IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

[APPELLATE TRIBUNAL]

Election Appeal No.01 of 2020

Appellant:	**Syed Noor All Shah Son of Syed Mian Shah, through Mr. Barrister Zamir Ahmed Ghumro, Advocate.**
Respondent No.1	**District Election Commissioner, Tharparkar /Returning Officer PS-52, Umerkot-II, Through Mr. Muhammad Humayoon Khan, Deputy Attorney General for Pakistan.**
Respondents No.2&3	**Inayatullah & Arbab through Mian Taj Muhammad Keerio, Advocate.**
	Mr. Muhammad Ismail Bhutto, Additional Advocate General, Sindh.
Date of hearing:	**16.03.2020.**
Date of decision:	**16.03.2020.**

J U D G M E N T

KHADIM HUSSAIN M. SHAIKH, J- Through the captioned Election Appeal, appellant Syed Noor Ali Shah **["the appellant" j,** has called in question order dated 09.03.2020, passed by District Election Commissioner Tharparkar/ the Returning Officer **["the Returning Officer"],** Bye-Election P.S-52, Umerkot-II, whereby the nomination papers of the appellant for a Member of Provincial Assembly Sindh, from constituency P.S-52 Umerkot-II, have been rejected.

2. Briefly the facts of the case are that the appellant had filed his nomination papers to contest the forthcoming bye-election 2020 for a Member of Provincial Assembly Sindh from the constituently P.S-52 Umerkot-II. The Returning Officer after hearing the parties' counsel and examining the record, has rejected the nomination papers of the appellant vide impugned order dated 09.03.2020 on

the grounds that the appellant has concealed the F.1.R registered against him in his nomination papers; and, that the appellant has also concealed his income of salary received by him as Chairman District Council Umerkot in the years 2017 and 2018 in his nomination papers, as the appellant had received honorarium of Rs.9,62,581/- from 30.08.2016 to 31.08.2018 as Chairman District Council Umerkot. Having felt aggrieved by the said order dated 09.03.2020 of the Returning Officer, the appellant has filed this appeal.

3. Respondents No.2 and 3 and the Returning Officer have filed their objections/counter affidavits, wherein they have denied the allegations and claims of the appellant.

4. The learned counsel for the appellant has mainly contended that the appellant is not a previous convict; that the appellant was not aware about the subject Criminal case, which is pending trial before the learned Court of find Additional Sessions Judge, Hyderabad; that the disclosure of the income received by the appellant in the years 2017 and 2018 as honorarium being Chairman District Council Umerkot in his nomination papers was not necessary, per learned counsel, the nomination papers of the appellant could not be rejected; and, that the Returning Officer without considering such aspects, has rejected the nomination papers of the appellant. The learned counsel, placing his reliance on the cases of *TARIQ HUSSAIN Vs. SARFARAZ AHMED and 4 others [2013 CLC 16201, Haji GHULAM HUSSAIN Vs. RETURNING OFFICER ZILLA COUNCIL, BAHWALPUR and 2 others [1998 M L D 19481, Sheikh MUHAMMAD AKRAM Vs. ABDUL GHAFOOR and 19 others [2016 SCMR* 733], and *Rai HASSAN NAWAZ Vs. The ELECTION COMMISSION OF PAKISTAN and others [2013 CLC 11011,* requests that the impugned order dated 09.03.2020, passed by the Returning Officer may be set-aside and the nomination papers of the appellant may be accepted, allowing the

appellant to contest the Bye-Election 2020 for a Member of Provincial Assembly Sindh from the constituency of P.S-52-Umerkot-II.

