IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. D-997 of 2019

Present:

Mr. Justice Abdul Maalik Gaddi
Mr. Arshad Hussain Khan

Petitioner:		Sharbati Khan, *through* M/s Ovais Ali Shah, Shehazad Akhtar and Deedar Ali M. Chohan Advocates.
Respondents 1 to 3:		Chief Election Commissioner, Islamabad, Provincial Election Commissioner, Karachi and Returning Officer of By-Election-2019 of NA-205 (Ghotki-II) *through* Mr. Muhammad Mahmood Khan Yousfi, Deputy Attorney General along with Mr.Aijaz Anwar Chohan Director (Election) Karachi/respondent No.2 Mr. Rana Abdul Ghaffar Regional Election Commission/DRO
Respondent No.4	:	Mohammad Bux Khan, *through* Mr. Haq Nawaz Talpur assisted by M/s Muhammad Asad Ashfaq and Ali Raza Baloch, Advocates
The State	:	*Through* Mr. Shafi Mohammad Chandio, Additional Advocate General
Date of hearing	:	11.07.2019

JUDGMENT

ARSHAD HUSSAIN KHAN, J.- The petitioner through instant petition challenging the order dated 18.06.2019, passed by Returning Officer Bye-Election 2019 NA-205, Ghotki-II, whereby the nomination paper of respondent No.4 for contesting the forthcoming Bye-Election

of NA-205, Ghotki-II, has been accepted and order dated 25.06.2019 passed by learned Election Appellate Tribunal, whereby the Election Appeal No.07 of 2019 filed by the petitioner against the aforesaid order of the Returning Officer, was dismissed, has sought the following reliefs:

I. Set aside the order of the of the Learned Election Tribunal dated 25.06.2019 as well as the Order dated 18.06.2019 passed by the Respondent No.3 whereby the nomination form of Respondent No.4 has been accepted;

II. Declare that the Respondent No.4 stands disqualified in terms of Article 62 (1) (d) and (f), is not qualified to contest elections not being of good character and not being righteous and sagacious, non-profligate, honest and Ameen and accordingly issue direction to the Respondent No.3 to reject his nomination papers/form;

III. Restrain the Respondents from printing ballot papers of the Respondent No.4 and further restrain them from allowing the said Respondent from contesting election in the Bye-Election 2019 for NA 205, Ghotki-II,

IV. Grant costs of this Petition,

V. Grant any further and better relief that this Honourbale Court may deem appropriate under the facts and circumstances, of the case."

2. Briefly, the facts of the case are that the petitioner being the voter of the constituency NA-205, Ghotki-II, had raised objections to the nomination form of respondent No.4 to contest the Bye-Election 2019 of constituency viz. NA-205, Ghotki-II, at the time of scrutiny before the Returning Officer (respondent No.3). The Returning Officer after hearing the counsel for the parties and getting himself satisfied with the reply placed before him by the respondent No.4 in respect of the objections raised by the petitioner, accepted the nomination form of respondent No.4, vide its order dated 18.06.2019. The said order was subsequently challenged by the petitioner before the learned Election Appellate Tribunal, through Election Appeal No. S-07 of 2019, however the said Election Appeal was also dismissed by the Appellate Tribunal vide order dated 25.06.2019. Hence this petition.

3. Upon notice of the present petition respondent No.4 filed objection/counter affidavit to the petition wherein while supporting the impugned orders he controverted the facts and allegations levelled in the

memo of petition. He also raised preliminary objections with regard to the maintainability of the present petition. Whereas respondent No.3/Returning Officer Bye-Election, 2019 filed para-wise comments *inter alia* stating that the order of this court shall be implemented.

