

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.237 of 2024

Date

Order with signature of Judge

1. For order on CMA No.627/2024
2. For order on office objection a/w reply as at `A`
3. For hearing of main case

Date of hearing and order: 08.1.2024

Mr. Ahmed Hussain Jokhio, advocate for the appellant
Mr. G.M Bhuto Assistant Attorney General along with
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of
Pakistan

ORDER

Adnan-ul-Karim Memon, J. Appellant Imtiaz Ahmed through instant Election Appeal has called into question the order dated 28.12.2023 passed by the Returning Officer, PS-75, Thatta-I, *inter alia*, on the allegation that one vehicle (Sazgar Rikshaw) 2019 registration No. 09133-D19 SG 19040146 was registered in the name of the appellant as per the report of the Excise and Taxation Department that factum had not been disclosed in the nomination papers in the Assets/Liabilities form, hence, his nomination form was found contrary to Section 62 of the Elections Act, 2017.

At the outset, learned counsel for the appellant argued that the appellant had sold out vehicle vehicle (Sazgar Rikshaw) 2019 registration No. 09133-D19 SG 19040146) to a third party vide agreement dated 11.11.2020 (*Annexure-C at Pag-67*) thus he cannot be saddled with this liability under the law. Learned counsel further contends that due to the impugned order, the appellant is deprived to contest the elections, which is sheer injustice with him and voters of the area. Learned counsel further contends that the impugned order clearly reflects that there is no any illegality or deficiency found in nomination paper of the appellant. He, therefore, prayed for setting aside the impugned order dated 28.12.2023.

Learned Assistant Attorney General assisted by the learned Law Officer representing the Election Commission of Pakistan present in Court has waived the notice of this appeal due to paucity of time, however, they have opposed this appeal on the analogy so put forward by the Returning Officer.

I have heard the learned counsel for parties and have perused the material available on record.

The question involved in the matter is whether the reason assigned by the Returning Officer is substantial or curable under the Elections Act, 2017.

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.

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.

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 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, 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 28.12.2023 passed by the Returning Officer, PS-75, Thatta-I, is set aside and the Returning Officer is directed to include the name of the appellant in the list of contesting elections for PS-75, Thatta-I, without resistance.

Shahzad Soomro/*

JUDGE