5. Conversely, learned Advocate for the respondents No.2 & 3 has mainly contended that the appellant is a nominated accused in the case, emanating from F.I.R No.79 of 2017 for offences under Section 367(i), 365-B, 452, 109, 337-J P.P.C, registered at Police Station Hali Road Hyderabad, on the complaint of Mst. Saba alias Asma daughter of Muneer Ahmed Birhmani. alleging therein that on the night of 18.04.2017, five accused nominated in the said FIR, including the appellant, after abducting her from her house and administering intoxication. had committed Zina with her in an unknown place of Qasimabad and then threw her near her house at about 0600 hours; that the appellant is Chairman of District Council Umerkot, but he has concealed such material fact in his nomination papers and affidavits; that the appellant has not declared his entire assets; that the appellant has also shown contradictory cost of the immoveable property in his nomination papers and affidavits; and, that the appellant is not a fit candidate for the post of a Member of Provincial Assembly. The learned counsel has submitted that the Returning Officer has rightly rejected the nomination papers of the appellant and he prays that the Election Appeal may be dismissed.

6. The learned Deputy Attorney General for Pakistan has mainly contended that the respondents No.2 and 3 in their objections had stated that the appellant had concealed the subject F.I.R. against him in his nomination papers, and had also concealed the fact of his being Chairman District Council Umerkot. verification whereof was sought from the concerned Departments by the Returning Officer, who is empowered to have information, documents or record for the scrutiny of nomination papers under the provisions of subsection (5) of Section 62 of The Elections Act, 2017; that Senior Superintendent of Police

Umerkot by verification letter No.844 dated 08.03.2020 furnished information that the subject Criminal case is pending Trial in the learned Court of IInd Additional Sessions Judge, Hyderabad, wherein the appellant and Allandino are proclaimed offenders; the learned D.A.G went on to say that after the investigation the challan was submitted and after completing the proceedings under the provisions of sections 87 & 88 Cr.P.C, the appellant was declared as proclaimed offender, who is still fugitive from the law; that Chief Officer District Council Umerkot, had furnished information that an amount of Rs.9,62,581/- as honorarium was received by the appellant from 30.08.2016 to 31.08.2018 as Chairman District Council Umerkot; that the appellant was under obligation to disclose his income of last three financial years from 2017 to 2019 with the source of income in his nomination papers/affidavits, but the appellant has also concealed salary received by him being Chairman District Council Umerkot in the years 2017 and 2018 in his affidavits at Serial No.K intentionally and deliberately as he has only disclosed his salary of the year 2019, which comes .within the meaning of mis-statement and false information, eliminating him from contesting the election; that the Returning Officer has rightly rejected the appellant's nomination papers. Learned D.A.G. prays for dismissal of this Election Appeal. Learned Additional Advocate General has adopted the arguments of learned Deputy Attorney General for Pakistan.

7. I have considered the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

8. From a perusal of the record it would be seen that the appellant is nominated accused in the aforesaid FIR involving the above crime and after completing the proceedings as required under the law, the appellant was declared as proclaimed offender by the Court of competent jurisdiction. It is also a matter

of record that the appellant had not disclosed the subject criminal case against him in his nomination papers and affidavits filed along-with the nomination papers before the Returning Officer. Despite specific objections regarding his alleged involvement in the aforesaid crime. having been raised before the Returning Officer, the appellant did not bother to join the proceedings before the learned Trial Court and is still absconder and fugitive from the law and Courts; it is well established law that person becoming fugitive from the law and Courts loses some of the normal rights granted by the procedural as also substantive law. Reliance in this context is placed on the case of ***AWAL GUL Vs. ZAWAR KHAN etc. 1PLJ 1985 SC 1911,*** the case *ofMUHAMMAD* ***SADIQ Vs SADIQ 1PLJ 1985 SC 243]*** and the case of ***IKRAMULLAH and others Vs. The STATE /2015 SCMR 10021.*** In case of ***HUSSAIN BUX and another Vs. DISTRICT & SESSIONS JUDGE/DISTRICT RETURNING OFFICER AND APPELLATE AUTHORITY, SANGHAR and 3 others 12002 CLC 281],*** a learned Division Bench of this Court has held that:-

