

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-108 of 2024

Petitioner	Muhammad Dost through Syeda Abida Bukhari, Advocate
Respondent No.5	Muzzamil Aslam through Mr. Manzoor Hameed Arain, Advocate
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. Petitioner Muhammad Dost filed nomination paper to contest election from NA-241 is aggrieved by order dated 06.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.50 of 2024, *whereby*, the impugned order was set aside and the Election Appeal was ordered to be allowed.

2. Learned counsel for the Petitioner submits that Respondent No.5 has failed to disclose the unregistered vehicle, and has issued a Solemn Declaration before the Respondent No.4 – Returning Officer based on concealment. He further submits that the Nomination Papers of Respondent No.5 reveals that he has deliberately concealed of unregistered vehicle and the assets of his spouse, Petitioner has failed to provide any defence as to why the assets / business of Respondent No.5 and his spouse had not been declared by him. He further submits that Respondent No.5 does not meet the qualification 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 Appellate Tribunal in Election Appeal No. 50 of 2024.

3. Mr. Manzoor Hameed Arian, 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 vehicle i.e. Toyota Land Cruiser was received by the Respondent No.5 via Affidavit of Declaration of Gift Deed dated 27.07.2022 by the late father of the Respondent No.5, who had purchased the said vehicle which was duly imported to Pakistan after completing all the necessary formalities and the said vehicle was duly declared in the Tax Returns of the Respondent No.5's father for the year of 2022 – 2023 who died on 11.08.2022 due to natural causes and the Respondent No.5 declared the aforesaid vehicle in his Tax Returns for the 2022 – 2023. He further submits that after sudden death of the Respondent No.5's father, it was mutually agreed between all the legal heirs that the above-mentioned vehicle shall be handed over / gifted to the Respondent No.5's brother namely Faheem Aslam and therefore, the Respondent No.5 vide Affidavit for Declaration of Gift Deed 15.07.2023 gifted the said vehicle to his brother along with physical custody of the said vehicle, however, as far as the declaration of the said vehicle is concerned it has been duly shown as a gifted property to the Respondent No.5 in his tax return for the year 2022 – 2023. He further contends that the second ground for rejecting nomination papers of the Respondent No.5 is non-filing of the Statement of assets and liabilities of spouse of Form-B, that all the relevant details regarding financials of the spouse of the Respondent No.5 are available and at the time of scrutiny Respondent No.5 requested for submission of the said documents but unfortunately the Respondent No.1 – Election Commission of Pakistan informed that there is need for that as all the provided documents are in order, neither at the time of the scrutiny was raised from the Returning

Officer, otherwise, the Tax Returns of Respondent No.5's wife for last four years were ready for submission and were also offered. He further submits that the Petitioner has failed to show or place any material. He further submits that impugned order has rightly been passed by the learned Election Appellate Tribunal. 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 Nahra 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 appellant ought not to be divested of his fundamental right to contest the forthcoming election and his nomination paper may be accepted subject to any challenge being subsequently brought to bear against him on ground of disqualification, non-disclosure or any other valid basis for objection in the event that he is successful in being elected*”. 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.

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

CHIEF JUSTICE

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