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**Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.40835/2016
(Shehzad Ali Khan Vs. Election Commission of Pakistan etc.)

J U D G M E N T

Date of Hearing	16.01.2017
Petitioner by:	Mr. Hafeez Saeed Akhtar, Advocate.
Respondent No.3 by:	Mr. Azam Nazir Tarar, Advocate. Barrister Lehrasip Hayat Dahar, Advocate. Mazhar Ali Ghallu, Advocate. Ch. Naveed Akhtar Bajwa, Advocate.
Election Commission by:	Mr. Nasir Javaid Ghuman, Advocate. Amer Raza, Returning Officer.

Atir Mahmood, J. Through this constitutional writ petition, the petitioner seeks disqualification of respondent No.3 (hereinafter called “the respondent”) from being the Member and Chairman of Municipal Committee, Teshil Daska, District Sialkot while asserting that a decree regarding loan taken by the respondent duly stands against him which has not been declared by him while filing the nomination papers. The petitioner has also prayed that Section 27 of the Punjab Local Government Act, 2013 be declared ultra vires to the Constitution of Islamic Republic of Pakistan, 1973.

2. Learned counsel for the petitioner submits that the petitioner is a voter of Ward No.23 of the Municipal Committee, Tehsil Daska; that the respondent obtained loan from the National Bank; that since the respondent did not return the said loan to the bank, a suit was filed wherein a decree of Rs.11,743,159/- has been passed against the respondent vide judgment dated 12.04.2016 but the same has not been mentioned by him while filing the nomination papers; that the respondent being an ‘undischarged insolvent’ is liable to be disqualified; that Section 27 of the Punjab Local Government Act,

2013 being against Articles 62 and 63 of the Constitution be declared ultra vires the Constitution. He has relied upon the law laid down in cases titled **Ch. Muhammad Yusaf Kaselia v. Peer Ghulam Mohy-ud-Din Chishti and others** (PLD 2016 SC 689), **Muhammad Ahmad Chatta v. Iftikhar Ahmad Cheema and others** (2016 SCMR 763), **Allied Bank Ltd. through Authorized person v. Inam Ullah Khan and another** (2013 CLC 1310 Lahore), **Worker's Party Pakistan through General Secretary and 6 others v. Federation of Pakistan and 2 others** (PLD 2013 SC 406), **Rana Muhammad Hayat Khan v. Rana Imtiaz Ahmad Khan** (PLD 2008 SC 85), **Rana Muhammad Arshad v. Additional Commissioner (Revenue), Multan Divison and others** (1998 SCMR 1462), **Ch. Tanvir Khan v. President, Cantt. Board, Rawalpindi and 2 others** (1999 MLD 721 Lahore), **Ghulam Mustafa Jatoi v. Additional District and Sessions Judge/Returning Officer, No.A. 158, Naushero Feroze and others** (1994 SCMR 1299),

3. On the other hand, learned counsel for the respondent as well as learned counsel for the Election Commission have vehemently opposed this writ petition on legal as well as factual grounds. He has relied upon the law laid down in cases reported as **Zahid Iqbal v. Hafiz Muhammad Adnan and others** (2016 SCMR 430), **Liaquat Ali and others v. Returning Officer and others** (2016 MLD 846), **Muhammad Mujtaba Abdullah and another v. Appellate Authority/Additional Sessions Judge Tehsil Liaquatpur District Rahim Yar Khan and others** (2016 SCMR 893) and **Abdul Rasheed and another v. Election Appellate Authority and others** (2016 SCMR 1215).

4. Arguments heard. Record perused.

5. Scanning of record reveals that the respondent filed nomination papers alongwith others for contesting the seat of Councillor, Municipal Committee, Tehsil Daska, District Sialkot. He was declared as the Returned Candidate. Then he contested for the seat of

Chairman, Municipal Committee and was elected so. The petitioner is a voter of the Halqa.

6. Main emphasis of learned counsel for the petitioner is on the point that the respondent while filing the nomination papers has since failed to mention the decree passed against him, he is not entitled to hold the Office of the Member as well as Chairman of the Municipal Committee. In this regard, he has referred to Sub-Rule (5) of Rule 12 of the Punjab Local Government (Conduct of Elections), Rules, 2013 (hereinafter called "the Rules"). I have gone through the said provision of law which duly demands for declaration of the assets and liabilities by the contesting candidate. I have also perused the nomination papers filed by the respondent, a copy of which has been placed before this Court. There is Annexure A to the nomination form which is regarding declaration of assets and liabilities. After declaring the assets in Annexure A, the respondent has mentioned regarding his liability while submitting that there is a house mortgaged with the National Bank, Sialkot and the amount in this regard is yet to be paid, although he has not given details of the loan. In this view of the matter, I am not in consonance with argument of learned counsel for the petitioner that the respondent has not mentioned the liability of loan to be paid by him.

