

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI,
CHIEF JUSTICE;

MR. JUSTICE ABDUL MOBEEN LAKHO

C.P. No. D-139 of 2024

Petitioner	Ehsan Ullah through M/s. S.M. Ehtesham, Muhammad Fahim Zia and Sayed Samiullah, Advocates
Respondents	through M/s. Irshad Ali, Asst: Advocate General Sindh and Saifullah, AAG.
Date of hearing	12.01.2024
Date of order	12.01.2024

ORDER

Abdul Mobeen Lakho, J. The Petitioner is aggrieved by the order dated 08.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No. 197 of 2024, wherein, the order passed by the Returning Officer rejecting the Nomination Paper of Petitioner on the ground that the seconder does not belong to the same constituency, dismissed the Election Appeal filed by the petitioner contesting the forthcoming election for P.S. 88.

2. Learned counsel for the Petitioner submits that the petitioner is law abiding citizen of the Pakistan and is residing at the above mentioned address since more than 30 years *whereas* proposer viz. Seconder namely Inayat ul Haq S / o Muhammad Gul is also resident of same area/constituency; the petitioner being candidate of Jamait-Ul-Ulama Islam from P.S. 88, Malir-V, submitted his Nomination Form Alif(A) before the office of the respondent where the petitioner fulfilled all the legal codal formalities of the respondents without fail and the

respondents submit the said Nomination Form; on 27-12-2023 the nomination of the Petitioner was rejected. That the seconder Mr. Inayatul Haq is the resident of the constituency along with his family/brothers of PS-88 since 1992 and he casted his Vote in local Body Election 2023 in the same constituency and he collected his data from the Message Portal of Election Commission of Pakistan through SMS on 13th July, 2023 at 11:25 AM which shows the same address of the seconder and the seconder never applied for transfer of his vote to any other area but due to the mistake of Election Commission of Pakistan the vote and electoral area has been changed negligence and *malafide* intentions of the respondents the petitioner has suffered and cannot contest the election until and unless the nomination form of the petitioner is accepted which otherwise is his fundamental right; the petitioner filed Election Appeal No.197/2024 before Election Appellate Tribunal Karachi against the order of the Returning Officer dated 27.12.2023 and the learned Tribunal dismissed the appeal vide impugned order; every citizen has equal rights and privileges as guaranteed by the Constitution of Islamic Republic of Pakistan, 1973, but in the present case the petitioner's appeal No.197/2024 was dismissed on the ground that the seconder does not belong to the same constituency whereas the petitioner was informed by respondent No.1 on portal of ECP that the name of the seconder is of the same constituency; there is no alternate speedy efficacious remedy is available to the petitioner, hence to invoke the constitutional jurisdiction of this court hence this petition.

3. Learned Asstt: A.G and A.A.G have opposed the contention of learned Counsel for the Petitioner and submitted that petitioner did not raise such plea before Returning Officer or Appellate Authority, provided under law, and for the first time, have raised such plea before this Court at a belated stage which otherwise is contrary to law and the judgments of the Hon'ble Supreme Court and full Bench decision of this High Court.

4. We have heard learned counsel for the Petitioner and perused the record and considered the relevant laws. In order to clarify the position, the findings reported in 2016 CLC 855 [ABDUL LATIF and others ...versus... The APPELLATE AUTHORITY FOR LOCAL COUNCILS KHAIRPUR and others] (authored by one of us Aqeel Ahmed Abbasi, J) is reproduced as under:

From perusal of above it is clear that the same are similar to provisions of Section 12 and 14 of the Representation of the People Act, 1976, whereas, said provisions have already been interpreted by a full bench of Lahore High Court in case of **Mudassar Qayyum Nagra versus Election Tribunal Punjab, Lahore, 2003 M L D 1089**, wherein, the learned judges of the full bench were pleased to hold as under:-

“8. Section 12(1) of the Representation of the People Act, 1976, provides that any elector of a constituency may propose or second the name of any duly qualified person to be a member of that constituency. Similarly, para.39 of the Manual of Instructions for the Guidance of the Returning Officers, issued by the Election Commission of Pakistan, provides that it is necessary that the person proposing or seconding the constituency must belong to that constituency and should be registered as elector in the electoral roll of any one of the electoral areas comprised in the constituency. Furthermore, law has taken into consideration the commission of such a mistake. Section 14(4) of the above said Act provides that a person may be nominated in the same constituency by five nomination papers. Similarly, para. 40 of the above said Manual of Instructions provides that a candidate may file five nomination papers from a constituency. Section 14(3)(b) of the Representation of the People Act, 1976, provides that the Returning Officer may reject the nomination papers if he is satisfied that the proposer or the seconder is not qualified to subscribe to the nomination paper. Similarly, section 14(3)(c) provides for the rejection of the nomination papers, if any provision of section 12 or section 13 has not been complied with.

9. The above mentioned shows that a person not belonging to the concerned constituency cannot be a proposer or a seconder and the nomination papers of a candidate are liable to be rejected if the proposers or the seconder are not qualified to subscribe to the nomination papers. Second proviso to section 14(3)(d) of the Representation of the People Act, 1976, provides that the Returning Officer can allow the removal of only those defects which are not of substantial nature. The unqualified proposer or the seconder leads to the rejection of nomination papers as provided in section 14(3)(b) and, therefore, such a defect cannot be held to be not of substantial nature because such a defect can be removed only by the substitution of a nomination paper and the law does not provide for the substitution of the proposers or the seconders and the safety valve has

been provided to the candidates by permitting them by filing up to five nomination papers.....

