

SENATE APPELLATE TRIBUNAL, SINDH HIGH COURT OF SINDH AT KARACHI

Election Appeal 07 of 2021

Syed Khizar Askar Zaidi, Advocate

vs.

Provincial Election Commissioner Sindh & Others

For the Appellant : Mr. Muhammad Mohsin, Advocate

Date of hearing : 22.02.2021

Date of announcement : 22.02.2021

JUDGMENT

Agha Faisal, J. The present appeal has been filed assailing the Order of the learned returning officer dated 18-02-2021 ("Impugned Order"), whereby the nomination form of the appellant was rejected with respect to candidature for election to the Senate, from the Province of Sindh, on a technocrat seat. It is considered illustrative to reproduce the Impugned Order herein below:

"Syed Khizer Askar Zaidi filed his nomination papers on 13-02-2021 for election to Senate for category of Technocrats. The Scrutiny of said Nomination Paper was held on 17.02.2021 at 3:30 PM and adjourned for decision on 18-02-2021. The candidate, his proposer and seconder were present during the scrutiny of said nomination papers. During the aforementioned Scrutiny, it was founded that the candidate had no record of achievements at national or international level as required under section 2 (xxxiv)(b) of the Elections Act, 2017. His nomination papers are, therefore, rejected."

Arguments

2. Per appellant's learned counsel, the Impugned Order was untenable; hence, ought to be set aside. The appellant's plea was predicated primarily on the grounds that being a lawyer he has several reported judgments; he was made Assistant Advocate General Sindh in past; and that even though he is not an advocate of the Supreme Court he certainly meets the requirements in such regard.

3. This Tribunal has considered the arguments articulated by the learned counsel and surveyed the law / record to which its attention was solicited. The question hereby framed for determination is whether the Impugned Order can be sustained under the law, as articulated vide the Election Act 2017 ("Act") and the rules, the Election Rules 2017 ("Rules"), made there under.

Ambit of the law

4. This tribunal is constituted¹ to adjudicate appeals with respect to the acceptance or rejection of candidature, in respect of senate elections, by a learned returning officer². The appeal is required to be decided summarily³ and announcement of fixation thereof, *inter alia* via the media, is deemed to be sufficient notice of the date and time so appointed⁴. The domain of this determination is enunciated per section 113(3)⁵ of the Act.

5. There is a myriad of guidance from the Superior Courts with regards to consideration of the eligibility of candidature in such pre-electoral matters; *inter alia* professional competence was something nationally or internationally recognized⁶; and that an advocate seeking to qualify as a technocrat should at least be an advocate of the Supreme Court⁷.

Application of the law to the present lis

6. The primary issue is with respect to the non-conformity of the appellant within the definition of technocrat, per section 2(xxxix) of the Act, which is reproduced herein below:

“technocrat means a person who

(a) holds a degree requiring conclusion of at least sixteen years of education recognized by the Higher Education Commission; and

(b) has at least twenty years of experience including a record of achievement at the national or international level;”

¹ 113 (1) A candidate or an objector may, within the time specified by the Commission, file an appeal against the decision of the Returning Officer rejecting or, as the case may be, accepting a nomination paper to the Tribunal constituted for the purpose consisting of a person who is a Judge of a High Court, appointed by the Commission in consultation with the Chief Justice of the High Court concerned.

² 105. For the purpose of an election to the Senate, the Commission shall appoint a Returning Officer for each Province, ... and shall also appoint such number of Polling Officers to assist the Returning Officer as it may consider necessary.

³ 113 (2) An appeal filed under sub-section (1) shall be summarily decided within such time as may be notified by the Commission and any order passed on the appeal shall be final. Although Rule 100(5) of the Rules contemplates a discretionary inquiry. *Per Akhtar Zaman Maghlani J (as he then was) in Nawabzada Mir Balach Khan Marri vs. Mir Mohabbat Khan Marri & Others* reported as *PLD 2003 Quetta 42*.

⁴ 113 (4) Announcement of the day and time appointed for the hearing of an appeal under this section over the radio or television or by publication in the newspaper shall be deemed to be sufficient notice of the day and time so appointed.

⁵ 113(3) If, on the basis of information or material coming to its knowledge by any source, a Tribunal constituted under sub-section (1) is of the opinion that a candidate whose nomination paper has been accepted is a defaulter of loans, taxes, government dues and utility expenses or has had any loan written off or has willfully concealed such fact or suffers from any other disqualification from being elected as a Member of the Senate, it may, on its own motion, call upon such candidate to show cause why his nomination papers may not be rejected, and if the Tribunal is satisfied that the candidate is actually a defaulter or has had a loan written off or suffers from any disqualification, it may reject the nomination paper of the candidate.

⁶ *Per Shafiur Rehman J (as he then was) in Sh. Ihsanul Haq Piracha vs. Wasim Sajjad & Others* reported as *2003 SCMR 145*.

⁷ *Per Syed Shabbar Raza Rizvi J (as he then was) in Mazhar Ali Chaudhry vs. Wasim Sajjad & Others* reported as *PLD 2006 Lahore 358; Illahi Bux Soomro vs. Aijaz Ali Jakhrani & Others* reported as *2004 CLC 1060*.

7. In the present facts and circumstances that the appellant, although an advocate, is not enrolled as an Advocate Supreme Court. The plea that he is eligible to be enrolled as such has no significance as the process of enrolment entails a finding of fitness in such regard as well.

8. Merely being mentioned, as an advocate, in reported judgments and / or appointment as an assistant law officer could not be construed to confer national and / or international recognition upon the appellant and nothing has been placed on record to demonstrate that the appellant had any record of inter/national achievements.

Conclusion

9. In view of the reasoning and rationale herein contained, this Tribunal is of the considered view that this appeal is devoid of merit, hence, the same, along with pending application/s, is hereby dismissed *in limine*.

10. The office is hereby instructed to convey a copy hereof to the learned returning officer, in *mutatis mutandis* application of Rule 54(5) read with Rule 100(6) of the Rules, forthwith.

JUDGE