

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

C.P. NO. D-7760/2015

Petitioner: Mrs. Nusrat Kamal, through Mr. Umer Akhund, Advocate.

Respondent No.1: Federation of Pakistan, through Mr. Asim Mansoor Khan, DAG

Respondent No.2: Pakistan Medical & Dental Council, through Mr. Sohail K. Rana, Advocate

Respondent No.6: Dr. Nasir Ali Khan, in person.

C.P. NO. D-7855/2015

Petitioner: Dr. Professor Ata ur Rehman, through Mr. Rehman Aziz Malik, Advocate.

Respondent No.1: Federation of Pakistan, through Mr. Asim Mansoor Khan, DAG

Respondent No.2: Pakistan Medical & Dental Council, through Mr. Sohail K. Rana, Advocate

Respondent No.4: Dr. Jamaluddin Shaikh, through Mr. Nishat Warsi, Advocate.

Date of hearing: 08.05.2017

Date of Judgment:

Present: Munib Akhtar & Yousuf Ali Sayeed, JJ

JUDGEMENT

YOUSUF ALI SAYEED, J – The captioned Petitions raise similar questions as to the probity of elections of the Pakistan Medical and Dental Council (the “**Council**”) for the year 2015 (the “**Election**”). In view of the commonality as to the underlying facts, as well as the grounds raised and relief sought, we intend to jointly dispose of these matters vide this common Judgment.

2. The Council is a statutory regulatory body constituted in terms of Section 3 of the Pakistan Medical & Dental Council Ordinance, 1962 (the “**Ordinance**”), the constituent members of which are to include, under Section 3(1)(h), *“one member each from every province to be elected from amongst themselves by the faculties of all public sector Pakistan Universities including their constituent and affiliated colleges”*, and under Section 3(1)(j), *“one member from each Province, Federally Administered Tribal Areas (FATA) and Islamabad Capital Territory, to be elected amongst themselves by the registered medical practitioners”*.

3. As per Section 4 of the Ordinance, all elections are to be conducted by a 3-member Election Committee to be constituted by the Federal Government and to be conducted in such manner as may be prescribed from time to time. For this purpose, vide SRO No. 1042(1)/2015, in exercise of the powers conferred by Section 33(1) of the Ordinance, the Council, with the previous sanction of the Federal Government, was pleased to make the Pakistan Medical and Dental Council (Election) Regulations, 2015 (the “**Regulations**”).

4. From a perusal of the Petitions, and the arguments advanced at the bar on behalf of the Petitioners, the principal strand of the common thread that binds these matters is that the respective Petitioners were both unsuccessful candidates in the Election, and have attributed mass rigging at the polling station of Abbasi Shaheed Hospital (“**ASH**”), Karachi, and the allegedly skewed results emanating therefrom, as the root cause of their defeat.

5. Briefly stated, the facts and circumstances leading up to the Election as are germane to both Petitions, are as follows:
- (a) On 24.10.2015 the Election Committee published a “Notice of Election for Council 2015”, including elections under (h) and (j) of sub-section (1) of Section 3 of the Ordinance, and as per the Election Schedule set out in the said Notice, 5th December 2015 was designated as the polling day.
 - (b) The Petitioner in CP No. 7760/15, Mrs. Nusrat Kamal, contested the Election in Sindh as a candidate under Clause (h) for the public faculty seat, whereas the Petitioner in CP. No. 7855/16, Dr. Professor Ata Ur Rehman, was a contestant under Clause (j).
 - (c) The Respondent No.6 in CP No. 7760/15, Dr. Nasir Ali Khan, and the Respondent No.4 in CP. No. 7855/16, Dr. Jamaluddin Sheikh (hereinafter collectively referred to as the “**Rival Contestants**”), also contested the Election in Sindh under Clauses (h) and (j) respectively.
 - (d) On 4th December 2015 (i.e. the day prior to polling) the Lahore High Court, Rawalpindi Bench, apparently made an Order in Writ Petition No. 3438/15, whereby the election to be held on 5th December 2015 was stayed till further orders, due to the administrative complications of an overlap with local bodies elections that were scheduled to take place the same day. The Council thus postponed the elections in the Province of Punjab, but did not suspend the same in the other Provinces. On polling day, voter turnout in Sindh was low, and out of roughly 34,000 registered voters, only 853 votes were cast. The reason ascribed in this regard is the confusion said to have been created by the media reporting of the aforementioned Order. This aspect is of some relevance and will subsequently be discussed further.

