

**IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-4961 of 2018

Present:

Mr. Justice Khadim Hussain M. Shaikh

Mr. Justice Arshad Hussain Khan

*Gulab Shah*

*V/s.*

*Provincial Election Commission & other*

Petitioner Through Mr. Muhammad Gaffar Khan Kakar,  
Advocate

Respondents: Through Mr. Salah-ud-dain Khan Gandapur  
Advocate for Election Commission of Pakistan  
a/w Ms. Maimoona Nasreen, Advocate and Mr.  
Abdullah Hinjrah, Law Officer, ECP.  
Mr. Zahid Khan Assistant Attorney General.  
Mr. Jawwad Dero, Additional Advocate General  
Sindh a/w Mr. Muhammad Tahir, State Counsel

Date of hearing 13.07.2018.

**ORDER**

**ARSHAD HUSSAIN KHAN, J.-** The petitioner through instant constitutional petition has challenged the order dated 26.06.2018, passed by the learned Election Appellate Tribunal dismissing the Election Appeal bearing No.84 of 2018, filed by petitioner, and upheld the decision dated 18.06.2018 passed by the Returning Officer who rejected the nomination form of the petitioner.

2. Brief facts arising to the filing of present petition are that the petitioner submitted his nomination form to contest general elections 2018 from the constituency NA-248, Karachi West. However, on 18.06.2018, the said nomination form after scrutiny was rejected by Returning Officer on the ground that the petitioner suppressed material facts in his nomination form and has filed affidavit not based on true facts. The petitioner preferred Election Appeal No. 84 of 2018 before the learned Election Appellate Tribunal against the said order of Returning Officer. On 26.06.2018, the learned Appellate tribunal while upholding the decision of the Returning Officer dismissed the Election Appeal of the petitioner. The petitioner challenged both the orders of the forum below through this constitutional petition.

3. Learned counsel for the petitioner during the course of his argument has contended that the orders impugned in the instant

proceedings are not sustainable in law and liable to be set aside as the Returning Officer as well as the learned Election Appellate Tribunal while passing the impugned orders have failed to appreciate the law and have incorrectly applied the provisions of the Election Act, 2017, and the constitution. It is also argued that both the forums below while passing impugned orders have failed to consider the material fact that the petitioner has not obtained any loan from the bank nor he has ever got the loan written off, in fact the real brother of the petitioner for his personal and business purposes has obtained loan in the name of petitioner for which the petitioner has no knowledge and that is the reason such facts were not mentioned in the affidavit filed by the petitioner along with the nomination form. It is also argued that in the given circumstances, non-mentioning of the facts about loan, overdue and write-off, in the affidavit filed by the petitioner along with the nomination cannot be termed either as concealment of fact and/or misstatement. As regards the non-mentioning of exclusive bank account for the purpose of election expenses, it was argued that the petitioner though applied for exclusive bank account but due to last date for submission of nomination form and rush of work, the requisite bank account could not be opened till the date of scrutiny, however, on the very next day the said the requisite bank account was opened which fact was also brought to the knowledge of the Returning Officer as well as to learned Appellate Tribunal, however both the forums below have failed to take into consideration such fact. It is further argued that in the given circumstances, the rejection of the nomination paper of the petitioner was unjustified. It has also been argued that the subject defects are not substantial in nature and could be cured by the Returning Officer in terms of 2nd proviso to sub-section (9) (d) of Section 62 of the Elections Act 2017. It is also argued that the impugned orders are in violation of fundamental rights of the petitioner as guaranteed under the Constitution of Pakistan. Further argued that the failure on the part of the forums below to give an opportunity to the petitioner to rectify any infirmity within his nomination form as provided in Section 62 (9) (d) (ii) of the Election Act 2017 is in violation of the law. It has also been argued that subject defects are purely technical in nature and could be rectified by this court by setting-aside the impugned orders and the nomination form of the petitioner may be accepted.

4. Conversely, learned Counsel appearing on behalf of the Election Commission of Pakistan and learned Additional Advocate General Sindh while supporting the impugned orders have vehemently opposed the petition. It has been argued that the impugned orders passed by the forums below do not suffer from any error or illegality, whereas, relevant legal provisions relating to election laws have been properly invoked by the Returning Officer and the learned appellate tribunal while rejecting the nomination form of the petitioner as the same was not filed in accordance with the provisions of Election laws 2017. It has also been argued that the petitioner admittedly concealed material facts about the loan, overdue and write-off, in the nomination form and did not mention the exclusive bank account for the purpose of election expenses as required under the election laws 2017 till date when the nomination form of the petitioner was scrutinized, hence his nomination form was rightly found not in accordance with election laws and violation is substantial in nature, which cannot be ignored or condoned at this stage when the names of validly nominated and contesting candidates have already been published. It has also been argued that it is the duty of each candidate to file complete and correct nomination form along with requisite documents after complying with all codal formalities in accordance with election laws/rules, as per schedule announced by Election Commission for such purpose, within the prescribed time limit, so that the election process shall be completed in time and in a transparent manner. It has been further argued that the entire process of filing of nomination papers, their scrutiny by the Returning Officers, hearing of the appeals by the Appellate Tribunals, have been completed, and even the printing of the ballot papers is near to complete. Per learned Counsel for the respondents such plea could not be accepted by the forums below as the above defects being substantial in nature could not be allowed to be cured at the subsequent stage. It has been prayed that instant petition being misconceived, both on the facts and law, is liable to be dismissed with costs.

