

**ORDER SHEET**  
**HIGH COURT OF SINDH AT KARACHI**

**C.P.No.D-2217 of 2019**

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**DATE            ORDER WITH SIGNATURE(S) OF JUDGE(S)**  
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**Before:-**

**Mr. Justice Muhammad Ali Mazhar**

**Mr. Justice Agha Faisal**

Dilbar Khan Nizamani.....Petitioner

Versus

Government of Sindh & others.....Respondents

Date of hearing 12.04.2019 & 24.04.2019

Mr. Muhammad Junaid Farooqui, Advocate for the petitioner along with Mr. Muhammad Chuttan advocate.

Mr. Ali Safdar Deeper, AAG.

Mr. Akhlaque Khan Yousufzai, Research Officer, Local Government Department, Government of Sindh.

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**Muhammad Ali Mazhar, J:** This petition has been brought to challenge the Notification dated 27.03.2019, issued by Secretary to Government of Sindh, Local Government and Town Planning Department pursuant to sub-Section (2) of Section 80 of the Sindh Local Government Act, 2013 by dint of which the functions and dominion of the Chairman Municipal Committee Sanghar, District Sanghar have been assigned to Vice Chairman, Municipal Committee Sanghar till decision of case pending in Anti-Terrorism Court, Shaheed Benazirabad against the petitioner and others.

2. The short and snappy facts of the case are that the petitioner was elected as Chairman Municipal Committee Sanghar, District Sanghar. The results were notified by the Election Commission of Pakistan on 29.08.2016 since then he was continuously performing his responsibilities as Chairman, elected on the party ticket of Pakistan Muslim League (Functional). It is further alleged that the petitioner, his relatives and other local workers of PML (F) have been implicated in FIR No.83/2015 at P.S. Sanghar. The

petitioner was granted pre-arrest bail which was cancelled, consequently, the petitioner was arrested on 23.02.2017 and confined in District Jail Sanghar. The Anti-Terrorism Court, Shaheed Benazirabad vide order dated 02.03.2017 directed the Jail Superintendent Sanghar to give permission to concerned employees of Sanghar Municipality to obtain signature of petitioner for the purpose of monthly salaries and other expenses under intimation to ATC Court.

3. The learned AAG filed comments in which the concerned department has denied the allegations and they fully supported the impugned notification whereby the responsibilities of Chairman were assigned to Vice Chairman.

4. The learned counsel for the petitioner argued that the notification has been issued without lawful authority. The requisite space and facilities are available to the petitioner in jail premises since February, 2017 where he can hold the meeting, pursue record and files, pass orders, sign cheques of financial disbursement and perform all other functions as Chairman. It was further argued that even the petitioner can hold camp office inside the compound of District Jail Sanghar. He further contended that the impugned notification was issued without any sanction and approval of competent authority. Through the impugned notification, the petitioner has been permanently restrained from performing his functions as Chairman Municipal Committee which action can only be taken in terms of Section 27 of the Sindh Local Government Act, 2013. Prior to impugned notification, no show cause notice or charge sheet was issued to the petitioner nor he was afforded any opportunity of being heard. In fact the impugned notification was aftermath of the incident with Assistant Commissioner who was not cooperating with the petitioner and placed a list of 60 persons for appointment as sanitary/janitorial staff. The petitioner declined to appoint them and addressed two letters to the respondent Nos. 2 and 4 on 06.03.2019 as a result of which malicious conspiracy was

hatched. Learned counsel further argued that the impugned notification was not published in the official gazette, therefore, it is liable to be struck down.

5. The learned AAG argued that Chief Municipal Officer, Sanghar sent a letter for guidance so that the function of the council may be run smoothly. The Vice Chairman Municipal Committee in his letter stated that the FIR has been lodged against the Chairman and bail has also been rejected and since there was no chance of his early release from jail, he requested that the functions of the Chairman may be assigned to him. The Deputy Commissioner, Sanghar also stated in his letter that the functions of Municipal Committee is not being performed effectively by the concerned staff due to improper supervision and he also requested that DDO powers of the Chairman may be assigned to the Vice Chairman. Learned AAG further argued that the notification was rightly issued in accordance with Sub-section (2) of Section 80 of Sindh Local Government Act, 2013.

6. Heard the arguments. It is an admitted piece of information that the petitioner is "Under Trial Prisoner" (UTP) in crime No.183/2015 and his case is pending in the Anti-Terrorism Court (ATC). His bail was recalled on 23.02.2017 but despite cancellation of his bail, he was continuously performing the functions of Chairman till 27.03.2019 when the impugned notification was issued. The learned counsel for the petitioner made much emphasis that the notification was issued with mala fide intention for the reason that the petitioner had sent letters on 16.03.2019 to the Secretary Local Government, Assistant Commissioner and Chief Municipal Commissioner, Municipal Committee, objecting the appointment of janitorial staff. In fact in the first letter he lodged a complaint to the Secretary Local Government which inter alia states that as per Government directives the appointment of sanitary workers on contract basis was to be appointed/engaged after proper procedure but the sanitary workers were appointed by the Chief

Municipal Officer contrary to the Government's directives. The second letter was communicated to the Assistant Commissioner and Chief Municipal Officer with the grievance that the services of the sanitary staff should be placed under control of Councilors. He further argued the application of the petitioner was granted by ATC to sign cheques and the petitioner can still perform his responsibilities and duties from prison and can hold Camp Office in jail.