4. During the course of arguments, it is, *inter-alia,* contended by the learned counsel for the petitioner that the petitioner upon coming to know that respondent No.4 filed nomination form as a candidate to contest the by-election from the constituency, raised substantial issues, details whereof are mentioned in para No.3 of the memo of petition, before the respondent No.3, however, respondent No.3 failed to consider the said objections in true perspective and accepted the nomination form of respondent No.4. The petitioner challenged the said order of the Returning Officer before the learned Election Appellate Tribunal, however, the learned Appellate Tribunal also failed to consider documents available on record and passed the judgment impugned in the present proceedings. It is further contended that the orders impugned in the present proceeding are not sustainable in law and liable to be set aside as the Returning Officer as well as the learned Election Appellate Tribunal while passing the impugned orders have failed to appreciate the facts as well as law and have incorrectly applied the provisions of the Election Act, 2017. Learned counsel submits that both the forum below have failed to consider the material fact that the nomination form of respondent No.4 to contest the General Election 2018 as a candidate for provincial assembly of PS-20 Ghotki-I, was rejected by the then Returning Officer on the ground of mis-declaration regarding his assets. The said rejection order was maintained upto the Honourable Supreme Court of Pakistan. Per learned counsel consequence of omission or false declaration on oath would be disqualification. It is contended that the Honourable Supreme Court in its various pronouncement observed that that consequence of mis-declaration will be penal and constitutional. Per learned counsel respondent No.4 falsely deposed on oath regarding his assets and such deposition was adjudicated as being false not only by the Election Tribunal but also the High Court and Supreme Court, thus respondent No.4 can no longer contest election and he ought to be disqualified under Article 62 (1) (f). It is further contended that both the forums below while passing the impugned orders have also failed to consider

the material fact that respondent No.4, by misusing his powers, and authority obtained 2030 Acres of Government land in the name Mahar Live Stock Farm, Khangarh on lease till the year 2005-2006. After expiry of the lease the said land was directed to be resumed, however, respondent No.4 continued to retain possession of government land which till date in his possession. Respondent No.4 in his declaration concealed the fact that the said land belongs to him. When the petitioner raised objection before the returning officer (respondent No.3) respondent No.4 while using his influence get issued manipulated letter/report dated 18.06.2019 from Mukhtiarkar Khangarh to respondent No.3 (Returning Officer), regarding current status of the land admeasuring 2030 Acres of Mahar Live Stock Farm Khangarh. Per learned counsel the influence of respondent No.4 can be ascertained from the fact that Mukhtiarkar Khangarh submitted the said report in respect land falls in Taluka Mirpur Mathelo and Taluka Pano Aqil, although the said land was admittedly outside the jurisdiction of Mukhtiarkar Khangarh. It is also contended that the said statement/report of Mukhtiarkar was obtained to the effect that the said land was already resumed by the Government way back in the year 2005. Per learned counsel the falsehood of the said report can be ascertained from the fact that the lease amount was being paid up to the year 2014. Furthermore, a certificate issued by Mukhtiarkar Pano Akil stating therein that land is still in possession of respondent No.4, also belied the statement/report of Mukhtiarkar Khangarh. It is also contended that respondent No.4 was also involved in fraudulent transaction of land measuring 176 Acres situated in Deh Sutyaro, Chak No.1, Talulka Khangarh. Per learned counsel respondent No.4 manipulated forged documents viz., registered sale deed dated 20.03.2014, whereafter bogus unregistered gift deed was managed in favour of his brother Bangul Khan during elections to disassociate himself from the property. It is also contended that despite substantial objections raised by the petitioners, the nomination form of respondent No.4 was accepted by the respondent No.3 vide its order date 18.06.2019 which order was subsequently upheld by the learned Appellate Election Tribunal. Lastly argued that the impugned orders passed by the Returning Officer and the Appellate Tribunal may be set aside with the direction to the Returning Officer to reject the nomination

form of respondent No.4. Learned counsel in support of his stance has placed reliance on the cases of *Mian Mohammad Nawaz Sharif and others v. Imran Ahmed Khan Niazi and others* ***(PLD 2018 Supreme Court 1)*** *Samiullah Balouch and others v. Abdul Karim Nousherwani and others* ***(PLD 2018 Supreme Court 405)***, *Raja Shoukat Aziz Bhatti v. Major ® Iftikhar Mehmood Kiani and another* ***(PLD 2018 Supreme Court 578)***, *Khalid Parvaiz Gill v. Saifullah Gill and others* ***(2013 SCMR 1310)***, *Obaidullah v. Senator Mir Mohammad Ali Rind and 2 others.* ***(PLD 2012 Balouchistan 1)***, *Mian Zia-ur-Rehman and others v. Syed Nadir Ali Shah and others* ***(2019 SCMR 137)***, *Faisal Mir v. Election Commission of Pakistan and others* ***(2018 CLC I Lahore)***, *Gullu v. Ramzan and 6 others* ***(2000 CLC 1468)***, *Sajid Mehdi v. Nazir Ahmed and others* ***(PLD 2010 Lahore 312)***, *Rai Hassan Nawaz v. Haji Muhammad Ayub and others* ***(PLD 2017 Supreme Court 70)***, *and Abdul Ghafoor Lehri v. Returning Officer, PB-29, Naseerabad-II and others* ***(2013 SCMR 1271)***.

