

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present:

Mr. Justice Khadim Hussain Tunio

Mr. Justice Zulfiqar Ali Sangi

C.P. No. D – 2308 of 2022.

Mr. Murtaza Lund Advocate for petitioner.

Mr. Allah Bachayo Soomro, Addl. A.G. Sindh along with Abdul Hafeez Nizamani Commissioner RTO IR Hyderabad & Muhammad Ibrahim R.O. 6 Taluka Jhando Mari TandoAllahyar ADC-I TandoAllahyar.

Mr. Fayyaz Ahmed Leghari Advocate / HESCO files statement along with photostate copies of Electricity Consumption Charges Bills; taken on record.

Mr. Ashfaque Nabi Qazi, Assistant Attorney General for Pakistan.

Mr. ZaheerAbbass Advocate / Law Officer, ECP.

Mr. Pervaiz Tariq Tagar Advocate files Vakalatnama for private respondent No.8, and statement along with documents; taken on record.

Date of hearing 06.07.2022.

Date of decision. 06.07.2022.

ORDER

ZULFIQAR ALI SANGI, J.- Through this petition, the petitioner has challenged the order dated 23.6.2022 passed by the Election Appellate Authority Tando Allahyar in Election Appeal No.59 of 2022, wherein the order of returning officer who accepted the nomination form of respondent No.8 was upheld while dismissing the election appeal of the petitioner.

2. Learned counsel for the petitioner contended that respondent No.8 has concealed assets at the time of filing nomination form and was a defaulter of HESCO for an amount of Rs.184777 on the meter Reference No.2737412140250-R and for an amount of Rs.562661 on the meter Reference No.24371420096291 U which are in the name of respondent No.8. Learned counsel next contended that respondent No.8 has also concealed assets from the FBR while filing wealth statement which includes vehicle **Toyota, Hilux VIGO Registration No. AW-1907, Toyota Corolla bearing Registration No.BBE-**

691. Therefore, his nomination form was to be rejected by the returning officer but with malafide intention was accepted and the said order was maintained in Election Appeal No.59 of 2022. Lastly, he prayed that this petition may be allowed and the order passed by the returning officer so also Election Appellate Authority may be set-aside and the nomination papers of respondent No. 8 may be rejected.

3. Learned counsel for respondent No.8 filed a statement along with certain documents including paid bills of the electricity and submits that the outstanding amount of Rs.184777/- and Rs.518926/- was paid whereas respondent No. 8 has no concern with the vehicles and the same were fraudulently entered in his name, therefore, he had not mentioned in the form of 'Assets Declaration'. Lastly, he submitted that the order of the returning officer so also the Election Appellate Authority is in accordance with law and prayed that the petition filed by the petitioner may be dismissed.

4. Learned counsel for HESCO has placed on record a statement which reflects that respondent No.8 is a chronicle defaulter for the last about 72 months and an amount of Rs.184777/- is outstanding against him, however, he submitted that the HESCO was not in knowledge as to whether the respondent No.8 has paid the electricity bills recently.

5. Mr. Abdul Hafeez Nizamani Commissioner RTO IR Hyderabad has filed a statement along with certain documents including copies of online verification in respect of the aforesaid vehicles so also the copies of wealth statements of different years submitted by respondent No. 8 with his income tax returns and submit that as per online verification record the vehicles are in the name of respondent No. 8 but he had not disclosed the same in his wealth statements and concealed the same. Lastly, he submitted that since the department came to know about the concealment of the assets therefore the cognizance has been taken against respondent No.8.

6. We have heard learned counsel for the parties and have carefully scanned the material available on record with their able assistance.

7. As per the Notification dated 29th April 2022 and 10th June 2022 issued by the Election Commission of Pakistan the dates for filing

nomination papers with the returning officers by the candidates for the 2nd phase of election was from 08-06-2022 to 15-06-2022 and the dates for scrutiny of nomination papers was fixed from 17-06-2022 to 19-06-2022. The petitioner and respondent No.8 submitted their nomination papers for the seat of General Councilor ward No. 3 Town Committee Piaro Lund. The nomination paper so submitted by respondent No. 8 was objected but the same was accepted by the returning officer and the election appeal was filed which was dismissed. Respondent No. 8 had not denied that the bills as alleged have not belonged to him however, took the plea that the said bills were paid by him and copies of paid bills are submitted with the statement. The bills were scanned and it is found that the same were paid on 09-06-2022 and 27-06-2022 much after the date of filing of nomination papers and even after the date of scrutiny. **In the circumstance, it is very much clear that at the time of filing the nomination papers and at the time of scrutiny respondent No.8 was a defaulter of the HESCO.** Section 60 (2) (a) of the Election Act, 2017 provided that “a declaration that he has consented to the nomination and that he fulfils the qualification specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 for being elected as a member.” However, Article 63 (1) (o) of the Constitution of the Islamic Republic of Pakistan, 1973 provides that **“A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:- (o) he or his spouse or any of his dependent has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time filing his nomination papers; or”**. Admittedly respondent No.8 at the time of filing the nomination paper was a defaulter of HESCO for over 72 months and the amount was over ten thousand.

