

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.153 of 2024

Date	Order with signature of Judge
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1. For order on CMA No.535/2024 (Urgency granted)
2. For order on CMA No.536/2024 (Exemption granted)
3. For hearing of main case

**Date of hearing and order: 08.1.2024**

Mr. Usman Farooq advocate for the appellant  
Mr. Hidayat Ali Mangrio advocate for the objector Ghulam Murtaza  
Mr. G.M. Bhutto, Assistant Attorney General  
Mr. Sarmad Sarwar, Assistant Director (Law), Election Commission of Pakistan

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**ORDER**

**Adnan-ul-Karim Memon, J.** Appellant Muhammad Ali Khan has questioned the legality and propriety of the order dated 30.12.2023 passed by the Returning Officer PS-76, Thatta-II by which his nomination papers have been rejected on the ground that the candidate/appellant has not disclosed his immovable property at Form-B whereas during scrutiny the candidate admitted that he owns furniture i.e. bed, shelf, other households articles. It is also claimed that the candidate is doing a private job but has not disclosed his total income and source of income at Para-K of the affidavit. It is also claimed that the candidate has admitted that his net assets are Rs.340,000/- but the same has not been specified on pages 7 and 8 of Form-B, which seems that the nomination form submitted by the candidate is contrary to Sections 60 and 61 of the Elections Act, 2017, and contrary to Article 62(f) of the Constitution of the Islamic Republic of Pakistan, 1973.

It is, inter alia, contended by learned counsel for the appellant that the order of respondent No.2 / Returning Officer is illegal, unlawful, unconstitutional, and against the true spirit of the law, furthermore, the impugned order also violates Article 10-A of the Constitution; that according to Section 149 of the Income Tax Ordinance, the appellant is not eligible to pay tax as his monthly salary is below than Rs.40,000/-, moreover the appellant has clearly showed his net assets in Para-T of the affidavit of nomination Form-23; that the appellant has already mentioned complete details regarding his salary, house and household articles. He, therefore, prayed for setting aside the impugned order dated 30.12.2023.

Learned Assistant Attorney General as well as the Assistant Director (Law) on behalf of the Election Commission of Pakistan is present in Court and waived notice of this election appeal due to paucity of time, however, they have opposed this appeal on the analogy so put forward by the Returning Officer.

Mr. Hidayat Ali Mangrio advocate also filed Vakalatnama on behalf of the objector Ghulam Murtaza and has waived notice of this appeal and argued that the appellant has suppressed the material facts in his nomination papers about non-disclosure of his Agricultural Land- 6.22 Acres of Deh and Tapo Gharo, Taluka Mirpur Sakro as such his case falls within the meaning of misstatement and false information, eliminating him from contesting the ensuing election and relied upon the letter dated 29.12.2023 issued by Mukhtiarkar Revenue Mirpur Sakro and submitted that as per village Form VII-B, the appellant owns subject land.

At this stage, I reminded him that these factual controversies require complete evidence to be produced in support of the objectors' claim as these documents need to be confronted to the appellant whereas the powers conferred upon this Tribunal are of a summary nature. Learned counsel emphasized that if this is the position of the case then the matter needs to be referred to Returning officer to decide the subject issue, however, he added that such controversy goes into the root of the case and the appellant has suppressed the material facts and made a false statement before the Returning Officer who rightly rejected his Nomination papers, I again reminded him that such allegation and counter allegation at this stage could not disenfranchise the appellant. However, he insisted that the appeal is liable to be dismissed. The aforesaid stance has been refuted by the learned counsel for the appellant that the respondent has to prove the allegations under the Qanoon-e-Shahadat Order. He further submitted that the Mukhtiarkar Revenue Mirpur Sakro is not sure on the premise that the appellant did not file any claim for the reconstruction of record of rights in respect of his purported landed property before the committee, constituted by the Revenue, Sindh for the reconstruction of record of right of Deh Gharo Taluka Mirpur Sakro vide letter dated 29.12.2023.

