

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.241 of 2024

Date

Order with signature of Judge

1. For order on CMA No.665/2024
2. For order on CMA No.666/2024
3. For hearing of main case

Date of hearing and order: 08.1.2024

Mr. Muhammad Idrees Alvi, advocate for the appellant
Mr. G.M Bhuto Assistant Attorney General along with
Mr. Sarmad Sarwer Assistant Director (Law) Election Commission of
Pakistan

ORDER

Adnan-ul-Karim Memon, J. Appellant Wilayat Ali through instant election appeal has assailed the order dated 30.12.2023 passed by the Returning Officer, PS-124 Karachi Central-III, whereby it is alleged that the Proposer and Secunder of the appellant do not belong to same constituency, hence, his nomination papers were rejected in terms of Section 60(1) of the Elections Act, 2017.

At the very outset, learned counsel for the appellant submits that due to delimitation the seconder and proposer of the appellant are shown from different constituency, which is not fault on the part of appellant. Learned counsel further submits that soon after coming to know about this fault on the day of scrutiny, the appellant requested Returning Officer (R.O) to change the proposer and seconder but the R.O did not consider the request of the appellant and rejected the nomination papers out rightly. He, therefore, prayed for setting aside of the impugned order dated 30.12.2023.

Learned Assistant Attorney General assisted by the learned Law Officer representing the ECP present in Court waived notice and opposed this appeal *inter alia* on the ground that Proposer and Secunder of the appellant do not belong to aforesaid constituency, as such the appellant is not entitled to contest the ensuing election.

I have heard the learned counsel for the parties and perused the record with their assistance.

The question involved in the present appeal is whether the rejection of the nomination papers of the appellant is justified under the election law. Whether the defect as pointed out by the learned Law Officer is substantial or curable?

The main theme of the arguments of the appellant is that because of some confusion prevailing on account of the delimitation of constituencies and finalization of the list of different constituencies, the contesting candidates due to inadvertence, filed their nomination forms through proposer and seconder belonging to the other constituencies than that of the constituency in which the appellant wanted to contest the elections, resulting into cancellation of his nomination form by the Returning Officer. It has been further argued that such a defect is not substantial and could be cured by the Returning Officer in terms of the 2nd proviso to sub-section (9) (d) of Section 62 of the Elections Act 2017. According to learned Counsel for the appellant, such defect could not be cured in time before the Returning Officer as the appellant was not aware of the legal position, therefore, that may be allowed to be cured by this Court by setting aside the impugned order with the directions to the Returning Officer to allow the appellant to remove such defect by bringing other proposer and/or seconder, as the case may be, of the same constituency as a substitution of the earlier proposer and/or seconder, where after the nomination forms of the appellant may be accepted.

From the plain reading of Section 60 (1) of the Elections Act 2017, it appears that the voter, who proposes or seconds the name of a duly qualified person to be a candidate for an election of a member of the National Assembly or Provincial Assembly, as the case may be. It further appears that upon receipt of the nomination paper of the candidate duly proposed and seconded by the voters of the same constituency, the Returning Officer shall assign a serial number to every nomination paper and endorse on the nomination paper the name of the person presenting it, and the date and time of its receipt, and inform such person of the time and place at which he shall hold scrutiny and shall cause to be affixed at a conspicuous place in his office, a notice of every nomination paper received by him containing the particulars of the candidate as shown in the nomination papers, it is not that a candidate 'files' his nomination paper and merely mentions the names of proposer and seconder as a formality, which in fact is the essence and foundation of the whole process. Thus, if the nomination is duly made by the proposer and seconder of a candidate it is only then that the nomination paper is received by the Returning Officer. Thus, in the circumstances, a defect to the proposer and/or seconder, not being a voter of the same constituency, would go to the core of his qualification, to be a proposer or seconder, as the same was the only qualification required of such person and the same was not amenable to rectification. Provisions, as discussed supra, are mandatory and the defect is substantial, however, at the same time, it is vehemently urged that due

to all of a sudden change in the delimitation process the constituencies changed and the appellant claims that she was not aware of such changes as no notice was given to the aggrieved parties to change their voter list from such constituencies, therefore, he cannot be deprived of to contest election to bring the proposer and seconder of such constituency within reasonable time which factum could be left to the discretion of the Returning Officer to remedy the same under the law.

The proposal seems to be reasonable. Let the R.O facilitate the appellant to bring his Proposer and Seconder of the same constituency from which he wanted to contest the ensuing election within two days. The R.O shall facilitate the appellant in this regard and will not create bottlenecks in his endeavor to contest the election without resistance on his part. However, it is made clear that the qualification and disqualification in terms of the ratio of the judgment passed by the Supreme Court in the case of *RANA MUHAMMAD TAJAMMAL HUSSAIN v. RANA SHAUKAT MAHMOOD* (PLD 2007 Supreme Court 277) shall remain intact which could be taken care of by the Election Tribunal to be constituted under section 140 of the Election Act 2017 after completion of first Phase of the Election.

The Appeal stands disposed of in the above terms.