

**APPELLATE TRIBUNAL FOR CONDUCT OF BYE-ELECTION
IN CONSTITUENCY NO. NA-249 KARACHI WEST-II /
HIGH COURT OF SINDH AT KARACHI**

Election Appeal No.13 of 2021

Date of hearing : 05.04.2021
Date of announcement : 05.04 .2021
Appellant : Zunaira Rehman, Appellant, through Mr. Huzaifa Khan, Advocate.
Respondents : The Election Commission of Pakistan and another, through Mr. Irfan Ahmed Memon, Deputy Attorney General along with Mr. Abdullah Hanjrah, Senior Law Officer, Election Commission for Pakistan.

DECISION

Muhammad Faisal Kamal Alam, J.- This Election Appeal is filed against the order dated 21.03.2021 (the “**Impugned Order**”), passed by Returning Officer / Respondent No.2, rejecting the Nomination Form of the Appellant on the ground that signature of ‘Seconder’ is not genuine, in terms of Section 62(9)(d) of the Election Act, 2017 (the “**Elections Law**”).

2. Learned counsel for the Appellant states that it is a mere technicality and Nomination Form should not have been rejected rather an opportunity should have been given to the Appellant for filing a fresh Nomination Form in terms of first proviso to subsection (9) of Section 62 of the Elections Law. He has further contended that Seconder is not a literate person, but his identity is genuine. In support of his arguments, learned counsel for the appellant has placed reliance on the following case law _

1. **C L C 1984 page-544,**
[*Muhammad Ayub Khan versus Addl. D. C. (General), Sheikhpura and 2 others*];
2. **P L D 1996 Supreme Court page-256**
[*Sana Ullah and another versus Muhammad Manzoor and another*] – Sana Ullah Case.

3. Above arguments were controverted by learned Deputy Attorney General, who is assisted by Mr. Abdullah Hanjrah, Senior Law Officer, ECP. They have filed their parawise comments, which are taken on record. Contended that Respondent No.2 gave ample opportunity to the Seconder, namely, Habibul Hussain son of Habib Ahmed, but each time his signature did not match with the one on his Computerized National Identity Card (CNIC). They have referred to the copy of CNIC of Appellant, which is available at page-37 of the Court's file. Learned Deputy Attorney General has relied upon the case law reported in **1993 M L D page-2471** [*Malik Javed Awan versus Aghir Ahmed Qadri, Returning Officer*] – **Awan Case**.

4. Arguments heard and record perused.

5. Seconder is present in Court and he was asked to put five signatures on a piece of paper, which has been made part of the record, so that the same can be compared with his signature on his CNIC, in terms of Article 84 of the Qanun-e-Shahadat Order, 1984; but the signatures could not be matched. To verify the identity of Seconder, Mr. Muhammad Usman, Assistant Registrar / In Charge of Affidavit and Identity Branch of this Court, was called to assist the Court. The current affidavit on behalf of **Seconder** Habibul Hussain son of Habib Ahmed, available at page-45 of the Court's file is perused. This Affidavit contains his present picture and the one on his CNIC. Prescribed Form of Affidavit, which is used in this Court, also contains details of verification of National Database and Registration Authority (“**NADRA**”) about the person swearing such affidavit. In the present case, affidavit of the above Seconder contains confirmation of NADRA that he is the same person and there is no issue with regard to his identity.

6. Adverting to case law. In the above reported decision of Awan Case, which was handed down with regard to rejection of nomination paper,

learned Election Tribunal Punjab, has held that omission of filing copies of electoral roll bearing entry of the appellant, proposer and seconder (of the reported case) as voters, was not fatal and time should have been given for rectification.

7. The case law relied upon by the Appellant is distinguishable for the reasons that in the Sana Ullah Case, the Honourable Supreme Court has expounded Article 79 of the Order 1984, which relates to proving of signature on a document. This decision was given in a case for Specific Performance of Contract and the rule laid therein is not applicable to the present case; *whereas*, the Ayub Khan Case is relevant. Learned Division Bench of Lahore High Court has overturned decision of Returning Officer, who has rejected nomination paper of petitioner (of the reported case) on the ground that signatures of proposer and seconder are forged. It is held that merely on allegations, nomination paper should not have been rejected and proof should have been sought and decision should have been given on the evidence. Supporting affidavits filed in petition of both proposer and seconder (of the reported case) were given due weightage while handing down the decision.

8. Section 62 (*ibid*) is carefully examined and particularly sub-section 9, that contains proviso for rejection of nomination paper. Clause (d) is relevant for the present purpose, which states that the nomination of a candidate will be rejected if signatures of the Proposer or Seconder are not genuine; provided that it shall not invalidate the nomination of a candidate by any other nomination paper. The second proviso is as follows_

“(ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature 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 or his

proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.”

9. The second proviso speaks about that nomination paper shall not be rejected if the defect is not of a substantial nature and can be remedied forthwith. In the present case, issue of signature of Secunder could have been resolved by filing fresh nomination paper with different Secunder, as there was no objection with regard to the name and the signature of Proposer. *Secondly*, in my considered view, and significantly, a signature can be termed as not genuine, if it is not a signature of a person concerned / present Secunder; that is, if in place of Secunder Habibul Hussain son of Habib Ahmed someone else had signed the Nomination Paper, then the Impugned Order is quite correct. On a query, the Secunder, who is present in Court has informed that he is not literate and has a juice kiosk. Once an identity of Secunder has been finally confirmed by NADRA, as discussed above, then difference in signature would not be a substantial defect (in terms of above provisions) and cannot be termed that it is not genuine, in the above given circumstances, resulting in rejection of the Nomination Form of present Appellant.

10. The upshot of the above discussion is that the Impugned Order is set aside and the Nomination Form of the Appellant is accepted.

11. Let copy of this order be communicated to the Respondents. However, learned Deputy Attorney General and Senior Law Officer on behalf of Respondents, are present and they are directed to communicate this order to the Respondents.

Judge

Karachi,
Dated: 05.04.2021.

Riaz / P.S.