6. It is pertinent to mention that there were 11 designated polling stations across Sindh, of which 4 were in Karachi, one of which was ASH. As far as the events that unfolded on the polling day are concerned, the case set up by the Petitioners is that whilst they were initially in the ascendancy on the basis of the results of the other 10 polling stations in the Province, the eventual outcome came to be in favour of the Rival Contestants once the votes cast at ASH were factored in, as the result at this polling station was overwhelmingly in their favour and decisively swung the election their way.

7. In this regard, the numerical position that emerged is that in the election under Clause (h), the Petitioner in CP No. 7760/15 secured 137 votes at the polling stations other than ASH, as opposed to the 14 votes secured by the Respondent No.6. However, at ASH, the said Petitioner secured only 8 votes, whereas the Respondent No.6 secured 135 votes. Thus, on this basis, the Respondent No.6 surpassed the Petitioner with a total tally of 149 votes to the Petitioner's 145. In the election under Clause (j), the Petitioner in CP No. 7855/15 secured 364 votes from amidst the 566 votes cast at the other 10 stations. The tally of the Respondent No.4 on the same basis stood at 202 votes. As for the polling station at ASH, a total of 287 votes were cast, of which only 45 were in support of the Petitioner and 242 were in favour of the Respondent No.4. On this basis, the total tally of the Petitioner came to 409 votes, whereas that of the Respondent No.4 surged to 444 votes.

8. The overall result of the Election was notified by the Federal Government vide Notification No.F.1-40/2015-SO(PMDC) dated 28.12.2015 and, amongst the other results, the Rival Contestants were shown in the said Notification to have been elected as members of the Council from the Province of Sindh under Clauses (h) and (j) respectively. However, the operation of the said Notification to the extent of the Respondent No.6 in CP No. D-7760/15 was suspended by an Order made in the said Petition on 15.01.2016, and the effect of the Notification to the extent of the Respondent No.4 in CP No. D-7855/15 was subsequently held in abeyance by the Ministry of National Health Services in pursuance of an Order made in that Petition on 23.1.2015.

9. Learned counsel for the respective Petitioners contended that the election results at ASH were the product of massive rigging, predicated on various irregularities that were observed to have occurred on the polling day, as brought to the attention of the representatives of the Council and the Election Committee by their polling agents on the spot at (albeit that this is denied by the Council) and also subsequently by the Petitioners themselves. In this regard, he contended that although it was clearly stated in the Notification dated 29.11.2015 published in the newspapers that an invalid PMDC Certificate, PMDC Small I.D. Card and photocopy of PMDC Registration Certificate would not be acceptable as proof of identity for the purpose of voting, it was witnessed that voters who cast their votes at ASH were freely allowed to cast votes merely on showing Small I.D. Cards and various forms of identification other than their Certificate. He also contended that some voters who were carrying small I.D. cards had in fact submitted their PMDC Registration Certificates for renewal and in the absence of valid Certificates they were ineligible to cast votes.

10. In an endeavor to demonstrate these irregularities, learned counsel for the Petitioner in CP 7855/15 invited our attention to the List of Votes cast under Clause (j), as placed on record on behalf of the Council under cover of a Statement dated 17.05.2016, and sought to tally the information reflected therein (i.e. Serial Number of the Ballot Paper, Doctors Name and Registration Number) to the particulars contained in a Practitioner List comprising 23 pages, as filed by him. It was averred that irregularities in 82 votes could be discerned on this basis.

11. It was also contended by both counsel for the respective Petitioners that all the irregularities were committed with the collusion and complicity of the presiding officer and other representatives of the Council and Election Committee, who were apparently in league with the Rival Contestants in as much as they orchestrated the result at ASH in their favour by such an overwhelming margin so as to effectively hand them the election in their given categories. It was contended that this exercise was made easier due to the very low turnout resulting from the confusion created by the publicity given to the Order of the Lahore High Court as well as the clash with Local Bodies elections. He placed reliance on a Judgment of the Honourable Supreme Court in the case reported as Khalid Hussain Magsi v. Mir Abdul Rahim Rind and others 2016 SCMR 900 in an endeavor to show that the Court could take cognizance of a 'doubtful voting pattern'.

