

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-93 OF 2024

Date

Order with Signature of Judge

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ

MR. JUSTICE ABDUL MOBEEN LAKHO, J

***Muhammad Alamgir Khan....Vs.....Election Tribunal, Sindh
at Karachi & others.***

Date of Hearing 10-01-2024.

M/s.Haider Waheed & Asad Ashfaq, Advocates for the Petitioner.

Mr.Muhammad Asif Malik, Advocate for Respondent No.2

Mr.S.Mohsin Ali Shah, Advocate holds brief for Syed Ahsan Ali Shah, Advocate for Respondent No.6 [1] and [2] along with Respondent No.6[2] Mr.Sanaullah Nawazani.

Mr.Irshad Ali, Assistant Attorney General.

Mr.Abdullah Hanjrah, Deputy Director (Law) Election Commission of Pakistan and Mr.Muhammad Yameen Khan, A.R.O. are present.

ORDER

ABDUL MOBEEN LAKHO, J: The Petitioner is aggrieved by the order dated 05.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.06 of 2024, whereby, the Order dated 27.12.2023 passed by Returning Officer NA-236 rejecting the nomination papers of the petitioner was upheld on the ground that if a candidate looking to contest elections to go and eventually manage state of affairs cannot manage his own affairs and ensure his own dues are clear, said candidate cannot be trusted with mandate of the people.

2. Brief facts as narrated in the memo of petition are that the petitioner submitted his nomination papers for the elections in respect of NA-236 Karachi scheduled to be held on 08.02.2024, but in the backdrop of scrutiny the petitioner's nomination papers were rejected on the sole ground of being not cleared from FBR against which the petitioner filed an Election Appeal under Section 63 of the Elections Act, 2017, which was also dismissed.

3. Learned counsel for the petitioner argued that both the impugned orders are liable to be set-aside as the same are passed on mis-appreciation of facts and

law. He further argued that in impugned order dated 05.01.2024, the learned Election Appellate Tribunal did not identify the glaring illegalities of the Respondent No.2's order, which hunt in relation to FBR registration. Learned counsel further argued that the petitioner is a Tax Payer, but malice could be seen by the political approach, who by asserting political pressure kept him from acquiring documents from the FBR. Learned counsel further argued that clearance from FBR is not a requirement to contest elections, hence the remarks in the impugned order dated 05.01.2024 are irrelevant and without jurisdiction and cannot constitute any ground which upholds the Returning Officer's illegal impugned order dated 27.12.2023. Learned counsel further argued that the respondent Nos.1 and 2 have failed to consider the documentary evidence, which included documents from the F.B.R. confirming the petitioner's status as an active taxpayer. Learned counsel for the petitioner also filed a statement along with some documents showing that being aggrieved by the assessment order, the petitioner has preferred an appeal on 15.08.2023 and according to Circular dated 05.10.2022 issued by FBR, till the test of appeal is passed, coercive measures are to be avoided, therefore, at this stage the petitioner is not a defaulter of any government dues as the stay order dated 2.1.2024 passed by Commissioner (Appeals) is still operative. Learned counsel for the petitioner further argued that the orders passed by Returning Officer as well as learned Election Appellate Tribunal are without application of judicial mind and without taking into account the blatant and malafide discrepancies and tangible evidence produced before them. Learned counsel for the petitioner argued that the petitioner may not be disfranchised or prevented from contesting elections, which is a fundamental right of every citizen.

4. We have heard the learned counsel for the parties, perused the material available on record and also considered the submissions as well as case law cited by them at bar. It is settled law that a candidate who intends to contest elections is required to submit complete and correct Nomination Papers along with annexures as required under relevant law and rules, whereas, any deliberate omission or default, which is of substantial nature and not curable, cannot be allowed to be validated at a subsequent stage. However, in the instant case, the concerned Returning Officer as well as learned Election Appellate Tribunal have not taken the cognizance of the documents, which were produced by the petitioner, whereas, nothing has been produced on record either by the Returning Officer as well as learned Election Appellate Tribunal to deny such fact. Therefore, we are of the opinion that unless the issue regarding payment of FBR's liability is decided by competent court of jurisdiction, the petitioner

should not have been disfranchised or prevented from contesting elections, which is fundamental right of every citizen. It may be further observed that prima facie, petitioner by not disclosing the subject liability in his name, would not have drawn any benefit at the time of filing his nomination paper, and can always be confronted to explain even after election in accordance with law. Moreover, the issue relating to liability or its declaration under different laws, including Income Tax laws and Elections laws, requires careful examination and determination by the competent forum under the relevant law. Reference in this regard can be made in the case of *Aitbar and another.....Vs.....Provincial Election Commission through DEO, District N'Feroze, through A.A.G. Sindh & others [(2017 CLC Note 179 Sindh (Sukkur Bench)]*

5. In view of the above facts and circumstances, both the impugned orders dated 27.12.2023 and 05.01.2024 are set-aside. The petitioner is allowed to contest the forthcoming election and his nomination paper shall be accepted subject to any challenge subsequently brought to bear against him in the second round of litigation after election on ground of disqualification, non-disclosure or any other valid basis for objection in the event that he is successful in being elected.

6. We vide our short order dated 10.01.2024 had allowed instant petition and these are the reasons thereof.

Judge

Chief Justice