

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
C.P.No. D- 609 of 2022

Date of hearing	Order with signature of Judge.
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Hearing of Case(Priority)

- 1.For hearing of CMA 2390/22
- 2.For hearing of main case.

01-06-2022

Mr. Anwar Ali Lohar, Advocate for the Petitioners.
Mr. Muhammad Hamzo Buriro, D.A.G.
Mr. Asfandyar Kharal, Assistant A.G.
Mr. Zeeshan Haider Qureshi, Law Officer, Election Commission.

Ch. Shahid Hussain Rajput, Advocate has filed Vakalatnama on behalf of the Respondents No.5&6, which is taken on record.

Through this Petition, the Petitioners have impugned Order dated 25.05.2022, passed by the Election Appellate Tribunal, Ghotki in Election Appeal No. 40 of 2022, whereby Order dated 20.05.2022, passed by the Returning Officer has been set aside, through which the nomination papers of the Respondents No.5&6 were rejected.

It appears that the Returning Officer had rejected nomination papers of the Respondents No.5&6 on the ground that the assets and liabilities were not properly declared and some properties in the name of Respondent No.5 had been concealed.

Counsel for the Respondents No.5&6 have vehemently opposed this Petition.

We have heard learned Counsel and perused the record.

Without going into the very fact that whether the properties were concealed or not, it appears that in the case of *Tariq Hussain vs. Subhan Ali and 6 others* (**2019 CLC 1592**) (**Sindh Sukkur Bench**), it has already been held that insofar as the elections of the Local Government under Local Government Act including their Rules are concerned, there is no mandatory requirement for filing of declaration of assets and liabilities of the candidates. Para-26 of the said Judgment reads as under:

"26. Secondly, when there is no requirement for filing a declaration of assets and liabilities by a candidate, who is a contestant in a Local Government Election, under the SLGA and its Elections Rules, as discussed hereinabove, then this requirement of disclosure of assets and liabilities as mentioned in ROPA read with its Rules, 1977, cannot be read into the scheme of SLGA and the provisions whereof, which are especially enacted for Local Bodies Elections. It is a settled rule of interpretation that unless a penal provision is expressly mentioned either in the statute itself or a rule made thereunder, a person cannot be penalized or disqualified on any assumption or by invoking a provision from some other statute; in the instant case ROPA. The intentional omission by legislature as is obvious in the SLGA and its Election Rules (supra), cannot be filled up by this Court by declaring or holding that non-disclosure or erroneous disclosure of assets and liabilities by a contesting candidate while submitting his nomination paper, is a disqualification under SLGA or Election Rules framed thereunder. The principle of 'casus omissus' is attracted here.

The other rule of interpretation, which is applicable here is *expressio unis est exclusio alterius* (**express enactment shuts the door to further implication**); when a statute directs a thing to be done in a particular manner, or by certain persons, then it should be done in the manner and by the persons so mentioned. In afore-mentioned Hasnat Khan's Case, the Honourable Supreme Court while reiterating the rule of interpretation of statute has held that, "no word used by lawmakers is either redundant and can be subtracted, substituted, added or read in a piece of legislation or a document," (**Underlying is done for emphasis**).

Thirdly, under Section 71 of SLGA, only those provisions of ROPA can be invoked or made applicable to the elections and the electoral process, held and conducted, regarding which SLGA is silent. The requirement of disclosure of assets and liabilities under ROPA as discussed hereinabove, cannot by implication be incorporated or read into SLGA, for the purpose of disqualifying candidates or the present (incumbent) Respondent No.1".

In view of the above, we are of the view that at this stage of the proceedings nomination form of the Respondents No.5&6 ought not to have been rejected by the Returning Officer. Accordingly, this Petition stands **dismissed** and Order of the Appellate Court is maintained and that of the Returning Officer, whereby nomination papers of the Respondents No.5&6 were rejected, stands set aside. Let copy of this order be communicated to the Election Commission.

JUDGE
JUDGE

Ahmad