

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-135 of 2024

Date	Order with Signature of Judge
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PRESENT:

Mr. Justice Aqeel Ahmed Abbasi, CJ

Mr. Justice Abdul Mobeen Lakho, J.

Abdul Razzak Khushkv.....Election Commission of Pakistan & others

15-01-2024

Mr. Ali Asghar Dholo, advocate for the Petitioner.

Mr. Muhammad Haseeb Jamali, advocate for respondent along with Mr. Abdullah Hanjrah, Law Officer.

Mr. Irshad Ali, Assistant Attorney General.

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ORDER

After hearing the learned counsel for the parties at some length and from perusal of the record, it appears that at the time of scrutiny petitioner has made request to the Returning Officer, PS-76, Thatta-II, available at page 97 of instant petition to allow him to produce arms licence of pistol and also to fill the blanks in the affidavit of candidate on 29.12.2023, however, it appears that instead of allowing the petitioner to remove aforesaid defects, the Returning Officer has passed the order on the next date in the following manner:-

“Documents were earlier concealed and were presented on 30.12.2023. Hence rejected as per article 60(f) of Constitution 1973.”

The impugned order is violative of the spirit of Election Law particularly Section 72(9) (d)(ii), as on the date of scrutiny, petitioner could have been allowed to remove all such defects, which prima-facie were curable, whereas, nothing has been held by the Returning Officer that said defects are not curable. We are of the opinion that defects which were curable should have been remedied while allowing the petitioner to remove such defects at the time of scrutiny. The petitioner who otherwise eligible shall not be disfranchised or prevented from contesting election on technicalities, as it is his fundamental right to contest elections subject to law. Reference in this regard can be made to the case of ***Aitbar and another vs. Provincial Election Commission through DEO, District N/Feroze, through A.A.G. Sindh and 5 others [2017 CLC Note 179***

Sindh (Sukkur Bench)]. The learned Election Appellate Tribunal was not properly assisted by referring to above legal provisions and the case law on the subject. While confronted with hereinabove position, the learned counsel for respondent, officer of Election Commission and learned AAG could not dispute the legal position as emerged in the instant case.

Accordingly, instant petition is allowed, both the impugned orders dated 30.12.2023 and 09.01.2024 passed in the instant matter are hereby set-aside, and the Returning Officer is directed to allow the petitioner to submit complete and true declaration of assets as well as affidavit with correct information, which shall be examined by him and subject to fulfillment of codal formalities, decide the fate of Nomination papers of the petitioner at the earliest strictly in accordance with law.

CHIEF JUSTICE

JUDGE

Nadeem