

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P. No. D-2199 of 2016

Date	Order with signature of Judge
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1. For Katcha Peshi.
2. For hearing of C.M.A No. 5984/2016.

Present:
Mr. Justice Aqeel Ahmed Abbasi &
Mr. Justice Muhammad Faisal Kamal Alam, JJ.

03-06-2016

Mr. Shabir Ali Bozdar, advocate for the petitioner.

Mr. Noor Hassan Malak, learned A.A.G. a/w Muhammad Imran Election Officer, Sukkur and Muhammad Aslam ARO, Reserved Seats District Council Naushehro Feroze.

Mr. Mian Mumtaz Rabbani, learned D.A.G.

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JUDGMENT

Muhammad Faisal Kamal Alam, J. The Petitioner has assailed the decision dated 14.05.2016 of Respondent No. 2 (the Appellate Authority), who maintained the decision of Respondent No. 4 (Returning Officer) rejecting the nomination paper of the Petitioner to contest the forthcoming Election of District Council, Naushehro Feroze on the Seat reserved for Labourer. In the Petition, following relief has been claimed:-

" a) To set-aside the impugned order dated 14.05.2016 passed by the learned Appellate Authority/District Judge N/Feroze in Appeal No.08/2016 "Re: Haji Khan Bhatti V/S RO for Reserved Seat and others" ; and to allow the petitioner for contesting the Election of the Members to the Reserved Seats for Labourer Seat of Member District/Zila Council".

b) To suspend the operation of the impugned order dated 14.05.2016, till the final decision of the instant petition in hand before this Court.

c) To grant any other relief, which deems fit and proper under the circumstances of the petition.

d) To award the cost of petition."

2. Mr. Shabbir Ali Bozdar, learned counsel for the Petitioner has argued that after revival of Section 18-A in the Sindh Local Government Act, 2013 (**SLGA**), the Petitioner has now been wrongly disqualified by Respondents from contesting the Election of District Council, Naushehro Feroze.

3. The learned counsel has further argued that since language of above Section 18-A of SLGA and that of Section 47-A of the Representation of the People Act, 1976, (**ROPA**) are in *pari materia*, therefore, the principle as developed by way of judicial pronouncements in respect of above Section 47-A [of ROPA] is squarely applicable to above Section 18-A of SLGA. It was further argued that in the earlier round of litigation before this Court, the petition i.e C.P No.D-381 of 2016 filed by the petitioner was dismissed for the reasons that the said Section 18-A was not on the statute book. The Petitioner challenged the above order (of 04.02.2016) before the Hon'ble Supreme Court, however, withdrawn the CPLA No.111-K of 2016 for the reasons that Section 18-A was re-enacted pursuant to which, the petitioner became qualified to contest the above Election. The learned counsel for the petitioner also invited our attention to the order dated 06.05.2016 of Hon'ble Apex Court, whereby, withdrawal of petition was allowed with the observation that the earlier order of this Court in the above C.P.No.D-381/2016 shall not prejudice Petitioner's case, "if he otherwise stands qualified to contest the election."

4. To appreciate the stance of Petitioner it would be advantageous to reproduce the above referred provisions of the two statutes, viz. Section 47A of ROPA and 18-A of SLGA-

"47A. Party lists for reserved seats, etc.-(1) For the purpose of election to seats reserved for women and non-Muslims in the National Assembly and Provincial Assemblies, the political parties contesting election for such seats shall, within the period fixed by the Election Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Chief Election Commissioner, or as he may direct, with the Provincial Election Commissioner, who shall forthwith cause such lists to be published for information of the public at large.

(2) The parties' lists referred to in clause (1) may contain as many names of additional candidates as a political party may deem necessary for contesting seats reserved for women and non-Muslims to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seat during the terms of National Assembly and Provincial Assemblies, as the case may be.

(3) Whether a seat reserved for women or non-Muslim in the National Assembly or a Provincial Assembly falls vacant for death, resignation or disqualification of a member, it shall be filled in by the next person in order of precedent from the party's list of the candidates submitted to the Election Commission under clause (1).

(4) Every candidate contesting election on a seat reserved for women or non-Muslims, shall alongwith the nomination papers and other relevant documents, submit to the Returning officer appointed by the Election Commission in this behalf-

(a) a copy of the party list of the candidate's political party for such seats;

(b) declarations and statements as required by law or rules in support of the nomination; and

(c) The fee required under any law for the time being in force for filing nomination papers.]"