5. Conversely, learned counsel for respondent No.4 during his arguments has contended that present petition is not maintainable as the Article 199 is subject to Article 225 of the Constitution of Pakistan, which bars the adjudication of election disputes, including the pre-election matters, except by way of an Election Petition filed before the Election Tribunal constituted under the Election Act, 2017 and the Election Rules, 2017. Per learned counsel the present petition even otherwise is not maintainable, as it involves disputed question of facts which cannot be decided without recording evidence and such exercise cannot be gone into in writ jurisdiction of this court. It is also contended that the petitioner has failed to point out any illegality and irregularity in the impugned orders which could warrant interference by this Court in its constitutional jurisdiction by way of a writ of certiorari. Per learned counsel the allegations levelled against respondent No.4 are frivolous and scandalous in nature which have no nexus in any manner with respondent No.4. It is also argued that the petitioner is seeking rejection of the nomination form of respondent No.4 on the touchstone of Article 62 and 63 of the Constitution of Pakistan whereas there is no declaration in terms of Article 62 and 63 of the Constitution, 1973 by a Court of competent jurisdiction, which could entail penal consequences of

rejection of the nomination form of respondent No.4. It is also contended that the petitioner through the instant petition is also seeking a declaration to the effect that respondent No.4 is not *Sadiq* and *Ameen*. Per learned counsel the Honourable Supreme Court of Pakistan, time and again, has held that only a Court of Plenary jurisdiction, that is, the Court vested with powers to record evidence can issue such a declaration. This Court under its constitutional jurisdiction whilst adjudicating a writ of certiorari is not empowered to entertain disputed questions of fact nor record any evidence. It is further contended that the objections raised by the petitioner were duly replied to by respondent No.4 before the Returning Officer and thereafter before the learned Election Appellate Tribunal. Per learned counsel both the forums below after getting themselves satisfied with the reply of respondent No.4, rejected the objections of the petitioners through the orders impugned in the petition. Per learned counsel, the petitioner is only dragging respondent No.4 into the frivolous litigation to disturb the democratic process of by-Election in NA-205 Ghotki-II. It is also contended that the letters of Mukhtiarkar relied upon by the petitioner are bogus and managed documents produced subsequent to scrutiny process held by the Returning Officer and as such the same are liable to be discarded. It is further contended that from the record produced before the Returning Officer clearly reflects that the land admeasuring 2030 Acres is admittedly owned by the Government therefore, respondent No.4 was not required to mention it in his nomination form. Conversely, mentioning land in question as asset in his nomination form by respondent No.4 would have been a mis-declaration. It is further argued that nomination form of respondent No.4 to contest the General Election 2018 from PS-20, Ghotki-I, was found defective, resultantly, it was rejected. Respondent No.4 though had challenged the said rejection order upto the Honourable Supreme Court yet he could not succeed, however, neither this court nor the Honourable Supreme Court of Pakistan ever declared respondent No.4 disqualified in terms of article 62 and 63 of Constitution of Pakistan to contest any other election. It is further contended that defect found in previous nomination form since has been rectified therefore, respondent No.4 filed his nomination form and he is entitled to contest the forthcoming by-election. Lastly, contended that the impugned orders are well-reasoned and addressed

