

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No. 252 of 2024

Date	Order with signature of Judge
	1. For orders on CMA No. 730/2024
	2. For orders on office objection a/w reply at flag 'A'
	3. For orders on CMA No. 731/2024
	4. For hearing of main case

Date of hearing and order: 09.1.2024

Mr. Rehman Dino Mahesor advocate for the appellant
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of
Pakistan

ORDER

Adnan-ul-KarimMemon, J Appellant Abdul Sattar Khan Qaimkhani has questioned the legality of the action taken by the Returning Officer PS- 62 (Latifabad Hyederabd) whereby his nomination papers for the said constituency were not entertained.

It is inter alia contended that the appellant submitted his nomination papers for PS-62 Hyderabad and after scrutiny, the Returning Officer returned the nomination papers to the appellant and refused to either accept or reject nomination papers on the purported plea that the appellant appeared on the last date and after closing time; Learned counsel submitted that the appellant attempted to convince the Returning Officer to pass speaking order on the nomination papers but he blatantly refused on the ground that appellant belongs to PTI and threatened to leave the office. Per learned counsel, the attitude of the Returning Officer is alarming, discriminatory, and biased. Learned counsel referred to the application moved to the District Returning Officer on 25.12.2023 which was received to the office at 4.45 p.m. and another application to the Returning Officer who ordered to file. He next contended that his nomination papers (available on pages 25 to 79-A) are complete in all respects and he has cleared all utility dues of SSGC, PTCL, HESCO, and WASA and the same nomination papers may be ordered to be placed before the Returning Officer for appropriate order. He prayed for allowing the instant election appeal.

The learned law officer representing the Election Commission of Pakistan has opposed this appeal on the ground that the nomination papers were not filed by the appellant within time.

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

In principle, the learned Returning Officer cannot refuse to entertain the nomination papers under the law based on the alleged bias. Let him entertain the nomination papers of the appellant today and if the same is complete in all respects, the same shall be accepted and the appellant may be allowed to contest the election from PS-62 Hyderabad without resistance, for the simple reasons that Articles 62 and 63 of the Constitution reveal that one deal 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 Mahmood 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.

However, it is made clear that the Returning Officer shall not create a bottleneck and shall facilitate the appellant without discrimination. The office is directed to transmit the nomination papers along with annexures attached with the memo of appeal to the Returning Officer PS-62 Hyderabad today

The Appeal stands disposed of in the above terms.

JUDGE