

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P No.D-981 of 2023
C.P No.D-983 of 2023
C.P No.D-984 of 2023
C.P No.D-985 of 2023
C.P No.D-1009 of 2023
C.P No.D-986 of 2023
C.P No.D-987 of 2023

Date	Order with signature of Judge
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Before:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Petitioners in C.P No.D-981/23

983/23, 984/23, 985, 986/23 &

987/23:

Abdul Karim Khaskheli, Azeeza,
Rebel Rani, Najeebullah,
Muhammad Amir & Sajjan Das
Through Mr. Irshad Hussain
Dharejo, Advocate

Petitioner in C.P No.D-1009/23: Mai Ghufrana Khoso

through Mr. Yameen Ali Khoso

Respondents:

Election Commission of Pakistan
through Zeeshan Hyder Qureshi,
advocate

Federation:

Through Dareshani Ali Haider
'Ada', DAG

Date of hearing: 15.08.2023

Date of Order: 24.08.2023

ORDER

ARBAB ALI HAKRO, J: Through this common order, we intend to dispose of captioned petitions as similar law questions and facts are involved.

2. Precisely facts as narrated in C.P No.D-981, 983, 984, 985, 986 & 987 of 2023 are that Election Commission of Pakistan issued a schedule vide Notification dated 16.05.2023 for filing up Indirect seats in Union Committees and Union Councils relating to Sindh Province by calling upon the members of the electoral college of concerned Councils and Committees to elect the members against reserved seats of

Women, Youth, Non-Muslim and Labourers/ Peasants. In this regard, petitioners in order to contest the election filled their Nomination forms for reserved seats retained for Women, Youth, Non-Muslim and Labourers/ Peasants through a political platform of the Grand Democratic Alliance ("**GDA**") and submitted the same before Returning Officer of Municipal Committee Pir-Jo-Goth, Taluka Kingri, District Khairpur within prescribed time period along with priority list of the candidates issued by authorized person of GDA for District Khairpur in which all the names of candidates for reserved seats including petitioners herein were mentioned. It is asserted that inspite of the submission of the Nomination Form by the Petitioners, repeated demands were made by Returning Officer for filing of the priority list on the ground that the priority list submitted was got missing; hence petitioners again submitted the priority list of GDA candidates along with the authorized person of GDA and got received copies of the same. It is also urged that after the scrutiny process as per the schedule given by the Election Commission of Pakistan, the Forms of the Petitioners were restored, and their names have been inserted in the list of valid candidates, i.e. Form-VII, and ultimately GDA won all the seats and petitioners were declared as Returned Candidate by the authority. However, as per the schedule/published list of the Returned Candidates, seats reserved under the category of Women, Youth, Non-Muslim and Labourers/ Peasants are mentioned as vacant due to non-filing of names in the priority list submitted by GDA, which acts on behalf of Returning Officer appears to be malafide as the same has been submitted with receipt annexed with the petition.

3. In C.P No.D-1009 of 2023, it is urged that through Public Notice circulated in Form-I issued by District Returning Officer Naushahro Feroze, the Petitioner had participated in the reserved seat of women by filing a Nomination Form through a platform of GDA, after that, concerned DRO issued list of validly nominated candidate in

Form-VII wherein name of Petitioner was listed at Serial No.1 with affiliation of GDA. It is further asserted that Petitioner was declared Returned Candidate; however, on the day of Oath Ceremony, she was informed that she was an independent candidate; hence Petitioner refused to take Oath as an independent candidate and approached Election Tribunal/ District and Sessions Judge, Naushahro Feroze, by filing an application for redressal of her grievance, which was allowed vide order dated 07.06.2023, whereby directions were issued to Returning Officer to issue certified true copy of Form-VIII to the Petitioner. On approach, District Returning Officer issued a copy of Form-VIII and malafidely mentioned the name of Petitioner as an independent candidate; hence the act of the District Returning Officer is illegal, unlawful, and against the law and malafidely under the influence of the Ruling Party, expelled the name of Petitioner from the platform of GDA for the reserved seat under Women Category.

4. Mr. Irshad Hussain Dharejo, advocate representing the Petitioners (except in C.P No.1009 of 2023), at the outset, submits that the concerned Returning Officer deliberately and willfully misplaced/lost the priority list given to him by the authorized representative of GDA under the influence of ruling party PPPP to cause hardship to the general public, which violates parameters and guidelines issued by Election Commission of Pakistan for filling up the reserved seats as unless priority list is not submitted, which is the requirement for submission of Nomination Form, a candidate cannot contest the election from a political forum. It is contended that the claim of Returning Officer regarding non-submission of the priority list appears to be fabricated as names of the petitioners have already been inserted in the list of validly nominated candidates, i.e. Form-VII issued by Returning Officer himself. It is further argued that the act of Returning Officer not to declare the petitioners as Returned Candidates on the reserved seat of Women, Youth, Non-Muslim and Labourers/Peasants from the platform of GDA is illegal,

unlawful and unconstitutional. Lastly, it is submitted that Respondents may be directed to give Oath to the Petitioners on the reserved seat of Women, Youth, Non-Muslim and Labourers/Peasants, as the case may be.

