

BEFORE THE ELECTION TRIBUNAL
(HIGH COURT OF SINDH, KARACHI)
ELECTION APPEAL NO. 01 / 2022

DR. KHALIDA SIKANDAR _____ APPELLANT

VERSUS

ELECTION COMMISSION OF PAKISTAN _____ RESPONDENT

- 1) For hearing of CMA No. 4054/2022.
- 2) For hearing of main case.

28.06.2022.

M/s. Abid S. Zuberi, Jafer Raza & Shahreen Chughtai,
Advocates for Appellant.
Mr. Abdullah Hanjrah, Senior Law Officer. ECP.
Mr. Sarmad Sarwar, Law Officer, ECP.

Muhammad Junaid Ghaffar, J. This Election Appeal has impugned order dated 24.6.2022 passed by the Returning Officer, whereby, the nomination papers of the Appellant for Senate Bye Elections have been rejected. Pursuant to notice issued yesterday, Mr. Abdullah Hanjrah, Senior Law Officer and Mr. Sarmad Sarwar, Law Officer have affected appearance on behalf of Election Commission and the Returning Office and have filed comments.

Learned Counsel for the Appellant submits that the nomination paper of the Appellant has been rejected by the Returning Officer on two grounds; firstly, that original CNIC was not presented at the time of scrutiny of nomination papers; and secondly, the candidate chose not to appear in person. He submits that the order of the Returning Officer is not in conformity with Section 110 of the Election Act, 2017 and therefore, the same cannot be sustained.

On the other hand, Mr. Abdullah Hanjrah, Senior Law Officer, Election Commission of Pakistan submits that though there is no such requirement as recorded in the order; however, legible copy of CNIC was not provided; hence, the impugned order was passed.

I have heard the Learned Counsel for the Appellant as well as representative of Election Commission and perused the record. Section 110 of the Election Act, 2017 deals with the nomination of Election to Senate of Pakistan and the relevant provision in consideration reads as under:-

“110. **Nomination for election.**---(1) A voter may propose or second the name of any person qualified for election to the Senate from a Province, Islamabad Capital Territory or the Federally Administered Tribal Area, as the case may be.

(2) Every nomination shall be made by a separate nomination paper on Form A signed by the candidate and shall be accompanied by---

- (d) an **attested copy** of his National Identity Card, and
- (e)

(3) Every nomination paper shall be delivered to the Returning Officer by the candidate or by his proposer or seconder **or if so authorized in writing by the candidate, by his nominee** and the Returning Officer shall acknowledge receipt of the nomination paper specifying the date and time of receipt.

Perusal of the aforesaid provision clearly reflects that a nomination can be filed on the basis of an **attested copy** of CNIC, whereas, the nomination paper can be delivered to the Returning Officer by the candidate or by his proposer or seconder or **through an authorized representative**. Admittedly, the nomination paper was submitted through an authorized person and to that effect there is neither any dispute or an exception has been drawn.

Insofar as issue of CNIC is concerned, the law does not provide that original CNIC must necessarily be shown to the Returning Officer. At the most instead of rejecting the nomination papers, an opportunity could have been provided to the candidate for making compliance of any such requirement or wish of the Returning Officer; but in no case the nomination could have been rejected.

The impugned order appears to be in total disregard to the provisions of Section 110 of the Election Act, 2017 and this Tribunal is surprised as to how the Provincial Election Commissioner who is also the Returning Officer can pass such an absurd and illogical order. His conduct has unnecessarily given rise to this Appeal which has to be decided by a Judge of the High Court in terms of Section 113 *ibid*, and that too within a specified time period. Needless to observe that High Court is already burdened with numerous cases being fixed on daily basis, and a bit of caution and application of mind would not have resulted in wasting precious time of the Court and ordinary litigants.

In view of the above, this Appeal is allowed. The order dated 24.06.2022 passed by the Returning Officer impugned herein is hereby set aside, whereas, the nomination papers of the Appellant stands accepted.

Let copy of this order be communicated to the Returning Officer as well as all concerned today through fax; email and bailiff in terms of Rule 100(6) of the Election Rules 2017. It shall also be sent to Chief Election Commissioner for his perusal.

J U D G E

Arshad/