

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Faisal Arab
Mr. Justice Qazi Muhammad Amin Ahmed

CIVIL APPEAL NO.1400 OF 2019

(Against the judgment 31.5.2019 passed by High Court of Sindh at Karachi in C.P. No.493-D of 2018)

Umaid Ali

...Appellant(s)

Versus

***The Election Commission of Pakistan
through Secretary Election Commission
of Pakistan Islamabad & others***

...Respondent(s)

For the Appellant(s):	Mr. Zulfiqar Khalid Maluka, ASC
For Respondent No.5:	Afnan Karim Kundi, ASC
For Government of Sindh:	Syed Shabbir Shah, Addl. A.G. Sindh
Date of hearing:	11.03.2020

ORDER

Umar Ata Bandial, J. The learned High Court through the impugned judgment dated 31.05.2019 has upheld the findings of the learned Election Commission of Pakistan (“ECP”) vide its order dated 16.01.2018, which held as follows:

“In the light of above discussion, we are of the considered view that respondent violated the provisions of Section 36(1)(i)(j) and section 80(2) of the Sindh Local Government Act, 2013 and Article 63(1)(l) of the Constitution. It is proved though the documentary evidence that respondent was a Government contractor (owner of Dhatti one Transport Company

Umerkot) and received a huge amount of Rs.40,27,450/- from Government. Being a Government Contractor the respondent was not eligible to file nomination papers or take part in the Local Government Election held in 2015 for the seat of Member, Town Committee, Kheme Jo Par and thereafter for the seat of Chairman of the said Town Committee. The petition is accepted.”

2. Learned counsel for the appellant has contended that the disqualification of the appellant is confined to Section 36(1)(i) of the Sindh Local Government Act, 2013 (**“the Act”**), which reads as follows:

S36(1) “A person shall be disqualified from being elected or chosen as and from being a member of the Council, if-

(i) he is under contract for work to be done or goods to be supplied to a council or has otherwise any direct pecuniary interest in its affairs.”

Admittedly, the appellant is a Government Contractor but he is not a Contractor with any Council nor does he have any direct pecuniary interest in the affairs of such Council. Consequently, it is submitted that the appellant has been wrongly disqualified for holding the elected office of the Chairman, Town Committee, Kheme Jo Par, District Tharparkar Sindh. The learned counsel for the appellant has then urged that the ECP is the original forum for directing removal of a member of a Council under Section 36(2) of the Act. No appeal is provided against such decision of the ECP. On the other hand, the ECP is the appellate forum under Section 30 of the Act against a similar direction for removal of a member of

the Council by the Provincial Government under Section 25 of the Act. There is a duality of roles of the ECP in respect of the same relief which can lead to a conflict.

3. Learned counsel for the respondents submit that the impugned order of the ECP dated 16.01.2018 not only disqualifies the appellant under clause (i) of Section 36(1) of the Act but also on the basis of clause (j) of the said section. The language of that clause is reproduced below:

(j) “he is for the time being disqualified or chosen as a member of the Provincial Assembly under any law for the time being in force.”

His submission is that clause (j) *ibid* is a residuary or blanket provision that incorporates additional disqualifications in Article 63(1) of the Constitution. Consequently, the admitted status of the appellant as a Government Contractor attracts the sanction under Article 63(1)(l) of the Constitution which disqualifies a candidate who is a Government Contractor. It applies fully to the appellant and therefore he is disqualified in the present election.

4. After hearing the learned counsel for the parties, it transpires that since the appellant is a Government Contractor the disqualification under section 36(1)(i) *ibid* does not apply to the appellant because the disability thereunder extends to a contractor of a local Council. Accordingly, the only issue in controversy between the parties is whether the appellant is disqualified under clause (j) of Section 36(1) of the Act because that would attract clause (l) of Article 63(1) of the Constitution. The language of clause (j) *ibid* leaves much to be desired because it is not clear how “disqualified or chosen as a member of the Provincial Assembly” makes any sense. If as suggested by the learned counsel for the