5. Learned Assistant Attorney General has also supported the arguments of the learned Counsel for the Election Commission of Pakistan as well as the learned Additional Advocate General Sindh and submitted that the contentions of the petitioner are misconceived and as such not sustainable in law. It has been prayed that the above petition may be dismissed and the concurrent orders of rejection of

nomination paper of the petitioner, passed by both the forums below, may also be maintained.

6. We have heard the learned Counsel for the parties, perused the record and the orders of both the forums below, and also examined the relevant provisions of the Elections Act 2017, and the Election Rules 2017, as well as the case law relied upon by the learned Counsel for the parties.

7. From the perusal of the record, it appears that during the process of scrutiny of the nomination form of the petitioner, it was found that (i) the petitioner suppressed material fact in his affidavit about loan he obtained from five (5) different banks and he got the loan written off, (ii) the petitioner has failed to mention the details of his other properties/assets in his nomination form as well in his affidavit on oath, (iii) one of them from proposer and seconder has mentioned wrong Electoral number of his vote in the nomination form of the petitioner and (iv) the petitioner has not mentioned exclusive bank account for election expenses as required under the election laws.

8. Before going into further discussion, it would be appropriate to reproduce hereunder the relevant provisions of the Election Act 2017, as well as Constitution of Pakistan necessary for the decision of the present petition:-

Section 60 of the Election Act, 2017 reads as follows:-

**“60. Nomination for election.—** (1) Any voter of a constituency, may propose or second the name of any qualified person to be a candidate for Member for that constituency:

Provided that no voter shall subscribe to more than one nomination papers either as proposer or seconder.

(2) Every nomination shall be made by a separate nomination paper on Form A signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, be accompanied by

- (a) -----
- (b) a declaration that he has opened an exclusive account with a scheduled bank for the purpose of election expenses;
- (c) -----; and
- (d) a statement of his assets and liabilities and of his spouse and dependent children as on the preceding thirtieth day of June on Form B.”

Section 62 of the Election Act, 2017 reads as follows:

**“62. Scrutiny.**---(1) Any voter of a constituency may file objections to the candidature of a candidate of that constituency who has been nominated or whose name has been included in the party list submitted by a political party for election to an Assembly before the Returning Officer within the period specified by the Commission for the scrutiny of nomination papers of candidates contesting election to an Assembly.

(2)-----

(3)-----

(4)-----

(5)-----

(6)-----

(7)-----

(8)-----

(9) Subject to this section, the Returning Officer may, on either of his own motion or upon an objection conduct a summary enquiry and may reject a nomination paper if he is satisfied that -

(a)-----

(b) the proposer or the seconder is not qualified to subscribe to the nomination paper

(c)-----

(d) the signature of the proposer or the proposer or the seconder is not genuine: provided that \_

(i) the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper; or

(ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial and may allow any such defect to be remedied forthwith including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate of his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.

[emphasis supplied]

**“63. Disqualifications for membership of Majlis-e-Shoora (Parliament).--(1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora(Parliament), if-**

(a).....

(b).....

.....

"(n) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off".

The above Article provides for a disqualification on the ground that if a candidate has obtained a loan for an amount of Rs.2 million or more from any bank etc. which remains unpaid for more than one year from the due date the said candidate stands disqualified from being elected or chosen as Member of the Parliament. The word "remains" in the above Article connotes a continuous default, which means that the loan must continue to remain unpaid for a period of over one year and till the time the candidate opted to present himself to be elected to the Parliament. The above disqualification is not attracted if the loan simply remains unpaid for more than one year from the due date, but stands attracted if the loan 'remains' unpaid at the time when the candidate presents himself for election. It is the entry point for a candidate to step into the electoral process and in the wisdom of the Constitution the candidate must not only be qualified but must also be free from any taint of disqualification at this initial stage.

9. Perusal of the above provision of election law indicates that the powers of the Returning Officer have been controlled for not rejecting the nomination papers on any defect, which is not of substantial nature and the defect, which may be remedied forthwith.

10. In the present case, the petitioner cannot take refuge of the above provisions as firstly, he concealed the material facts about his loan outstanding liability in his nomination form, secondly when the said fact came to the surface instead of depositing the said liability the petitioner shown his unawareness and in Election Appeal stated that loan amount was obtained by his brother in the name of the petitioner and the said fact was not in knowledge of the petitioner. Furthermore, it is also an admitted position that the exclusive bank account as

required under section 60(2)(b) of the Election Act 2017, for the purpose of election expenses, was not in existence at the time of scrutiny of nomination form, however, the petitioner subsequently opened the requisite bank account after expiry of the scrutiny period. Opening of requisite bank account after the expiry of scrutiny period does not cure the disqualification of the petitioner.

11. In the backdrop of the above, we have examined the orders rendered by the two forums below and find that the impugned orders are legal and unexceptionable, which suffer from no jurisdictional defect and as such do not call for any interference by this Court in exercise of its constitutional jurisdiction.

12. In view of foregoing reasons, we do not find any merit in the instant petition, which is accordingly dismissed along with the listed application.

*JUDGE*

*JUDGE*