

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**Present**

**Mr. Justice Muhammad Iqbal Kalhoro**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P. No.D-1091 of 2016**

Mst. Irshad Begum ----- Petitioner

Versus

Mst. Shamim and others ----- Respondents

**C.P. No.D-1092 of 2016**

Hari Ram ----- Petitioner

Versus

Misri and others ----- Respondents

**C.P. No.D-1093 of 2016**

Hari Ram ----- Petitioner

Versus

Misri and others ----- Respondents

**C.P. No.D-1094 of 2016**

Mst. Irshad Begum ----- Petitioner

Versus

Mst. Shamim & others ----- Respondents

**C.P. No.D-1095 of 2016**

Muhammad Imran ----- Petitioner

Versus

Zeeshan Ali ----- Respondents

**C.P. No.D-1096 of 2016**

Muhammad Imran ----- Petitioner

Versus

Zeeshan Ali & others ----- Respondents

**C.P. No.D-1097 of 2016**

Bakhu Khan ----- Petitioner

Versus

Aamir Noor & others ----- Respondents

**C.P. No.D-1098 of 2016**

Bakhu Khan ----- Petitioner

Versus

Aamir Noor & others ----- Respondents

**C.P. No.D-2161 of 2016**

Muhammad Hanif and another ----- Petitioners

Versus

Rahim Bux and others ----- Respondents

**C.P. No.D-2162 of 2016**

Muhammad Hanif and another ----- Petitioner

Versus

Rahim Bux & others ----- Respondents

**C.P. No.D-2209 of 2016**

Khan Muhammad and another ----- Petitioners

Versus

Rasheed Khan & others ----- Respondents

Date of hearing : 05.03.2019

Date of Decision : 14.03.2019

Mr. Muhammad Arshad S. Pathan, Advocate for the Petitioners.

Mr. Mian Taj Muhammad Keerio, Advocate for Respondent No.1.

Mr. Allah Bachayo Soomro, Addl.A.G. along with District Election Commissioner Sanghar [Muslim Hussain].

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.-** All the above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common questions of law and facts are involved therein.

2. The Petitioners in CP No. D-1091/2016, 1092/2016, 1093/2016, 1094/2016, 1095/2016, 1096/2016, 1097/2016 & 1098/2016 have assailed the common order dated 14.5.2016 passed by the learned Appellate Authority in various Election Appeals, whereby he set aside the common order dated 11.5.2016 passed by the learned District Returning Officer/Returning Officer Sanghar and accepted the nomination forms of respondent No.1 (in all petitions) and rejected the nomination forms of the Petitioners. Petitioners being aggrieved by and dissatisfied with the aforesaid common order have filed the instant petitions.

3. The case of petitioners is that they belong to a political party namely Pakistan Peoples' Party (PPP) and participated in General Local Body Elections for reserve seat of Women, Non-Muslim, Youth and Labour. The learned Returning Officer vide order dated 11.5.2016 accepted their nomination forms. The respondents No.1 in the aforesaid petitions being aggrieved by and dissatisfied with the common order dated 11.5.2016 passed on nomination papers/forms of the respondents No.1 filed Election Appeal under Rule 18 (5) of Sindh Local Councils (Election) Rules, 2015. The same was allowed vide common order dated 14.5.2016 in the aforesaid petitions, whereby the learned Appellate Authority set aside the order dated 11.5.2016 passed by the learned Returning Officer and rejected the nomination form of Petitioners. Petitioners being aggrieved by and dissatisfied with the aforesaid order have filed the instant petitions.

4. The case of the Petitioners in C.P No.D-2161/2016 is that they have assailed the order dated 13.8.2016 passed by the learned District & Sessions Judge, whereby he has maintained the order passed by the Returning Officer by rejecting the nomination papers of the Petitioners and the case of Petitioners in C.P No.D-2162/2016 is that they assailed the order dated 13.8.2016 passed by the learned District & Sessions Judge, Appellate Authority Sanghar, whereby he has upset the decision of the Returning Officer and allowed the Appeal and accepted the nomination paper of the respondent No.1.

5. The case of the Petitioner in C.P No.D-2209/2016 is that they have impugned the notice dated 24.8.2016 issued by the Returning Officer Municipal Committee Sanjhor/Twon Committee Jhol Khadhro, whereby after counting of the result which came out equal and throughout under Rule 41(1) of Sindh Local Government (Election) Rules, 2015 and such declaration was made accordingly.

