

ORDER SHEET
BEFORE THE ELECTION APPELLATE TRIBUNAL FOR SINDH AT SUKKUR
(Before Mr. Zulfiqar Ali Sangi)

Election appeal No.S-42 of 2024

Muhammad Zuhaib Shaikh v. Mubeen Ahmed and others

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case

Date of hearing 09.01.2024

Date of decision 10.01.2024

Mr. Muhammad Haseeb Jamali and Mr. Ali Gul Abbasi,
Advocates for appellant

Mr. Muhammad Zubair Malik, Advocate for respondent No.1
Mr. Zeeshan Hyder, Law Officer, Election Commission of
Pakistan

Mr. Dareshani Ali Hyder 'Ada' DAG

Mr. Muhammad Umair Election Officer Sanghar
representative of Election Commission of Pakistan

Mr. Ghulam Ali Tunio Returning Officer NA-200 (Sukkur-I)

ORDER

Zulfiqar Ali Sangi J:- Through this Election Appeal, the appellant has challenged the impugned order dated 25.12.2023, (mistakenly mentioned in memo of appeal as 26.12.2023) passed by the Returning Officer NA-200 Sukkur-I whereby nomination form of the respondent No.1, was accepted. The appellant has not filed any objection before the Returning Officer however, he was available at the time of scrutiny and filed an application requesting that to hold the scrutiny of a candidate for any other day, his such request was not considered by the Returning Officer and nomination form of the respondent No.1, was accepted. Mr. Muhammad Haseeb Jamali, Advocate for appellant submit that on refusal to adjourn the scrutiny the appellant raised verbal objections even the same were not considered by the Returning Officer. His main objections against the nomination form are (a) that the candidate has concealed a valuable property being Flat No. 507 P-II measuring 1800 sq. ft on 5th floor of the Building named (SAVOY RESIDENCY) situated at Sector F-11/1, Islamabad, to which counsel for respondent No.1, submitted the copies of returns of FBR of the father of the candidate who himself is a candidate for the General Elections 2024 and submitted that the said property is of the father of candidate who already declared it in the all aforesaid documents by showing himself as owner purchased in the name of wife and daughter of the candidate who is his son. Since

the property has already been declared by the father of candidate to be his own, therefore, non-disclosure of such property by the candidate does not disqualify him. (b) that the candidate in his affidavit attached with the nomination form showed his one of his business named as “**AM-MJ Builders Pvt. Ltd**” and under such circumstance candidate being a Government Contractor is not eligible to contest the Election. Counsel for the respondent No.1 defended this objection and pointed out from the affidavit attached with the nomination form that it is not the business of the candidate however, he declared himself to be the secretary of that company, further from the documents filed on behalf of the appellant today alongwith the statement (List of shareholders & list of directors) of the said company pointed out that in both the lists name of the respondent No.1 does not appear. (c) that the candidate has not showed his expenditures incurred by him in the foreign tour as disclosed in the nomination form for which counsel for the respondent No.1, contended that all the foreign tours are declared by candidate as a business tours and the company has incurred all expenses, the respondent No.1 did not expend a single penny, therefore he has not mentioned such expenditure.

2. Learned counsel for the Election Commission of Pakistan has fully supported the impugned order. Learned DAG stated that if the appellant was appeared before the Returning Officer and filed an application for adjournment such was to be considered and scrutiny was to be adjourned to enable appellant to file objections. Counsel for respondent No.1, contended that the nomination form was submitted on 22.12.2023 however the scrutiny was fixed for 25.12.2023 and there was sufficient time for the candidates and the voters to file objections but the appellant has failed to file the same and the Returning Officer has no power under the Election Act, 2017 to adjourn the scrutiny process only on baseless application.

3. The objections raised by the appellant before this Appellate Tribunal were defended by the candidate very well, however if the same are not defended even then the same are to be resolved by way of recording evidence and such exercise cannot be undertaken in the summery proceedings. It is observed that the appeal is to be decided summarily in view of Section 63 (2) of the Election Act, 2017 as the

Election Tribunal has been constituted for a limited purpose in terms of Section 63 of Election Act, 2017 and is not an Election Tribunal form in terms of Section 140 of the Election Act, 2017. The difference is to be kept in mind, as any order of Election Tribunal in respect of allegation and, acceptance of nomination form cannot be equated with an order or decision/judgment of Election Tribunal constituted in Terms of Section 140 of the aforesaid Act, for deciding the Election Petition.

4. In the light of above, the returning officer has rightly accepted the nomination form of the respondent No.1, and the order passed by Returning Officer is hereby maintained. The appeal stands dismissed.

J U D G E