

# 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-383 of 2024

Petitioner	Syed Pir Ghulam Rehmani Shah through Syed Mureed Ali Shah, Advocate
Respondents	Through Mr. Saifullah, AAG along with Mr. Abdullah Hanjrah, Deputy Director [Law], and Mr. Sarmad Sarwar, Assistant Director (Law), E.C.P.
Date of hearing	24.01.2024
Date of order	24.01.2024

## ORDER

**Abdul Mobeen Lakho, J.** Petitioner filed nomination paper to contest election from PS-75, Thatta-I is aggrieved by order dated 06.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.34 of 2024, *whereby*, the order passed by the Returning Officer PS-75 rejecting the Nomination Papers of the petitioner was upheld.

2. Brief facts of the petition are that the concerned Returning Officer PS-75, Thatta-I, rejected the Nomination Papers of Petitioner on the ground that the Petitioner failed to disclose a vehicle as well as three weapons i.e. Rifle, Pistol and Short Gun in his nomination papers, against which the Petitioner has filed an Election Appeal under Section 63 of the Election Act, 2017, which was rejected.

3. At the very out-set, learned counsel for the petitioner argued that according to Section 60(2)(d) of the Elections Act, 2017 “a statement of his assets and liabilities and of his spouse and dependent children as on the preceding thirtieth day of June on Form-B.”. Learned counsel further argued that the ground cited by respondent No.1 as well as learned Election Appellate Tribunal for non-disclosure of assets deemed invalid

under the aforesaid provision of law and against the fact and  
circumstances of the

case. Learned counsel for the petitioner further argued that the Respondent No.1 as well as learned Election Appellate Tribunal have failed to thoroughly review the FBR returns, which clearly display that head “Any other Assets---Weapon Code No.7013” wherein, the petitioner has diligently disclosed the value of weapons and there has been no attempt at concealment on the part of the petitioner. Learned counsel for the petitioner further argued that the petitioner may not be disfranchised or prevented from contesting elections, which is fundamental right of every citizen. Reference in this regard can be made in the case of ***Rana Muhammad Asif Tauseef .....Vs..... Election Commission of Pakistan through Chairman, Islamabad and others [(2022 SCMR 1344)]***.

4. On the other hand, learned AAG while supporting the impugned order has vehemently opposed instant petition. It has been submitted that the petitioner knowingly and deliberately concealed the fact in the nomination papers and further that the petitioner has also failed to disclose the fact, therefore, the petitioner is not entitled to any relief and his petition may be dismissed.

5. We have heard the learned counsel for the parties, perused the material available on record, considered the submissions and the case law cited. From the perusal of the record, it appears that the concerned Returning Officer while rejecting the nomination papers of the petitioner without taking into consideration failed to recognize that the Petitioner acquired a Toyota Prado with registration No.BH-1944 after June 30<sup>th</sup>, 2023, whereas, another vehicle bearing Registration No.BJ-9292 transferred in the petitioner’s name in FBR returns was sold out on 21<sup>st</sup> September, 2023, therefore, 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 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 24.01.2024 had allowed instant petition and these are the reasons thereof.

Judge

Chief Justice