6. Mr. Muhammad Arshad S. Pathan, learned counsel for the petitioners in all petitions has argued that the Appellate Authority has no jurisdiction to call in question the common order dated 11.5.2016 passed by the learned Returning Officer, District Sanghar in all Election Appeals; that the Appellate Authority failed to consider the Election Rules, 2015 on the premise that the rejection of the nomination form can only be assailed by the candidates but no provision is available under the Election Rules whereby the Appeal is provided against the acceptance of the nomination forms, therefore, the order passed by the learned Appellate Authority is nullity in the eyes of law and liable to be set aside; that the Appellate Authority failed to consider that the elected members of the Committee, Council, Corporation are only entitled to propose and second belonging to the same political party and in the present case only one candidate won from Ward No.2 belongs to political party namely Pakistan Muslim League (Functional) as such the finding of filing of nomination form for all four reserved seats would be fatal for them, as their only one member cannot be the proposer and seconder at the same time and in the nomination form of Petitioner two councilors who are elected and had taken oath under the umbrella of their political party (PPP) have proposed and seconded all four candidates on reserved seat; that the Appellate Authority failed to consider that the nomination form seconded by one Sher Muhammad who is elected counselor for PPP his act to second the nomination forms of respondent No.1 in the aforesaid petitions and other 03 persons contesting for reserved seats under the shelter of PML (F) cannot be accepted and it would be sufficient for the Appellate Authority to uphold the order of Returning Officer who had accepted the nomination form of the Petitioners and had rejected the nomination form of Respondents No.1 and three others on sole ground being seconded by councilor of PPP which is neither permissible under the election law thus the Appellate Order is against the principle of natural justice and nullity; that the Appellate Authority failed to consider that the nomination forms had been allowed being based upon proportional representation system and the provision of Section 36 (k) of Sindh Local Government Act, 2013 has been misapplied which is neither the requirement

under the law nor it was need to apply as a sole and mandatory ground for consideration was to see the proposer and seconder who should be councilor and belongs to one and the same party whose nomination forms has been filed for the purpose of reserved seats and in the present case the Councilor Sher Muhammad has seconded 8 forms, 4 of PPP to whom Sher Muhammad belongs and 4 of opposite party PML (F) whom the said Sher Muhammad does not belong and under the Election Law Sher Muhammad being the elected member on PPP ticket cannot propose or second any candidate of any other party except of his own party; that the Appellate Authority failed to consider that the neither the petitioners filed any objection to the nomination form of Respondents No.1, nor the Respondents No.1 filed any objection against the nomination form of the Petitioners; that the orders passed by the Appellate Authority suffer from various illegalities and infirmities. He lastly prayed for allowing the petitions.

7. On the contrary, Mr. Mian Taj Muhammad Keerio, learned counsel representing the Respondents No.1 in all the petitions has supported the impugned order dated 14.5.2016 passed by the learned District & Sessions Judge/Appellate Authority Sanghar and argued that the there is no illegality in the impugned orders which are well- reasoned and do not require interference by this Court. He lastly prayed for dismissing the petitions.

8. Mr. Allah Bachayo learned Additional AG has filed comments on behalf of the Election Commission of Pakistan and supported the impugned common orders dated 14.5.2016 and prayed for dismissal of the petitions.

9. We have heard the learned counsel for the parties and perused the material available on record.

10. The back ground of Sindh's local Government elections, which were held in three phases on 31 October, 19 November and 5 December 2015, under the Sindh Local Government Act 2013 (SLGA) and Sindh Local Governments (Conduct of Elections) Rules 2015 (hereafter referred to as the Election Rules), The Sindh local government structure consists of eight types of elected local councils: metropolitan corporation, district municipal corporation, municipal corporation, municipal committee, town committee, union committee, district council and union council. The councils utilized in a given jurisdiction depend upon its urban or rural designation and population size. All councils are comprised of directly and indirectly elected members, using various electoral systems. Each local council has reserved seats set aside

for women, non-Muslims, youth, and peasants or laborers. Elections to the local councils can be contested by both party-affiliated and independent candidates. Depending on their jurisdiction, voters cast from one to three ballots.

