

BEFORE THE ELECTION APPELLATE TRIBUNAL FOR SINDH AT SUKKUR

Election Appeal No. S-09 of 2024

Imam Bux son of Haji Ihsanullah by caste Phulpoto

Adult, Muslim r/o Mohalla Bhurgari

Taluka and District Khairpur ----- Appellant

V E R S U S

1. Returning Officer, NA 202 Khairpur-I
The Additional Deputy Commissioner-I Khairpur
2. Election Commission of Pakistan, through its Secretary
Sector G-5/2 Constitution Avenue Islamabad
3. District Election Commissioner Khairpur
4. Federal Board of Revenue through Commissioner RTO Sukkur
Tax House Queens Road Sukkur
5. Federation of Pakistan through DAG
----- Respondents

Mr. Safdar Ali Bhatti, Advocate for appellant

Mr. Zeeshan Hyder, Law Officer, Election Commission of
Pakistan

Mr. Dareshani Ali Hyder 'Ada' DAG

Mr. Umair Ali Election Officer

Mr. Jawad Ali RO NA-202 Khairpur-I

Mr. Tahir Hussain Shah, Assistant Commissioner FBR

Date of hearing; 08.01.2024

Date of order; 08.01.2024

ORDER

Zulfiqar Ali Sangi J:- Through this Appeal, the appellant has challenged the impugned order dated 30.12.2023 passed by the Returning Officer NA-202 Khairpur-I, whereby his nomination form was rejected.

2. It is contended by the learned counsel for appellant that firstly on 25.12.2023 nomination form of the appellant was accepted and subsequently he was called and informed by the Returning Officer NA-202 Khairpur-I that income tax outstanding is against him and thereafter on 30.12.2023 on the that basis nomination form of appellant was rejected. He submits that appellant on his has filed appeal against outstanding before concerned authority of FBR and stay order was passed on 28.12.2023 in his favour inspite of that his nomination form was rejected.

3. Mr. Jawad Ali Returning Officer NA- 202 Khairpur-I is present and admits that initially on 25.12.2023 at the time of scrutiny he accepted the nomination form of appellant and on coming to his knowledge about the outstanding of FBR he called the appellant and asked him to pay outstanding amount of FBR and on his failure he rejected the nomination form of the appellant vide impugned order dated 30.12.2023. When Returning Officer was asked as to whether after accepting the nomination form he is competent to review his own order with the result of rejection to which he replied in **negative**. The learned DAG assisted by the Counsel of Election Commission are of same view that after acceptance of nomination form by the Returning Officer he himself cannot reject the same. The impugned order available at page No. 25, reflects that on the day of scrutiny it was accepted and the process of scrutiny was completed. It further reveals that on the order of acceptance the Returning Officer made scratch with pen and then passed impugned order by rejecting the nomination form which also admitted by him. In respect of outstanding of the Income Tax Department, Returning Officer admits that appellant produced copy of stay order before him and he on telephone verified it that it was passed on appeal of appellant, therefore, he was a view that appellant was defaulter and rejected the nomination form of appellant. Mr. Tahir Hussain Shah, Assistant Commissioner FBR is in attendance and submit that the appeal of appellant is pending before the Commissioner (Appels) Inland Revenue, Sukkur, RTO Sukkur and stay was granted till 17.01.2024 against the demand of FBR. Since the dispute of appellant in respect of demand made by Income Tax authorities is pending for adjudication and the same has not been decided finally. Under these circumstances, the Returning Officer was not competent to reject the nomination form.

4. In view of the above, this Election Appeal is allowed, the nomination form of appellant is accepted. The Returning Officer is directed to include the name of appellant in the list of contesting candidates as provided under the law.

J U D G E

M. Ali/steno