

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.131 of 2024

Date

Order with signature of Judge

Hearing of Cases

For hearing of main case

Date of hearing and order 06.1.2024

Mr. Nizamuddin Channa 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 Zakaria Usman through instant Election Appeal has called into question the order dated 27.12.2023 passed by the Returning Officer, NA-241 Karachi South-III, whereby an amount of Rs.4,72,87,547/- is outstanding against the appellant about tax liability as per letter No.FBR-NA-241-5018 and his nomination papers were rejected in terms of Section 63(1) of the Constitution of the Islamic Republic of Pakistan, 1973.

It is contended that the appellant filed an appeal before the learned CIR Karachi and a stay of demand was granted for 15 days up to 13.01.2024 under Section 128(1A) of the Income Ordinance 2001 which was submitted before Returning Officer within the stipulated time for waving the objection but the same was declined, thus, the impugned order is liable to be set aside.

Learned Law officer has objected to this appeal on the premise that the appellant owes an amount of Rs. 472,87,547/- as Tax liability for the year 2016 and 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 matter is whether the reason assigned by the Returning Officer is substantial or curable under the law.

I have gone through the No Demand Certificate dated 29.12.2023 issued by the office of the Deputy commissioner-IR, Unit-06, Zone-IV, Medium Taxpayers office Karachi which explicitly shows that the stay

against the recovery has been granted by the learned CIR (Appeal-IV), Karachi vide order dated 29.12.2023 for 15 days upto 13.01.2024.

The law on the subject point is very much clear that the nomination form can only be rejected if the case of the candidate falls with the exception provided under Sections 62 and 63 of the Elections Act 2017, wherein in the present case the appellant has obtained stay order from the concerned Tribunal in terms of letter issued by the office of the Deputy Commissioner IR Unit 06-Zone-IV Medium Taxpayer Office Karachi vide letter dated 29.12.2023.

Since 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 and keeping in view the decision made by the office of the Deputy Commissioner- IR Unit 06-Zone-IV Medium Taxpayer Office Karachi vide letter dated 29.12.2023. This Tribunal has no option but to allow this appeal enabling the appellant to contest the election from NA-241 Karachi South-III, however, it is made clear that the question of qualification and disqualification of the appellant shall remain intact in view of the operation of the stay order up to 13.01.2024 in terms of letter dated 29.12.2023. consequently, this appeal is allowed and the impugned order dated 27.12.2023 is set aside. The Returning Officer is directed to accept the nomination papers of the appellant forthwith.

JUDGE