

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN
JUDICIAL DEPARTMENT**

W. P. No.4216 of 2024

Sirdar Muhammad Umer Khan Khosa

Versus

Election Commission of Pakistan, Islamabad & others

JUDGMENT

Date of hearing: 04.04.2024.

Petitioner by: Mr. Mubeen-ud-Din Qazi, Advocate.

Respondents by: Mr. Muhammad Asad, Political Assistant / Returning Officer, PP-290, D.G. Khan-V. M/s. Tahir Mehmood and Fayaz Hussain Khan Laghari, Advocates for respondents No.3 & 7.

Mr. Muzaffar Hussain, Advocate for respondent-Election Commission of Pakistan.

Mr. Kashif Nadeem Malik, Assistant Attorney General.

MUHAMMAD SAJID MEHMOOD SETHI, J.-

Through instant petition, petitioner (Sirdar Muhammad Umer Khan Khosa) has assailed order dated 21.03.2024, passed by the Returning Officer and judgment dated 27.03.2024, passed by learned Election Tribunal, respectively, whereby his nomination papers for the constituency PP-290, D.G. Khan-V were rejected on the grounds of non-submission of requisite NOCs and attachment of transcript of petitioner's brother, concurrently.

2. Learned counsel for petitioner submits that the Returning Officer is empowered to ask for requisite NOCs from concerned departments even if the same are not attached with the nomination papers but the needful was not done. He adds that petitioner furnished the NOCs before the date of scrutiny of the nominations papers, however the same were discarded without any lawful justification. He alleges that transcript of petitioner's

brother was detached from the nomination papers of his brother and included in the nomination papers of petitioner making a ground for rejection of nomination papers mala fide, however argues that petitioner's nomination papers were liable to be accepted even without the transcript of his brother as academic qualification of LLM was not a condition precedent for a candidate to contest the general elections. He contends that even otherwise, petitioner is a law graduate and holding a degree of LLM, which was attached with his nomination papers. He contends that even no opportunity was provided to petitioner to explain his position and cure the bona fide mistake, if any. He finally submits that relevant provisions of the Elections Act, 2017 have been misconstrued while passing the impugned decisions, which are unsustainable in the eye of law.

3. Conversely, learned counsel for Election Commission of Pakistan and learned Assistant Attorney General, who argued W.P.No.4005 of 2024 fixed today, have shown their willingness to advance arguments in this case. They defended the impugned decisions by submitting that it was a case of non-fulfillment of pre-requisites while filing nomination papers, thus, the same were rightly rejected within the contemplation of section 62(9)(c) of the Elections Act, 2017.

Admittedly, respondents No.3 & 7 did not raise any objections before the Returning Officer against nomination papers of petitioner, however they have tendered appearance today, on watching brief, and contested W.P.No.4005 of 2024 fixed today, therefore, they are allowed to argue the matter. Learned counsel for respondents No.3 & 7 have supported the stance of learned counsel for Election Commission of Pakistan. The remaining private respondents were not in attendance in W.P.No.4005 of 2024 fixed today despite notice and proceeded against ex parte, therefore, we are not inclined to issue notice to them in this case, which is being decided in their absence after

hearing arguments of parties who entered appearance in this case.

4. Arguments heard. Available record perused.

5. The grounds prevailed upon the Returning Officer to reject petitioner's nomination papers, concurred by learned Election Tribunal, are *non-provision of requisite NOCs from MEPCO, PTCL, Municipal Committee and SNGPL and attachment of transcript of petitioner's brother*. The available record reflects that NOCs from MEPCO, Municipal Corporation, Dera Ghazi Khan and PTCL are dated 20.03.2024 and clearance letter / certificate from SNGPL, signed by Muhammad Jamil Rasheed, Dy. Chief Engineer, is dated 02.01.2024, however signatures of Abdul Rasheed Janjua, Billing Officer are dated 18.03.2024. It is manifestly clear from the tenor of the said NOCs that no liability was existing against petitioner. Petitioner has claimed that these NOCs were presented before the Returning Officer before expiry of the scheduled date and time for scrutiny of nomination papers and this fact has not been negated by the other side before us. In this scenario, the omission to tender the said requisite NOCs while filing nomination papers is not a lapse / defect of such a grave nature which may invite extreme measure of rejection of the nomination papers. This lapse could have been fatal if it was the omission was designed to avoid the liability or intended to conceal some unlawful activity. In this backdrop, the impugned decisions are not legally sustainable. Reference can be made to *Malik Shakeel Awan v. Sheikh Rasheed Ahmed and 21 others (PLD 2018 Supreme Court 643)*, *Khawaja Muhammad Asif v. Muhammad Usman Dar and others (2018 SCMR 2128)*, *Nida Khuhro v. Moazzam Ali Khan and others (2019 SCMR 1684)*, *Shamona Badshah Qaisarani v. Election Tribunal, Multan and others (2021 SCMR 988)* and *Amir Raza and another v. Provincial Election Commission through DEO and 5 others (2016 YLR 431)*.

6. Petitioner has seriously disputed the fact of attachment of transcript of LLM of petitioner's brother with his nomination papers, and this denial coupled with allegation of some sort of mala fide act on the part of the Returning Officer raises a factual dispute, which we are not inclined to dilate upon. However, we are persuaded that petitioner's transcript of LLM was not required to be filed along with the nomination papers. We are also of candid opinion that the alleged mistake of filing transcript of petitioner's brother is not a defect of such a nature which may attract any express provision qua disqualification or rejection of nomination papers provided in the Elections Act, 2017.

7. The available record further shows that neither any specific direction was issued by the Returning Officer nor a fair opportunity was provided to petitioner to cure the said defects / lapses, which is not a proper exercise of jurisdiction. This material aspect of the matter also escaped the notice of learned Election Tribunal.

8. Needless to say that right to contest election is a fundamental right guaranteed by Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and the provisions in the Elections Act, 2017 that curtail or in any manner affect this right are to be construed strictly and applied restrictively, especially when the defect is not of substantial nature and can be remedied. Steering thought can be gathered from latest decisions of the Supreme Court of Pakistan vide order dated 29.01.2024, passed in Civil Petition No.150 & 152 of 2024 titled *Tahir Sadiq v. Faisal Ali, etc.* and order dated 26.01.2024, passed in Civil Petition No.181 of 2024 titled *Pervez Elahi v. Election Commission of Pakistan, etc.* Some of the observations in the case of *Tariq Sadiq* supra are reproduced hereunder:-

"3. It is in this context of both the right of the candidates to contest the election and the right of the voters to vote for

the candidate of their choice that the qualification and disqualification of a candidate become material. The aim of prescribing qualifications and disqualifications for candidacies to contest elections is to maintain the integrity and effectiveness of the political process. They are designed to ensure that individuals holding public office meet certain standards. In a well-functioning democracy, the criteria for qualifications and disqualifications are clearly defined, publicly known and uniformly applied. Qualifications and disqualifications of a candidate for the electoral process must therefore be clearly spelled out in the Constitution or the law. Otherwise, electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership. With this approach rooted in the high constitutional rights and values, the courts are to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections.”

9. In view of the above, instant petition is allowed and impugned decisions are set aside being illegal and without lawful authority. In consequence, nomination papers of petitioner stand accepted, he is allowed to contest the election and participate in all the subsequent steps / stages of the announced election schedule.

(Faisal Zaman Khan) (Muhammad Sajid Mehmood Sethi)
Judge Judge

APPROVED FOR REPORTING

Judge Judge

Sultan