7. So far as the argument raised by the learned counsel for the petitioner that the notification was not published in the official gazette for which the relevant provisions under which the provision of such Notification has been incorporated is Section 80 of the Sindh Local Government Act, 2013 which fundamentally and in essence pertains to the powers of Mayor or Chairman which is for ease of reference reproduced as under:-

**80. Powers of Mayor or Chairman.- (1) The Mayor or Chairman, as the case may be, shall -**

**(a) unless prevented by reasonable cause, preside at all meetings of the Council, and regulate the conduct of business at such meetings in accordance with rules;**

**(b) watch over the financial and executive administration of the Council and perform such executive functions as are assigned to him by or under this Act;**

**(c) exercise supervision and control over the acts and proceedings of all employees of the Council and dispose of all questions relating to their service, pay, privileges and allowances in accordance with the rules; provided that service matters of the members of the Sindh Councils Unified Grades shall be referred to Government;**

**(d) have power in cases of emergency to direct the execution or stoppage of any work or the doing of any act which requires the sanction of Government or the Council, and the immediate execution or stoppage or doing of which is, in his opinion, necessary for the service or safety of the public and the action so taken shall forthwith be reported to Government or, as the case may be, to the Council at its next meeting; provided that he shall not act under this clause in contravention of any provision of this Act or order of the Council or Government.**

**(2) When the Mayor or Chairman by reason of absence from Pakistan or any other cause, is unable to exercise his powers and perform his functions, the Deputy Mayor or, as the case**

**may be, Vice Chairman, shall exercise powers and perform functions of the Mayor or, as the case may be, Chairman. (emphasis applied)**

**Provided that in the absence of Mayor, Deputy Mayor, Chairman or Vice Chairman, the Government may by Notification entrust the duties of the Mayor, Deputy Mayor, Chairman or Vice Chairman as the case may be to some other member. (emphasis applied)**

8. In sub-Section (2) of the aforementioned Section, it is unambiguously postulated that when the Mayor or Chairman by reason of absence from Pakistan or any other cause, is unable to exercise his powers and perform his functions, the Deputy Mayor or, as the case may be, Vice Chairman shall exercise powers and perform functions of the Mayor or, as the case may be, Chairman. The letters of law unequivocally expounds an automatic transition of powers by virtue of office of Deputy Mayor and the Vice Chairman due to absence of Mayor or Chairman from Pakistan or any other cause by which they may be unable to exercise their powers and perform their functions, however, a proviso is also attached with this Sub-section (2) which encapsulates that in the absence of Mayor, Deputy Mayor, Chairman or Vice Chairman, the Government may by Notification entrust the duties of the Mayor, Deputy Mayor, Chairman or Vice Chairman as the case may be to some other member. What legal position emerges? In the first two segments and junctures in the absence of Mayor or Chairman, the Deputy Mayor or the Vice Chairman shall exercise powers and perform functions by the fiction of law without any requirement of notification as in Sub-section (2) there is no legal compulsion or mandatory requirement to issue the notification in absence of Mayor or Chairman, however, this provision is embedded to be complied with while entrusting the duties of Mayor, Deputy Mayor, Chairman or Vice Chairman to some other member.

9. According to the learned counsel for the petitioner, there is no exact time frame or expectancy as to when the trial shall be concluded and judgment will be announced. Obviously at this

stage, nobody can foresee or foretell the ultimate destiny of the trial. In the intervening period, the affairs of the Council cannot be left unattended without its Chairman. In order to meet this exigency, a provision has been incorporated expressly to perform the functions and duties of the Chairman by the Vice Chairman in his absence for any reason. Under Section 80 of the Sindh Local Government Act 2013, it is responsibility of the Chairman to watch over financial and executive administration of the Council; supervise and control other acts and proceedings of the employees and dispose of matters relating to their services, pay, privileges and allowances; watch over in the cases of emergency, to direct the execution or stoppage of any work. Under Section 81, the Chief Executive has to supervise the financial and executive administration of the Council under the general control of the Chairman. Whereas, under Section 83 all business of the Council may be disposed of in the meeting by the Chairman and all meetings are ordinarily be presided over by its Mayor or Chairman and in his absence by Deputy Mayor or Vice-Chairman, or a Member chosen for that purpose by the Members present. In keeping with the tenor of law, the Chairman of the Council has a significant role which is to be performed by him as an elected representative of that particular vicinity and locale. Obviously when the Chairman is personally unable to perform his duties, the smooth and efficient working of the Council should not be allowed to be hampered or impeded. It is a common phenomenon followed by almost every association or organization that in the absence of President or Chairman for any reason, the Vice President or Vice Chairman have to perform their duties and responsibilities according to the byelaws or article and memorandum of society/association as the case may be.

10. Since the Chairman is unable to perform his duties personally due to his confinement in jail, we feel no legal disability or illegality committed to entrust his official responsibilities to the Vice Chairman to exercise powers and functions but at the same

time there is no denial that he was continuously performing his duties from jail since 23.02.2017 and was also allowed permission to sign cheques by ATC, therefore, being an elected Chairman despite his confinement in jail as under trial prisoner, he has a right to be acquainted with and up-to-date to the functions and performance of duties by all other office bearers of the Council and employees as an elected Chairman which is concomitant to the proper working of Council. He cannot be excluded or secluded merely on the ground that he is behind the bar where his guilt is not proved so far. Till today no vote of confidence has been moved nor has the petitioner been removed from the post of Chairman, so the downright exclusion without complying with requisite procedures of law will amount to disenfranchise the people of that particular locality who elected the petitioner as their representative in the Council.

11. As a result of above discussion, this petition is disposed of with the directions that though the Vice Chairman in absence of the petitioner may perform his duties as Chairman in terms of sub-Section (2) of Section 80 but all major and policy decisions will be taken subject to the meaningful consultation with the petitioner in prison.

**Judge**

**Judge**

**Karachi:-  
Dated.31.5.2019**