

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-140 of 2024

Petitioner	Asgher Hussain Manikia through Mr. Waseem Abbas, Advocate
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 06.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.74 of 2024, *wherein*, the order passed by the Returning Officer rejecting the Nomination Paper of Petitioner on the ground that the proposer does not belong to the same constituency which order was upheld while dismissing the Election Appeal filed by the petitioner who was contesting the forthcoming general election for NA-238.

2. Learned counsel for the Petitioner submits that the Petitioner above named is peaceful, law abiding citizen of Islamic Republic of Pakistan filing instant appeal before this Honorable Court through his Special Attorney; the Petitioner is residing at above-mentioned address and his General Electoral Area falls within the constituency of NA-238, Jamshed Quarters, Soldier Bazar, District East as per list of Constituency issued by the Election Commission of Pakistan; the Petitioner is independent Candidate and submitted his nomination papers for General Election 2024 for the Seat of National Assembly Sindh, Karachi; That, during scrutiny of nomination papers of Petitioner, the respondent No.1 rejected the nomination papers of Petitioner as the proposer is not

resident of the area, however the Petitioner is residing in same area since long as per CNIC address; the Petitioner is ready to change name of first proposer in lieu of Syed Ali Abbasi Zaidi S/o, Syed Zahoor Haider as Muhammad Abbas S/o, Syed Sha'ban Ali CNIC No: 42301-4600633-5, resident of Mudassar Terrace, Soldier Bazar No:2, Flat No: 302, Karachi; in fact the present Proposer is the voter of Soldier Bazar of same area and he casted his previous vote from the vicinity of Soldier Bazar; the impugned order dated 30.12.2023 passed by the respondent No.1 was erroneous and based on conjectures and surmises, which maintained by the Honorable Appellate Tribunal High Court Single Bench on 06.01.2024 in Election Appeal No: 74/2024; No legal objection was raised by any person / department / bank or authority against the Petitioner.

3. 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 Nhra 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

4. 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