"[18-A.-(1) For the purpose of election to the seats reserved for woman, peasant or labourer and non-muslim in a Council other than Union Council and Union Committee, the political party contesting election for such seats shall within the period fixed by the Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for woman, peasant or labourer and non-muslim with the District Returning Officer who shall also act as the Returning Officer for the aforementioned reserved seats in the District.

(2) The lists submitted under sub-section (1) with the Returning Officer shall be published forthwith for information of public at large.

(3) The parties' lists referred to in sub-section (1), may contain as many names of additional candidates as the political party may deem necessary for contesting seats reserved for woman, peasant or labourer and non-muslim to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seat during the term of Council concerned.

(4) Where a seat reserved for woman, peasant or labourer and non-muslim in a Council falls vacant due to death, resignation or disqualification of a member, it shall be filled in by the next person in order of precedent from the parties lists of the candidates submitted to the Returning Officer under sub-section (1).

(5) Every candidate contesting election on a seat reserved for woman, peasant or labourer and non-muslim shall, alongwith the nomination papers and other relevant documents submit to the Returning Officer appointed by the Commission in this behalf-

(a) a copy of party list of the candidates' political party for such seat;

(b) Declaration and statements as required by law or rules in support of the nomination; and

(c) The fee required under the law for the time being in force for filing nomination papers.]"

5. Mr. Mian Mumtaz Rabbani, the learned DAG, who was assisted by Mr. Noor Hassan Malik, learned A.A.G representing the Respondent-ECP, on the other hand, argued that Section 18-A is merely a mechanism for holding Election on the reserved seat and the same section is subject to qualification mentioned in Section 35 of the afore referred SLGA. The learned DAG specifically pointed out sub-section (c) of Section 35(1) relating to the eligibility criteria for a candidate to be elected or chosen as a member of the Council. As per the Respondents' contention since Petitioner is not a registered Voter in District Council, therefore, he cannot contest the Election on reserved seat of a District Council, but, the Petitioner is registered as a voter in Municipal Committee, Moro, Ward-6, which falls within the Urban Area of Naushehro Feroze. As per the learned DAG, in terms of Sections 8 and 15 of the SLGA, a clear distinction has been made between Urban and Rural areas so as to ensure that respective constituencies are represented by the person / members of that particular area. It was further argued that scheme of Election as envisaged in SLGA is quite different from RUPA, inter alia, as eligibility criteria to become member are quite distinctly described in the two statutes. The main objective of the present SLGA is that people / constituents of an area should be represented by electing some one with whom they are acquainted with.

6. We have heard learned counsel for petitioner and learned DAG/AAG and perused the record with their assistance. The submissions made by learned DAG on the subject controversy on behalf of Respondents'

side are not without substance. The nomination form filed by the petitioner with the present petition shows that the petitioner has been shown as a registered voter of "M.C-Moro, Ward-6".

The above factual position, which is material in nature and goes to the root of the subject controversy is not disputed as the same has also been mentioned in the impugned order of 14.05.2016 passed by the Respondent No.2, being the Appellate Authority, and has also not been challenged by the petitioner while filing instant constitutional petition.

7. We have examined the relevant provisions relating to Elections under SLGA carefully, which lead us to the conclusion that the same have been enacted keeping in view the spirit of local government representation, that can be summarized as the sphere of government closest to the people. Thus, the Local Government representatives are closest to the communities as they work at grass root level and the main purpose of local government is to empower such representatives of the people at the grass root level. Keeping in view this prime consideration, the eligibility criteria mentioned in SLGA is to be interpreted; scope of which is that if a candidate is a voter registered in an urban area, then he can only be elected for Council falling within an urban area of a District as envisaged in Section 8 and 15 of the SLGA, including, Town Committees and Municipal Committees. Similarly, if a person is not registered in a Union Council or such other category of rural area, then he is disqualified to represent a rural area, irrespective of the fact that a candidate is a voter of the same district, as vehemently argued by the petitioner that, since Moro falls within District Naushehro Feroze, hence, he is eligible to contest the election of its District Council. Since Municipal Committee (M.C) Moro undisputedly is an urban area of District Naushehro Feroze, thus Petitioner is not qualified to contest election of that District

Council which in fact comprises of rural area. Consequently, the above mentioned Section 18-A will neither apply to the case of petitioner nor will rescue the petitioner from disqualification, as he failed to cross the first hurdle of Section 35 of SLGA, which provides the basic qualification to become a member, and since the said Section 35 is couched in a negative language, it is to be interpreted strictly being mandatory in nature.

