

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.2499 of 2017

Abdul Latif

**Versus**

Election Commission of Pakistan and another

**Date of Hearing:** 06.10.2017  
**Petitioner by:** Dr. Babar Awan, and Raja Tajammal Hussain, Advocates,  
**Respondents by:** Mr. Nisar Ahmed Bhanbhro, Advocate for respondent No.2,  
Respondent No.2-in-person.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Abdul Latif, impugns the order dated 20.06.2017, passed by the Election Commission of Pakistan (respondent No.1), whereby, respondent No.2's application seeking the petitioner's disqualification as a Member of the Municipal Committee Gambat, District Khairpur Miras, Sindh, was accepted, and the petitioner's notification as a returned candidate from Ward No.10, Municipal Committee Gambat, was withdrawn.

2. The facts essential for the disposal of this petition are that on 31.10.2015, the petitioner contested the local body elections for the seat of Member, Municipal Committee Gambat from Ward No.10. The petitioner was declared as the returned candidate.

3. On 17.01.2017, respondent No.2 (Khalid Hussain) was elected as the Chairman of the Municipal Committee Gambat. In March, 2017, respondent No.2 filed an application under Section 36(2) of the Sindh Local Government Act, 2013 ("the Sindh L.G. Act") read with Section 103AA of the Representation of People Act, 1976 ("R.O.P.A.") before respondent No.1, praying for the petitioner's disqualification as a Member of the Municipal Committee Gambat on the ground that since the petitioner was under a contract for the supply of goods to the Municipal Committee Gambat, and had obtained pecuniary benefits from 2012 to 2016, he was disqualified in terms of Section 36(1) of the Sindh L.G. Act from being elected as a Member of the Municipal Committee Gambat.

4. Respondent No.2's case before respondent No.1 was that after the former assumed the charge of office of the Chairman, Municipal Committee Gambat on 25.01.2017, he came to know, upon scrutinizing the available record that since 2012 to 2016, different contracts were awarded to 'Rehman Manufacturers' (which was admittedly owned by the petitioner) and bills to the tune of millions of rupees were paid to the petitioner; that under Section 36 (1) (i) of the Sindh L.G. Act, a person shall be disqualified from being elected or chosen as a Member of a Council, if he is under contract for work to be done or goods to be supplied to the Council or has otherwise any direct pecuniary interest in its affairs; that as per the record of the Municipal Committee Gambat, at the time of the local body elections, the petitioner was under a contract for goods to be supplied to Municipal Committee Gambat; that the petitioner, in his declaration of assets filed along with his nomination papers, had declared himself to be the owner of 'Rehman Manufacturers'; that even after being elected as a Member of the Municipal Committee Gambat, the petitioner was getting pecuniary benefits from the said Committee; and that the petitioner had deliberately concealed this fact while filing his nomination papers.

5. The petitioner contested the said application by filing a written reply. In the said reply, the petitioner took objections to the jurisdiction of respondent No.1 to entertain and adjudicate upon respondent No.2's said application. It was *inter-alia* pleaded that only an Election Tribunal had the jurisdiction to declare an election as void on the ground that the returned candidate was not qualified or was disqualified at the time of the filing of the nomination papers. Furthermore, it was pleaded that in the event, no election petition is filed against the returned candidate and the returned candidate incurs disqualification after having been elected, the only way the election of a returned candidate can be challenged is through a writ of *quo warranto* before the High Court. Other than the preliminary objections, the petitioner's para-wise reply to respondent No.2's application is

replete with evasive denials. For ready reference, the petitioner's reply on merits can be seen in Schedule-1 to this judgment.

6. Vide short order dated 20.06.2017, respondent No.1 accepted respondent No.2's petition. On 03.07.2017, the petitioner filed instant writ petition. Vide order dated 05.07.2017, this Court directed the petitioner to file the detailed reasons issued by respondent No.1 for its decision. Furthermore, as an interim measure, it was ordered that the petitioner shall not be disqualified.

7. The said order dated 05.07.2017, was challenged by respondent No.2 before the Honourable Supreme Court of Pakistan in Civil Petition No.2691/2017. Vide order dated 31.07.2017, the said petition was dismissed. In the said order, it was observed that this petition should be decided expeditiously, and that the question of jurisdiction, if raised by the petitioner, should be decided on merits.

