

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT

MR. NISAR AHMED DURRANI, MEMBER

MR. SHAH MUHAMMAD JATOI, MEMBER

MR. BABAR HASSAN BHARWANA, MEMBER

Case No. 6 (123)/2023-Law-III

In Ref: **APPLICATION UNDER SECTION 25-1(A) OF THE SINDH LOCAL GOVERNMENT ACT 2013 R/W ARTICLE 62 AND 63 OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.**

Asad Ahmed S/o Khan Muhammad Khan R/o House No.b-66-A
Mohallah Zahid Town, Sanghar

... Petitioner

VERSUS

Abdul Latif S/o Wali Muhammad R/o House No.C-181 Mohallah Al-
Mansoorah Colony Sanghar (General Member Ward No.12 Municipal
Committee, Sanghar)

... Respondent

For the Petitioner : Mr. Muhammad Noman

For the Respondent : Nemo

Date of Hearing : 11-10-2023

ORDER

Mr. Nisar Ahmed Durrani, Member.— Shortly, the facts giving rise to instant matter are that respondent, Abdul Latif s/o Wali Muhammad contested the local bodies elections held on 22.06.2022 for the seat of General Member from constituency Ward No. 12, Municipal Committee, district Sanghar. Respondent won the election and as such he was declared as returned candidate from aforesaid constituency. By way of instant petition, petitioner namely Asad Ahmed has called in question the qualification of respondent namely Abdul Latif. It is prayed that notification of respondent may be set aside.

2. On receipt of petition, notices were issued to petitioner as well as answering respondent to hear their stance. Learned counsel for petitioner appeared on last date of hearing and



vociferously contended that respondent was neither eligible and nor qualified to contest the election for the seat of General Member. It was contended that respondent was contractor of Municipal Committee at the time of filing of his nomination papers but he deliberately, malafidely and intentionally concealed this material fact at the time of filing of his nomination papers. That he is approved contractor and he had participated in contracts of Cattle Piri, Parking Fee, Pat Pir Fee and Dirty Water of TMA Sanghar under Auction Notice dated 06.06.2012. He emphasized that vide letter dated 12.12.2012 he was awarded auction of Cattle Piri Fee, Fruits and Vegetable Fee, Town Committee, Kandiyari and Parking Fee, Town Committee Kandiyari. Carrying forward his arguments, contended that respondent was defaulter of payment amounting to Rs. 13800400 in lieu of Cattle Piri fee for the year 2012-2013. He referred a list of defaulters for the years 1970-71 to 2018-2019 wherein the name of respondent exists at serial No. 80. He also referred letters dated 17.09.2013 27.09.2012 and 22.01.2013 issued by Municipal Administration, Sanghar for payment of arrears in respect of Cattle Piri Fee, TMA Sanghar for the year 2012-2013. He further displayed a letter dated 22.01.20213 of Octroi Superintendent TMA Sanghar addressed to Administrator TMA Sanghar for taking legal action against respondent due to nonpayment of arrears of Cattle Piri contract. To further strengthen his arguments and stance, he also referred letters dated 12.02.2012 and 18.07.2012 of Municipal Officer, TMA Sanghar for payment of Cattle Piri amounting to Rs. 1,17,04400/- and Re.s 1,3800400/-. It was vociferously,



contended that respondent has not paid the said amount as yet. He prayed that respondent was declared defaulter, at the time of filing of his Nomination Papers, therefore, he may be de-notified.

3. The report of the Chairman, Municipal Committee Sanghar was sought to the above mentioned allegations vide our order dated 01.08.2023. In pursuance of the order, Chairman Municipal Committee has furnished his report dated 29.08.2023 wherein he has categorically endorsed the letters furnished by the petitioner along with his petition and has inter alia observed as under:

"It is further submitted that apart from above documents which this office received on scanning of the record of undersigned in respect of contract of Cattle Piri 2012-2013 this office has also issued details of list of defaulters to Mr. Asad Ahmed the Petitioner of present matter on his written application which is also submitted herewith being issued under No. MCS/GR/392/2023 dated 01.06.2023 wherein the name of Mr. Abdul Latif is also mentioned as defaulter at Sr.No.80.

It is also submitted for kind information of this Honourable Authority that Mr. Abdul Latif is still defaulter and had not made payments of TMA Sanghar till today and his pecuniary interest was attached with the affairs of Municipal Committee Sanghar at the time when he filed the Nomination Paper in view of outstanding amount against him."

From plain reading of above observations of inquiry report, it has become crystal clear that respondent remained under contract of



council and also was defaulter of an amount of Rs. 13800400/- due to non-payment of Cattle Piri Fee, at the time of filing of his nomination papers. It has further been observed that his pecuniary interest was also attached with the affairs of Municipal Committee at the time of filing of his nomination papers.

4. In view of above, for removal of respondent under section 25 of Sindh Local Government Act, 2013 as sought by the petitioner, it needs to determine first, whether respondent was qualified to contest the election of local government for the seat of General Member or he is qualified to hold the office after having been elected as a member of a Council? To reach at just and fair conclusion, section 36 (1) (i) of Sindh Local Government Act, 2013 is reproduced as under:

"36. Disqualifications for candidates as members.- (1) A person shall 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 otherwise any direct pecuniary interest in its affairs"

It is clearly stipulated in the above quoted provision of law that not only could disqualification be warranted in respect of work to be done or goods to be supplied to a council but, such disqualification



was also attracted if a person had otherwise any direct pecuniary interest in the affairs of the said council.

5. It reveals from the record that respondent was awarded contract of Cattle Piri Fee, Fruit and Vegetable Fee, and Parking Fee, Town Committee, Kandiari in the year 2012 & 2013. It is also evident from the record and proven from the report submitted by the Chairman Municipal Committee, that respondent was under the contract of Town Committee and was also defaulter of huge amount of Rs. 13800400/- at the time of filing of his nomination papers. On the other hand despite proper service of notice on 24.07.2023, 12.09.2033 & 21.09.2023, respondent has not bothered to appear before the Commission to discharge the burden, that he had no pecuniary interest in the affairs of the above said Municipal Committee.

6. Now it is to be further determined whether a person who has been elected through corrupt practice, can be disqualified from "being a Member". Section 36 (2) (b) of the Sindh Local Government Act, 2013 governing the matter is reproduced as under:

"36. Disqualifications for candidates as members-

(2) Whoever-

(a)

(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



Sd/-

election to a council for a period of four years."

It has expressively been provided in the above quoted provision of law that a person who is a member, can be disqualified under the provisions of Section 36(2)(b) of the Act from "being a member".

7. That once such glaring illegality, under section 36 (1) (i) of Sindh Local Government Act, 2013 comes into the notice of Election Commission of Pakistan then whether it can shut its eyes to allow the corrupt practice to perpetuate. The absolute answer comes in negative.

8. Hence, for what has been discussed above, we are of the considered view that respondent Abdul Latif has contravened the provision of section 36 (1) (i) of Sindh Local Government Act, 2013 which squarely attracts the consequences of disqualification under section 36 (2) (b) of the Sindh Local Government Act, 2013 and cannot be wriggled out of the mischief of said section.

9. Consequently, instant petition is allowed and respondent Abdul Latif is declared as disqualified from being a member. His notification as returned candidate is hereby withdrawn forthwith. The respondent is also declared as disqualified from being a candidate for election to a council for a period of four years.

10. Office to take all follow up actions under the law.


(Nisar Ahmed Durrani)
Member


(Shah Muhammad Jatoi)
Member


(Babar Hassan Bharwana)
Member

Islamabad
The 1st December, 2023

