

Order Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Constitutional Petitions No. D – 622/2022, 623/2022, 626/2022,
628/2022, 633/2022 and 678/2022

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Zafar Ahmed Rajput

C. P. No. D – 622 of 2022

- Petitioner : Saeed Ahmed, through Mr. Nisar Ahmed Bhanbhro Advocate.
- Respondent No.6 : Mudasir Ali, through Mr. Mukesh Kumar G. Karara Advocate.
- Respondent No.12 : Shahrukh Khan, through Mr. Habibullah G. Ghouri Advocate.

C. P. No. D – 623 of 2022

- Petitioner : Abdul Ghani, through Mr. Nisar Ahmed Bhanbhro Advocate.
- Respondents 3 & 4 : Abdul Haque Khuhawar and another, through Mr. Ghulam Asghar Khichi Advocate.

C. P. Nos. D – 626 & 628 of 2022

- Petitioners : Muhammad Jawed and another, through Mr. Skandar Ali Junejo Advocate.
- Respondent No.5 : Arshad Ali and Muhammad Amir, through M/s Dareshani Ali Haider 'Ada', Ali Gul Abbasi and Muhammad Zuhaib Azam Advocates.

C. P. No. D – 633 of 2022

- Petitioners : Ahsanullah and another, through M/s Nisar Ahmed Bhanbhro, Sheeraz Fazal and Irfan Mehdi Soomro Advocates.
- Respondents 3 & 4 : Arshad Ali and another, through M/s Dareshani Ali Haider 'Ada', Ali Gul Abbasi and Muhammad Zuhaib Azam Advocates.

C. P. No. D – 678 of 2022

- Petitioner : Niaz Ali Khan, through M/s Habibullah G. Ghouri and Muhammad Iqbal Chaudhry Advocates.
- Respondent No.8 : Agha Mir Mustafa Khan, through Agha Atta Muhammad Khan Advocate.

In all petitions

Federation of Pakistan, through Mr. Muhammad Hamzo Buriro, Deputy Attorney General and Mr. Ali Raza Pathan, Assistant Attorney General.

Province of Sindh and others, through M/S Ali Raza Baloch, Ahmed Ali Shahani and Asfandyar Kharal, Assistant Advocates General Sindh.

Election Commission of Pakistan and others, through Mr. Zeeshan Haider Qureshi, Law Officer.

Date of hearing : 08.06.2022, 14.06.2022 and 15.06.2022.

ORDER

NADEEM AKHTAR, J. : The petitioners in all these petitions have impugned the orders passed by the Returning Officers concerned whereby the nomination papers filed by them to contest the upcoming Local Government Elections 2022 were rejected on the ground that they did not disclose their assets at the time of filing their nomination papers ; and, the orders passed by the Appellate Authority whereby the appeals filed by them against rejection of their nomination papers were dismissed. In addition to the above ground, the nomination papers were rejected in C. P. No. D-633 of 2022 also on the ground that the name of one of the petitioners / candidates as Vice Chairman Union Council was not mentioned in the nomination form jointly filed by the petitioners for the seats of Chairman and Vice Chairman Union Council and his seconder had not signed his nomination papers ; and, in C. P. No. D-623 of 2022, also on the ground that the petitioner had not cleared the outstanding dues of SSGC. As the questions of fact and law involved in all these petitions are common, they were heard together and are being disposed of through this common order.

2. In all these cases, the nomination papers were rejected by the Returning Officers on the objections raised / filed by private respondents. In some of the cases, the petitioners have claimed that they were / are not the owners of the assets that were alleged to have been owned by them at the time of filing the nomination papers. The petitioners had filed nomination for the following seats in the upcoming Local Government Elections 2022 scheduled on 26.06.2022 :

Petitioner in C. P. No. D-622/2022 for the seat of Chairman Union Committee No.1, Municipal Corporation Darri Town, Larkana.

Petitioner in C. P. No. D-623/2022 for the seat of Chairman Union Committee No.2, Municipal Corporation Hyderi Town, Larkana.

Petitioners in C. P. No. D-626/2022 for the seats of Chairman and Vice Chairman Union Committee No.1, Nogza Pir, Makki Shah, Sukkur.

