

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

C.P No.D-1082 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGES
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Priority

1. For orders on office objection
2. For hearing of CMA No.5104/2023 (Stay Application)
3. For hearing of main case

19.10.2023

Mr. Muhammad Umar Lakhani, Advocate for the petitioner
Mr. Khaleeq Ahmed, DAG
M/s. Abdullah Hanjrah, Senior Law Officer and Sarmad Sarwar,
Law Officer, ECP

Petitioner originally filed his nomination papers to contest General Elections from PS-81 Sanghar-IV in the year 2013, where his nomination papers were accepted by the Returning Officer vide order dated 01.04.2013, however his candidature was challenged by rivals through filing objections, which objections were dismissed and being aggrieved, the objector filed Election Appeal before the Election Tribunal (High Court of Sindh at Karachi) under Section 14(5) of the Representation of People Act, 1976, which appeal was also dismissed vide order dated 17.04.2013, but still unsatisfied, the objector took up the matter by filing Constitutional Petition bearing C.P No.D-1682 of 2013 before the High Court of Sindh at Karachi, where Full Bench of this Court through order dated 09.05.2013 reversed the findings of the Election Tribunal by declaring that the petitioner was disqualified to contest the elections, however as an interim measure, at the same time the disqualification order was suspended by permitting the petitioner to contest general elections, where he *in fact* was declared a Returned Candidate.

Being aggrieved by a portion of the judgment where his disqualification was maintained, the petitioner moved to the Supreme Court of Pakistan in CPLA No.235-K of 2013, where a detailed judgment

of two member Bench of the Supreme Court upheld the judgment of the Full Bench of this Court by holding that since the petitioner had submitted bogus documents and played fraud on the electors of his constituency, hence, he failed to make up to the criteria set up for a proposed candidate under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 (“the Constitution”) as well as failed in meeting the criteria set up *inter alia* under sub sections (d)(e) and (f) of Section 99(1) of the Representation of People Act, 1976 and observed that the petitioner was perpetually disqualified. Seemingly, the petitioner also sought review of the said judgment of the Supreme Court however the review was dismissed upon becoming infructuous vide order dated 05.09.2013.

With this background, the petitioner has filed the instant petition placing reliance on the recent judgment of the Supreme Court of Pakistan rendered in the case of *Allah Dino Khan Bhayo v. Election Commission of Pakistan and others (PLD 2020 SC 591)* stating that the said judgment has carved out a possibility for the petitioner to participate in the forthcoming elections since Article 62(1)(f) of the Constitution as existent, before the 18th Constitutional Amendment has been changed with the addition of the words “*there being no declaration to the contrary by a court of law*” and in the case at hand, per learned counsel, in similar circumstances, where the petitioner Allah Dino Khan was disqualified under the old text of Article 62(1)(f) was held to be eligible to contest elections, as allegedly there was no declaration made against the petitioner Allah Dino Khan by any court of law, same is the case of the present petitioner, per learned counsel.

Whereas, learned DAG as well as representatives from the Election Commission are of the view that the petition had already become infructuous, as new elections are to be announced shortly, however, learned counsel for the petitioner still insisted that the

petitioner can benefit from the judgment of the Supreme Court of Pakistan *supra* (*Allah Dino Khan*), who per learned counsel, was also disqualified under Article 62(1)(f) of the Constitution before the said Article was amended by the 18th Amendment.

After hearing the learned counsel for the petitioner as well as learned DAG and representatives from the Election Commission of Pakistan, we are of the view that when the new elections are about to be announced shortly, it would be more appropriate for the petitioner to file his nomination papers in accordance with law when such a possibility presents itself, and if those nomination papers are rejected under Article 62(1)(f) of the Constitution (by any chance) that would be an appropriate time and opportunity to plead the case of the petitioner in post 18th Amendment scenario, and at the same time placing reliance on the judgment of the Hon'ble Supreme Court *supra* in *Allah Dino Khan Bhayo's* case to persuade the concerned forum. We, therefore, dispose of this petition and leave the matter to the petitioner to take appropriate course in accordance with law in the forthcoming elections, if he chose to file nominations therein.

ACTING CHIEF JUSTICE

JUDGE