IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-4304 of 2022

Present:
Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Ahmed Khan.....Petitioner

Versus

Election Commission of Pakistan & others.....Respondents

Muhammad Afzal Roshan, Nusrat Gul Malik and Muhammad Anjum Godal, Advocates, for the Petitioner. Ms. Leela Kalpana Devi, Addl. A.G, Sindh along with Sarmad Sarwar Law Officer, ECP, Karachi and Syeda Humaira Bint-e-Maaz, Returning Officer, UC-09, TMC Mauripur, Keamari, Karachi.

Date of hearing : 18.10.2022

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner has impugned the Order made by the District and Sessions Judge Karachi West on 25.06.2022 in his capacity as the Appellate Authority constituted for that district in respect of the forthcoming Local Government Election 2022, whereby he dismissed Election Appeal No. 17 of 2022 filed by the Petitioner against the Order of the Returning Officer of Union Council-09, TMC Mauripur, Keamari, Karachi, dated 21.06.2022, rejecting his nomination papers for the office of Chairman / Vice Chairman of the aforementioned UC.

2. From an examination of the impugned Order, it is apparent that the rejection of the nomination paper took place as the Petitioner was found to suffer from disqualification under Section 36(1)(f) of the Sindh Local Government Act, 2013 (the "**SLGA**"), with the relevant excerpt from the Order of the appellate forum reading as follows:-

> "Heard learned counsel for the appellant and respondent as well as gone through the material placed on the record, including impugned order. It appears that at the first instance the nomination papers of the appellant was accepted by the returning office but later on one Shehriyar Ahmed and Muhammad Sikandar appeared and filed objections in black and white and also produced copy of judgment passed in a Cr. Case No.347/2017 registered under section 269/270 PPC at P.S. Jackson, whereby the appellant was convicted U/s. 245(ii) Cr.PC and sentenced taking lenient view, till rising of court and to pay fine of Rs.1500/-, therefore, after going through the said judgment the returning officer/respondent No.1 rejected the nomination papers of the appellant. So far as the plea of the learned counsel for the appellant that the impugned order is liable to be set aside and same is not accordance with law is concerned. As per version of the concerned Returning Officer, as per the section 36 (1) (f) of the said Act the nomination papers of the appellant liable to be rejected and disqualified the appellant from contesting election, as applicant has been convicted by the Court of competent judge. Obviously, a judgment was recorded by the Court on 05.12.2020 whereby the appellant was convicted in the aforesaid crime and period of three years has not been elapsed so far and looking to this very reason the Returning Officer rejected the nomination papers of the appellant. Besides, the learned counsel for the appellant during his arguments admitted that he has challenged the said judgment dated 05.12.2020 which is pending adjudication before the Appellate Court for decision, meaning thereby the conviction still subsist".

3. Proceeding with his submissions, learned counsel for the Petitioner simply argued that the fora below had erred in applying Section 36(1)(f) of the SLGA, with it being averred that the provision envisaged a conviction of two years or more for the envisaged disqualification to come into play. It was submitted that the aforesaid Section had been amended so as to introduce the concept of such a minimum termed, which had been overlooked. For purpose of reference, the Section, as relied upon by counsel, reads as follows:

> **"36. Disqualifications 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 -
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> …
>
> (f) he has been convicted by a court of competent jurisdiction [sentenced to imprisonment for a term of not less than two years] 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;"

4. Conversely, the learned AAG pointed out that the words "sentenced to imprisonment for a term of not less than two years" had been added in the Section on 25.11.2013 through the Sindh Local Government (Second Amendment) Ordinance, 2013, and argued that since the Ordinance was a piece of temporary legislation, Section 36(1)(f) of the SLGA reverted to its original form upon repeal thereof on expiry of the 90-day period prescribed in terms of Article 128 of the Constitution. He contended that the textual amendment was not saved, as Section 5 of the Sindh General Clauses Act, 1956 did not apply under the given circumstances, and the disqualification under Section 36(1)(f) had thus been properly considered and correctly applied in the case of the Petitioner.

5. Having considered the matter, it is noteworthy that the Petitioner has not been able to show that the amendment introduced through the aforementioned Ordinance subsequently received any further statutory cover so as to accord it permanence.

6. In the case reported as Zia Ullah Khan and others v. Government of Punjab and others PLD 1989 Lahore 554, a learned Division Bench of the Lahore High Court *inter alia* considered the effect of an amendment to the Special Courts for Speedy Trials Act, 1987 through the Special Courts for Speedy Trials (Amendment) Ordinance 1988, in as much as Section 1(2) of the Act stipulated that it was to remain in force for a period of one year from the date of assent by the President, but the amendment introduced through the Ordinance substituting the period of "one year" with "two years". Considering the development, the learned Division Bench held as follows:-

> "44. From the foregoing discussion, it is quite clear that section 6A of the General Clauses Act is designed to save the textual amendments made in the parent statute by an amending Ordinance which has since been repealed. No such saving provision is admittedly available in the Constitution and the law is well settled that the provisions of the General Clauses Act do not apply to constitutional matters. Absence of such a specific provision in the Constitution as is contained in section 6A of the General Clauses Act is the manifestation of the intention of the framers of the Constitution that they did not want the amendments/substitution made by an Ordinance in the text of an Act of the Parliament to survive the repeal of the amending Ordinance. In this view of the matter, we are constrained to repel the contention of the learned Advocate-General and we hold that the impugned amendment made by the amending Ordinance No. XIX of 1988 in the parent Act (whereby the life of the Act was extended from one year to two years) was in force only during the subsistence/ currency of the amending Ordinance and it has not survived the repeal of the said Ordinance. Result, therefore, is that the main statute viz. Act XV of 1987 remained in force and operative only upto the date of the repeal of the Ordinance."

7. As such, we are of the view that the Petition is devoid of force, with no case for interference being made out. That being so, the Petition stands dismissed accordingly.

JUDGE

CHIEF JUSTICE

Dated: 21.12.2022