

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN QUETTA.

Constitution Petition No.(S) 265/2022
(CC-100207500732)

Rehman
v.
Dur Muhammad & others

Date of hearing 07.12.2022 Announced on 09.12.2022

Petitioner by: M/s Adnan Ejaz Sheikh and Akhtar Shah, Advocates.

Respondent No.
1 by: Mr. Ali Hassan Bugti, Advocate.

Respondent Nos.
2 & 3 by: Mr. Muhammad Haroon Kasi, Senior Law Officer, Mr. Shehzad Ahmed, Law Officer, Mr. Zahoor Mengal, Legal Advisor and Mr. Naseer Ahmed, Senior Personal Assistant, Election Commission of Pakistan.

Respondent No.
4 by: Mr. Shahid Baloch, Additional Advocate General.

JUDGMENT

Muhammad Aamir Nawaz Rana, J.- Tersely, facts necessary for decision of this constitution petition are that the respondent No.1 had filed his nomination forms to contest the forthcoming local bodies elections for reserved seat of Peasant from Union Council No.22, Nesao, District Kohlu. The petitioner objected the candidature of respondent No.1 on the ground that since respondent No.1 is Chairman of Zakat Committee Lohi Daf, therefore respondent No.1 does not qualify to contest the local bodies elections considering the qualification criteria set out in the Balochistan Local Government Act, 2010 (hereinafter “**the Act of 2010**”). The objection of the petitioner

was overruled by the Returning Officer of UC No.22 and vide order dated 12.11.2022, the Returning Officer accepted the nomination forms of respondent No.1. The petitioner assailed the order of Returning Officer before the Appellate Authority but the Appellate Authority, vide order dated 24.11.2022, while maintaining the order of Returning Officer, dismissed the appeal so filed by the petitioner. Both the orders passed by the Returning Officer and Appellate Authority are impugned before us through this constitution petition.

2. Learned counsel for the petitioner contended that respondent No.1 is the Chairman of Zakat Committee Lohi Daf, and in this regard, learned counsel referred the Notification dated 26.04.2021 issued by Religious Affairs Department, Government of Balochistan ('GoB'), whereby respondent No.1 had been appointed as Chairman Zakat Committee Lohi Daf for a period of three years. Learned counsel further contended that in view of the relevant provisions of Election Laws as well as the judgments passed by this Court, respondent No.1 cannot contest the local bodies elections for special seat reserved for Peasants.

Conversely, learned counsel for respondent No.1, while opposing the contentions of learned counsel for the petitioner, submitted that the respondent No.1 is performing his duties as Chairman Zakat Committee Lohi Daf voluntarily and in this regard respondent No.1 is not receiving salary, therefore, per learned counsel,

the bar contained in section 24 of the Act of 2010 is not attracted in the case of respondent No.1.

Learned Senior Law Officer, Election Commission of Pakistan supported the impugned orders.

Arguments heard. Record perused.

3. The admitted feature of the case is that vide Notification dated 26.04.2021, respondent No.1 was appointed as Chairman Zakat Committee Lohi Daf. The proposition before us is whether a person being Chairman of Zakat Committee can contest the local bodies elections within the meaning of section 24(1) (f) of the Act of 2010? For the facility of reference, the ibid section is reproduced:

“24. (1) A person shall qualify to be elected or to hold an elective office or membership of a local council, if he-

(a)

(b)

(c)

(d)

(e)

(f) is not in the service of the federal government, a provincial government or a local council or any statutory body or a body which is controlled by any such government or council or, in which any of such government or council has a controlling share or interest, except the holders of elected public office and part-time officials remunerated either by salary or fee:

Provided that in case of a person who has resigned or retired from such service, a period

of not less than six months has elapsed since his retirement;

(g)

(h)

(i)

(j)

(k)

(l)

(m)

(n)

(o)

(p)

(q)

4. Section 15 and section 23 of the Balochistan Zakat and Ushr Act, 2012 (hereinafter “**the Act of 2012**”) provide status of the Chairman and Member of Zakat Committee as under:

“15. Tehsil, Sub-divisional Zakat and Ushr Committee or Town Zakat and Ushr Committee. – (1) *There shall be constituted a Tehsil Zakat and Ushr Committee in each Tehsil or Taluka:*

Provided that, if the Provincial Council so directs in respect of any sub-Tehsil, a Tehsil Zakat and Ushr Committee may be constituted in the Sub-Tehsil and, where a committee is constituted in a sub-Tehsil such committee and such sub-Tehsil shall be deemed to be a Tehsil Zakat and Ushr Committee and a Tehsil, respectively, for the purposes of this Act.