Petitioners in C. P. No. D-628/2022 for the seats of Chairman and Vice Chairman Union Committee No.4, Makki Shah Town, Sukkur.

Petitioners in C. P. No. D-633/2022 for the seats of Chairman and Vice Chairman Union Committee No.1, Makki Shah Town, Sukkur.

Petitioner in C. P. No. D-678/2022 for the seat of Member of Ward, Ward No.4, Town Committee Garhi Yaseen, District Shikarpur.

3. The learned counsel for all the petitioners were heard at length. The essence of the arguments advanced by them is that there is no requirement, either under The Sindh Local Government Act, 2013, (**'SLGA'**) or The Sindh Local Councils (Election) Rules, 2015, (**'the Rules of 2015'**), particularly in Section 36 of SLGA and Rules 16 and 18 of the Rules of 2015, whereby the candidate is required to disclose or declare his assets at the time of filing his nomination papers, and as such the rejection of the nomination papers of the petitioners on this ground is unjustified and illegal ; under Section 23(1) of SLGA, the declaration of assets and liabilities has to be filed within thirty (30) days of making oath as a Mayor, Deputy Mayor, Chairman, Vice Chairman and Member of the Council, and not at the time of filing the nomination papers ; the legislature has intentionally dispensed with the making of such declaration at the time of filing the nomination papers ; and, since there is no specific requirement for filing a declaration to this effect at the time of nomination, the petitioners were not obligated to do so. Without prejudice and in addition to their above contentions, it is further contended by them that the non-filing of such declaration by the petitioners has been misconstrued by the Returning Officers and the Appellate Authority as a concealment of assets by them ; and, because of the rejection of their nomination papers on this ground, their fundamental right to contest the election has been infringed. They also referred to Articles 62 and 63 of the Constitution of the Islamic Republic of Pakistan, 1973, and stated that no violation whatsoever of the said Articles has been made by any of the petitioners.

4. In support of their above submissions, learned counsel for the petitioners placed reliance on *Khalid Ahmed Memon V/S Deen Muhammad Talpur and 2 others (2016 MLD 1527)*, *Tariq Hussain V/S Subhan Ali and 6 others (2019 CLC 1592)*, *Aitbar and another V/S Provincial Election Commission through DEO, District N/Feroze, through A.A.G. Sindh and 5 others (2017 CLC Note 179)*, and an unreported order dated 01.06.2022 passed by a learned Division Bench of this

Court in C. P. No. D-596 of 2022 (*Agha Abdul Naeem and another V/S Federation of Pakistan through Chief Election Commissioner, Islamabad, and others*).

5. Conversely, it is contended by Mr. Dareshani Ali Haider 'Ada', learned counsel for respondents No.5 in C. P. Nos. D-626 & 628 of 2022 and respondents 3 and 4 in C. P. No. D-633 of 2022, that the declaration / disclosure of assets at the time of filing the nomination papers is mandatory under the Rules of 2015 ; under Rule 16(3) of the Rules of 2015, the nomination must be made in any of the Forms-II, III, III(A) and III(B), as the case may be ; all the said Forms specifically provide a separate column for declaration of assets by the candidate on solemn affirmation which is mandatory ; by virtue of Section 71 of SLGA, the provisions of The Elections Act, 2017, (**'the Elections Act'**) have been made applicable to the elections and the electoral process under SLGA ; under Section 60(2)(d) of the Elections Act, the declaration of assets is mandatory at the time of filing the nomination papers ; and, as Rule 16(3) *ibid* was not complied with by the petitioners by not declaring their assets as per the prescribed Forms, their nomination papers were rightly rejected by the Returning Officer upon scrutiny under Rule 18(3)(c) of the Rules of 2015. Regarding the other ground on which the nomination papers of the petitioners in C. P. No. D-633/2022 were rejected that the name of one of the petitioners was not mentioned in the joint nomination form and his seconder also did not sign his nomination papers, it is contended by the learned counsel that his nomination papers were rightly rejected on this ground also as the same were not compliant of Rules 16(2), 16(3)(b) and 18(3) of the Rules of 2015. In support of his above submissions, reliance was placed by the learned counsel on *Nida Khuhro V/S Moazzam Ali Khan & others (2019 SCMR 1684)*, *Muhammad Hanif Abbasi V/S Jahangir Khan Tareen (PLD 2018 S.C. 114)*, *Rai Hassan Nawaz V/S Haji Muhammad Ayub & others (PLD 2017 S.C. 70)*, *Sardar Saeed Ahmed Khan & others V/S Appellate Authority & others (2017 CLC Note 158)*, and *Ch. Asif Ali and others V/S Muhammad Mehmood & others (2019 CLC 920)*.