7. Section 14 of the Rules being relevant in this case is reproduced below:

- “14. **Scrutiny.**– (1) The scrutiny of nomination papers shall be open to the candidates, their election agents, proposers and seconders, or the persons who made objections against the nomination papers, and any voter of the constituency with the permission of the Returning Officer, before the commencement of the scrutiny, and the Returning Officer shall give all those present reasonable opportunity for examining all nomination papers delivered to him under rule 12.
- (2) The Returning Officer shall, in the presence of the persons attending the scrutiny under sub-rule (1), examine the nomination papers and decide an objection raised by any such person to a nomination.

- (3) The Returning Officer may, either on his own accord or on an objection, conduct such summary inquiry as he may think fit and reject a nomination paper if he is satisfied that:
 - (a) the candidate is not qualified to be elected as a member, a Chairman and a Vice Chairman, or a Mayor and a Deputy Mayor;
 - (b) the proposer or the seconder is not qualified to subscribe to the nomination paper;
 - (c) any provision of rule 12 or rule 13 has not been complied with; or
 - (d) the signature or thumb impression of the proposer or the seconder is not genuine.
- (4) The rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper.
- (5) The Returning officer may, for purposes of scrutiny, require any agency or authority to produce any document or record.
- (6) In case of joint candidacy, the rejection of the nomination of either a Chairman or a Vice Chairman or a Mayor or a Deputy Mayor shall be construed as rejection of nomination of all those joint candidates.
- (7) The Returning officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith, including an error with regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral rolls.
- (8) The Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.
- (9) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it and, in case of rejection, record brief reasons therefor.
- (10) An appeal against the decision of the Returning Officer rejecting or accepting the nomination paper of the candidate(s) may be preferred by any person present at the time of scrutiny under sub-rule (1) to the appellate authority, who shall be the District and Sessions Judge or

any other judicial officer, appointed for the purpose by the Election Commission.

- (11) The appeal under sub-rule (10) shall be summarily decided within such time as may be notified by the Election Commission and any order passed thereon shall be final.
- (12) An appeal not disposed of within the period as notified by the Election Commission shall be deemed to have been rejected.”

(Emphasis provided)

Perusal of Sub-Rules (1) and (2) of Rule 14 of the Rules reflects that these provisions do not restrict objections by a contesting candidate, a proposer or a seconder, rather they state that any person or even a voter of the constituency can raise objection to the nomination papers of a contesting candidate. Such objections are required to be looked into by the Returning Officer which may lead to acceptance or rejection of nomination papers. Against decision of the Returning Officer, an appeal before the appellate authority appointed by the Election Commission in light of Sub-Rule 10 of the Rules can also be made. Admittedly, the petitioner is a voter of the concerned Halqa. He had every right to raise objection upon nomination papers of the respondent at the time of scrutiny of the nomination papers but he did not do so. Nor he went to the appellate authority for redressal of his grievance. Even the petitioner has not disclosed as to when and how he came to know about liability of the respondent. This leads me to the conclusion that the petitioner has not approached this Court with bona fide intention rather he has approached the Court with some mala fide or for the benefit of some other candidate. It is well settled law that any person not approaching the court bonafidely is not entitled to any relief. Therefore, this writ petition is liable to be dismissed on this score alone.

8. As far as the contention of learned counsel for the petitioner that a decree has been passed against the respondent which has not been mentioned in the column of liabilities by him is concerned, suffice it to say that the respondent has challenged the validity of the

decree passed against him by filing RFA No.916/2016 which is still pending decision. It is well-settled proposition of law that an appeal is continuation of the proceedings in the suit, therefore, the decree passed by the banking court being under-challenge cannot be said to be the final decree against the respondent. The decision in appeal may come in favour of or against the respondent. If the respondent is disqualified on the basis of the said decree but the decree awarded against him is set aside at a later stage, there will be no compensation available for the respondent for the intervening period when he is out of the said offices. Even otherwise, clause (j) regarding the disqualification of a candidate on the basis of default specifically provided under Sub-section (1) of Section 152 of Local Government Ordinance, 2001 has been excluded in the Local Government Act, 2013. This Court can only interpret the statute but cannot circumvent the intention of the legislator. In this view of the matter, I am not inclined to upset the election of the respondent merely on the basis of the decree which is under challenge so far.

9. Another aspect of the matter is that an election petition on the same allegation of non-disclosure of the liabilities against the respondent is pending adjudication before the Election Tribunal. If this Court in its constitutional jurisdiction disqualifies the respondent from the positions of the Member and the Chairman, the election petition on the same set of facts and allegations filed against the respondent will become infructuous and the purpose of the remedy available before the Election Tribunal will stand circumvented. Moreover, parallel proceedings for one and the same cause are not permitted under the law. The petitioner either should approach the Election Tribunal for redress of his grievance or wait for decision of the Election Tribunal and then approach this Court for redressal of his grievance if still persists at that time.

