

Election Appeal No.06 of 2018.

(Al-Haaj Azhar Iqbal Satti versus. Returning Officer and another)

J U D G M E N T

Date of hearing	25.06.2018
Appellant by	Sardar Abdul Raziq Khan, Advocate
Appellant in E. A. No.17 of 2018	Malik Ghulam Mustafa Kandwal, Advocate
Appellant in E. A. No.35 of 2018	Malik Jawwad Khalid, Advocate
Appellant in E. A. No.46 of 2018	M/S Muhammad Irfan Zafar Hashmi and Bilal Raza, Advocates
Appellant in E. A. No.50 of 2018	Mr. Imran Mumtaz Malik, Advocate
Election Commission of Pakistan by	Malik Amjad Ali, Advocate
	Ms. Nadia Hayat, Assistant Attorney-General for Federation of Pakistan
	Mr. Shafqat Munir Malik, Additional Advocate-General Punjab

IBAD-UR-REHMAN LODHI J.:- With the concurrence of

learned counsel for the parties, the hearing of all the appeals is being treated as *pacca* hearing.

2. Through this common judgment, I intend to dispose of this appeal as also Election Appeals No.17, 35, 46 and 50 of 2018, as common question in all these appeals, as to whether in view of the provisions of Section 28 of The Punjab Local Government Act, 2013, the Mayor, Deputy Mayor, Chairman or Vice Chairman are barred to contest the election for any other political office unless they resign from their such

"to prevent or prohibit, to impede, to obstruct, to forbid",

whereas the term 'disqualification' is defined in both referred Dictionaries in the manner that *"the act of disqualifying or the state of being disqualified"* and *"something that incapacitates, disables, or makes one ineligible"* respectively and the term 'disqualify' is defined in Rafiq's Law Dictionary to mean that *"to make unfit or ineligible, pronounce someone ineligible for an office or activity because of an offence or infringement"*.

Keeping in view the above, there is no other possible view except to hold that "bar" contained in Section 28 of The Punjab Local Government Act, 2013 cannot be equated with "disqualification" within the meaning of Article 63(1)(p) of The Constitution of the Islamic Republic of Pakistan, 1973.

4. It is further a fact to be noted that in view of the provisions of Article 143 of The Constitution of the Islamic Republic of Pakistan, 1973, if any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.

Here-in the present case, a "bar" is provided as against dual membership for Local Government office holders through a Provincial Legislation, which has no prevailing effect upon the Federal Legislation i.e. The Elections Act, 2017 and also our supreme law i.e. The Constitution of the Islamic Republic of Pakistan, 1973.

The elections scheduled to be held on 25.07.2018 are to be regulated through The Elections Act, 2017 (XXXIII of 2017) enacted on 02.10.2017. Section 231 of The Elections Act, 2017 provides that the qualifications and disqualifications for a person to be elected or chosen or to remain a Member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly shall be such as provided in Articles 62 and 63 of The Constitution of the Islamic Republic of Pakistan, 1973.

Article 62 of The Constitution of the Islamic Republic of Pakistan, 1973 provides qualifications of a person to be elected or chosen as a member of Majlis-e-Shoora (Parliament), whereas disqualifications of such person are provided in Article 63 of the Constitution.

In support of the stated disqualification for sitting members of the Local Government to be candidates in the forthcoming elections for any Constituent Assembly without resigning from their present responsibilities in Local Government is pressed, while referring Article 63(1)(p) of The Constitution of the Islamic Republic of Pakistan, 1973, which provides that a person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if he is for the time being disqualified from being elected or chosen as a member of a Majlis-e-Shoora (Parliament) or of Provincial Assembly under any law for the time being in force.

Section 28 of The Punjab Local Government Act, 2013 provides a bar against dual membership for existing Mayor, Deputy Mayor, Chairman or Vice Chairman in Local Government, however, it is a fact that such "bar" cannot be treated as a "disqualification" within the meaning of Article 63(1)(p) of the Constitution.

The term 'bar' is defined in Rafiq's Law Dictionary as well as Black's Law Dictionary to mean

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5. It is also added that the office holders in Local Governments in Punjab are being discriminated against with the similarly placed office holders of Local Governments in all other provinces, as no such barring clause is provided in Local Government Laws of any province other than Punjab and as such, this treatment is discriminatory and violative to the provisions of Article 25 of the Constitution.

6. It is interesting to note that although a bar is placed upon the candidature of a Mayor, Deputy Mayor, Chairman or Vice Chairman to the National or Provincial Assemblies in the manner that they cannot contest election for any other political office without first resigning from their office, but at the same time, in view of Section 28(2) of the said Act, ordinary members of the same Local Government may contest election for any other political office without resigning from the membership of the Local Government, but such member shall not simultaneously hold more than one office and in view of sub-section (3), the seat as member of the Local Government shall become vacant, if is elected to any other political office.

The same arrangement can be provided in case of Mayor, Deputy Mayor, Chairman or Vice Chairman. The Election Commission of Pakistan may look into the possibility of suspension of offices of such office holders in Local Governments after once the notification for general elections for Assemblies is issued just in order to avoid the influence possibly to be exerted by the sitting office holders, who at the same time would be participating in the elections of Assemblies in the same constituency, where they are holding the offices in Local Government.

7. The elections scheduled for 25.07.2018 are to be held under the provisions of The Elections Act, 2017 read with The Constitution of the Islamic Republic of Pakistan, 1973, which contain no disqualification clause for the existing office holders in Local Government in Province

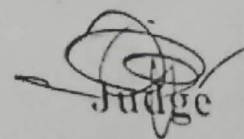
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of Punjab. Thus, the findings arrived at by the Returning Officer, whereby nomination papers of such office holders were rejected on the touchstone of Section 28 of The Punjab Local Government Act, 2013 are not sustainable and the same are set aside. Resultantly, by allowing present Election Appeal, as also Election Appeals No.17 and 35 of 2018, it is held that the provisions of Section 28 of The Punjab Local Government Act, 2013 would have no effect upon qualification of the candidates for National or Provincial Assemblies, even if they are sitting office holders in Local Government, whereas the Election Appeals No.46 and 50 of 2018 filed against acceptance of nomination papers of such candidates are dismissed.

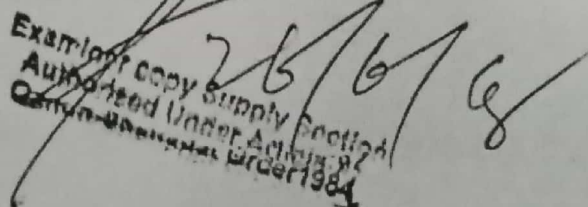
8. Possibility cannot be ruled out that office holders in other parts of Province are also confronted with the question, which has been decided through this judgment, therefore, this judgment is directed to be treated as a judgment in rem.


Judge

Approved for reporting.


Judge

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