8. Learned counsel for the petitioner after narrating the facts leading to the filing of this petition submitted that respondent No.1 did not have the jurisdiction to entertain or adjudicate upon respondent No.2's petition seeking the petitioner's disqualification as a Member of the Municipal Committee Gambat; that the only way the petitioner's election could have been challenged was through an election petition before an Election Tribunal; that Section 46 of the Sindh L.G. Act provides that an election to an office of a Council shall not be called in question except by an election petition; that only a candidate can file an election petition before an Election Tribunal appointed by the Election Commission; and that respondent No.2 could have file a writ of *quo warranto* against the petitioner.

9. Learned counsel for the petitioner further submitted that respondent No.2 had raised several disputed questions of fact in his application before respondent No.1; that such questions could not have been resolved without recording of evidence; that although supply orders had been issued by the Municipal Committee Gambat to 'Rehman Manufacturers', but the required

supplies had been made prior to the filing of the nomination papers; that there was no pending contract which was to be executed by the petitioner at the time of the elections; that a certificate issued by the Municipal Committee Gambat showed that payments had been made to the petitioner's firm for works that had been completed before 10.09.2015; that there had been tampering in the records maintained by the Municipal Committee Gambat because the serial number of the work orders alleged to have been issued to the petitioner are not in a chronological sequence; that the petitioner disputes the authenticity of the supply orders dated 30.10.2015; and that given the disputed questions of fact, respondent No.1 ought not to have adjudicated upon respondent No.2's petition. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for the impugned order dated 20.06.2017 to be set-aside. In making his submissions, learned counsel for the petitioner placed reliance on the judgment dated 07.07.2017, passed by this Court in W.P. No.4815/2016 titled "Mrs. Sumaira Malik etc. Vs Election Commission of Pakistan, etc." wherein it has been held *inter-alia* that the Election Commission of Pakistan did not have the jurisdiction to enter in any detailed inquiry and record evidence, where there are disputed questions of fact. Furthermore, it was held that the Election Commission of Pakistan does not have the power to adjudicate upon a matter with respect to elections held under the Punjab Local Government Act, 2013, since there was no provision in the said Act similar to Section 103AA of the Representation of People Act, 1976.

10. On the other hand, learned counsel for respondent No.2, in his submission reiterated his stance taken in the application before the Election Commission of Pakistan. The contents of the said application have been referred to earlier. He further submitted that the petitioner, in his reply filed before respondent No.1, did not controvert respondent No.2's pleadings before respondent No.1; that the petitioner's reply to respondent No.2's application contained nothing but evasive denials; that the records of the Municipal Committee Gambat revealed that when

the local body elections were held on 31.10.2015, the petitioner was under a contract for the supply of goods to the Municipal Committee Gambat; that for the thirteen works/supply orders, issued to the petitioner/Rehman Manufacturers, the Municipal Committee Gambat approved the payment of Rs.11,34,922/- on 30.10.2015, and payments were made on 30.11.2015; that the petitioner concealed the fact regarding the issuance of the said work orders in his nomination papers; and that since the petitioner was engaged as the contractor for the supply of goods to the Municipal Committee Gambat at the time of the filing of the nomination papers, he was disqualified in terms of Section 36(1)(i) of the Sindh L.G. Act from being elected or chosen as a Member of the Municipal Committee Gambat.

11. Furthermore, learned counsel for respondent No.2 submitted that under Section 36(2)(b) of the Sindh L.G. Act, respondent No.1/Election Commission of Pakistan could disqualify the petitioner for a period of four years if it found that his election was in contravention of the requirements of Section 36(1)(i) of the Sindh L.G. Act; that additionally, by virtue of Section 71 of the Sindh L.G. Act, the provisions of R.O.P.A. have been made applicable to the elections and electoral process under the said L.G. Act; and that on the basis of Section 71 of the Sindh L.G. Act, respondent No.1 had the power under Section 103AA of R.O.P.A. to disqualify the petitioner. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed. In making his submissions, learned counsel for respondent No.2 placed reliance on the judgments in the cases of Syed Ibrar Ali Shah Vs. Chief Election Commissioner (SBLR 2016 S.C. 70), and Haji Ghulam Ali Vs. Election Commissioner of Pakistan (2016 YLR 2132).

12. I have heard the contentions of the learned counsel for the contesting parties, and perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 above, and need not be recapitulated.

13. Vide notification dated 26.08.2015, issued by respondent No.1 (Election Commission of Pakistan), the election schedule for the local government elections in the Province of Sindh, was announced. The elections were held on 31.10.2015. The petitioner contested the said elections for the seat of Member Municipal Committee Gambat from Ward No.10. It is an admitted position that vide notification dated 03.12.2015, issued by respondent No.1, in exercise of powers conferred under Section 34(1) of the Sindh L.G. Act etc., the petitioner was notified as having been elected as a General Member from Ward No.10, Municipal Committee Gambat. None of the candidates that contested against the petitioner challenged his election.

