

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-191 of 2024

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI,
CHIEF JUSTICE;
MR. JUSTICE ABDUL MOBEEN LAKHO**

***Ghulam Murtaza & another....V/s.....Muhammad Ali Khan
& others***

Date of hearing 22.01.2024

Mr.M. Haseeb Jamali, Advocate for Petitioners.

Mr.Usman Farooq, Advocate along with Respondent No.1

Mr.Saifullah, A.A.G.

Mr.Abdullah Hanjrah, Deputy Director (Law) and

Mr.Sarmad Sarwar, Assistant Director (Law), Election
Commission of Pakistan are present.

ORDER

Abdul Mobeen Lakho, J. The Petitioner is aggrieved by the order dated 08.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.153 of 2024, whereby, the order dated 30.12.2023 passed by the Returning Officer PS-76, Thatta-II was set-aside and nomination papers of the Respondent No.1 were accepted.

2. Brief facts of the petition are that the respondent No.1 filed his nomination papers for the forthcoming election from PS-76, District Thatta-II. The petitioner raised objections before the Returning Officer and prayed for the rejection of the nomination papers of respondent No.1 on the ground that the respondent No.1 with *mala fide* intention did not provide correct information with regard to his assets as well as total income and source of income. The objections were accepted by the Returning Officer and the nomination papers of the respondent No.1 to contest the forthcoming elections were rejected, against which the respondent No.1 preferred Election Appeal under Section 63 of the Election Act, 2017, which has been allowed.

3. Learned counsel for the petitioner has contended that the Impugned Order dated 08.01.2024 passed by learned Election Appellate Tribunal (Respondent No.5) while allowing the Appeal of Respondent No.1 is unconstitutional and contrary to the norms of the justice as well as standards for nomination set by the Elections Act and the Hon'ble Supreme Court. The learned Election Appellate Tribunal erred in law and passed the order without the correct exercise of jurisdiction, application of judicial mind, and without taking into account the blatant and / malafide discrepancies and tangible evidence produced before them; the objections pointed out various material inconsistencies, intentional concealments and misstatements by the Respondent No.1 in his nomination papers; the Affidavit of the candidate and the Annexures filed therewith. Hence, the Forum in summary jurisdiction had the authority and duty to adjudicate upon the same, but chose to avoid such adjudication. By concealing the fact that the Respondent No.1 is working as Administrator in two Institutes i.e. Ali Akbar Memorial Hospital, Gharo, Thatta as well as Alkhidmat Foundation and recently resigned from Ali Akbar Memorial Hospital, did not disclose his source of income in the nomination papers, hence, the Respondent No.1 is not Sadiq nor Ameen in terms of Article 62(1)(f) & 63 of the Constitution, therefore, the Returning Officer PS-76 Thatta-II had rightly rejected the nomination papers of the Respondent No.1.

4. On the other hand learned AAG argued that the petitioner has not filed any proof in support of his contentions and has fully supported the order passed by the learned Election Appellate Tribunal in appeal filed by the Respondent No.1.

5. We have heard learned counsel for the parties and perused the record and considered the facts.

6. 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.”

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7. The learned Election Appellate Tribunal while allowing the appeal of the Respondent No.1 has observed that *the test of honesty about non-disclosure of assets and liability is to be applied, in that contest alone and certainly not in a case where non-disclosure of clean assets is only inadvertent omission.*

8. Reverting to the case in hand, it is observed that mere reference to the allegations without giving specific findings that the Respondent No.1

on this presumption that he was deriving any benefit out of the post of Administrator of two institutes i.e. Ali Akbar Memorial Hospital, Gharo, Thatta and Alkhidmat Foundation, his nomination papers could not have been rejected by the Returning Officer, more particularly when there is no evidence of him drawing any salary or benefit from the above two positions which the Respondent No.1 has reportedly otherwise has already left. In view of the above, we are of the opinion that unless it is established that a candidate has deliberately concealed the facts in the statement of assets his nomination cannot be rejected on the basis of mere presumption as in the instant case specially when there is no material available with the Returning Officer to this effect.

9. We have examined the order rendered by the learned Election Tribunal and find that the impugned order is legal, unexceptionable, apt to the facts and circumstances of the case, which suffers from no jurisdictional defect, do not call for any interference by this Court in exercise of its Constitutional jurisdiction. We vide our short order dated 22.01.2024 had dismissed this petition and these are the reasons thereof.

J U D G E

CHIEF JUSTICE

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