

BEFORE THE ELECTION APPELLATE TRIBUNAL FOR SINDH AT SUKKUR

Election appeal No.S-17 of 2024

Naeem-ul-Arfeen son of Muhammad Anwar Kan Rao
 Muslim adult, by caste Rao
 r/o H. No. 30-2115/29 Mohalla Latifabad, Nawab Shah
 District Shaheed Benazirabad - - - - - Appellant

VERSUS

1. Federation of Pakistan through Secretary Election Commission, Election Commission of Pakistan Islamabad.
2. Provincial Election Commissioner, Office at Pakistan Secretariat, Block No. 44-A Shahrah-Iraq Saddar Karachi
3. District Election Commissioner, District Shaheed Benazirabad
4. Deputy Commissioner, (District Returning Officer) Shaheed Benazirabad
5. Returning Officer, PS-37 Taluka Nawab Shah Shaheed Benazirabad-II
6. Syed Sajjad Hussain Shah Taqi son of Syed Nazim Hussain Shah Taqi r/o Shabbir Mahal, Mohalla Gharibabad H. No. II-B-216 Nawab Shah, District Shaheed Benazirabad
7. Muhammad Imran son of Muhammad Din, r/o Mohalla Malik Colony, Linepar, Nawabshah District Shaheed Benazirabad
8. Mian Sajjad Ahmed son of Mian Iftikhar Ahmed r/o H. No. 2 Mohalla Housing Society Nawab Shah District Shaheed Benazirabad

- - - - - Respondents

M/s Mukhtiarkar Ali Rind and Co- learned counsel for appellant

Mr. Zeeshan Ahmed, Law Officer, Election Commission of Pakistan

Mr. Dareshani Ali Hyder 'Ada' DAG

Date of hearing; 05.01.2024
 Date of order; 05.01.2024

ORDER

Zulfiqar Ali Sangi J;- Through this Election Appeal, the applicant has challenged the impugned order dated 30.12.2023, passed by the Returning Officer PS-37 Taluka Nawab Shah, Shaheed Benazirabad-II on the objections filed by respondents that he is involved in the incident of

9th May 2023 and 22nd August 2016 and is involved in Anti-State Activities as belongs to PTI and MQM London.

2. Learned counsel for appellant contended that allegations are false and no material whatsoever in support of these allegations has been brought on record either by the objectors or by the Election Commissioner and there is no FIR registered against appellant in respect of the said incidents. He further contended that objector filed combined application against seven candidates namely Naeem-ul-Arfeen (appellant), Muhammad Bilal, Muhammad Noor Brohi, Shahahmir, Inayat Rind, Muhammad Aadil and Mukhashan Raza and no separate objections were filed. He next contended that Inayat Rind's form was accepted by Returning Officer on the same allegation, however nomination papers of appellant has been rejected. He placed on record a copy of Form-32 issued by Returning Officer, wherein the name of said Inayat Rind is available at Sr. No.8. Lastly, he prayed that the order impugned may be set-aside and nomination form of appellant may be accepted.

3. Learned DAG and Law Officer of Election Commission of Pakistan opposed the contention of learned counsel for appellant and supported the impugned order on the ground that appellant was involved in heinous offences of 9th May, 2023 and 22nd August 2016, therefore his nomination form was rightly been rejected. They further submits that though chance for appearance was given to him by Returning Officer but appellant failed to appear and rebut the allegation. On query as to what material in support of allegations is available with them they submits that there is nothing except objections filed by respondents.

4. Heard learned counsel for the parties and have gone through the material available on record.

5. On perusal of application filed by objectors it reflects that only allegations of involvement has been mentioned and no any other material FIR etc in support of the allegations is placed on record either by the objector or by the Election Commission of Pakistan before the Returning Officer so also before this tribunal even nothing has been placed on record that appellant was either convicted by the Court of law. Mere

leveling allegations are not sufficient to reject nomination form of a candidate. As regard to the absence of candidate at the time of scrutiny the counsel has submits that candidate along with his counsel was available however, Returning Officer with mala fide intention mentioned in the order that he was not available. From the perusal of Section 62 (2) of Election Act 2017, which reflects that at the time of scrutiny candidate, his election agent, proposer and seconders and one other person authorized in this behalf by each candidate and a voter who has filed objection under subsection (1) “**may**” attend the scrutiny of nomination papers and the Returning Officer shall give them reasonable opportunity for examining all the nomination papers delivered to him under section 60. The word may has been used in the above provisions to attend the scrutiny of nomination papers, whereas subsection (3) of Section 62 states that a voter who has file an objection to the candidature of a candidate shall only attend the scrutiny of the nomination paper of that candidate. It is observed that it was scrutiny of nomination papers of candidate but not of candidate in-person and Returning Officer was bound to the material for accepting or rejecting nomination papers in respect of the allegation but no material was bought on record in support of the allegations leveled against the appellant. Mere absence which even otherwise is denied by the appellant is no ground for rejection of nomination form. On the point of absence of candidate on the date of scrutiny of his nomination form it was held in the case of ***Mst. MISBAH AFZAL vs. DISTRICT RETURNING OFFICER, PUNJAB LOCAL GOVERNMENT ELECTIONS, TOBA TAKE SINGH and another (2004 YLR 1783)***, as under:-