respondents, the words 'or chosen' are to be ignored to arrive at the intended meaning then that amounts to ignoring the literal words and to reading down in order to ascertain the meaning of the statutory provision. On the other hand, if the words "from being elected" are read into the said provision after the word "disqualified" then such reading in is also avoided by the courts unless the intention of the law maker is clear. To ascertain the intention of the law maker if one looks at the other provisions of section 36(1) *ibid*, it is noticeable that these reproduce almost verbatim clauses (a), (b), (c) & (d) of Article 63(1) of the Constitution. Clause (c) of the Act, that reproduced clause (c) of Article 63(1) of the Constitution, was subsequently repealed on 27.08.2015. Clauses (f) & (g) of section 36(1) *ibid* correspond with the terms of clauses (h) & (g) of Article 63(1) of the Constitution but with the reduction of the period of disqualification. Clause (h) of section 36(1) *ibid* mirrors the provisions of clauses (i) & (j) of Article 63(1) of the Constitution. In the same manner clause (i) of section 36(1) *ibid* adopts the disqualification listed in clause (l) of Article 63(1) of the Constitution. The scope of the disqualifications under Article 63(1) have been modified in the Act to cater to the requirements of elected representatives of local Councils. In the above context, the modifications of the disqualifications contained in Article 63(1) of the Constitution for incorporation into the Act have made the Provincial Legislature's intention clear about the nature and extent of disability of candidates for election to a Council under the Act. The statedly general or blanket disqualification incorporated through clause (j) of Section 36(1) of the Act, therefore, cannot again import the disqualifications under

Article 63(1) of the Constitution that have already been incorporated with modification in clauses (a) to (d), (f), (g), (h) & (i) of section 36(1) of the Act. Otherwise, clause (j) of section 36(1) *ibid* would either be repeating the incorporated disqualifications from Article 63(1) of the Constitution or undoing the modifications made thereto in section 36(1) of the Act. Although clause (j) of Section 36(1) *ibid* is unclear and vague, we are not convinced that clause (j) of the Act intends to repeat what is already stated in clauses (a) to (i) of section 36(1) of the Act. Accordingly, the rule of reading in or reading down is not attracted to the facts of this case. The application of such an aid while interpreting or construing a statutory provision has been dealt with in the case reported as **Abdul Haq Khan & others vs. Haji Ameerzada & others** (PLD 2017 SC 105, at page 117):

“As a matter of statutory interpretation, Courts generally abstain from providing *casus omissus* or omissions in a statute, through construction or interpretation. An exception to this rule is, when there is a self-evident omission in a provision and the purpose of the law as intended by the legislature cannot otherwise be achieved, or if the literal construction of a particular provision leads to manifestly absurd or anomalous results, which could not have been intended by the legislature. However, this power is to be exercised cautiously, rarely and only in exceptional circumstances.”

Following the above dictum, we are of the view that the Court cannot come to the assistance of the respondents to construe

clause (j) of Section 36(1) of the Act to bear a meaning which is not apparent or clear from the words thereof. Nor is the need for the suggested attribution of a blanket disqualification in clause (j) of section 36(1) ibid evident from the intention of the law maker. This is because clauses (a) to (i) of Section 36(1) of the Act mirror the disqualifications contained in Article 63 of the Constitution. At best, clause (j) of Section 36(1) of the Act may encompass such other disqualifications in Article 63(1) of the Constitution that have not already been incorporated in Section 36(1) of the Act. In this behalf, clauses (n) & (o) of Article 63(1) of the Constitution dealing with willful default may be covered in clause (j) of Section 36(1) of the Act. However, this aspect is not germane to the present controversy and may be considered in some other appropriate case. Consequently, we are not inclined to agree with the impugned judgment that the appellant is disqualified under clause (j) of section 36(1) of the Act for admittedly being a Government Contractor. The relevant disqualification is section 36(1)(i) which disbars only a contractor of the Council and not a contractor of the Government. As a result, findings recorded in the impugned judgment of the ECP dated 16.01.2018 and affirmed by the learned High Court in its impugned judgment dated 31.05.2019 are in error. This appeal is, therefore, allowed.

5. The Provincial Government is also directed to re-examine and amend the language of Section 36(1)(j) of the Act as necessary to bring it in conformity with the intention of the legislature.

Judge

Judge

Judge

Islamabad, the
11th March, 2020
Meher + Ghulam Raza

APPROVED FOR REPORTING.