

BEFORE THE ELECTION APPELLATE TRIBUNAL FOR SINDH AT SUKKUR

Election appeal No.S-15 of 2024

Muhammad Khan son of Ghulam Hyder
 By caste Jeesar, Adult, Muslim
 r/o Village Lilya Taluka Moro
 District Naushehro Feroze ----- Appellant

V E R S U S

1. Masroor Ahmed Khan son of Ghulam Mustafa Khan Jatoi
 Adult, Muslim by caste Jatoi r/o Village New-Jatoi
 Taluka Moro, District Naushehro Feroze
2. The Returning Officer PS-35 Naushehro Feroze-IV
 Office of the Assistant Commissioner Moro
3. The Election Commission of Pakistan
 To be served through District Election Commissioner
 Naushehro Feroze
 ----- Respondents

Mr. Nisar Ahmed Bhambhro and Mr. Sheraz Fazal,
 Advocates for appellant

Mr. Mureed Ali Shah, Advocate for respondent No.1

Mr. Zeeshan Hyder, Law Officer, Election Commission of
 Pakistan

Mr. Dareshani Ali Hyder 'Ada' DAG

Mr. Muhammad Umair Election Officer Sanghar,
 representative of Election Commission of Pakistan

Mr. Aijaz Ali Halepoto RO PS-35 Naushehro Feroze-IV

Date of hearing: 08.01.2024

Date of order: 10.01.2024

ORDER

Zulfiqar Ali Sangi J:- Through this Election Appeal, the appellant has challenged the impugned order dated 29.12.2023, passed by the Returning Officer PS-35 Naushehro Feroze-IV, whereby nomination form of the respondent No.1, was accepted. Mainly on the grounds that he had not declared three daughters namely Ms. Raina, Ms. Shah Noor and Ms. Shareen in his nomination form and affidavit attached with nomination form and made a false declaration which has a Penal consequences in view of the judgment rendered by The Supreme Court in case reported as PLD 2018 Supreme Court 678. The next contention of counsel for appellant is that respondent No.1, has not declared his assets properly and as per the annexure 'F' of the nomination form there are variations in the assets viz agricultural land. Lastly he submits that his nomination form was liable to be rejected on the aforesaid grounds, however, the

same was wrongly accepted by the Returning Officer which by allowing this appeal may be rejected. He has relied upon the cases of Moazam Ali Khan Abbasi v. Federation of Pakistan and others 2020 CLC 1938, Nida Khuhro v Moazzan Ali Khan and others 2019 SCMR 16, Saeed Ahmed and others v Federation of Pakistan and others PLD 2022 Sindh 508 and Yasir Aftab v. Irfan Gul and others 2023 SCMR 206.

2. Syed Mureed Ali Shah, Advocate by filling vakalatanma on behalf of respondent No.1, contended that the requirement in the nomination form and the affidavit is only in respect of spouse(s) and dependents. Next contended that daughters as alleged by the appellant are major and independent not depends upon their father (respondent No.1), under such circumstances their names were not mentioned, however in affidavit at column 'E' written with pen their entire property is mentioned. Lastly contended that nomination form was rightly accepted by the Returning Officer and the appeal is liable to be dismissed.

3. On the other learned DAG and counsel for Election Commission by filling para-wise comments contended that the entire requirements of law were satisfied by the Returning Officer and thereafter accepted the nomination form of the respondent No.1, no illegality or infirmity has been committed by Returning Officer who acted as per act/rules under section 60, 61 and 62 of the Election Act 2017, therefore the appeal is liable to be dismissed.

4. Heard and perused.

5. From perusal of paragraph 'D' of the affidavit filed along with nomination it reflects that the respondent No.1, has showing the name of spouse (s) and dependents and has not mentioned any name of his dependent being the major and independent. The three daughters as claimed by the appellant are admitted by the counsel for appellant are major and not a minor. It is also admitted that the daughters have own properties and they are capable of being maintained out of their own properties. As per Section 370 of Muhammadan Law (D. F Mulla's Principles of Muhammadan Law) which provides that "(1) A father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. But he is not bound to maintain his adult sons unless they are disabled by

infirmity or disease. The fact that the children are in the custody of their mother during their infancy (S.352) does not relieve the father from the obligation of maintaining them. **But the father is not bound to maintain a child who is capable of being maintained out of his or her own property.** (2) If the father is poor, and incapable of earning by his own labour, the mother, if she is in easy circumstance, is bound to maintain her children as the father would be. (3) If the father is poor and infirm, and the mother is also poor, the obligation to maintain the children lies on the grandfather provided he is in easy circumstance". The dependent mean a person who relies on another for support (as per Black's Law Dictionary 8th Edition). The word dependent has also a wide scope, not only the children but the relative, any poor person and a friend can be said to be a dependent of someone who has regularly supporting him financially. Herein the present case the respondent No.1, in clear terms states that the daughters being major and having their own property or maintaining themselves and he is not providing any maintenance to them, therefore they being independent and not dependent, that's why their names are not mentioned in the nomination form or affidavit. The majority and having own property and business has not been denied by the appellant side.

6. As regards to the false declaration of assets, no proper particulars of the property which allegedly concealed by the respondent No.1, has been pointed out. However, as per the defence taken by respondent No.1, he has declared entire property in the nomination form and in the affidavit attached and had not concealed anything which comes in definition of false declaration. It is observed that the appeal is to be decided summarily in view of Section 63 (2) of the Election Act, 2017 as the Election Tribunal has been constituted for a limited purpose in terms of Section 63 of Election Act, 2017 and is not an Election Tribunal form in terms of Section 140 of the Election Act, 2017. The difference is to be kept in mind, as any order of Election Tribunal in respect of allegation and, acceptance of nomination form cannot be equated with an order or decision/judgment of Election Tribunal constituted in Terms of Section 140 of the aforesaid Act, for deciding the Election Petition.

7. Under such circumstances, the returning officer has rightly accepted the nomination form of respondent No.1, and the order passed by Returning Officer is hereby maintained. The appeal stands dismissed.

J U D G E.