

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-4898 of 2018

Present:

Mr. Justice Khadim Hussain M. Shaikh
Mr. Justice Arshad Hussain Khan

Muhammad Sharjeel Khan Yousfi

V/s.

Returning Officer PS 95, & another,

Petitioner : Through Mahmood Hussain, Advocate.

Respondents : Through Mr. Salah-ud-dain Khan Gandapur
Advocate for Election Commission of Pakistan a/w Ms. Maimoona Nasreen, Advocate and Mr. Abdullah Hinjrah, Law Officer, ECP.
Mr. Zahid Khan Assistant Attorney General.
Mr. Jawwad Dero, Additional Advocate General Sindh a/w Mr. Muhammad Tahir, State Counsel

Date of hearing : 13.07.2018

ORDER

ARSHAD HUSSAIN KHAN, J.- Through the instant petition, the petitioner has challenged the orders passed by the Returning Officer of PS-95 [Korangi] Karachi and learned Election Appellate Tribunal dated 19.06.2018 and 26.06.2018 respectively, whereby, the nomination paper of the petitioner for PS-95 [Korangi] Karachi, has been rejected on the ground that the petitioner has not produced Bank Certificate and or any authentic document which could show the petitioner has opened an exclusive bank account for the purpose of election expenses as per mandatory provisions of Section 60 (2) (b) of the Election Act, 2017.

2. Briefly the facts as disclosed in the petition are that the petitioner on 08.06.2018 had filed his nomination paper for contesting the forthcoming General Elections-2018 from the constituency of PS-95 [Korangi] Karachi. During scrutiny of nomination form of the petitioner it was found that the petitioner did not produce Bank

Certificate and or any other related documents which could reflect that the petitioner has opened exclusive bank account for the expenditure of the election campaign as per mandatory provision of the Election Act 2017. Upon such finding, the Returning Officer vide its order dated 19.6.2018 rejected the nomination form of the petitioner which order was challenged by the petitioner before the learned Election Appellate Tribunal in Election Appeal No.91 of 2018 however, said election appeal was dismissed by the learned Election Appellate Tribunal vide its order dated 26.06.2018. The petitioner challenged both the orders of the forum below through this constitutional petition.

3. During the course of the arguments learned counsel for the petitioner submits that both the forums below while passing impugned orders have failed to consider the material fact that the Returning Officer on 14.06.2018, which was the last working day before the Eid Holidays, directed to the petitioner to submit certificate in respect of requisite exclusive bank account whereas 19.06.2018 was the last date fixed for scrutiny of nomination form of the petitioner. The petitioner tried his level best to obtain the required certificate however, due to rush as 19.06.2018 was first working day after eid holidays, the same could not be obtained for its placement before the Returning Officer in time. It is also argued that the petitioner obtained such certificate on 20.06.2018, which fact was immediately brought to the knowledge of the Returning Officer and subsequently to learned Election Appellate Tribunal however both the forums below have failed to consider the fact that non-production of the required certificate in time was neither willful nor deliberate but it was only on account of the situation beyond control of the petitioner. It is further argued that the Returning Officer upon the request of the petitioner instead of rejecting the nomination form of the petitioner ought to have given an opportunity to the petitioner to do the needful. However, the Returning Officer instead of providing an opportunity to the petitioner to rectify the deficiencies in the nomination form, straightaway rejected his nomination form. It has also been argued that the subject defect is not substantial in nature and could be cured by the Returning Officer in terms of 2nd proviso to sub-section (9) (d) of Section 62 of the Elections Act 2017. It is also argued that the impugned orders are in violation of fundamental rights of the petitioner as guaranteed under the Constitution of Pakistan. Further argued that the failure on the part of the forums below to give an opportunity to the petitioner to rectify

any infirmity within his nomination form as provided in Section 62 (9) (d) (ii) of the Election Act 2017 is in violation of the law. It has also been argued that subject defect is purely technical in nature and could be rectified by this court by setting-aside the impugned orders with the directions to the Returning Officer to allow the petitioner to provide a new bank account, where after the nomination form of the petitioner may be accepted.

