

2016 M L D 1527

[Sindh]

Before Muhammad Shafi Siddiqui and Abdul Maalik Gaddi, JJ

KHALID AHMED MEMON---Petitioner

Versus

DEEN MUHAMMAD TALPUR and 2 others---Respondents

C.P. No.D-2547 of 2015, decided on 29th December, 2015.

Sindh Local Government Act (XLII of 2013)---

---Ss. 23 & 36---Sindh Local Councils (Election) Rules, 2013, R.18---Election for the seat of local council---Non-disclosure of complete assets at the time of submitting nomination papers---Effect---Rejection of nomination papers---Scope---Proper and Secunder were required to be from the constituency of candidate Nomination papers of the candidate were rejected on the ground that he had not disclosed his complete assets at the time of submitting the same---Appeal filed by the candidate was accepted and it was held that a person could not be disqualified for not disclosing the assets---Contention of rival candidate was that false statement had been given disclosing incomplete assets---Validity---Provisions of Sindh Local Government Act, 2013 and Sindh Local Councils (Election) Rules, 2013 did not provide any necessity or mandatory requirement to submit the details of assets at the time of submitting nomination papers---Successful candidate had to submit the details of assets within a period of 30 days when he took oath of an office---Candidate could not be disqualified on summary assumption for such details of assets---No one should be penalized for not disclosing the assets when law did not require him to disclose the same---No reason was available with the Returning Officer to reject the nomination form on account of not disclosing the assets---Statement made by the candidate did not fulfill the requirements for considering it to be an affidavit on oath---Even such information could not be considered to be a false affidavit---Nothing had been gained by the candidate by not showing assets at the time of filing nomination papers---Such information could not be considered to be a mala fide---Candidate's proposer and secunder were required to be from the same ward or constituency from where a candidate was contesting the election---Constitutional petition was dismissed in circumstances.

Arbab Ali Hakro for Petitioner.

Allah Bachayo Soomro A.A.G. Sindh.

Imdad Ali R. Unar advocate files his Vakalatnama on behalf of Respondent No.1, taken on record.

Jhamat Jehtanand advocate as Amicus Curie.

ORDER

Learned counsel for the petitioner has challenged the impugned order passed by the appellate authority m. Election Appeal No.01 of 2015. In terms whereof, the appeal was allowed and the nomination papers of the rival candidate were accepted.

2. The facts are that the nomination papers of the respondent No.1 were rejected by Returning Officer on the ground that he has not disclosed his complete assets at the time of giving statement and submitting nomination papers. The order passed by the Returning Officer is available at page-67. Aggrieved with this order, the respondent No.1 filed an appeal and it is observed by the appellate forum that in terms of section 36 of Sindh Local Government Act of 2013 a person cannot be disqualified for not disclosing the assets.

3. It is the case of the petitioner that since he has given a statement disclosing the incomplete assets amounts to giving a false statement as it does not contain the entire assets owned by him. He submits that this is not a question of disclosing assets in terms of section 23 of Sindh Local Government Act, 2013 but it amounts to giving incorrect information through a declaration and hence, hit in terms of Articles 62 and 63 of the

Constitution. He further submits that in addition to this, he has not submitted the challan of the concerned Mukhtiarkar Revenue and other outstanding dues against him. Counsel submits that since he has disclosed incorrect and incomplete facts, therefore, the provisions of Articles 62 and 63 of the Constitution are applicable and he should stand disqualified on this score alone.

4. On the other hand, Mr. Imdad Ali R. Unar, advocate for respondent No.1, at the very outset, stated that these points under no stretch of imagination could constitute grounds to disqualify a candidate as in terms of section 23 of the Act, 2013 as he is only required to disclose the assets after he takes oath of the office and not otherwise. He further submits that in addition to this, rule 18 of Sindh Local Council Election Rules 2015 provides only four conditions to disqualify a candidate are recognized which does not include the grounds raised by the petitioner. He submits that without prejudice to the above, the entire assets which include those as relied upon by the petitioner were disclosed and hence, at the time of scrutiny they were available before the Returning Officer. He further submits that such objections were not preferred by the petitioner but in fact, such objections were raised by a stranger and hence, the petitioner is not allowed to contest all those objections, which were not taken by him before Returning Officer.

5. Mr. Soomro, learned Additional A.G. has also adopted the arguments of the respondent and submits that the provision of articles 62 and 63 of the Constitution do not apply and the Sindh Local Government Act, 2013 and the rules framed thereunder does not provide any room to disqualify the candidate on the ground of not showing the entire or complete assets.

