

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-219 OF 2024

Date Order with Signature of Judge

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ
MR. JUSTICE ABDUL MOBEEN LAKHO, J

***Syed Naveed Aziz.....Vs.....The Returning Officer
NA-248 & another***

Date of Hearing 17-01-2024.

Mr.Mehmood Hussain, Advocate a/w Petitioner.

Mr.Saifullah, A.A.G.

Mr.Abdullah Hanjrah, Deputy Director (Law), and Mr.Sarmad Sarwar, Assistant Director (Law), E.C.P. are present in person.

Mr.Hassan Zafar, Returning Officer NA-248 is present in person.

ORDER

ABDUL MOBEEN LAKHO, J The Petitioner is aggrieved by the order dated 08.01.2024 passed by the learned Election Appellate Tribunal in Election Appeal No.106 of 2024, *wherein*, the order passed by the Returning Officer NA-248, Karachi, rejecting the Nomination Paper of Petitioner was upheld, while dismissing the Election Appeal filed by the petitioner.

2. Brief facts of the petition are that the petitioner filed Nomination Papers for contesting in the upcoming General Election of 2024 from NA-248, but the Respondent No.1 rejected the nomination papers of Petitioner on the ground that the Petitioner has defaulted on various loans, against which the petitioner filed an Election Appeal under Section 63 of the Elections Act, 2017, which was also dismissed.

3. Learned counsel for the petitioner argued that the Appellate Court as well as the Returning Officer (Respondent No.1) did not consider the statement filed by the petitioner according to which the petitioner has repaid the loan

amount and the settlement documents issued by the competent authority, therefore, the petitioner is not a defaulter as per the record of United Bank Limited. Learned counsel for the petitioner further argued that the case of the petitioner does not fall under criteria of 'defaulter' as under Article 63 (i) (n) of the Constitution, default is considered from the amount which may accede from two million, whereas, the amount outstanding against the petitioner is only Rs.12,00,000/-, which is below the criteria of 'defaulter'. Learned counsel for the petitioner submits 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 whilst dismissing the Appeal of Petitioner 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 CIC Note 179 Sindh (Sukkur Bench))].*

4. On the other hand learned AAG argued that the petitioner has not filed any proof in support of his contentions and has fully supported the order passed by the returning officer who rejected the nomination papers of the respondent No.1 which was upheld by the Election Appellate Tribunal in appeal filed by the petitioner.

5. We have heard learned counsel for the parties and perused the record and considered the relevant laws.

6. 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 Nahra 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.”

...

7. Under such facts and circumstances of the case, we are of the opinion that the learned Election Appellate Tribunal did not consider the statement filed by the petitioner, according to which the petitioner does not fall under the criteria of ‘defaulter’ as under the Article 63(i)(n) of the Constitution default is to be considered from the amount which may accede from two million.

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 17.01.2024 had allowed instant petition and these are the reasons thereof.

Judge

Chief Justice

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