

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Election Appeal No.168 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**

Mr. Abdul Khursheed Khan advocate for the appellant  
Mr. G.M Bhuto Assistant Attorney General along with  
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of  
Pakistan

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**ORDER**

**Adnan-ul-Karim Memon, J** Appellant Muhammad Aftab Uddin Baqai has called in question the order dated 30.12.2023 passed by the Returning Officer PS-91 Shah Faisal Korangi Karachi-II, by which his nomination paper has been rejected on the ground that during scrutiny and inquiry it reveals that the candidate / appellant has failed to declare his business namely “Al-Hayat” located at showroom No.7 and 8, Pardesi Pride, Chartered Accountants Avenue Clifton, Karachi in his nomination papers and supporting documents.

It is, inter alia, contended by learned counsel for the appellant that the appellant never owns or runs any business in the name and style of Al-Hayat, which was/is mistakenly shown in the website of the Federal Board of Revenue in the appellant’s FBR account; that the appellant first time came to know about the said business when the objection was made, who immediately contacted with the officials of the FBR who rectified the mistake and removed the said business attached with the CNIC of the appellant; that the appellant never filed any income from any showroom business or exercised any monetary transaction in respect of the said showroom; that the impugned order passed by learned Returning Officer is erred in law and facts, which is liable to be set aside; that due to the impugned order, the appellant deprived to contest the elections, which is sheer injustice with him and voters of the area. Learned counsel further contends that the impugned order clearly reflects that there is no any illegality or deficiency found in nomination paper of the appellant; that rejection of the nomination papers of the appellant is in violation of the fundamental rights of the appellant as such the findings of the Returning Officer is perverse and liable to be set aside. He, therefore, prayed for setting aside the impugned order dated 30.12.2023.

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 is 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.

It appears that the FBR has no grievance at all if the appellant is allowed to contest the ensuing election and therefore, the aforesaid objection appears to be misconceived. 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. It is settled law 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 30.12.2023 passed by the Returning Officer PS-91 Shah Faisal Korangi Karachi-II, is set aside and the Returning Officer is directed to include the name of the appellant in the list of contesting elections for PS-91 Shah Faisal Korangi Karachi-II.

JUDGE