The above controversy has also been set at rest by the Hon'ble Supreme Court of Pakistan in the case of **Rana Muhammad Tajammal Hussain versus Rana Shaukat Mehmood reported as P L D 2007 Supreme Court 277**, wherein the Hon'ble Chief Justice of Pakistan i.e Justice Iftikhar Muhammad Chaudhry (as his lordship then was), while speaking for the bench, has decided the controversy in the following terms:-

“9. It has been pointed out hereinabove that the object of section 12(1) of the Act, 1976 is that elector of the constituency may propose or second the name of any duly qualified person as a candidate for election as a member for that constituency, clearly spells out the intention of the legislature. Therefore, keeping in view that intention of the legislature the word ‘may’ used in section 12(1) has to be read as ‘shall’ and on having held that the word ‘may’ can be interchanged with the word ‘shall’ to enhance the intention of the legislature, the candidate is bound and under mandatory obligation to ensure filing of nomination papers from the constituency duly proposed and seconded by the electors therefrom.....”

10. Thus it is held that the plea of the learned counsel for appellant that permission be accorded to him to substitute the names of the proposer and seconder, at this stage, seems to be not acceptable. Therefore, opinion expressed in the case of Ishaq Dar v. Election Tribunal (KLR 1998 Civil Cases 374) is not approved for the reasons mentioned herein above because of the fact that this provision of law is mandatory in its nature and would have substantial effect on the election for which schedule is to be announced and any nomination paper found invalid cannot be allowed to be validated afterwards, even in exercise of powers either by the Returning Officer or the Election Tribunal or for that matter High Court or this Court, in terms of section 14(1) (2) of the Act, 1976. A perusal of this provision also indicates that the powers of Returning Officer have been controlled for not rejecting the nomination papers on any defect which is not of substantial nature, whereas defect in any submitted nomination papers, duly proposed and seconded by a candidate, is of a substantial nature and provisions of sections 12 and 14 of the Act, 1976 are mandatory in nature.....”

Moreover, this bench has also decided the above controversy in in C.P. No. D-3627 of 2015, in the case of [Sultan Khan versus Federation of Pakistan and others], in the above terms, and in order to avoid repetition, it will be advantageous to reproduce the relevant portion of the order of this bench, which reads as under”-

“We have heard learned Counsel for the parties and perused the record. Admittedly, the proposer and seconder in the instant case in respect of the petitioner do not belong to Ward-6 for which petitioner is contesting the elections, whereas, the definition as given in Rule-2 of Sub-Rule (12) of Sindh Local Council (Election) Rules, 2015 talks about the electoral Units which in the instant case, admittedly is Ward-6, whereas, proposer and seconder of the petitioner are registered in Ward-7. We may observe the contentions of learned Counsel for the petitioner, wherein it has been stated that it was the duty of the Returning Officer to point out such defect at the time of scrutiny is misconceived, as it is the prime responsibility of each candidates contesting Election for a particular post to fill the nomination paper properly which shall be correct and complete in all respects, and shall be in conformity with relevant law and rules. The responsibility of the Returning Officer in terms of second proviso of Sub-Rule (3) of Rule-18, is limited only to the extent that if there is some minor defect or deficiency in the nomination form, then he may allow the candidate(s) to remove or cure such defect, however, any substantial defect or deficiency in nomination forms cannot be ignored or condoned by the Returning Officer at a subsequent stage, as it would deprive the contesting candidates of their substantial right who otherwise would have filed the proper nomination forms after complying with law and relevant rules within stipulated period. Moreover, we have already decided this issue relating to proposer and seconder and have already dismissed the petition No.D-3616 of 2015 in the case of Abdul Qadeer v. Federation of Pakistan & others, which facts have not been controverted by the learned Counsel for the parties. Accordingly, we do not find any substance in the instant petition, which is dismissed along with listed applications.”

In view of hereinabove facts and circumstances of above petition, and from perusal of the relevant law, rules, as well as the Judgment of Hon’ble Supreme Court, Full bench of Lahore High Court and the order of this Court, in above referred cases, we are of the considered opinion that the provisions relating to proposer and seconder of a candidate are mandatory in nature, therefore, the proposer and seconder of a candidate has to be of the same electoral unit (constituency) from which a candidate has filed his nomination paper and contesting elections, whereas, in case of any defect in the nomination paper in this account, the said defect is of substantial nature, which cannot be cured at subsequent stage, and the nomination papers found invalid on this account, cannot be allowed to be validated afterwards in exercise of powers either by the Returning Officer or Election Tribunal and for that matter, by High Court or Supreme Court. In view of herein above facts and circumstances of this case, and by respectfully following the ratio of

judgment of Hon'ble Supreme Court and full bench of Lahore High Court; and also the decision of this Court as referred to hereinabove, the above petition was dismissed

5. We vide our short order dated 12.01.2024 had dismissed this Petition and these are the reasons thereof.

J U D G E

CHIEF JUSTICE

Jamil