

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Mobeen Lakho

C.P. No.D-5288 of 2023

Date

Order with signature of Judge

FRESH CASE:

1. For order on CMA No.24322/2023 (Exemption).
2. For order on CMA No.24323/2023 (Stay).
3. For hearing of main case.

Dated; 2nd November 2023

Mr. Usman Farooq, Advocate for Petitioner.

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1. Exemption granted subject to all just exceptions.

2&3. Through instant Constitutional Petition, the petitioner, who is Naeb Amir of Jamaat-e-Islami, Karachi, has expressed his grievance against respondent No.6, who according to learned counsel for the petitioner, being a Mayor of Karachi, has filed his nomination and contesting the Local Government Elections from three different Union Councils i.e. UC-3 TMC Mauripur, District Keamari and UCs-8 & 9, TMC, Ibrahim Hyderi, District Malir, whose nomination papers were accepted by the respondents No.3, 4 and 5 i.e. Returning Officers of the aforesaid UCs. According to learned counsel for the petitioner, respondent No.6, being a registered voter of UC-13, Gizri Saddar Town, cannot contest the elections from any other Union Council in terms of Section 35(c) of the Sindh Local Government Act, 2013, which prescribes the qualifications for candidates as members, according to which, 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". It has been further contended by the learned counsel for the petitioner that nomination of

the petitioner to contest elections in three different Union Councils, while holding the office of Mayor is also in violation of Regulation 16 of the Code of Conduct of Local Government Election, 2022, which provides as under: -

16 (A)

پارلیمنٹیرین جن میں ممبران سینٹ، قومی اسمبلی صوبائی اسمبلی اور لوکل گورنمنٹ شامل ہیں ان کو انتخاب مہم میں حصہ کی اجازت ہوگی البتہ وہ ضابطہ اخلاق، الیکشن کمیشن کے قواعد احکامات و ہدایات پر سختی سے عملدرآمد کریں گے اور خلاف ورزی کی صورت میں قانونی کارروائی بشمول الیکشنز ایکٹ 2017 کی دفعہ 10 کے تحت توہین کی کارروائی کی جا سکتی ہے۔

16 (B)

عوامی عہدہ رکھنے والے جن میں صدر، وزیر اعظم، سینٹ کے چیئرمین اور ڈپٹی چیئرمین، کسی اسمبلی کے اسپیکر اور ڈپٹی اسپیکر وفاقی وزراء، وزراء مملکت، گورنر وزراء اعلیٰ، صوبائی وزراء، وزیر اعظم اور وزرائے اعلیٰ کے مشیران، مقامی حکومتوں کے مینر، چیئرمین اور ان کے نائب شامل ہیں کسی بھی حلقہ انتخابی مہم یا کسی قسم کی سے اسی سرگرمی میں حصہ نہیں لیں گے

According to learned counsel for the petitioner, respondent No.6, being a Mayor of Karachi, is misusing his authority in violation of Election Laws, while announcing new schemes and also releasing funds for the development of the concerned Union Councils wherefrom he is contesting the elections in violation of Notification No.F.3(1)/2022-LGE-Sindh issued by Election Commission of Pakistan in respect of Code of Conduct of Local Government Bye-Elections in Sindh Province. It has been prayed that respondent No.6 may be restrained from contesting the election scheduled on 05.11.2023.

Mr. Muhammad Hassan Akbar, Advocate-General, Sindh alongwith Mr. Saifullah, AAG, present in Court in some other cases, waived notice of instant petition and claimed copy, however, raised preliminary objection as to maintainability of instant petition, and submitted that to challenge the nomination of any candidate a

complete mechanism has been provided for redressal of grievance before the Election Commissioner of Pakistan under Sindh Local Government Act, 2013, however, the petitioner, instead of approaching Election Commission of Pakistan by lodging such complaint or filing grievance petition, has directly approached this Court under Article 199 of the Constitution on the basis of allegations announcement of new scheme or releasing of funds, which *prima facie*, are not supported by any documentary evidence or material placed on record, therefore, petition is not maintainable. Learned Advocate-General, Sindh has drawn the attention of this Court to the provisions of Sindh Local Councils (Election) Rules, 2015 and has also referred to Rule 18 relating to the scrutiny of the nomination papers, filing objection as well as filing of an appeal before the Appellate Authority appointed by the Election Commission, whereas, according to learned AG, Sindh, after completion of the elections process, the candidate, who could not succeed, can file election petition before the Election Tribunal in terms of Section 46 of the Sindh Local Government Act, 2013, however, the petitioner, instead of availing such remedy has directly approached this Court by filing a Constitutional petition, which petition otherwise, is not maintainable and liable to be dismissed in limine.

While confronted with hereinabove factual and legal position, learned counsel for the petitioner could not submit any reasonable explanation, however, submits that petitioner has approached the Election Commission of Pakistan by filing complaint in writing pointing out the violations of Election Laws and the Code of Conduct by respondent No.6 on 14.10.2023, however, no order has been passed thereon so far, therefore, petitioner has approached this Court with similar grievance. Per learned counsel, petitioner will be satisfied and

will not press instant petition at this stage, and pursue the remedy, as may be available to the petitioner before the relevant forum(s), however, it has been prayed that directions may be issued to Election Commission of Pakistan to decide such complaint or representation of the petitioner within stipulated period in accordance with law, so that the purpose of filing such complaint or representation may not become redundant. Learned Advocate-General, Sindh does not oppose such request, however, has raised an objection with regard to locus standi of the petitioner on the ground that since petitioner is not contesting the elections in the subjection Union Councils, therefore, cannot file such representation / appeal. According to learned AG, Sindh, in terms of Section 46(2) of the Sindh Local Government Act, 2013, only the candidate contesting election can file an election petition before the Election Tribunal in accordance with law.

Accordingly, instant Petition stands dismissed as not pressed alongwith listed applications. However, petitioner will be at liberty to approach the relevant forum or authority, and in case of any genuine grievance and subject to determination of locus standi of the petitioner, same shall be dealt with strictly in accordance with law.

J U D G E

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Farhan/PS
