

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No. D-51 of 2024  
(*Saadat Ali Dahri v. Shah Nawaz & others*)

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro &  
Mr. Justice Arbab Ali Hakro**

M/s Nisar Ahmed Bhanbhro and Sheeraz Fazal, Advocates for petitioner.  
Syed Mureed Ali Shah, Advocate files power on behalf of respondent No.1.  
Mr. Zeeshan Haider Qureshi, Law Officer, Election Commission of  
Pakistan.

Mr. Dareshani Ali Haider 'Ada', Deputy Attorney General.

M/s Liaquat Ali Shar, Additional A.G and Ali Raza Baloch, Assistant A.G.

Date of Hearing & Order: **17-01-2024**

### **ORDER**

**MUHAMMAD IQBAL KALHORO, J:-** Respondent No.1 filed nomination papers to contest the General Election-2024 for the seat of Member Provincial Assembly of Sindh from PS-35 Naushahro Feroze-IV. Petitioner being a voter of the same constituency, finding that the respondent No.1 had not disclosed true facts in his nomination papers and affidavit about property/agricultural land in the name of his wife, filed objections before the Returning Officer concerned. The Returning Officer after hearing both the parties accepted nomination form of respondent No.1 and rejected objections raised by petitioner vide order dated 29.12.2023, which the petitioner challenged before learned Election Tribunal in Election Appeal No.S-11 of 2024, but met with the same fate vide impugned order dated 10.01.2024. Hence, this petition.

2. Learned counsel for petitioner has argued that petitioner was required to disclose agricultural land held by his wife in Form-B i.e. statement of assets and liabilities, as required, but he failed to do so, which is in violation of section 60 read with section 137 of the Election Act, 2017. Hence, he is disqualified to contest the upcoming elections. According to him, both, the Returning Officer and learned Election Tribunal overlooked such mandatory requirement left unfulfilled by respondent No.1 while accepting his nomination papers. He in support of his case has relied upon the cases reported as *Speaker National Assembly of Pakistan Islamabad v. Habib Akram and others* (**PLD 2018**

**Supreme Court 678)** and *Rai Hassan Nawaz v. Haji Muhammad Ayub and others* (**PLD 2017 Supreme Court 70**).

3. On the other hand, learned counsel appearing for respondent No.1 has supported the impugned orders and has submitted that there are concurrent findings in favour of respondent No.1; that subject agricultural land was purchased in the year 2008 and 2011 in the name of Mst. Amna, wife of respondent No.1 by her father, when she was unmarried; that her marriage was performed in the year 2021 with respondent No.1; that her father is also contesting elections and he in his nomination form and supporting affidavit has declared such property. Hence, there is no question of non-declaration of assets and liabilities in the name of wife of respondent No.1 and no case for concealment of facts has been made out.

4. Learned Law Officer, Election Commission of Pakistan has supported the impugned orders. However, learned DAG has supported the petitioner stating that the respondent No.1 was required to declare assets/properties held by his wife in compliance of section 60 of the Election Act, 2017 and was required to disclose and mention such facts in Form-B, which he omitted to do so, hence is disqualified to contest the elections. Learned AAG has also made similar arguments.

5. We have heard the parties and perused material available on record and taken guidance from the case law relied at bar. Section 60 of the Election Act, 2017 has entire scheme revealing the manner as to how any voter of a constituency can propose or second the name of any qualified person to be a candidate for Member of that constituency; and how every such nomination can be made by a separate nomination paper on form A signed by both the proposer and seconder. And in what form it shall contain a declaration by the candidate requiring him to show that he has consented to nomination and fulfills all qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 of the Constitution for being elected as a Member. Clause (d) of the said section denotes that a candidate has to submit a statement on Form-B revealing both his assets and liabilities, of his spouse and dependent children as on the preceding 30<sup>th</sup> day of June.

6. A perusal of Form-B filed with this petition (available on page-51) shows that respondent No.1 has not mentioned any assets/properties held by his spouse. It is not disputed that his spouse is holding agricultural land in Deh Khalso Tapo Khalso and Deh Dabirhi Wai, Tapo Dabirhi Wai, Taluka Moro district Naushahro Feroze in her name, which as per requirement of above provisions of law was to be specified by him without fail. The question either before Returning Officer or learned Election Tribunal was not to consider or determine as to how she had come to be owner of such property and whether it was purchased by her father or by her husband/respondent No.1. But the fact whether she was having any holdings and whether the same had been disclosed by respondent No.1 in Form-B or not, as required and then proceed to record their findings in the light thereof.

7. Arguments in defence that her father Ghulam Murtaza Khan in his affidavit has shown her i.e. wife of respondent No.1 as his dependent is not relevant for deciding challenge to requirement of section 60 (2)(d) of the Election Act, which commands the candidate to disclose (without fail) all the assets and liabilities of his/her spouse and dependent children. That requirement appears to be substantial and mandatory in law. Its mandate cannot be whittled down by any subsidiary circumstances pertaining to mode and manner of acquiring such assets and liabilities either by candidate, by his/her spouse and his/her children. If on the day of submitting nomination papers by the candidate, there were certain assets held or liabilities outstanding against him, his spouse or dependent children, he cannot afford to skip mentioning the same. His failure to do so would land him in direct violation of section 60(2)(d) of the Election Act.

8. Both the forums below did not attend to such aspect of the matter and its true prospective and context and were carried away merely by the fact that at the time of acquiring such assets, spouse of respondent No.1 was not married with him and had acquired such assets from her father who had disclosed the property in his form. The requirement for a candidate to make a statement regarding assets and liabilities of his dependent children and spouse is material one and its non-disclosure has a direct reference to his credentials to contest the election, as a candid candidate.

9. We, therefore, find both the orders below based on mis-appreciation of facts and relevant laws and not sustainable in law. Consequently, objections raised by petitioner stand, and the nomination papers of respondent No.1 for want of requirement envisaged under section 60(2)(d) of the Election Act, are rejected.

10. The petition stands disposed of in the above terms.

**JUDGE**

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Ahmad