

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No.73 of 2024

Date

Order with signature of Judge

1. For orders as to non prosecution.

Date of hearing and order: 06.1.2024

Mr. Ghulam Akbar Jatoi 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 Muhammad Arif through instant Election Appeal has called in question the order dated 30.12.2023 passed by the Returning Officer, NA-235, Karachi East (I) Karachi inter alia on the ground that due to change of constituency, the name of seconder Muhammad Imran had wrongly been shown in another constituency however he requested to replace the name of seconder with Ahmed Raza son of Muhammad Hanif R/o House C-211, Scheme 33, Gulzar-e-Hijri, Sector 15-C Karachi and also obtained his vote certificate however due to minor omission the Returning Officer rejected the nomination papers of the appellant without providing the opportunity of hearing. An excerpt of the order is reproduced as under:-

“Scrutiny dated 30.12.2024 at 10.30 a.m seconder namely M. Imran bearing CNIC No. 42201-7149150-7 does not pertain to NA-235 East. I jurisdiction hence the nomination papers, is rejected.”

At the outset, learned counsel referred to the impugned order and submitted that the Returning Officer erroneously held that the seconder does not belong to NA 235 East I jurisdiction, however, the appellant intimated that due to change of the constituency, the name of the seconder Muhammad Imran has wrongly been shown in the other constituency and requested to replace the name of seconder with Ahmed Raza resident of House No. C-211 Scheme 33 Gulzar-e-Hijri Sector 15/C Karachi and obtained the vote certificate of the seconder. Per learned counsel, the case of the appellant is squarely out of the ambit of Section 62(9)(ii) of the Election 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. He prayed for setting aside the impugned order dated 30.12.2023.

Learned Law officer has objected to this appeal on the premise that the objection raised is not a curable defect in terms of Section 62(9)(d)(ii) of the Elections Act 2017, which defect is substantial. He prayed for the dismissal of this appeal.

I have heard the learned counsel for the parties and have perused the material available on record.

The question involved in the present proceeding is whether the rejection of the nomination paper of the appellant is justified for the reason that either of the subscriber (proposer or seconder) is not enrolled as a voter in the electoral roll of the constituency whether this defect is substantial or curable.

On the face of the record, the appellant has not denied the facts that his proposer namely Muhammad Imran bearing CNIC NO. 42201-7149150-7 does not belong to the constituency of NA-235 Karahi East-I wherefrom he sought to contest the elections, rather the only prayer was that he may be allowed to contest the election subject to him bringing a different seconder on the proper constituency. This defect prima facie needs to be looked into by the Returning Officer in terms of Section 62(9)(d)(ii) of the Elections Act 2017, for the reason that 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 that 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.

Without touching the merits of the case, the matter is remanded to the Returning Officer, who is directed to allow the appellant to bring the seconder namely Ahmed Raza son of Muhammad Hanif, who is registered voter in the constituency of NA-235 Karachi East I, so that he be able to contest the election for NA-235 Karachi East I. So far as the question of a curable and non-curable defect in terms of Section Section 62 of the

Elections Act 2017 is concerned the same shall be taken care of by the Election Appellate Tribunal to be constituted after the completion of the first phase of the election, as the question of qualification and disqualification of proposer and seconder shall remain intact in terms of law laid down by the Supreme Court in the case of Rana Tajummul Hussain v Rana Shoukat Mehmood **PLD 2007 SC 2007**.

The appeal stands disposed of in the above terms.

JUDGE

Shafi