11. We have noted that Section 3(xvii) of the 2013 Act defines 'Council' as a Corporation, Municipal Committee, Town Committee, District Council, Union Committee or Union Council, as the case may be. Section 18 of the 2013 Act deals with the composition of Councils consisting of such number of directly or indirectly elected members as provided in the said Act, or as may be determined by the Government (of Sindh) from time to time. Thus, Councils comprise of members elected directly as well as indirectly. Under Section 18 *ibid*, women, youth, non-Muslim and labour or peasant members of the Councils, to the extent of the percentage provided therein, are elected for the reserved seats in the manner provided in Section 18-A of the 2013 Act, which was inserted on 28.10.2014 by Sindh Act No. XVIII of 2014, but was omitted on 27.08.2015 by virtue of Sindh Act No. XXXVIII of 2015. The said Section 18-A has now been revived through Sindh Act No. XV of 2016 on 26.04.2016 in compliance of the order passed on 15.04.2016 by the Hon'ble Supreme Court of Pakistan in Civil Appeals No.760 to 786 of 2016. It is an undisputed position that elections for the reserved seats in the Province of Sindh were being held by the election commission of Pakistan in compliance of the aforesaid order passed by the Hon'ble Supreme Court. On 4th May, 2016, The Election Commission of Pakistan withdrew its Notifications bearing No.F.6 (16)/2015-LGE (S) dated 15.01.2016 and 04.02.2016, to the extent of election to the Reserved Seats of Women, Labourers / Peasants, Youth and Non-Muslims in the District Councils, Municipal Committees, Town Committees, Municipal Corporation, District Municipal Corporations and Metropolitan Corporation in Sindh Province. (On the basis of priority list)

12. The primordial question in the present proceedings is whether the Appellate Authority is empowered under the Election Law to call in question the acceptance and rejection of nomination form of the candidates by the District Returning Officer/ Returning Officer Sanghar.

13. To elaborate on the aforesaid legal proposition it is expedient to have a glance on the Election Rules, 2015. An excerpt of the Rule 18 is reproduced as under:-

**“18. (1) The candidates, their election agents, proposers and seconders, and one other person authorized in this behalf by each candidate and the person who made a representation against the nomination paper may attend the scrutiny of nomination papers, and the Returning Officer shall give them reasonable opportunity for examining all nomination papers delivered to him under rule 16.**

**(2) The Returning Officer shall in the presence of the persons attending the scrutiny under sub-rule (1), examine the nomination papers and decide any objection raised by any such person to any nomination.**

**(3) The Returning Officer, may either on his own motion or upon any objection, conduct such summary enquiry as he may think fit and reject a nomination paper if he is satisfied that-**

**(a) the candidate is not qualified to be elected as a member;**

**(b) the proposer or the seconder is not qualified to subscribe to the nomination paper;**

**(c) any provision of rule 16 or rule 17 has not been complied with; or (d) the signature of the proposer or the seconder is not genuine:**

**Provided that –**

**(i) the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper;**

**(ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith;**

**(iii) the Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.**

**(4) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it, and shall, in the case of rejection, record reasons therefor.**

**(5) An appeal against the decision under sub rule (4) shall lie to Appellate Authority appointed by the Election Commission and shall be filed and disposed of by the date specified in the election programme.**

**(6) An appeal shall be disposed of either summarily or after summary enquiry as the Appellate Authority may consider necessary.**

**(7) The orders passed under sub-rule (5) shall be final.”**

14. From bare perusal of Rule 18 (5) of Sindh Local Councils (Election) Rules, it is clear that an Appeal against the decision under sub rule (4) shall lie to Appellate Authority appointed by the Election Commission. Record reflects that the Appellate Authority was nominated in each District, who decided the Election Appeals against the acceptance and rejection of nomination papers by the Returning Officer concerned.

15. Returning to the question raised by the learned counsel for the petitioners that the impugned orders wherein nomination form of petitioners have been rejected on the ground that seconder of the nomination form belongs to PPP and has seconded the candidate of Muslim League Functional and the Appellate Authority wrongly accepted the nomination form of Respondents No.1, suffice it to say that the Rule 50 of Election Rules 2013 discloses that any member of Electoral College may nominate and any other such member may second any candidate whose name is entered in the electoral rolls and is eligible for election to the reserved seats; that proposer or seconder is not bound to only propose or second his party candidate. The learned Appellate Authority has elaborately dealt with the aforesaid issue in each Appeal. An excerpt of the common order is reproduced as under:-

**“7. I have gone through the impugned order wherein nomination form of appellant has been rejected on the ground that seconder of the nomination form belongs to PPP and has seconded the candidate of Muslim League Functional. In the impugned order learned Returning Officer has relied upon Section 36(k) of the Act, 2013 wherein it is provides that where political party certified the candidate to have defected from the party. In the case in hand there is no certificate issued by political party about defection of seconder Sher Muhammad from party, on record, as such, this ground for rejection of nomination paper has no legs to stand. The second ground for rejection of nomination paper as per learned Returning Officer is that the seconder by seconding the appellant has violated the Political Parties Act. Section 36 of the Act 2013 provides the grounds for disqualification of candidates, under said provision of law, violation of provision of Political Parties Act by seconder of the nomination form, is no ground for disqualification of candidate.**