each and every objection/point raised by the petitioner and as such the same do not warrant any interference by this court in its writ jurisdiction and thus the instant petition may be dismissed with costs. Learned counsel in support of his arguments has relied upon the cases of *Ali Gohar Khan Mahar v. Election Commission of Pakistan through Secretary and 2 others* ***(2014 CLC 776)***, *Mohammad Raza Hayat Hiraj and others v. The Election Commission of Pakistan and others* ***(2015 SCMR 233)***, *Government of Pakistan through Secretary, Ministry of Interior and Narcotics Control (Interior Division) Board, Islamabad v. Muhammad Yasin, Sub-Inspector No.525-L, Wapda Anti-Corruption, Lahore and another* **(PLD 1997 Supreme Court 401)**, *Muhammad Hanif Abbasi v. Imran Khan Niazi and others* ***(PLD 2018 Supreme Court 189)***, *Khawaja Muhammad Asif v. Muhammad Usman Dar* ***(2018 SCMR 2128)***, *Imran Ahmed Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member, National Assembly, Prime Minister's House Islamabad and 9 others* ***(PLD 2017 Supreme Court 265)***, *Imran Ahmed Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan* ***(PLD 2017 Supreme Court 692)*** and *Muhammad Hanif Abbasi v. Imran Khan Niazi* ***(PLD 2018 Supreme Court 295).***

6. Learned Deputy Attorney General representing the Election Commission of Pakistan while opposing the impugned orders has supported the petition. Whereas the learned Additional Advocate General Sindh representing the State has mainly contended that the orders impugned are within the four corners of law and as such do not warrant any interference by this court in this constitutional petition, further the Returning Officer as well as Election Tribunal have rightly rejected the objections raised by the petitioner and accepted the nomination form of respondent No.4; and, that there is no illegality or any jurisdictional defect in the impugned orders, passed by both the forums below. Lastly, he prays that the petition may be dismissed with costs.

7. We have considered the submissions of learned counsel for the petitioner, respondent No.4, learned Deputy Attorney General as well as Additional Advocate General Sindh and have gone through the material placed on record.

8. From the perusal of the record it appears that the petitioner challenged the nomination form of respondent No.4, *inter alia*, on the ground that his previous nomination form for contesting the General Election 2018 from PS-20, Ghotki-I, was rejected on the account of mis-declaration, which rejection was upheld upto the Honourable Supreme Court and as such respondent No.4 is disqualified in perpetuity and he cannot contest the present election.

In order to examine the objection, it would be appropriate to discuss the earlier orders passed in respect of rejection of previous nomination form of respondent No.4 for contesting the general election 2018 from PS-20, Ghotiki-I.

From the record, it transpires that the nomination form of respondent No.4, upon objection was found defective and consequently it was rejected by the Returning Officer PS-20 Ghotki-I, vide its order dated 18.06.2018. Relevant portion of the said order is reproduced as under:

> "In view of above discussion I am of the firm opinion that candidate has failed to defend objection No.1 regarding purchase of 176-00 acres land in Deh Satiyaro Chak No.1, (Lass) alias Murad Waro Tapo Kundalo Taluka Khangarh and District Ghotki and concealed such fact which was to be included in Form-B and the mandatory affidavit (included on the instruction of Honourable Supreme Court) filed along with nomination form provides that the failure to give detail regarding any item in respect of Form-A and Form-B shall render the nomination to contest election invalid and present candidate has failed to give complete detail regarding immovable property as required in Form-B and concealed his abovementioned agricultural land hence his nomination form stands rejected for failing to comply with the affidavit as well as under sections 62(9)(a)(c) of Election Act, 2017."
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> [Emphasis supplied]

Respondent No.4 challenged the said order before the election appellate tribunal through appeal No. S-70 of 2018, which appeal was dismissed on 25.06.2018, relevant portion whereof is reproduced as under:

> "I have heard arguments advance by learned Counsel and scanned the entire material and valued submissions made before me. It is the case of appellant that he has gifted out the property to his brother under an unregistered gift-deed. It is to be noted that the property was purchased by appellant through sale-deed dated 18.3.2014 while the same was gifted out through the gift-deed executed on 25.04.2014. It is pertinent to mention here that registered document be equated by an

> unregistered document. The record shows that the objections were filed on 13.06.2018 while gift was first time revealed on 18.06.2018. Although during this period there was Eid-holidays but sufficient time was available for managing the said gift. Being a Tribunal I cannot say about anything of such gift but it can be said that gift itself dubious documents it was filed before Returning Officer as such I am of the view that order of Returning Officer is proper, hence instant appeal is dismissed."
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> [Emphasis supplied]

Thereafter, the said order was challenged before this court in the constitutional petition No.1288 of 2018. The said petition was also dismissed by this Court, relevant portion whereof is reproduced as under:

