

ORDER SHEET

(25, (a))

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-2478 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

13.01.2023

M/s Barrister Syed Adeel Mahmood Shah & Wali  
Muhammad Thebo, advocates for petitioner

Mr. Arbab Ali Hakro advocate a/w respondent No.5

Mr. Bashir Ahmed Almani, Assistant Attorney General  
a/w Mukhtiarkar Taluka Chamber (Sajjad Ahmed  
Leghari) on behalf of R.O Taluka Chamber

Mr. Zaheer Abbas, Law Officer ECP

We have heard the learned counsel for the petitioner, learned counsel  
for respondent No.5 Yasir Aftab as well as learned Law Officer ECP. For the  
reasons to be recorded later on this petition is hereby dismissed and the  
respondent No.5 Yasir Aftab is free to contest the local bodies elections.

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26

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana Hussain

C.P. No. D- 2478 of 2022

Irfan Gul & others.

Versus

Election Commission of Pakistan & others

Petitioners : Irfan Gul and another	Through M/s. Barrister Syed Adeel Mahmood Shah and Wali Muhammad Thebo Advocates
Respondents Election Commission of Pakistan	Through Mr. Bashir Ahmed Almani, Assistant Attorney General for Pakistan along with Zaheer Abbas, Law Officer ECP and Mukhtiarkar Taluka Chamber (Sajjad Ahmed Leghari) on behalf of R.O Taluka Chamber
Respondent No.5 Yasir Aftab also present in person	Through Mr. Arbab Ali Hakro, Advocate
Date of hearing and short order	13.01.2023
Date of reasons of short order	17.01.2023

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** This matter arises out of the ongoing process of local government elections in Sindh, in relation to local bodies set by and under the Sindh Local Government Act, 2013 ("2013 Act"). In exercise of powers conferred by Section 138 of the said Act read with entry No.1 of the Seventh Schedule thereto, the Provincial Government has framed the Sindh Local Councils (Election) Rules, 2015 ("2015 Rules").



2. The appellant filed his nomination papers for the seat of councilor in UC Jarki @ Chamber. The respondent Nos. 1 and 2 ("contesting respondents") sought rejection of the nomination papers on the ground that the appellant had not fully disclosed and declared his and his spouse's assets/properties. The objection was rejected by the Returning Officer and the nomination papers accepted. The contesting respondents filed an appeal before the appellate authority constituted by the Election Commission of Pakistan ("ECP") under Rule 18(5) of the 2015 Rules. The appeal was dismissed. The contesting respondents thereafter filed a writ petition under Article 199 of the Constitution before this Court, which allowed the same by means of order dated 20.07.2022 in the following terms.

*"The learned appellate authority wrongly upheld the orders of the Returning Officer while accepting the nomination papers of the respondent No.5 [i.e., the present appellant] who had intentionally and willfully concealed his assets which he was required to provide details on solemn affirmation."*

3. The orders of the forums below were set aside with the result that the nomination papers of respondent No.5 stood rejected. Respondent No.5 then approached the Hon'ble Supreme court against the aforesaid order of this court in Civil Appeal No.2797 of 2022 in the case of **Yasir Aftab V Irfan Gull** and others and vide Judgment dated 09.11.2022 after an elaborate discussion of the interplay between the concerned laws governing local Government elections set aside the order of this court and remanded back the matter to this court to consider whether based on the facts and circumstances of this case and **consistently with what had been stated in the aforesaid Supreme Court Judgment** the petitioner/appellant was entitled to the benefit of clause (ii) of Rule 18 of the Sindh Local Councils (Election) Rules 2015 (the Rules).

4. Learned counsel for the petitioners has contended that the respondent No.5 Yasir Aftab is not entitled to contest the elections mainly on the grounds that he has concealed his assets being plots at Bahria Town and bank accounts; that he has misstated his assets in his nomination papers; that he has given a false affidavit which shows that he is not an honest person and as such is not entitled to contest the election and as such his nomination papers be rejected.

