

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 367-K OF 2016

(On appeal against the judgment dated 03.06.2016
passed by the High Court of Sindh, Sukkur in C.P. No.
D-2199/2016)

Haji Khan Bhatti

... Petitioner

VERSUS

Province of Sindh through Provincial Election Commission and others
... Respondents

For the Petitioner: In person

For Govt. of Sindh: Mr. Adnan Karim, Addl. A.G.
Mr. Abdullah Hanjiah, Law Officer, ECP

Date of Hearing: 02.08.2016

JUDGMENT

FAISAL ARAB, J.- The petitioner was one of the candidates in the Local Government elections nominated on a reserved seat for District Council, Naushero Feroz. Upon scrutiny, the nomination papers submitted by the petitioner on 07.05.2016 were rejected by the Returning Officer vide order dated 11.05.2016 for the reason that the petitioner was an enrolled voter on the electoral rolls of the Municipal Committee, Moro, which is a Council located in the urban area of District Naushero Feroz and therefore cannot be nominated on a reserved seat of the District Council, which is constituted for the rural area of District Naushero Feroz. Against such decision, the petitioner appealed before the Appellate Authority. Before the Appellate forum, the petitioner's case was that

to contest election on a reserved seat of District Council, the provisions of Sindh Local Government Act, 2013 impose no restriction that a candidate must be an enrolled voter of the rural area of the District. Petitioner's appeal before the Appellate Authority was dismissed on the same ground that prevailed with the Returning Officer i.e. the petitioner was not enrolled as a voter in any electoral roll of a Ward that falls in the rural area of the District Naushero Feroz. In reaching such conclusion, the Appellate Authority placed reliance on the provisions of Section 35 (1) (c) of the Sindh Local Government Act, 2013. Having failed to seek any relief from the Appellate Authority, the petitioner filed Constitution Petition before the High Court of Sindh. The High Court in its decision kept the distinction between the urban and rural areas of the District and held that the petitioner, a voter of a Council of an urban area, was not eligible to contest election on a reserved seat of District Council, which is constituted for the rural area only. Based on such reasoning the High Court dismissed the Constitution Petition vide impugned judgment dated 03.06.2016. Hence, this petition for leave to appeal.

2. The petitioner, who appeared in person, argued that irrespective of the fact that he is an enrolled voter of the Municipal Committee, Moro which is a Council constituted for urban area of District Naushero Feroz, he stills qualifies as no provision of Sindh Local Government Act, 2013 imposes restriction that a candidate for a reserved seat of District Council must be enrolled as a voter on the electoral roll of a Council meant for the rural area of the District. According to him, a candidate would still qualify to contest elections for such seat if he is enrolled as a voter on the electoral rolls of any

Council located in the entire District, be it in rural area or urban. We proceed to examine the issue raised before us by the petitioner.

3. The very purpose of establishing local government system is to extend representation of the people in the governance to the grass root level. For establishing local government system in Sindh, the Government has been empowered under Section 15 of the Sindh Local Government Act, 2013 to categorize a District into urban and rural areas, if it is not already so categorized. The urban area of a District is divisible into various Councils such as a Union Committee, a Town Committee, Municipal Committee, a Municipal Corporation and a Metropolitan Corporation, depending upon the municipal status of its urban areas. The rural area of a District is divided into Union Councils for each Union and a District Council. After dividing a District into various Councils as aforesaid, each Council is assigned a particular local area. The local area of each Council is then further divided into Wards, each having its definite locality. The voters of each Ward of a Council constitute its basic electoral unit, who elect members from their respective Wards on the basis of adult franchise. Apart from electing members directly, the Sindh Local Government Act, 2013 also provides that certain Councils would have reserved seats as well. Such Councils are Town Committees, Municipal Committees, District Municipal Corporations, Municipal Corporations, Metropolitan Corporations and District Councils. The members on the reserved seats of such Councils are to be elected by the members who have been directly elected on such Councils as these directly elected members constitute the Electoral College for electing members on the reserved seats.

4. Chapter V of the Sindh Local Councils (Election) Rules, 2015 deals with the elections to the reserved seats of the Councils. Rule 50(1) of the said Rules prescribes the basic requirement for nominating a candidate for electing him as a member of the Council on its reserved seats. It reads; *"Any member of the electoral college may nominate and any other such member may second any candidate whose name is entered in the electoral rolls and is eligible for the election to the reserved seats."* It can be seen from the provisions of Rule 50(1) that it is a fundamental requirement that only such person can be nominated for the reserved seats of a Council, who is enrolled as a voter in the electoral rolls. The question that has come to be addressed by this Court is that where a candidate intends to contest election on a reserved seat of a District Council then his name ought to be entered in which electoral rolls in order to make him eligible for nomination? Is it the electoral rolls of the entire Revenue District, including its urban as well as rural areas or only the electoral rolls of rural area for which a District Council is constituted in a revenue District? Section 15(b) (ii) of Sindh Local Councils Act, 2013 provides that a District Council is to be constituted for rural area of a District. This question can be answered by interpreting the provision of Section 35 (1) (c) of the Sindh Local Government Act, 2013. Section 35 (1) (c) of the Sindh Local Government Act, 2013 provides that a person shall not be qualified to be elected or chosen as a member of the Council unless he is enrolled as a voter in the electoral rolls of the Council or Ward. When Section 35 (1) (c) states that a candidate has to be enrolled as a voter in the electoral rolls of the Council or Ward, it uses two separate terms i.e. *'the Council'* as well as *'Ward'*. In our view these two terms have been

