

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No. 238 of 2024

Date	Order with signature of Judge
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1. For order on CMA No. 625/2024 (Granted)
2. For order on CMA No. 626/2024 (Exemption granted)
3. For hearing of main case

Date of hearing and order: 08.1.2024

Mr. Kamran Ali Abro 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 Muhammad Daniyal Ahmed, through instant election appeal, has called into question the order dated 27.12.2023 passed by the Returning Officer, NA-234 Korangi Karachi, whereby the nomination papers of the appellant were rejected on the ground that the seconder of the appellant was not present at the time of scrutiny of the nomination papers.

At the very outset, learned counsel for the appellant submits that the Returning Officer has wrongly assumed and rejected the nomination form of the appellant based on the analogy that the seconder of the appellant was not present at the time of scrutiny of the nomination papers. Learned counsel submitted that the word “may” has been used in Section 62(2) of the Election Act 2017, which depicts that it is not mandatory for the proposer and seconder to appear before the Returning Officer at the time of scrutiny and therefore without any objection from any person, merely due to the absence of the proposer at the time of scrutiny, the nomination papers of the appellant could not be rejected. He, therefore, prayed for setting aside the impugned order.

The learned Assistant Attorney General assisted by the learned law officer representing the Election Commission of Pakistan has waived the notice due to paucity of time and opposed this appeal inter alia on the ground that the seconder of the appellant was not present at the time of scrutiny 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?

Prima facie the Returning Officer has failed and neglected to see provision 62(2) of the Elections Act 2017 as the word “may” has been used in Section 62(2) of the Election Act 2017, which depicts that it is not mandatory for the proposer and seconder to appear before the Returning Officer at the time of scrutiny and therefore without any objection from any person, merely due to the absence of the seconder at the time of scrutiny, the nomination papers of the appellant could not be rejected.

The Appeal stands allowed and the impugned order dated 27.12.2023 is set aside, the appellant shall be allowed to contest the election from NA-234 Korangi Karachi without resistance.

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JUDGE