

THE HIGH COURT OF SINDH, KARACHI

Present:

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

C.P. No. D - 88/2024 : Mansoor Ali son of Mohammad Nawaz versus District Returning Officer, NA-231 (Malir-III), Karachi and three others.

C.P. No. D - 89/2024 : Mansoor Ali son of Mohammad Nawaz versus District Returning Officer, NA-230 (Malir-II), Karachi and three others.

For the Petitioner : Mr. Ali Tahir Advocate, alongwith Mr. Muhammad Hashim Sairani, Advocate. [In both Petitions].

For the Respondent 1 : Mr. Abdul Rahim Qureshi, Returning Officer, NA-231 (Malir-III), is present in Court. [In C.P. No. D - 88/2024]

For the Respondents 2-3 : Provincial Election Commission of Pakistan and the Secretary, ECP, through Qazi Ayazuddin Qureshi, Assistant Attorney General, alongwith Mr. Riaz Ahmed, Director (Law), ECP & Mr. Sarmad Sarwar, Assistant Director (Law), ECP, Karachi. [In both Petitions].

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 orders dated 27-12-2023 and 24-12-2023 passed by the Returning Officers, NA-231 (Malir-III) and NA-230 (Malir-II), Karachi, rejecting the Petitioner's nomination papers; which were then maintained by the learned Election Tribunal by a common order dated 05-01-2024 passed in Election Appeal No. 10/2024 and 11/2024 respectively.

2. The ground taken by the Returning Officers for rejecting the nomination papers was that as per a letter dated 24-12-2023 received from the Second Secretary (IR-Jurisdiction), a sum of Rs. 672,500/- was outstanding against the Petitioner as income tax. It is the case of the Petitioner that though no such liability was outstanding, nonetheless he had requested the Returning Officers to give him an opportunity to settle the same, but the Returning Officers declined. The Petitioner paid the amount on the next day i.e. 28-12-2023 and the Federal Board of Revenue issued a No Demand Certificate to him which was then placed before the learned Election Tribunal with his appeals under section 62 of the Election Act, 2017. However, the learned Election Tribunal relied on Article 63(1)(o) of the Constitution of Pakistan to hold that since such liability existed "at the time of filing of nomination papers", the subsequent payment could not rescue the Petitioner. The learned Tribunal was also not inclined to give benefit of sub-section (10) of section 62 of the Election Act, 2017, to the Petitioner by observing that the Petitioner could not say that he did not have knowledge of his tax liability.

3. The letter dated 24-12-2023, on which the Returning Officers have placed reliance, suggests that income tax liability of the Petitioner for tax year-2022, which was Rs. 769,235/- was not paid, whereas the income tax return for that tax year placed on the record determines the tax payable at Rs. 73,095/-, and counsel for the Petitioner has placed on record the paid challan of said amount. Therefore, it appears that the letter relied upon by the Returning Officers may not be correct. In such circumstances, even the material relied upon by the Returning Officers for rejecting the Petitioner's nomination forms, was hardly sufficient to disenfranchise him.

4. For the same reason, it cannot also be said that the Petitioner had deliberately suppressed his tax liability. Consequently, the benefit of sub-section (10) of section 62 of the Election Act, 2017, should have been extended to the Petitioner when he had in any case cleared the alleged tax liability before the last date of scrutiny of

nomination papers, and well before he filed appeals before the Election Tribunal. As held in the case of *Ghulam Mustafa Jatoi v. Additional District and Sessions Judge/Returning Officer, NA-158, Naushero Feroze (1994 SCMR 1299)*, in such situations it is inopportune to disfranchise a candidate at the pre-election stage as that would deprive him of candidature if subsequently it is found that he is qualified.

5. For the aforesaid reasons, we are inclined to allow these petitions. Resultantly, the orders dated 27-12-2023 and 24-12-2023 passed by the Returning Officers, NA-231 (Malir-III) and NA-230 (Malir-II), Karachi, and the common order dated 05-01-2024 passed by the learned Election Tribunal in Election Appeals No. 10/2024 and 11/2024 are set-aside and said appeals are allowed. The office shall convey this order forthwith, also by fax and email to the Returning Officers concerned, who shall revise the list of validly nominated candidates accordingly. The officers of the Election Commission present acknowledge the same.

Office is directed to place a copy of this order in the petition listed above.

JUDGE

JUDGE

SHABAN*