

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

C. P. No. D-1777 of 2023

Present:

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

Petitioner : Muhammad Azhar through
Tassaduq Nadeem, Advocate.

Respondent No.1 : Election Commission of
Pakistan (ECP) through
Abdullah Hanjrah, Senior Law
Officer, Sarmad Sarwar, Law
Officer and Muhammad Imran,
DEC, East, Election
Commission of Pakistan (ECP).

Respondent No.2. : National Database Registration
Authority (NADRA) through
Khaleeqe Ahmed, DAG.

Respondent No.3. : Noman Bashir through Usman
Farooque, Advocate.

Date of hearing : 04.05.2023.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner contested the election for the Seat of General Member from Ward No.2, UC No.06, Akhtar Colony, TMC Chanesar, Karachi, East (the “**Constituency**”) in the 2nd Phase of the Sindh Local Government Elections held on 15.01.2023 and secured the highest number of votes.

2. However, prior to a formal Notification being issued in the matter by the Election Commission of Pakistan (“**ECP**”), the election was challenged by the Respondent No.3, a rival candidate, on the ground that the Petitioner had been ineligible to contest as he was not an enrolled voter of the Constituency. The proceedings that then ensued culminated in an Order dated 06.03.2023, whereby the Petitioner’s Nomination Paper was rejected and he was declared disqualified from the Seat in question. Being aggrieved, the Petitioner has preferred this Petition.

3. For proper appreciation of the question of eligibility, it is pertinent to note that Section 35 of the Sindh Local Government Act 2013 (the “**SLGA**”) and Section 2(xli)(a) of the Election Act 2017 (the “**Election Act**”) stipulate as follows:

“35. Qualification for candidates as members.-

(1) A person shall not be qualified to be elected or chosen as a member of the Council unless:-

- (a) he is a citizen of Pakistan;
- (b) he is not less than twenty one years of age on the last day fixed for filing the nomination papers;
- (c) he is enrolled as a voter in the electoral rolls of the Council or ward; and
- (d) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of the Pakistan.”

“2(xli)(a) voter means.

(a) in relation to an Assembly or a local government, a person who is enrolled as a voter on the electoral roll of any electoral area in a constituency.”

4. Learned counsel for the Petitioner argued that the ECP had no jurisdiction in the matter and the dispute raised by the Respondent No.3 could only have been addressed by an Election Tribunal once the Petitioner had been formally notified by the ECP as the returned candidate. Furthermore, he sought to rely on a voter certificate to show that the Petitioner's vote was registered in the relevant constituency.

5. Conversely, the learned Law Officer appearing on behalf of the ECP submitted that the impugned Order had been validly made in exercise of powers under Section 9 of the Election Act. As to the merits of the matter, he invited attention to the Paragraph-4 of the Memo of Petition, wherein it has been stated *inter alia* that:-

“the concerned returning officer Ward-02, UC-6, TMC-Chanesar, Karachi East approved the nomination papers of the petitioner on the basis of his name on the voter list issued in 2018 issued by the Respondent No.1 as the Petitioner's vote is/was not appearing on the current voter list issued by the Respondent No.1 for 2nd Phase of Sindh Local Government Election 2023.”

6. He submitted that it was thus evident from the Petitioner's pleadings that his vote was not registered in the Constituency at the time of filing and scrutiny of the Nomination Papers, between 08.06.2022 to 15.06.2022, with the question of eligibility falling to be determined accordingly. He pointed out that the Petitioner had then moved an application on 15.06.2022 for transfer of his vote, which showed that he lacked eligibility at the relevant time in terms of the SLGA and Election Act. For his part, learned counsel for the Respondent No.3 adopted the arguments advanced on behalf of the ECP.

7. We have heard and considered the arguments advanced in light of the material on record and the relevant provisions of the SLGA and the Election Act.

8. Turning firstly to the question of competence, it merits consideration that Section 9 (1) of the Election Act reads as follows:

“9. Power of the Commission to declare a poll void.—
(1) Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such enquiry as it may deem necessary, the Commission is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as have materially affected the result of the poll at one or more polling stations or in the whole constituency including implementation of an agreement restraining women from casting their votes, it shall make a declaration accordingly and call upon the voters in the concerned polling station or stations or in the whole constituency as the case may be, to recast their votes in the manner provided for bye-elections.

Explanation.—If the turnout of women voters is less than ten percent of the total votes polled in a constituency, the Commission may presume that the women voters have been restrained through an agreement from casting their votes and may declare, polling at one or more polling stations or election in the whole constituency, void.

(2) Notwithstanding the powers conferred on it by sub-section (1), the Commission may order filing of complaint under this Act before a court of competent jurisdiction against persons who entered into the agreement referred to in sub-section (1).

(3) Notwithstanding the publication of the name of a returned candidate under section 98, the Commission may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the Commission does not finally dispose of a case within the said period, the election of the returned candidate shall be deemed to have become final, subject to the decision of an Election Tribunal on an election petition, if any.

(4) While exercising the powers conferred on it by sub-section (1), the Commission shall be deemed to be an Election Tribunal to which an election petition has been presented and shall, notwithstanding anything contained in Chapter IX, regulate its own procedure.

(5) Any person aggrieved by a declaration of the Commission under this section may, within thirty days of the declaration, prefer an appeal to the Supreme Court.”

8. As such, it is apparent from a plain reading of the provision that the ECP has thereby been empowered to declare a poll void, and is deemed to be an Election Tribunal to which an Election Petition has been presented while exercising such powers. Ergo, we see no force in the Petitioner’s argument regarding the ECP’s competence.

9. Furthermore, on query posed with reference to the excerpt from the pleadings reproduced herein above, learned counsel for the Petitioner conceded that the Petitioner had not been enrolled as a voter in the electoral rolls of the Constituency at the time of filing and scrutiny of his Nomination Papers and had subsequently made an application for transfer of his vote. That being so, it is manifest that the Petitioner’s case is devoid of merit. Moreover, as Section 9(5) of the Election Act prescribes a remedy by way of an appeal to the Supreme Court, a Petition even otherwise does not lie under Article 199 of the Constitution.

10. It is for the aforementioned reasons that we had found the Petition to be misconceived and had dismissed the same vide a short Order made in Court upon culmination of the hearing on 04.05.2023.

JUDGE

CHIEF JUSTICE

MUBASHIR