

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No. 149 of 2024

Date	Order with signature of Judge
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For hearing of main case

Date of hearing and order: 10.1.2024

Mr. Ashfaq Rafiq Janjua, advocate for the appellant
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of Pakistan

ORDER

Adnan-ul-KarimMemon, J. Appellant Muhammad Ashraf through instant election appeal has called into question the order dated 27.12.2023 passed by the Returning Officer, NA-236 Karachi East-I, whereby the nomination papers of the appellant were rejected on the ground that he mentioned wrong CNIC number of proposer in the nomination form, he is bank defaulter of Rs.6,08,798/- and Rs.21,000,000/- and pending a criminal case. He also failed to provide a bank account for election expenses.

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. He further submits that the appellant was arrested by the Law Enforcement Agencies on 20.01.2017 an FIR was lodged against him and this Court vide order dated 15.3.2022 in CP No.715/2021 disposed of the petition on the premise that the appellant was found confined in Intermittent Centre Malakhand. He further submits that he has been released recently by the Law Enforcement Agencies. Learned counsel further submits that the appellant moved an application for opening the bank account, as his name still appears in the 4th Schedule of the Anti-terrorism Act, 1997 and now there is no criminal case pending against him. He further submits that there is no conviction on his account and due to confinement with the Law Enforcement Agencies, he could not pay the loan of Rs.6,08,798/- instead of Rs.6,087,989/-. He, therefore, prayed for setting aside the impugned order dated 27.12.2023.

The learned Law Officer representing the Election Commission of Pakistan has opposed this appeal inter alia on the ground that the appellant is a defaulter and he has not provided his bank account besides his name is

appearing in the 4th Schedule of Anti-terrorism Act, 1997, 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 stance of the Returning Officer is that the appellant is disqualified to contest the ensuing election, as his name has been added in the 4th Schedule of the Act, 1997, this stance is without any weight for the simple reason that Qualifications and Disqualification for membership of Majlis-e-Shoora (Parliament) have been respectively provided in Articles 62 and 63 of the Constitution of Islamic Republic of Pakistan, 1973, and on perusal thereof, it appears that only Articles 63(g) and 63(h) of the Constitution attract in the case of a convicted person and a person would be disqualified to contest election inter alia if he/she has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan or its judiciary or defames or brings into ridicule the judiciary or the Armed Forces of Pakistan and if any person has been convicted for moral turpitude. An order under Section 11-EE of the Act is passed by the executive authority to impose some restrictions on the movement and liberty of a person and just some preventive measures are adopted by the executive authority to ensure law and order situation and to avoid any untoward incident which may be a criminal offense, if committed. Thus merely adding the name of any person in the 4th Schedule of the Act, cannot be equated with the conviction mentioned in above quoted Article of the Constitution because the conviction is a sentence either in imprisonment or a fine which is imposed after framing the charge, recording of evidence and also recording the stance of the accused in his defence and this process when finally results, either in acquittal or conviction. Hence an order passed under Section 11-EE of the Act cannot be equated with conviction, whereas, disqualification to contest an election only attracts against the person convicted under any law because of Articles 63(g) and 63(h) of the Constitution.

So far as the stance of the Returning Officer that the appellant has not provided his exclusive account or dedicated an existing account with a scheduled bank for election expenses in his nomination papers, learned

counsel for the appellant states at the bar that he has applied for urgent hearing of a Constitution Petition pending before this Court, wherein he has sought suspension of the order passed by the Executive Authority whereby his name has been placed in 4th Schedule; and, if he succeeds in obtaining the suspension order then he will provide bank account to the Returning Officer today so that the compliance of Section 60(2)(b) of the Elections Act, 2017 be made accordingly. So far as the wrong CNIC number of the proposer is concerned, he submits that he will provide the correct CNIC number of his proposer to the Returning Officer today. He also undertakes to pay his loan amount, if any. He has also asserted that the appellant has not been convicted by any Court of law and, therefore, prayed for allowing the appellant to contest the election.

The proposal seems to be reasonable. Let the Returning Officer facilitate the appellant to provide his exclusive account or dedicate an existing account with a Scheduled Bank and bring his proposer 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 his endeavor to contest the election subject to providing his exclusive bank account to the Returning Officer today and if he fails to do so in the intervening period, the order of the Returning Officer shall remain intact. 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 Elections Act 2017 after completion of first Phase of the Election.

The Appeal stands disposed of in the above terms.

JUDGE