

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.162 of 2024

Date	Order with signature of Judge
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For hearing of main case

Date of hearing and order: 08.1.2024

Mr. Zahid Hussain Laghari 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-KarimMemon, J Appellant Syed Mumtaz Ali Shah has called in question the order dated 30.12.2023 passed by the Returning Officer NA-212 Mirpurkhas-II, District Mirpurkhas by which his nomination paper has been rejected on the ground that the candidate/appellant submitted detail of agricultural land admeasuring 70-32 acres in the name of his son Syed Hasnain Ali Shah in Deh 329, Taluka Shujaabad Mirpurkhas, however, he has failed to produce paid challan of agriculture income tax and assessment of agriculture income tax regarding the above land, which shows that he has concealed the facts and the government dues are not clear, therefore, his nomination paper has been rejected.

It is, inter alia, contended by learned counsel for the appellant that the Returning Officer while rejecting the nomination paper of the appellant has failed to consider the fact that whatever agriculture income tax payable by the appellant or his dependent(s), the appellant had paid and no dues of agriculture income tax are due against the appellant; that the appellant has filled up the columns of nomination form regarding assets and the tax paid by him and produce no dues certificate; that the grounds mentioned for rejection of nomination form of the appellant are not substantial that the impugned order passed by learned Returning Officer is erred in law and facts, which is liable to be set aside; that due to the impugned order, the appellant deprived to contest the elections, which is sheer injustice with him and voters of the area. Learned counsel further contends that the impugned order reflects that there is no illegality or deficiency found in the nomination paper of the appellant; that rejection of the nomination paper of the appellant violates 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 30.12.2023.

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 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 issue of not providing details of agricultural land admeasuring 70-32 acres in the name of his son Syed Hasnain Ali Shah in Deh 329, Taluka Shujaabad Mirpurkhas, and tax regarding the above land, the appellant has specifically added that agriculture income tax payable by the appellant or his dependent(s), had been cleared and no dues of agriculture income tax are payable by the appellant as the appellant has filled up the columns of nomination form regarding assets and the tax paid by him, if this is the stance of the appellant, this Tribunal cannot go into detail and record evidence of the parties on the subject issue has limited jurisdiction in the matter as 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; even the Tax authorities have no grievance at all if the appellant is allowed to contest the ensuing election as they have not come forward to claim such amount, therefore, this objection appears to be misconceived. In the present case, it appears that the Returning Officer was not properly advised and failed into a grave error by disqualifying the appellant on a minor defect.

For the aforesaid reasons, this appeal is allowed. Let the impugned order dated 30.12.2023 passed by the Returning Officer NA-212 Mirpurkhas-II, District Mirpurkhas, is set aside and the Returning Officer is directed to include the name of the appellant in the list of contesting elections for NA-212 Mirpurkhas-II, District Mirpurkhas.

JUDGE