

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.D- 733 of 2023
(*Jhando Khan Jarwar & others v. Federation of Pakistan & others*)

Present:

**Muhammad Iqbal Kalhoro &
Arbab Ali Hakro, JJ**

Mr. Nisar Ahmed Bhanbhro, Advocate for petitioners.

M. Safdar Kamal, Assistant Director, (Legal), files power for NADRA-respondent.

Mr. Zeeshan Haider Qureshi, Law Officer, ECP.

Mr. Ishfaque Hussain Abro, Assistant Attorney General.

Mr. Mehboob Ali Wassan, Assistant A.G.

Date of Hearing : **24.08.2023**

Date of Decision : **24.08.2023**

ORDER

MUHAMMAD IQBAL KALHORO, J.: Petitioners contested Local Bodies Elections for Chairman and Vice Chairman respectively on UC-26 Kotri Muhammad Kabir, held on 26.06.2022. They lost the election against the private respondents, but got dissatisfied with the process of election. Hence, they filed an Election Petition No.03 of 2022 before the Election Tribunal, District Judge, Naushahro Feroze, which is being contested by the respondents on merits. When entire proceedings in the Election Petition were completed and the matter was fixed for final arguments, petitioners filed two applications, one under Section 151 CPC for re-opening their side for further evidence and the other under Order 16 Rule 1(2) CPC for summoning as many as three witnesses, duly named therein. These applications have been dismissed by impugned

order dated 29.03.2023 by learned Election Tribunal holding, largely, that ample opportunity was afforded to both the parties to lead evidence, and now the matter was fixed for final arguments and that the applications were filed only to fill up the lacunas.

2. Learned counsel for the petitioners has hit the said impugned order in his arguments stating that the evidence of proposed witnesses is necessary to decide the controversy between the parties. To support his contentions, he has relied upon cases of *Amjad Khan v. Muhammad Irshad & others (2020 SCMR 2155)*, *Muhammad Anwar and others v. Mst. Ilyas Begum and others (PLD 2013 SC 255)*, *Haji Ghano Khan v. Dr. Bhagwandas (2020 MLD 1127)* and *Famir Asghar v. Asghar Ali (2019 MLD 79)*. His arguments have been opposed by learned Assistant Attorney General and Law Officer, Election Commission of Pakistan on the ground that in the Election Petition, names of these witnesses are not mentioned by petitioners, and they have failed to reveal any valid reason for summoning the proposed witnesses.

3. We have heard the parties and perused material available on record and taken guidance from the case law. Learned counsel for petitioners has not been able to controvert that at the time of filing Election Petition, or subsequently at the time of evidence, he ever attempted to introduce proposed witnesses for examination or tried to insert their names in the proceedings in Election Petition for the said purpose. At belated stage, when the petition was fixed for final arguments, petitioners moved these applications. We have perused

these applications, and find force in the arguments of learned Assistant Attorney General, that petitioners have failed to put up any cogent reason in applications justifying re-opening of their side for evidence and / or summoning the proposed witnesses, whose relevancy with the controversy as a witness at best is vague and does not appear to have been worked out by petitioners for good measure.

4. No doubt, an aggrieved party can file such applications at any stage for the purpose as stated, but when they are not filed within reasonable time plus on tangible grounds. Reversing back the proceedings already on the cusp and about to be culminated would not be legally tenable. They are to be overlooked on the ground of having impact of undermining the proceedings already held. Then in support of these two applications, only formal affidavits have been filed by the petitioners with an obscure statement that applications have been filed in the interest of justice, without disclosing, however, such interest.

5. We, therefore, do not find any merits in this petition and accordingly **dismiss** it.

JUDGE

JUDGE

Ahmad