5. On the other hand learned counsel for the respondent No.5 has contended that his non disclosure was not deliberate and was by mistake and does not amount to a substantial defect. He claims that he disclosed assets worth RS 29.5M and only omitted to disclose jewellery worth RS 76,000, a joint account at Mezzan Bank containing RS 2.5 M, and bank accounts at UBL and Summit bank,

respectively containing RS 76,000 and RS 259 which non disclosure does not amount to a material defect and as such he should be able to contest the elections. Learned counsel for ECP supported the contentions of Respondent No.5 and stated that even otherwise any doubt as to the correctness of the assets disclosed by the Respondent No.5, if he was successful in the election could be challenged under 49(b) and 50 (b) of the 2013 Act.

6. We have heard learned counsel for the parties, considered the record and the relevant law.

7. In essence the issue before us is whether the alleged concealment of assets by the respondent No.5 Yasir Aftab in his nomination papers was sufficient in and of itself to lead to the rejection of his nomination papers to run for the seat of councilor in UC Jarki @ Chamber whilst following the guidelines in this regard as laid down by the Supreme Court in its judgment mentioned above which lead to the remand of this case. For ease of reference those guidelines are set out below at para 12;

*"Para 12..... As regards the second ground, that is to be decided in terms of clause (ii) of the proviso to sub-rule (3) of Rule 18. It requires a two-step exercise to be carried out by the Returning Officer. In the first stage he must determine whether the defect objected to is of a substantial nature. If the answer is in the negative, that concludes the exercise and he is bound not to reject the nomination papers. If the answer is in the affirmative, then the matter moves to the second stage. He must consider whether, in his discretion (exercised in a lawful manner), to overrule the objection to the defect though it be of a substantial nature, as long as it can be remedied forthwith. If he exercises his discretion in favor of the candidate and the defect is remedied forthwith the nomination papers stand accepted. If he refuses to exercise his discretion then of course the nomination papers stand rejected. But whatever his action the Returning Officer must record his reasons appropriately and accordingly, in relation (as the case may be) to both stages of the exercise."*

8. The first question to be answered is whether the defect referred to, namely the concealment of assets by the Respondent No.5, is of a substantial nature, which may be judged by the useful yardstick of the total assets allegedly



concealed when judged against the total amount of assets disclosed whilst considering the Respondents nomination papers in their entirety.

29

9. The main material produced by the petitioners concerning the concealment of assets by the respondent is that he purchased 3 plots in Bahria Town amounting to RS12.8 M which he failed to disclose in his nomination papers however when confronted by the court learned counsel for the petitioner fairly conceded that these plots were purchased **after** Respondent No.5 had filed his nomination papers and thus were of no relevance at the pre election stage. The next concealment allegedly by respondent No.5 was Account No.31010105615747 at Meezan Bank Tando Allayer Branch amongst others. The respondent No.5 admitted that he had not disclosed this bank account however he contended that it was a joint account with his father which his father operated for business purposes and which had been disclosed by his father in his wealth tax return and thus was under the impression that he did not need to disclose this account. We find the explanation given by respondent No.5 to be quite reasonable and do not consider this omission to be a deliberate or willful non disclosure. Respondent No.5 also admitted not disclosing his bank accounts at UBL and Summit bank containing Rs 76,000 and RS 257 respectively as well as jewellery worth RS 76,000. On the other hand the respondent has disclosed a vast amount of land and other assets totaling RS29.5 M in his nomination form and has only omitted to disclose the UBL and Summit Bank accounts and the jewellery which comes to be about RS 1.5 M in total. When this amount is placed in juxta position with the other large amounts of assets disclosed in the nomination form it amounts to a non disclosure of assets worth only about 5% of Respondent No.5's total assets which we find cannot be held to be a substantial defect and as such we find that the defect in not disclosing two bank accounts and jewellery worth relatively poultry sums when compared to the total assets which Respondent No.5 disclosed is **not** a substantial defect and that the Respondent No.5 is free to contest the elections. Even if we had found that the defect was substantial we find that it could have been remedied forth with and enabled the respondent to contest the election and under these circumstances he should not be debarred from contesting the elections based on the spirit of the Supreme Court Judgment whose guidelines we have relied upon as participation in local government elections should be encouraged.

10. These are the reasons for our short order dated 13.01.23 which reads as under;

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"We have heard the learned counsel for the petitioner, learned counsel for respondent No.5 Yasir Aftab as well as learned Law Officer ECP. For the reasons to be recorded later on this petition is hereby dismissed and the respondent No.5 Yasir Aftab is free to contest the local bodies elections."