

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Election Appeal No.21 of 2024

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Date	Order with signature of Judge
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1. For order on office objection alongwith reply as at 'A'
2. For hearing of main case

**Date of hearing and order: 05.1.2024**

Mr. Ali Tahir attorney of the appellant  
Mr. G.M Bhuto Assistant Attorney General along with  
Mr. Sarmad Sarwer Assistant Director (Law) Election Commission of  
Pakistan

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**ORDER**

**Adnan-ul-Karim Memon: J**, Appellant Haleem Adil Sheikh through his attorney Ali Tahir has filed the instant Election Appeal by calling in question the order dated 26.12.2023 passed by the Returning Officer NA-238 District East Karachi on the ground that he failed to disclose the details of clearance from the police / anti-corruption, no dues certificate from the Provincial Assembly and clearance from the Home Department.

The attorney of the appellant is present and contended that the subject documents were not provided to the appellant by the concerned departments due to political victimization as the appellant has been incarcerated in the Central Jail Karachi on politically trumped up charges. The appellant has asserted that, though he requested the Returning Officer to issue a production order, however, he failed and neglected to perform his duties assigned to him under the law; the appellant also applied to the department concerned for certified copies vide letters dated 29.12.2023 but they failed to respond without assigning reasons; that the Returning Officer has failed to disclose any cogent reason to reject the nomination papers of the appellant, without providing the opportunity of hearing. He further submits that the Returning Officer erroneously accepted the objections of unknown persons and based on such frivolous objections, he also rejected the nomination papers of the appellant in violation of the Election Act, 2017 on the aforesaid purported pleas. As per the appellant, no copies of the purported objections were provided to him and/or his representative/attorney, and directly rejected the nomination papers in violation of Section 62(9) of the Election Act, 2017. He further submits that the appellant has complied with every requirement of law. He emphasized that in a democratic State, political activity is a common feature; however, certain limitations might vary from one State to another.

He added that in our homeland, the right to form an association or a union is a constitutional right that has been made part of fundamental rights under Article 17 of the Constitution of the Islamic Republic of Pakistan, 1973. He asserted that Participation in elections is a constitutional right. He prayed for setting aside the impugned order dated 26.12.2023 and allowing the appellant to contest the election.

The learned Assistant Attorney General assisted by the learned law officer representing the Election Commission of Pakistan has opposed this appeal on the ground that there is sufficient material available against him to disqualify his candidature for contesting the election under the Election Act 2017.

I have heard the learned counsel for the parties and have gone through the relevant facts and circumstances, including the order passed by the Returning Officer.

The question involved in the present appeal is whether the rejection of the nomination papers of the appellant was/is justified under the election law. Whether the defect as pointed out by the learned Law Officer substantial or curable?

Primarily, the appeal against the scrutiny order passed by the Returning Officer is of a summary nature, as this Tribunal can pass an order within the specified period, thereafter, the proceedings stand abated and the order of the Returning Officer is deemed to have become final. Needless to mention under Section 63 of the Election Act, 2017 no fact-finding inquiry is to be made and/or evidence is to be recorded which is only permissible before the Election Tribunal under Section 140 of the Elections Act 2017 after the completion of First Phase of Election.

A perusal of the relevant provision also indicates that the powers of the Returning Officer have been controlled for not rejecting the nomination papers on any defect which is not of a substantial nature. Under the election law, it is mandatory for candidates, who desire to contest the election on the subject seats to fulfill eligibility criteria as mentioned in Articles 62 and 63 of the Constitution of the Islamic Republic of Pakistan 1973. However, in the present case, the allegations and counter-allegations can not be determined and it is for the Election Appellate Tribunal to determine the qualification and disqualification of the candidate after recording the evidence which cannot be done in summary proceedings.

In the present case, the appellant has been disallowed to contest the election on the plea that he failed to produce the no dues certificate, prima-facie such analogy is absurd on the part of the Returning officer. In principle, the provisions of disqualification of a candidate are to be strictly construed. Additionally, Section 62, sub-Section (9) provides for the rejection of nomination papers on one of four grounds: (9)(a) the candidate is not qualified to be elected as a member, (b) the proposer or the seconder is not qualified to subscribe to the nomination paper; (c) any provision of section 60 or Section 61 has not been complied with or the candidate has submitted a declaration or statement which is false or incorrect in any material particular; or (d) the signature of the proposer or the seconder is not genuine. Prima facie the reasoning put forward by the Returning Officer is not commensurate to the provision of law as discussed supra.

For the aforementioned reasons this Appeal is allowed, the impugned order is set aside, and the returning officer is directed to allow the appellant to contest the Election from NA-238 District East Karachi without resistance.

JUDGE