

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4811 of 2018

PRESENT:

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

Abdul Sattar

V/s.

Election Tribunal & others

Petitioner : Through Mr. Abdul Latif Leghari, Advocate.

Respondents : Through Mr. Salahuddin Khan Gandapur Advocate for Election Commission of Pakistan a/w Miss. 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 Ms. Rukhsana Durrani, State Counsel.

Date of hearing : 13.07.2018.

ORDER

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

- a. To pass the kind directives / orders to set aside the impugned order dated 22.06.2018 passed by Respondent No.1 so also order dated 19.06.2018 passed by the Respondent No.3 in the best interest of law, justice and equity.
- b. To pass the kind order of any other further relief(s) which this Court deem fit in the interest of justice”.

2. Succinctly, the facts of the petitioner's case are that he submitted his nomination form to contest general elections 2018 from the constituency NA-233 Jamshoro. On 19.06.2018, the said nomination form at the time of scrutiny was rejected by Returning Officer on the grounds that neither the petitioner, nor his proposer and seconder was in attendance and nor intimation received on their behalf. The plea of the petitioner in the case is that the petitioner and his proposer as well as seconder while coming to attend the scrutiny proceeding before the returning Officer, their vehicle met with an accident due to which the petitioner, his proposer and seconder could not appear before the Returning Officer at the time of scrutiny proceedings. Resulting which the returning officer rejected the nomination form of the petitioner. The petitioner subsequently, challenged the decision of the Returning Officer before the learned Election Appellate Tribunal in Election Appeal No. 116 of 2018, however, the said appeal was dismissed on 22.06.2018. The petitioner challenged both the orders of the forums below through this constitutional petition.

3. It is, inter-alia, contended by the learned counsel for the petitioner that the orders impugned in the instant proceedings are not sustainable in law and liable to be set aside. Further contended that 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 contended that both the forums below have failed to consider that non-appearance of the petitioner, his proposer and seconder on the date of scrutiny proceedings, was neither willful nor deliberate but it was on account of an accident, the circumstances beyond control of the petitioner, they could not appear before the Returning Officer at the time of scrutiny proceedings
Further argued that the nomination form of the petitioner has been rejected on the misconceived grounds which can be rectifiable. It has also been argued that the subject defect is not substantial in nature and could be cured by the Returning

Officers by providing an opportunity to the petitioner to appear before him on any extended date. Failure on the part of the forums below to give an opportunity to the petitioner to rectify the infirmity is in violation of the law.

4. Learned Counsel appearing on behalf of the Election Commission of Pakistan and learned Additional Advocate General Sindh argued that neither there is any proof regarding road accident of the petitioner to show that the incident took place nor there was any FIR lodged against the said incident, therefore, the Returning Officer has rightly rejected the nomination form of the petitioner. 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. It has also been argued that it was the factual position that the petitioner, his proposer and seconder have failed to appear before the Returning Officer, 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. 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 and argued that the grounds raised by the petitioner in his petition are misconceived in nature. 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 upheld.

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 would be appropriate to reproduce the relevant portions of the order impugned in the present proceedings:

Following is the Order dated 19.06.2018 passed by Returning Officer:

“ The candidate Abdul Sattar is called absent. He is absent without intimation. Not only he, his proposer and seconder are also absent. It is 12:00 PM. Though at the time of filing of nomination papers, a receipt was given to him specifying in it the date and time of scrutiny i-e 19.06.2018 at 11:00 AM. The conduct of the candidate, his proposer as well as seconder shows that they got no interest in the nomination paper, I therefore, reject the same in the given circumstances.”

Following is the relevant portion of Order dated 22.06.2018 passed by the Election Tribunal in Election Appeal No. 116 of 2018.

“It seems unfortunately that mainly due to circumstances, beyond their control neither the proposer nor seconder was able to be present at the time of scrutiny. Be that as it may, I am of view that notwithstanding the language used in section 62(2) of the Election Act 2017 both proposer and seconder must be present at the time of scrutiny as they must confirm that they have genuinely proposed and seconded the candidate and that their signatures are genuine. As such the decision of Returning Officer is upheld and appeal is dismissed in limine along with all listed application.”

8. Perusal of the record shows that it is an admitted fact that during scrutiny of the nomination form of the petitioner, the petitioner, his proposer and seconder were called absent without any intimation and thus the nomination form was rejected as the date and time had already been given to the petitioner in a receipt issued by the Returning Officer. The ground taken by the petitioner for his non-appearance at time of scrutiny proceedings, without any proof, appeared to be frivolous one and as such not sustainable in law.

9. 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 foregoing reasons, we do not find any merit in the instant petition, which is accordingly dismissed alongwith the listed application.

JUDGE

JUDGE

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