

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P No.D-54 of 2024

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Iqbal Kalhoro Mr. Justice Arbab Ali Hakro
Petitioner:	Through M/s. Haseeb Jamali and Ali Gul Abbasi, advocates
Respondent No.1:	Through Muhammad Zubair Malik, advocate
Federation of Pakistan:	Through Mr. Ashfaq Hussain Abro, DAG
Election Commission of Pakistan:	through Mr. Zeeshan Haider Qureshi, Law Officer, ECP
Province of Sindh:	Through Mr. Ahmed Ali Shahani, AAG
Date of hearing:	18.01.2024
Date of decision:	18.01.2024

ARBAB ALI HAKRO, J:Through this petition, the petitioner has impugned the orders passed by Returning Officer of NA-200 (Sukkur-I) and the Election Appellate Tribunal for Sindh at Sukkur dated 25.12.2023 wrongly mentioned in the prayer clause of petitioner as 26.12.2023 & 10.01.2024, respectively; whereby nomination form submitted by Respondent No.1 to contest the election from the constituency i.e. NA-200, Sukkur-I, has been accepted. The Election Appellate Tribunal maintained the order passed by the Returning Officer, NA-200, Sukkur-I, and dismissed the appeal filed by the petitioner under Section 63 of Election Act, 2017 (“**the Act of 2017**”).

2. The learned counsel for the petitioner, at the very outset, contended that Respondent No.1 is a director and owner of AM&MJ Construction Company Pvt. Ltd. Therefore, this is a disqualification for a member of the Majlis-e-Shoora (Parliament) under Article 63(1)(I) of the Constitution of Pakistan. It was further urged that Respondent No.1 did not disclose his movable and immovable assets in Form-B of the nomination papers nor the affidavit sworn by him. It was also pointed out that, according to the State Bank of Pakistan record, he

has availed himself of six loans from different banks; however, only one loan had been disclosed by him in his nomination form. The counsel further argued that he is also a proclaimed offender in Criminal Case No.156/2014 for offences punishable under Sections 302, 148, 149, 109, 114, 337H-2 PPC, registered at Police Station A-Section, Sukkur, and at the time of submitting the nomination form, he did not disclose it. At the conclusion of his arguments, the learned counsel contended that Respondent No.1 willfully concealed information regarding liabilities and assets, which is a false declaration and a violation of Section 60 of the Act of 2017. In support of his contentions, learned counsel has relied upon the case law reported as **2018 SCMR 1952, 2019 SCMR 1684, PLD 2017 SC 70, PLD 2018 SC 678, 2013 CLC 1521, 2019 CLC 111 & 2002 CLC 281.**

3. On the other hand, the learned counsel for Respondent No.1 argued that, as a Director and owner of the company, the nomination form of Respondent No.1 cannot be rejected since there is no contract executed by the company with the Government in violation of Article 63(1)(l) of the Constitution of Pakistan. He further argued that prior to submitting the nomination form, he had obtained protective bail for the same crime and offence, thereafter surrendered before the concerned Court and successfully obtained pre-arrest bail. Therefore, the grounds of being a proclaimed offender do not apply. He also argued that nobody raised objections before the Returning Officer when the nomination form of Respondent No.1 was scrutinised as per the provisions of Section 62 of the Act of 2017. The counsel further submitted that he had already disclosed a list of vehicles that were purchased through a loan. Such disclosure is sufficient and cannot be termed a mis-declaration of liabilities and assets. He finally relied upon the case law reported as **2021 SCMR 988, 2018 SCMR 2128, PLD 2018 (Lah) 318, 2023 CLC 723, PLD 2017 (Lah) 394, 2019 CLC 130, 2016 SCMR 2042 & 2006 YLR 48.**

4. The representative of the Election Commission of Pakistan submitted that the objections raised by the petitioner are not tenable, as they were not raised before the Returning Officer during the scrutiny process as per the provisions of Section 62 of the Act of 2017.

