

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No.75 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. S.K Lodhi advocate for the appellant
Mr. G.M Bhuto Assistant Attorney General along with
Mr. Sarmad Sarwer Assistant Director (Law) Election Commission of
Pakistan

ORDER

Adnan-ul-KarimMemon-J Appellant Jamaluddin Nasir through instant Election Appeal has called in question the order dated 30.12.2023 passed by the Returning Officer, PS-123, Karachi Central II Karachi, inter alia on the ground that the appellant has not violated Section 60 (2)(b) of the Elections Act 2017 and due to minor omission, if any, the Returning Officer has rejected the Nomination Papers of the Appellant without providing the opportunity of hearing to him. An excerpt of the order is reproduced as under:-

“Nomination of Mr. Jamaluddin Nasir is hereby rejected under Section 62(9)(C) of the Election 2017. The reason for violation of Section 60(2)(b) of Election Act 2017.”

At the outset, learned counsel referred to the impugned order and submitted that the Returning Officer had erroneously held that the appellant violated Section 60(2)(b) of the Election Act 2017 and invalidly applied Section 62(9)(C) of the Act 2017 to nonsuit the appellant to contest the ensuing Election. Per learned counsel, the case of the appellant 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.....”

Learned counsel emphasized 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 omission is not substantial as no time was granted to the appellant to cure the defect, if any. Learned counsel referred to the statement dated 4.1.2024 and submitted that he had already applied for the opening of Bank Account No.610294188300018 and that a certificate

thereof would be issued in two days however the Returning Officer neglected this factum and rejected his nomination papers. He prayed for setting aside the impugned order dated 30.12.2023.

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 in the nomination form, the appellant has failed to disclose his bank account in terms of section 60 (2)(b) of the Elections Act 2017 as such the appellant is not entitled to contest the ensuing election. At this stage I enquired from the learned law officer as to how he claims that the appellant had not provided information as he applied to open the Bank Account, he simply referred to the impugned order and relied upon the reasoning so put forward by the Returning Officer and argued that the appellant ought to have opened the Bank account before closing the Nomination Papers.

I have heard the learned counsel for the parties and perused the record with their assistance.

The question involved in the present proceeding is whether the rejection of the nomination paper of the appellant is justified by the reason that the appellant could not submit a Bank Account Certificate in terms of Section 60(2)(b) that at the time of scrutiny of nomination papers, the appellant could have opened an exclusive account to the scheduled bank for Election expenses. Whether this defect is substantial or curable.

From the perusal of the order passed by the Returning Officer dated, it is clear that no one has objected that the appellant has suppressed assets and liabilities. As regards the bank account, the bank account in the name of the appellant has also been mentioned in the statement of the appellant, thus no material concealment or misstatement in the nomination paper has been established. Contentions raised by learned law officers are without any legal substance. It may be observed here that process for General Elections, 2024 is in progress, under Article 225 of the Constitution, this Court cannot interfere with the election process without any legal justification. Let the appellant produce the Bank Account certificate before the Returning Officer within two days and the appellant shall be allowed to contest the ensuing Election without fail. The matter is remanded to the Returning Officer to facilitate the appellant so that he be able to produce the Bank Account certificate for the aforesaid purpose.

This Appeal is disposed of in the above terms.

JUDGE