

Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 35088 of 2015

Muhammad Ashraf

Versus

Muhammad Aslam Shad etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties of counsel, where necessary
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27.11.2015 Ch. Abrar Hussain, Advocate for the petitioner.
Ch. Khalid Mehmood, Advocate for respondent No.5.
Mr. Shahid Qayyum Chaudhry, Advocate for respondent No.3.
Mr. Hamid Rafiq, Advocate for NADRA.
Mr. Muzammal Akhtar Shabbir, Deputy Attorney General for Pakistan along with Mr. Muhammad Akram Shad, Returning Officer.

Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner has challenged the eligibility of respondent No.3 claiming that he being under age was disqualified to contest election for the seat of General Councilor from Ward No.4 of Union Council No.1, Begum Kot, Shahdara, Lahore.

2. Brief facts of the case are that the petitioner was a contesting candidate for the seat of General Councilor from Ward No.4 of Union Council No.1, Begum Kot, Lahore. Respondent No.3/Sami Ullah Khan also contested election from the said Ward for the seat of General Councilor and has been declared as returned candidate. At the time of scrutiny of nomination papers, the petitioner had raised

objection that respondent No.3 being below the age of 25 years was not eligible to contest the election. It is alleged that the Returning Officer did not advert to this objection and proceeded to accept nomination papers of respondent No.3. Thereafter respondent No.3 contested election and declared returned candidate. Hence, the instant writ petition.

3. Learned counsel for the petitioner contends that at the time of filing of nomination papers respondent No.3 was underage as his date of birth as per NADRA record is 25.9.1991. He further contends that respondent No.3 being below 25 years of age under section 27(1)(b) of the Punjab Local Government Act, 2013 was disqualified for being elected or to hold an elected office of a local government. He adds that election of respondent No.3 suffered from an inherent defect of ineligibility, therefore, this Court has jurisdiction to declare him disqualified to hold the seat of General Councilor. He next contended that as respondent No.3 wilfully made a false statement and produced a forged document with regard to his date of birth, he committed a criminal offence for which he is liable to be proceeded against under the relevant provisions of law. He lastly contended that respondent No.3 may be declared

disqualified and order may be passed for conducting re-polling in the aforesaid constituency.

4. Conversely, learned counsel for respondent No.3 contended that the petitioner's objection in this respect has no force; that as per computerized Birth Certificate issued by the Secretary, Town Hall, District Lahore respondent No.3 was born on 5.7.1988 as such he was more than 25 years of age at the time of filing nomination papers; that younger brother of respondent No.3, namely, Saleem-ur-Rehman was born on 23.9.1991, which fact is evident from his NIC issued on 2.8.2010; that mere mentioning of wrong date of birth does not disqualify him from being contesting election or holding seat of a local government despite the fact that at the time of submission of nomination papers as per record maintained by the Town Hall he was more than 25 years; that as the petitioner has failed to get nomination papers of respondent No.3 rejected before the Appellate Authority, therefore, it is an other attempt on his behalf to dislodge him through the instant petition which is not maintainable; that since the election process has been completed and the controversy between the petitioner and respondent No.3 requires evidence, therefore, appropriate remedy for the petitioner is to file election petition.

5. Learned Deputy Attorney General as well as learned Law Officer of NADRA submit that as per NADRA record respondent No.3 was below 25 years of age on the date of submission of nomination papers. They further submit that photocopy of CNIC appended with the nomination papers of respondent No.3 showing his date of birth as 25.9.1986, does not tally with the date of birth mentioned in the computerized data of NADRA. They argued that apparently respondent No.3 has committed forgery and tampering with the CNIC to make himself eligible for contesting election.

