

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

C.P. No.D-4950 of 2018

PRESENT:

**Mr. Justice Khadim Hussain M. Shaikh**  
**Mr. Justice Arshad Hussain Khan**

*Syed Mahmood Saeed*

*V/s.*

*Returning Officer & another*

Petitioner : Through Mr. Muhammad Arif, Advocate.

Respondents : Through Mr. Salahuddin Khan Gandapur  
Advocate for Election Commission of  
Pakistan a/w Miss. 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 petition challenging the orders, passed by Returning Officer and learned Election Appellate Tribunal, whereby the nomination papers of the petitioner for contesting the forthcoming general elections-2018 was rejected, has sought the following reliefs:

“To set-aside the impugned order dated 19.06.2018 for rejection of nomination form of the petitioner passed by the respondent No.1 and to allow the petitioner to contest the general election 2018”.

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 PS-96, (Korangi) Karachi. On 19.06.2018, the said nomination form after scrutiny was rejected by Returning Officer on the grounds that (i) the petitioner’s seconder namely Nasir Baig is not the registered voter of the constituency PS-96, (ii) submitted incomplete affidavit and

(iii) not mentioned the exclusive bank account for election expenses. The petitioner challenged the said decision of the Returning Officer before the learned Election Appellate Tribunal in Election Appeal No.161 of 2018, which appeal was dismissed by the learned Tribunal on 25.06.2018 by upholding the decision of the Returning Officer. The petitioner challenged both the above said orders in the instant constitutional petition.

3. Learned counsel for the petitioner, inter-alia, contended that the orders impugned in the present proceedings are not sustainable in law and liable to be set aside. Further contended that 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. Further contended that both the forums below have failed to consider the material fact that the names of the proposer and seconder were placed in the nomination form on the basis of certificates issued by the District Election Commissioner, therefore, the petitioner is not at fault, if the seconder of the petitioner was found not a registered voter of the constituency from where the petitioner filed nomination form to contest the forth coming general elections 2018, his nomination form could not be rejected and in the event if the seconder is found to be a voter of other constituency, the petitioner may be allowed to substitute the seconder of the constituency from where the petitioner filed his nomination form. It is also argued that non-mentioning the exclusive bank account for election expenses in the nomination form is not fatal as the deficiencies of such nature are curable. Further argued that the nomination form of the petitioner has been rejected on technical grounds which can be rectifiable. It has also been argued that the subject defects are not substantial in nature and could be cured by the Returning Officers in terms of 2nd proviso to sub-section (9) (d) of Section 62 of the Elections Act 2017. Failure on the part of the forums below to give an opportunity to rectify and amend 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.

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 contentions of the learned counsel for the petitioner. 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 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 argued that the grounds raised by the petitioner in his petition are contrary to Election Act, 2017. It has been prayed that the above petition may be dismissed and the concurrent orders of rejection of nomination papers 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 the petitioner in his nomination form for contesting the forthcoming general elections from constituency of PS-96 Korangi, Karachi, placed the name of the seconder who admittedly belongs to the other constituency. Furthermore, petitioner also failed to mention requisite exclusive bank account for the expenditure of the election expenses as per mandatory provision of the Election Act, 2017. The Returning Officer at the time of scrutiny of the nomination form of the petitioner upon finding such deficiencies, rejected his nomination form.

8. Learned counsel for the petitioner during the course of arguments also referred to sub-section (9) (ii) of Section 62 of the Election Act 2017, for the convenience's sake the same are reproduced as under:

**“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)-----

(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]

A perusal of the above provision 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. Furthermore, this bench recently decided the issue relating to proposers and seconders in the case of Muhammad Feroz V. ECP & others (CP No.D-4778/2018) alongwith 18 other constitution petitions, wherein while relying upon the judgments of Honorable Supreme Court of Pakistan, we have held that the above provisions are mandatory in nature and the defect is of a substantial nature, which could not be left to the discretion of the Returning Officer to remedy. Relevant portion of the judgment for convenience's sake is reproduced as under:-

“12. In view of the above discussion and by respectfully following the ratio of judgments of Hon'ble Supreme Court, we are of the considered view that the provisions relating to proposer and seconder of a candidate in the Election Act 2017 are mandatory in nature, and any defect in respect thereof in nomination, is a defect of substantial nature, which cannot be cured at subsequent stage, and the nomination papers being invalid on this account, could not be allowed to be validated

afterwards in exercise of powers either by the Returning Officer or even by the Appellate Tribunals. And thus, the orders rendered by the two forums below impugned in these petitions are legal, unexceptionable, apt to the facts and circumstances of the case and they do not call for any interference by this Court in exercise of its Constitutional jurisdiction. Accordingly, the present petitions being devoid of merit are dismissed with no order as to costs along with all the pending applications.”

9. As regards the issue relating to the exclusive bank account for the purpose of election expenses, it would be appropriate to reproduce Section 60 of the Election Act, 2017 as under:

**“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) .....
- (d) ..... ”

[emphasis supplied]

From the above, it appears that the aforesaid provision is mandatory in nature and the candidate who intends to contest the election has to declare in his nomination form that he has opened an exclusive account with a schedule bank for the purpose of election expenses. The non-compliance of mandatory provision would render nomination form defective of a substantial nature, which could not be left to the discretion of the Returning Officer to remedy.

10. 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.

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

JUDGE

JUDGE

*jamil*