

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No.39 of 2024

Date	Order with signature of Judge
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For hearing of main case

Date of hearing and order: 06.1.2024

Mr. Shahzeb Akhtar Khan Advocate for the appellant
Mr. G.M Bhuto Assistant Attorney General along with
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of Pakistan

ORDER

Adnan-ul-Karim Memon, J. Appellant Rauf Ahmed through instant election appeal has called into question the order dated 25.12.2023 passed by the Returning Officer, PS-108, Karachi South-III *inter alia* on the ground that the Returning Officer based on the erroneous opinion of the FIA Facilitation Cell rejected the nomination papers of the appellant that he held Foreign Nationality i.e. Mozambique without providing the opportunity of hearing to cure the defect, if any. An excerpt of the order is reproduced as under:-

“However, during examination/ scrutiny of the nomination papers of the abovenamed candidate and verification received from FIA Facilitation Cell, FIA Headquarter, Islamabad (copy enclosed) it appears that candidate namely MR. RAUF AHMED S/o MUHAMMAD ISMAIL bearing CNIC No. 42000-9964196-5 holding Foreign Nationality i.e Mozambique which is against the Article 63(1)c of the Constitution of Islamic Republic of Pakistan 1973. ----

Therefore in the light of above-mentioned Article 63(1) (c) of the Constitution of Pakistan 1973, hence the nomination paper of the abovenamed candidate is hereby rejected, accordingly.”

As per the appellant, his case is squarely out of the ambit of Section 62(9)(ii) of the Elections Act, 2017. An excerpt whereof is reproduced as under: -

“62(9)(ii). The Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith.....”

It is the case of the appellant that the impugned order has been passed based on hypothesis, surmises, and conjectures, therefore, the same has no legal standing and is liable to be set aside, even otherwise the purported assertion on the part of the Returning Officer is not substantial as no time was granted to the appellant to cure the defect, if any, as the appellant on the day of nomination papers had already seized to be

National of Mozambique since 26.10.2023. He has prayed for setting aside the impugned order dated 25.12.2023.

The learned Assistant Attorney General assisted by the learned law officer representing the Election Commission of Pakistan has opposed this appeal inter alia on the ground that the appellant is National of Mozambique and is disqualified to contest the election in the light of Article 63(1)(c) of the Constitution of Pakistan 1973. At this stage I enquired from the learned law officer as to how he claims that the appellant is a Mozambique Citizen when he had already renounced Mozambique Citizenship on 26.10.2023 which has been duly acknowledge by the Ministry of Mozambique, National Immigration, Republic of Mozambique on 22.11.2023 (*Annexure-A/3 Page-81*). He simply stated that the impugned order dated 30.12.2023 explicitly show that the appellant is Mozambique citizen therefore there is sufficient material available against him to disqualify his candidature for contesting the election under the Election Act 2017.

The question involved in the present proceeding is whether the rejection of the nomination papers of the appellant is justified by the reason that the appellant held the Foreign Nationality and was found ineligible to participate in the ensuing election and whether this defect is substantial or curable in terms of law laid down by the Supreme Court in the cases of Speaker *National Assembly v. Habib Akram* **PLD 2018 SC 678** and *Samiullah Baloch v Abdul Karim Noshervani* **PLD 2018 SC 405**.

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 is whether the defect as pointed out by the learned Law Officer is substantial or curable?

Prima facie the appellant has taken the stance that he had renounced his Citizenship of Mozambique on 26.10.2023 before filing the nomination papers from the subject constituency which has been duly acknowledge by the Ministry of Mozambique, National Immigration, Republic of Mozambique on 22.11.2023 (*Annexure-A/3 Page-81*).

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 Elections 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. Additionally, Sub-Section (9) of Section 62 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.

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 cannot 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 view of my tentative assessment of record coupled with acknowledgment letter dated 22.11.2023 (*Annexure-A/3 Page-81*) which was issued by the Ministry of Mozambique, National Immigration, Republic of Mozambique with regard to renouncement of the appellant from nationality of Republic of Mozambique before the filing of his nomination papers. However, the question of qualification and disqualification of the appellant shall remain open to be determined by the Election Appellate Tribunal under Section 140 of the Elections Act 2017 after the completion of the First Phase of the Election, therefore at this stage, the appellant has made out a case for grant of relief as provided under the law enabling him to contest the election without resistance which is subject to the final adjudication by the Election Appellate Tribunal if aggrieved party approaches, who has power to record evidence, if the appellant succeeds in the election.

For all that has been discussed and stated above, this Appeal is allowed, the order dated 25.12.2023 passed by the Returning Officer, PS-108, Karachi South-III Karachi is set aside, and the appellant shall be allowed to contest the election from PS-108, Karachi South-III Karachi.