections for reserved seats as instead nominations are made to such a position by the political party with which the candidate is affiliated. In respect of Karachi the nomination is therefore done not as per district within which the Union Council is located; but rather for the Karachi Metropolitan Corporation as a whole that represents the entire district of Karachi. On this basis he has stated that as by section 48 of the Sindh Local Government Act, 2013, the provisions of the Code of Civil Procedure, 1908 have been made applicable to such an election the provisions contained in Section 19 and 20 of the Code of Civil Procedure, 1908 are to be used to determine the issue of the territorial jurisdiction of the Appellate Election Tribunal. On this basis, as the office of the Respondent No. 2 i.e. Returning officer, Municipal Councils offices are located at the Karachi Metropolitan Corporation

Office at M.A. Jinnah Road in “District South” hence the Appellate Election Tribunal District & Sessions Judge Karachi South had territorial jurisdiction to hear the appeal. The Legal Officer of the Election Commission of Pakistan who appeared on notice has argued that as the Appellant had specifically indicated on the form that he had filed his nomination in respect of “Zilla” Malir, the impugned order is in consonance with law and the Appellant should present his appeal before the Election Appellate Authority and District and Sessions Judge Malir.

I have heard the contentions of the Counsel for the appellant and the Legal Officer of the Election Commission of Pakistan and have perused the record. It is admitted that the jurisdiction to appoint an Election Tribunal vests under Sub-Section (1) of Section 47 of the Sindh Local Government Act, 2013 with the Election Commission of Pakistan as under:

“47. Election Tribunal.-

- (1) The Election Commission shall, by notification, appoint an Election Tribunal for such local area as may be specified in the notification.”

The notification as issued reads as under:

ELECTION COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, 23rd May, 2023

No. F.3(6)/2023-LGE-S: In exercise of the powers conferred upon it under Article 140 (A) and 219 (d) of the Constitution of Islamic Republic of Pakistan, and in pursuance of Section 140(2)(b) of the Elections Act, 2017, read with Section 47(1) of the Sindh Local Government Act, 2013 and rule 63(1) of the Sindh Local Councils (Election) Rules, 2015, and all other powers enabling it in that behalf, the Election Commission of Pakistan, in consultation with the Hon'ble Chief Justice of the High Court of Sindh, Karachi, is pleased to appoint all District & Sessions Judges of Sindh province to act as Appellate Tribunals for the disposal of appeals against the decisions of Returning Officers regarding acceptance or rejection of nomination papers in their respective districts for the ongoing elections to reserved seats of all local councils of Sindh province.

Bye order of the Election Commission of Pakistan.

Sd/-
(ZAINUL ABIDEEN SHAH)
Deputy Director (LGE-S)

Admittedly nomination papers submitted by the Appellant indicate in column 2 that the relevant “Zilla” or District for which this nomination has been filed is “Malir” and it would logically follow that as per the Notification dated 23 May 2023 that matters pertaining to the adjudication of appeals in respect of District Malir are to be heard by the Election Appellate Authority and District and Sessions Judge Malir. The Appellant’s argument regarding the application of the provisions of the Code of Civil Procedure, 1908 so to override the provisions of the Notification dated 23 May 2023 are also misplaced. The language of Sub-Section (1) of Section 47 of the Sindh Local Government Act, 2013 states that the Election Commission of Pakistan will by notification “appoint the Election Tribunal, for such **local area** as may be specified in the notification”. Hence the issue of determining the “territorial jurisdiction” of the Election Tribunal vested in the Election Commission through the notification and not under the provisions of the Code of Civil Procedure, 1908. Suffice to say that the provisions of Sub-Section (1) of Section 47 of the Sindh Local Government Act, 2013 being a special provision of law regulating the territorial jurisdiction of the Election Tribunal will oust the general rules of determining territorial jurisdiction as contained by reference to the Code of Civil Procedure, 1908 in Section 48 of the Sindh Local Government Act, 2013. Reliance in this regard is placed on the decision in **Al Jihad Trust vs. Federation of Pakistan**¹ wherein it was held that:²

“ ... 69. In fact, there is no cavil with the proposition that if there are two provisions in the same statute and one is general and the other is special, then while interpreting the provisions the presumption would be that the general provision was not intended to interfering with the operation of the special provision...

I am therefore of the considered opinion that the Election Tribunal and District & Sessions Judge Karachi South has correctly interpreted the Notification dated 23 May 2023 issued *inter alia* under Sub-Section (1) of Section 47 of the Sindh Local

¹ PLD 1997 SC 84

² *Ibid* at pg. 136

Government Act, 2013 and had returned the appeal for proper presentation before the Election Appellate Authority and District and Sessions Judge Malir.

In the circumstances, there being no infirmity or illegality with the impugned Order dated 30 May 2023 passed by the Appellate Election Tribunal and District & Sessions Judge Karachi South in Election Appeal No. Nil of 2023 this appeal is dismissed with no order as to cost.

JUDGE

Ayaz ps.