> ***"The perusal of impugned orders and the record shows that' criminal case bearing S.C. No.38 of 1995 (State v. Hakim Ali and others) is pending before the learned Additional Sessions Judge, Sanghar since last more than 6 years. The trial Court issued N.B.Ws. against the petitioner No.1 time and again but the same could not be executed upon him. The case diaries further shows that on 28-2-2000, the statement of process-server was recorded and order of absconsion against the petitioner under section 512, Cr.P.C. was passed The proclamation was issued under section 87, Cr.P.0 by the trial Court which was followed by the order of the attachment of property under section 88, Cr.P.C. However, after the nomination forms were rejected on this ground, the petitioner approached this Court and obtained protective bail. The conduct and behaviour of petitioner No. I demonstrates that the petitioner No.1 has thwarted the process of the Court and is fugitive from law. Merely because the petitioner No. I had sought protective bail, therefore, it cannot be said that the absconsion order and proclamation orders have been undone by the grant of protective bail which was granted for a very limited period. Consequently it cannot be said or declared that the petitioner No. I was enjoying good character or possessing good reputation."***

9. It is worthwhile to mention here that Form 'A' is the nomination paper and whereas Form 'B' is the statement of assets and liabilities. The nomination papers are accompanied by a declaration which is required to be sworn pursuant to the Judgment passed by the Hon'ble Supreme Court of Pakistan in case of *SPEAKER, NATIONAL ASSEMBLY OF PAKISTAN, ISLAMABAD and others Vs. HABIB AKRAM and others IPLD 2018 Supreme Court 6781* whereby the candidates were required to submit affidavits disclosing all the assets and liabilities. In paragraph-8 of the said Judgment it was clarified that failure to file such affidavit before the Returning Officer would render the nomination papers incomplete and liable to rejection and if the affidavit or any part thereof is found false then it shall have consequences, as contemplated by the constitution and the law. It has further been held that since the affidavit is required to be filed in pursuance of the orders of the Hon'ble Supreme Court of Pakistan, therefore, if any false statement is made therein it would also entail such penalty as is of filing a false affidavit before the Hon'ble Supreme Court of Pakistan. The declaration given by a candidate under solemn affirmation as part of his nomination paper and the affidavit submitted by him in pursuance of the judgment of *Hon'ble Supreme Court of Pakistan* in the case of *Speaker National Assembly supra*, exposes him to disqualification not only under the provisions of Elections Act, 2017 as also under the Constitution of Islamic Republic of Pakistan, 1973. Undisputedly the appellant had received salary of Rs.9,62,581/— from 30.08.2016 to 31.08.2018 as Chairman District Council Umerkot, however, he had disclosed his income of salary, Business, Rent and Petroleum jointly only for one year 2019, and that too without any specification, but he had not disclosed his being Chairman District Council Umerkot and salary received by him in the years 2017 and 2018 intentionally and dishonestly. The false statement having been made in the nomination papers, in the statement of

assets and in the affidavit by the appellant exposed him to serious legal consequences under the law as well as the constitution. By making a false statement under oath, the appellant rendered himself to be disqualified to be elected or chosen as a member of Mailis-e-Shoora (Parliament), therefore, in my humble view, the appellant did not qualify to be a candidate for contesting the forthcoming bye-election 2020 of P.S-52 Umerkot-11, on this score too. Reliance in this context is placed on the case of ***Mian MUHAMMAD NA WAZ SHARIF and others Vs. IMRAN AHMED KHAN NIAZI and others [PLD 2018 SC-1],*** wherein the Hon'ble Supreme Court of Pakistan has held that:-

