

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.155 of 2024

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Date	Order with signature of Judge
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For hearing of main case

**Date of hearing and order: 08.1.2024**

Ms. Sadia Ghouri 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 Muhammad Anwar Khan Tareen has called in question the order dated NIL of 2024 passed by the Returning Officer NA-242 District Keamari-I, Karachi by which his nomination paper has been rejected on the ground that “during scrutiny of nomination papers the specimen of signature of the candidate was taken on the paper and tallied with a signature which signed on the face of nomination form. It is proved that both signatures on the face of nomination paper seemed fake and fabricated”: therefore, due to the aforesaid reason his nomination paper has been rejected.

It is, inter alia, contended by learned counsel for the appellant that as per order dated 01.1.2024 passed by respondent No.1 / Returning Officer, the signature of the appellant was not visible on Photostat copy of CNIC, same was produced at the time of submission of nomination papers, but it is also a fact that at the time of scrutiny candidate/appellant was present along with his original CNIC but the Returning Officer did not consider and rejected the nomination papers of the appellant; that the Returning Officer/respondent No.1 has failed to appreciate the above grounds and facts before passing the impugned order, which is liable to be set aside. Learned counsel further contends that the impugned order reflects that there is no illegality or deficiency found in the nomination papers of the appellant; that due to the impugned order, the appellant was deprived of contesting the elections, which is sheer injustice with him and the voters of the area. Learned counsel further contends that rejection of the nomination paper of the appellant violates the fundamental rights of the appellant as such the findings of the Returning Officer are perverse

and liable to be set aside. He, therefore, prayed for setting aside the impugned order dated 01.1.2024.

The learned Assistant Attorney General assisted by the learned law officer representing the Election Commission of Pakistan has opposed this appeal.

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

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?

Primarily, Articles 62 and 63 of the Constitution reveal that one deals with the qualifications of a person to be elected or chosen as a member of Parliament while the other deals with disqualifications of a person not only from being elected or chosen but also from being a member of Parliament. If a candidate is not qualified or is disqualified from being elected or chosen as a member of Parliament in terms of Articles 62 and 63 of the Constitution, his nomination could be rejected by the Returning Officer or any other forum functioning in the hierarchy. But where the returned candidate was not, on the nomination day, qualified for or disqualified from being elected or chosen as a member, his election could be declared void by the Election Tribunal constituted under Article 225 of the Constitution. While election of a member whose disqualification was overlooked, illegally condoned or went unquestioned on the nomination day before the Returning Officer or before the Election Tribunal, could still be challenged under Article 199(1)(b)(ii) of the Constitution of Pakistan, 1973 as was held by the Supreme Court in the cases of *Lt. Col. Farzand Ali and others v. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore* (PLD 1970 SC 98) and *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1054). However, disqualifications envisaged by Article 62(1) (f) and Article 63(2) of the Constitution because of words used therein have to be dealt with differently. In the former case, the Returning Officer or any other fora in the hierarchy would not reject the nomination of a person from being elected as a Member of Parliament unless a court of law has given a declaration that he is not sagacious, righteous, non-profligate, honest and Ameen. Even the Election Tribunal, unless it proceeds to give the requisite declaration based on the material before it, would not

disqualify the returned candidate where no declaration, as mentioned above, has been given by a court of law. The expression “a court of law” has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration based on the evidence so recorded. Such a court would include a court exercising original, appellate, or revisional jurisdiction in civil and criminal cases. But in any case, a court or a forum lacking plenary jurisdiction cannot decide questions of this nature at least when disputed. In the latter case when any question arises whether a member of Parliament has become disqualified it shall be dealt with only by the Election Commission on a reference from the Speaker of the Parliament in terms of Articles 63(2) and 63(3) of the Constitution.

The aforesaid objection appears to be misconceived. In the present case, it appears that the Returning Officer was not properly advised and failed into a grave error by disqualifying the appellant on a minor defect though the appellant was present before him. The reasons assigned by the Returning Officer are not sufficient to disallow the appellant to contest the election for the simple reason that participation in elections is a constitutional right, subject to inherent disqualification under the law, which is not the case at hand, 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 election without resistance.

Progressing further on the subject issue, principally, 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.

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 proposer 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.

Under section 62(9) of the Elections Act,2017, the Returning Officer shall not reject a nomination paper on the ground of any defect that is not substantial and may allow such defect to be remedied forthwith and failure on the part of the returning officer to allow rectifying and amending any infirmity within his/her nomination form as provided in Section 62 (9 (d) (ii) of the Elections Act 2017 violates the law.

For the aforesaid reasons this appeal is allowed, the impugned order dated Nil of 2024 passed by the Returning Officer NA-242 District Keamari-I is set aside and the Returning Officer is directed to include the name of the appellant in the list of contesting elections for NA-242 District Keamari-I.

JUDGE