

## 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-107 of 2024

Petitioner	Muhammad Dost through Syeda Abida Bukhari, Advocate
Respondent No.5	Khurram Sher Zaman through M/s. Haider Waheed and Muhammad Asad Ashfaq Tola, Advocates
Respondents	through M/s. Naeem Akhtar Talpur, Addl: Advocate General Sindh and Saifullah, AAG.
Date of hearing	10.01.2024
Date of order	10.01.2024

### ORDER

**Abdul Mobeen Lakho, J.** The Petitioner Muhammad Dost is aggrieved by the order dated 06.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.01 of 2024, *whereby*, nomination paper of Respondent No.5 Khurram Sher Zaman was ordered to be accepted for constituency NA-241 in forthcoming election of National Assembly.

2. Learned counsel for the Petitioner submits that Respondent No.5 has failed to disclose the assets / business details of his spouse and has issued a Solemn Declaration before the Respondent No.4 – Returning Officer based on concealment. He further submits that Respondent No.5 in response to the arrest of his former Chairman of his political party indulged into activities that were intended to raise and promote a narrative against the State of Pakistan and Armed Forces of Pakistan. Resultantly, numbers of FIRs were lodged against him. Hence, he does

not meet the qualifications of a Member to be chosen to represent populous in the Majlis-e-Shoora [Parliament]. He, therefore, prays for setting aside the impugned order dated 06.01.2024 passed by the learned Election Tribunal of this Court in Election Appeal No.01 of 2024.

3. Mr. Haider Waheed, Advocate for Respondent No.5 submits that there is no concealment of facts as the Respondent No.5 has disclosed all assets which are necessary to establish the true value of the Property. He further submits that the Petitioner has failed to show or place any material that the Respondent No.5's spouse owns any assets or engaged in any business activities. He further submits that FIRs registered against Respondent No.5, in which, Respondent No.5 has also been granted bail by the competent Court and merely pendency of the Tribunal Cases is no grounds for rejection of the nomination papers of a candidate. He further submits that impugned order has rightly been passed by the learned Election Tribunal of this Court. Hence, the instant Petition may kindly be dismissed.

4. We have heard learned counsel for the parties and perused the record and considered the relevant laws.

5. 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.”

...

6. The learned Election Tribunal while observing that “*the objector has raised disputed questions of facts which cannot be decided without leading evidence, which exercise cannot be gone into either before Returning Officer or in the instant proceedings insofar as the criminal cases of the appellant are concerned, admittedly, the appellant was not convicted in the said crimes and he would only stand to gain if he did not mention in his nomination form about criminal cases in which he had been convicted, which may have entailed his disqualification*”. It is also a well settled principle of law that merely on the pendency of the criminal cases the nomination paper of a candidate cannot be rejected. Reverting to the case in hand and after going through the order rendered by the learned Election Appellate Tribunal, we find that the impugned order is unexceptionable, apt to the facts and circumstances of the case

and not suffering from jurisdictional defect, hence, it does not call for any interference by this Court in exercise of its Constitutional jurisdiction. The Petitioner is allowed to contest the forthcoming election and his nomination paper shall be accepted subject to any challenge subsequently brought to bear against him in the second round of litigation after election on ground of disqualification, non-disclosure or any other valid basis for objection in the event that he is successful in being elected.

7. We vide our short order dated 10.01.2024 had dismissed this petition and these are the reasons thereof.

CHIEF JUSTICE

J U D G E