

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No.83 of 2024

Date	Order with signature of Judge
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For orders as to non-prosecution.

Date of hearing and order: 06.1.2024

Mr. Shabbir Sultan 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 Saeed Khan has called in question the order dated 27.12.2023 passed by the Returning Officer PS-97 Karachi East-1, by which his nomination paper has been rejected on the ground that proposer of the candidate/appellant namely Abdullah Khan and seconder namely Jameel Khan are not registered voters in the constituency of PS-97, therefore, the nomination paper of the appellant has been rejected by the Returning Officer.

Learned counsel for the appellant has mainly contended that the appellant has now arranged the proposer namely Wazir Ali Channa and the seconder namely Muhammad Noor, who are registered voters in the constituency of PS-97. Learned counsel further submits that rejection of the nomination paper of the appellant only for the reason mentioned in the impugned order violates the fundamental rights of the appellant. He, therefore, prayed for setting aside the impugned order dated 27.12.2023.

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.

On the face of the record the appellant has not denied the facts that his proposer and seconder did not belong to the constituency of PS-97 Karahi East-I wherefrom he sought to contest the elections, rather he 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 proposer namely Wazir Ali Channa, and the seconder namely Muhammad Noor, who are registered voters in the constituency of PS-97 so that he be able to contest the election for S-97 Karachi East-1. 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