

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Election Appeal No. 45 of 2024

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Date

Order with signature of Judge

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**Hearing of cases (Priority)**

1. For hearing of CMA No. 141/2024
2. For hearing of main case

**06.1.2024**

Mr. Ali Asghar Buriro Advocate for the appellant.  
Mr. G.M Bhuto Assistant Attorney General along with  
Mr. Sarmad Sarwer Assistant Director (Law) Election Commission  
of Pakistan

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**ORDER**

**Adnan-ul-KarimMemon, J** Appellant Subhan Ali through instant election appeal has called into question the order dated 29.12.2023 passed by the Returning Officer, NA-243 District Keamari Karachi inter alia on the ground that merely registration of criminal cases is no ground to disqualify the candidate from contesting election. As per the appellant, due to the erroneous opinion of the Returning Officer on the purported plea that the candidate has criminal cases and rejected the same without providing the opportunity of hearing to cure the defect if any. An excerpt of the impugned order is reproduced as under:-

**“ Criminal cases against Mr. Subhan Ali son of  
Ahsan Muhammad”**

As per the appellant, the case of the appellant 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. He has prayed for setting aside the impugned order dated 29.12.2023.

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 in the nomination form, the appellant

has failed to disclose the pendency of criminal cases against him which amounts to concealment of facts as such the appellant is not entitled to contest the ensuing election. At this stage I enquired from the learned law officer as to how he claims that the appellant is involved in criminal activities and is disqualified to contest the election. He simply stated that at present there is no material available with him.

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 involved in the present proceeding is whether the rejection of the nomination paper of the appellant is justified by the reason that the criminal cases are pending against the appellant thereby the appellant 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 case of *Murad Bux v Karim Bux* 2016 SCMR 2042.

In the present case, the nomination papers of the appellant were rejected on the ground that the appellant failed to disclose in his affidavit the pendency of criminal cases. 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 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.

The plea raised that criminal cases were registered against the appellant. The provisions of disqualification of a candidate are to be strictly construed. In the case at hand, the disqualification of the appellant is not an issue. The only issue is the non-disclosure of the pending criminal case in the affidavit before the Returning Officer and whether such non-disclosure would be construed as concealment of 'material particulars'. In the backdrop of these facts, the Supreme Court in the case of Murad Bux v. Kareem Bux and others **2016 SCMR 2042**; held that the non-disclosure of a fact which otherwise, if disclosed, could not debar the candidate from contesting the election, which even otherwise cannot be made a ground to preclude the appellant from contesting the election. Prima facie this is not an inherent disqualification to nonsuit the appellant to contest the election from NA-243, District Keamari Karachi and even if this defect is presumed to be material, the same can be taken care of by the Election Tribunal to be constituted under Section 140 of the Elections Act 2017 after the completion of the first phase of election 2024, 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 subject election without resistance.

In view of the legal position of the case, I do not see any valid justification for the returning officer to reject the nomination papers of the appellant.

This Appeal is allowed. The impugned order dated 29.12.2023 is set aside. The returning officer is directed to allow the appellant to contest the election from NA-243, District Keamari, Karachi.

JUDGE