

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi, CJ

Mr. Justice Abdul Mobeen Lakho, J

C.P. No.D-164 of 2024

Date

Order with signature of Judge

FRESH CASE:

1. For order on office objection.
2. For hearing of CMA No.792/2024.
3. For hearing of main case.

Dated; 16th January 2024

Mr. Muhammad Aqil Zaidi, Advocate for Petitioner.

Mr. Saifullah, Asst. Advocate-General, Sindh.

Mr. Abdullah Hanjrah, Deputy Director (Law), Provincial
Election Commission of Pakistan.

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Through instant Constitutional Petition, the petitioner has challenged the order dated 30.12.2023 passed by the Returning Officer, whereby, the nomination of petitioner was rejected mainly on the ground that one person submitted an application alongwith copy of FIR No.795/2023 against the petitioner, which according to learned counsel for petitioner, has been upheld by the Election Appellate Tribunal vide order dated 09.01.2024, however, without examining the facts and the relevant law applicable to the case of petitioner, who was not provided any opportunity to cure the defects, if any, at the time of scrutiny of the nomination form.

According to learned counsel for the petitioner, the allegation of registration of aforesaid FIR against the petitioner has neither been confronted with the petitioner, nor there is FIR registered against him. Per learned counsel, no valid reason has been disclosed in the impugned order dated 30.12.2023 passed by the Returning Officer. Learned counsel for the petitioner further submits that the petitioner's

nomination form is otherwise complete in all respect, whereas, nothing has been concealed, however, on frivolous ground of extreme action nomination of the petitioner has been rejected. Per learned counsel, Election Appellate Tribunal has also not examined the fact and the law applicable to the case of petitioner, therefore, both the orders impugned through instant petition are violative of law.

Notices were issued to the respondents, pursuant to which Mr. Abdullah Hanjrah, Deputy Director (Law), Provincial Election Commission of Pakistan has shown appearance and has supported the impugned order dated 30.12.2023 and submits that since the correct particulars were not given in the nomination form, therefore, same has been rightly rejected.

Mr. Saifullah, learned Asst. Advocate-General, Sindh after perusal of the record has candidly submitted that prima facie it appears that the ground as reflected in the impugned order passed by the Returning Officer has neither substantiated, nor pointed out any defect, which is not curable and could have been remedied at the time of scrutiny in terms of Section 62(9)(d)(ii) of the Elections Act, 2017.

Heard the learned counsel for the parties and perused the record of this case with their assistance, which prima facie reflects that the Returning Officer has not pointed out the nature of defects, which appears to have been provided any opportunity of being heard to the petitioner at the time of scrutiny of nomination form to explain his position. It further transpires that no valid reason has been disclosed in the impugned order dated 30.12.2023 passed by the Returning Officer. There seems no element of concealment, particularly when the petitioner has disclosed all facts in the nomination form. Moreover,

nomination form even otherwise appears to be in order, as no objection to this effect has been raised from any quarters.

In the circumstances, we are of the opinion that Returning Officer has not followed the mandate of law as reflected in Sub-Section (9), sub-clause (d)(ii) of Section 62 of the Elections Act, 2017, which reads as follows: -

62. Scrutiny

(9)

(d)

(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 candidates or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.

Accordingly, by following the dicta laid down by this Court in the case of **AITBAR and another v. PROVINCIAL ELECTION COMMISSIONER through DEO District N/Feroz and 5 others [2017 CLC NOTE 179]**, while setting aside the impugned orders instant Constitutional Petition is allowed.

CHIEF JUSTICE

JUDGE