

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No.78 of 2024

Date	Order with signature of Judge
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1. For order on CMA No. 230/2024
2. For hearing of main case

Date of hearing and order 06.1.2024

Mr. Faran Sardar 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 Amjad Iqbal Afridi through instant Election Appeal has called in question the order dated 01.01.2024 passed by the Returning Officer, PS-111 District Keamari I Karachi inter alia on the ground that the attorney of the appellant had appeared before the Returning Officer, however, his nomination papers were rejected on the premise that he failed to comply with the provision of Section 62 of the Election Act 2017 and due to minor omission and or opinion of the Returning Officer rejected the same without providing the opportunity of hearing. An excerpt of the order is reproduced as under:-

“ In view of the above-mentioned facts, the undersigned is satisfied that the candidate has not complied with the provision of Section 62 of the Election Act 2017, the nomination form of the candidate namely Mr. Amjad Iqbal Afridi S/o Muhammad Iqbal Khan Afridi is hereby rejected..”

As per the memo of the appeal the appellant has submitted that the Returning Officer erroneously held that the appellant failed to appear at the time of scrutiny and failed to produce special power of attorney of his representative and erroneously held that the signature of the candidate on photocopy of CNIC was not visible and he could not produce proposer and seconder without any substance and erroneously applied the penal provision and non-suited him from contesting the election. 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.....”

As per the appellant, 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. He prayed for setting aside the impugned order dated 01.01.2024.

The question involved in the matter is whether the reasons assigned by the Returning Officer are substantial or curable under Section 62(9)(ii) of the Act, 2017.

It appears that the findings of the Returning Officer are based on the analogy that the appellant had not authorized his agent to be his attorney for scrutiny purposes and his signature on the photocopy of CNIC was not visible. If this is the stance of the Returning Officer the question arises whether such defect is curable under the law and whether this Tribunal can go far fish hunting at this stage, 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, therefore, 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.

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 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.

Prima facie the findings of the Returning Officer are absurd for the reason that the appellant has explicitly shown his willingness to contest the election and he put forward his attorney to pursue his scrutiny process but the Returning Officer declined his power of attorney was not valid with further assertion that the signature of the appellant on the photocopy of the CNIC was not visible, which reasoning is not acceptable under the law.

For all that has been discussed and stated above, this appeal is allowed, the order dated 01.01.2024 of the Returning Officer is set aside, and the appellant shall be allowed to contest the election from PS-111 Keamari I, District Keamari, Karachi.

Shafi

JUDGE