

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 3499 OF 2016

(On appeal against the order dated 25.10.2016 passed by the
Lahore High Court, Multan Bench in Writ Petition No.
15172/2016)

Malik Abid Hussain

... Petitioner

VERSUS

Returning Officer, Wards 1 to 47 Municipal Committee etc

... Respondents

For the Petitioner: Mr. Dil Muhammad Khan Alizai, ASC
Mr. Mehmood A. Sheikh, AOR (Absent)

For the Respondents: N.R.

Date of Hearing: 15.11.2016

Announced on: 16.11.2016

JUDGMENT

FAISAL ARAB, J.- The petitioner was one of the candidates on the reserved seat of 'Worker' of the Municipal Committee, Muzaffargarh. Respondent No. 2, who was also a candidate for the said seat, sought rejection of petitioner's nomination papers on the ground that the petitioner is not a worker as he holds LPG dealership and operates his business from a business concern established in the name of 'Malik Electro Gas Centre, Multan Road, Muzaffargarh'; that being a businessman, he is a tax payer having 0114289-5 as his National Tax Number and has also been elected as President of the LPG Union, Muzaffargarh. Respondent No.2's plea for rejection of petitioner's nomination papers however did not find favour with the Returning Officer, who accepted latter's nomination.

2. The acceptance of petitioner's nomination was challenged by Respondent No. 2 in Election Appeal No. 08/2016 before the Additional District & Sessions Judge, Muzaffargarh who was the

Appellate Authority for the Local Bodies Elections, 2016. After taking into consideration contents of the letter written by DCO Muzaffargarh to the Secretary Industries, Government of Punjab, wherein the petitioner was shown as one of the distributors of LPG in the District of Muzaffargarh and the contents of the daily report of District Office (Civil Defence) regarding LPG prices issued by the District Officer (Civil Defence) Muzaffargarh which reflected the name of the petitioner as dealer/distributor of LPG and the fact that the petitioner held the office of the President of LPG Union, the Appellate Authority came to the conclusion that the petitioner does not fall within the ambit of the definition of 'worker' as defined in Section 2 (mmm) of the Punjab Local Government Act, 2013 and rejected his nomination papers vide order dated 22.10.2016. The petitioner then challenged the decision of the Appellate Authority in Writ Petition No. 15172/2016 before the Lahore High Court, Multan Bench but the same was dismissed vide impugned order dated 25.10.2016, hence this petition.

3. Learned counsel for the petitioner contended that the petitioner's claim of being a 'worker' ought not to have been rejected summarily at pre-election stage and in case the petitioner is elected, the same can be challenged after the election. He concluded by stating that depriving the petitioner of his right to contest the elections in summary proceedings amounts to disenfranchising him. In support of this contention he relied upon the case of Muhammad Mujtaba Abdullah Vs. Appellate Authority Tehsil Liaquatpur District Rahim Yar Khan (2016 SCMR 893).

4. It has undisputedly come on the record that the petitioner is a dealer of LPG and distributes LPG from his business concern i.e. 'Malik Electro Gas Centre, Multan Road, Muzaffargarh'. He also held the office of President of LPG Union which takes care of the business of the traders who sell LPG gas to consumers from their outlets in Tehsil Muzaffargarh. As a tax payer, the petitioner has a National Tax Number as well. In the decision rendered by the Appellate Authority, which has been affirmed in impugned judgment, it is clearly stated that on an inquiry from DCO Muzaffargarh, the Secretary Industries, Government of Punjab confirmed that the petitioner is one of the LPG distributors of District Muzaffargarh, having dealership contract for

Muzaffargarh Tehsil. We have also noted that status of the petitioner, that was made basis for rejecting his nomination papers by the Appellate Authority, has not been specifically denied by the petitioner either in memo of Writ Petition that he filed in the High Court or in the present petition seeking leave to appeal. The Punjab Local Government Act, 2013 has defined 'worker' in Section 2 (mmm) in the following words: "*'worker' means a person directly engaged in work or is dependent on personal labour for subsistence living and includes a worker as defined in the Punjab Industrial Relations Act, 2010.*" Thus only such person, who is directly engaged in physical work and for his subsistence rely on physical labour or falls within the definition of 'worker' as contained in the Punjab Industrial Relations Act, 2010 qualifies to contest election on the reserved seat of 'worker' and not a person who is a businessman or a trader. Similar view has been taken by this Court in the case of Muhammad Hussain Vs. District Returning Officer (2008 SCMR 488).

5. In the present case the petitioner has nowhere denied his status of being a dealer/distributor of LPG for the Tehsil of Muzaffargarh. Being in the business of LPG, the petitioner also did not deny that he held the position of the President of LPG Union of Muzaffargarh that comprises of LPG traders of Muzaffargarh, he therefore cannot arrogate to himself the status of a worker as defined in the Punjab Local Government Act, 2013. We therefore find no legal justification to interfere with the impugned order. This petition having no merit is accordingly dismissed and leave is refused.

JUDGE

JUDGE

JUDGE

Islamabad, the

Announced on 16.11.2016 by Hon'ble Mr. Justice Faisal Arab
Approved For Reporting

Khurram