5. The learned D.A.G argued that the petition is not maintainable, and the law does not provide any right to raise such objections, which were not raised before the Returning Officer. Hence, the nomination papers have been rightly accepted by the Returning Officer.

6. The learned A.A.G also supports the arguments advanced by learned counsel for the petitioner.

7. Heard arguments. Record perused. The first argument of learned counsel for the petitioner is that Respondent No.1 is one of the Directors of AM & MJ Construction Company Pvt. Ltd, which is one of disqualification of Member of Majlis-e-Shoora (Parliament). According to Article 63 (1)(l) of the Constitution of Pakistan, if a person or any entity on their behalf or for their benefit, including a member of Hindu, undivided family, has any share or interest in a contract (excluding contracts between a cooperative society and the Government) for the supply of goods, execution of any contract or performance of any service undertaken by the Government, then the form should be rejected. This implies that an owner of the company is not barred from filing the nomination form to contest the election even if he is a Director of the company. This bar would be applicable when there is evidence showing that he is currently in any of the conditions defined above. However, there are exceptions to this disqualification, which are as under:-

- (i) If the share or interest in the contract is inheritance or succeeded or if the person is legatee, executor or administrator, the disqualification does not apply only for

six months after the share or interest has devolved on them;

- (ii) If the contract has been entered into by or on behalf of the public company as defined under the Company Ordinance, 1984 (XLVII of 1984), and the person is a shareholder but not a director holding an office of profit under the company, disqualification does not apply;
- (iii) If a person is a member of Hindu, undivided family, and a contract has been entered into by any other member of that family in the courts of carrying on a separate business in which a person has no share or interest, the disqualification does not apply.

8. In the present case, the petitioner has failed to present any document or conclusive material that contradicts the current situation. This lack of evidence means that the interest in the contract and the applicability of Article 63 of the Constitution of Pakistan cannot be invoked. Consequently, we find no merit in the arguments put forth by the learned counsel for the petitioner on this ground. The second argument of learned counsel for the petitioner is that there is a misdescription of assets regarding movable and immovable properties, and such defect would tend to rejection of the nomination form. Learned counsel for the petitioner pointed out discrepancies in the nomination form regarding movable assets where weight or other jewellery descriptions are not mentioned. He also pointed out that only one description of the loan has been mentioned, though six separate loans have been obtained by Respondent No.1 from different banks.

9. We have perused the nomination form, including Form-B of Respondent No.1, along with supporting annexures, and we are of the opinion that such disclosure is not contrary to the returns of FBR. It is a settled principle that bonafidenon-disclosure or misdescription

will not permanently disqualify a Member of Parliament or a candidate. The affidavit and purpose behind the non-disclosure and misdeclaration must be examined, and the nomination form will only be rejected if he has dishonestly acquired assets and is concealing them to gain certain benefits. If the non-disclosure or mis-declaration gives an illegal advantage to a candidate, it would result in the termination/ rejection of his candidature. In the case of Khawaja Muhammad Asif vs. Muhammad Usman Dar (2018 SCMR 2128), the Supreme Court of Pakistan clearly stated that mere fact that a candidate has not declared assets in the nomination paper would not result in his disqualification. It must be determined whether the act of non-disclosure of the assets was done with dishonest intent. The candidate will be disqualified only if there is dishonest intent behind the non-disclosure. The creditability of explanation is the determining factor as to whether non-disclosure of any assets carries with it an element of dishonesty. The nomination form and other relevant documents reflect that Respondent No.1 did not conceal assets. However, there are only misdescriptions, which are otherwise confirmed from the other relevant records as per arguments of learned counsel for the petitioner. So, in view of the above discussion, we are of the opinion that on such misdescription or otherwise in the absence of a detailed description, the nomination form cannot be rejected. Learned counsel for the petitioner cannot surface any dishonesty or malice on the part of Respondent No.1, which leads to the rejection of the nomination form.