used to deal with two distinct situations. Where a member for a Council is to be directly elected from a Ward on the basis of adult franchise of the electors then the candidate has to be enrolled as a voter of that particular Ward, otherwise his candidature would be liable to be rejected, hence the term '*Ward*' has been used in clause (c) of Section 35 (1) for such candidates. On the other hand, where a member is to be elected for a reserved seat of a particular Council by its electoral college then the requirement is that such candidate must be enrolled as a voter from any of the Wards falling within the local limits of such Council. It is for this reason that the term '*the Council*' has also been used in Section 35(1) (c). Mere use of the term '*Ward*' for the election on reserved seat would not have been adequate as the members on the reserved seats of a Council are not elected by any particular Ward but by the electoral college of the Council, which comprise of its directly elected members. Section 35(1) (c) clearly deals with these two different situations.

5. From the above discussion it is evident that the mandate of Section 35(1) (c) of the Sindh Local Government Act, 2013 is that where a member is to be directly elected from a Ward of a Council then unless he is an enrolled voter of that very Ward, he cannot be a candidate from that particular Ward, the reason being that in case of direct election on the basis of adult franchise, every Ward of a Council should have its own representative on the Council. This is precisely the object with which Wards have been created. On the other hand, where a member is to be indirectly elected on a reserved seat of a Council by its electoral college then unless he is an enrolled voter of any of the Wards falling within the local limits of that Council, he would not be qualified to contest the election, the reason

being that every member who is to be indirectly elected on a reserved seat of a Council should be an enrolled voter of the area which falls with the constituency of that very Council. The representation on a reserved seat has to be from the local limits of that very Council and not from outside its area. No person can seek his election on a reserved seat of a Council unless he is enrolled as a voter in the electoral rolls of any of the Wards that fall within the limits of such Council. One who is not enrolled as a voter in any locality of Council's constituency, cannot be regarded as a true representative of that Council and, therefore, has not been allowed to be a candidate for its reserved seat by virtue of the provisions of Section 35(1)(c) of the Sindh Local Councils Act, 2013. Thus where a member is to be directly elected from a Ward, his enrollment in that particular Ward is a mandatory requirement and where a member is to be indirectly elected, his enrollment in the local limits of that very constituency of the Council is a mandatory requirement. As the constituency of a District Council under Section 15 (b) (ii) of Sindh Local Government Act, 2013 is rural area of a District only and not beyond that, a candidate on its reserved seat must be an enrolled voter of any of the Wards falling in the rural area of the District. Only such candidate would qualify to contest election on a reserved seat and not the one who is an enrolled voter of a Council from urban area of the District. The electoral college of any Council does not enjoy the liberty to nominate a person on its reserved seat who is not an enrolled voter of any of the Wards falling within the local limits of such Council. Any nomination that is contrary to such a mode, would be in breach of the provisions of Section 35 (1) (c) read with Rule 50(1) of the Sindh Local Councils (Election) Rules, 2015 and would thus invalidate his candidature.

6. We conclude that the petitioner, being a voter of Municipal Committee, Moro, District Noushero Feroz, which is a Council in urban area of the District, on account of the restriction contained in Section 35 (1) (c) of the Sindh Local Government Act, 2013 cannot stand as a candidate on the reserved seat of District Council, Noushero Feroz, which under Section 15 (b) (ii) of Sindh Local Government Act, 2013 is constituted purely for rural area of a District. This petition is therefore dismissed and leave refused.

JUDGE

JUDGE

Karachi, the
Announced on 25.08.2016 by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting
Khurram

Section 15 of the Sindh Local Government Act, 2013, which reads as under:-

- "15. As soon as may be, the following Councils shall be constituted -*
- (a) in urban area –*
 - (i) a Union Committee for each ward in the Corporation;*
 - (ii) a Town Committee for each Town comprising of single member of ward;*
 - (iii) a Municipal Committee for each Municipality comprising of single member of ward;*
 - (iv) a Municipal Corporation for each city comprising of Union Committees;*
 - (v) a District Municipal Corporation for each district of the Metropolitan city; and*
 - (vi) a Metropolitan Corporation for each Metropolitan city;*
 - (b) in rural area-*
 - (i) a Union Council for each Union;*
 - (ii) a District Council for each District;*

Provided that for the districts in Karachi Division there shall be one District Council comprising of such areas of said districts."

Section 35 (1) (c) reads as under:-

- "35. Qualifications for candidates as members.** (1) A person shall not be qualified to be elected or chosen as a member of the Council unless-*
- (a)*
 - (b)*
 - (c) he is enrolled as a voter in the electoral roll of the Council or ward".*