

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-165 OF 2024

Date

Order with Signature of Judge

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ

MR. JUSTICE ABDUL MOBEEN LAKHO, J

***Syed Ayaz Ali ShahVs.....Federation of Pakistan
& others***

Date of Hearing 19-01-2024.

M/s.Maqbool-ur-Rehman and Ishaque Ahmed Khawaja, Advocates a/w
Petitioner.

Mr.Saifullah, A.A.G.

Mr.Irshad Ali, Assistant Attorney General.

Mr.Abdullah Hanjrah, Deputy Director (Law), and Mr.Sarmad Sarwar,
Assistant Director (Law), Election Commission of Pakistan are present in
person.

Mr.Muhammad Haseeb Jamali and Mr.Muzzamil Hussain Jalbani,
Advocates for the Respondent No.4.

ORDER

ABDUL MOBEEN LAKHO, J The Petitioner is aggrieved by the order dated
10.01.2024 passed by the learned Election Appellate Tribunal in Election
Appeal No.167 of 2024 filed by Respondent No.4, *whereby*, the order dated
26.12.2023 passed by the Returning Officer PS-76 accepting the nomination
paper of the Petitioner was set-aside and the nomination paper of the petitioner
was rejected.

2. Brief facts of the petition are that the petitioner filed Nomination Papers
disclosing the movable and immovable properties for contesting in the
upcoming General Election of 2024 from PS-76 Mirpur Sakro, but the
respondent No.4 filed objections on the ground that the petitioner has concealed
the fact that he possessed 10 acres and 18 ghuntas of land in Deh Gharo District
Thatta and also possessed firearm license under which the petitioner has a
registered 9mm pistol.

3. Learned counsel for the petitioner argued that the Respondent No.4 (objector) did not file any objection before the Returning Officer on the nomination paper of the petitioner, however, under Section 62 of the Elections Act, 2017 any voter of a constituency may file objections to the candidature of a candidate of that constituency, whereas, in the present case the Respondent No.4 (objector) is not a voter of the same constituency. Learned counsel further argued that the petitioner has not suppressed or conceal any material fact, whereas, the Appellate Court did not consider the fact that the respondent No.4 has filed forged document (Form-VII) as the land in question is not in the name of the petitioner, therefore, disclosure of the same in the nomination paper does not arise being inherited land in which brothers and sisters of the petitioner also have shares. Learned counsel for the petitioner further argued that Respondent No.4 has raised controversial questions of facts, which cannot be decided in the election appeals as the same requires recording of evidence. Learned counsel for the petitioner argued that there is no column in the nomination papers regarding mentioning of arm license, that is why the petitioner did mention the same. Learned counsel for the petitioner further argued that there is no any legal objection raised by any person / Bank or authority against the petitioner. Learned counsel further submits that the Impugned Order passed by the learned Election Appellate Tribunal is unconstitutional and contrary to the norms of the justice as well as standards for nomination set by the Election Act and the Supreme Court decision and have been passed without application of judicial mind and without taking into account the blatant and malafide discrepancies and tangible evidence produced before them; while passing the Impugned Order. Learned counsel for the petitioner further argued that the petitioner may not be disfranchised or prevented from contesting elections, which is fundamental right of every citizen. Reference in this regard can be made in the case of *Aitbar and another.....Vs.....Provincial Election Commission through DEO, District N'Feroze, through A.A.G. Sindh & others [(2017 CLC Note 179 Sindh (Sukkur Bench)]*.

4. On the other hand, learned counsel for the Respondent No.4 while supporting the impugned order has vehemently opposed instant petition. It has been submitted that the petitioner knowingly and deliberately concealed the fact about the subject land in the nomination papers and further that the petitioner has also failed to disclose the fact that he possessed an arm license, therefore, the petitioner is not entitled to any relief and his petition may be dismissed.

5. We have heard the learned counsel for the parties, perused the material available on record, considered the submissions and the case law cited by them at bar.

6. From the perusal of the record, it appears that admittedly the Respondent No.4 (objector) is not the voter of same constituency, whereas, under Section 62 of the Elections Act, 2017 the objector should be a voter of the same constituency from which the candidate is contesting elections and also the Respondent No.4 did not file any objection before the Returning Officer against the petitioner's nomination paper, both these facts have not been controverted by the learned counsel for the Respondent No.4. It also appears that the learned Election Appellate Tribunal while relying upon Deh Form-VII rejected the nomination papers of the petitioner without taking into consideration the legal objection that the land in question is an ancestral land and the petitioner has only some share form the land of his father.

7. We are fortified with the view taken by a Division Bench of this Court in 2017 CLC Note 179 wherein it was held as follows: -

...

“There is no cavil to the proposition that a candidate who, intends to contest elections is required to submit complete and correct Nomination Papers along with annexures as required under relevant law and rules, whereas, any deliberate omission or default, which is of substantial nature, cannot be allowed to be validated at a subsequent stage. Reliance is placed in the case of *Rana Muhammad Tajammal Hussain V/S Rana Shaukat Mahmood* reported in **PLD 2007 SC 277** and *Mudassar Qayyum Nagra versus Election Tribunal Punjab, Lahore and 10 others* reported in **2003 MLD 1089**. However, if there is an error or omission on the part of candidate in the Nomination Papers, which is not substantial in nature and can be cured at a very initial stage of scrutiny by the Returning Officer or before the Appellate Authority, in such situation, we are of the opinion that, an opportunity is to be given to the candidate to remove such defect or deficiency so that he may not be disfranchised or prevented from contesting elections which is a fundamental right of every citizen as per constitution, however, subject to law. We are of the tentative view that, the petitioners, otherwise qualify to contest elections, and there is no objection with regard to their eligibility except, the ground of incomplete declaration of assets by petitioner No.1, which according to the petitioner was on account of omission by the petitioner, whereas, respondents have not been able to demonstrate as to how such non-declaration of assets of the ancestral agricultural land by the petitioner No.1 is a deliberate act of concealment or the petitioner wanted to gain any benefit out of such non-declaration.

In view of hereinabove facts and circumstances of the case and while agreeing with the ratio of the decision of the Lahore High Court, as referred to hereinabove, we are of the opinion that non-declaration of

small share in the ancestral agricultural land by the petitioner No.1, was not a deliberate act of concealment of assets, hence, does not fall within the mischief of section 12 and 14 of the Representation of the Peoples Act, 1976. Accordingly, instant petition is allowed, impugned order passed by Appellate Authority is hereby set aside and the petitioner is directed to submit complete and true declaration of assets before the Returning Officer, which shall be examined by him and, thereafter, order of acceptance shall be passed in accordance with law and Form-VIII shall be issued immediately.

Petition stands allowed in above terms.”

...

8. The Petitioner is allowed to contest the forthcoming election and his nomination paper shall be accepted subject to any challenge subsequently brought to bear against him in the second round of litigation after election on ground of disqualification, non-disclosure or any other valid basis for objection in the event that he is successful in being elected.

9. We vide our short order dated 19.01.2024 had allowed instant petition and these are the reasons thereof.

Judge

Chief Justice

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