

IN THE HIGH COURT OF SINDH AT KARACHI  
**C.P.No.D-402 OF 2024**

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Date

Order with Signature of Judge

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PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI, CJ**

**MR. JUSTICE ABDUL MOBEEN LAKHO, J**

*Amjad Iqbal Afridi.....Vs.....Provincial Election  
Commissioner &  
another*

**Date of Hearing 24-01-2024.**

Ms.Samreen Ali Rizvi, Advocate for the Petitioner.

Mr.Saifullah, A.A.G.

Mr.Abdullah Hanjrah, Deputy Director (Law), and Mr.Sarmad Sarwar, Assistant Director (Law), E.C.P. are present in person.

Ms.Kanwal Kausar, Returning Officer NA-242 is present in person.

**ORDER**

**ABDUL MOBEEN LAKHO, J:** Through instant petition, the petitioner has prayed as under:-

- (1) To declare that the act of the respondents to delist the petitioner from NA-242 without his consent and permission and without adopting due legal and codal formalities / procedure is illegal, unlawful, unwarranted and of no legal effect in the eye of law.
- (2) To direct the respondent No.1 and 2 to approve the nomination paper of the petitioner from NA-242, District Keamari, Karachi and allow him to contest the election from the said constituency.
- (3) To declare that the order for withdrawal of the nomination paper of the petitioner issued by the respondent No.2 as null and void ab initio and cancel the same.

(4) To direct the respondent No.2 to accept/approve the Nomination paper of the petitioner from the constituency of NA-242.

2. Brief facts of the case as narrated in the memo of petition are that the petitioner filed his nomination papers for constituency of NA-242 before the Respondent No.2, which was accepted, however, since the petitioner was busy in looking after his ailing father, who was hospitalized, he was shocked to know the fact that his nomination papers from the said constituency were withdrawn by someone without his consent or permission. Thereafter, on 13.01.2024 the petitioner submitted an application for approval of his nomination papers from the said constituency of NA-242 and further requested that verification of the signature and thumb impression be made from the application for withdrawal of the said nomination papers, but no action has been taken by the Respondent No.2, therefore, the petitioner has approached this Court.

3. Learned counsel for the petitioner submitted that the petitioner has never submitted any application nor appeared before the Respondent No.2 for withdrawal of his nomination papers. He further argued that the Respondent No.2 has also failed to produce any record to this effect. Learned counsel further argued that the nomination paper of the petitioner was earlier rejected, but thereafter, approved and the same has been shown as withdrawn by the Respondent No.2, which clearly shows malafide on the part of the respondents to refrain the petitioner from contesting the general elections. Learned counsel for the petitioner further argued that the fundamental rights of the petitioner and general public are being violated and the act of the respondents to refrain the petitioner from contesting the election from the said constituency is illegal and unlawful as well as misuse of their powers.

4. Pursuant to Court's notice, the Returning Officer NA-242 (Respondent No.2) has shown appearance and submitted her comments, which are taken on record and copy supplied to learned counsel for the petitioner. The Returning Officer submits that the petitioner filed withdrawal application after acceptance of his nomination papers, whereas, no application or documentary evidence stating any ailment of petitioner's father was produced, whereas, the signature and writing of the petitioner on nomination paper and on all affidavits are same. It is further stated by the Respondent No.2 that the petitioner has falsely accused the respondents and may be punished under Section 173(c) of the Elections Act, 2017.

5. We have heard the learned counsel for the parties, perused the material available on record. Section 65 of the Elections Act, 2017, which deals with withdrawal of nomination papers by a candidate is reproduced as under:-

**“65. Withdrawal:-** (1) A validly nominated candidate may, by notice in writing signed by him and delivered to the Returning Officer on or before the withdrawal date either by the candidate himself or by an advocate authorized in writing by the candidate, withdraw his candidature.

**Explanation:-** Authorization in favour of an advocate shall be attested by a Notary appointed under the Notaries Ordinance 1961 (XIX of 1961) or an Oath Commissioner appointed under the Oaths Act, 1873 (X of 1873) or a Government servant in basic pay scale 17 and above.

(2) A notice of withdrawal under sub-section (1) shall, in no circumstances, be open to recall or cancellation.

(3) On receiving a notice of withdrawal under sub-section (1), the Returning Officer shall, if he is satisfied that the signature on the notice is that of the candidate, cause a copy of the notice to be affixed at a conspicuous place in his office.”

As per list of validly nominated candidates issued on 11.01.2024 the petitioner's nomination paper was accepted, but the very next date an application for withdrawal of nomination paper was filed by the petitioner, therefore, as per procedure under Section 65 of the Elections Act, 2017 the said application was allowed by the Returning Officer (Respondent No.2). During course of arguments, original application for withdrawal was produced before petitioner's counsel, who cannot controvert the fact that writing and the signature on the application are same. The instant petition seems to be an afterthought, as the same was filed after 10 days of acceptance of the withdrawal application. It is settled law that any deliberate omission or default, which is of substantial nature and not curable, cannot be allowed to be validated at a subsequent stage, whereas, nothing has been produced on record by the petitioner to deny such fact.

6. In view of the above facts and circumstances, instant petition was dismissed along with listed application vide our short order dated 24.01.2024 and these are the reasons thereof.

Judge

Chief Justice