

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 55 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 Sindh Assembly from PS-19 (Ghotki-II) in the upcoming General Election to be held on 8th February 2024, petitioner, being a voter of the same constituency, raised four objections to his such attempt 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 not mentioned fact of his being absconder in Crime No.203/2021 U/S 324, 353 PPC of Police Station Shahdadpur and Crime No.60/2021 U/S 324, 353 PPC of Police Station Mangli, District Sanghar, (iii) that he has shown one bank account but without any amount lying therein, and (iv) that he was a proclaimed offender in Crime No.203/2021, registered at Police Station Shahdadpur, District Sanghar U/S 324, 353, 34 PPC.

2. His objections were entertained and decided by the Returning Officer vide order dated 30.12.2023, who rejected all except one i.e. respondent No.5 was a proclaimed offender in abovementioned case, and hence, he proceeded to reject his nomination papers. He filed an Election Appeal No. S-27 of 2024 before the Election Tribunal, which,

by impugned order dated 09.01.2024, has been accepted and the order of the Returning Officer set aside.

3. Learned Counsel for petitioner has argued that the fact that respondent No.5 was a proclaimed offender on the day of submitting nomination papers, which he had failed to mention in his form, is a sufficient disqualification disentitling him from contesting the upcoming election. His declaration in affidavit, supporting his nomination papers, disclosing that no criminal case was pending against him was false one making him ineligible under Article 63 of the Constitution of Islamic Republic of Pakistan, 1973, and hence, the impugned order passed by the Election Tribunal is bad in law and liable to be set aside. He has relied upon a judgment dated 16.03.2020 passed by this Court (Appellate Tribunal) in an **Election Appeal No.01 of 2020** (Re: Syed Noor Ali Shah v. District Election Commissioner, Tharparkar and others).

4. Learned Counsel for respondent No.5 has supported the impugned order and has relied upon the cases of Fahad Malik v. Mir Mumtaz Hussain Jakhriani and another (2008 CLC 457), Nadeem Sarwar v. Election Commission of Pakistan through Election Commissioner, Punjab and 3 others (2013 CLC 1481), Murad Bux v. Kareem Bux and others (2016 SCMR 2042), Syed Fida Hussain Shah v. Election Appellate Tribunal and others (PLD 2018 Lahore 788), Jam Zeeshan Ali v. Returning Officer and others (2022 CLC 119) and Zakir Hussain Khokhar v. Assistant Commissioner Tando Allahyar and 2 others (2023 CLC 723).

5. Learned Counsel appearing for Election Commission has, however, supported the order passed by the Returning Officer.

6. Learned Deputy Attorney General submits that the order passed by the Election Tribunal is spot on and does not suffer from any illegality. The fact that respondent No.5, after gaining knowledge of registration of FIR against him and his declaration as a proclaimed offender had appeared in the Court during pendency of his appeal before this Court, would wash away whatever disqualification he had at the time of submitting nomination papers and would make him eligible for contesting election.

7. Learned Assistant Advocate General Sindh has, however, supported the order of the Returning Officer.

8. We have heard parties, perused material and sought guidance from the case law relied upon. Section 62 of the Elections Act, 2017, provides for scheme for scrutinizing 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.

9. No doubt, as per report of SHO, Police Station Shahdadpur sought by the Returning Officer in response to objections of petitioner, it transpired that respondent No.5 was a proclaimed offender in a case, but he did not afford him an opportunity to remedy such defect and remove the objection against his candidature. The Returning Officer merely on coming to know of such fact proceeded to reject his candidature without realizing his duty cast upon him under the ibid provision of law.

10. On the other hand, respondent No.5, the record shows, as soon as came to know of such fact and rejection of his nomination papers, approached this Court by filing an application (Cr. Bail App. No. S-05 of 2024) for protective bail on 02.10.2024 in the same crime and offence and was given protective bail for five (05) days to appear before the trial Court. He, in compliance, appeared before the trial Court on 06.01.2024 and obtained ad-interim pre-arrest bail.

11. Article 63(h) of the Constitution stipulates 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, among other things, has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release. Obviously it is only the conviction in an offence involving moral turpitude that will undermine eligibility of a candidate to contest the election. Whereas, in the present case, respondent No.5 has not been convicted in any of the offences and is merely an accused in some offence, in which he was no doubt previously declared as a proclaimed offender. But as soon as he gained such knowledge appeared before the relevant Court and got bail. After

getting bail in the relevant crime and offence from the competent Court of law, the impediment, which otherwise, might have been insurmountable for him to cross, has been washed away and he, now simply just because of pendency of a criminal case, cannot be denied the right to contest the election.

12. Furthermore, the Clause (ii) of Proviso of Subsection (9) of Section 62 of the Elections Act, 2017 strongly posits a latitude approach to be taken 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 which 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.

13. 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