

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.157 of 2024

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Date	Order with signature of Judge
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For hearing of main case

**Date of hearing and order: 08.1.2024**

Mr. Naseer Nehal Hashmi advocate for the appellant  
Mr. G.M Bhuto Assistant Attorney General along with  
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of  
Pakistan

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**ORDER**

**Adnan-ul-KarimMemon, J** Appellant Rehan Qaiser has called in question the order dated 28.12.2023 passed by the Returning Officer NA-237 Karachi East-III by which his nomination paper has been rejected on the ground that the proposer and seconder of the appellant/candidate are not the registered voters of constituency NA-237 and the candidate's / appellant's spouse named Naureen is also Director/owner of the company Shadman Cotton Mills Ltd having overdue / write off amounting to Rs.2 Million and above the last one year have the following financial institutions as mentioned in the impugned order: therefore, due to the aforesaid reasons his nomination paper has been rejected.

It is, inter alia, contended by learned counsel for the appellant that the Returning Officer has not provided any just and cogent reason while rejecting the nomination paper of the appellant; that both proposer and seconder of the appellant are registered voters and have voted in NA-237 in the past General Elections held in 2018 and 2013; that the respondent No.1 / Returning Officer has not provided any detailed reasons under Section 62(9)(b) as to how the proposer and seconder are not qualified to subscribe the nomination papers, whereas both are registered voters having their respective electoral rolls; that the spouse of the appellant namely Naureen was one of the Directors of Shadman Cotton Mills Ltd having only 3% of the shares in the company which was less than Rs. Two Million, whereas on 25.11.2020 the spouse of the appellant resigned from the Directorship of the said company and even tendered a formal notice of her resignation; that the Returning Officer/respondent No.1 has failed to appreciate the above grounds and facts before passing the impugned order, which is liable to be set aside. Learned counsel further contends that the impugned order clearly reflects that there is no illegality or deficiency

found in the nomination papers of the appellant; that rejection of the nomination paper of the appellant is in violation of the fundamental rights of the appellant as such the findings of the Returning Officer is perverse and liable to be set aside. He, therefore, prayed for setting aside the impugned order dated 28.12.2023.

The learned Assistant Attorney General assisted by the learned law officer representing the Election Commission of Pakistan has opposed this appeal.

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?

Primarily, Articles 62 and 63 of the Constitution reveal that one deals with the qualifications of a person to be elected or chosen as a member of Parliament while the other deals with disqualifications of a person not only from being elected or chosen but also from being a member of Parliament. If a candidate is not qualified or is disqualified from being elected or chosen as a member of Parliament in terms of Articles 62 and 63 of the Constitution, his nomination could be rejected by the Returning Officer or any other forum functioning in the hierarchy. But where the returned candidate was not, on the nomination day, qualified for or disqualified from being elected or chosen as a member, his election could be declared void by the Election Tribunal constituted under Article 225 of the Constitution. While election of a member whose disqualification was overlooked, illegally condoned or went unquestioned on the nomination day before the Returning Officer or before the Election Tribunal, could still be challenged under Article 199(1)(b)(ii) of the Constitution of Pakistan, 1973 as was held by the Supreme Court in the cases of Lt. Col. Farzand Ali and others v. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore (PLD 1970 SC 98) and Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1054). However, disqualifications envisaged by Article 62(1) (f) and Article 63(2) of the Constitution because of words used therein have to be dealt with differently. In the former case, the Returning Officer or any other fora in the hierarchy would not reject the nomination of a person from being elected as a Member of Parliament unless a court of law has

given a declaration that he is not sagacious, righteous, non-profligate, honest and Ameen. Even the Election Tribunal, unless it proceeds to give the requisite declaration based on the material before it, would not disqualify the returned candidate where no declaration, as mentioned above, has been given by a court of law. The expression “a court of law” has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration based on the evidence so recorded. Such a court would include a court exercising original, appellate, or revisional jurisdiction in civil and criminal cases. But in any case, a court or a forum lacking plenary jurisdiction cannot decide questions of this nature at least when disputed. In the latter case when any question arises whether a member of Parliament has become disqualified it shall be dealt with only by the Election Commission on a reference from the Speaker of the Parliament in terms of Articles 63(2) and 63(3) of the Constitution.

Insofar as the proposer and seconder of the appellant is concerned the appellant states that they are registered voters of the same constituency and had voted in NA-237 in the General Elections held in 2018. This object goes into the rote of the case, for the reason that Section 60 (1) of the Elections Act 2017, provides 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 he 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 Returning Officer facilitate the appellant to bring his Proposer and Secunder of the same constituency from which he wanted to contest the ensuing election within two days the Returning Officer 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. So far as the issue of shares of Mst Naureen as one of the Directors of Shadman Cotton Mills Ltd is concerned the learned counsel states that she has only 3% of the shares in the company which were less than Rs. Two Million, whereas on 25.11.2020 the spouse of the appellant resigned from the Directorship of the said company and even tendered a formal notice of her resignation. If this the stance of the appellant, now at this stage this Tribunal cannot go beyond the scope of election law on the subject issue as 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 if the appellant succeeds in the election.

The Appeal stands disposed of in the above terms.

JUDGE