

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI,
CHIEF JUSTICE;

MR. JUSTICE ABDUL MOBEEN LAKHO

C.P. No. D-192 of 2024

Petitioner	Ghulam Murtaza through Mr. Muhammad Haseeb Jamali, Advocate
Respondents	through Mr. Saifullah, AAG.
Respondent No.1	Nemo
Date of hearing	12.01.2024
Date of order	12.01.2024

ORDER

Abdul Mobeen Lakho, J. The Petitioner is aggrieved by the order dated 10.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.165 of 2024, challenging the acceptance of the nomination papers by the Returning Officer PS-76, District Thatta.

2. Brief facts of the petition are that the respondent No.1 filed his nomination papers for the forthcoming election from PS-76, District Thatta. The petitioner raised objections before the Returning Officer and prayed for the rejection of the nomination papers of respondent No.1 on the ground that the respondent No.1 with *mala fide* intention concealed several material facts and his bank records. The objections were rejected by the Returning Officer and the respondent No.1 was allowed to contest the elections, against which the petitioner filed an Election Appeal under Section 63 of the Election Act, 2017.

3. Learned counsel for the petitioner has contended that the Impugned Order passed by the Respondent No.5 whilst dismissing the Appeal of Petitioner is unconstitutional and contrary to the norms of the justice as well as Standards for nomination set by the Election Act and the Hon'ble Supreme Court. The learned Tribunal erred and passed the order without the correct exercise of jurisdiction, application of judicial mind, and without taking in account the blatant and / malafide discrepancies and tangible evidence produced before them; the Objections pointed out various material inconsistencies, intentional concealments and misstatements by the Respondent No.1 in his nomination papers; the Affidavit of the candidate and the Annexures filed therewith. Hence, the Forum in Summary Jurisdiction had the authority and duty to adjudicate upon the same, but chose to avoid such adjudication. By concealing copy of passport, the Respondent No.1 has withheld material information and has come out with unclean hands; Section 114 of the income tax ordinance requires persons of various categories to file tax returns. Admittedly, the Respondent No.1 owns at least three Properties which are more than 500 sq yds in total. Respondent No.1 has claimed that his home is 1258 Sq Yds. and besides he has co-ownership of two other properties. Hence, under Section 114(b)(iii) of the income tax ordinance, the Respondent No.1 was under statutory duty to file tax returns but he has failed to do so. Such failure is fatal to his nomination form; the Respondent No.5 failed to consider that Clause K of the Affidavit of Candidate, requires every person to disclose his last three years income. However, the Respondent No.1 has only disclosed income of year 2023 and avoided to disclose income of year 2021 and 2022. Furthermore, as he claims that his profession is of "Pesh Imam" and shown his annual income as 250,000/- in year 2023, whereas the bank statement attached with the nomination papers shows many other transactions, for which, the nomination papers are silent. Amount of more than 6 lacs have fallen into the said account. No other source of income has been provided therein. Similarly, failed to disclose the rental income he is generating from the shops. It is surprising that the net assets

have neither been increased nor decreased which is blatant lie on part of the Respondent No.1 for the last 2 years.

4. On the other hand learned AAG argued that the petitioner has not filed any proof in support of his contentions and has fully supported the order passed by the returning officer who accepted the nomination papers of the respondent No.1 which was upheld by the Election Appellate Tribunal in appeal filed by the petitioner. Lastly, he prayed that the petition filed by the petitioner may be dismissed.

5. We have heard learned counsel for the parties and perused the record and considered the facts.

6. We are fortified with the view taken by a Division Bench of this Court in 2017 CLC Note 179 wherein it was held as follows: -

...

“There is no cavil to the proposition that a candidate who, intends to contest elections is required to submit complete and correct Nomination Papers along with annexures as required under relevant law and rules, whereas, any deliberate omission or default, which is of substantial nature, cannot be allowed to be validated at a subsequent stage. Reliance is placed in the case of *Rana Muhammad Tajammal Hussain V/S Rana Shaukat Mahmood* reported in **PLD 2007 SC 277** and *Mudassar Qayyum Nagra versus Election Tribunal Punjab, Lahore and 10 others* reported in **2003 MLD 1089**. However, if there is an error or omission on the part of candidate in the Nomination Papers, which is not substantial in nature and can be cured at a very initial stage of scrutiny by the Returning Officer or before the Appellate Authority, in such situation, we are of the opinion that, an opportunity is to be given to the candidate to remove such defect or deficiency so that he may not be disfranchised or prevented from contesting elections which is a fundamental right of every citizen as per constitution, however, subject to law. We are of the tentative view that, the petitioners, otherwise qualify to contest elections, and there is no objection with regard to their eligibility except, the ground of incomplete declaration of assets by petitioner No.1, which according to

the petitioner was on account of omission by the petitioner, whereas, respondents have not been able to demonstrate as to how such non-declaration of assets of the ancestral agricultural land by the petitioner No.1 is a deliberate act of concealment or the petitioner wanted to gain any benefit out of such non-declaration.

In view of hereinabove facts and circumstances of the case and while agreeing with the ratio of the decision of the Lahore High Court, as referred to hereinabove, we are of the opinion that non-declaration of small share in the ancestral agricultural land by the petitioner No.1, was not a deliberate act of concealment of assets, hence, does not fall within the mischief of section 12 and 14 of the Representation of the Peoples Act, 1976. Accordingly, instant petition is allowed, impugned order passed by Appellate Authority is hereby set aside and the petitioner is directed to submit complete and true declaration of assets before the Returning Officer, which shall be examined by him and, thereafter, order of acceptance shall be passed in accordance with law and Form-VIII shall be issued immediately.

Petition stands allowed in above terms.”

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7. The learned Election Appellate Tribunal while observing that *the Respondent No.1 in his Form "B" showed his total assets to be valued at Rs.7.5 million. In details therewith, he has stated that he owns one house, two shops and two buffaloes. The pieces of land placed on the record were under the Ghoth Abad scheme which are also a public record, therefore satisfying the purpose behind disclosure of assets which is to bring it in the public's knowledge. This candidate annexed his bank records and other details which cure any defects in his nomination form and affidavit. Such act is found sufficient and is in conformity with the observations of this Court. This candidate disclosed all material particulars; as such his nomination form was rightly accepted by the RO. As for the other allegations, the appellant has failed to establish his presence at the time of scrutiny and since he was*

indolent of his rights as a voter of the constituency, he cannot come and seek benefit at this stage. Had he been present at the time of scrutiny, he would have been able to raise every objection and provide all the details collateral therewith, but since this was not done and the nomination form of the candidates was accepted, he shall now go on to contest the elections and if any discrepancy surfaces on the record, his candidature could very well be challenged once he is declared as a returned candidate.

8. Reverting to the case in hand, we have examined the order rendered by the learned Election Tribunal of this Court and find that the impugned order is legal, unexceptionable, apt to the facts and circumstances of the case, which suffers from no jurisdictional defect, do not call for any interference by this Court in exercise of its Constitutional jurisdiction. We vide our short order dated 12.01.2024 had dismissed this petition and these are the reasons thereof.

J U D G E

CHIEF JUSTICE