

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Election Appeal No.24513/2023**

**Muhammad Iqbal Vs. Returning Officer, PP-85  
Essa Khail**

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge, and that of parties or counsel, where necessary.
---------------------------------	-------------------------------	---

12-04-2023 Mr. Faraz Ahmed Khan, Advocate for the appellant alongwith Mr. Muhammad Karim (Seconder).  
Mr. Imran Arif Ranjha, Advocate/ Legal Advisor and Hafiz Adeel Ashraf, Advocate/Legal Assistant for ECP.

Through this Election Appeal under Section 63 of the Elections Act, 2017 (**Act**), the appellant has challenged the order dated 22.03.2023 (**impugned order**), whereby his nomination papers were rejected by the Returning Officer (**respondent**) on the ground that his seconder did not appear at the time of scrutiny of his nomination papers.

2. Learned counsel for the appellant submits that the appellant alongwith his proposer appeared before the respondent, however, his seconder could not appear because of death of his real uncle. Submits that the seconder promised to appear after offering funeral prayer but the respondent without waiting for his seconder rejected his nomination papers, even though no objection was filed by any person.

3. Learned counsel for the respondent, on the other hand, submit that presence of the seconder was required to verify his signature under Section 62(9)(d) of the Act,

hence, his presence was mandatory at the time of scrutiny.

4. Arguments heard. Record perused. The provision of Section 62(2) of the Act, being relevant to the controversy, is reproduced hereunder:-

*“62(2) The candidates, their election agents, the proposers and seconders and one other person authorized in this behalf by each candidate, and a voter who has filed an objection under sub-section (1), may attend the scrutiny of nomination papers, and the Returning Officer shall give them reasonable opportunity for examining all the nomination papers delivered to him under section 60.”*

*(Emphasis supplied)*

The plain reading of sub-section (2) of Section 62 of the Act shows that the candidates, their election agents, the proposers and seconders and one other person authorized in this behalf by the candidate, and a voter who has filed an objection may attend the scrutiny of nomination papers. The word “may”, used in Section 62(2) of the Act, depicts that it is not mandatory for the proposer and seconder to appear before the Returning Officer at the time of scrutiny and therefore, without any objection from any person merely due to absence of the seconder at the time of scrutiny, the nomination papers of the appellant could not be rejected.

5. Similar provision was available under Sub-section (1) of Section 14 of the erstwhile Representation of the People Act, 1976 (**ROPA**). The learned Sindh High Court in “ALI MUHAMMAD Vs. IQBAL KHAWAJA” (**2008 CLC 843**), while interpreting the said provision, held that due to word “may” the presence of the proposer

and seconder at the time of scrutiny is not mandatory. Same view was also expressed while interpreting similar provision in local Government laws by this Court and the learned Balochistan High Court in "GUL MUHAMMAD Vs. PROVINCE OF PUNJAB through District Officer (Revenue)" (2006 YLR 1963) & "ABDUL KARIM Vs. THE RETURNING OFFICER/AC, HUB AT HUB and another" (PLD 1999 Quetta 78).

6. No doubt, under Section 62(9) of the Act the Returning Officer may, on either of his own motion or upon an objection, conduct a summary enquiry and may reject the nomination papers, if he is satisfied with the grounds mentioned therein including that the signature of the proposer or seconder is not genuine. This provision cannot be construed that presence of proposer or seconder is mandatory but it means that where presence of proposer or seconder was specifically required by the Returning Officer to verify the genuineness of their signature or for any other purpose relating to the scrutiny of nomination papers then their absence could be fatal and nomination papers could be rejected. However, mere absence of the proposer or seconder cannot be a sole ground to reject the nomination papers. In the present case, neither any objection was filed by any third party (voter) nor any inquiry was required to be conducted by the respondent to examine the genuineness of the signature of proposer or seconder. Further, the seconder (*Mr. Muhammad Karim*), for whose absence the nomination papers were rejected, is present in the Court and has endorsed the fact that he was the seconder of the appellant and also his signature, marked on the nomination forms, are genuine.

7. In view of the above discussion, this Election Appeal is **allowed** and the impugned order dated 22.03.2023 is set-aside. Consequently, the Returning Officer is directed to include the name of the appellant in the list of eligible candidates.

**ABID AZIZ SHEIKH**  
**JUDGE**

**Approved For Reporting**

**JUDGE**

*Arsalan*