12. In reply, learned counsel appearing on behalf of the Council denied any complicity on the part of the personnel of the Council as well as all allegations of impropriety on their part. He stated that whilst there may have been a few inadvertent irregularities during the course of polling at ASH, appropriate measures were taken in that regard upon the same being detected and did not have any materially

adverse effect on the outcome of the Elections. He referred to the report submitted by the Medical Superintendent of ASH in response to the complaints received, wherein the points raised by way of complaint were addressed and it was mentioned that the two votes found to have been cast on the basis of small I.D. had been rejected. He submitted that the case of the Petitioners as to mass rigging was baseless and misconceived, that electoral officers entrusted with physically administering and overseeing the conduct of the election at ASH had no vested direct nexus with that institution or area, and had instead been deputed from Islamabad. He also submitted that the enquiries conducted on the basis of the complaints made by the Petitioners after the event showed that no objection had been forthcoming from the polling agents of the Petitioners during the course of polling, and it was only after the counting ensued that a hue and cry was raised upon the probable result becoming apparent, and the allegation of rigging was an afterthought rather than a product of a genuine grievance based on any untoward activity observed at the time of polling.

13. He further submitted on behalf of the Council that the allegations put forth even otherwise required a factual enquiry which could not ordinarily be undertaken in the realm of proceedings under Article 199. Moreover, he raised an objection as to the maintainability of the Petitions on account of the alternate remedy provided for under Section 4(2) of the Ordinance, 1962 read with Section 19 of the Regulations, and submitted that Petitioners could not resort to the writ jurisdiction in a matter concerning an election dispute where an adequate remedy was otherwise available. He pointed out that contrary to the assertion made by the Petitioner on CP 7760/15, her complaint had been fully addressed through an enquiry, and the Chairman of the Election Committee, Justice (R) Tariq Pervez, had then seen fit to dismiss the same. The learned DAG appearing on behalf of the Federation also raised similar objections as to maintainability.

14. The Respondent No.6 in CP 7760/15 (who appeared in person) as well as learned counsel appearing on behalf of Respondent No.4 in CP 7855/15, similarly assailed the maintainability of the Petitions and submitted that the cases of the Petitioners were disingenuous, the grounds raised were tenuous and assumptive, and the material brought forward in support thereof was far from conclusive and lacked the necessary quality so as to enable any definitive finding to be made on the basis thereof. They denied all allegations of rigging and impropriety on the polling day and referred to and adopted the stance of the Council that the result of the Election was a genuine reflection of a fair and untainted process conducted in conformity with the Ordinance and Regulations.

15. Additionally, learned counsel for the Respondent No.4 in CP 7855/15 submitted that the catchment area of ASH was comprised of 8 major Sindh Government and KMC Administered Hospitals, more than 20 Maternity Homes, UHC and Dispensaries, having more than 3000 employed doctors. It was further submitted that the said Respondent had been served in that area for more than 25 years, as a Deputy Medical Superintendent, Medical Superintendent, Director Administration Health Karachi and Deputy Secretary Health, Govt. of Sindh and had undertaken considerable work for improvement of Medical Institutions and the welfare of practitioners. He submitted that the said Respondent had also served at ASH for many years. He contended that, by contrast, the Petitioner was not genuinely an active medical practitioner and his history in the medical profession was linked primarily to areas outside Karachi and he was therefore relatively unknown to those doctors who were voters at ASH. On this basis, he asserted that the Respondent No.4 was far better known to and regarded by local members of the medical profession, and it

was but natural that on this account a large number of practitioners in the vicinity had voted for him at that polling station, and there was thus nothing untoward about the electoral result. He submitted that had it not been for the coinciding Local Bodies elections, the Respondent No.4 could well have genuinely received even more votes. He submitted that the voting pattern throughout the Province showed that votes had been cast for those who had local affiliations, and reflected what he termed an 'urban-rural divide'.

16. The Respondent No.6 in person similarly pointed out that of the 1100 or so registered voters in Sindh in respect of Clause (h), approximately 750 of them were associated with the medical colleges of Karachi, and that of his 26 years in the medical profession, he had served for 20 years in District Central, Karachi, where ASH is situated. He submitted that a large number of medical practitioners are from this District, and as such, it was only to be expected that a significant number of votes would be cast in his favour at that polling station, far exceeding any votes in favour of the number of votes that could be expected in favour of the Petitioner in CP 7760/15, who had no ties to the District.

