

SENATE APPELLATE TRIBUNAL, SINDH HIGH COURT OF SINDH AT KARACHI

Election Appeal 08 of 2021

Muhammad Abdul Rauf Siddiqui

vs.

The Election Commission of Pakistan & Another

For the Appellant : Muhammad Abdul Rauf Siddiqui
In Person

Date of hearing : 22.02.2021

Date of announcement : 22.02.2021

JUDGMENT

Agha Faisal, J. The present appeal has been filed assailing the Order of the learned returning officer dated 18-02-2021 ("Impugned Order"), whereby the nomination form of the appellant was rejected with respect to candidature for election to the Senate, from the Province of Sindh, on a technocrat seat. It is considered illustrative to reproduce the Impugned Order herein below:

"Mr. Muhammad Abdul Rauf Siddique filed his nomination papers on 13-02-2021 for election to Senate for category of Technocrats. The Security of aid Nomination Paper was held on 17.02.2021 at 3:30 PM and adjourned for decision on 18-02-2021 at 4:30 PM The candidate, his proposer and seconder were present during the Scrutiny of said nomination papers. It is found that the educational qualification of the candidates is B.A. Hence, he does not possess sixteen years of education as required under section 2 (xxxiv)(a) of the Election Act, 2017. His nomination papers are therefore, rejected."

(Underline added for emphasis.)

Arguments

2. Per the appellant, who is appearing in person, the Impugned Order was untenable; hence, ought to be set aside. The appellant's plea was predicated primarily on the grounds that since the tenure of B.A. degree has been increased from two years, hence, the benefit of extended tenure must be read into appellant's educational qualification; the appellant has substantial international achievements which have not been considered by the learned returning officer; and that in any event if this matter requires detailed inquiry or evidence then the appellant may, in the very least, be allowed to contest the elections on a provisional basis.

3. This Tribunal has considered the arguments articulated by the learned counsel and surveyed the law / record to which its attention was solicited. The question hereby framed for determination is whether the Impugned Order can be sustained under the law, as articulated vide the Election Act 2017 (“Act”) and the rules, the Election Rules 2017 (“Rules”), made there under.

Ambit of the law

4. This tribunal is constituted¹ to adjudicate appeals with respect to the acceptance or rejection of candidature, in respect of senate elections, by a learned returning officer². The appeal is required to be decided summarily³ and announcement of fixation thereof, *inter alia* via the media, is deemed to be sufficient notice of the date and time so appointed⁴. The domain of this determination is enunciated per section 113(3)⁵ of the Act.

5. The primary issue is with respect to the non-conformity of the appellant within the definition of technocrat, per section 2(xxxix)(a) of the Act, which is reproduced herein below:

“technocrat means a person who

(a) holds a degree requiring conclusion of at least sixteen years of education recognized by the Higher Education Commission; and

(Underline added for emphasis.)

(b) has at least twenty years of experience including a record of achievement at the national or international level;”

Application of the law to the present lis

6. The appellant, appearing in person, has admitted that he has not undergone sixteen years of education; however, he seeks the reading down or interpretation of a statutory provision, being section 2(xxxix)(a) of the Act, in

¹ 113 (1) A candidate or an objector may, within the time specified by the Commission, file an appeal against the decision of the Returning Officer rejecting or, as the case may be, accepting a nomination paper to the Tribunal constituted for the purpose consisting of a person who is a Judge of a High Court, appointed by the Commission in consultation with the Chief Justice of the High Court concerned.

² 105. For the purpose of an election to the Senate, the Commission shall appoint a Returning Officer for each Province, ... and shall also appoint such number of Polling Officers to assist the Returning Officer as it may consider necessary.

³ 113 (2) An appeal filed under sub-section (1) shall be summarily decided within such time as may be notified by the Commission and any order passed on the appeal shall be final. Although Rule 100(5) of the Rules contemplates a discretionary inquiry. Per *Akhtar Zaman Maghlani J (as he then was) in Nawabzada Mir Balach Khan Marri vs. Mir Mohabbat Khan Marri & Others* reported as *PLD 2003 Quetta 42*.

⁴ 113 (4) Announcement of the day and time appointed for the hearing of an appeal under this section over the radio or television or by publication in the newspaper shall be deemed to be sufficient notice of the day and time so appointed.

⁵ 113(3) If, on the basis of information or material coming to its knowledge by any source, a Tribunal constituted under sub-section (1) is of the opinion that a candidate whose nomination paper has been accepted is a defaulter of loans, taxes, government dues and utility expenses or has had any loan written off or has willfully concealed such fact or suffers from any other disqualification from being elected as a Member of the Senate, it may, on its own motion, call upon such candidate to show cause why his nomination papers may not be rejected, and if the Tribunal is satisfied that the candidate is actually a defaulter or has had a loan written off or suffers from any disqualification, it may reject the nomination paper of the candidate.

the appellate jurisdiction of this Tribunal. The Act was promulgated almost four years ago and the appellant remained at liberty to assail any provision thereof before the Court of appropriate jurisdiction. Admittedly, that was never done.

7. In the present facts and circumstances, rejection of candidature was predicated on the ground that the appellant has not completed sixteen years of education, as statutorily required. While admitting the same, the appellant pleads for interpretation or reading down of the relevant statutory provision, however, the plea is devoid of law *inter alia* as the jurisdiction of this Tribunal does not merit such an enterprise.

8. The plea of achievements is also irrelevant for the present purposes as the appellant *prima facie* could not comply with the stipulation of section 2(xxxix)(a) of the Act. The plea for provisional permission to contest the election, in the presence of manifest ineligibility, neither has merit nor is the same within the jurisdictional ambit of this Tribunal.

Conclusion

9. In view of the reasoning and rationale herein contained, this Tribunal is of the considered view that this appeal is devoid of merit, hence, the same, along with pending application/s, is hereby dismissed *in limine*.

10. The office is hereby instructed to convey a copy hereof to the learned returning officer, in *mutatis mutandis* application of Rule 54(5) read with Rule 100(6) of the Rules, forthwith.

JUDGE