> ***The argument that even if it is assumed that unwithdrawn salary constitutes an asset, omission to disclose it involving a violation of sections 12 and 13 of the Representation of Peoples Act calls for the rejection of nomination papers or at its worst, removal of the petitioner from the public office and not his disqualification in terms of section 99(1)(/) of the ROPA and Article 62(1)(1) of the Constitution is devoid of force when the petitioner deliberately concealed his assets and willfully and dishonestly made a false declaration on solemn affirmation in his nomination papers. It is not something to be looked at with a casual eye and outlook. It is not only a legal duty but a qualifying test for the candidates who in the later days preside over the destiny of the people. This duty has to be performed without a taint of misrepresentation. This test has to be qualified without resorting to unfair means. Any concession at this stage or any leniency to the candidates or the person elected would be a prelude to a catastrophe in politics, which has already had enough of it. Since it is already touching the extreme, extreme measures have to be taken. The culture ofpassing the candidates by granting grace marks has not delivered the goods. It has rather corrupted the people and corrupted the system. This aspect of the case has been beautifully highlighted in the case of Rai Hassan Nawaz v. Haii Muhammad Ayub and others (PLD 2017 SC 170) by holding as under:-***
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> ***An honest and truthful declaration of assets and liabilities by a returned candidate in his nomination papers furnishes a benchmark for reviewing his integrity and probity in the discharge of his duties and functions as an elected legislator. His statement of assets and liabilities along with other financial disclosures contemplated by section 12(2) of the ROPA provide the Election Commission of Pakistan and the general public with a picture of both his wealth and income. Such disclosures are crucial for demonstrating the legitimacy and bona fides of the accrual and the accumulation of economic resources by such a candidate. In other words, the said disclosures show the returns received from his economic activities and can indicate if these activities may be tainted with illegality, corruption or misuse of office and authority. This important aspect of the financial disclosures by a contesting candidate has been noticed by this Court in Muhammad Yousaf Kaselia v. Peer Gh :dam (PLD 2016 SC 689)".***

In case of *IMRAN AHMED KHAN NIAZI* Vs. *MUHAMMAD NAWAZ SHARIF [PLD 2017 SC 692/* the Hon'ble Supreme Court of Pakistan has held that:-

> *It is hereby declared that having failed to disclose his un-withdrawn receivables constituting assets from Capital FZE Jebel Ali, IME in his nomination papers filed for the General Elections held in 2013 in terms of section 12(2)0 of the Representation of the People Act, 1976 (ROPA), and having furnished a false declaration under solemn affirmation respondent No. 1 Minn Muhammad Nawaz Sharif is not honest in terms of section 99(fi of ROPA and Article 62(1)(fi of the Constitution of the Islamic ¯Republic of Pakistan, 1973 and therefore he is disqualified to be a Member of the Majlis-eShoora (Parliament)."*

In case of *Khaleefa MUHAMMAD MUNAWAR BUTT and another Vs. Hafiz MUHAMMD JAMIL NASIR and others [2008 SCMR 5041* the Hon'ble Supreme Court of Pakistan refused to interfere in a case where the learned Lahore High Court, had disqualified a candidate for failure to declare the amount received by him as part payment of the sale consideration of his property in pursuance of an agreement. The relevant paragraph of the said judgment of the Hon'ble Supreme Court of Pakistan is reproduced here for the sake of convenience:-

> "3. *We are not inclined to agree with his contention because admittedly property stands in the name of the petitioner and he himself entered into an agreenzent to sell the same not as attorney of his father but in his own rights. Besides till the completion of the sale petitioner continued to be the owner of the property. Therefore, it was incumbent upon hi ‣n to have sho ‣vn receipt of Rs.13,00,000 as his assets in the column of nomination papers."*

The case law cited by the learned counsel for the appellant being distinguished on facts and circumstances is not helpful for the appellant as none of the cases cited by the learned counsel involved the facts and circumstances as are involved in the case one in hand.

10. In view of what has been stated above, 1 am of the considered view that the Returning Officer by rejecting the nomination papers of the appellant has not committed any illegality and the impugned order dated 09.03.2020, passed by the Returning Officer does not call for any interference and this Election Appeal having no substance is liable to be dismissed. These are the reasons of short order announced by me on 16.03.2020, whereby this Election Appeal was dismissed.

Hyderabad 19(1) March 2020.

JUDGE

Ahrhamottuf Danish Steno'