6. While adopting the submissions made by Mr. Dareshani, our attention was invited by Mr. Mukesh Kumar G. Karara, learned counsel for respondent No.6 in C. P. No.D-622/2022, to Rule 2(13) of the Rules of 2015 whereby "Form" means a Form appended in the Rules of 2015 or prescribed by the Election Commission. It is contended by him that as the petitioners were obligated to submit their nomination forms in the Form prescribed by the Election Commission, any deficiency therein would entail consequences as prescribed by SLGA, the Rules of 2015 and the Elections Act.

7. Mr. Ali Raza Baloch, the learned Assistant Advocate General Sindh, has adopted the arguments advanced by Mr. Dareshani Ali Haider 'Ada'. Additionally, it is contended by him that the deliberate addition of the requirement of declaration of assets in the Forms prescribed in the Rules of 2015 cannot be overlooked as this deliberate addition in the Rules of 2015 was made by the legislature to make it mandatory at the time of filing the nomination papers ; and, due to this reason, the 'Hand Book for Returning Officers Local Government Elections-2022 Sindh' issued by the Election Commission of Pakistan for the guidance of the Returning Officers also makes the declaration of assets mandatory in view of the Rules of 2015 ; and, the requirement of declaration of assets has been made mandatory at the time of filing the nomination in order to compare the wealth of the candidate at the time of filing the nomination and after becoming the returned candidate in case he is elected. It was pointed out by him that this subsequent addition was not considered, argued and or dilated upon in the case of Khaild Ahmed Memon (supra). Regarding the omission of the name of one of the candidates in C. P. No. D-633 of 2022 and the absence of his seconder's signature on his nomination form, it was contended by him that such defect in his nomination papers was of substantial nature in terms of Proviso (ii) of Sub-Rule (3) of Rule 18 of the Rules of 2015, and thus they were rightly rejected by the Returning Officer. In support of his submissions, the learned AAG Sindh cited and relied upon Muhammad Jamil V/S Munawar Khan and others (PLD 2006 S.C. 24), Federation of Pakistan and others V/S Mian Muhammad Nawaz Sharif and others (PLD 2009 S.C. 284), Federation of Pakistan and others V/S Mian Muhammad Nawaz Sharif and others (PLD 2009 S.C. 531), Federation of Pakistan and others V/S Mian Muhammad Nawaz Sharif and others (PLD 2009 S.C. 644), Ms. Shamuna Badshah Qaisarani V/S Khuwaja Muhammad Dawood and others (2016 SCMR 1420), Rai Hassan Nawaz V/S Haji Muhammad Ayub and others (PLD 2017 S.C. 70), Imran Ahmed Khan and others V/S Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan (PLD 2017 S.C. 692), Sardar Saeed Ahmed Khan and others V/S Appellate Authority and others (2017 CLC Note 158) and Tariq Hussain V/S Subhan Ali and 6 others (2019 CLC 1592).

8. The learned Law Officers of the Federation and the Election Commission of Pakistan have adopted the arguments advanced by learned counsel for private respondents and the learned Assistant Advocate General Sindh.

