

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.51 of 2024

Date

Order with signature of Judge

1. For order on CMA No.159/2024
2. For hearing of main case

Date of hearing and order: 06.1.2024

Mr. Sanaullah Soomro advocate for the appellant
Mr. Muhammad Haseeb Jamali advocate for respondent No.4.
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of Pakistan along with ARO PS-76 Thatta-II

ORDER

Adnan-ul-KarimMemon-J Appellant Muhammad Umer Nahiyo through instant election appeal has called in question the order dated 30.12.2023 passed by the Returning Officer, PS-76, Thatta-II, *inter alia*, on the ground that the appellant has not specified his assets on pages No.7 and 8 of Form-B of Nomination Paper and he has also concealed his weapon and license which has been verified from Deputy Commissioner Thatta hence his nomination form is contrary to Section 60 and 61 of Election Act, 2017 and contrary to Article 62(f) of the Constitution of the Islamic Republic of Pakistan, 1973.

At the outset, learned counsel for the appellant submits that respondent No.3 has miserably failed to appreciate that the appellant is a laborer, thus, he could not specify his assets in Form-B of the nomination paper. Learned counsel further submits that the ground of concealing his weapon and license is unsustainable for the reason that in the nomination form, no description has been incorporated for the declaration of license/weapon, therefore, the appellant mistakenly did not produce a valid license, however, this objection would be removed if the impugned order is set aside.

On the contrary, learned counsel representing respondent No.4 has raised the question of maintainability of the instant appeal on the ground that the appellant has not specified his liability in the nomination form and concealed his weapon, thus not entitled to contest the ensuing election. He prayed for the dismissal of this appeal.

The learned law officer representing the Election Commission of Pakistan has supported the impugned order and prayed for the dismissal of the instant Appeal on the same analogy put forward by the Returning Officer.

The question involved in the matter is whether the reasons assigned by the Returning Officer are substantial or curable under the Election Act, 2017.

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 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. 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 propose 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.

The reasons assigned by the Returning Officer are not sufficient to disallow the appellant to contest the election for the simple reason that participation in elections is a constitutional right, subject to inherent disqualification under the law, which is not the case at hand. However, the allegations and counter-allegations can not 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. therefore at this stage, the appellant has made out a case for a grant of relief as provided under the law enabling him to contest the election without resistance subject to the condition that he shall appear before the Returning Officer today to cure the defect and the Returning Officer shall endeavor to help him out and after fulfilling the required conditions he shall allow the appellant to contest the election.

For the aforesaid reasons this appeal is allowed, the impugned order dated 30.12.2023 passed by the Returning Officer, PS-76, Thatta-II, is set aside and the Returning Officer is directed to allow the appellant to cure the defect and the Returning Officer shall endeavor to help him out and after fulfilling the required conditions he shall allow the appellant to contest the election for PS-76, Thatta-II, without resistance.

The appeal stands disposed of in the above terms.

JUDGE