

IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Adnan Iqbal Chaudhry &
Mr. Justice Jawad Akbar Sarwana

C.P No.D-82 of 2024

Syed Amjad Hussain Shah VS Election Commission of Pakistan and Others

For the Petitioner: M/s Syed Jamil Ahmed Shah and Syed Waqar Ahmed Shah, Advocates.

For the Respondents 1-3 Kazi Ayazuddin Qureshi, AAG alongwith Mr. Riaz Ahmed, Director (Law), Election Commission of Pakistan

For the Respondent-4 Nemo

Date of Hearing 09.01.2024:

Date of Order : 09.01.2024

JUDGMENT

Adnan Iqbal Chaudhry J. - The Petitioner is aggrieved of the rejection of his nomination paper by the Returning Officer PS-75, Thatta-1 **[RO]** *vide* order dated 27.12.2023, which was then upheld by the Election Tribunal by order dated 06.01.2024 passed in Election Appeal No. 29 of 2024.

2. The grounds taken by the RO and the Tribunal are as follows:

(i) that a vehicle bearing registration No.AKH-275 was owned by the Petitioner but was not disclosed by him in his income tax return;

(ii) that FIR No. 346/2023 was lodged against the Petitioner at P.S. Thatta but had not been disclosed by him in his affidavit;

(iii) that Rs.8878/- was outstanding against the Petitioner in respect of a PTCL bill for telephone No. 550377 which was not disclosed by him in his affidavit.

3. Regard the vehicle alleged to be the property of the Petitioner, learned counsel draws attention to the income tax return of the Petitioner for tax year 2020 which disclosed the sale of said vehicle. He further supports such fact with a copy of the sale and delivery letter of such vehicle, dated 10.08.2020, which appears to be the contract of sale of said vehicle. *Prima facie*, the Petitioner had sold the vehicle in 2020 and had made such disclosure in his tax return. Apparently, the finding by the *fora* below that said vehicle was still the property of the Petitioner, was based on a letter of the Excise and Taxation Department. However, that letter is not conclusive proof of the Petitioner's ownership for if the purchaser of the vehicle failed to apply to the Excise & Taxation Department for transfer of the vehicle, their record would still show the Petitioner as owner. This aspect escaped the attention of the *fora* below.

4. Regards FIR No. 346/2023, that was lodged on 27-08-2023 under sections 341, 147, 148 and 149 PPC on the allegation that the Petitioner, alongwith others, had blocked a public road during a political rally. The Petitioner was eventually challaned only under section 341 PPC, and subsequently, by order dated 06.01.2024 the trial court acquitted him under section 249-A Cr.P.C, a certified copy whereof has been placed on the record today. Counsel submits that the non-disclosure of the FIR in the affidavit was only a slip, not deliberate, and that the Petitioner had no reason to suppress the same when it did not constitute a disqualification under Article 63 of the Constitution of Pakistan. We find the Petitioner's explanation to be plausible. The fact that an FIR against the Petitioner was pending at that time without any conviction also did not constitute a disqualification as held by the Supreme Court in *Murad Bux v. Kareem Bux* (2016 SCMR 2042). Therefore, the second ground taken by the *fora* below for rejection the Petitioner's nomination paper also fails.

5. As regard the third ground, viz. an outstanding PTCL bill, the Petitioner has placed on the record a No-Dues Certificate issued to him by the PTCL on 01.01.2024. Per learned counsel, the Petitioner was unaware of the outstanding bill, the Returning Officer did not confront him with such bill nor provided him an opportunity to pay the same, but nonetheless the Petitioner paid the same before filing the appeal before the Election Tribunal. Be that as it may, since the amount outstanding was less than Rs.10,000/-, the disqualification under Article 63(1)(o) of the Constitution was not attracted. For this reason, it seems, even the Tribunal did not take that as a ground for rejection.

6. For the foregoing reasons none of the grounds taken for rejecting the Petitioner's nomination papers were material in nature so as to disenfranchise him. We are therefore inclined to allow the petition. Resultantly, the impugned orders dated 27.12.2023 and 06.01.2024 passed respectively by the RO and the Election Tribunal are set aside, and the Petitioner's Election Appeal No. 29 of 2024 is allowed. The office shall convey this order forthwith, also by fax and e-mail, to the Returning Officer concerned, who shall revise the list of validly nominated candidates accordingly. The officer of the Election Commission is present and acknowledges the same. Petition disposed of.

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