9. The main questions involved in these petitions are whether a candidate contesting the Local Government Elections is required to disclose / declare his assets at the time of filing his nomination papers ; if so, whether such requirement

is mandatory ; and, whether the nomination papers can be rejected if such disclosure / declaration is not made by the candidate. In order to decide these questions, we have examined the relevant provisions of the Rules of 2015 viz. Rules 16 and 18. The relevant portion of Rule 16 is reproduced below for ease of convenience and ready reference :

“ 16. Nominations for Elections –

(1) *The Returning Officer shall, as soon as may be after the publication of the election program under sub-rule (2) of rule (12), give a public notice in Form-I inviting nominations and specifying the time before which and the place at which the nomination papers shall be received by the Returning Officer.*

(2) *An elector of an electoral unit may propose or second the name of any duly qualified person to be a member for that unit.*

(3) *Every proposal shall be made by a separate nomination paper in Form-II (English or Urdu or Sindhi), Form-III, Form-III(A) and Form-III(B), which shall be signed by the proposer and the seconder and shall contain*
(a) a declaration signed by the candidate that he has consented to the nomination and that he is not subject to any disqualification for being elected as a member ; and
(b) a declaration signed by the proposer and the seconder that neither of them has subscribed to any other nomination paper either as proposer or seconder.

- (4).....
- (5).....
- (6).....
- (7).....
- (8).....
- (9).....”

10. All the Forms mentioned in Rule 16(3) ibid also contain a declaration of assets on solemn affirmation in the following format :

“DECLARATION OF ASSETS

I, _____ s/o, d/o, w/o _____ candidate for _____ from _____ do hereby solemnly declare that no movable property or immovable land, house, apartment, shop, share certificates, securities, bonds, insurance policies, gold jewelry and motor vehicle are held by me or any family member dependent upon me except as below :-

S#	Description of movable and immovable property and its location	Name of Owner	Relationship with Declarant	Value of Property	Date and manner of acquiring	Net yearly income from property	Remarks

SIGNATURE OF DECLARANT”

11. It is not the case of the petitioners that they were not required to submit their nomination papers in the prescribed Form, or the nomination form submitted by them was misconstrued by the Returning Officer and the Appellate Authority. Their precise case is that they did submit their nomination papers in the prescribed Form that did not require the disclosure or declaration of their assets and as such they were not liable to declare their assets. Their contention clearly appears to be misconceived and cannot be accepted as the declaration of assets on solemn affirmation is an integral part of the Forms subscribed by them. A nomination could be made only in the prescribed Forms mentioned in Rule 16(3) of the Rules of 2015 and not otherwise, therefore, the nomination papers that were not compliant of the said Forms could not be entertained and were liable to be rejected. Admittedly, the requisite declaration of assets on solemn affirmation was not made by any of the petitioners in the Forms subscribed by them. Therefore, the nomination papers submitted by them were incomplete and not in accordance with the Forms especially prescribed in the Rules of 2015 and specifically mentioned in Rule 16(3) *ibid*. The word “shall” used in Rule 16(3) *ibid* is significant which undoubtedly makes the provisions thereof mandatory. It is important to note that the declaration of assets on solemn affirmation was not required under The Sindh Local Councils (Election) Rules, 2013, which have been superseded and substituted by the Rules of 2015 *vide* Notification published in the Sindh Government Gazette on 10.09.2015 ; and, such declaration has been introduced for the first time in the Rules of 2015.

12. Indeed, SLGA does not provide the declaration of assets at the time of filing the nomination, however, Section 71 thereof specifically provides that the provisions of the Elections Act shall be applicable to the elections and the electoral process under SLGA. Under Section 60(2)(d) of the Elections Act the nomination papers filed by the candidate shall be on solemn affirmation, duly signed and accompanied by a statement of his assets and liabilities and those of his spouse and dependent children as on the preceding thirtieth day of June. It may be noted that Form-B prescribed for this purpose in the Elections Act is meant for the candidates of the Senate and the National and Provincial Assemblies. It is for this reason that a separate format of the ‘Declaration of Assets’ on solemn affirmation has been especially provided for and made as an integral part of all the Forms prescribed under the Rules of 2015. There was no necessity or occasion to make the ‘Declaration of Assets’ an integral part of the prescribed Forms if it was not required to be made by the candidates at the time of filing the nomination.