14. Elections to the office of the Chairman, Municipal Committee Gambat were held on 17.01.2017. The petitioner and respondent No.2 contested the elections for the said office against each other. In the said elections, respondent No.2 was declared as the successful candidate. It appears that there is a bitter political rivalry between the petitioner and respondent No.2.

15. The portions of Section 36 of the Sindh L.G. Act relevant for the purpose of this case are reproduced herein below:-

***“36. Disqualifications for candidates as members. – (1) A person shall be disqualified from being elected or chosen as and from being a member of the Council, if –***

- (a) .....
- (b) .....
- [(c) \* \* \* \* \* ]
- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) .....
- (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;*
- (j) .....
- (k) .....

***(2) Whoever –***

- (a) *is found by the Election Commission to have contravened the provisions of sub-section (1), shall stand disqualified from being a candidate for election to any office of a Council for a period of four years;*

- (b) *having been elected as a member of a Council or is a holder of an elective office of the Council is found by the Election Commission to have contravened the provisions of sub-section (1) shall cease forthwith to be an elected member or to hold the office of such member and stand disqualified from being a candidate for election to a Council for a period of four years."*

16. Respondent No.2 in his application before respondent No.1 sought the petitioner's disqualification on the ground that he was under contract for work to be done or goods to be supplied to a Council or had otherwise any direct pecuniary interest in its affairs. In this regard, paragraphs 8, 9, and 10 of respondent No.2's application before respondent No.1, and the petitioner's reply to the said paragraphs, are reproduced herein below:-

<b>Para No.</b>	<b>Paragraphs of respondent No.2's application before respondent No.1.</b>	<b>Reply of the petitioner to the paragraphs of respondent No.2's application before respondent No.1.</b>
<b>8</b>	<p><i>That the record of the Municipal Committee Gambat reveals that the time of elections of Local Bodies in year 2015 which were held on 31.10.2015 Respondent was under contract of goods to be supplied to the Council, details of which are as under:</i></p> <p><i>i Twenty Quotation Works / Supply Orders amounting to Rs.12,47,583 bills of which were paid to Rehman Manufacturer on 07.07.2015 &amp; 07.09.2015</i></p> <p><i>ii Nineteen Quotation Works/ Supply Orders amounting to Rs.11,34,922 approved by Municipal Committee Gambat on 30.10.2015 payments of which were made on 30.11.2015.</i></p> <p><u><i>(it is very important to mention here that the contracts were awarded to Respondent on 30.10.2015 which is one day prior to poll day)</i></u></p>	<i>Paragraph 8 of the application is denied.</i>
<b>9</b>	<i>That the Respondent also filed his declaration of assets with nomination paper, wherein he disclosed himself as the owner of Rehman Manufacturer.</i>	<i>Paragraph 9 of the application is admitted.</i>

10	<i>That the Respondent at the time of elections before the filing of nomination paper and even after being elected as member was getting pecuniary benefits from the Municipal Committee and he was engaged in contracts to supply of Goods thus was not qualified to contest elections as Member of Municipal Committee Gambat.</i>	<i>Paragraph 10 of the application is denied.</i>
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17. It is well settled by a catena of case law that if a statement of fact contained in a plaint or a petition is not specifically controverted in a written statement or a reply, and an evasive answer is given, it amounts to an admission. An evasive denial in a written statement or a reply could even be interpreted as an admission to the contents of the plaint or petition. Reference in this regard may be made to the law laid down in the cases of Bashir Ahmed Vs. Muhammad Aslam (2003 SCMR 1864), Haji Abdul Ghafoor Khan Vs. Ghulam Sadiq (PLD 2007 S.C. 433), Louise Anne Fairley Vs. Sajjad Ahmed Rana (PLD 2007 Lahore 300), Ghulam Abbas Vs. Manzoor Ahmed etc (PLD 2004 Lahore 125), Hafiz M. Sadiq Vs. Muhammad Rashid (2003 YLR 717), and United Bank Limited Vs. Ali Muhammad B. Rajani (1994 CLC 173).

18. The petitioner's reply to the pleadings in respondent No.2's application before respondent No.1 is clearly evasive. Therefore, in terms of the law laid down in the aforementioned judgments, respondent No.2's averments/pleadings in the said paragraphs would be deemed to have been admitted by the petitioner. Hence, there are no disputed questions of fact which need to be resolved by recording of evidence.

