

## 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-207 of 2024

Petitioner	Sarfraz Ahmed Chaudhary through Mr. Irfan Ahmed Memon, Advocate
Respondent	through Mr. Saifullah, AAG.
Respondent	Mr. Abdullah Hanjrah, D.D. (Law) and Mr. Sarmad Sarwar, A.D. (Law), Election Commission of Pakistan.
Date of hearing	22.01.2024
Date of order	22.01.2024

### ORDER

**Abdul Mobeen Lakho, J.** The Petitioner is aggrieved by the order dated 09.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.183 of 2024, wherein, the order passed by the Returning Officer of NA-234 District Korangi Creek, Karachi rejecting the Nomination Paper of Petitioner was upheld.

2. Brief facts of the petition are that the Returning Officer rejected the nomination papers of Petitioner on the ground that the Petitioner has not provided requisite information on the affidavit submitted alongwith the nomination form, against which the petitioner filed an Election Appeal under Section 63 of the Election Act, 2017.

3. Learned counsel for the petitioner has contended that both the impugned orders are contrary to facts and not sustainable in law, equity and principles of natural justice. Learned counsel for the appellant submits that the Returning Officer as well as learned single Judge of this Court while passing the impugned orders have failed to apply their mind, as such, the orders are not sustainable in law and are liable to be set

aside. He further submits that the defect, if any, in the nomination form is curable defect.

4. On the other hand, learned AAG as well as representatives of E.C.P. while supporting the impugned order has vehemently opposed instant petition and further submit 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 relevant law.

6. A glance over concluding para of impugned Order dated 09.01.2024, which reads as under, will help us to resolve the controversy in the present case:-

...

“The nomination paper was found defective on the counts mentioned in the impugned order, resulting which the nomination form was rejected. I have examined the impugned order rendered by respondent No. 2, I do not find any error and/or illegality. Furthermore, learned counsel for the appellant could not point out any substantial error and/or any illegality and infirmity in the impugned order. The impugned order does not warrant any interference by this tribunal, as such, the present appeal is dismissed being devoid of merits.”

...

7. From the perusal of the record, it appears that nomination of the petitioner was rejected purely on technical grounds as the petitioner was not provided any opportunity to cure the defects in the nomination form at the time of scrutiny in terms of Sub-Section 9 Clause d (ii) of Section 62 of the Elections Act, 2017, which is as under: -

...

“(ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.”

...

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.”

...

8. 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.

9. We vide our short order dated 22.01.2024 had allowed instant petition and these are the reasons thereof.

J U D G E

CHIEF JUSTICE

Jamil/nasir