

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
**Election Appeal No.103 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 order on CMA No.303/2024 (Stay)
3. For hearing of main case

**Date of hearing and order: 06.1.2024**

Mr. Imran Rana 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 Tabish Toufiq has called in question the order dated 28.12.2023 passed by the Returning Officer NA-250 District Central-1V Karachi, inter alia, on the ground that he is Canadian National, therefore, his nomination paper has been rejected in the light of Article 63(c) of the Constitution of the Islamic Republic of Pakistan, 1973, which deals with disqualification from membership of Majlis-e-Shoora (Parliament). An excerpt of the order is reproduced as under:-

**“Form of Mr. Tabish Toufiq is “Rejected” due to his Candian Nationality in the light of Section 63 sub section (c) of Constitution of Pakistan which deals with disqualification for membership of Majlis-e-Shoora (Parliament)”**

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 has moved an application dated 18.12.2023 for renouncement of his Canadian Citizenship before submission of nomination papers which was acknowledged by Government of Canada vide acknowledgment receipt dated 18.12.2023 (*available at Pages-75 to 135*). He has prayed for setting aside the impugned order dated 28.12.2023.

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 Canada 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 Canadian Citizen when he had already renounced Canadian Citizenship on 18.12.2023 which has been duly acknowledged by the Government of Canada on the same date (*available at Pages-75 to 135*). He simply stated that the impugned order dated 28.12.2023 explicitly shows that the appellant is a Canadian citizen therefore there is sufficient material available against him to disqualify his candidature for contesting the election under the Elections 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 Canada on 18.12.2023 before filing the nomination papers from the subject constituency which has been duly acknowledged by the Government of Canada on the same date (*available at Pages-75 to 135*).

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 receipt dated 18.12.2023 (*available at Pages-75 to 135*) which was issued by the Government of Canada with regard to renouncement of the appellant from Canadian nationality 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 impugned Order dated 28.12.2023 passed by the Returning Officer, NA-250 District Central-1V Karachi, is set aside, and the appellant shall be allowed to contest the election from NA-250, District Central-1V Karachi.