

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 80 of 2024

(Masroor Ali Chandio versus Shah Nawaz Jatoi & others)

Fresh case

1. For orders on office objections at Flag-A
2. For orders on CMA No.335/2024 (Ex./A)
3. For hearing of main case

Present:

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

Date of hearing : **01.02.2024**

Date of decision : **01.02.2024**

Mr. Nisar Ahmed Bhanbhro, Advocate for petitioner.
Mr. Ravi R. Pinjani, Advocate for respondent No.1.

ORDER

Muhammad Iqbal Kalhoro, J. – Petitioner has challenged candidature of respondent No.1 to contest election as a Member Provincial Assembly from PS-34, Naushahro Feroze-III, on the ground that his nomination papers to contest election on PS-35, Naushahro Feroze-IV, on objections of one Saadat Ali were accepted by the relevant Returning Officer. The said Saadat Ali preferred an Election Appeal No.15 of 2024 before the Election Tribunal, which was dismissed. He then filed a Constitutional Petition No. D-51 of 2024 before this Court against such order, which was allowed vide order dated 17.01.2024, and the nomination papers of respondent No.1 for PS-35, Naushahro Feroze were rejected. Therefore, acceptance of nomination papers of respondent No.1 on PS-34, Naushahro Feroze-III is not sustainable under the law.

2. During arguments, it has transpired that petitioner neither filed any objection against the nomination papers of respondent No.1 before the Returning Officer on the above ground in terms of Section 62 of the Elections Act, 2017 (**'the Act'**), nor he challenged his candidature before the Election Tribunal in terms of Section 63 of the Act, and has directly filed this petition.

3. Learned Counsel, who has appeared voluntarily on behalf of respondent No.1, submits that Sections 112 and 113 of the Act also provide same scheme, and the only remedy, which is available to the petitioner is under Section 156 of the Act in post-election proceedings, where the petitioner can agitate the same ground for seeking declaration of election of respondent No.1, if succeeds, to be void on any ground including that nomination is invalid or he is not qualified. Relying upon a case law reported as Muhammad Nawazish Ali Pirzada v. Election Commission of Pakistan and 6 others (PLD 2018 Lahore 318), he prays for dismissal of this petition.

4. Perusal of Section 62 of the Act reveals that any voter of a constituency may file objections to the candidature of a candidate of that constituency who has been nominated or whose name has been included in the party list submitted by a political party for election to an Assembly before the Returning Officer within the period specified by the Commission for the scrutiny of nomination papers of a candidate contesting election to an Assembly. Similarly, Section 63 provides that a candidate or the objector may, within the time specified by the Commission, file an appeal against the decision of the Returning Officer rejecting or accepting a nomination paper to an Appellate Tribunal constituted for the constituency by the Commission.

5. In this case, it has been observed that petitioner has directly approached this Court without exhausting both the above remedies. This petition is, therefore, not maintainable, and is accordingly **dismissed in limine** along with listed application.

J U D G E

J U D G E

Abdul Basit