

APPELLATE TRIBUNAL FOR ELECTION TO SENATE
AT HIGH COURT OF SINDH, KARACHI

Election Appeal No. 263 of 2024

Appellant : Muhammad Najeeb Haroon son of Muhammad Maoon ur Rashid, through Khawaja Arslan Rauf, Advocate.

Respondents 1-2 : Provincial Election Commissioner Sindh/Returning Officer for Senate Election and Election Commission of Pakistan through Ms. Alizeh Bashir, Assistant Attorney General for Pakistan alongwith Mr. Shaqurt Rasool, Assistant Director (Law), Election Commission of Pakistan, Karachi.

Date of hearing : 25-03-2024

Date of order : 25-03-2024

ORDER

Adnan Iqbal Chaudhry J. - The Appellant submitted nomination papers for election to the general seat in the Senate for the Province of Sindh, but his nomination paper was rejected by the Returning Officer [RO] vide order dated 19-03-2024; hence this appeal under section 113 of the Election Act, 2017.

2. The two grounds taken by the RO for rejecting the nomination papers are as follows:

"In response, report received from State Bank of Pakistan. Wherein it was revealed that an amount of Rs.87,14,07,398 (Eighty Seven Crore Fourteen Lac Seven Thousand Three Hundred Ninety Eight Only) is overdue against Muhammad Najeeb Haroon being a Director of M/s. Principal Developers Pvt. Ltd. Furthermore, the Federal Board of Revenue has also intimated an outstanding tax demand of Rs.5,90,49,622 (Five Crore Ninety Lac Forty Nine Thousand Six Hundred Twenty Two Only) against Muhammad Najeeb Haroon. The candidate was provided an opportunity and was given time till 3:00 P.M. (closing time) on the following day i.e. 19.03.2024 to settle the overdue payments with Bank Al-Habib and Federal Board of Revenue and submit clearance certificates to that affect but the candidate failed to produce the same till last date of scrutiny and the closing hours today i.e. 19.03.2024.

Therefore, as per material available on record and in purview of Article-63 (n),(o) Muhammad Najeeb Haroon is not qualified to be a candidate for the Senate Elections. Hence, the nomination papers of Muhammad Najeeb Haroon candidate for Senate against the general seat from Sindh Province are hereby rejected."

3. Heard learned counsel and perused the record.
4. The document relied upon by the RO to conclude that Principal Developers (Pvt.) Ltd. is in default of a bank loan, is a report of the Credit Information Bureau [CIB] of the State Bank of Pakistan. Though that report shows Rs. 871,407,398/- to be the liability of said Company to a bank, it classifies that liability as "*overdue past 90 days < 365 days*". Thus, the liability accrued less than a year ago, whereas the disqualification under Article 63(1)(n) of the Constitution is attracted when the loan remains unpaid for more than one year.
5. The other aspect of the matter is that Form 'A' of Principal Developers (Pvt.) Ltd. shows the Appellant as 40% shareholder, not the controlling shareholder. In somewhat similar circumstances a Full Bench of the Lahore High Court held in *Muhammad Athar Maqbool v. Returning Officer* (2013 CLC 1068) that it cannot be said that the loan obtained by the company was a loan by the candidate for himself. The case of *Sardar Sarfaraz Ahmed Cheema v. Returning Officer* (2013 CLC 1088) cited by learned counsel for the Appellant also takes the same view. The learned Assistant Attorney General had pointed out that the other shareholders of the company are the sons of the Appellant. But that *ipso facto* does not make the Appellant controlling shareholder as there is no evidence to suggest that the sons are his dependents.

Consequently, the disqualification under Article 63(1)(n) of the Constitution was not attracted to the case.

6. As regards the other ground *viz.* of the Appellant's tax liability, learned counsel draws attention to the fact that the order dated 11-09-2023 passed by the Commissioner (Appeal-IV) upholding such liability is under appeal before the Appellant Tribunal, Inland

Revenue, Karachi [ATIR] *vide* Income Tax Appeal No. 3286/KB-2023. There is force in the submission that until the statutory appeal is exhausted, the liability is not 'final'. Be that as it may, at the request of learned counsel for the Appellant, he was provided a few hours to produce copies of orders he claimed to have been passed by the Commissioner Appeal earlier and then by the ATIR to stay recovery of tax. Though an order of the ATIR is produced, it appears to have been passed only today. Nonetheless, it is difficult to ignore the same when the definition of 'tax' in section 2(xxxviii) of the Election Act, 2017 does not include a tax the recovery of which has been stayed by a court or tribunal. Therefore, for the present, it would be unsafe to disqualify the Appellant under Article 63(1)(o) of the Constitution.

7. In view of the foregoing, the appeal is allowed and the order dated 19-03-2024 passed by the RO against the Appellant is set-aside. This order shall be communicated to the RO forthwith for the purpose of Rule 100(6) of the Election Rules, 2017.

SHABAN*

JUDGE