

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-218 OF 2024

Date

Order with Signature of Judge

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ

MR. JUSTICE ABDUL MOBEEN LAKHO, J

***Nek Muhammad Brohi.....Vs.....Election Commission
of Pakistan & another***

Date of Hearing 25-01-2024.

Mr.Abdul Wahab Baloch, Advocate for the Petitioner.

Mr.Saifullah, A.A.G.

M/s.Riaz Ahmed, Director (Law), and Sarmad Sarwar, Assistant Director (Law), Election Commission of Pakistan are present in person.

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.19 of 2024, *whereby*, the order dated 28.12.2023 passed by the Returning Officer PS-60 rejecting the nomination papers of the petitioner was upheld.

2. Brief facts of the petition are that the petitioner filed Nomination Papers for contesting in the upcoming General Election of 2024 from PS-60, but his nomination papers were rejected on the ground that the petitioner has concealed the fact that he is proclaimed offender in Crime No.57/2006 registered at P.S. Hatri, District Hyderabad, as declared by the Court of Additional Sessions Judge, Hyderabad vide Judgment dated 24.04.2012 and he has also concealed the fact in respect of the company and maintaining Bank account in J.S. Bank.

3. Learned counsel for the petitioner argued that at the time of filing of nomination papers the petitioner was not aware about the case, whereas, he for the first time came to know about the criminal cases on the date of scrutiny. Learned counsel for the petitioner further argued that the petitioner requested the Returning Officer for grant of time to obtain bail, which request of the petitioner was not allowed by the Returning Officer. Learned counsel further submits that as far as proprietorship of M/s.DM Brothers Construction and Advertisement Company is concerned, the said business was old one and the

same has been already closed down in 2018, for this reason, petitioner did not mention this fact in his nomination papers. Learned counsel for the petitioner further argued that there is no any legal objection raised by any person / Bank or authority against the petitioner. Learned counsel for the petitioner submits that orders passed by learned Election Appellate Tribunal as well as Returning Officer PS-60 may be set-aside, as the same have been passed in hasty manner and without taking the law into consideration and rejection of nomination papers of the petitioner is a clear violation of Article 10-A of the Constitution.

4. We have heard the learned counsel for the parties, perused the material available on record and considered the submissions made by the parties. At the very outset, learned counsel for the petitioner was asked whether the petitioner has succeeded in obtaining bail in Crime No.57/2006, registered at P.S. Hatri, Hyderabad from the concerned Court of law, he submits that he has filed copy of Order dated 29.12.2023 (copy of order is available at page 223 Annexure-C of the Court file). passed by 2nd Additional Sessions Judge, Hyderabad in *Cr.Bail Application No.3650/2023 (Nek Muhammad s/o Muhammad Brohi.....v/s.....The State)* in which interim-pre-arrest bail was granted to the petitioner with the directions to appear before the Investigating Officer and cooperate in the investigation and appear before the concerned Court on the date of hearing. Reference in this regard can be made to a recent pronouncement by Hon'ble Supreme Court of Pakistan in the case of **Umar Aslam Khan.....v/s.....Election Commission of Pakistan etc. (Civil Petition No.159 of 2024)**, where it has been held that *“Since there is no provision either in the Constitution or in the Elections Act that makes a proclaimed offender disqualified from contesting the election, the courts cannot on their own create such additional disqualification, without any backing of the law. Further, in this particular case, the petitioner was declared a proclaimed offender in criminal case FIR No. 231/23 registered at Police Station, Khushab. However, he obtained a protective bail in the said case by surrendering himself to the court; he, therefore, cannot be considered a proclaimed offender. We may point out that Article 62 (1) (d), (e), (f) and (g) has been recently declared by this Court, in Civil Appeal No. 982 of 2018 etc titled Hamza Rasheed Khan v. Election Appellate Tribunal & Others, not to be self-executory and to serve as guidelines for the voters in exercising their right to vote, hence even being a proclaimed offender does not attract the disqualification under the said provisions.”*

5. In view of the above facts and circumstances, the impugned order dated 06.01.2024 is set-aside and the petitioner is allowed to contest the forthcoming election and his nomination paper shall be accepted subject to any challenge subsequently brought to bear against him in the second round of litigation after election on ground of disqualification, non-disclosure or any other valid basis for objection in the event that he is successful in being elected.

6. We vide our short order dated 25.01.2024 had allowed instant petition and these are the reasons thereof.

Judge

Chief Justice

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