

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No. D- 1283 of 2018

DATE ORDER WITH SIGNATURE OF JUDGE

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Shamsuddin Abbassi

Petitioner : Mir Shahnawaz Khan Talpur through
Mr. Haq Nawaz Talpur Advocate .

Respondents Nos.5 : Muhammad Hussain Ujjan through
Mr. Qurban Ali Malalno Advocate.

Respondent No.1 &2 : through Mr. Muhammad Aslam Jatoi
Assistant Attorney General.

Respondents Nos. 3 & 4: through Mr. Mehboob Ali Wassan
Assistant Advocate General Sindh.

Date of hearing: 18-07-2018

J U D G M E N T .

NAIMATULLAH PHULPOTO,J. _____ : Through the instant constitution petition, petitioner Mir Shahnawaz Khan Talpur has prayed for the following reliefs.

- a) To set aside order dated 26.06.2018 passed by Election Tribunal Sukkur in Election Appeal No.104/2018, whereby order dated 19.06.2018 passed by Returning Officer PS-27, Khairpur-II was set aside and Nomination Form of the petitioner was rejected.
- b) That impugned order dated 26.06.2018 be declared as illegal, unlawful, unconstitutional, unwarranted and against fundamental rights of constitution and petitioner be allowed to contest General Elections-2018, scheduled to be held on 25th July,2018.
- c) That it may also be declared that order dated 26.06.2018 passed by Election Tribunal Sukkur is against the sprit of Article 62 and 63 of Constitution of Islamic Republic of Pakistan, 1973.
- d) That after setting aside the impugned order dated 26.06.2018 learned Returning Officer PS-27 Khairpur-II be directed to receive Party Ticket/Party Certificate for allotment of Election Symbol.
- e) That operation of the impugned order 26.06.2018 be suspended, so that petitioner may contest the Election and he may start Election campaign as his fundamental right.

2. Notices were issued against the respondents for filing of comments.

3. Brief facts leading to the filing of the petition are that petitioner is a candidate to contest General Elections 2018 from PS-27 Kotdiji Khairpur-II. The petitioner filed his nomination paper before Returning Officer PS-27 Kotdiji, Khairpur-II. Objections were filed against the nomination paper of the petitioner. Learned Returning Officer after scrutiny accepted his nomination paper vide his orders dated 19.06.2018.

4. Respondent No.5 Muhammad Hussain Ujjan being aggrieved and dissatisfied with the orders of the Returning Officer filed Election Appeal No.104/2018 before Election Tribunal at Sukkur. Learned Tribunal vide order dated 26.06.2018 set aside the impugned order passed by Returning Officer and rejected the nomination paper of the petitioner. Hence, petitioner has filed this constitution petition.

5. Learned counsel for the petitioner mainly argued that Returning Officer had accepted the nomination paper of the petitioner after close scrutiny but learned Election Tribunal at Sukkur rejected the nomination paper in slip shot manner. It is argued that petitioner has annexed his challan receipts showing the payment of agricultural income tax in the concerned bank. It is further stated that petitioner has clearly mentioned in para 'M' of the affidavit that he paid agricultural income tax. It is argued that petitioner has not concealed his assets. Lastly, argued that finding of Tribunal is against the spirit of law.

6. Counsel appearing for respondent No.5 argued that as per challan 2016 agricultural income of the petitioner is Rs. 34,500/- while for the year 2017 he has paid agricultural income tax Rs.37500/-. It is argued that Tribunal has held that it was discrepancy. It is further argued that petitioner did not disclose rent of 34 shops in his nomination paper and failed to disclose National Tax Number. Lastly, it is argued that learned Tribunal has rightly set aside the order of the Returning Officer for acceptance of the nomination paper and petition is without merit.

7. We have also heard counsel for Election Commission of Pakistan as well as learned D.A.G and perused the relevant record.

8. Petitioner Mir Shahnawaz Khan Talpur filed his nomination form before Returning Officer PS-27 Kotdiji Khairpur-II. Respondent No.5 Muhammad Hussain filed objections. Learned Returning Officer after

scrutiny of the nomination paper and hearing counsel of the parties accepted the nomination paper vide order dated 19.06.2018. Relevant portion of Order of Returning Officer is reproduced as under:

"10. Scope of scrutiny is limited therefore mere on saying that candidate is defaulter of FBR cannot held him disqualified to contest Election. During course of hearing, no any substantial objection has been raised by the objector which could hit the status of candidate as to his being Sadique and Ameen and mere raisings without genuine proof, a candidate cannot be deprived from his legal and constitutional rights to contest Election.

11. Sequel to, what has been stated above, the nomination paper of candidate namely Mir Shah Nawaz Khan Talpur stands accepted."

9. Respondent No.5 namely Muhammad Hussain Ujjan filed Election Appeal No.104/2018 before Election Tribunal at Sukkur. Learned Tribunal vide order dated 26.06.2018 set aside the impugned order passed of Returning Officer and rejected the nomination form of the petitioner vide order dated 26.06.2018, which is also reproduced herewith.

