

ORDER SHEET  
IN THE HIGH COURT OF SINDH KARACHI

1238

Election Appeal No. 105 of 2018

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of Main Case.

27.06.2018

Mr. Farooq H. Naek, Advocate for the Appellant.  
Syed Mehmood Alam Rizvi, Advocate for the Respondent No. 2.  
Mr. Luqman-ul-Haque, Advocate for the Respondent No. 3.  
Mr. Riaz Alam Khan, Advocate for the Respondent No. 4.  
Mr. Abdullah Hanjrah, Law Officer of ECP.  
Mr. Atif-ud-Din, Law Officer of SBP.  
Mr. Yousif Rahpoto, Assistant Advocate General Sindh  
Ms. Rukhsana Durrani, State Counsel.

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The Appellant filed nomination papers for NA-224, however, the same were rejected by the Returning Officer vide order dated 19.06.2018 largely on account of the fact that the Appellant was a loan defaulter. Learned counsel for the Appellant submitted that he was not a loan defaulter and did not fall within the mischief of Article 63(1)(n). He admitted that a loan had been taken by Bachani Sugar Mills and he was one of the directors of the Company. He however, pointed out that Company had entered into a compromise decree with a consortium of banks and as such he had no further liability, the responsibility vested with another Company to payoff the bank loan pursuant to the compromise agreement and that though he was a director of the Company prior to the compromise agreement his ownership was only 1.43%. He also referred to a no dues certificate which had been issued by the bank consortium which stated that he had no further liability to them which shows that he was not a defaulter and as such Article 63(1)(n) would not be applicable to him. Thus for all the above reasons the decision of the Returning Officer should be set aside and he should be entitled to contest

the elections. In support of his contentions he placed reliance on 1194 SCMR 1299, 2013 CLC 1088, 1993 MLD 2507, 1997 CLC 719 and 2016 YLR 1404.

Learned counsel for the Respondents submitted that the Appellant was a loan defaulter as the loan has been taken by the Bachani Sugar Mills for which the Appellant was a director and that the Appellant gave a personal guarantee for a payment of the dues which were still outstanding because the Company which was supposed to repay the outstanding amount to the consortium of banks pursuant to the compromise agreement had defaulted and the liability therefore returned to the Appellant and as such he was a loan defaulter and disqualified from contesting the elections; that he had concealed assets in his nomination papers and again on this account he was not qualified to stand for the elections. That the no dues certificate presented by him was false and has been signed on behalf of many banks none of whose accounts had been disclosed in his nomination papers; that this was a case of loan write off as shown by a SBP certificate. Learned counsel for the Respondent No. 4 placed reliance on *PLD 2017 Lahore 394* and *2014 CLC 94* and *2013 CLC 1512*.

For all the above reasons, the Respondents submitted that the Returning Officer rightly rejected the nomination papers of the Appellant namely Mr. Abdul Sattar Bachani. Both the legal adviser of Election Commission of Pakistan and the learned Assistant Advocate General Sindh, supported the arguments of the Respondents.

I have heard the parties, perused the record and considered the relevant laws.

In my view, it is true that the Appellant compromised the matter with the consortium of banks and on failure to pay the compromise by the concerned company the liability of the Appellant came back to life and as such the Company of which he was a director was responsible for loan default. However, it appears that the Appellant had a minor shareholding in the defaulting Company and not a major shareholding in Company with no controlling interest thus in my view he cannot be regarded as a loan defaulter.

With regard to controlling interest reliance is placed on 2013 CLC 1068 relevant Page-1071 which reads as under: -

*"7. In the first place, admittedly the shareholding of the petitioner is not more than 30% of the total shareholding in the Company. It is not argued that the Company is a family owned concern. The petitioner does not hold controlling interest in the Company. Therefore, he cannot be said to have obtained the loan for himself in terms of Article 63(1)(n) of the Constitution of Islamic Republic of Pakistan, 1973. Further the Company is not owned or controlled by the spouse or dependent children. Therefore, he cannot be held liable for the amounts owned by the Company".*

Likewise in 1997 CLC 719 at Para-8 which reads as under: -

*"8. The loan was obtained by the company in which respondent No. 1 and his wife are shareholders according to the list of shareholders (Form-A) placed on the record by the petitioner himself. According to the document there are in all 42,75,200 shares out of which respondent No. 1 and his wife are holders of 5,00,000 shares each. Total shareholding of petitioner and his wife are holders of 5,00,000 shares each. Total shareholding of petitioner and his wife comes to 10,00,000 out of 42,75,200 shares, therefore, their shareholding is less than 51% in the Company. According to Ordinance XX of 1993 any person holding less than 51% shares in a Company which is a defaulter in regard to loan obtained by the said Company, was not disqualified to contest elections as he in his personal capacity was treated in such circumstances not to fall within the definition of a defaulter. As regards respondent No. 1 having stood surety for the payment of the loan obtained by the Company is concerned, there is no document on the record to establish this".*

Reliance in this respect is also placed on 2013 CLC 1088.

With regard to any personal guarantee which the Appellant may have given this would not bring him within the definition of a defaulter. In this respect reliance is placed on 2016 YLR 1401.

With regard to write off no doubt this is a ground for disqualification. It appears from report produced by the State Bank of Pakistan that Bachani Sugar Mills in which Mr. Abdul Sattar Bachani had an interest had an amount written off. Ordinarily, this would be a ground for disqualification as was held in 2013 CLC 1512. However, as I have already found that since Mr. Abdul Sattar Bachani did not have a controlling interest in the defaulting Company and thus could not be liable as a defaulter of the Company for the purposes of Article 63(1)(n) in my view by the same token he cannot be liable for any written off loan of the Company especially as this loan was taken in the Company's name and not in his personal capacity.

With regard to the other objections raised by the Respondents these were not raised at the time of scrutiny before the Returning Officer and have been raised as new grounds under Section 60(4) of the Election Act, 2017. Even, after considering such new objections such as concealment of assets etc., I am of the view that these involve a detailed factual inquiry which are beyond the scope of this Tribunal's mandate.

Under these circumstances, the order of the Returning Officer is overturned, the Appeal is allowed and Mr. Abdul Sattar Bachani is hereby allowed to contest elections. NA-224.