

BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT

MR. SIKANDAR SULTAN RAJA, CHAIRMAN
MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MOHAMMAD JATOI, MEMBER
MR. BABAR HASSAN BHARWANA, MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN, MEMBER

Case No. 27 (1)/2023-LGE-KP

In Ref: **PROCEEDINGS FOR DISQUALIFICATION OF CHAIRMAN TEHSIL COUNCIL BALAMBAT DISTRICT DIR LOWER U/S 78 (1) (O), 78 (2) (B) & 81 OF KPK LOCAL GOVERNMENT ACT, 2013**

Asim Shoaib, Chairman, Tehsil Council Balambat, District Lower Dir, Khyber Pakhtunkhwa

... Respondent

ON NOTICE:

For the Respondent

(Asim Shoaib)

:

Nemo

For Local Government KPK :

Mr. Dawood Khan, Secretary

Mr. Sajid Gul, Coordinator

Mian Shafiq ur Rehman

Mr. Tariq Ayub

For the Members of Council:

Nemo

Date of Hearing

:

21-12-2023

ORDER

Mr. Nisar Ahmed Durrani, Member.— Instant matter was sent by Provincial Election Commission, Khyber Pakhtunkhwa vide his letter dated 29.08.2023 for taking necessary action against respondent namely Asim Shoaib, Chairman Tehsil Council Balambat; whereby letters of District Election Commissioner dated 15.08.2023 and 21.08.2023 along with enclosures i.e. letter of SP Investigation Dir Lower dated 11.08.2023, AD LG & RDD, Dir Lower dated 18.08.2023 and copy of FIR, lodged against respondent. First enclosure dated 11.08.2023 relates to lodging of



FIR No. 64 at Police Station Balambat, wherein it is inter alia stated that Asim Shoaib, respondent is charged for Commission of offence of 09.05.2023 and is avoiding his lawful arrest. While second enclosure relates to joint application made by 16 elected Chairmen of Balambat Tehsil, wherein it is inter alia alleged that respondent is continuously absent from his office after incident of 09.05.2023 and after having lodged FIR against him; that due to his continuous absence, the routine work of tehsil Council Balambat is badly suffering, therefore legal action against respondent may be initiated.

2. On receipt of complaint, notices were issued to respondent as well as Secretary Local Government, Khyber Pakhtunkhwa. On last date of hearing learned counsel for respondent appeared and contended that respondent is abroad. However, he is not in attendance today.

3. A report was sought from the Secretary Local Government, Khyber Pakhtunkhwa. In pursuance thereof, he has furnished his report. The relevant part is as under:

"04. The Deputy Commissioner Dir Lower sent the requisite report and to comply with the direction, the Hon'ble Election Commission of Pakistan was informed through Local Government Department letter No. CU (LG&RDD)/DirLower/2023/ dated 22.09.2023 "Annex-IV". The crux of the Deputy Commissioner Dir Lower report is presented below:

- i) Tehsil Chairman Balambat has not attended three (03) consecutive meetings of Tehsil council since 09.05.2023;



- ii) After 09.05.2023 incident, a Case FIR No.64 dated 10.05.2023 U/S 188/ 189/ 148/ 149/ 7ATA/ 341/ 380/ 436/ 427440/ 500/ 504/ 120B/ 124A/ 295b/186/324/353/355 of PPC has been lodge in Police Station Balambat;
- iii) Accused has fled away after the occurrence of May 09, 2023;
- iv) The Court declared him as absconder.
- v) The affairs of Tehsil local government seems to be at standstill and the social and municipal delivery of services are suffering due to the absence of the chairman."

4. From bare perusal of above, it is evident that respondent has not attended three consecutive meetings of council. Obviously, such absence would be visited with the consequences of disqualification under the relevant provision of law. Section 78 (1) (o) and section 78 (2) of the Khyber Pakhtunkhwa Local Government Act 2013 being main provision of law applicable to the controversy before us are reproduced as under:

"78. Qualifications for candidates and elected members.-(1) A person shall qualify to be elected or to hold an elective office or membership of a local council, if he-

(o) does not absent himself without reasonable cause from three consecutive meetings of the council of which he is a member;

provided that a member shall not be disqualified if the absence was necessitated by a national emergency or force majeure;



Section 78 (2) of Khyber Pakhtunkhwa Local Government Act, 2013.

"78 (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 the local governments for a period of three years; or

(b) having been elected as a member of a local council or a holder of an elective office of the local government 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 local council for a period of three years.

A perusal of above section 78 (1) (o) of the Act *ibid* with utmost clarity provides that a person shall qualify to hold an elective office or membership of a local council, if he does not absent himself without reasonable cause from three consecutive meetings of the council of which he is a member. Section 78 (2) of the Act, further independently provides that once an elected member has contravened the provision of section 78 (1) of the Act *ibid* then he shall be ceased 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 local council for a period of three years.



5. It has been reported by the Secretary Local Government in his report that respondent Asim Shoiab has not attended three consecutive meetings of Council. The letters of SP investigation dated 05.10.2023 and 11.08.2023 addressed to District Police Officer, Dir Lower at Timargara and District Election Commissioner Dir Lower respectively provide that after the incident of 10.05.2023, respondent after committing of alleged offence, and having been lodged an FIR No. 64 dated 10.05.2023, under the relevant provision of law at PS- Balambat, he has been absconding and is avoiding his lawful arrest.

6. If the argument of learned counsel for respondent that he is abroad, is linked with section 78 (1) (o) of the Act *ibid* with an assumptive stretch of arguments, even then it cannot evade the consequences of disqualification as his presence outside the country as stated by learned counsel, cannot be termed as reasonable cause in the circumstances of the case.

7. For what has been discussed above, it is sufficient to believe that respondent has violated section 78 (1) (o) of the Act *ibid* without any sufficient cause, which obviously attracts the consequences of disqualification under section 78 (2) of the Khyber Pakhtunkhwa Local Government Act, 2013.

8. Consequently, membership of Asim Shoaib, elected member/ Chairman is ceased forthwith. His notification as returned candidate, Chairman Tehsil Council Balambat is hereby withdrawn forthwith, accordingly. The respondent is also declared as disqualified from being a candidate for election to a council for a period of three years.

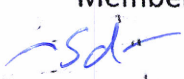


9. Tehsil Council, Balambat shall elect its Officiating Chairman under section 81 of the Act *ibid* within 10 days under the law.
10. Office to take further follow up action under the law.


(Sikandar Sultan Raja)
Chairman


(Nisar Ahmed Durrani)

Member


(Babar Hassan Bharwana)

Member


(Shah Mohammad Jatoi)

Member


(Justice (R) Ikram Ullah Khan)

Member

Islamabad
The 22nd January, 2024

