

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Election Appeal No.02 of 2024

Date

Order with signature of Judge

For hearing of main case

Date of hearing and order: 05.1.2024

Mr. Haider Waheed advocate for the appellant assisted by
Mr. Asad Ashfaq and Mir Moula Bux Tunio
Mr. G.M Bhuto Assistant Attorney General along with
Mr. Sarmad Sarwer Assistant Director (Law) Election Commission of
Pakistan
MR. Fahim Ali Returning Officer NA-234

ORDER

Adnan-ul-KarimMemon-J Appellant Sadiq Iftikhar Muhammad through instant Election Appeal has called into question the order dated 30.12.2023 passed by the Returning Officer, (RO) NA-234, Korangi Karachi-3. An excerpt whereof is reproduced as under:-

“Rejected/not accepted.

The candidate Mr. Sadiq Iftikhar Mohammad has made the following violation in his nomination papers.

(i) information provided in part (d) of the affidavit is not as per the prescribed form issued by the ECP. The date of birth and CNIC number has not been provided, this information/declaration made in part © cannot be verified.

(ii) Value of House No. 118, Street 28, PhaseVI, DHA, Karachi, and form B has been declared as Rs.1/ in violation of FBR valuation table. This information provided is incorrect and para (ii) appears to be false. Hence the form is rejected under Section (C) of sub-Section 9 of Section 62 of the Election Act 2017.”

Mr. Haider Waheed, learned counsel for the appellant submits that the Returning Officer erroneously held the information provided by the appellant in the nomination papers is false. Per learned counsel, the Returning Officer is not required to reject a nomination paper under Section 62(9)(ii) of the Elections Act, 2017 on the ground of any defect which is not substantial and he ought to have remedied such defect, however, he opted not to allow such defect to be cured; that to any omission in providing information in the nomination papers cannot be termed to be a false statement and dishonest, which factum if any is yet to be determined as such imposing the penalty of disqualification to contest the ensuing election, is illegal unless the dishonesty was/is established in appropriate judicial proceedings. Learned counsel emphasized that the impugned order has been passed based on hypothesis, surmises, and conjectures, therefore, the same has no legal standing and is liable to be

set aside, even otherwise the purported omission is not substantial as no time was granted to the appellant to cure the defect, if any. In support of his contentions, he relied upon the cases of Khawaja Muhammad Asif v. Muhammad Usman Dar [2018 SCMR 2128] and Malik Shakeel Awan v. Shaikh Rasheed Ahmed [PLD 2018 SC 643]. He prayed for setting aside the impugned order dated 30.12.2023.

The learned Assistant Attorney General assisted by the learned law officer representing the Election Commission of Pakistan has opposed this appeal inter alia on the ground that in the nomination form, the appellant has failed to disclose the information provided in part D of the affidavit; the date of birth and CNIC number had not been provided and valuation of the House No. 48, Street 118, Phase VI, DHA Karachi is not under FBR valuation table, as such the appellant is not entitled to contest the ensuing election. At this stage I enquired from the learned law officer as to how he claims that the appellant has not provided information in his affidavit as required and the appellant failed to provide information about his date of birth and his CNIC number, he simply referred to the impugned order and relied upon the reasoning so put forward by the Returning Officer.

I have heard the learned counsel for the parties and perused the record with their assistance.

The question involved in the present appeal is whether the rejection of the nomination papers of the appellant is justified under the election law. Whether the defect as pointed out by the learned Law Officer is substantial or curable?

In the present case, the Returning Officer claims that the appellant has provided false information, which does not match the FBR valuation table and even he failed to disclose/provide the date of birth and CNIC number. These intricate questions require evidence. Primarily, the appeal against the scrutiny order passed by the Returning Officer is of a summary nature, as this Tribunal can pass an order within the specified period, thereafter, the proceedings stand abated and the order of the Returning Officer is deemed to have become final. Needless to mention that under Section 63 of the Election Act, 2017 no fact-finding inquiry is to be made and/or evidence is to be recorded which is only permissible before the Election Tribunal under Section 140 of the Elections Act 2017 after the completion of First Phase of Election. Additionally, Sub-section (9) of Section 62, provides for the rejection of nomination papers on one of four grounds: (9)(a) the candidate is not qualified to be elected as a member, (b) the propose or the seconder is not qualified to subscribe to the

nomination paper; (c) any provision of section 60 or Section 61 has not been complied with or the candidate has submitted a declaration or statement which is false or incorrect in any material particular; or (d) the signature of the proposer or the seconder is not genuine.

