

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI,
CHIEF JUSTICE;

MR. JUSTICE ABDUL MOBEEN LAKHO

C.P. No. D-134 of 2024

Petitioner	Waheed Ali Rind Baloch through Mr. Ali Tahir, Advocate
Objector	Mr. Muhammad Haseeb Jamali, Advocate
Respondents	through M/s. Saifullah, AAG, Irshad Ali, Assistant Attorney General, and Abdullah Hinjrah, Law Officer of Election Commission of Pakistan.
Date of hearing	15.01.2024
Date of order	15.01.2024

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.28 of 2024, *wherein*, the order passed by the Returning Officer PS-76, District Thatta-II, *whereby*, he rejected the Nomination Paper of Petitioner, was upheld while dismissing the Election Appeal filed by the petitioner.

2. Brief facts of the petition are that the respondent No.1 rejected the nomination papers of Petitioner on the ground that the Petitioner failed to disclose that he possessed a licensed firearm in his details of assets nor did he declare the same to the FBR in his tax return, against which the petitioner filed an Election Appeal under Section 63 of the Election Act, 2017.

3. Learned counsel for the petitioner has contended that the Petitioner believes in public service and understands that it can be best achieved through democratic dispensation and continuity of democratic process. The Petitioner is also a longstanding member of the Pakistan Tehreek-e-Insaf (PTI); the Petitioner has filed Nomination Papers for contesting in the upcoming General Election of 2024 from PS-76 (THATTA-II). He submits that the Impugned Order passed by the Respondent whilst dismissing the Appeal of Petitioner is unconstitutional and contrary to the norms of the justice as well as Standards for nomination set by the Election Act and the Supreme Court decision which have been passed without the correct exercise of jurisdiction and without application of judicial mind and without taking in account the blatant and / malafide discrepancies and tangible evidence produced before them; while passing the Impugned Order, Learned Respondent completely failed to consider the tangible evidence produced before him. The Objections pointed out various material inconsistencies, intentional concealments and misstatements by the objector in his nomination papers, the Affidavit of the candidate and the Annexures filed therewith. Hence, the Forum in Summary Jurisdiction had the authority and duty to adjudicate upon the same, but chose to avoid such adjudication; Section 114 of the income tax ordinance requires persons of various categories to file tax returns.

4. On the other hand learned Assistant Attorney General as well as learned AAG argued that the petitioner has not filed any proof in support of his contentions and have fully supported the order passed by the returning officer who rejected the nomination papers of the Petitioner which was upheld by the Election Appellate Tribunal in appeal filed by the petitioner. Lastly, they prayed that the petition filed by the petitioner may be dismissed.

5. We have heard learned counsel for the parties and perused the record and considered the facts.

6. We are fortified with the view taken by a Division Bench of this Court in 2017 CLC Note 179 wherein it was held as follows: -

...

“There is no cavil to the proposition 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, cannot be allowed to be validated at a subsequent stage. Reliance is placed in the case of *Rana Muhammad Tajammal Hussain V/S Rana Shaukat Mahmood* reported in **PLD 2007 SC 277** and *Mudassar Qayyum Nagra versus Election Tribunal Punjab, Lahore and 10 others* reported in **2003 MLD 1089**. However, if there is an error or omission on the part of candidate in the Nomination Papers, which is not substantial in nature and can be cured at a very initial stage of scrutiny by the Returning Officer or before the Appellate Authority, in such situation, we are of the opinion that, an opportunity is to be given to the candidate to remove such defect or deficiency so that he may not be disfranchised or prevented from contesting elections which is a fundamental right of every citizen as per constitution, however, subject to law. We are of the tentative view that, the petitioners, otherwise qualify to contest elections, and there is no objection with regard to their eligibility except, the ground of incomplete declaration of assets by petitioner No.1, which according to the petitioner was on account of omission by the petitioner, whereas, respondents have not been able to demonstrate as to how such non-declaration of assets of the ancestral agricultural land by the petitioner No.1 is a deliberate act of concealment or the petitioner wanted to gain any benefit out of such non-declaration.

In view of hereinabove facts and circumstances of the case and while agreeing with the ratio of the decision of the Lahore High Court, as referred to hereinabove, we are of the opinion that

non-declaration of small share in the ancestral agricultural land by the petitioner No.1, was not a deliberate act of concealment of assets, hence, does not fall within the mischief of section 12 and 14 of the Representation of the Peoples Act, 1976. Accordingly, instant petition is allowed, impugned order passed by Appellate Authority is hereby set aside and the petitioner is directed to submit complete and true declaration of assets before the Returning Officer, which shall be examined by him and, thereafter, order of acceptance shall be passed in accordance with law and Form-VIII shall be issued immediately.

Petition stands allowed in above terms.”

...

7. The learned Election Appellate Tribunal while observing that *from the assertions of the appellant, he has not denied the ownership of the licensed pistol. The trend of not filling out the nomination form fully and instead attaching the FBR returns has to stop as it defeats the purpose of having those dedicated columns in the nomination form and leads to situations like the present one/where candidates fail to disclose assets and then swear affidavits stating that they have declared their assets to the best of their knowledge when it is not true Failing to declare the weapon meant that the appellant did not go through his FBR returns which in turn means that the assets declared by him were not to the best of his knowledge. To clarify, however, it is not the mandate of the law to declare weapons separately under each head, rather even a generalized approach to the same under "Other" could be deemed sufficient. however the appellant even failed at that. Moreover, a perusal of the nomination form of the appellant shows that he even failed to sign the affidavit at page 4, the first one being his assurance to abide by the Code of Conduct of the Elections and the second one being a verification on oath to the effect that the contents of the nomination form and affidavit are correct. If the appellant's negligence in this regard and concealment that has to be seen as wilful goes unpunished, then the purpose of the act*

which is to move forward the best possible candidates to the next stage of elections becomes meaningless. Given these reasons, the impugned order is unexceptionable and as such the instant appeal is dismissed.

8. Reverting to the case in hand, we have examined the order rendered by the learned Election Tribunal of this Court and find that the impugned order is legal, unexceptionable, apt to the facts and circumstances of the case, which suffering from no jurisdictional defect, do not call for any interference by this Court in exercise of its Constitutional jurisdiction. We vide our short order dated 15.01.2024 had dismissed this petition and these are the reasons thereof.

J U D G E

CHIEF JUSTICE