> "**13.** In the present case, we have come to the conclusion that learned Returning Officer by assigning sound reasons rejected the nomination form mainly for the reasons that petitioner purchased 176 acres of land situated in deh Satiyaro Chak No.1 (Lass) alias Murad Waro Patt, Tapo Kundalo Taluka Khangarh district Ghotki. Petitioner had not disclosed purchase of 176 acres land in nomination paper as well as in the affidavit, it was requirement of law. Petitioner offered explanation after filing of objections that he purchased land through sale deed dated 18.03.2014 while the same has been gifted out by him to his brother on 25.04.2014 through unregistered gift deed. In our considered view, explanation furnished by petitioner is not legally acceptable for the reasons that purchase of 176 acres of land was concealed by petitioner in Form-B and in affidavit. Additionally petitioner was required to disclose purchase/gift of 176 acres of the Agricultural land in every fiscal year in his assets before FBR and after Member of the Assembly, to the Election Commission of Pakistan but petitioner has failed to do so. Returning Officer, on non-disclosure of above land, for the sound reasons rejected nomination paper of the petitioner. Tribunal agreed with the finding of Returning Officer and dismissed appeal.
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> 14. In the view of above stated facts and circumstances we have come to the conclusion that learned Returning Officer rightly rejected the nomination form of the petitioner and Tribunal by assigning the sound reasons, dismissed the appeal. No interference is required by this Court. Generally in an election process this Court cannot interfere with by invoking its constitutional jurisdiction in view of Article 225 of the Constitution. Reliance is placed upon the case of Ghulam Mustafa Jatoi v. Additional Sessions Judge/Returning Officer NA-158 Naushehro Feroze and others 1994 SCMR 1299 and Haji Khuda Bakhsh Nizamani vs. Election Tribunal and others 2003 MLD 607 (Karachi)."
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> [Emphasis supplied]

Respondent No.4, having aggrieved by the order approached the Honourable Supreme Court and filed CPLA bearing No.3316 of 2018. The said CPLA was also dismissed. Relevant portion of the said order for the sake of ready reference is reproduced as under:

> "Furthermore, with respect to the arguments that the gift was orally made, we find that no date, time, venue, etc. of the oral making of the gift has been provided, which details could, at best, only be acknowledged through the gift deed. Furthermore, contrary to what has been argued before this Court, the petitioner was not divested of physical possession of the property as there is no official record such as the *Khasra gardwari* reflecting delivery of possession of the property either on the basis the alleged oral gift or the gift, instrument which is alleged to be an acknowledgment, as the revenue record still shows the petitioner to be the owner of the property in question. In light of the above, there is no legal and factual error in the impugned judgment warranting interference by this Court. Dismissed accordingly."

[Emphasis supplied]

First and foremost, question before us is that whether the order passed by the Returning Officer rejecting nomination form of the respondent No.4 can be considered as declaration in terms of Article 62 (1) (f) Constitution of Islamic Republic of Pakistan, 1973, which reads as under.

> "***62. Qualifications for membership of Majlis-e-Shoora (Parliament)***.(1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless;
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> (a)----------
>
> (b)----------
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> (c)----------
>
> (d)----------
>
> (e)----------
>
> (f) he is sagacious, righteous, non-profligate, honest and amen, there being no declaration to the contrary by a Court of law;
>
> (g)----------

Before going into further discussion, it would be advantageous to reproduce Section 62 of Election 2017, which deals with scrutiny of nomination paper of a candidate and decision of Returning Officer in respect of objection thereof.

> "**62. Scrutiny.**---(1) Any voter of a constituency may file objections to the candidature of a candidate of that constituency who has been nominated or whose name has been included in the party list submitted by a political party for election to an Assembly before the Returning Officer within the period specified by the Commission for

the scrutiny of nomination papers of candidates contesting election to an Assembly.

(2)----------

(3)----------

(4) The Returning Officer shall, in the presence of the persons attending the scrutiny, examine the nomination papers and decide any objection raised by any such person to any candidature.

(5) The Returning Officer may, for the purpose of scrutiny, require any, authority or organization, including a financial institution, to produce any document or record or to furnish any information as may be necessary to determine facts relating to an objection to the candidature of a candidate. (6) The Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.

