

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.228 of 2024

| Date | Order with signature of Judge |
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1. For order on CMA No.634/2024 (Urgency granted)
2. For order on CMA No.635/2024 (Exemption granted)
3. For hearing of main case

Date of hearing and order: 08.1.2024

Appellant in person
Mr. G.M. Bhutto, Assistant Attorney General
Mr. Sarmad Sarwar, Assistant Director (Law), Election Commission of Pakistan

Adnan-ul-Karim Memon, J. Appellant Izhar Ahmed has called in question the order dated 30.12.2023 passed by respondent No.1 / Returning Officer PS-100 Karachi East-IV by which his nomination paper has been rejected on the grounds the appellant is involved in anti-state activities and he failed to produce the utility bills.

Appellant present in person submits that he mentioned his present residential address in his affidavit which shows that the appellant has no bad intention and also not hide/trying to hide any real fact regarding his residential address; that the appellant has filed his nomination papers as an independent candidate and the order impugned in this appeal is erroneous and based on conjectures and surmises; appellant submits that he is not involved in any anti-state activities as alleged in the impugned order and the Returning Officer while passing the impugned order has also failed to appreciate the fact that the appellant has not concealed any material fact in his nomination form. Appellant further submits that due to the impugned order, he was deprived of contesting the elections, which is sheer injustice to him and the voters of the area and the rejection of his nomination paper is in violation of his fundamental rights 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 30.12.2023.

Learned Assistant Attorney General as well as the Assistant Director (Law) on behalf of the Election Commission of Pakistan are present in Court and waived notice of this election appeal due to paucity of time, however, they have opposed this appeal on the analogy so put forward by the Returning Officer.

I have heard 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?

The reasoning so put forward by the Returning Office is that the candidate is a member of PTI and is involved in anti-state activities. This is hardly ground to reject the nomination papers as no proof of his involvement in such an alleged incident has been produced, merely saying that he being active member of PTI is not sufficient to disallow the appellant to contest the election. The reasoning is absurd and is discarded accordingly, which has no basis, and even otherwise this cannot be ground to reject the nomination papers under the law for the simple reason that the involvement of a candidate in a criminal case is not sufficient to restrain him from contesting the election until and unless he has been convicted in the said criminal case. Mere involvement in any F.I.R cannot form the basis of passing judgment on the character of a person, qualification / disqualification referred to Articles 62 & 63 of the Constitution of Islamic Republic of Pakistan, 1973, cannot be proven or disproven by reference to an F.I.R alone.

As regards the non-disclosure of his involvement in the criminal case by the appellant, as stated above, the initial burden was upon the respondents to prove the appellant's knowledge about the pendency of said criminal case against him if any; however, the Returning Officer has failed to prove the allegations. Admittedly, the appellant was not convicted of the purported crime and he would only stand to gain if he did not mention in his nomination form about his involvement in anti-state activities in which he had been convicted which may have entailed his disqualification. Thereby, even if the appellant had disclosed this information regarding the pendency of a criminal case in his nomination papers before the Returning Officer, he would not have been declared disqualified from contesting the election. In the case of MURAD BUX v. KARIM BUX & others [2016 SCMR 2042] wherein the Supreme Court of Pakistan has observed as under:

“As against this if non-disclosure about the pendency of a criminal case has been made, for which the petitioner has offered a reasonably plausible explanation, then the affidavit could not be considered as a false or incorrect declaration. It is well settled that the provision of disqualification of a candidate

is to be strictly construed. In the case at hand, the disqualification of the petitioner is not an issue. The only issue is the non-disclosure of pending criminal cases in the affidavit before the Returning Officer and whether such non-disclosure would be construed as concealment of material particulars. We in the backdrop of these facts are of the considered view that nondisclosure of a fact which otherwise, if disclosed, could not debar the petitioner from contesting the election, cannot be made a ground to preclude the petitioner from contesting the election”.

A similar view was taken by the Supreme Court in the case of *SHEIKH MUHAMMAD AKRAM v. ABDUL GHAFOOR* [2016 SCMR page 733], wherein it has been held as under:

“10. Admittedly, the appellant did not disclose that the said criminal case was pending against him in his nomination papers. The said case against the appellant was one of rash and, according to the complainant of the case, the complainant had been injured. The offense for which the appellant was charged carried a maximum prison term of two years. The complainant of the case, however, resiled from his complaint and the appellant secured his acquittal. Would the non-disclosure of this case (lodged u/s 337-F read with Section 279 PPC) be fatal to the candidate of the appellant?

11. It may however be mentioned that a candidate is not disqualified to contest elections merely because a criminal case is pending against him. Non-disclosure of a pending case cannot be equated with the non-disclosure of a criminal case in which a person has been convicted and one which may entail his disqualification”.

Because of the dictum laid down in the case laws cited supra as well as the plausible explanation furnished by the appellant in the memo of appeal that he is not involved in any anti-state activities, I have no hesitation in holding that findings given by the Returning Officer in this regard are unjustified and not sustainable under the law.

The result of the above discussion is that this appeal is allowed. The order dated 30.12.2023 passed by respondent No.1 / Returning Officer PS-100 Karachi East-IV, whereby the nomination papers of the appellant were rejected is set aside. Consequently, the nomination papers filed by the appellant for election from PS-100 Karachi East-IV are hereby restored and the appellant is allowed to contest the said election

JUDGE