17. This line of argument with reference to the close links and affinity inter se the Rival Contestants and the district and ASH was not controverted on behalf of the Petitioners, and, as tacit acceptance of such ties, it was merely submitted that the same made it easier for the Rival Contestants to have rigged the election and orchestrated the result in their own favour.

18. Be that as it may, having heard the arguments advanced and considered the material placed on record, it merits consideration that whilst the Petitioners' case hinges around the allegation of rigging at ASH, it logically has to be considered that any such conspiracy would quite obviously have come to naught had the voting at other polling stations taken place in even moderately significant numbers. Needless to say, the Rival Contestants could not possibly have orchestrated the low turnout across the Province. This is perhaps the reason why the Petitioners have emphasized the aspect of the publicity given to the Order of the Lahore High Court (as discussed herein above) in their respective Petitions, and in doing so have thereby pleaded that in postponing the Election in Punjab but not in Sindh, the Council only "partially complied with the aforesaid order of the Hon'ble Lahore High Court, Rawalpindi Bench". Furthermore, the Petitioners have emphasized the media reporting leading voters to conclude that the Election would not take place in Sindh either, and stated that the announcement made by the Council that the Election in Sindh would in fact take place as per schedule was made "at a very late hour in the night", thus suggesting that such actions on the part of the Council were by way of design. In any case, it merits consideration that as per the case set up by the Petitioners, the rumour as to suspension of the Election in Sindh only came to the surface on the day prior to that scheduled for polling, which scarcely leaves any time for an elaborate plan to fix the Election result in favour of the Rival Contestants to have been hatched in concert with the electoral staff deputed by the Council and the Election Committee, and, indeed, if the news as to the conduct of the Election in Sindh was so shrouded as to suggest to all and sundry that the same stood suspended, then at that stage there would have been no call for a plan to have been put in place at all for the fateful day.

19. Furthermore, while the voting pattern that emerged on the day of polling may appear to be unusual on the surface, the allegations of impropriety have been examined and addressed by the Council and rejected. A plausible explanation for the voting pattern has also been put forward by the Rival Contestants in their counter-affidavits, as further explained during the course of arguments. Although there are certain possible irregularities that have been highlighted on behalf of the Petitioners during the course of proceedings, a proper determination as to whether there was in fact any impropriety requires a factual enquiry, and the instant Petitions under Article 199 are not the appropriate proceedings for such an exercise, as it is well settled that election disputes have to be resolved by the authority appointed for such purpose under the relevant laws and constitutional jurisdiction of Superior Courts cannot generally be availed for the redressal of such a grievance by an aggrieved person. The objections raised by the Petitioners pertain to matters of a purely factual nature, and in the absence of an authoritative determination based on evidence, all that remains are suspicions based on assumptions. As such, with the results of the Election having been notified (albeit remaining in abeyance as regards the Rival Contestants) and the Council standing firm as to the sanctity of the process, we are not inclined to make any order vitiating the result on the basis of such suspicions and assumptions. In this regard, it is also noteworthy that the Judgment of the Apex Court in the case of Khalid Hussain Magsi (Supra), as cited by learned counsel for the Petitioners, was rendered within the scope of an appeal against a decision of an election tribunal constituted under the Representation of the People Act 1976, and not in a writ petition. Accordingly, we are of the view that the proper course open to the Petitioners would be to file a complaint with the Federal Government, within the scope of which all the questions as are being raised in these Petitions can be decided after proper inquiry.

20. Hence, whilst dismissing the captioned Petitions, we would observe that should any complaint(s) be filed by the Petitioner(s) within twenty-one days of the date of this Judgment, the same shall be entertained by the Federal Government under Section 4(4) of the Ordinance and decided on merit vide a speaking order after affording proper opportunity of hearing to the Petitioners and the Rival Contestants. Interim Orders made in these Petitions in relation to the subject of Notification No.F.1-40/2015-SO(PMDC) dated 28.12.2015 stand recalled and vacated accordingly.

JUDGE

JUDGE

Karachi
Dated _____