

**IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-5058 of 2018

**PRESENT:**

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

*Syed Marghoob Hussain Abidi*

*V/s.*

*Provincial Election Commission & others*

Petitioner : In person

Respondents : Through Mr. Salah-ud-dain Khan Gandapur  
Advocate for Election Commission of  
Pakistan a/w 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 : 16.07.2018.

**ORDER**

ARSHAD HUSSAIN KHAN, J.- The petitioner through the instant constitutional petition has challenged the order dated 25.06.2018 passed by the learned Election Appellate Tribunal whereby the Election Appeal bearing No. 78 of 2018, filed by petitioner against the decision dated 13.06.2018 passed by Returning Officer rejecting the nomination form of the petitioner, was dismissed for non-prosecution.

2. Brief facts arising to the filing of present petition are that the petitioner submitted his nomination form to contest general elections 2018 from the constituency NA-245, Karachi East. However, on 13.06.2018, the said nomination form after scrutiny

was rejected by Returning Officer on the ground that the petitioner concealed material facts in his nomination form and has filed affidavit not based on true facts. The petitioner preferred Election Appeal No. 78 of 2018 before learned Election Appellate Tribunal against the said order of Returning Officer. On 25.06.2018 the learned Appellate tribunal dismissed the Election Appeal of the petitioner for non-prosecution. The petitioner challenged both the orders of the forum below through this constitutional petition.

3. 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. Further contended that the Returning Officer has failed to provide opportunity to the petitioner to rectify error in his nomination form in respect of his travelling abroad and instead passed the order whereby the nomination form of the petitioner was rejected. It is also contended that the order passed by the learned Election Tribunal is also nullity in the eyes of law as firstly, the same is not a speaking order and secondly, the tribunal should not have passed the order, impugned in the present proceedings, in the manner it was passed. It was the duty of the Tribunal to decide the case on its own merits instead of knocking out the petitioner on technical ground. It is also contended that non-mentioning the fact about travelling abroad, by the petitioner was neither willful nor deliberate but it was on account of a bonafide mistake. It is also argued that in the given circumstances, non-mentioning of the facts in the affidavit filed by the petitioner along with the nomination cannot be termed either as concealment of fact and or misstatement and as such the rejection of the nomination paper of the petitioner was unjustified. 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. Further argued that the failure on the part of the forums below to give an opportunity to the petitioner to rectify the subject infirmity within his nomination form as provided in Section 62 (9) (d) (ii) of the Election Act 2017 is in violation of the law.

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 contentions of the learned counsel for 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 law have been properly invoked by the Returning Officer while rejecting the nomination form of the petitioner as the same was not filed in accordance with the provisions of Election law 2017. Furthermore, the election appeal of the petitioner was rightly dismissed by the learned appellate tribunal for non-prosecution as the petitioner failed to appear before the appellate Tribunal at the time of hearing of petition. It has also been argued that the petitioner admittedly concealed material facts in his affidavit filed with nomination form, hence petitioner's nomination form was rightly found not in accordance with election law 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. From the perusal of the record, it appears that the petitioner, during the process of scrutiny of his nomination form himself admitted the fact before the Returning Officer that he did not mention the fact about his travelling abroad and as such it was rightly found that the affidavit filed by the petitioner with his nomination paper was not based on the true fact rather petitioner suppressed the material fact.

8. Before going into further discussion, it would be appropriate to reproduce hereunder the relevant provisions of the Election Act 2017, as well as Constitution of Pakistan necessary for the decision of the present petition:-

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) -----; 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.

[emphasis supplied]

9. Perusal of the above provision of election law 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 in nature and the defect, which may be remedied forthwith.

10. In the present case, the petitioner cannot take refuge of the above provisions as he has concealed the material facts in his affidavit especially traveling abroad in February 2018 on this ground his nomination form was rejected by the Returning Officer.

11. 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.

12. 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

*jamil*