6. Arguments heard. Record perused.

7. Before dilating upon the merits of the case I would like to deal with the question of maintainability of the instant writ petition. I see no force in the argument of learned counsel for the respondent that the petitioner should seek his remedy by filing election petition. Admittedly, respondent No.3 has been declared as returned candidate but his result has not so far been notified in the official gazette by the Election Commission, Punjab. In the circumstances, the remedy of filing election petition is not available to the petitioner. Reliance in this regard is placed on the case of Dr. Liaquat Ali Khan and another v. District Returning Officer and 3 others

(2002 SCMR 1632). No doubt the petitioner has also not availed the remedy of appeal before the Appellate Authority against the acceptance of nomination papers of respondent No.3 but this fact does not create any hurdle in the way of the petitioner to invoke the constitutional jurisdiction of this Court. In the case of Dr. Liaquat Ali Khan and another v. District Returning Officer and 3 others (supra) it has been held that even if the statutory remedy available under the law is considered inadequate and inefficacious as the relief being claimed cannot be granted to an aggrieved person in such remedy, the writ petition can be maintained. In this view of the matter I am of the considered view that the instant petition is maintainable, particularly when the controversy between the parties can be resolved from the available official record.

8. Now coming to the merits of the case, this Court after examining the available record has come to the conclusion that respondent No.3 was underage at the time of submission of nomination papers and to make himself eligible to contest the election he appended with his nomination papers a forged and fabricated CNIC. This fact is evident from the copy of his CNIC which has been produced by the Returning Officer concerned with his report and parawise

comments. According to the said CNIC date of birth of respondent No.3 is 25.9.1986 whereas its entry in the CNIC varies from the data preserved with the NADRA where his date of birth is recorded as 25.9.1991. It is pertinent to mention here that copies of both the CNICs have the same No.35202-9416532-1. Even date of issuance i.e. 21.12.2013 and date of expiry i.e. 21.12.2020 is the same. From this fact it is clear that the photocopy of the CNIC attached with the nomination papers of respondent No.3 was tampered with to change his actual date of birth. Even during the course of hearing of the instant petition, learned counsel for respondent No.3 has placed on record same photocopy of CNIC of respondent No.3, which has already been appended by the petitioner with the instant writ petition. The photocopy of CNIC produced by the petitioner has been obtained by him from online verification of NADRA. This Court finds no force in the argument that date of birth has wrongly been recorded in the CNIC of respondent No.3. CNIC was issued to respondent No.3 on 21.12.2013. He remained silent for about two years and did not make any effort to get his date of birth corrected from NADRA. Astonishingly, the date of birth of respondent No.3 as shown in his computerized Birth Certificate also does not tally with his date of birth mentioned in the photocopy of

I.D.Card appended with the nomination papers. This Court has also noticed that the Birth Certificate has been issued by the Secretary Town Hall, Lahore District on 18.11.2015, after the filing of the instant writ petition. The particulars of the aforesaid Birth Certificate cast a serious doubt qua authenticity of the said certificate. Date of entry of birth of respondent No.3 in the said Birth Certificate is shown as 9.12.2000, much after his date of birth i.e. 5.7.1988 and despite entering date of birth after a lapse of more than 12 years it has been recorded as a normal entry. This fact is a question mark on the correctness of the said birth certificate. All this discussion leads to an irresistible conclusion that as per record of NADRA respondent No.3 was below the age of 25 years at the time of filing his nomination papers. He got himself cleared from the process of scrutiny by producing forged I.D. Card and thereafter contested the election and declared as a returned candidate. In view of the fact that respondent No.3 at the time of filing his nomination papers was having inherent defect of disqualification, therefore, he is not qualified to hold any public office on that basis. Reliance is placed on the case of Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 S.C. 1054).

9. In view of what has been discussed above, the instant petition is allowed and respondent No.3 is declared disqualified from being elected as General Councilor from Ward No.4, Union Council No.1, Begum Kot, Lahore. Consequently, respondent No.2 is estopped from issuing notification showing him as returned candidate of the aforesaid seat. Respondent No.2 will hold re-election for the above said seat of General Councilor within a period of two months from the receipt of this order. Respondent No.2 will also lodge a criminal complaint against respondent No.3 for having committed the offences of cheating and producing before the Returning Officer a forged and fabricated CNIC.

(Muhammad Farrukh Irfan Khan)
Judge

APPROVED FOR REPORTING:

Rafiq*