*3. Heard. Record perused. **Undeniably, presence of the petitioner at the time of scrutiny of nomination papers was not needed and thus, respondent No.2 should not have rejected the nomination papers on this sole ground.** As regards, non-signing of nomination papers by the seconder of the petitioner, it was just an irregularity which could be cured by having signatures on the nomination papers, even at the time of scrutiny. This Court has earlier dealt with a similar situation while dealing with the case of *Mst. Iqbal Begum v. District Returning Officer/District & Sessions Judge, Okara and another 2001 MLD 1796* wherein it was held that the defect, if any, in the nomination papers as C claimed in the case in hand, was curable. A similar view was earlier taken by the Sindh High Court in the case of *Ghulam Nabi v. Khuda Bakhsh and others PLD 1984 Karachi 245* and by this Court in an unreported judgment in *Writ Petition No.7676 of 2001*. Above all, provisions of rule 18 of Election Rules, 2000 are directly in nature, as no penal consequence has been envisaged therein.*

6. In respect of the allegations in the objections/application regarding the involvement of the appellant in the anti-state activities no proof/material/FIR or complaint was/is placed on record by the respondents before the returning officer nor before this Tribunal to show his involvement. The Election Tribunal Punjab in case of **Sikandar Hayat Khan Bosan vs. Syed Yousif Raza Gillani and another (2008 CLC 240)**, has held as under:-

“We have considered the arguments advanced by the learned counsel for the parties and perused the relevant record on the question of conviction. Prima facie, the contentions of learned counsel for respondent No.1, are well founded. There is no denial of the fact that, respondent No.1, was convicted and sentenced by Accountability Court-I Rawalpindi. The said conviction and sentences awarded by the Accountability Court, Rawalpindi has been challenged in two criminal appeal, which are admitted for regular hearing and are still awaiting decision and verdict of this Court on the same, as to whether the conviction and sentence awarded to the respondent No.1, is in accordance with law or otherwise. Since the matter of guilt or innocence of respondent No.1, is sub-judice and terms of Section 430 Cr.PC and the decision of this Court will be the final determination of his guilt or otherwise, hence for the time being, he cannot be considered a convict within the meaning of Article 63(h) of the Constitution of Islamic Republic of Pakistan 1973, and clause (r) of sub-sections (1)(a) of Section 99 OF The Representation of the People Act 1976. Pendency of appeal is always considered to be continuation of the trial, meaning thereby that conviction or sentence awarded to a person, will be considered to be the final, subject to the decision of the Appellate Court in terms of Section 430 Cr.PC. Even otherwise, conviction and sentence awarded to the respondent No.1, by Accountability Court No.1, Rawalpindi Islamabad, vide order dated 18.09.2004, in Reference No. 39, of 2001, has been suspended by a Division Bench of this Court on 05.10.2006, in Writ Petition No. 122 of 2006, thus, he cannot be considered to be a convict for the purpose of Section 99(1)(a) of the Representation of the People Act, 1997, and Article 63(h) of the Constitution. The order of the suspending the conviction and sentence was not challenged by the prosecution, therefore, same still holds the filed”

In another case of **Muhammad Arshad vs. Returning Officer and others (2006 YLRD 48)**, it was held as under:-

“5. Prima facie the contention of the learned counsel for respondents are well-founded. Since the matter of guilt or innocence of respondent Ghulam Farid is sub-judice before this Court and it is the decision of this Court in terms of Section 430 Cr.PC which will finally determine his guilt or otherwise, hence for the time being he cannot be considered as disqualified within the meaning of Section 152(1) of the above Ordinance. However, a remedy has been provided in the above mentioned section itself whereby in case an elected member of Local Government or holder of elective officer of Local Government is found by the Chief Election Commissioner to have contravened the provision of sub-section (1) of the said Ordinance i.e enumerating qualifications of candidate of elective member or holder of such office, he shall cease forthwith to be the elective member or to hold the office as such and stand disqualified from

being a candidate for lection of Local Government for a period of our years. This remedy has been provided as an inbuilt mechanism for catering such like situation. Hence, in case if respondent Ghulam Farid is elected and his appeal is subsequently dismissed mainlining his conviction and sentence, during his holder such office he cannot only be removed from said office but also shall stand disqualified from being a candidate for lection for Local Government for a period of four years”

7. Thus based upon the above circumstance instant Election Appeal is accepted and impugned order dated 30.12.2023, passed by Returning Officer PS-37 Taluka Nawab Shah, Shaheed Benazirabad-II is set aside. The nomination papers of appellant are accepted. Returning Officer is directed to include the name of appellant in the list of candidates as provided under the law.

J U D G E