

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**Election Appeal No.110 of 2024**

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Date	Order with signature of Judge
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For orders as to non-prosecution

**Date of hearing and order : 06.1.2024**

Mr. Imdad Ali R. Unar, advocate for the appellants/objector  
Pir Syed Asadullah Rashdi advocate for respondent No.3  
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission  
of Pakistan

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**ORDER**

**Adnan-ul-KarimMemon-J** Objectors/Appellants Noor Muhammad Nizamani and Abid Hussain through instant Election Appeal have called in question the order dated 30.12.2023 passed by the Returning Officer, PS-58/Assistant Commissioner Tando Allahyar-I, whereby the candidature of the Respondent No.3 was accepted to contest the ensuing election on the premise that such objections were not supported with documentary evidence; that there was no defect of substantial nature found in the nomination papers of the Respondent No.3, and finally she was declared qualified to contest the General Elections 2024 under Section 62(11) of Election Act, 2017. An excerpt whereof is reproduced as under:-

**“15. After hearing both the parties, the counsel of the objectors and most their objections are not supported with documentary evidence but the reply of the counsel of the contesting candidate furnished the documents related to the information given in the nomination papers by the candidate. Hence it is concluded that there is no defect of the subtaintial nature found in the nomination papers of the candidate. Therefore, the Nomination papers of the contesting candidate is hereby ACCE[TED, and she is declared as qualified candidate to the contest of General Election 2024 u/s 62(11) of Elections Act 2017.”**

At the very outset, learned counsel for the appellants submits that the acceptance of the nomination paper of respondent No.3 as a candidate for member Provincial Assembly, PS-58 is contrary to law, equity, and justice. He further submits that respondent No.3 filed a false affidavit and submitted a false statement of assets, liabilities, and particulars, which constitute a corrupt practice and false declaration has been given by her, thus she is not entitled to contest the ensuing election under the election law. Learned counsel referred to various documents attached with the memo of Election appeal and submits that after the cut of date for filing the Nomination papers with the Returning Officer by the candidate she has manured the things and subsequently filed affidavit which has no value under the Election Law; that she has not any bank statement of any bank while she is giving balance of Rs. 6,27,48,016/- that she has not mentioned her Agriculture land Deh Nehaki Tapa A, Tlauka and District Tando

Allahyar; that she has cancelled that she still own one acre 19 ghunta in her name of Deh Nehaki; that she also concealed that her daughter owns plots of chambers, her daughter namely Maryam Fayaz and she own 24 acres 26 ghuntas, plots 1073754 sq. ft. Deh Nehaki Tapa A. Tando Allahyar; that she has not mentioned any thing or property of her spouse, Farooque Leghari; that she has not given PTCL No dues Certificate; that she has not provided AIT documents; that she has not filed Bank statement and also has not shown disruption liabilities. Learned counsel has urged that respondent No.3 has failed and neglected to disclose her property bearing Bungalow No.1-A/I, 26<sup>th</sup> Street, Phase-V, Extension, DHA Karachi in the nomination form. In support of his contentions, he relied upon the cases of *Nida Khuhro v Moazzam Ali Khan* **2019 SCMR 1684**, *Sherbaz Khan Gadai v Muhammad Ramzan* **2018 SCMR 1952**, *Sadiq Ali Memon v Returning Officer NA-237 Thatta-I* **2013 SCMR 1246**, *Mian Najeebuddin Owaisi v Ameer Yar Waran* **PLD 2013 SC 482** and *Speaker National Assembly of Pakistan v Habib Akram* **PLD 2018 SC 678**. He therefore, prayed for setting aside the impugned order dated 30.12.2023.

On the contrary, the learned counsel representing respondent No.3 has filed a statement dated 06.01.2024 coupled with certain documents and submits that this Election appeal is not maintainable on the premise that she has disclosed each and everything and relied upon the Gift-deed, Mutation Certificate, Tax returns of Muhammad Mohsin and Maryam Fayaz. Learned counsel submits that the objections raised by the objectors were rightly rejected by the Returning Officer PS-58 Tando Allahyar and similar points have been raised in this Election appeal. He prayed for the dismissal of this Election appeal.

The learned law officer representing the Election Commission of Pakistan has supported the impugned order and prayed for the dismissal of the instant Appeal on the same analogy 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 acceptance of the nomination papers of respondent No.3 by the Returning Officer PS-58/Assistant Commissioner Tando Allahyar-I, is sustainable under the law. Whether such defects as pointed out by the learned counsel for the appellant substantial and justifiable under the law?

In the present case, the appellants claim that respondent No.3 has provided false information to the Returning Officer and obtained an order

of acceptance of her nomination papers by deceitful means by not disclosing the facts. If this is the stance of the appellants, whether this Election Appellate Tribunal could dig out the truth by calling the concerned officials to come up with concrete evidence against respondent No.3, certainly these things require complete evidence; besides, these intricate questions require thorough probe as pointed out by the learned counsel for the appellant. Primarily, the appeal against the scrutiny order passed by the Returning Officer is of a summary nature, as this Appellate Election Tribunal can pass an order within the specified period so set forth by the Election Commission of Pakistan under the law, if the proceedings are not completed within time, thereafter, the proceedings stand abated and the order of the Returning Officer shall be treated 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, to be constituted, 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 proposer or the seconder is not qualified to subscribe to the nomination paper; (c) any provision of section 60 or Section 61 of the Elections Act 2017, 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.

Prima facie, the reasons assigned by the Returning Officer PS-58/Assistant Commissioner Tando Allahyar-I, are sufficient to reject the viewpoint of the appellants 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 and if the allegations are supposed to be supported by the material evidence the same can also be looked after by the Election Tribunal to be constituted by the Election Commission of Pakistan as discussed supra.

Adverting to the contention of the learned counsel for the appellant on the analogy so put forward by him suffice it to say that, 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/her 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 mis-declaration 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, case there is no such declaration against the respondent No.3 as such the findings of the Returning Officer that the information provided by the objectors appears to be insufficient to dislodge the respondent No.3 from contesting the ensuing the election,

which decision is even otherwise is prima facie within the parameter of law as discussed supra, however the qualification and disqualification of the candidate shall remain intact after completion of first phase of the election to be taken care of by the Election Appellate Tribunal, if the respondent No.3 is succeeded in the election.

At this juncture, the allegations and counter-allegations cannot 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 under sections Section 62 and 63 of the Election Act, 2017, therefore at this stage, the appellants have failed to make out their case for grant of relief as provided under the election law to non-suit the respondent No.3 from disfranchising her from contesting the ensuing election.

For the aforesaid reasons, this Election Appeal fails and is accordingly dismissed.

Shafi

JUDGE