

**APPELLATE TRIBUNAL FOR CONDUCT OF BYE-ELECTION
IN CONSTITUENCY NO. NA-249 KARACHI WEST-II /
HIGH COURT OF SINDH AT KARACHI**

Election Appeal No.12 of 2021

Date of hearing : 02.04.2021
Date of announcement : 02.04 .2021
Appellant : Hasnain Ali Chohan, Appellant /
Advocate, in person.
Respondent No.1 : Miftah Ismail Ahmed, through M/s.
Muhammad Yousuf Alam and
Muhammad Ali Danish, Advocates.
Respondents No.2 and 3 : Mr. Abdullah Hanjrah, Senior Law
Officer, Election Commission for
Pakistan.

DECISION

Muhammad Faisal Kamal Alam, J.- This Election Appeal is filed by the Appellant, who himself is contesting the elections from NA-249 Karachi West-II, against the order of Respondent No.2 for accepting the Nomination Form of Respondent No.1.

2. Mr. Hasnain Ali Chohan, Advocate / Appellant, argued that Respondent No.2 has not recorded the reasons for accepting the Nomination Form of Respondent No.1 while rejecting his Objections, which is a material irregularity and should be set at naught in the present proceeding. He has referred to Section 62 of the Election Act, 2017 (the “**Elections Law**”) to support his arguments. He has next contended by referring to the ‘Form B’, bearing caption “**STATEMENT OF ASSETS AND LIABILITIES**” to show that concealment has been committed by Respondent No.1 in the following manner_

- a) Details of vehicles as required in the said Form B is not mentioned;
- b) Details of liabilities is not mentioned; and
- c) Gift as mentioned in the Income Tax Return of Respondent No.1 under entry No.7091 has not been mentioned.

3. He has referred to pages-121, 139 and 147 to highlight that under Code No.7037 and 7091, a figure of Rs.122,452,497/- and Rs.35,000,000/- are mentioned under the heading 'Gift' but the same was never disclosed in the 'Form B'. He further states that if these amounts are added, even then the overall tax liability of Respondent No.1 will also increase and mis-statement of Respondent No.1 in the above Form 'B' stands proved; hence he is to be disqualified under Section 63, sub-section (4) of the Elections Law. He has referred to Section 60(2)(d) of the Elections Law that "Statement of Assets and Liabilities" (Form 'B') by contesting candidate should also state details of spouse and dependent children, and if a proper disclosure is not made, then adverse consequence would follow. He has referred to Section 62(5)(11), regarding authority and powers of Returning Officer / Respondent No.2, that he should have called for the information from the concerned Government Departments and Authorities after perusal of objections of present Appellant filed before the Returning Officer / Respondent No.2, to determine the disqualification of Respondent No.1, but the said Respondent No.2 did not exercise his jurisdiction correctly.

4. The other limb of the arguments of Appellant is that there are serious allegations against Respondent No.1 regarding LNG Contract and a NAB Reference is also pending against him, worth Rs.47 Billion. In support of his argument, Appellant has cited the following case law_

- i. **P L D 2016 Supreme Court page-689**
[*Ch. Muhammad Yousaf Kaselia versus Peer Ghulam Mohy-ud-Din Chishti and others*] – **Kaselia Case**;
- ii. **P L D 2018 Lahore page-752**
[*Masood Ahmad Abbasi, Advocate versus Shahid Khaqan and others*]; and
- iii. **2013 C L C page-133**
[*Munir Ahmed versus Election Commission of Pakistan, Islamabad and 3 others*].

5. The above arguments were controverted by Mr. Muhammad Yousuf Alam, Advocate, representing Respondent No.1. He has contended that this Appellate Tribunal has a limited jurisdiction. Learned counsel has referred to Form B (*ibid*), available at page-17, relied upon by the Appellant, to elaborate his arguments. He has contended that a figure of Rs.79,964,344/- is mentioned under the Heading of ‘Immoveable Property’, details whereof is mentioned in Annexure “A”, which is at page-131; a figure of Rs.1,143,873,128/- is mentioned as ‘Moveable Assets’ and details whereof are mentioned in Annexure “B”, available at page-133. Similarly, ‘Cash and Bank Accounts’ details are mentioned in Annexure “C” and the total sum is mentioned as Rs.20,806,171/- (cash in hand) and Rs.107,396,105/- (cash in Bank) in Form B under the heading of **Cash and Bank Accounts**. He has further contended that a total figure of Rs.1,362,820,248/- is mentioned and since there is no liability payable by Respondent No.1, hence no such disclosure is made. He has cited the following precedents law in support of his arguments_

- a. **P L D 2017 SC page-265 (Panama Case);**
[*Imran Ahmad Khan Niazi versus Mian Muhammad Nawaz Sharif and 9 others*];
- b. **P L D 2013 Lahore page-552;**
[*Raja Pervaiz Ashraf versus Election Tribunal and others*]; and
- c. **P L D 2018 Lahore page-788**
[*Syed Fida Hussain Shah versus Election Appellate Tribunal and others*].