6. We have also appointed Mr. Jhamat Jethanand advocate for the assistance in this regard and he has assisted that insofar as the provisions of the Sindh Local Government Act, 2013 are concerned and the rules framed thereunder, a candidate who is not required to submit declaration of his assets under Act, 2013, cannot be ousted to contest the election in terms of rule 18 as well as section 23 of Sindh Local Government Act, 2013. He submits that section 71 of the Sindh Local Government Act, 2013 provides that the provisions of the Representation of the Peoples Act, 1976, shall be made applicable to the election and the electoral process under this Act but that has been made after saving the provisions under the Act of 2013. He submits that it only means that all those tests which have been prescribed as disqualifying ground under the Act 2013 and rules there under, could only be considered and nothing beyond that. He submits that insofar as a candidate being sagacious, righteous, non-profligate, honest and ameen is concerned means that any declaration contrary to above has to be from a Court of law and considering any candidate as dishonest etc in a summary manner would amount to depriving him and hence, on this score such candidates should not have been disqualified.

7. We have heard the learned counsel as well as learned Amicus Curie in the matter. Insofar as the declaration of the assets is concerned, we are of the view that the provisions of Sindh Local Government Act, 2013 as well as the rules framed thereunder do not provide any necessity or mandatory requirement to submit the details of the assets at the time of submitting nomination papers. The need only arises when a successful candidate takes oath of an office, where after, within a period of 30 days, he shall disclose his assets in terms of the section 23 *ibid*. Similarly in terms of the rules framed thereunder, i.e. rule 18(3) provides four conditions to disqualify a candidate in addition to section 36 of the Act of 2013. All the subject clauses from (a) to (k) of section 36 does not provide any room for disqualifying a candidate on such summary assumption as relied upon by petitioner insofar as the assets are concerned. The same is the situation under rule 18 (3) framed under the Act, 2013 hence, it is inconceivable as to what could be the mala fide approach of the candidate by not disclosing such assets at the time of submitting nomination papers when it is not required under section 23 of the Act. Even the petitioner's counsel submits that though it may not be a mala fide concealments but it amounts to simple non-disclosure. The counsel is unable to justify as to why one should be penalized for not disclosing the assets when the law does not require him to disclose such assets under the law as it would be a premature demand in terms of section 23 of the Act, 2013.

8. Be that as it may and without prejudice to the above, the record further shows that at the time of scrutiny, all such assets, on a query raised by the Returning Officer, were disclosed along with earlier statement / declaration hence, everything was available in terms of the assets owned by respondent No.1. There was no reason available to the Returning Officer to reject the nomination form on account of not disclosing the assets hence, an appeal was preferred, which was allowed and the nomination papers were accepted. We have also perused the "statement" which is relied upon by the petitioner's

counsel pretending it to be an affidavit on oath. We have carefully gone through it and it does not fulfill all requirements for considering it to be an affidavit on oath. Hence, we are unable to frame this question as well that any false affidavit was given, even otherwise, it cannot be considered to be a false affidavit. Such information cannot be considered to be a malafide as nothing would have been gained by a contesting candidate by not showing assets at the time of filing nomination papers since it is required subsequently at the time of oath.

9. Insofar as the alleged dues are concerned though some of the documents as claimed by the petitioner's counsel were placed on record, however, if at all, petitioner claims that any dues are outstanding then it ought to have been produced before the Returning Officer, which he has failed. Hence, we do not interfere in the order passed by the appellate authority.

10. Apart from these two points we have also been noticing that in most of the cases the issue of the proposer and seconder is coming up. There is no cavil to this proposition that a candidate's proposer and seconder are required to be from the same ward or constituency from where a candidate is contesting the election. However, the issues which are coming up need consideration firstly; that many of the candidates have been provided with the certificates of the proposer and seconder by the Returning Officer that they belong to the same Ward. Such certificates appeared to have been issued at the time of filing nomination papers. However, at the time of scrutiny it has been realized by the R.O that these proposer and seconder are not from the same ward. It has also been noticed in many cases that the effect of delimitation which has transferred and shifted some units of a constituency to another constituency have not been trickled down for the use and utility of a common man as we have noticed in many cases that when practically in court room some of the proposers and seconders were checked on website; they appear to be on the same ward despite the voter list which shows otherwise. This has also been noticed by Additional Advocate General Sindh Mr. Soomro. In such situation when even the certificates were issued to the proposers and seconders by the D.R.O how and in what way a candidate could be penalized. It is on this account that we feel that such issues are curable. The system of the Local Bodies Election as being held under the Act, 2013 and rules framed thereunder in 2013 and 2015 is still toddling and- even the rules which have been framed thereunder need consideration. Many of the candidates, who faced with this situation, have filed their nomination papers, certainly were prevented to make compliance of Rule 16(2).

11. In view of the above facts we feel that such issues of proposers and seconders in the given situation are curable.

The petition thus stands dismissed.

ZC/K-22/Sindh

Petition dismissed.