4. Conversely, learned Counsel appearing on behalf of the Election Commission of Pakistan and learned Additional Advocate General Sindh while supporting the impugned orders have vehemently opposed the petition. It has been argued that the impugned orders passed by the forums below do not suffer from any error or illegality, whereas, relevant legal provisions relating to election laws have been properly invoked by the Returning Officer and the learned appellate tribunal while rejecting the nomination form of the petitioner as the same was not filed in accordance with the provisions of Election laws 2017. It has also been argued that the petitioner admittedly did not produce the required bank certificate which could show that the exclusive bank account for the purpose of election expenses as required under the election laws 2017 was opened till date when the nomination form of the petitioner was scrutinized, hence his nomination form was found not in accordance with election laws and violation is substantial in nature, which cannot be ignored or condoned at this stage when the names of validly nominated and contesting candidates have already been published. It has also been argued that it is the duty of each candidate to file complete and correct nomination form along with requisite documents after complying with all codal formalities in accordance with election laws/rules, as per schedule announced by Election Commission for such purpose, within the prescribed time limit, so that the election process shall be completed in time and in a transparent manner. It has been further argued that the entire process of filing of nomination papers, their scrutiny by the Returning Officers, hearing of the appeals by the Appellate Tribunals, have been completed, and even the printing of the ballot papers is near to complete. Per learned Counsel for the respondents such plea could not be accepted by the forums below as the above defects being substantial in nature could not be allowed to be cured at the subsequent stage. It has been prayed that instant petition being

misconceived, both on the facts and law, is liable to be dismissed with costs.

5. Learned Assistant Attorney General has also supported the arguments of the learned Counsel for the Election Commission of Pakistan as well as the learned Additional Advocate General Sindh and submitted that contentions of the petitioner are misconceived and as such not sustainable in law. It has been prayed that the above petition may be dismissed and the concurrent orders of rejection of nomination paper of the petitioner, passed by both the forums below, may also be maintained.

6. We have heard the learned Counsel for the parties, perused the record and the orders of both the forums below, and also examined the relevant provisions of the Elections Act 2017, and the Election Rules 2017, as well as the case law relied upon by the learned Counsel for the parties.

7. Before going into further discussion, it will be appropriate to reproduce hereunder the relevant provisions of the Election Act 2017, necessary for the decision of the present petition:-

Section 60 of the Election Act, 2017 reads as follows:

“60. Nomination for election.— (1) Any voter of a constituency, may propose or second the name of any qualified person to be a candidate for Member for that constituency:

Provided that no voter shall subscribe to more than one nomination papers either as proposer or seconder.

(2) Every nomination shall be made by a separate nomination paper on Form A signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, be accompanied by—

- (a)
- (b) a declaration that he has opened an exclusive account with a scheduled bank for the purpose of election expenses;
- (c)
- (d) ”

Section 62 of the Election Act, 2017 reads as follows:

“62. Scrutiny.”---(1) Any voter of a constituency may file objections to the candidature of a candidate of that constituency who has been nominated or whose name has been included in the party list submitted by a political party for election to an Assembly before the Returning Officer within the period specified by the Commission for the scrutiny of nomination papers of candidates contesting election to an Assembly.

(2)-----

(3)-----

(4)-----

(5)-----

(6)-----

(7)-----

(8)-----

(9) Subject to this section, the Returning Officer may, on either of his own motion or upon an objection conduct a summary enquiry and may reject a nomination paper if he is satisfied that _

(a)-----

(b)-----

(c)-----

(d) the signature of the proposer or the proposer or the seconder is not genuine: provided that _

(i) the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper; or

(ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial and may allow any such defect to be remedied forthwith including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate of his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.

(10)-----

(11)-----

[emphasis supplied]

A perusal of the above provision indicates that the powers of the Returning Officer have been controlled for not rejecting the nomination papers on any defect, which is not of substantial nature and the defect, which may be remedied forthwith.

8. In the present case, it is an admitted position that the requisite bank certificate in respect of exclusive bank account as required under section 60(2)(b) of the Election Act 2017, for the purpose of election expenses, was not produced before the Returning Officer till the last date of scrutiny, which could reflect the required bank was in existence at the time of scrutiny of nomination form, however, the petitioner subsequently opened the requisite bank account after expiry of the scrutiny period. Opening of requisite bank account after the expiry of scrutiny period does not cure the disqualification of the petitioner.

9. In the backdrop of the above, we have examined the orders rendered by the two forums below and find that the impugned orders are legal and unexceptionable, which suffer from no jurisdictional defect and as such do not call for any interference by this Court in exercise of its constitutional jurisdiction.

10. In view of the foregoing reasons, we do not find any merit in the instant petition, which is accordingly dismissed along with the listed application.

JUDGE

JUDGE