

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No.61 of 2024

Date

Order with signature of Judge

For orders as to non-prosecution

Date of hearing and order: 06.1.2024

M/s. Ghulam Muhammad and S.M. Shafiul Hassan 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 Prem Jee son of Daman through instant election appeal has called into question the order dated 26.12.2023 passed by the Returning Officer, PS-107, Karachi South-II.

It is contended that the appellant is ready and willing to cure the defect as pointed out by the Returning Officer vide order dated 26.12.2023. In this regard, he has filed a statement dated 04.01.2024 with the narration that the seconder Kishan son of Kanji has obtained vote certificate No. 04/2024 who belongs to PS. 107 Karachi South II to fill the lacuna in terms of Section 60(1) and Section 62(9) of the Election Act, 2017.

Learned Law officer has objected to this appeal on the premise that the objection raised is not a curable defect in terms of Section 62(9)(d)(ii) of the Elections Act 2017, which defect 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.

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 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.

On the face of the record the appellant has not denied the facts that his seconder did not belong to the constituency of PS-107 Karachi South II, wherefrom he sought to contest the elections, rather he only prayer was that he may be allowed to contest the election subject to him bringing a different seconder on the proper constituency. This defect prima facie needs to be looked into by the Returning Officer in terms of Section 62(9)(d)(ii) of the Elections Act 2017, 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.

Without touching the merits of the case, the matter is remanded to the Returning Officer, who is directed to allow the appellant to bring the seconder namely Kishan son of Kanji, who is a registered voter in the constituency of PS-107 Karachi South II so that he be able to contest the election for PS-107 Karachi South II. So far as the question of a curable and non-curable defect in terms of Section Section 62 of the Elections Act 2017 is concerned the same shall be taken care of by the Election Appellate Tribunal to be constituted after the completion of the first phase of the election, as the question of qualification and disqualification of proposer and seconder shall remain intact in terms of law laid down by the Supreme Court in the case of *Rana Tajummul Hussain v Rana Shoukat Mehmood* **PLD 2007 SC 2007**.

JUDGE