

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-5002 of 2018

PRESENT:

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

Amjadullah Khan

vs.

Election Commissioner of Pakistan & others

Petitioner: Through Ch. Tassaduq Nadeem, Advocate.

Respondents: M/s. Salah ud Din Khan Gandapur, and Maimoona Nasreen advocates for Election Commission of Pakistan along with Mr. Abdullah Hinjrah, Law Officer ECP.
Mr. Manzoor ul Haq, Advocate for State Bank along with Jameel Abdul Nasir Daudpota, Joint Director.

Mr. Jawad Dero, Additional Advocate General.
Mr. Zahid Khan, Assistant Attorney General.
Ms. Rukhsana Durrani State Counsel.

Date of hearing: 10.07. 2018

JUDGMENT

Arshad Hussain Khan, J. The petitioner through instant petition challenging the orders, passed by Returning Officer and learned Election Appellate Tribunal, whereby the nomination form of the petitioner for contesting the forthcoming general elections-2018 was rejected, has sought the following reliefs:

“It is, therefore, prayed that this Hon’ble Court may be pleased to allow this petition and set-aside the Order dated 12/06/2018 passed by Respondent No.2 while rejected the nomination Form on the ground that the petitioner did not file affidavit as directed by Hon’ble Supreme Court of Pakistan till 11-06-2018 and the petitioner along with the father and mother have written off loan amounting to Rs.24.926 million each as per information received from State Bank of Pakistan and accept the affidavit along with nomination papers and allow this petition to contest the general elections 2018 from Na-253 in the larger interest of justice.”

2. Brief facts leading to the filing of present petition as averred therein are that the petitioner on 07.06.2018 filed his nomination paper to contest the forthcoming general elections-2018 for the seat of the

Member National Assembly from the constituency NA-253. On 12.06.2018 on the date of scrutiny, the petitioner appeared before respondent No.2 (Returning Officer) and requested respondent No.2 to receive his affidavit as required after the decision of Hon'ble Supreme Court of Pakistan but the said respondent refused to accept the said affidavit and rejected the nomination form of the petitioner on the ground that the petitioner has not filed the requisite affidavit and got the loan amount of Rs.24.926 Million written off. The petitioner challenged the said decision of the Returning Officer before the learned Election Appellate Tribunal in Election Appeal No. 27 of 2018, however, said appeal was dismissed on 26.06.2018. Thereafter, the petitioner has challenged both the aforesaid orders through instant constitutional petition.

3. Learned counsel for the petitioner during the course of his argument has contended that the orders impugned in the instant proceedings are not sustainable in law and liable to be set aside as the Returning Officer as well as the learned Election Appellate Tribunal while passing the impugned orders have failed to appreciate the law and have incorrectly applied the provisions of the Election Act, 2017. Further argued that the petitioner has settled all loan amounts mentioned in the information given by respondent No.3 (SBP) and in this regard, he also filed Settlement Agreement, entered into with respondent No.4 (MCB), before respondent No.2. It is also argued that both the forums below have failed to consider the material fact that the petitioner though offered to file the requisite affidavit as per the direction of the Hon'ble Supreme Court of Pakistan but the respondent did not accept the said affidavit of the petitioner, therefore, the petitioner is not at fault, thus his nomination form could not be rejected on this count and further the petitioner must not be penalized for the mistake of respondent No.2. It is also argued that both the forums below while passing the impugned orders have failed to consider the fact that in view of the settlement agreement it cannot be said that the loan amount was written off. It has also been argued that the subject defect is not substantial in nature and could be cured by the Returning Officers 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. It is 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. Per learned counsel the subject defects are purely technical in nature and can be rectified by this court by setting-aside the impugned orders with the directions to the Returning Officers to allow petitioner to remove such defect by filing the requisite affidavit, where after the nomination form of the petitioner may be accepted. Learned counsel in support of his stance in the case relied upon following case law:

- (i) **2016 MLD 1464** MUHAMMAD YOUSIF v. FEDERATION OF PAKISTAN through Election Commission of Pakistan, Islamabad and another

4. On the other hand, 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 and the rules 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 were not filed in accordance with the provisions of Election laws 2017. It has also been contended that the petitioner admittedly did not file requisite affidavit till 12.06.2018 when the nomination form of the petitioner was scrutinized, hence his nomination form was found not in accordance with directions of Hon'ble Supreme Court of Pakistan 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 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 contrary to law and facts. 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. The case of the petitioner precisely is that he attempted to file requisite affidavit on 12.06.2018 but such request was not accepted by the Returning Officer (respondent No.2) who rejected the nomination paper of the petitioner for no fault of him. Per learned counsel, it is the error on the part of the Returning Officer for which the petitioner should not be made responsible and liable to suffer. It is also the case of the petitioner that the information about write-off loan was incorrect as the relevant loan amount stand rescheduled as per the terms and in presence of the settlement it cannot be said that the said loan amount was written off. Furthermore, deficiency of the nature, if any, exists, the same can be cured by allowing the petitioner to file the requisite affidavit at later stage.

8. From the perusal of the record, it appears that the petitioner and his parents were sponsors/directors/shareholders of M/s. Amjad Ahsan Info Tech (Pvt.) Ltd., and an amount of 24.926 million was written off in respect of the loan facility obtained from the NIB Bank (presently MCB) and such information was reported by the SBP. It also transpires from the record that the outstanding liability then owned by the company settled, however, in terms of SBP's BPRD circular No.08 of 2013, it is clarified that the waiver of mark-up is included in what constitutes a write-off. It is also pointed out that in the affidavit of the petitioner, his father is shown as his dependent,

thus his holding in the business concern would fall within the purview of the term 'mainly owned' as used in clause B of the affidavit read with explanation (ii) thereof.

9. In the circumstances, it seems that there has been a write-off loan in favour of business concern mainly owned by the petitioner, which falls within the scope of the disqualification as envisaged under Article 61(1) (n) of the Constitution of Pakistan and even otherwise it has also not been disclosed in the affidavit, filed with this petition available at Page 43-50 which was sought to be filed before the Returning Officer. In fact, it appears that a declaration contrary to above fact has been made so as to suppress this aspect of disqualification.

10. We have examined the orders rendered by the two forums below and find that the impugned orders are legal, unexceptionable, apt to the facts and circumstances of the case, which suffer from no jurisdictional defect and do not call for any interference by this Court in exercise of its constitutional jurisdiction.

11. The case law cited by learned counsel for the petitioner is found distinguishable from the facts of the present case and hence the same are not applicable to the present case.

12. Consequently, for the foregoing discussion, we are of the view that present petition is devoid of merit, which is dismissed with no order as to costs alongwith the pending application.

JUDGE

JUDGE