(6)----------

(7)----------

(8) The declaration submitted under sub-section (2) of section 60 shall only be questioned by the Returning Officer if there is tangible material to the contrary available on record.

(9) Subject to this section, the Returning Officer may, on either of his own motion or upon an objection conduct a summary enquiry and may reject a nomination paper if he is satisfied that _

(a) the candidate is not qualified to be elected as a Member;
(b) the proposer or the seconder is not qualified to subscribe to the nomination paper;
(c) the candidate any provision of section 60 or section 61 has not been complied with or the candidate has submitted a declaration or statement which is false or incorrect in any material particular; or
(d) the signature of the proposer or the proposer or the seconder is not genuine:

provided that _

(i) the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper; or

(ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial and may allow any such defect to be remedied forthwith including an error in regard to the name, serial number in

> the electoral roll or other particulars of the candidate of his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.
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> [emphasis supplied]

From the perusal of above provision, it appears that power of Returning Officer to scrutinize nomination paper of a candidate and decide the objection raised thereon, is summary in nature without recording evidence, and such the order of a returning officer cannot be equated with a decision which has been made after recording evidence. Thus, the order passed by Returning Officer during scrutiny of nomination cannot termed as declaration, no matter said order of the Returning Officer, subsequently upheld upto the Honourable Supreme Court of Pakistan. Furthermore, where non-disclosure or omission to declare an asset pointed out by any rival candidate and or the voter of the constituency to the Returning Officer at the appropriate stage of the election process, it would at best result in rejection of nomination paper. The Honourable Supreme Court of Pakistan in the case Khawaja Muhammad Asif v. Muhammad Usman Dar and others (2018 SCMR 2128) while dealing with issue of non-disclosure/omission of assets by a candidate in his nomination form, has held as under:

> "8. It may so happen that an undeclared asset of an elected member that stands in his own name or in the name of his spouse or dependent children or any of his business entities gets discovered after the time to challenge an election under the election law has expired and had it been declared it would have exposed his dishonesty qua such an asset. The right time to call in question such concealment would obviously arise when such a fact becomes known, therefore, no cutoff period can be fixed or legal bar can be imposed to seek a declaration of dishonesty with regard to such an asset that remained concealed from the records of the Election Commission. We may clarify here that this declaration of dishonesty cannot be sought from the Returning Officer at the time of raising objections to a nomination as his scope of work is only to scrutinize the nomination papers in a summary manner within two to three days and at the most reject a nomination for non-compliance with the requirement of making requisite declarations but not to pass a judicial verdict on the issue of honesty of a contesting candidate in terms of Article 62(1)(f) of the Constitution. Thus upon finding a nomination paper to be non-compliant with the election law all that a Returning Officer can do is to reject a nomination paper without attributing any sort of dishonesty to the contesting candidate. It is only when a contesting candidate has already been declared disqualified under Article 62(1)(f) of the Constitution by a competent court of law that the Returning Officer can reject his nomination paper straight away on that basis. Hence where an undeclared asset that had remained concealed from the records of the Election Commission comes to light and some dishonest act is associated with such an asset then the court of competent

