

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-309 OF 2024

Date

Order with Signature of Judge

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ

MR. JUSTICE ABDUL MOBEEN LAKHO, J

Aijazuddin.....Vs.....*Chief Election
Commissioner
& others*

DATE OF HEARING 23-01-2024.

Mr.Irfan Aziz, Advocate a/w 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.

Mr.Sajjad Pervez, Returning Officer PS-101, Karachi East is 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.36 of 2024, whereby, the Order dated 30.12.2023 passed by Returning Officer PS-101 rejecting the nomination papers of the petitioner was upheld.

2. According to learned counsel for the petitioner, the petitioner filed nomination papers to contest the forthcoming elections from the constituency of PS-101, Karachi East, but the Returning Officer rejected nomination papers of the petitioner on the ground that the nomination form was not properly filled in, as the name of the proposer and seconder written instead of candidate and signatures of both the proposer and seconder did not match with their CNICs as well as affidavit was not properly filled. Learned counsel for the petitioner argued that due to mistake the name of proposer was mentioned in Form A instead of candidate. He further argued that the proposer and seconder were ready to appear for checking and verification of their

signatures, but the Returning Officer did not provide opportunity for curing the aforesaid minor defects, even otherwise, the case of the petitioner is not covered under the disqualification clause under Section 99(1A) of the Representation Peoples Act, 1976. Learned counsel for the petitioner further argued that the Returning Officer as well as learned Election Appellate Tribunal have not correctly followed the law and passed the impugned orders. He further argued that the minor errors in the nomination form, which were not substantial in nature can be cured at the time of scrutiny, but the petitioner was not allowed to cure the same, for which applications were also filed before the Returning Officer. Learned counsel for the petitioner further argued that the orders passed by Returning Officer as well as learned Election Appellate Tribunal are without application of judicial mind and without taking into account the blatant and malafide discrepancies and tangible evidence produced before them. Learned counsel for the petitioner argued that the petitioner may not be disfranchised or prevented from contesting elections, which is fundamental right of every citizen.

3. We have heard the learned counsel for the parties, perused the material available on record and also considered the submissions and the case law cited by them at bar. It is settled law that a candidate who intends to contest elections is required to submit complete and correct Nomination Papers along with annexures as required under relevant law and rules, whereas, any deliberate omission or default, which is of **substantial nature** and **not curable**, cannot be allowed to be validated at a subsequent stage. However, in the instant case, the concerned Returning Officer as well as learned Election Appellate Tribunal have not taken the cognizance of the matter that there is no dishonest intent behind the mistakes, which were due to inadvertence and not intentional, therefore, we are of the opinion that no material concealment or mis-statement in the nomination papers has been established. Moreover, the issue relating to assets or its declaration under different laws, including Income Tax laws and Elections laws, requires careful examination and determination by the competent forum under the relevant law.

Reference in this regard can be made in the case of ***Aitbar and another.....Vs.....Provincial Election Commission through DEO, District N'Feroze, through A.A.G. Sindh & others [(2017 ClC Note 179 Sindh (Sukkur Bench))***

4. In view of the above facts and circumstances, both the impugned orders dated 30.12.2023 and 06.01.2024 are set-aside. 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.

5. We vide our short order dated 23.01.2024 had allowed instant petition and these are the reasons thereof.

Judge

Chief Justice