10. Admittedly, it is a matter of record that the nomination form was submitted before the Returning Officer on 22.12.2023 and after obtaining protective bail, Respondent No.1 surrendered before the trial Court and got interim pre-arrest bail vide order dated 28.12.2023, and he has joined the trial in Criminal Case No.156/2014, whereby he has been declared proclaimed offender so such embargo will not come in the way for rejection of nomination form. Since

Respondent No.1 surrendered before the concerned trial court and obtained pre-arrest bail, hence disqualification on this sole ground does not arise. Article 63(h) of the Constitution of Pakistan stipulates that a person shall be disqualified from being elected or chosen as, and from being, a Member of the Majlis-e-Shoora (Parliament) if he, among other things, has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than 02 years, unless a period of five years has elapsed since his release. Obviously, it is only the conviction of an offence involving moral turpitude that will undermine a candidate's eligibility to contest the election. In the present case, Respondent No.1 has not been convicted in any of the offences and is merely accused in some offence, in which he was no doubt previously declared as a proclaimed offender, but has now joined the trial.

11. The issues related to the legitimacy of the nomination form/paper, the examination of the candidate's nomination form/paper, and the Returning Officer's decision regarding any objections are addressed in Section 62 of the Act of 2017. It is suitable to restate the pertinent section as follows:-

“62. Scrutiny.---(1) Any voter of constituency may file objections to the candidature of a candidate of that constituency who has been nominated or whose name has been included in the party list submitted by a political party for election to an Assembly before the Returning Officer within the period specified by the Commission for the scrutiny of nomination papers of candidates contesting election to an Assembly.

(2) The candidates, their election agents, the proposers and seconders and one other person authorised in this behalf by each candidate, and a voter who has filed an objection under subsection (1), may attend the scrutiny of nomination papers, and the Returning Officer shall give them reasonable opportunity for examining all the nomination papers delivered to him under section 60.

(3) A voter who has filed an objection to the candidature of a candidate shall only attend the scrutiny of the nomination paper of that candidate.

(4) The Returning Officer shall, in the presence of the persons attending the scrutiny, examine the nomination papers and decide any objection raised by any such person to any candidature.

(5) The Returning Officer may, for the purpose of scrutiny, require any authority or organisation, including a financial institution, to produce any document or record or to furnish any information as may be necessary to determine facts relating to an objection to the candidate of a candidate.

(6) The Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.

(7) The Returning Officer, while scrutinising the nomination paper of a candidate, shall not ask any question which----

(a) has no nexus with the information supplied in the nomination paper or

(b) has not arisen from the objections raised by any person or from information received by him under this section.

(8) The declaration submitted under subsection (2) of section 60 shall only be questioned by the Returning Officer if there is tangible material to the contrary available on record.

(9) Subject to this section, the Returning Officer may, on either of his own motion or upon an objection, conduct a summary enquiry and may reject a nomination paper if he is satisfied that---

(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 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;

(i) The rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper or

(ii) The Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so

as to bring them in conformity with the corresponding entries in the electoral roll.

(10) Notwithstanding anything contained in subsection (9), where a candidate deposits any amount of loan, tax or Government dues and utility expenses payable by him of which he is unaware at the time of filing of his nomination paper, such nomination paper shall not be rejected on the ground of default in payment of such loan, taxes or government dues and utility expenses.

(11) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it and shall, in the case of rejection or objection to acceptance, record brief reasons for his decision.”

12. The record reveals that neither the petitioner, his election agent, proposer, seconder, nor anyone else authorised on his behalf filed an objection within the period specified by the Election Commission to scrutinise nomination papers. This applies to respondent No.1, who is contesting the election under sub-section (2) of Section 62 of the Act of 2017, and also to the date of scrutiny of nomination papers by the Returning Officer. However, the petitioner did move two applications to obtain certified true copies of the nomination papers, which does not indicate that the petitioner sought time to file objections over the nomination paper. The petitioner's counsel argued that the Returning Officer did not provide an opportunity to file an objection and hastily carried out the scrutiny of the nomination papers of respondent No.1 on 25.12.2023. In this regard, we have examined the relevant applications, heard the Returning Officer in person, and also perused the impugned order of the learned Appellate Tribunal. We found that the Returning Officer was obligated under the Notification of Election Schedule issued by the Election Commission of Pakistan. There is no specific provision in Section 60 of the Act of 2017 for postponing the scrutiny process once the Returning Officer has scheduled or established it. Even so, the petitioner had an opportunity to voice objections verbally, but he did not do so when the Returning Officer conducted the scrutiny of the