6. Arguments heard and record perused.

7. The crux of case law cited by Appellant is that non-disclosure of any information by a candidate entails penal consequences; even an Election Tribunal duly constituted under the Law, can declare that a candidate is not honest (Ameen) for withholding information from his voters; irrespective of any detail relating to financial obligation, liability is created the moment

a person took upon himself an obligation to settle the same and it is to be disclosed in the Nomination Form and its non-disclosure entails penal action and the appellant (of the reported case) was un-seated; Returning Officer is a key person, whose main obligation is to ensure that election process is conducted in a just and fair manner; when sufficient documentary evidence was available before the Returning Officer, then he should have passed the appropriate order; elected representative should be a role model and not a person with rusty face.

8. The précis of the case law cited by learned counsel for Respondent No.1 is that unless there is declaration by a Court of plenary jurisdiction already existing, the Returning Officer or any other fora in the hierarchy would not reject the nomination of a person from being elected as a member of the Parliament on the ground that he is dishonest, not sagacious and Ameen; Court of law essentially means a Court of plenary jurisdiction, having power to record evidence; Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973, is to be strictly construed.

9. Firstly, it is necessary to determine that whether any concealment of fact is done in Form B by Respondent No.1, which should entail the penal consequences.

10. With regard to serial No.1 – **Immoveable Property**, learned counsel for Respondent No.1 has referred to page-131. This is **Annexure ‘A’** and it is stated that one property – Residential Bungalow C-36, K.D.A. Scheme No. 1, Karachi, is owned by Respondent No.1, *whereas*, Residential Bungalow C-24, C-25, C-26, K.D.A. Scheme No. 1, Karachi, is owned by his spouse (Mrs. Reema Ismail Ahmed); the same Immoveable Properties are mentioned in tax return for the year 2020 filed by Respondent No.1 under Code No.7002, *whereas*, same Immoveable Property of spouse is

mentioned under Code 7002 of the tax return of Mrs. Reema Ismail Ahmed for the tax year 2020.

Moveable assets-total value under this heading is mentioned in Form B as Rs.1,143,873,128/- and its details are mentioned in **Annexure 'B'**, which is at page-133. Details include shareholding of Respondent No.1 and his wife in a Company and the final figure mentioned in Annexure 'B' is the same as mentioned in Form B; this figure is reflected in the Tax Return of Respondent No.1 under the Code 7006, with the description that Respondent No.1 holds shareholding in the Company Ismail Industries Limited having worth Rs.1,021,238,073/- (page-147) which is the same as mentioned in Annexure 'B' (at page-133). Similarly, at page-173, which is part of the Tax Return of wife of Respondent No.1 for the year 2020, the shareholdings as contained in Annexure 'B' is mentioned under the Code 7006; *whereas*, under the code 7007, advance (loan) made by wife of Respondent No.1 is also mentioned. Sum total is same as it is mentioned in Form 'B' and its Annexure 'B'.

11. With the Objection filed to the main Appeal, a certificate from the Inland Revenue Services dated 30.03.2021 issued by the Deputy Commissioner-IR, E & C Unit-05, Zone-I, C.T.O., Karachi, is also appended, which certifies that against Respondent No.1 no tax liability is outstanding; the original whereof is also produced today in Court, which is taken on record.

12. To a specific query, Appellant replied, which is supported by the record, that till date Respondent No.1 has not been convicted in the NAB Reference pending against him; but his assets have been frozen by the NAB (National Accountability Bureau), which shows that he is involved in corrupt and illegal practice. This argument is not acceptable as there is no supporting record, including any judicial order. No information or material

has been brought on record to *prima facie* show that Respondent No.1 is a defaulter of loans, taxes and Government dues, as envisaged in sub-section (4) of Section 63 of the Elections Law.

13. With regard to the contention of Appellant's side that no vehicle has been disclosed in Form B by the Respondent No.1, learned counsel representing the latter, has replied, that since vehicles are not in the name of Respondent No.1, hence, they are not mentioned in Form 'B'. Since no evidence contrary to what is stated by learned Advocate for Respondent No.1, is available in the record, thus, this contention appears to be correct.

14. The case law cited by the Appellant's side is distinguishable and do not apply to the facts of present case; in particular, the reported decision of the Honourable Supreme Court handed down in *Kaselia Case (supra)*, in which a returned candidate was non-seated because it was proven that he did not disclose a liability of Rs.70 Million, which existed at the time of filing of the Nomination Form. It was a post-election dispute and the decision was given after a proper trial and not summarily, which is a requirement of present *lis*, in terms of section 63 of the Elections Law.

15. In view of the above, no interference is required in the impugned Order and this Appeal is accordingly dismissed. However, Appellant may bring a fresh proceeding in terms of Elections Law, if some new development takes place.

16. There is no order as to costs.

17. Let copy of this decision be communicated to the Election Commission of Pakistan.

Judge

Karachi, Dated: 02.04.2021.

Riaz / P.S.