

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 58 of 2024

(*Abdul Basit Lund versus Federation of Pakistan & others*)

Present:

Mr. Muhammad Iqbal Kalhoro, J.
Mr. Arbab Ali Hakro, J.

Date of hearing : **17.01.2024**

Date of decision : **17.01.2024**

M/s Qurban Ali Malano and Israr Ahmed Shah, Advocates for petitioner.

M/s Khan Muhammad Sangi and Sikandar Sadar Siddiqui, Advocates have filed power on behalf of respondent No.5.

Mr. Zeeshan Haider Qureshi, Law Officer of Election Commission of Pakistan.

Mr. Dareshani Ali Haider 'Ada', Deputy Attorney General.

Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

ORDER

Muhammad Iqbal Kalhoro, J. – When respondent No.5 filed his nomination papers for Member Provincial Assembly from PS-19 (Ghotki-II) in the upcoming General Election to be held on 8th February 2024 before the Returning Officer concerned, petitioner filed objections to his candidature viz. (i) that he had not filed any receipt showing income tax paid on any of the property including agricultural land or details about his agricultural income during last three years as required, (ii) that he had failed to mention his past criminal record in his nomination papers and the fact that he is an absconder in Crime No.60/2021 U/S 324, 353 PPC of Police Station Mangli, District Sanghar, (iii) that he is a defaulter of Sindh Bank since last two years as he had obtained agricultural loan of Rs.3.5 million, which he did not disclose in his nomination papers so also the land which was mortgaged against the said loan, (iv) that he is a defaulter of SEPCO as Rs.9,47,530/- are outstanding against his father's property, which is inherited by him, and (v) that he has shown two bank accounts in the nomination papers but without any amount lying therein.

2. His objections were maintained by the Returning Officer who vide order dated 29.12.2023, on account of default in payment of loan amount of Rs.3.587 million in Sindh Bank, Ghotki, and failure to pay

Rs.1,21,831/- towards electricity charges, rejected his candidature. He filed an Election Appeal No. S-31 of 2024 before the Election Tribunal, which has been decided in his favour vide order dated 09.01.2024, on the ground that loan amount and liability have been cleared off by respondent No.5, hence there was no legal impediment against him to contest the election.

3. Learned Counsel for petitioner has submitted that respondent No.5 has filed a false affidavit available at Page 35 in support of his nomination papers declaring that no loan for an amount of Rs.2 million or more was obtained by him from any bank etc. On scrutiny, an amount of Rs.3.5 million was found outstanding against him, and it was only after the rejection of his nomination papers, respondent No.5 came forward to clear off the same and pay electricity charges. Therefore, he is not qualified to contest the election in view of scheme under Article 62 and 63 of the Constitution of Islamic Republic of Pakistan, 1973. He has relied upon the cases of Muhammad Naveed Yaseen v. Federation of Pakistan through Cabinet Secretary and another (PLD 2013 Lahore 493), Rashid v. Returning Officer, Nankana Sahib (PLD 2013 Lahore 509) and Hameed Akbar Khan v. Election Appellate Tribunal and others (PLD 2013 Lahore 548).

4. Learned Counsel for respondent No.5, however, has supported the impugned order and has submitted that in the nomination papers in "Form B" in the column of "Liabilities", respondent No.5 has clearly mentioned the loan amount of Rs.3.5 million, but since he was not aware that just because of some loan amount outstanding against him, he would be adjudicated as disqualified, he did not pay the same as it was a running finance. However, after rejection of his form by the Returning Officer, he deposited the same immediately as well as amount of electricity bill. The proceedings before the appellate forum is a continuation of proceedings before the Returning Officer, hence, he cannot be non-suited on the basis of defects which he has already remedied. He has relied upon the cases of Malik Muhammad Sameen Khan v. Returning Officer and others (2012 CLC 820), Amir Raza and another v. Provincial Election Commission through DEO and 5 others (2016 YLR 431), Khalid Ahmed Memon v. Deen Muhammad Talpur and 2 others (2016 MLD 1527), Syed Fida Hussain Shah v. Election Appellate Tribunal and others (PLD 2018 Lahore 788), Syed Shafqat Hussain Shah v. Returning Officer and another (2019 YLR 643) and

Imran Saeed Malik v. Appellate Authority/Cantt. Executive Officer and 3 others (2022 CLC 312).

5. Learned Counsel appearing for Election Commission has supported the order passed by the Returning Officer. Learned Deputy Attorney General and learned Assistant Advocate General Sindh have submitted that in terms of Section 62(9)(ii) of the Elections Act, 2017, the Returning Officer ought to have afforded an opportunity to respondent No.5 to remedy the defect, but in any case, during pendency of the appeal, a continuity of original proceeding, respondent No.5 has cleared off his liability of loan amount and paid the electricity charges, hence his form cannot be rejected.

6. We have heard the parties, perused material and sought guidance from the case law relied at bar. Section 62 of the Elections Act, 2017, provides for scheme to scrutinize objections of any voter of a constituency to the candidature of a candidate duly nominated for election of an Assembly by the Returning Officer within a certain period specified by the Election Commission. Clause (ii) of Proviso of Subsection (9) thereof provides that the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith.

7. Furthermore, Article 63(n) of the Constitution prescribes that a person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if he has obtained a loan for an amount of two million rupees or more, from any bank etc. in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off. Clause (o) states that he or his spouse or any of his dependents has defaulted in payment of government dues including utility expenses in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers.

8. There was/is no record that the loan amount obtained by respondent No.5 had remained unpaid for more than one year or the electricity charges against him were due for over six months. The fact of his being loanee or defaulter in payment of electricity dues were considered by the Returning Officer while rejecting nomination papers but without determining that whether the loan amount had remained

unpaid by him for more than one year or the utility charges for over six months.

9. Furthermore, respondent No.5, during pendency of the appeal, has cleared off his loan amount and paid electricity charges; hence, the impediment, which otherwise, might have been insurmountable for him to cross, has been washed away and simply just because of his previous loan and electricity charges, which he has otherwise made good of, he cannot be denied the right to contest the election.

10. The claim of petitioner that respondent No.5 had concealed fact of outstanding loan amount against him in his papers is factually incorrect as he, in his nomination papers in the column of “Liabilities”, has mentioned the above outstanding loan amount against him. So this is not even the case of concealment and non-declaration of assets held or liabilities outstanding against him, his spouse or his dependent children.

11. Next, the Clause (ii) of Proviso of Subsection (9) of Section 62 of the Elections Act, 2017 strongly posits a latitude approach by the Returning Officer in scrutinizing the nomination papers of a candidate with an object not to reject the same on any defect, which is not of a substantial nature and can be remedied immediately by the candidate. His strong-arm approach in rejecting form of respondent No.5 in haste was inherently defective and has rightly been remedied by the Election Tribunal.

12. We, therefore, do not find any illegality in the impugned order and **dismiss** the petition accordingly.

J U D G E

J U D G E

Abdul Basit