

IN THE HIGH COURT OF SINDH AT KARACHI  
**C.P.No.D-114 OF 2024**

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Date

Order with Signature of Judge

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PRESENT:

*MR. JUSTICE AQEEL AHMED ABBASI, CJ*

*MR. JUSTICE ABDUL MOBEEN LAKHO, J*

*Abdul Rehman Mallah...Vs....Chief Election Commission  
& others.*

**Date of Hearing 16-01-2024.**

Mr.Muhammad Iqrar, Advocate for the Petitioner.

Mr.Saifullah, A.A.G.

Mr.Abdullah Hanjrah, Deputy Director (Law), and Mr.Sarmad Sarwar, Assistant Director (Law), E.C.P. are present in person.

Mr.Rizwan Alam Shaikh, Returning Officer NA 224 Sujawal is present.

**ORDER**

**ABDUL MOBEEN LAKHO, J** The Petitioner is aggrieved by the order dated 06.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.56 of 2024, whereby, the Order dated 30.12.2023 passed by Returning Officer NA-224 rejecting the nomination papers of the petitioner was upheld.

2. According to learned counsel for the petitioner, the petitioner filed nomination papers to contest the forthcoming elections from the constituency of NA-224 Sujawal, but the Returning Officer rejected nomination papers of the petitioner on the ground of suppression of the facts that his wife owned land as per objection filed by one Ismail son of Muhammad Soomro.

3. At the very outset, learned counsel for the petitioner argued that the land owned by wife of the petitioner was sold out and he also attached copy of sale agreement to this effect (copy available at pages 81-83 of the Court file), but the Returning Officer as well as learned Election Appellate Tribunal did not consider the material fact and rejected the nomination papers of the petitioner, which is unconstitutional and contrary to the norms of the justice. Learned counsel for the petitioner further argued that the orders passed by Returning Officer as well as learned Election Appellate Tribunal are without application of judicial mind and without taking into account the blatant and malafide discrepancies and tangible evidence produced before them. Learned counsel for the petitioner argued that the petitioner may not be disfranchised or prevented from contesting elections, which is fundamental right of every citizen.

4. We have heard the learned counsel for the parties, perused the material available on record and also considered the submissions and the case law cited by them at bar. It is settled law 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 and not curable, cannot be allowed to be validated at a subsequent stage. However, in the instant case, the concerned Returning Officer as well as learned Election Appellate Tribunal have not taken the cognizance of the documents, which were produced at the time of scrutiny by the petitioner i.e. sale

agreement of the subject land owned by wife of the petitioner, which was sold out prior to cut off date, whereas, nothing has been produced on record either by the Objector or by the Returning Officer to deny such fact. Therefore, we are of the opinion that unless such sale agreement is denied or the issue regarding its title is decided by competent court of jurisdiction, the petitioner should not have been disfranchised or prevented from contesting elections, which is fundamental right of every citizen. It may be further observed that prima facie, petitioner by not disclosing the subject land in the name of his wife, would not have drawn any benefit at the time of filing his nomination paper, and can always be confronted to explain about its ownership even after election in accordance with law. Moreover, the issue relating to assets of either spouse or its declaration under different laws, including Income Tax laws and Elections laws, requires careful examination and determination by the competent forum under the relevant law. Reference in this regard can be made in the case of ***Aitbar and another....Vs.....Provincial Election Commission through DEO, District N'Feroze, through A.A.G. Sindh & others [(2017 ClC Note 179 Sindh (Sukkur Bench)]***

5. In view of the above facts and circumstances, both the impugned orders dated 30.12.2023 and 06.01.2024 are set-aside. 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.

6. We vide our short order dated 16.01.2024 had allowed instant petition and these are the reasons thereof.

Judge

Chief Justice

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