"The appellant has assailed the impugned order dated 19.06.2018 passed by the Returning Officer whereby the nomination form/paper of respondent No.4 is accepted and his objections before Returning Officer were turned down. In support of his appeal, learned Counsel for appellant submits that the appellant has questioned the candidature of respondent No.4 on several account but his objections were not considered by the learned Returning Officer. He submits that appellant has shown 34 shops in his affidavit but he has not shown any declaration as well as income tax generated from those shops. He submits that income generated is required as taxable which has not paid by the respondent No.4 but he has to file return also but he did not file return. He submits that the respondent No.4 has shown 403 acres agricultural land in his assets but surprisingly income generated from withholding only around Rs.80438/- as shown in clause-M of the affidavit. He submits that the respondent No.4 has filed income tax Rs.37500/- for the year 2017. Photostat copies of agricultural income tax paid to National Bank of Pakistan Kotdiji branch which is annexed with the nomination form for the year 2015-16 and 2017 showing the amount Rs.37500/- have been paid by Mir Shahnawaz S/o Mir Ghulam Ali @ Gullan Talpur. It is pertinent to mention here that all these challans have been paid on the same date. In clause-M of affidavit the total agricultural income shown

by the respondent No.4 from his holding as under;

Tax Year	Land holding	Agricultural Income	Total Agricultural Income
2015	403 acres	Agricultural	80438
2016	403 acres	Agricultural	80438
2017	403 acres	Agricultural	83438

The challan paid by the respondent No.4 were shown to the learned Counsel for respondent No.4 and he admits the same. As per challan 2016 the agricultural income is Rs.34500/- while for the year, 2017 he has paid agricultural income tax Rs. 37500/-. If the agricultural income tax paid by the respondent No.4 is considered from the income shown by the respondent No.4 in clause-M as compared affidavit. It appears that the income tax paid is surely indicates that his agricultural income which is higher than he has shown in clause-M of nomination paper filed by him. From this discrepancy it is evident that the fact mentioned in the affidavit is not in accordance with the agricultural income tax paid by the respondent No.4.

I am of the view that the respondent No.4 has concealed his income as such he has committed active concealment in respect of his income generated from 403 acres land. The respondent No.4 is under novice in the field of politics and at the very beginning of his career he has committed misstatement in respect of income if it is compared with the agricultural income paid by him.

In view of above discussion I am very much satisfied that the acceptance of nomination form by the Returning Officer is not warranted under the law. I therefore, set-aside the impugned order passed by the learned Returning Officer and nomination form of respondent No.4 is hereby rejected."

10. In order to appreciate the contentions of learned counsel for the parties, we are guided by the following Judgments of Honourable Supreme Court of Pakistan.

11. In the case of Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Shareef reported in PLD 2017 SC 265, it is held that when a person failed to disclose any assets owned by him, his spouse or dependent in his Nomination Papers in terms of section 12 of Representation of the Peoples Act 1976, he exposed himself not only to disqualification but also prosecution for corrupt practices under Section 78 of the said Act besides any other liability prescribed by the law. Relevant portion of the Judgment is reproduced as under:

18. A bare reading of the aforesaid provisions of the Representation of the People Act, 1976 makes it clear and obvious that if a person fails to disclose any asset owned by him, his spouse or dependant in his Nomination Papers

in terms of Section 12 of ROPA, he exposes himself not only to disqualification but also prosecution for corrupt practices under Section 78 of ROPA besides any other liability prescribed by the law.

19. In the aforesaid provisions reference to the source of funds for acquisition of such undisclosed assets is conspicuous by its absence, hence, wholly irrelevant. Even, if a delinquent person offers a perfect, legally acceptable explanation for the source of funds for acquiring the undeclared assets, he cannot escape the penalty of rejection of his Nomination Papers or annulment of his election. Such is the law of the land as has been repeatedly and consistently interpreted by this Court, including in the judgments, reported as (1) Muhamamd Jamil v. Munawar Khan and others (PLD 2006 SC 24), (2) Khaleefa Muhamamd Munawar Butt and another v. Hafiz Muhammad Jamil Nasir and others (2008 SCMR 504), and (3) Muhammad Ahmed Chatta v. Iftikhar Ahmad Cheema and others (2016 SCMR 763).

12. In another case of Muhammad Ahmad Chatta v. Iftikhar Ahmad Cheema and others reported in 2016 SCMR 763 (Supreme Court), it is held as under:-

"9. From the perusal of record, it is established that while submitting the nomination papers, the respondent has not submitted statement regarding assets of his spouse as required under section 12 of the Act, 1976. The learned Election Tribunal, without taking into consideration this aspect of the case and while holding that respondent has not disclosed assets owned by his spouse and the account maintained by him, dismissed the election petition merely on the ground that mens rea is not proved and further the government exchequer has not suffered any loss on account of non-disclosure of these material facts. This finding of the Tribunal is against the spirit of law and as such calls for interference".

13. We have carefully heard the arguments of learned counsel for the parties and have gone through available record.

14. In the present case, petitioner submitted nomination paper as well as affidavit before Returning Officer and mentioned that he owns 34 shops, the same are on rent. Petitioner failed to disclose income of the shops. Petitioner has also failed to disclose his National Tax Number (NTN). Tribunal rightly pointed out that appellant has shown 34 shops in his affidavit but he has not made any declaration of income generated from those shops. It has also been observed by the Tribunal that petitioner owns 403 acres of agricultural land but he has concealed income. This is clear case of active concealment. Findings of the learned Tribunal are based upon sound reasons and require no interference by this Court. Generally in an election process this Court cannot interfere with by invoking its constitutional jurisdiction in view of Article 225 of the Constitution. Reliance is placed upon the case of Ghulam Mustafa Jatoi vs. Additional Sessions Judge / Returning Officer NA-158 Naushehro Feroze and others 1994 SCMR 1299 and Haji Khuda Bakhsh Nizamani vs. Election Tribunal and others 2003 M L D 607 (Karachi). Consequently, the petition is without merit and the same is dismissed. Interim order passed earlier is hereby cancelled.

15. Let the copy of the Judgment be sent to the Secretary Election Commission of Pakistan Islamabad today by fax for information and compliance.


JUDGE

18.7.2018
JUDGE