13. Our above view finds support from Form XVII prescribed in the Rules of 2015 for declaration of assets by a returned candidate in terms of Section 23(1) of SLGA whereby a returned candidate is required to file a declaration of assets within thirty days of making oath as a Mayor, Deputy Mayor, Chairman, Vice Chairman and Member of the Council. This is clear from the word “elected” mentioned in the third line of the following Form XVII :

“ FORM-XVII

DECLARATION OF ASSETS

I, _____ S/O, D/O, W/O _____
 CNIC No. [][][][][][] - [][][][][][] - [][]
elected as _____ of _____ belong
 to _____

(Category of Seat) (Number, if any & Name of Local Council / Ward) do, hereby, solemnly declare that no movable property or immovable property, land, house, apartment, shop, share certificate, securities, bonds, insurance policies, gold jewelry and motor vehicle are held by me or any member of my family dependent upon me except as below :-

Sr. No.	Description of movable and immovable property and its location	Name of Owner	Relationship with Declarant	Value of Property	Date and manner of acquiring	Net yearly income from property	Remarks

Name & signature of the Declarant

Place _____
 Date _____ ” (emphasis in third line added)

The provision of two separate and specific declarations of assets on solemn affirmation in the Rules of 2015 i.e. one under Rules 16(3) ibid for the candidates filing nomination papers, and the other for the returned candidates, clearly show the intention of the legislature that such declaration is to be filed both at the time of nomination and after taking oath.

14. We have seen that the nomination of the petitioners was not made in the Form prescribed in the Rules of 2015 as they admittedly did not file the declaration of their assets and those of their dependent family members at the time of filing nomination papers. It is well-settled that where a statute directs a thing to be done in a particular or prescribed manner, or by certain persons, then it must be done

only in such manner and only by such persons. It is not disputed that the Rules of 2015 have been made under the express provision of Section 138 of the governing statute i.e. SLGA for carrying out the purposes of SLGA. It is also well-settled that the rules made under any statute, being statutory in nature, have the force of law, and if the rules are *intra vires* and are validly made by the rule-making authority, the same are to be treated as a part of that statute. Accordingly, the provisions of Rule 16(3) of the Rules 2015 have the force of law that require the nomination to be made in the Forms, including the declaration of assets on solemn affirmation, specified therein.

15. Under Rule 18(3)(c) of the Rules of 2015, the Returning Officer may reject a nomination paper if he is satisfied that any provision of Rules 16 or 17 of the Rules of 2015 has not been complied with. Rule 17 is not relevant in the instant cases as it relates to the candidature fee. Proviso (ii) to Sub-Rule (3) of Rule 18 provides that 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 such defect to be remedied forthwith. We are of the view that the non-compliance of the mandatory provision of Rule 16(3) and the non-filing of the declaration of assets on solemn affirmation by the petitioners, as discussed above, was a defect of substantial nature that could not be remedied under the above Proviso. Thus, the nomination papers of the petitioners were liable to be rejected under Rule 18(3)(c) as it specifically provides such consequence in case of non-compliance of Rule 16. Regarding the claim of the petitioners that they were / are not the owners of the assets that were alleged to have been owned by them at the time of filing the nomination papers, needless to say such disputed question of fact cannot be looked into or examined by this Court in its constitutional jurisdiction.

16. The learned counsel for the petitioners have heavily relied upon the reported cases of Khalid Ahmed Memon, Aitbar and another and Tariq Hussain (supra) and the unreported case of Agha Abdul Naeem (supra) which are briefly discussed below :

I. In Khalid Ahmed Memon it was held, *inter alia*, by a learned Division Bench of this Court that the provisions of SLGA as well as the Rules framed thereunder do not provide any necessity or mandatory requirement to submit the details of assets at the time of submitting nomination papers ; the need arises only when a successful candidate takes oath of an office, whereafter he shall have to disclose his assets within a period of thirty days in terms of Section 23 of SLGA ; in addition to Section 36 of SLGA, Rule

18(3) of the Rules of 2015 provides four conditions to disqualify a candidate which do not provide any room for disqualifying a candidate on such summary assumption ; and, the candidate should not be penalized for not disclosing the assets when the law does not require him to do so.

