

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**Election Appeal No.124 of 2024**

---

Date

Order with signature of Judge

---

For hearing of main case

**Date of hearing and order: 06.1.2024**

Mr. Ali Tahir, 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 Makhdoom Fazal Hussain Qureshi through instant election appeal has called in question the order dated 30.12.2023 passed by the Returning Officer, NA-219, Hyderabad II, whereby the appellant has been declared defaulter of FBR tax liability amounting to Rs.11507279/- vide FBR letter No.FBR-NA-219-18180 dated 24.12.2023 and his nomination papers were rejected.

At the very outset, learned counsel for the appellant submits that the appellant was unaware of the amount being due and as per Section 60(10) a candidate deposits any amount of loan, tax, or government dues and utility expenses payable by him of which he is unaware at the time of filing of his nomination paper, such nomination paper shall not be rejected on the ground of default in payment of such loan. He further submits that the appellant must be allowed to clear his dues which in this case has not been done. Learned counsel referred to the letter dated 23.12.2023 issued by the office of FBR whereby his outstanding Tax liability was shown as Rs.-Nil, however on the next day i.e. 24.12.2023 to knock out the appellant from contesting the election the FBR has shown the outstanding Tax liability against the appellant Rs. 11507279/- which shows malafide intention on the part of the FBR. Learned counsel states that though there is no liability against the appellant however he is ready and willing to pay his liability if any within a reasonable time.

The learned Law officer has objected to this appeal on the premise that the objection raised is not a curable defect as there is Tax liability on the part of the appellant in terms of the letter of the FBR, which falls within the ambit of liability which is substantial. He prayed for the dismissal of this appeal.

I have heard the learned counsel for the parties and perused the record with their assistance.

The question involved in the matter is whether the reasons assigned by the Returning Officer are substantial or curable under Section 62(9)(ii) of the Act, 2017.

It appears from the record that when the appellant filed nomination papers there was no liability on his part vide letter dated 23.12.2023 however subsequently another letter dated 24.12.2023, shows that there is outstanding Tax liability on the part of the appellant these two contradictory letters confusing as 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 as under Section 63 of the Election 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, however, the qualification and disqualification of the appellant on the subject issue can also be adjudicated by the Election Appellate Tribunal as discussed supra as the FBR has shown certain amount outstanding against the appellant though there are two contradictory letters, however the appellant has to sort out these things with the FBR. As such on this score alone the appellant cannot be non-suited to contest the election at this stage.

Since the appellant is ready and willing to cure the defect as pointed out within a reasonable time, let him clear his dues within a reasonable time.

For the aforesaid reasons this appeal is allowed, the impugned order dated 30.12.2023 passed by the Returning Officer, NA-219, Hyderabad II is set aside and the Returning Officer is directed to include the name of the appellant in the list of contesting elections for NA-219, Hyderabad II.

JUDGE