

IN THE HIGH COURT OF SINDH AT KARACHI

CP D – 4689 OF 2018

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Sikandar Ali

vs.

Chief Election Commissioner Sindh
& Others

For the Petitioner: Mr. Mansoor Mir, Advocate

For the Respondent No. 1: Mr. Salahuddin Gandapur, Advocate
Mr. Darvesh, Advocate

For the Respondents No. 6: Mr. Jhamat Jethanand, Advocate

For Province of Sindh: Mr. Miran Muhammad Shah
Assistant Advocate General
Mr. Shamsheer A Khan
State Counsel
Ms. Rukhsana Mehnaz Durrani
State CounselMr. Zahid Khan
Assistant Attorney General

Date of Hearing: 14.11.2018.

Date of Announcement: 14.11.2018

JUDGMENT

Agha Faisal, J: The present petition was filed challenging the election of Respondent Nos. 6 and 7, as Chairman and Vice Chairman of Town Committee Tando Bago. The prayer clause sought vitiation of the election of the respective respondents and also sought fresh elections to be conducted under the aegis of the Pakistan Rangers. An objection as to maintainability of the petition was raised at the very onset, in view of the statutory remedy available to the petitioner under

the Sindh Local Government Act 2013 (“**Act**”), and that is the very issue determined herein.

2. Mr. Mir Mansoor, learned counsel for the petitioner, contended that at the time when the election under consideration was conducted the relevant election tribunals had not been constituted and even otherwise the dispute raised did not fall within the ambit of election petitions. It was argued that the bar placed with respect to entertaining of electoral disputes by virtue of Article 225 of the Constitution did not extend to local bodies elections, therefore, there was no impediment for the present dispute to be adjudicated by this court in the exercise of its writ jurisdiction.

3. Mr. Salahuddin Gandapur, learned counsel for Election Commission of Pakistan, stated that the case of the petitioner was prima facie an electoral dispute and adjudication of the same was provided for under the applicable law, hence, the present petition was demonstrably not maintainable. It was further argued that the petitioner sought setting aside of an election in the present proceedings without even having arrayed all the contesting candidates as parties hereto. The factual controversy raised by the petitioner was also contended to be contrary to the facts and record, hence, it was prayed that present petition be dismissed forthwith.

4. Mr. Jhamat Jethanad opened the arguments on behalf of the respondent No.6, being the elected Chairman Town Committee Tando Bago. It was argued that the electoral process was conducted in a fair and transparent manner and with the participation of the present petitioner. Learned counsel submitted that the election for Chairman and Vice Chairman is held on the basis of panels and the candidate for

Vice Chairman, who contested the election on the same panel as the present petitioner, is conspicuously absent from the present proceedings. Per learned counsel the dispute raised by the petitioner is purely an electoral dispute and statutory remedy in respect thereof is provided under the Act. It was thus contended that in view of an efficacious statutory remedy provided to address any grievance that the petitioner may have had, the institution of the present petition is without the sanction of law.

5. We have heard the arguments of the respective learned counsel and have also reviewed the record placed before us. It may be prudent to initiate this discussion by adverting to the relevant dispute resolution mechanism prescribed under the Act, Section 46, whereof stipulates as follows:

“Election Petition:- (1) Subject to this Act, an election to an office of a council shall not be called in question except by an election petition”.

6. The Sindh Local Councils (Election) Rules 2015 (“**Rules**”) deals at length with the issue of election disputes and the entire chapter 7 thereof is dedicated to the said subject. Rule 60(i) of the Rules stipulates as follows:

“60. (1) No election shall be called in question except by an election petition made by a candidate or panel for that election, hereinafter in this Chapter referred to as the “petitioner”.”

7. It is prima facie apparent from a perusal of Section 46 of the Act read with Rule 60(i) of the Rules that the appropriate forum for determination of electoral disputes is the learned Election Tribunal. The controversy in the present petition is prima facie an election dispute and

this observation is cemented by the prayer clause contained in the Memorandum of the Petition, which seeks to nullify the election of the respondents Nos. 6 and 7 and thereafter seeks for fresh elections to be conducted in the manner sought. It may be pertinent to observe that the relief sought in the present petition is commensurate to that which was within the ambit of an Election Tribunal in terms of Section 49 of the Act, which states as follows:

- “49. *Decision of the Election Tribunal:* The Election Tribunal may, on the conclusion of trial of an election petition, make an order –
- (a) dismissing the petition;
 - (b) declaring the election of the returned candidate to be void
 - (c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected’ or
 - (d) declaring the election as a whole to be void....”

8. It is well settled law that in the presence of efficacious statutory remedy the invocation of the writ jurisdiction of this court is not merited. The petitioner has failed to demonstrate any sustainable grounds for failure to approach the relevant Election Tribunal for the redressal of his grievance. It is thus, the considered view of this court that the present petition is misconceived and not maintainable.

9. In view of the reasoning and rationale contained hereinabove this court had dismissed the present petition vide order dated 14.11.2018. These are the reasons for the afore-cited order.

JUDGE

JUDGE

Karachi
Dated 03 December 2018