

(21) (1)

IN THE HON'BLE HIGH COURT SINDH AT KARACHI

Constitution Petition No.D 126 / 2024

ABDUL JABBAR ARAIN
SON OF MUHAMMADAKRAM ARAIN LATE
Muslim Adult Holding CNIC
No. 41406-9184936-9
R/o House No. Nil
Near Custom Office mohallah
New Abadi Ghara Tehsil
Mirpur Sakro, District Thatta -----PETITIONER

Presented on 10-01-2024
[Signature]
Additional Registrar (Writ)

VERSUS

1. **THE RETURNING OFFICER,**
Taluk Ghorabari/
Returning Officer
PS-76 Thatta II,
DC Office Thatta.
2. **THE ELECTION COMMISSION OF PAKISTAN,**
Through Its Secretary,
Constitution Avenue, G-5/2
Islamabad.
3. **PROVINCIAL ELECTION COMMISSION OF SINDH**
Having office at Pakistan Secretariat
Block No. 44 -A Shahrah-e-Iraq
Near Saddar Karachi
4. **The Learned Election**
Appellate Tribunal Sindh,
At Karachi -----RESPONDENTS

CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

Being aggrieved and dissatisfied with the impugned Order dated 08-01-2024 passed by the learned Election Petitioner Tribunal Sindh at Karachi bearing Election Appeal No. 31/2024 / Respondent No.4 dismissed the appeal filed by the petitioner against the respondent No. 1 to 3.

It is therefore prayed to this Honourable Court would be pleased to set aside the impugned Order Dated 08-01-2024, as considering the following facts and grounds:-

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-126 of 2024

(9)

Date

Order With Signature Of Judge

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi, CJ
 Mr. Justice Abdul Mobeen Lakho, J

For orders as to non-prosecution

15.01.2024.

Mr. Muhammad Abrar Arain, advocate for petitioner.
 M/s. Muhammad Haseeb Jamali and
 Muzammil Hussain Jilbani, advocate for objector.
 Mr. Irshad Ali, Assistant Attorney General.
 Mr. Saifullah, Assistant Advocate General, Sindh.
 Mr. Abdullah Hinjrah, Assistant Director of
 Election Commission of Pakistan and Khadim Hussain, ARO.

ORDER

AQEEL AHMED ABBASI, CJ: Instant petition has been filed against the order passed by the Returning Officer/Assistant Commissioner, Taluka Ghorabari, PS-76, Thatta-II on 26.12.2023, whereby according to learned counsel for petitioner on four grounds mentioned therein, the nomination of the petitioner has been rejected, whereafter the petitioner filed Election Appeal bearing No.31 of 2024 before the Election Appellate Tribunal, Sindh, who has been pleased to dismiss such appeal vide order dated 08.01.2024, which has been impugned through instant petition. According to learned counsel for the petitioner, all the four grounds as reflected in the order of Returning Officer are based on the objections, which are misconceived and contrary to the record, as according to learned counsel for the petitioner, all the assets/liabilities have been disclosed in the Nomination Form and candidate's affidavit wherein statement of assets duly supported by all the assets including two vehicles and the gold, etc. have been disclosed, whereas, nothing has been concealed. Whereas, the petitioner has not been confronted with any document, whatsoever relating to alleged business in the name of Roshan Goods Transport Company, Gharo. According to learned counsel, while opening the bank account, it was shown as mailing address only, which fact has duly been verified by Account Maintenance

(Signature)

Certificate, issued by the Bank, available at page 143, Annexure-F. It is further contended by learned counsel for the petitioner that as regards the alleged mobile shop in the name of A. Jabbar Mobile Shop, Gharo, the said shop is not owned by petitioner, as it is a rented premises, therefore, it is not an asset of the petitioner, hence the same has not been declared in Assets Declaration Form. It is further contended by learned counsel for the petitioner that the Returning Officer had given the date of scrutiny to the petitioner for 27.12.2023 between 08:30 a.m. to 04:00 p.m., however, the impugned order was passed on 26.12.2023 with malafide intention, however, without providing any opportunity of being heard to the petitioner, nor the petitioner was ever confronted with the aforesaid objections, which are otherwise curable. Learned counsel for the petitioner submits that the impugned order passed by the Election Appellate Tribunal in this regard is also based on misreading of facts and the law, as neither there has been any concealment of fact by the petitioner, nor there is violation of Elections Laws. Learned counsel for the petitioner further submits that the petitioner has also given the details of last three years tax returns alongwith income and tax paid thereon, however, since no objection was raised by the Returning Officer to this effect, therefore, the Election Appellate Tribunal was not justified to record any contrary finding thereon, without confronting the petitioner to enable him to rebut such objection, which was not raised by the Returning Officer, so that, the petitioner could produce such record, which otherwise has already been disclosed in the Assets Declaration Form.

While confronted with hereinabove factual position as stated by learned counsel for the petitioner, Mr. Abdullah Hinjrah, Assistant Director of Election Commission of Pakistan duly assisted by Khadim Hussain, Assistant Returning Officer could not submit any reasonable explanation to support the impugned orders, however, Mr. Muhammad Haseeb Jamali, representing the objector, namely, Ghulam Sarwar submits that since it was the requirement of law to attach three years tax returns, therefore, the nomination papers of the petitioner could not otherwise be accepted.

Learned AAG, however, has candidly referred to the provisions of Section 62(9)(d)(ii) of the Elections Act, 2017, which reads as follows:-

“62. Scrutiny.— (1)

(F)

(9) Subject to this section, the Returning Officer may, on either of his own motion or upon an objection, conduct a summary enquiry and may reject a nomination paper if he is satisfied that__

(a)-----

(b)-----

(c)-----

(d) the signature of the proposer or the seconder is not genuine:

(i)-----

(ii) 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, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.”

Learned AAG submits that the Returning Officer was under legal obligation to allow the candidate to remedy the curable defect, which in the instant case has not been done, therefore, the orders passed by the Returning Officer and the Election Appellate Tribunal in this regard, have no legal support.

Heard the learned counsel for the parties and perused the material available on record and the relevant law with their assistance which reflects that *prima facie*, there seems no concealment of fact by the petitioner, whereas, the defect as indicated by the Returning Officer in the order, which otherwise has been passed prior to the date of scrutiny without providing opportunity of being heard to the petitioner, creates doubts as to bonafide on the part of the Returning Officer, whereas, the right of the petitioner to remedy the defects, if any, has been denied. Moreover, the alleged defects are otherwise misconceived and contrary to the facts. The order passed by the Returning Officer, under the facts and circumstances of the case, is without any factual and legal basis. Similarly, the impugned order of Election Appellate Tribunal is also not based on the facts and circumstances of the instant case. Whereas, it has come on record that no concealment of facts by the petitioner has been made. However, with regard to objection of not attaching the tax return is concerned, we have observed that the


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petitioner has disclosed the last three years income and the tax paid t hereon and in case of non-availability of the copies of the tax returns alongwith nomination papers, the Returning Officer was under legal duty to call for such papers by providing opportunity to the petitioner to remedy the shortcoming, which exercise has not been undertaken by the Returning Officer. In view of the above facts and circumstances of the case, we allow instant petition by setting aside both the orders dated 08.01.2024 passed by the learned Election Appellate Tribunal and the order dated 26.12.2023, passed by the Returning Officer. However, the petitioner may deposit the copies of the tax returns not appended alongwith nomination papers within three days before the Returning Officer from the date of receipt of copy of this order.

Petition stands allowed in the above terms alongwith listed application.




JUDGE


CHIEF JUSTICE

HANIF/FARHAN