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

Law on the subject has elaborately been developed till now and in the pronouncement of the Supreme Court, certain criteria have been laid down to invoke Articles 62 & 63 of the Constitution of the Islamic Republic of Pakistan, 1973.

Element of dishonesty is an essential element of disqualification under Article 62-1(f) of the Constitutional as held in the case of

MUHAMMAD HANIF ABBASI v. IMRAN KHAN NIAZI & OTHERS [PLD 2018 Supreme Court page 189] wherein the Supreme Court has emphasized that dishonesty cannot be attributed regarding any alleged design, intention, scheme, background or impropriety means-ria. It is well settled that if the explanation given by a party is plausible, the Court should not deprive such party from contesting the election. However, if the party has willfully made a false statement in the affidavit sworn with the nomination paper concealing material particular to avoid disqualification, then the Tribunal would not travel deep into the explanation, once it is established that the disclosure of such material particular would have exposed him to disqualification.

Having deduced that mere non-disclosure of any particular asset does not ipso-facto render a person to be dishonest unless it is established that such non-disclosure/concealment is baked with dishonesty, malafide intention to avoid disqualification.

In the above backdrop, the question that needs determination here is whether the appellant has concealed the subject land to gain any benefit, the answer is plumb “No”, for the reason that if he had disclosed his purported land in his nomination papers, he would not have been disqualified on this score alone however, the qualification and disqualification can be properly adjudicated before the Election Appellate Tribunal after completion of the first phase of the election, therefore at this stage nothing could be said about the allegations and counter allegations.

I have gone through the material on record but did not find anything that indicates that the appellant had deliberately concealed the said piece of land in his nomination papers. I do not see any advantage accruing to the appellant in not disclosing the said land. Learned counsel for the objector contended that any error or omission in the declaration form by a candidate for election incurs his disqualification under Article 62(1)(f) of the Constitution posits a wide proposition of law, if at all, this may have limited relevance where the context involves corruption or money laundering in State office, misappropriation of public property or public funds accumulation of asset beyond known means or abuse of public office or authority for private gain. There is no involvement of public property or funds, abuse of public office and authority, corruption, or breach of fiduciary duty in the instant case.

It is by now well settled that it is the credibility of the explanation that matters as to whether non-disclosure of an asset carries with it an element of dishonesty or not. The test of honesty about non-disclosure of assets and liability is to be applied, in that context alone and certainly not in a case where non-disclosure of clean assets is only inadvertent omission. In this regard I am supported with case law reported as *Rai*

*Hassan Nawaz v. Haji Muhammad Ayub* [PLD 2017 Supreme Court 70],  
wherein it has been held as under:

**“8. We, therefore, observe that any plausible explanation that exonerates, inter alia, 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 an elected or contesting candidate. Where assets, liabilities, earnings, and income of an elected or contesting candidate are camouflaged or concealed by resorting to different legal devices including benami, trustee, nominee, etc. arrangements for constituting holders of the 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 false or incorrect statement of declaration under Section 12(2) of the ROPA is intentional or otherwise”**

After considering the entire material on record I am of the view that the Returning officer has failed to appreciate the actual position in this matter and has wrongly proceeded while rejecting the nomination papers of the appellant. So far as the contention of the objector that the appellant cannot contest the election having been suppressed the facts at this stage I am not impressed with this contention which seems to be probed by the Election Tribunal in terms of Section 140 of the Elections Act, 2017 to be constituted after completion of the first phase of Election.

The result of the above discussion is that this election Appeal is allowed. The order dated 30.12.2023 passed by the Returning Officer PS-76, Thatta-II whereby the nominating papers of the appellant were rejected is set aside. Consequently, the nomination papers filed by the appellant for election PS-76, Thatta-II is hereby restored and the appellant is allowed to contest the said election.

JUDGE