nomination papers. The nomination papers/forms of respondent No.1 were not challenged before the Returning Officer, who, after reviewing them, announced and accepted the form of respondent No.1.

13. Another crucial facet of this case revolves around the petitioner's utilisation of the appeal remedy against the scrutiny order, as stipulated under Section 63 of the Act of 2017. The Appellate Tribunal, exercising its powers per Section 63 (4) of the Act of 2017, observed that the petition lacked any substantial material that would warrant the exercise of a suo-moto jurisdiction. The appeal was to be decided summarily, as per Section 63 (2) of the Act of 2017. This decision was based on the fact that the Election Tribunal had been constituted under Section 63 of the Act of 2017 and not as an Election Tribunal formed under Section 140 of the Act of 2017. The learned Appellate Tribunal rightly upheld the Order of Returning Officer by dismissing the appeal of the petitioner.

14. In the context of elections, the Appellate Tribunal plays a crucial role in maintaining the integrity of the electoral process. This is achieved through a rigorous scrutiny of the nomination of candidates and by addressing potential disqualifications. The Tribunal ensures that individuals who are ineligible to hold public office due to financial irregularities or other disqualifications are prevented from participating in the election. The Appellate Tribunal's decision-making process is thorough and final. If the Tribunal finds that a nomination form has been correctly accepted and that any objections raised are not sustainable, then such a decision cannot be reversed in writ jurisdiction. This means that if a High Court or any other authority reviews the decision of the Appellate Tribunal (a process known as writ jurisdiction), it cannot overturn the decision if the Tribunal has found a candidate eligible and any objections against the candidate unsustainable. This emphasises the exclusive jurisdiction of the

Appellate Tribunal in matters relating to the acceptance of a candidate's nomination paper. If the Tribunal finds that the nomination form was correctly accepted and the objections raised are not sustainable, then such a decision cannot be normally reversed under the writ jurisdiction. In conclusion, the Appellate Tribunal plays a vital role in ensuring the integrity of the electoral process by meticulously scrutinising the nominations and potential disqualifications of candidates. Its decisions are final and cannot be reversed in normal course of things, unless gross mistake in arriving at impugned conclusion is pointed out.

15. Additionally, writ jurisdiction refers to the powers of the High Court to review the decisions of lower courts or Tribunals. However, this clause limits the exercise of writ jurisdiction in these specific circumstances. It further specifies that this limitation applies where no jurisdictional defect or error is apparent on the face of the record. In other words, as long as the Tribunal has acted within its jurisdiction and there are no evident errors or irregularities in the way it has exercised its power, its decision stands and cannot be challenged under writ jurisdiction.

16. In view of the above-stated facts and circumstances, we have concluded that the learned Appellate Tribunal has rightly allowed Respondent No.1 to contest the election by dismissing the appeal and claim of the petitioner for valid and sound reasons. This Court need not interfere in the impugned order of the Returning Officer and the learned Appellate Tribunal. It goes without saying that generally, in an election process, the High Court cannot interfere by invoking its constitutional jurisdiction in view of Article 225 of the Constitution of Pakistan. However, this is subject to an exception where no remedy is available to the aggrieved person during the process of the election or after its completion against the order of election functionaries. If the order is patently illegal and without jurisdiction, being coram non-

judice, the aggrieved person can press into service the constitutional jurisdiction of the High Court in terms of Article 199 of the Constitution.

17. For the foregoing reasons, the instant petition, which has no merits for consideration, is hereby **dismissed**.

JUDGE

Faisal Mumtaz/PS

JUDGE