However, at the same time under the election law, the contesting candidates needed to incorporate details of bank transactions from December 8, 2023, or bank statements that would be used for election expenses. It is only a material defect or omission in the declaration of assets, if willfully, knowingly, or deliberately made that can result in the rejection of the nomination papers. Under section 62(9) of the Elections Act, 2017, the Returning Officer shall not reject a nomination paper on the ground of any defect that is not substantial and may allow such defect to be remedied forthwith and failure on the part of the returning officer to allow rectifying and amending any infirmity within his/her nomination form as provided in Section 62 (9) (d) (ii) of the Elections Act 2017 violates the law.

In the present case, it appears that the Returning Officer was not properly advised, and failed into a grave error by disqualifying the appellant on a minor defect on the premise that the appellant failed to declare to disclose CNIC and date of birth as well as valuation of the subject property as per FBR valuation table in his statement of assets and liabilities on the date when he filed his nomination paper.

The reasons assigned by the Returning Officer are not sufficient to disallow the appellant to contest the election for the simple reason that participation in elections is a constitutional right, subject to inherent disqualification under the law, which is not the case at hand. However, the allegations and counter-allegations can not be determined and it is for the Election Appellate Tribunal to determine the qualification and disqualification of the candidate after recording the evidence which cannot be done in summary proceedings. therefore at this stage, the appellant has made out a case for grant of relief as provided under the law enabling him to contest the election without resistance.

Adverting to the reasoning of the Returning Officer, the Supreme Court in the case of Khawaja Muhammad Asif v. Muhammad Usman Dar [2018 SCMR 2128] has held that the provisions of election laws are designed to facilitate the general public to know what assets the contesting candidates own, what liabilities they owe before they are elected, and what variation has taken place in their assets and liabilities on a year on year basis after being elected. Hence the election laws require every contesting

candidate to file his or her statement of assets and liabilities and when elected required to declare his/her assets and liabilities every year with the Election Commission. In case an asset not declared by an elected member comes to light, his details of assets and liabilities would help in ascertaining whether concealment was intended to cover some wrongdoing. The whole purpose behind seeking details of assets and liabilities under the election laws is to discourage persons from contesting elections for a seat in the Parliament or a Provincial Assembly who have concealed assets acquired through some wrongdoing. Simultaneously it also aims at those members as well who hitherto may have held untainted records, be discouraged from indulging in corruption and financial wrongdoings after entering upon their office. Hence whoever contests an election for a seat in the Parliament or a Provincial Assembly, is mandatorily required by law to be forthright in declaring all the assets that he/she owns and all liabilities he/she owes. However, all non-disclosures of assets cannot be looked at with the same eye as no set formula can be fixed about every omission to list an asset in the nomination paper, make a declaration of dishonesty, and impose the penalty of disqualification. It is well-settled law that any plausible explanation that exonerates, inter alia, the misdeclaration of assets and liabilities by a contesting candidate should be confined to unintended and minor errors that do not confer any tangible benefit or advantage upon the contesting candidate. Where assets, liabilities, earnings, and income of the contesting candidate are camouflaged or concealed by resorting to different legal devices including benami, trustee, nominee, etc. arrangements for constituting holders of title, it would be appropriate for a learned Election Tribunal to probe whether the beneficial interest in such assets or income resides in the elected or contesting candidate to ascertain if his/her false or incorrect statement of declaration is intentional or otherwise. There is a public interest object behind the statutory prescription for obtaining the said statements and declaration. It is to ensure integrity and probity of contesting candidates and therefore all legislators.

The above-discussed essential element of disqualification about non-declaration of an asset within the ambit of Article 62(1)(f) of the Constitution has also been recognized in the judgment of the Supreme Court in the case of *Muhammad Hanif Abbasi v. Imran Khan Niazi* (PLD 2018 SC 189) and in the present, there is no such declaration against the appellant as such the findings of the Returning Officer that the information provided by the appellant appears to be false is an erroneous decision on the part of Returning Officer which is set at naught, for the simple reason that the Returning Officer has limited jurisdiction

For the aforesaid reasons this appeal is allowed, the impugned order dated 26.12.2023 is set aside and the Returning Officer is directed to include the name of the appellant in the list of contesting elections for NA-234, Korangi Karachi-3 without resistance.

JUDGE

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