

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-3516 of 2016

Date	Order with signature of Judge
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Priority Case:

1. For hearing of CMA No.17706/2016.
2. For hearing of Main Case.

8th May, 2018

Mr. Muhammad Zahid, Advocate for Petitioner alongwith
Petitioner.

Mr. Ahmed Ali Dewan, Advocate for Respondent No.5.

Mr. Asim Mansoor Khan, D.A.G.

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Through instant Constitution Petition, the petitioner has challenged the Notification issued by the District Returning Officer, District Council Karachi & District Municipal Corporation / Deputy Commissioner Malir, Karachi available at page 13 as Annexure “A” to the petition, whereby in terms of Section 18-A of the Sindh Local Government Act, 2013, the name of respondent No.5 was notified as returned candidate on reserved seats (Non-Muslim) in District Council Karachi being candidate of PPPP.

Learned counsel for the petitioner argued that in fact the petitioner was the candidate of PPPP and not the respondent No.5, but this aspect was not considered. In pursuance of the order passed by this Court dated 02.05.2017, the respondent No.4 filed his additional affidavit in which it was stated that being General Secretary of PPPP Sindh, all election tickets were issued under his signature and authority. It was further stated that originally the petitioner/Sunny Masih was their nominated candidate of the Party for the reserved seats for Minorities in Local Bodies Election as Member District Council Karachi, but due to some misunderstanding petitioner/Sunny Masih was replaced by the respondent No.5/Odha Mal, who has been mistakenly declared as successful. On the face of it, there is a controversy between the two ticketholders and their Party.

It is well-settled principle of law that the disputed questions of facts cannot be adjudicated in the writ jurisdiction. The petitioner has in fact wanted cancellation of the notification declaring the respondent No.5 as returned candidate. Under the Sindh Local Councils (Election) Rules, 2015, such type of disputes could have been decided by the learned Tribunal constituted in terms of Rule 60 of Sindh Local Councils (Election) Rules, 2015, but admittedly no such election petition was filed for challenging the result.

As a fallback argument, learned counsel for petitioner himself pointed out Annexure "F" available at page 51 to the petition, which is in fact an application moved to the Chief Election Commissioner of Pakistan Islamabad by the same petitioner. Learned counsel has also placed on record the order dated 18.08.2016 passed by the learned Election Commission of Pakistan in Case No.24(70)/2016-LAW, which shows that the same petitioner is already pursuing his remedy before the Election Commission of Pakistan in which the respondent No.5 is also one of the parties. Lastly, the case was fixed before the learned Election Commission of Pakistan and when they were informed that similar litigation is pending before this Court, the learned Election Commission of Pakistan was pleased to adjourn the case sine die.

After arguing the matter at some length and on instruction of the petitioner, who is also present in Court, learned counsel for the petitioner agrees to pursue his remedy before the Election Commission of Pakistan. Accordingly, this petition is disposed of with direction that learned Election Commission of Pakistan may preferably decide the case of the petitioner within 45 days. Copy of this order may be transmitted to the learned D.A.G.

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