

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**Election Appeal No.123 of 2024**

Date

Order with signature of Judge

1. For orders on office objection alongwith reply as at A
2. 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 Sarwer Assistant Director (Law) Election Commission  
of Pakistan

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**ORDER**

**Adnan-ul-KarimMemon-J** Appellant Rashid Nawaz through instant Election Appeal has called into question the order dated 26.12.2023 passed by the Returning Officer, PS-86, Sub Division Ibrahim Hyderi District Malir, Karachi, whereby his nomination papers were rejected under Section 60(2)(a) and Article 63(o) of the Constitution of the Islamic Republic of Pakistan, 1973 on account of failure to clear his utility bills of Water and Telephone connections, including Sui Gas bill; besides he was found involved in FIR No.397/2023 registered at PS Quaidabad.

At the outset, learned counsel submits that the Returning Officer has erroneously held him disqualified to contest the ensuing election on the premise that the appellant failed to disclose FIR/ pending criminal case against him and failed to pay utility bills, which amounts to misdeclaration in terms of Section 60 (2)(a) and Article 63(o) of the Constitution of Pakistan. Learned counsel submits that no opportunity of hearing was given to the appellant to clear his position; despite requesting the Returning Officer for time. 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. Learned counsel for the appellant submits that the appellant was unaware of utility charges duly payable by him at the time of filing his nomination papers, however, he has cured the defect and paid the utility bills available on pages 163 to 165, therefore, nomination papers ought not to have been rejected on the purported ground of default in payment of such dues and pendency of criminal cases. He, therefore, prayed for setting aside the impugned order dated 26.12.2023.

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 besides he failed to pay the utility bills ( Water and Telephone) 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, failed to pay the utility charges, when he has already paid as disclosed supra. However, he insisted on the dismissal of the appeal and supported the impugned order.

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, and he failed to pay utility charges, the aforesaid stance has been refuted by the appellant on the ground that in a criminal case, he has already been discharged under Section 63 Cr. P.C (order dated 06.08.2023 is available on page 139) additionally the utility charges have also been shown to have been paid available on pages 163 to 165. If this is the position of the case, this Court is left with no option but to accept the plea of the appellant, for the reason that 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.

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, in which case he has already been discharged; 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; 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

For the aforesaid reasons this appeal is allowed, the impugned order dated 26.12.2023 passed by the Returning Officer, PS-86, Sub Division Ibrahim Hyderi District Malir, Karachi is set aside and the Returning Officer is directed to include the name of the appellant in the list of contesting elections for PS-86, Sub Division Ibrahim Hyderi District Malir.