

**APPELLATE TRIBUNAL FOR CONDUCT OF BY-ELECTION IN
CONSTITUENCY NO. NA-246 KARACHI, SOUTH-I
HIGH COURT OF SINDH AT KARACHI**

Election Appeal No. 02 of 2022

Date of hearing : 22-08-2022

Date of Decision : 22-08-2022

Appellant : Muhammad Jawed, through M/s.
Muhammad Haseeb Jamali,
Hidayatullah Mangrio and Muzzamil
Jalbani, Advocates.

Respondents 1 to 4 : Nemo.

JUDGMENT

Adnan Iqbal Chaudhry J.- This is an appeal under section 63 of the Elections Act, 2017 against the order passed by the Returning Officer rejecting the objection of the Appellant and accepting the nomination form of Imran Ahmed Khan Niazi, Respondent No.4, as candidate for by-election to NA-246 Karachi, South-I.

2. Learned counsel points out that the declaration signed by the candidate that he has opened a bank account for the purpose of election expenses, is incomplete inasmuch as the account number and the name of the bank has been left un-filled. He further submits that the candidate did not annex with his affidavit a copy of the tax return for the year 2021; that his affidavit states that his net assets have increased from the previous financial year but his tax returns do not justify the increase; that he did not disclose the cost incurred on foreign travels; and that the copy of the passport annexed with the affidavit was incomplete. However, at the same time it is not being disputed that Form-B filed by the candidate lists 4 bank accounts, any of which may well be a bank account maintained for election expenses. It is not being disputed that the candidate had in fact filed a tax return for the year 2021, a copy of which has been produced by the Appellant himself. No material is placed on the record to

substantiate the averment that tax returns are false, or that any asset has been suppressed in Form-B. The affidavit of the candidate is that in the period of 3 years he made 3 foreign trips, all as head of State and none in his private capacity. That appears to be sufficient disclosure of foreign travels especially when it is not being alleged that there are undisclosed foreign trips. Therefore, none of the above objections are substantial. In any case, while filing written objections before the R.O., the Appellant had only vaguely and broadly pleaded that the candidate has suppressed information, and the objections now being urged were never pleaded specifically.

3. Learned counsel next submits that as per the registered trust deed dated 26-12-2019, amended vide trust deed dated 10-07-2020, the candidate is one of the trustees of Al-Qadir University Project Trust, which has a substantial land asset, but the trustee has not declared such asset in Form-B. Suffice to state that in law, trust property is not the property of the trustees. The further contention that the candidate is in fact the real beneficiary of trust property, is an allegation of fact that will require proof and judicial determination, one which cannot be probed here in summary jurisdiction.

4. Moving further, learned counsel draws attention to the following finding of the Election Commission of Pakistan [ECP] against the candidate on a complaint made under Article 6 of the Political Parties Order 2002:

“(k) The Chairman of PTI for financial year 2008-09 to 2012-13 (Five Years) has submitted Form-I which were found to be grossly inaccurate on the basis of the financial statements obtained by this Commission from SBP and other material available on record.”

Learned counsel equates the above finding to “a declaration by a Court of law” within the meaning of Article 62(1)(f) of the Constitution of the Pakistan. For that, he relies on section 4(2) of the Elections Act, 2017 which states that a direction or order issued by the ECP shall be enforceable and executed as if it had been issued by a High Court. Firstly, and tentatively, the above finding does not

appears to be a “declaration” for the purposes of Article 62(1)(f) of the Constitution. Secondly, when section 4(2) of the Elections Act deems a direction/order of the ECP as having been passed by a High Court, that is only for the purposes of providing a mechanism for the enforcement of directions/orders of the ECP. Whether the ECP would be a ‘Court’ within the meaning of Article 175 of the Constitution, is not a question before me, nor am I inclined to enter into that question in pre-election summary jurisdiction.

5. The last objection put forth by learned counsel is that payments made by the candidate for retaining gifts received as Prime Minister were less than the payment prescribed for such purpose vide Memorandum dated 18-12-2018 issued by the Cabinet Division. Such submission is made by learned counsel to eventually invoke the disqualification under Article 62(1)(f) of the Constitution. However, it has been held by the Honourable Supreme Court in *Sardar Yar Muhammad Rind v. Election Tribunal Balochistan* (PLD 2020 SC 137), and *Allah Dino Khan Bhayo v. Election Commission of Pakistan* (PLD 2020 SC 591) that the disqualification under Article 62(1)(f) of the Constitution entails a declaration by the Court of law, which is beyond the purview of this forum.

6. In view of the above, the appeal is meritless and is dismissed in *limine*. The office shall communicate this decision to the Election Commission of Pakistan.

JUDGE

KARACHI
DATED: 22-08-2022
SADAM/SHABAN/PA*