

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No.13 of 2024

Date	Order with signature of Judge
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1. For order on CMA No.67/2024 (O39 R1&2)
2. For hearing of main case

Date of hearing and order: 05.1.2024

Mian Shahbaz Ali advocate for the appellant
Mr. G.M Bhuto Assistant Attorney General along with
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of
Pakistan

ORDER

Adnan-UL-Karim Memon; J, Appellant Arsalan Khalid
through instant Election Appeal has called in question the order dated
30.12.2023 passed by the Returning Officer, NA-248, Karachi Central-II,
an excerpt whereof is reproduced as under:-

“As per Section 62 (1) of the Election Act, 2017 any objector can file objections before the Returning Officer within the period specified by the commissioner, the objections were heard in the presence of the candidate on 30.12.2023 in the interest of justice and the candidate was given due chance to give a reply on the said objections. The candidate submitted a judgment of the Honourable Court of Judicial Magistrate for acquittal in FIR No. 201/2022, however with regards to FIR No. 450/2023, sufficient document could not be produced. Hence, based on the hearing and summary inquiry it was found that the candidate failed to disclose the said FIR in the affidavit given by him as per para 6 of the judgment of the Honourable Supreme Court of Pakistan in the case Speaker National Assembly of Pakistan, Islamabad and others vs Habib Akram and others (PLD 2018 SC 678) (attached herewith) which requires the candidate to disclose any FIR/criminal pending cases. This nondisclosure tantamount to mis-declaration and hence the nomination form of the candidate is liable to rejection under Section 62(9)(C). Further, para 8 of the above said judgment of the Honourable Supreme Court of Pakistan reads:

“8. It is clarified that failure to file such Affidavit before the Returning Officer would render the Nomination Papers incomplete and liable to rejection. If the Affidavit or any part thereof is found false then it shall have consequences, as contemplated by the Constitution and the law. Since the affidavit is required to be filed in pursuance of the order of the Court , therefore, if any false statement is made therein, it would also entail such penalty as is of filing of false affidavit before this Court .”

The objector could not provide sufficient proof regarding other allegations against the candidate and hence they were not considered.

Therefore, on the basis of the above facts, Section 62(9)(c) and para 8 of the Honourable Supreme Court of Pakistan’s judgment, the nomination papers of Mr. Arslan Khalid are hereby rejected.”

At the outset, learned counsel referred to the impugned order and submitted that the Returning Officer erroneously held that the appellant failed to disclose FIRs / pending criminal cases which amounts to misdeclaration in terms of the ratio of the judgment passed by the Supreme Court in the case of *Speaker National Assembly of Pakistan, Islamabad & others v. Habib Akram & others* [PLD 2018 SC 678].

Learned counsel submits that no opportunity of hearing was given to the appellant to clear his position despite requesting for time; that the appellant has already been acquitted from the aforesaid criminal cases as such no clog of disqualification is available against the appellant to contest the ensuing election. Learned counsel emphasized that in the absence of conviction, the appellant cannot be disqualified to contest the election, mere registration of criminal cases is no ground to non-suit the appellant to contest the election. He, therefore, prayed for setting aside the impugned order dated 30.12.2023.

The learned Assistant Attorney General assisted by the learned law officer representing the Election Commission of Pakistan has opposed this appeal inter alia on the ground that in the nomination form, the appellant has failed to disclose the pendency of criminal cases against him which amounts to concealment of facts as such the appellant is not entitled to contest the ensuing election. At this stage I enquired from the learned law officer as to how he claims that the appellant is involved in criminal activities and is disqualified to contest the election he simply stated that at present there is no material available with him.

I have heard the learned counsel for parties and have perused the material available on record.

The question involved in the present appeal is whether the rejection of the nomination papers of the appellant is justified under the election law. Whether the defect as pointed out by the learned Law Officer substantial or curable?

In the present case, the nomination papers of the appellant were rejected on the ground that the appellant failed to disclose in his affidavit the pendency of criminal cases. Primarily, the appeal against the scrutiny order passed by the Returning Officer is of a summary nature, as this Tribunal can pass an order within the specified period, thereafter, the proceedings stand abated and the order of the Returning Officer is deemed to have become final. Needless to mention that under Section 63 of the Elections Act, 2017 no fact-finding inquiry is to be made and/or evidence is to be recorded which is only permissible before the Election Tribunal under Section 140 of the Elections Act 2017 after the completion of First Phase of Election.

Additionally, sub-Section (9) of Section 62 provides for the rejection of nomination papers on one of four grounds: (9)(a) the candidate is not qualified to be elected as a member, (b) the propose or the seconder is not qualified to subscribe to the nomination paper; (c) any

provision of section 60 or Section 61 has not been complied with or the candidate has submitted a declaration or statement which is false or incorrect in any material particular; or (d) the signature of the proposer or the seconder is not genuine.

A perusal of the relevant provision also indicates that the powers of the Returning Officer have been controlled for not rejecting the nomination papers on any defect which is not of a substantial nature. Under the election law, it is mandatory for candidates, who desire to contest the election on the subject seats to fulfill eligibility criteria as mentioned in Articles 62 and 63 of the Constitution of the Islamic Republic of Pakistan 1973.

The plea raised that criminal cases were registered against the appellant. The provisions of disqualification of a candidate are to be strictly construed. In the case at hand, the disqualification of the appellant is not an issue. The only issue is the non-disclosure of the pending criminal case in the affidavit before the Returning Officer and whether such non-disclosure would be construed as concealment of 'material particulars'. In the backdrop of these facts, the Supreme Court in the case of Murad Bux v. Kareem Bux and others **2016 SCMR 2042**; held that the non-disclosure of a fact which otherwise, if disclosed, could not debar the candidate from contesting the election, which even otherwise cannot be made a ground to preclude the appellant from contesting the election. Prima facie this is not an inherent disqualification to nonsuit the appellant to contest the election from NA-248, Karachi Central-II; and even if this defect is presumed to be material, the same can be taken care of by the Election Tribunal to be constituted under Section 140 of the Elections Act 2017 after the completion of the first phase of election 2024, therefore at this stage, the appellant has made out a case for grant of relief as provided under the law enabling him to contest the subject election without resistance.

In view of the legal position of the case, I do not see any valid justification for the returning officer to reject the nomination papers of the appellant

This Appeal is allowed. the impugned order dated 30.12.2023 is set aside. The returning officer is directed to allow the appellant to contest the election from NA-248, Karachi Central-II.

JUDGE