

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

C.P No. D-664 OF 2023

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Khadim Hussain Soomro

Petitioner: Imran Ali son of Fateh Muhammad Lashari through Mr. Abdul Rahman A. Bhutto, Advocate.

Respondents No.2, 3 & 5 Through Mr. Shafqat Rasool Narejo, Law Officer, ECP, Larkana Division.
Returning Officer, Municipal Committee, Jacobabad and others through Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh a/w Returning Officer Zakir Hussain Kakar.

Respondent No.4 Tanveer Ahmed son of Bashir Ahmed through Mr. Habibullah G. Ghouri, Advocate.
Mr. Oshaq Ali Sangi, Assistant Attorney General for Pakistan on behalf of Federation of Pakistan.

Date of hearing: 02.11.2023.

Date of Judgment 15.11.2023

ORDER

KHADIM HUSSAIN SOOMRO, J.:- Through this petition, the petitioner seeks indulgence of this Court being an aspirant contesting candidate of the Local Bodies Elections for the seat of General Member, Ward-22, Jatt Muhalla, Jacobabad City, the election scheduled to be held on 05.11.2023. Respondent No.4 is the opposite candidate, who tendered his resignation from contesting for the above-cited position in writing on 03.07.2023, enunciating thereby that due to domestic affairs, he would not be in a position to contest the said election. The post of General Member was declared vacant vide notification dated 25.09.2023 issued by the Election Commission of Pakistan, and the ECP ordered a fresh election in

said constituency. After the deadline for appeals, before the appellate authority had passed, respondent No.4 had submitted a renunciation in favour of candidate Liaquat Ali Khoso. Surprisingly, however, on 22.10.2023, the name of respondent No.4 appeared on the list of candidates with an assigned symbol. This action by respondents No.1 to 3, 5 & 6 is not justified under the law. Furthermore, the signatures of respondent No.4 on the declaration and Form of Assets were left blank; the petitioner obtained a certified true copy issued by the Returning Officer. Therefore, the petitioner has maintained this petition with the following prayer:

- a). That this Honourable Court may graciously be pleased to declare the act of respondents No.1 to 3, 5 & 6 for accepting and allowing respondent No.4 for contesting Local Bodies bye-elections for the seat of General Member by receiving huge bribe by respondents No.1 and 3 is null and void, though respondent No.4 on his own tendered resignation for the same seat.
- b). To direct respondent No.1 to issue fresh list of candidates and remove the name of respondent No.4 from the ballot papers it was printed.
- c). To grant any other relief(s) to the petitioner, which this Hon'ble Court deems fit and proper in the circumstances of the case.

2. Learned counsel for the petitioner at the very outset submits that non-signing of the nomination paper by respondent No.4 is equivalent to a substantial defect which cannot be cured and disqualified him from candidature. The learned counsel for the petitioner further submitted that respondent no 4 has not signed the declaration portion of the form dealing with the finality of Hazrat Muhammad (peace be upon him) as the last prophet of Allah; hence, this is also a substantial defect in the Nomination Paper/Form, which too is not remediable and cannot be cured in any manner. The counsel further submits that respondent No.4 has violated the mandatory requirement of the rules, which disentitled him to contest the elections; therefore, the counsel requests the revocation of his candidature in the forthcoming local bodies' election. In support of his arguments, he has referred to Rule 16 sub-section (3) (a) The Sindh Local Councils (Election) Rules, 2015.

3. Learned Assistant Advocate General Sindh, as well as learned Assistant Attorney General for Pakistan representing the official respondents, submitted that the petitioner has not made other contesting candidates a party in the proceedings; therefore, the instant petition is not maintainable.

4. Mr. Habibullah Ghouri, learned advocate for respondent No.4, submits that the alleged defect on the part of respondent No.4 is curable and can be remedied. In support of his arguments, he has referred to Rule 18 sub-section (3) and requested the dismissal of the instant petition.

5. Zakir Hussain Kakar, Assistant Commissioner / Returning Officer, respondent No.1 and Shafquat Rasool Narejo, Election Officer, on behalf of respondents No.2, 3 & 5, submit that the nomination papers of respondent No.4 are without his signature; they, however, submit that respondent No.4 had signed the verification portion of the nomination paper.

6. We have heard the learned counsel for the petitioner, learned counsel for respondent No.4, Learned Assistant Attorney General, Pakistan and learned Assistant Advocate General, Sindh, duly assisted by Law Officers of the Election Commission of Pakistan, Larkana Division and District Jacobabad and perused the material available on record.

7. The key issue raised in this petition is whether a candidate contesting the Local Government Elections is required to sign his nomination papers, whether such requirement is mandatory, and whether the nomination papers can be rejected if a candidate does not sign the declaration. In order to answer these questions, we have examined the relevant provisions of The Sindh Local Councils (Election) Rules, 2015, viz. Rules 16 and 18. [hereinafter referred as the rule], the relevant portions of the rule 16 is reproduced below for ease of convenience and ready reference:

"16. Nominations for Elections-

(1) The Returning Officer shall, as soon as may be after the publication of the election program under sub-rule (2) of rule (12),

give a public notice in Form-I inviting nominations and specifying the time before which and the place at which the nomination papers shall be received by the Returning Officer.

(2) An elector of an electoral unit may propose or second the name of any duly qualified person to be a member for that unit.

