

**IN THE HIGH COURT OF SINDH
BENCH AT SUKKUR**

Constitutional Petition No. D-1590 of 2023

Before:

Yousuf Ali Sayeed and
Zulfiqar Ali Sangi, JJ

Applicants : Naveed Ahmed and another through
Sufizada Zaheer Muhammad,
Advocate

Respondent No.1 : Returning Officer, U.C No.10, Nisar
Siddiqui Sukkur and others, through
Zeeshan Hyder, Law Officer, ECP and
Dareshani Ali Haider Ada, DAG.

Respondent No.4 : Muhammad Arshad, through Khuda
Bux Choahan, Advocate.

Date of hearing : 31.10.2023

ORDER

YOUSUF ALI SAYEED, J - The Petitioners submitted their Nomination Papers for contesting the Local Council Election, 2022 for the Seats of Chairman/Vice Chairman of Union Committee No. 10 Nisar Siddique, but the same were rejected by the Returning Officer on 10.10.2023, with that decision being maintained by the Appellate Authority vide an Order dated 18.10.2023, hence recourse to the present Petition.

2. The substantive portion of the underlying Order dated 10.10.2023 reads as follows:

“The nomination papers submitted by Mr. Naveed Ahmed Khoso (Chairman) and Mr. Liaquat Ali (Vice Chairman) as joint candidate for contesting Elections for Chairman/Vice Chairman from Union Committee No.10 Badal Faqir of TMC-III Nisar Ahmed Siddiqui is hereby rejected, while scrutinizing the nomination Paper under the Rule-18 of Sindh Local Councils (Election), Rules 2015

As per the Section 35 (c) of Sindh Local Government Act, 2013, which is reproduced as under:-

“he is enrolled as a voter in the electoral rolls of [the concerned Council or ward]”.

The voter should belong to concerned council, however the vote of the candidate is not registered in the same council i.e. TMC-III Nisar Ahmed Siddiqui. In this regard, the clarification was also issued by the Government of Sindh Local Government & Housing Town Planning Department vide letter dated 16th May, 2022, which is reproduced as under:-

*“It is clarified that any person who is a voter of any Union Committee in the town Municipal Corporation can contest the election of Chairman/Vice Chairman as joint Candidate in the **same Town Municipal Corporation**, provided that the Proposer and Secunder shall be registered in the same Union Committee, where from Chairman/Vice Chairman are contesting as Joint Candidates”.*

The vote of Mr. Naveed Ahmed Khoso (Chairman) is registered in Union Committee No.10 Choona Bhatta of TMC-I Makki Shah, hence, he cannot contest the elections from another TMC i.e. TMC-III Nisar Ahmed Siddiqui.”

3. Before the Appellate Authority, the Petitioners took the plea that the Order of the Returning Officer was bad in law as they were enrolled Voters of Municipal Corporation Sukkur and Section 35(C) of the Sindh Local Government Act, 2013 had been misapplied. Reliance was placed on a letter dated 03.09.2015 issued by the Local Government Department, Government of Sindh, regarding the filing of Nomination Forms in the context of the Local Government Elections, 2015, wherein it was clarified *inter alia* that:-

II. Similarly, a person registered in any Union Committee of Municipal Corporation can contest the election for the seat of Chairman / Vice Chairman from any Union Committee, in the same Corporation as a joint candidate.

4. However, upon examination, the Appellate Authority was pleased to reject that contention in terms of the Order dated 18.10.2023, the relevant excerpts of which read as follows:

“This Appeal under Rule 18(5) of Sindh Local Councils (elections) Rules, 2015 r/w Section 143 of the Sindh Local Government Act 2013 (cited as 2023) in the petition has been filed by Naveed Ahmed and Liaquat Ali against the order dated 10.10.2023 passed by Returning Officer, Union Committee 10 Nisar Siddiqui, Sukkur whereby their joint nomination papers filed in pair for the seat of Chairman and Vice Chairman, Union Committee No.10 Badal Faqir of Town Municipal Corporation (TMC)-III Nisar Ahmed Siddiqui were rejected on the ground that the vote of Naveed Ahmed Khoso was not registered in the concerned Union Committee of TMC-III.”

...

“12. On perusal of clause (c) of Section 35 (ibid) and the clarification contained in the above cited letter, it would clearly appear that for election from TMC-III Nisar Ahmed Siddiqui it was necessary for the aspiring candidates to be the registered voters from any Union Committee of the said TMC i.e. TMC-III Nisar Ahmed Siddiqui whereas here appellant No.1 was admittedly registered in Union Committee No.10 Choonia Bhatta of TMC-I Makki Shah and thus he was not eligible. The letter dated 03.9.2015 cited by the learned Advocate for the appellants no doubt provided that a person registered in any Union Committee of Municipal Corporation could contest election for the seat of Chairman/Vice Chairman from any Union Committee in the same Corporation as a joint candidate but as stated above there has been amendment in Section 35 of Act, 2013 in 2015 which required that a candidate should be enrolled voter in the electoral rolls of the concerned Council or Ward and further clarification in this context was also provided in the subsequent letter dated 16.5.2022. Thus I do not find any infirmity in the impugned order passed by the Returning Officer/Respondent No.1 in rejecting nomination papers of the appellant and dismissed the appeal being devoid of force.”

5. Proceeding with his submissions, learned counsel for the Petitioners presented essentially the same argument that had been raised before the Appellate Authority, while relying on the letter dated 03.09.2015. He prayed that the impugned Orders made against the Petitioners be set aside, with directions being issued for acceptance of their nomination paper.

6. On the other hand, the law officer of the Election Commission of Pakistan and the learned DAG pointed out that the Sukkur Municipal Corporation consists of three Town Municipal Corporations, being TMC-I Maki Shah, TMC-II Jeay Shah and TMC-III Nisar Ahmed Siddiqui, and that one of the Petitioners, namely Naveed Ahmed Khoso, was registered as a voter in TMC-I Maki Shah, whereas the election in question was for the vacant seat of one of the union Committees of TMC-III Nisar Ahmed Siddiqui, hence the joint nomination papers had been rightly rejected. It was pointed out that the letter dated 03.09.2015 relied upon by the Petitioners was inapplicable as it had been superseded by a later clarification dated 16.05.2022 issued by the Sindh Local government and Housing Town Planning Department in light of certain amendments that had been made to the Sindh Local Government Act, 2013. They argued that the Petition was misconceived and prayed that the same be dismissed.

7. We have heard and considered the arguments advanced in light of the material on record. It merits consideration that in C.P. No. D-585/2022 decided at Sukkur in relation to a matter which presented a situation that was the mirror image to that presently at hand, it was held by a learned Division Bench of this Court vide an Order dated 31.05.2022 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.”

8. The aforementioned judgment squarely addresses the matter, with there being no discernible perversity or illegality afflicting the Order of the *fora* below, and the Petition is accordingly found to be misconceived.

9. In view of the foregoing, we had dismissed the Petition vide a short Order dictated in Court upon culmination of the hearing on 31.10.2023.

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