19. In order to substantiate his assertion that at the time of the elections, the petitioner was under a contract for the supply of goods with Municipal Committee Gambat, respondent No.2 relied upon two supply orders dated 30.10.2015 issued by the Municipal Committee Gambat Rehman Manufacturers. These documents are annexed at pages No.31 and 32 of this petition and have been attested by respondent No.1. The petitioner's contention that the documents (i.e. supply orders dated



30.10.2015) filed by respondent No.2 before respondent No.1 were not authentic, in my view, is an afterthought. There is no document on record showing that the petitioner had raised an objection to the authenticity of these documents before respondent No.1. Not having done so, the petitioner's objection regarding the authenticity of these documents before this Court is spurned.

20. The petitioner has filed an undated certificate and supply orders dated 08.09.2015, and 09.09.2015, along with the writ petition, to show that the petitioner was not under a contract for work with the Municipal Committee Gambat at the time of the elections. These documents were not brought on record before respondent No.1. Copies of these documents have not been attested by respondent No.1, unlike the supply orders dated 30.10.2015, which have been so attested. Therefore, no premium can be drawn by the petitioner by bringing on record of this Court documents which were not before respondent No.1.

21. A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ of *certiorari* means calling for the record of the subordinate Court or Tribunal by the High Court and rendering a decision after considering the material placed before such Court or Tribunal. Ordinarily the High Court must confine its consideration to the record of the Court or Tribunal while deciding whether the impugned order suffers from an error of law. This Court while exercising its jurisdiction for issuing a writ of *certiorari*, cannot normally take into consideration, documents which were not on the record of the Court or Tribunal

22. The documents which are sought to be relied upon by the petitioner did not form part of record of respondent No.1. A writ of *certiorari* cannot be issued on the basis of such documents. Respondent No.1 had no opportunity to deal with the documents which are sought to be produced and relied upon by the petitioner before this Court. Though the documents sought to be relied upon by the petitioner are prior in point of time to the date of the application filed by respondent No.2 before respondent

No.1, none of them were produced by the petitioner before respondent No.1. The learned counsel for the petitioner has not explained as to why the petitioner did not produce these documents before respondent No.1. This Court would not be justified in setting aside the impugned order on the basis of documents sought to be produced for the first time in the writ petition. This would be simply unfair, and would not advance the cause of justice. In the case of Karnani Properties Ltd. Vs. State of West Bengal (AIR 1990 SC 2047), it has been held as follows:-

*“The High Court has rightly held that in considering the finding arrived at by the Tribunal the High Court while exercising its jurisdiction under Article 226 of the Constitution should generally consider the materials which were made available to the Tribunal and fresh or further materials which were not before the Tribunal should not normally be allowed to be placed before the Court. The appellant has not been able to show why the said documents were not produced before the Tribunal. It is not the case of the appellant that the Tribunal had precluded the appellant from producing these documents. In these circumstances we find no justification for accepting the plea of the learned counsel for the appellant for reconsideration of the Award of the Tribunal in the light of the documents submitted by the appellant during the pendency of the appeal before the High Court.”*

23. Learned counsel for the petitioner while raising objections to the jurisdiction of respondent No.1 to disqualify the petitioner submitted that this Court, vide judgment dated 07.07.2017, passed in writ petition No.4815/2016 titled “Mrs. Sumaira Malik etc. Vs. Election Commission of Pakistan etc.” had held *inter-alia* that the Election Commission of Pakistan did not have the jurisdiction/power to enter in any detailed inquiry and record evidence, where there are disputed questions of fact.

24. In the case of Mrs. Sumaira Malik (*supra*) the elections to the seats of Chairman and Vice Chairman of District Council Khushab were challenged through a petition before the Election Commission of Pakistan *inter-alia* on the ground that during polling there was a breach of secrecy of the ballot. The Election Commission allowed the petition and de-seated the returned candidates. The order of the Election Commission was challenged before this Court in a petition under Article 199 of the Constitution. This Court allowed the writ petition, and set aside