5. It is contended by learned Counsel representing the Petitioner in C.P No.D-1009 of 2023 that the act of District Returning Officer, Naushahro Feroze to expel the name of Petitioner as Returned Candidate from the Platform of GDA and mentioned as independent Returned Candidate is illegal, unlawful and in sheer violation of Sindh Local Government Act, 2013 ("**SLGA, 2013**"). It is further asserted that Respondent No.3 (DRO) may be directed to declare the Petitioner as Returned Candidate for the reserved seat under the Women Category from the platform of GDA, besides to give Oath to the Petitioner on the reserved seat under Women Category.

6. The case of the petitioners is that the Election Commission of Pakistan issued a schedule for filing up Indirect Election of seats in Union Committees and Union Councils relating to Sindh Province by calling upon the members of the electoral college of concerned Councils and Committees to elect them against reserved seats of Women, Youth, Non-Muslim and Labourers/ Peasants vide Notification dated 16.05.2023. Petitioners filed their nomination forms along with requisite documents as prescribed under Section 18-A (5) of SLGA, 2013, before the Returning Officer. Per schedule, such papers were scrutinized under the Sindh Local Councils (Election) Rules, 2015 ("**SLC(E) Rules, 2015**") and SLGA, 2013 and List of Validly Nominated Candidates (Form-VII) were issued, wherein petitioners' names were mentioned with party affiliation (GDA) by the Returning Officer.

7. We have perused the record and have noted that the priority list was attached with the Nomination Forms of petitioners. However, the same was not considered at the time

of compilation and declaration of result by the Returning Officer regarding Municipal Committee Pir-Jo-Goth and malafidely in the schedule / published list of returned candidate reserved seats were mentioned as vacant due to non-filling of the name of the candidate in the Priority list by the (GDA). Undisputedly, petitioners contested the election after their forms had been accepted by the Returning Officer and their names declared in Form-VII as Validly Nominated Candidates.

8. Learned Counsel for the Election Commission of Pakistan argued that it was the exclusive powers of Returning Officer to furnish the result of respective Committees and Councils to the Election Commission and the grievance of the petitioners regarding not mentioning the names is solely dependent on the Returning Officer, who sent result of Indirect Election of seats reserved for Women, Youth, Non-Muslim and Labourers/ Peasants in Union Committees and Union Councils to the Election Commission.

9. Returning Officer, Municipal Committee, Pir-Jo-Goth/ Deputy Commissioner Khairpur has filed submissions of a factual report in C.P No.D-981 of 2023 wherein it is stated that the authorized person of GDA for District Khairpur has not maintained the names of the petitioners in the priority list containing 35 pages, therefore, petitioners' names would not be considered under party affiliation.

10. We have observed that two letters dated 30.05.2023 were addressed to the District Election Commissioner, Khairpur, for guidance, as required for submission of a priority list of candidates furnished by the parties; and also a letter dated 02.06.2023 addressed to Returning Officer Khairpur to decide the issue of priority list under the guidelines of Section 18-A (1) of Sindh Local Government Act, 2013. It shall be advantageous to reproduce Section 18-A(1) of SLGA, 2013 as under:-

“[18-A-(1) For the purpose of election to the seats reserved for women [youth], peasant or labourer and non-muslim in a Council other than Union Council and Union Committee, the political party contesting election for such seats shall within the period fixed by the Commission for submission of nomination papers, file separate listes of their candidates in order of priority for seats reserved for women [youth], peasant or labourer and non-muslim with the District Returning Officer who shall also act as the Returning Officer for the aforementioned reserved seats in the District.”

11. Undisputedly, from the record, it is evident that the requisite priority list of candidates was filed with nomination form by the petitioners, which the authorized person of GDA had duly issued for District Khairpur. Notably, at the time of acceptance and scrutiny of these forms, not any objection to their validly for want of priority list was raised or conveyed later on to the petitioners. But, at later state, the Returning Officer, conveniently ignoring all these established facts, exercised jurisdiction illegally and not considered the names of the petitioners having affiliation with the political party, i.e. GDA. Even though initially, nomination forms had been accepted, and the petitioners were declared as validly nominated candidates. We have noted further that the priority list available in the Court file is also under the stamp of a dispatcher, Returning Officer/ Deputy Commissioner, Khairpur. In such a situation, it can safely be assumed that the priority list of candidates was on record, but it was overlooked by the Returning Officer on purpose. Moreover, once the election as per schedule was held and petitioners were allowed to contest the same, the Returning Officer at the time of schedule / published list of returned candidate could not leave the seats vacant on the ground of non-filing of the priority list by the petitioners.

12. Thus, the Returning Officer's declaration of result regarding reserved seats for Women, Youth, Non-Muslims and Labourers/ Peasants as mentioned vacant due to non-filing of the priority list is declared illegal. Consequently, Returning Officer is directed to consider the case of each Petitioner in

terms of Rule 53(1(5) of SLC(E) Rules, 2015 and Section 18-A (1)(5) of SLGA, 2013 and declare the result of candidates to have been elected; and submit a return of the election to the Election Commission, who shall publish in the official gazette the names of returned candidates within ten (10) days.

13. Above are the reasons for our short order dated 15.08.2023, whereby captioned petitions were disposed of.

JUDGE

Faisal Mumtaz/PS

JUDGE