10. On one hand, the petitioner on the strength of Section 27 of the Punjab Local Government Act, 2013 has sought disqualification of the respondent on the ground that he is a “discharged insolvent” whereas

on the other hand, he has prayed that the said section be declared ultra vires to the Constitution. So far as the disqualification of the respondent on the ground of non-disclosure of the decree passed against him is concerned, no such ground is provided under Sub-Section (2) of Section 27 of the Act which deals with disqualification of a returned candidate. The disqualification of the respondent under Section 27(2)(c) of the Act, i.e. on the ground of “undischarged insolvent”, there is no definition provided in the Punjab Local Government Act of “undischarged insolvent”. In absence of definition of “undischarged insolvent” in the Act, the applicable law is the Provincial Insolvency Act, 1920 (hereinafter called the PIA, 1920”) which deals with the subject of insolvency. Section 6 of the Act *ibid* being relevant is reproduced as under:

“6. **Acts of insolvency.** A debtor commits an act of insolvency in each of the following cases namely:--

- (a) if, in the Provinces and the Capital of the Federation or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
- (b) if, in the Provinces and the Capital of the Federation or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
- (c) if, in the Provinces and the Capital of the Federation or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;
- (d) if, with intent to defeat or delay his creditors, ---
 - (i) He departs or remains out of the Provinces and the Capital of the Federation;
 - (ii) He departs from his dwelling-house or usual place of business or otherwise absents himself;
 - (iii) He secludes himself so as to deprive his creditors of the means of communicating with him;
- (e) If any of his property has been sold in execution of the decree of any Court for the payment of money;

- (f) If the petitions to be adjudged an insolvent under the provisions of this Act;
- (g) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; or
- (h) If he is imprisoned in execution of the decree of any Court for payment of money.”

The minute perusal of the above provisions coupled with the allegation levelled by the petitioner against the respondent that he has not specifically mentioned the decree passed against him clearly reveals that the respondent has not committed any of the acts of insolvency detailed in Section 6 of the PIA, 1920, as such, he cannot be termed as “undischarged insolvent”. Therefore, the respondent, in my opinion, cannot be disqualified on the said ground of insolvency in constitutional jurisdiction of this Court. The case law reported as **Liaqat Ali and others v. Returning Officer and others** (2016 MLD 846 Lahore) is referred in this regard.

11. Regarding assertion of learned counsel for the petitioner that Section 27 of the Punjab Local Government Act, 2013 is ultra vires to the Constitution, the same matter came before the apex court in case reported as **Zahid Iqbal v. Hafiz Muhammad Adnan and others** (2016 SCMR 430) wherein it has been held that:

“It is not the function of the Court to read into any provision and or words that are not part of the statute, unless imported or made applicable specifically as has been done under the Sindh Local Government Act, 2013, wherein section 36(j) clearly imports disqualification “under any law it reads for the time being in force”. It is neither the duty nor the function of the Court to read into or delete any word and or provisions in an enactment, unless specifically adopted or imported by reference. Courts do no legislate but interpret statute according to their ordinary and plain meaning and do not import and or supply word or provisions from “any other law”, no matter how laudable and desirable it may appear to be. In this view of the matter, disqualification prescribed under “any law” or even in “The Constitution” unless as noted above are specifically made applicable or adopted by reference, specially penal and or castigatory provisions contained in “any law” cannot be imported, read into or inflicted on a person who put forth his

candidature to be elected as a Member or to hold an elected office of Punjab Local Government but his qualification and or disqualification for any office of the Punjab Local Government is to be adjudged strictly under the provisions of “the Act, 2013” only.”

(Underline is mine)

In view of the dictums laid down by the Hon’ble Supreme Court of Pakistan in the above case, this Court cannot legislate but interpret the law or statute passed by the legislature. Therefore, the prayer of the petitioner in this regard is not acceded to.

12. The argument of learned counsel for the petitioner is that Section 154 of the Punjab Local Government Ordinance, 2001 has not been repealed in the Punjab Local Government Act, 2013 as per notification dated 13.09.2013. When confronted with, learned counsel for the respondent as well as learned counsel appearing on behalf of the Election Commission submit that non-repealing of Section 154 *ibid* was an interim arrangement only in order to protect day-to-day affairs of the local bodies and it has no bearing in the election matters. Even otherwise, when the new law on a subject has come into force, there is no fun to continue the previous law on the same subject. The said argument of learned counsel for the respondents has force which is accordingly accepted. The case law relied upon by learned counsel for the petitioner pertains to the elections of Members of National and Provincial Assemblies as well as that of the Senate and is not applicable to the case in hand.

13. For what has been discussed above, this writ petition has no force, hence **dismissed**.

(ATIR MAHMOOD)
Judge

Approved for reporting.

Judge

*Akram**