> jurisdiction would scrutinize the issue of disqualification within the ambit of Article 62(1)(f) of the Constitution. If the outcome of the scrutiny is that a declaration of dishonesty is to be made then the court would make such a declaration or it may in the first instance choose to put the investigative machinery of the state into motion. Based on the material coming on the record the test of honesty would be applied and in case the elected member is found dishonest he would be disqualified for life.
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> 9. While considering a case of dishonesty in judicial proceedings what should not be lost sight of is that on account of inadvertence or honest omission on the part of a contesting candidate a legitimately acquired asset is not declared. This may happen as an honest person may perceive something to be right about which he may be wrong and such perception cannot necessarily render him dishonest though the omission would invariably result in rejection of his nomination paper had such a fact is pointed out to the Returning Officer at the time of scrutiny of nomination papers or in proceedings available under the election laws. There are many conceivable instances where an omission to declare an asset on the face of it cannot be regarded as dishonest concealment. For example, where an inherited property is not declared on account of mistake of fact or an asset acquired from a legitimate source of income is not listed in the nomination paper. Suchlike omissions at best could be categorized as bad judgment or negligence but certainly not dishonesty. As mentioned earlier even the proviso to section 14(3)(d) of RoPA envisaged that rejection of a nomination paper on account of failure to meet the requirements of section 12 of RoPA would not prevent a candidate to contest election on the basis of another validly filed nomination paper. Hence mere omission to list an asset cannot be labeled as dishonesty unless some wrongdoing is associated with its acquisition or retention which is duly established in judicial proceedings. In our view attributing dishonesty to every omission to disclose an asset and disqualify a member for life could never have been the intention of the parliament while incorporating Article 62(1)(f) in the Constitution. All non-disclosures of assets cannot be looked at with the same eye. In our view no set formula can be fixed with regard to every omission to list an asset in the nomination paper and make a declaration of dishonesty and impose the penalty of lifetime disqualification. In a judgment from the foreign jurisdiction in the case of Aguilar v. Office of Ombudsman decided on 26.02.2014 by the Supreme Court of Philippines (G.R. 197307) it was held that dishonesty is not simply bad judgment or negligence but is a question of intention. There has to exist an element of bad intention with regard to an undeclared asset before it is described as dishonest. Unless dishonesty is established in appropriate judicial proceedings, Article 62(1)(f) of the Constitution cannot be invoked to disqualify an elected member for life.
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> [emphasis supplied]

A perusal of the above, it appears that law does not envisage that every rejection of nomination paper on account of non-disclosure of an asset would lead to disqualification under Article 62(1)(f) of the Constitution, therefore, unless some wrongdoings associated with an undeclared asset is established the outcome of the case would not culminate into disqualification for life.

In view of the above discussion, and perusal of the previous orders relevant portions whereof are reproduced above, it may be observed that the rejection of earlier nomination paper of respondent No.4 does not constitute a disqualification in perpetuity for him to contest the present bye-election.

9. Insofar as the other objections with regard to committing fraud, usurpation of government land, misusing of power and authority are concerned the same can only be determined after recording evidence and such exercise cannot be gone into writ jurisdiction of this court. It is well settled that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of Constitution, and if there is any error on the point of law committed by the courts below or the tribunal or their decision takes no notice of any pertinent provision of law, then obviously this Court may exercise its constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation. This constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the courts or tribunals below passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vested in them or non-exercise of jurisdiction vested in them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. So far as the exercise of the discretionary powers in upsetting the order passed by the court/forum below is concerned, this Court has to comprehend what illegality or irregularity and/or violation of law has been committed by the courts below which caused miscarriage of justice. Reliance is placed on the case *Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others* ***(2015 PLC 259)***.

10. A perusal of the election laws envisages that where the objection to seek rejection of nomination paper of a candidate has failed before the Returning Officer or before the Election Tribunal constituted to hear

Election Appeals before the elections or the time to throw such challenge has gone by, the stage to challenge the candidature of a contesting candidate at pre-polling stage comes to an end. After the elections, the rival candidate may choose to file an election petition before the Election Tribunal to challenge the candidature of an elected member for non-compliance with the provisions of elections laws.

11. In the backdrop of the above discussion we have examined the impugned orders, passed by the Returning Officer and the learned Election Tribunal, and find that both the impugned orders are legal, unexceptionable and apt to the facts and circumstances of the case. The learned Election Tribunal has dismissed the Election Appeal of the petitioner, after taking into consideration all the objections of the petitioner by following the *ratio decidendi* of the judgment of the Hon'ble Supreme Court, passed in the case of *Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and others* (**PLD 2017 Supreme Court 265)**.

12. The case law cited by learned counsel for the petitioner have been perused and considered with due care and caution but are found distinguishable from the facts of the present case and hence the same are not applicable to the present case.

13. In view of what has been stated above, we are of the considered view that the Retuning Officer and the learned Election Tribunal by rejecting the objection of the petitioner have not committed any illegality and the impugned orders dated 18.06.2019 and 25.06.2019, passed by them, which do not suffer from any illegality or any jurisdictional defect, call for no interference in exercise of jurisdiction by this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Accordingly, the instant petition, being devoid of merit is dismissed with no order as to costs alongwith the pending application.

JUDGE

JUDGE

SUKKUR

Dated:16.07.2019

Ihsan/PA.