(3) Every proposal shall be made by a separate nomination paper in Form-II (English or Urdu or Sindhi), Form-III,

Form-III(A) and Form-III(B), which shall be signed by the proposer and the seconder and shall contain

(a) a declaration signed by the candidate that he has consented to the nomination and that he is not subject to any disqualification for being elected as a member ; and [this underlying is for emphasis]

(b) a declaration signed by the proposer and the seconder that neither of them has subscribed to any other nomination paper either as proposer or seconder.

(4).....

(5).....

(6).....

(7).....

(8).....

(9)....."

(10) All the Forms mentioned in Rule 16(3) (a) contained the declaration that the candidate accords his consent to the nomination and is not subject to any disqualification for being elected as a member.

8. The sub-rule (3) (a) of rule 16, The Sindh Local Councils (Election) Rules, 2015, consists of two components. The first part requires the candidates to express their consent to participate in the election, as proposed by the proposer and seconded by the seconder. The second part states that the consent is considered valid if the candidate signs the Nomination Form. The intention of the legislature is to procure the willingness of the candidate without coercion. The second component of the aforementioned rule stipulates that the applicant is not subject to any

disqualification. The candidate must lawfully confirm and solemnly declare their faith and credence in Hazrat Muhammad (peace be upon him) as the last prophet of Allah. They must acknowledge that there will be no prophet after him.

9. It is important to note that there is no specific date for submitting and accepting nominations. We have also marked both places of said Form to be unsigned. The original Form was seen and returned, whereas a photocopy thereof was kept on the record. It is a matter of great astonishment for us that neither the candidate has recorded his consent to contest the election nor has he made the declaration of his faith as cited supra, which makes him disqualified to contest the election.

10. Another question before us is whether non-signing of the nomination form is a substantial defect which is incurable or a procedural irregularity which can be rectified at any stage. Respondent No. 4 was required to fully fill out the Nomination Form in accordance with the prescribed forms outlined in the Rules of 2015. This requirement is specifically emphasized in Rule 16(3)(a)(a) of the aforementioned rules. The use of the term "shall" in Rule 16(3) ibid holds great importance, as it unequivocally renders the requirements therein obligatory.

11. The rule 18 sub-rule 3 (c) makes it more clear which says that the Returning Officer, whether acting on his own initiative or in response to any objection, shall undertake a summary enquiry at his discretion and may reject a nomination form if he is convinced that any stipulation outlined in Rule 16 or Rule 17 has not been adhered to in letter and spirit. The conspectus of the relevant portions of Rule 18 (3) is reproduced below for ease of convenience and ready reference:

" (3) The Returning Officer, may either on his own motion or upon any objection, conduct such summary enquiry as he may think fit and reject a nomination paper if he is satisfied that-

(a) the candidate is not qualified to be elected as a member;

(b) the proposer or the seconder is not qualified to subscribe to the nomination paper;

(c) any provision of rule 16 or rule 17 has not been complied with; or (d) the signature of the proposer or the seconder is not genuine" [underlying is for emphasizes]

12. Turning to another fundamental facet of this petition, it is obvious from the Rule 18(3) that failure to adhere to Rules 16 and 17 shall result in the rejection of the nomination. The substantial defects specified in the rule 18(3)(ii) render the petitioner's nomination form susceptible to rejection.

13. It is a well-settled principle of law that where a statute specifies a specific or prescribed way of doing something or by certain persons, then it must be done only in such a manner and only by those individuals. There is no disagreement that the Rules of 2015 have been made under the express provision of section 138 of the governing statute, i.e. Sindh Local Government Act, 2013, in order to fulfil the objectives of SLGA. It is widely accepted that rules created under any act, being of a statutory nature, carry the same legal weight as the law itself. If the rules are within the power of the rule-making body and are properly established, they are considered an integral part of the statute. Accordingly, the provisions of Rule 16(3) of the Rules 2015 have the force of law that requires the nomination to be made in the Forms, including the declaration of faith on solemn affirmation, specified therein.

14. Regarding the contention raised by Learned Assistant Advocate General Sindh and Learned Assistant Attorney General for Pakistan, the petitioner has not arrayed other contesting candidates as a party to the proceedings. In this regard, it is axiomatically clear that the petitioner has no grievance against the candidature of the rest of the candidates; besides this, it is not an Election Appeal or petition; hence, they are not necessary party, and if they are joined, they will be deemed to be proforma respondents.

15. In view of the above discussion, we hold that a candidate contesting the Local Government Elections under SLGA is required to record his consent to contest the election. He must have made the declaration of his faith with his signature while filing his nomination papers, which is a mandatory requirement. In case of non-compliance with this mandatory requirement, his nomination papers would be liable to be rejected. Therefore, the petitioner has been able to make out a case justifying interference of this Court in its constitutional jurisdiction.

16. As a result, this petition is allowed, and the nomination form of respondent No.4 is hereby rejected. Respondents No. 5 to 6 are hereby directed to conduct the Local Bodies bye-election for the seat of General Member Ward-22 Jat Muhalla, Jacobabad City, within the period of 15 days after the receipt of this order, among the rest of the contesting candidates, on the same ballot papers, with compliance report to the Additional Registrar of this Court.

JUDGE

JUDGE

(Manzoor P.S)