(2) The Tehsil Committee or Sub-divisional Committee shall subject to such guidelines as may be given by the Provincial Council, the Provincial Council or the District Committee---

(a) oversee assessment of Ushr and collection of Zakat, Ushr and Atiyyat, and the disbursement and utilization of the moneys in the Local Zakat Funds, by the Local Committee in the Tehsil or sub-division;

(b) for the purposes mentioned in clause (a), make plans for the Tehsil or sub-division, as the case may be, in such form and manner as may be prescribed;

(c) compile accounts of the Local Zakat Fund for the Tehsil or sub-division, as the case may be, in such form and manner as may be prescribed; and

(d) tender to the District Committee advice on any matter connected with the collection, disbursement or utilization of Zakat or Ushr.

(3) The Tehsil Committee or Sub-divisional Committee shall consist of the Assistant Commissioner, two women members and six members to be elected, in the prescribed manner, by the Chairman of the Local Committees of the Tehsil, Taluka or sub-division, from amongst themselves:

Provided that, if there are more than two Tehsil Committees within the jurisdiction of a Assistant Commissioner, he shall be a member of only such of the Committees as the Provincial Council may specify and the Provincial Council may nominate the Tehsildar of the Tehsil concerned, as the case may be, to be the member of any other of the said Tehsil Committee, Committees:

Provided further that, the two women members shall be nominated by the District Committee in consultation with the Chairman of the Tehsil or sub-divisional committee concerned, who shall not be less than forty-five years of age.

(4) The members of the Committee shall elect one of their members to be the Chairman of the Committee; and, if two or more persons secure equal number of votes,

the result of the election shall be determined by drawing lots.

(5) The Tehsil or Sub-Divisional Committee so constituted shall be duly notified by the District Committee concerned.

(6) The Chairman and members of a Tehsil Committee or Sub-Divisional Committee, not being an ex-officio member, shall hold office for a term of three years and shall be eligible for re-election.

(7) The Chairman or a member, not being an ex-officio member, may by writing under his hand addressed to the Tehsil Committee or, as the case may be, or Sub-Divisional Committee, resign his office.

(8) Subject to subsection (7), the Chairman or a member shall continue to hold office until his resignation is accepted by the Tehsil Committee or, as the case may be, or Sub-Divisional Committee.

(9) Any vacancy in the office of Chairman or member, other than an ex-officio member, shall be filled by election, in accordance with subsection (3), or, as the case may be, subsection (4) of a person qualified to hold the office.

(10) The Chairman or member elected under subsection (9) shall hold office for the un-expired term of his predecessor”.

“23. Certain Persons to be Public Servants.--Every person engaged in, or employed for, the administration of this Act shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (Act No.XLV of 1860).

Explanation. --- For the purposes of this section, the Chairman and members of the District Committee and Local Committee shall be the persons engaged in the administration of this Act”.

5. Considering the *ibid* sections of the Act of 2012, the Chairman of Tehsil Zakat Committee is deemed to be a public servant, since he is elected for the service in statutory body controlled by the Provincial Government, so section 24(1) (f) of the Act of 2010 debars the Chairman Tehsil Zakat and Ushr Committee from contesting the local bodies election.

Even otherwise, considering the social fabric of our society, if any person has the authority to distribute Zakat and Ushr then definitely there are overwhelming possibilities that he can influence the poor voters of the constituency and by using this authority, any individual can hijack the elections. Furthermore, it is not logical that a person who is empowered to provide monetary benefits of any kind under his discretion to the voters of his constituency should be allowed to contest the elections as it would raise questions regarding transparency and fairness of electoral process. This Court in the cases titled as **Muhammad Khan v. Amanullah**¹ and **Zulikha Bibi v. Election Commission of Pakistan**² has discussed this issue in detail and has concluded that the Chairman Zakat Committee should not be allowed to contest the elections.

For the foregoing reasons, the impugned orders dated 12.11.2022 and 24.11.2022, respectively passed by the Returning Officer of UC 22 and Appellate Authority are set aside. The Returning

¹ 2014 PLD 128

² 2015 YLR 1584

Officer of UC 22 is hereby directed to “delete” the name of respondent No.1 from the list of validly nominated candidates for reserved seat of Peasants in Union Council 22, Nesao, District Kohlu.

Petition is accepted.

Announced in open Court
on 9th December, 2022.

JUDGE

JUDGE

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