**8. Perusal of rule 50 of Rules 2013 discloses that any member of Electoral College may nominate and any other such member may second any candidate whose name is entered in the electoral rolls and is illegible for election to the reserve seats. As per this provision of law proposer or seconder is not bound to only propose or second his party candidate. There is also no ground in the impugned order if appellant is not illegible for election to the reserve seat of Women.**

**9. For the above discussed reasons, the impugned order regarding rejection of nomination paper of the appellant has no substance in the eyes of law.**

**10. So far the appeal of the appellant against the acceptance of nomination paper of respondent No.2 is concerned, the Returning Officer without discussing the objection raised by seconder Sher Muhammad, wherein he alleged his signature on the nomination paper of respondent No.2 as fake one, accepted the nomination form holding therein that seconder was not supposed to change his statement. Sher Muhammad is present in person before me and has denied his signature on the nomination form of respondent No.2. I have perused the admitted signature of Sher Muhammad on his original CNIC produced by him in open court, there is difference between disputed signature on nomination form of respondent No.2 and his admitted signature in CNIC, one with naked eye can differentiate the two. Under rule**

**52(3)(d) of Rules 2013 Returning Officer is bound to reject the nomination form where the signature of proposer or seconder is not genuine. In the case in hand the seconder himself had appeared before the Returning Officer and denied his signature on nomination paper of respondent No.2 through his statement but learned Returning Officer ignored this fact and accepted the nomination form of respondent No.2. For acceptance of nomination paper the reasons given as stated above, are uncalled for and not supported by any legal provision of law. Consequently the impugned order is set aside and while allowing both the appeals the nomination form of appellant is accepted and the nomination form of respondent No.2 stands rejected.”**

16. We have noted that apart from electing members directly, the Sindh Local Government Act, 2013 also provides that certain Councils would have reserved seats as well. Such Councils are Town Committees, Municipal Committees, District Municipal Corporations, Municipal Corporations, Metropolitan Corporations and District Councils. The members on the reserved seats of such Councils are to be elected by the members who have been directly elected on such Councils as these directly elected members constitute the Electoral College for electing members on the reserved seats. Chapter V of the Sindh Local Councils (Election) Rules, 2015 deals with the elections to the reserved seats of the Councils. Rule 50(1) of the said Rules prescribes the basic requirement for nominating a candidate for electing him as a member of the Council on its reserved seats. It reads; “Any member of the Electoral College may nominate and any other such member may second any candidate whose name is entered in the electoral rolls and is eligible for the election to the reserved seats.” It can be seen from the provisions of Rule 50(1) that it is a fundamental requirement that only such person can be nominated for the reserved seats of a Council, who is enrolled as a voter in the electoral rolls. Section 35 (1) (c) of the Sindh Local Government Act, 2013 provides 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 rolls of the Council or Ward. When Section 35 (1) (c) states that a candidate has to be enrolled as a voter in the electoral rolls of the Council or Ward, it uses two separate terms i.e. ‘the Council’ as well as ‘Ward’. In our view these two terms have been used to deal with two distinct situations. Where a member for a Council is to be directly elected from a Ward on the basis of adult franchise of the electors then the candidate has to be enrolled as a voter of that particular Ward, otherwise his candidature would be liable to be rejected, hence the term ‘Ward’ has been used in clause (c) of Section 35 (1) for such candidates. On the other hand, where a member is to be elected for a reserved seat of a particular Council by its electoral college then the requirement is that such

candidate must be enrolled as a voter from any of the Wards falling within the local limits of such Council. It is for this reason that the term 'the Council' has also been used in Section 35(1) (c). Mere use of the term 'Ward' for the election on reserved seat would not have been adequate as the members on the reserved seats of a Council are not elected by any particular Ward but by the electoral college of the Council, which comprise of its directly elected members. Section 35(1) (c) clearly deals with these two different situations.

17. For further fortification on the aforementioned issue, it is expedient to have a look at Sections 33, 36 & 54 of Sindh Local Government Act, 2013 which provide as under:-

**“33. Election on party basis. - The elections to the Council under this Act shall be held on party basis: Provided that any candidate may contest election as independent candidate and may subsequently join any party.**

**36. Disqualification for candidates as members.-**

**(1) A person shall be disqualified from being elected or chosen as and from being a member of the Council, if –**

**(a) he is of unsound mind and has been so declared by a competent court; or**

**(b) he is an un-discharged insolvent;**

**(c) 3[\* \* \* Omitted];**

**(d) he holds an office of profit in the service of Pakistan, or Province of Sindh or a Council;**

**(e) he is in the service of any statutory body or a body which is owned or controlled by the Government or the Federal Government or a Council or, in which any of such Government or Council has a controlling share or interest, except the holders of elected public office; provided that in case of a person who has resigned or retired from any such service, a period of not less than six months has elapsed since his resignation or retirement; or**