the decision of the Election Commission. It was also held that the provisions of R.O.P.A. did not confer any inherent power/jurisdiction on the Election Commission of Pakistan to adjudicate upon election disputes. It was also held that with respect to elections held under the provisions of Punjab Local Government Act, 2013, and the rules made thereunder, the Election Commission did not have powers of adjudication of a summary nature since no provision similar to Section 103AA of R.O.P.A. existed in the said Act. The said case did not involve the question as to whether the returned candidates were in any manner disqualified or were not qualified under the provisions of the Punjab Local Government Act, 2013, to contests elections to the seats of Chairman and Vice Chairman of a District Council. Therefore, the said judgment is distinguishable. The case at hand concerns the question as to whether the petitioner was disqualified to contest the local body elections in terms of Section 36(1)(i) of the Sindh L.G. Act. Section 36(2)(b) of the said Act clearly confers jurisdiction on the Election Commission of Pakistan to disqualify any person having been elected as a Member of the Council or is a holder of an elective office of the Council if found by the Election Commission to have contravened the provisions of Section 36(1) of the said Act. In view of the said express conferment of jurisdiction by Section 36(2)(b) of the said Act on the Election Commission to give a finding on whether an elected member of a Council had contravened the provisions of Section 36(1) of the said Act, the objection of the petitioner's learned counsel to the jurisdiction of the Election Commission to disqualify the petitioner, is not sustainable.

25. The elections in question were held on 31.10.2015, in the declaration of his assets, the petitioner had mentioned that he was the owner of 'Rehman Manufacturers'. The documents on the record of respondent No.1 led it to conclude that the petitioner was under contract for work to be done or goods to be supplied to the Municipal Committee Gambat at the time of the election. In view of the supply orders issued by the Municipal Committee Gambat to 'Rehman Manufacturers' on 30.10.2015,

respondent No.1 was correct in holding that the petitioner had contravened the provisions of Section 36(1)(i) of the Sindh L.G. Act. The documents on which the petitioner placed his reliance in order to contradict respondent No.2's stance have although been attested by the Chief Municipal Officer, Municipal Committee Gambat, but not by respondent No.1. This shows that the said documents were not produced before respondent No.1 when the impugned order was passed. It may be mentioned that the supply orders dated 30.10.2015, have been attested by respondent No.1.

26. As regards the contention of the learned counsel for the petitioner that the only way the petitioner's election could have been challenged was through an election petition before the election tribunal, it is my view that since respondent No.2 had not contested elections for the seat of Member, Municipal Committee Gambat, he could not have filed an election petition before the election Tribunal. In this regard, Section 46 of the Sindh L.G. Act is reproduced hereinbelow:-

***"46. Election petition.- (1) Subject to this Act, an election to an office of a council shall not be called in question except by an election petition.***

***(2) A candidate may, in the prescribed manner, file an election petition before the Election Tribunal challenging an election under this Act."***

***(Emphasis added)***

27. The words "subject to Act" in Section 46 (1) of the Sindh L.G. Act saves the authority of the Election Commission under Section 36 (2) of the said Act to give a finding that a person elected as a member of a Council had contravened the provisions of Section 36 (1) of the said Act. Such a finding against an elected member results in in such a member ceasing to be an elected member. The words "a candidate may" in Section 46 (4) of the said Act implies that only a candidate who had contested elections against the Member whose election is challenged can file an election petition before an election Tribunal.

28. In view of the above, I have no hesitation in holding that the respondent No.1/Election Commission did have the jurisdiction

under Section 36(2)(b) of the Sindh L.G. Act, 2013, to give a finding that a person elected as a Member of a Council having contravened the provisions of Section 36(1) of the said Act shall cease to be an elected Member and stand disqualified from being a candidate in an election to a Council for a period of four years. I do not find any jurisdictional infirmity in the decision of respondent No.1 that the petitioner having contravened the provisions of Section 36(1)(i) of the Sindh L.G. Act, ceased to be an elected Member of the Municipal Committee Gambat. Therefore, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017

(JUDGE)

APPROVED FOR REPORTING

*\*Ahtesham\**

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## **SCHEDULE-1**

### **ON MERITS**

- 1 Paragraph 1 of the application is formal.
- 2 Paragraph 2 of the application is not relevant for the present controversy.
- 3 Paragraph 3 of the application is not relevant for the present controversy.
- 4 Paragraph 4 of the application is denied.
- 5 Paragraph 5 of the application is admitted to the extent that the answering respondent was elected as a General Member of Municipal Committee Ghambt.
- 6 Paragraph 6 of the application is admitted.
- 7 Section 36 of the Sindh Local Government has been correctly depicted in this paragraph.
- 8 Paragraph 8 of the application is denied.
- 9 Paragraph 9 of the application is admitted.
- 10 Paragraph 10 of the application is denied.
- 11 Paragraph 11 of the application is denied.
- 12 Paragraph 12 of the application is denied.
- 13 Paragraph 13 of the application is denied.
- 14 Paragraph 14 of the application is denied.

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