II. In Aitbar and another, a small share in an ancestral agricultural land was not disclosed by the candidate in his assets, which objection was raised for the first time before the appellate authority. It was held, *inter alia*, by a learned Division Bench of this Court that non-disclosure of such a small share was not a deliberate act of concealment of assets nor did it fall within the mischief of Sections 12 and 14 of The Representation of the Peoples Act, 1976 ('ROPA'). It was further held in this report that a contesting candidate was required to submit complete and correct nomination papers along with annexures as required under the law and rules. Accordingly, the candidate was allowed to file complete and true declaration of his assets before the Returning Officer.

III. In Tariq Hussain it was held, *inter alia*, by a learned Single Judge of this Court that in SLGA and the Rules of 2015 there is no requirement of disclosure of assets and liabilities at the time of nomination as is required under ROPA and the Rules of 1977 made thereunder ; the provisions of ROPA govern the general elections for the National and Provincial Assemblies, whereas the Local Government Elections for the Province of Sindh are governed by SLGA ; the disclosure of assets and liabilities required under ROPA and the Rules of 1977 made thereunder cannot be applied to or read into the scheme of SLGA the provisions whereof have been enacted especially for the Local Bodies Elections ; and, the intentional omission of such requirement by the legislature in SLGA and the Rules of 2015 cannot be filled up by the Court by declaring or holding that non-disclosure or erroneous disclosure of assets and liabilities by a contesting candidate while submitting his nomination papers is a disqualification under SLGA or the Rules of 2015.

IV. In the unreported case of Agha Abdul Naeem, the case of Khalid Ahmed Memon was followed by a learned Division Bench of this Court.

17. A perusal of the above mentioned cases cited and relied upon by learned counsel for the petitioners shows that the Forms prescribed in the Rules of 2015 incorporating the specific declaration of assets on solemn affirmation by the candidate at the time of filing the nomination were not pointed out to the Court nor

was it argued therein that such declaration, being a part and parcel of the prescribed Forms, was mandatory. Resultantly, the effect of non-submission of such declaration at the time of filing the nomination was not argued in any of the said cases and thus it was not considered, discussed and or decided therein. Therefore, the cited cases cannot be applied in the instant petitions as the above point / objection has been specifically agitated herein. It may be noted that in Aitbar and another (supra) it was held by the learned Division Bench of this Court that the contesting candidate was indeed required to submit complete and correct nomination papers along with annexures as required under the law and rules, and accordingly he was directed to file complete and true declaration of his assets before the Returning Officer only for the reason that the non-disclosure of a small piece of land by him was found not to be a deliberate act of concealment of assets. Thus, in terms of Proviso (ii) to Sub-Rule (3) of Rule 18 of the Rules of 2015, the defect was not of a substantial nature. Whereas the non-disclosure of assets in the instant cases was deliberate and the defect was of a substantial nature as discussed above.

18. The other ground on which the nomination of the petitioners in C. P. No. D-633/2022 was rejected was that the name of one of the petitioners / candidates as Vice Chairman Union Council was not mentioned in the nomination form jointly filed by the petitioners for the seats of Chairman and Vice Chairman Union Council and his seconder had not signed his nomination papers. Rule 16(3) *ibid* provides that every proposal shall be made by a nomination paper, in the Forms prescribed therein, which shall be signed by the proposer and the seconder and shall contain, *inter alia*, a declaration signed by the proposer and the seconder that neither of them has subscribed to any other nomination paper either as proposer or seconder. In the absence of the name of the candidate and the signature of his seconder, his nomination form could not be deemed to have been filed in the prescribed form ; and, due to this substantial defect, the joint nomination, which could not be filed independently or singly, was liable to be rejected under Rule 18(3)(c) of the Rules of 2015.

19. In view of the above discussion, we hold that a candidate contesting the Local Government Elections under SLGA is required to disclose / declare his assets on solemn affirmation in the prescribed form at the time of filing his nomination papers which requirement is mandatory, and in case of non-compliance of this mandatory requirement, his nomination papers would be liable to be rejected. The petitioners have not been able to make out a case justifying interference in the impugned orders by this Court in its constitutional jurisdiction.

20. Resultantly, all these petitions and the applications pending therein are dismissed with no order as to costs.

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