

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-109 of 2024

Petitioner	Muhammad Dost through Syeda Abida Bukhari, Advocate
Respondent No.5	Awab Alvi 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. Petitioner Muhammad Dost is aggrieved by the order dated 06.01.2024 passed by the learned Election Appellate Tribunal of this Court in Election Appeal No.03 of 2024, *whereby*, the impugned order dated 30.12.2023 passed by the Returning Officer NA-241 was set-aside and the Election Appeal was ordered to be allowed as prayed for.

2. Learned counsel for the Petitioner submits that Respondent No.4 – Returning Officer has rightly rejected the nomination paper of Respondent No.5. He further submits that Respondent No.5 has misused the office of President of Pakistan, therefore, cannot be considered as a person of “good character” and is liable to be dealt with under Article 62 [1] [d]. 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 Appellate Tribunal of this Court in Election Appeal No. 03 of 2024.

3. Mr. Haider Waheed, Advocate for Respondent No.5 submits that Respondent No.1 – Election Commission of Pakistan while rejecting the nomination papers had invoked Section 62 [1] [f] of the Act, 2017, which deals with the declaration of qualification and disqualification of the candidates. He further submits that the Hon'ble Supreme Court of Pakistan has held that the Returning Officer or, as the case may be, other for a in the hierarchy had no jurisdiction to declare a person as being disqualified to contest the election, unless there is declaration by a Court of law having plenary jurisdiction. This legal position has been emphatically settled by the Hon'ble Supreme Court of Pakistan and the Superior Courts of the country in cases reported as *Allah Dino Khan Bhayo versus Election Commission of Pakistan* (PLD 2020 SC 591), *Khawaja Muhammad Asif versus Muhammad Usman Dar* (2018 SCMR 2128), *Fazal Mehmood versus Government of Pakistan* (2018 CLC 1664) and others. Admittedly there is no declaration to that effect by any Court of law against the Respondent No.5 and the Returning Officer is completely divested of any jurisdiction to make any such declaration, in view of the said legal position the Impugned Order is *coram non judice*; hence, it is liable to be set aside. He further submits that the Respondent No. 4 failed to place any material before the Respondent No. 1 to substantiate the baseless and frivolous allegations made in the Objections. He further submits that the Impugned Order passed by the Respondent No.1 is a classic example of the colourable exercise of powers and based on hypotheses, surmises and conjectures and is also in violation and derogation of fundamental rights of the Appellant as guaranteed under the Constitution, 1973.

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*”. 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

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