8. Secondly, another cardinal principle that applies here is that what law does not permit directly can not be allowed to be achieved indirectly. In this regard guidance can be taken from the judgment of our Hon'ble Supreme Court reported as PLD 2011 SC 385 (Shahid Orakazi versus Pakistan through Secretary Law and another). Relevant part of the above reported judgment is reproduced herein under:-

"Another mode of showing a clear intention that the provision enacted is mandatory is by clothing the command in a negative, form. As stated by CRAWFORD: "Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience". As observed by SUBBARAO, J.: "Negative words are clearly prohibitory and are ordinarily used as legislative device to make a statute imperative."

61. The learned counsel had further argued that it was an age-old principle too well-established by now that what the law did not allow to be achieved directly could never be permitted to be achieved indirectly. Reliance in this connection had been placed on the judgment delivered by this Court in the case of Mian Muhammad Nawaz Sharif v. President of Pakistan and others (PLD 1993 SC 473) and on the case of Haji Muhammad Boota and others v. Member (Revenue), Board of Revenue, Punjab and others (PLD 2003 SC 979).

62. The word "EXTEND", according to the Oxford English Dictionary, means:--

"to stretch out, to stretch forcibly, to lengthen, to prolong" and the word "EXTENDABLE" means:--

"capable of being extended or stretched and capable of being enlarged in length or duration"

"NON" is a Latin word which, again according to the Oxford English Dictionary, crept into the English language around the 14th century which is prefixed to nouns to indicate:--

"a negation or prohibition"

63. The word "NON-EXTENDABLE" would thus mean, in the present context, a duration of time which was incapable of being enlarged or extended or lengthened or prolonged or stretched. And as has been mentioned above prefixing the word "EXTENDABLE" with a negative command only indicates the emphatic, prohibition vis-a-vis the enlargement of the duration of the period in question. The intention of the law-giver by inserting the said word through an amendment in the relevant provision is obvious i.e. that since the Prosecutor-General could be called upon to prosecute the holders of the highest of public offices in the country including the sitting Prime Minister, therefore, he should be a person who should be placed above all kinds of temptations and greed and should not at any time be looking for any favour from any quarter which could become a hindrance in his way of fearlessly discharging his said obligations. Needless to say that the competent authority in the matter of appointment of the Prosecutor-General is the President which President is obliged by the provisions of Article 48 of the Constitution to act in the matter only on the advice of the Prime Minister which Prime Minister, as has been noticed above, fell within the purview of the NAB Ordinance and thus liable to be prosecuted by the Prosecutor-General. This is also a principle too well established that where the intention of the legislature was clear and the object for which a law had been enacted was patent and evident then the Courts were not allowed to interpret such a law in a manner which could impede or defeat the object for which such a law had been enacted. Reference may be made to Mehram Ali's case (PLD 1998 SC 1445) and to Imtiaz Ahmed Lali's case (PLD 2007 SC 369). If the interpretation canvassed by Mr. Irfan Qadir, ASC was to be accepted then the same would not only defeat the clear object of the provision in question but would also lead to a blatant absurdity. It would be preposterous and irrational to declare that once an incumbent of the office of the Prosecutor-General had completed his term of three years then no one had the competence to extend or enlarge the said term even by one day but the same competent authority could instead grant him three years by appointing him afresh to the same office. In the recorded judicial history such a situation attracted judicial notice in the year 1889 in case of Madden v. Nelson (1889 AC 626) and it was Lord Halsbury who declared for the first time that what was not permitted by law to be achieved directly could not be allowed to be achieved indirectly. And the said principle has been repeatedly acknowledged and followed by the Courts ever since then and the Courts in Pakistan are no exception in the said connection. The cases of Mian Muhammad Nawaz Sharif, and Haji Muhammad Boota (Supra) are evidence to the said effect".

Notwithstanding the above, even the plain language of said Section 18-A clarifies that it does not pertain to the qualification nor does it provide for the eligibility criteria of a candidate, but is a mechanism or procedure for electing or choosing Members for different category of reserved seats as mentioned therein.

9. In view of hereinabove facts and the ratio of the above cited judgment we are of the view that the impugned decision does not suffer from any illegality or error which may warrant any interference by this court in its constitutional jurisdiction, therefore, instant constitutional petition was dismissed along with listed application vide short order announced by us on 20.05.2016, and foregoing are the reasons for such short order.

JUDGE

JUDGE