8. Another point for consideration in the case in hand is that respondent No. 8 has not disclosed the assets as alleged by the petitioner in respect of the vehicles as discussed above. Respondent No. 8 had denied ownership of the above vehicles and claims that such did not remain under his use and were fraudulently registered in his name therefore he has not disclosed the same in the form of declaration of assets attached with the nomination paper. The defence so taken by the respondent that the vehicles were fraudulently registered in his name is misconceived as the Commissioner RTO IR Hyderabad, has filed statement along with copies of online verification in respect of the

aforesaid vehicles so also the copies of wealth statements of different years submitted by the respondent No. 8 with his income tax returns as required under section 114 (1) and (6) of the Income Tax Ordinance 2002 and as per the online verification record the vehicles are still in the name of respondent No. 8 but he had not even disclosed the same in his wealth statements so also in his nomination papers and concealed the same. The vehicle COROLLA (BBE-691) was registered in the name of respondent No. 8 in the year 2014, Vehicle HILUX VIGO (KW-1907) was registered in the year 2017 and motorcycle (HAR-3114) was registered in the year 2012 and the registrations of the vehicles in the name of respondent No. 8 are very old, not new. If for the sake of understanding we believe that someone fraudulently registered the vehicles in his name the same must be fresh registration as no one knows that the respondent would contest the election in future.

9. The Election Appellate Authority has wrongly held in the impugned order that *“in the proviso of law, nowhere it is mentioned that a person is disqualified mere on the ground of non-mentioning his assets in the nomination form.”* The Division Bench of this court in the case of Saeed Ahmed and others C.P No-D 633 and others of 2022 after detail discussion has held in para No. 17 and 19 as under:-

17. A perusal of the above mentioned cases cited and relied upon by learned counsel for the petitioners shows that the Forms prescribed in the Rules of 2015 incorporating the specific declaration of assets on solemn affirmation by the candidate at the time of filing the nomination were not pointed out to the Court nor C. P. Nos. D - 622 of 2022 & others Page 11 of 12 was it argued therein that such declaration, being a part and parcel of the prescribed Forms, was mandatory. Resultantly, the effect of non-submission of such declaration at the time of filing the nomination was not argued in any of the said cases and thus it was not considered, discussed and or decided therein. Therefore, the cited cases cannot be applied in the instant petitions as the above point / objection has been specifically agitated herein. It may be noted that in Aitbar and another (supra) it was held by the learned Division Bench of this Court that the contesting candidate was indeed required to submit complete and correct nomination papers along with annexures as required under the law and rules, and accordingly he was directed to file complete and true declaration of his assets before the Returning Officer only for the reason that the non-disclosure of a small piece of land by him was found not to be a deliberate act of concealment of assets. Thus, in terms of Proviso (ii) to Sub-Rule (3) of Rule 18 of the Rules of 2015, the defect was not of a substantial nature. Whereas the non-disclosure of assets in the instant cases was deliberate and the defect was of a substantial nature as discussed above.

19. In view of the above discussion, we hold that a candidate contesting the Local Government Elections under SLGA is required to disclose / declare his assets on solemn affirmation in the prescribed form at the time of filing his nomination papers which requirement is

mandatory, and in case of noncompliance of this mandatory requirement, his nomination papers would be liable to be rejected. The petitioners have not been able to make out a case justifying interference in the impugned orders by this Court in its constitutional jurisdiction.

10. In view of the above discussion, we hold that respondent No. 8 at the time of filing his nomination papers was a *defaulter* of the HESCO so also he concealed the assets and not declared/disclosed the same in the declaration of assets form attached with the nomination papers and therefore is not eligible to contest the elections. Thus the order dated 19-06-2022 passed by the returning officer by accepting the nomination papers of respondent No. 8 and the order dated 23-06-2022 passed by the Election Appellate Authority in Election Appeal No. 59 of 2022 are set-aside and the nomination papers of respondent No. 8 under-challenged are hereby rejected. The office is directed to send a copy of this order to Respondents No. 1 to 4 for compliance.

JUDGE

JUDGE