**(f) he has been convicted by a court of competent jurisdiction for an offence involving moral turpitude or misuse of power or authority under any law unless a period of three years has elapsed since his release; or**

**(g) he has been convicted for an offence involving activities prejudicial to the ideology, interest, security, unity, solidarity, peace and integrity of Pakistan, unless a period of three years has elapsed since his release;**

**(h) he has been dismissed, removed or compulsorily retired from public service on the grounds of misconduct unless a period of three years has elapsed since his dismissal, removal or compulsory retirement;**

**(i) he is under contract for work to be done or goods to be supplied to a council or has otherwise any direct pecuniary interest in its affairs;**

**(j) he is for the time being disqualified or chosen as a member of the Provincial Assembly under any law for the time being enforce;**

**(k) he is certified by his Political Party to have defected from the Party.**

**Whoever –**

**(a) is found, by the Election Commission to have contravened the provisions of sub-section (1), shall stand disqualified from being a**

**candidate for election to any office of a Council for a period of four years;**

**(b) having been elected as a member of a Council or is a holder of an elective office of the Council is found by the Election Commission to have contravened the provisions of sub-section (1) shall cease forthwith to be an elected member or to hold the office of such member and stand disqualified from being a candidate for election to a Council for a period of four years.]**

**54. Appeal against the orders of Tribunal. - (1) Any person aggrieved by a final order of a Tribunal may, within thirty days of the communication of such order, prefer an appeal to the High Court. (2) The High Court shall decide an appeal preferred under sub-section (1) within three months.”**

18. During the course of arguments, we have been informed that the Election Commission of Pakistan issued notification dated 15<sup>th</sup> March, 2017 and notified the seats of the constituencies of the Petitioners as vacant and ordered for conducting the election. An excerpt of the same is reproduced as under:

**“NOTIFICATION**

**Islamabad, the 15<sup>th</sup> March, 2017.**

**No.F.6(12)/2015-LGE(S)(1):- In exercise of powers conferred upon it under Article 140A of the Constitution of Islamic Republic of Pakistan, Section 28 of the Sindh Local Government Act, 2013, and all together powers enabling it in that behalf; the Election Commission of Pakistan hereby declare and notifies the seats, mentioned in the list attached, as vacant, for the category of seats of Women, Peasants/Labourer, Youth and Non-Muslims in Union councils, Union Committees, District Councils, Municipal Committees, Town Committees, Municipal Corporations District Municipal Corporations and Metropolitan Corporation of Sindh Province, on the basis of information furnished by the Secretary Local Government, Sindh vide letter No.RO (LG)/E.Com:/14 (45)/2016 dated 01.02.2017 and verified by the Provincial Election Commissioner, Sindh, after conduct of Local Government Elections-2015-16 in Sindh Province, due to reasons enunciated against each.**

**By order of the Election Commission of Pakistan.**

**Sd/-**

**(Inayatullah Jamali)**

**Deputy Director (LGE-S)”**

19. In the light of above discussion, we have reached the conclusion that any member of the electoral college may nominate and any other such member may second any candidate whose name is entered in the electoral roll and is eligible for the election to the reserved seat, therefore, there is no ambiguity in the proposition that he should be from one political party. The Rule 52 of Sindh Local Councils (Election) Rules, 2013 is very clear in its term that the Returning Officer is not required to reject a nomination paper of any candidate on the ground of alleged defect, prima-facie there is no such situation has arisen in the present matter.

20. Reverting to the question raised by the learned counsel for the petitioner that the nomination form of the respondents No.1 in all petitions

was rightly rejected by the Returning Officer under Section 36(k) of the Act, 2013. We do not agree with the assertion of the learned counsel on the aforesaid proposition for the reason that Section 36 (k) of the Act, 2013 is not fatal and does not envisage disqualification of the candidate, contesting the Election on reserved seats in the light of Rule 47 and 50 of Election Rules, 2013. In our view the exercise conducted by the learned Returning Officer by invoking the aforesaid section is not correct approach under the law as seemingly there is no defection from any political party.

21. We have gone through the orders passed by the learned Appellate Authority and in our view he has rightly corrected the wrong of the orders of the Returning Officer, therefore, we concur with the decision of the learned Appellate Authority which does not require any interference on our part. Resultantly, all the captioned petitions are not maintainable, thus accordingly dismissed along with pending application(s).

**JUDGE**

**JUDGE**

Karar\_hussain/PS\*