ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No. 257 of 2024

Date	Order with signature of Judge

1. For order on CMA No. 745/2024 (Granted)
2. For order on CMA No. 746/2024 (Exemption granted)
3. For hearing of main case

Date of hearing and order: 09.1.2024

Mr. Waheed Ali, advocate for the appellant
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of Pakistan

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ORDER

Adnan-ul-KarimMemon, J Appellant Muhammad Khan through instant election appeal has called into question the order dated 29.12.2023 passed by the Returning Officer, NA-218 Hyderabad, whereby the nomination papers of the appellant were rejected on the ground that the seconder of the appellant is not a registered voter in the constituency of NA-218 Hyderabad.

At the very outset, learned counsel for the appellant submits that the Returning Officer has wrongly assumed and rejected the nomination form of the appellant on the ground that seconder of the appellant does not belong to said constituency without providing any opportunity to file his reply. He, therefore, prayed for setting aside the impugned order.

The learned Law officer representing the Election Commission of Pakistan has waived the notice due to paucity of time and opposed this appeal inter alia on the ground that the seconder of the appellant is not the voter of NA-218 Hyderabad; as such the appellant is not entitled to contest the ensuing election.

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?

The main theme of the arguments of the appellant is that because of some confusion prevailing on account of the delimitation of

constituencies and finalization of the list of different constituencies, the contesting candidates due to inadvertence, filed their nomination forms through seconder belonging to the other constituencies than that of the constituencies in which the appellant wanted to contest the elections, resulting into that cancellation of her nomination forms by the Returning Officers. It has been further argued that such a defect is not substantial and could be cured by the Returning Officers in terms of the 2nd proviso to sub-section (9) (d) of Section 62 of the Elections Act 2017. According to learned Counsel for the appellant, such defect could not be cured in time before the Returning Officer as the appellant was not aware of the legal position, therefore, that may be allowed to be cured by this Court by setting aside the impugned order with the directions to the Returning Officer to allow the appellant to remove such defect by bringing other proposers and/or seconders, as the case may be, of the same constituency as a substitution of the earlier proposers and/or seconders, where after the nomination forms of the appellant may be accepted.

From the plain reading of Section 60 (1) of the Elections Act 2017, it appears that the voter, who proposes or seconds the name of a duly qualified person to be a candidate for an election of a member of the National Assembly or Provincial Assembly, as the case may be. It further appears that upon receipt of the nomination paper of the candidate duly proposed and seconded by the voters of the same constituency, the Returning Officer shall assign a serial number to every nomination paper and endorse on the nomination paper the name of the person presenting it, and the date and time of its receipt, and inform such person of the time and place at which he shall hold scrutiny and shall cause to be affixed at a conspicuous place in his office, a notice of every nomination paper received by him containing the particulars of the candidate as shown in the nomination papers, it is not that a candidate 'files' his nomination paper and merely mentions the names of proposer and seconder as a formality, which is the essence and foundation of the whole process. Thus, if the nomination is duly made by the proposer and seconder of a candidate it is only then that the nomination paper is received by the Returning Officer. Thus, in the circumstances, a defect to the proposer and/or seconder, not being a voter of the same constituency, would go to the core of his qualification, to be a proposer or seconder, as the same was the only qualification required of such person and the same was not amenable to rectification. Provisions, as discussed supra, are mandatory and the defect is substantial, however, at the same time, it is vehemently urged that due to all of a sudden change in the delimitation process the constituencies changed and the appellant claims that he was not aware of such changes as

no notice was given to the aggrieved parties to change their voter list from such constituencies, therefore, he cannot be deprived of to contest election to bring the seconder of such constituency within reasonable time which factum could be left to the discretion of the Returning Officer to remedy the same under the law.

The proposal seems to be reasonable. Let the Returning Officer facilitate the appellant to bring his seconder of the same constituency from which he wanted to contest the ensuing election today. The Returning Officer shall facilitate the appellant in this regard and will not create bottlenecks in her endeavor to contest the election without resistance on his part. However, it is made clear that the qualification and disqualification in terms of the ratio of the judgment passed by the Supreme Court in the case of *RANA MUHAMMAD TAJAMMAL HUSSAIN v. RANA SHAUKAT MAHMOOD* (**PLD 2007 Supreme Court 277**) shall remain intact which could be taken care of by the Election Tribunal to be constituted under section 140 of the Election Act 2017 after completion of first Phase of the Election.

The Appeal stands disposed of in the above terms.

JUDGE

Shafi*