

## IN THE HIGH COURT OF SINDH, AT KARACHI

### PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI,  
CHIEF JUSTICE;

MR. JUSTICE ABDUL MOBEEN LAKHO

### C.P. No. D-136 of 2024

Petitioner	Mashooque Ali Janwari through Mr. Ali Asghar Dholo, Advocate
Objector	Mr. Muhammad Haseeb Jamali, Advocate
Respondents	through M/s. Saifullah, AAG and Khaleeq Ahmed, DAG.
Date of hearing	15.01.2024
Date of order	15.01.2024

### 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.200 of 2024, *wherein*, the order passed by the Returning Officer PS-76, District Thatta-II, *whereby*, he rejected 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 Respondent No.3 / Returning Officer rejected the nomination papers of Petitioner on the ground that the Petitioner failed to disclose his total income and source of income, against which the petitioner filed an Election Appeal under Section 63 of the Election Act, 2017.

3. Learned counsel for the petitioner has contended that both the impugned orders are contrary to facts and opposed to law, equity and principles of natural justice; the scrutiny was conducted on 27.12.2023 whereby through oral announcement Respondent No.3 rejected the Form of Petitioner on one ground that Petitioner concealed his total income specified at Para-K and also concealed his net assets specified at Para-T of the Nomination Form, however, if there appeared any ambiguity in the papers, it was the duty of Respondent No.3 to ask the question about the net income and source of income from the Petitioner but he failed to do so. While petitioner alongwith other candidates moved application before the District returning officer Thatta where who verbally ordered the respondent No.3 for re-scrutiny; respondent No.3 issued notices to the petitioner alongwith other candidates on 30-12-2023, when petitioner approached to the respondent no.3 at morning time where objector alongwith his counsel and respondent no.3 were present at his office, where petitioner moved application for refilling the Nomination Form, wherein petitioner wanted to add his Bank account Number and source of income and net assets but respondent no.3 miserably did not give proper time to the petitioner to cure his defects and on objections of objector reject the Nomination paper of petitioner and respondent 3 rejected the nomination papers of all the candidates with *malafide* intention; neither learned Respondent No.3 applied its judicial mind and rejected the Nomination Form of the Petitioner on the basis of technicalities and he had failed to observe that valuable rights of the Petitioner are involved in the matter nor the learned Respondent No.4 appreciated the arguments advanced on behalf of the Petitioner that according to Section 62(9)(d)(ii) of the Election Act, 2017 Respondent No.3 could 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. Here, in the present case, first of all Respondent No.3, before the first scrutiny petitioner submitted the bank account statement but respondent no.3 malafidely concealed the same, thereafter on second scrutiny, petitioner submitted the application before respondent no.3 where petitioner attached attested bank account number statement and attested copy of license number and request to fill the net

assets and source of income but respondent no.3 did not oblige the petitioner and refused to take application from the petitioner; the Petitioner submitted all the relevant record before learned Respondent No.3 but he did not consider the relevant documents and passed the impugned Order which has been upheld by Order dated 08.01.2024 passed by the learned Respondent No.4, impugned herein; the findings of either Respondent No.3 or for that matter the learned Tribunal, i.e. Respondent No.4, are against law, facts and circumstances; both learned Respondent No.3 and 4 have failed to observe that it is settled law that every matter should be decided on merits rather on technicalities where in the valuable rights of the parties are involved and the same cannot be decided in a haste manner, thereby causing prejudice to the Petitioner; being a nullity in the eyes of law, both the impugned Orders are liable to set aside and Petitioner's Nomination Paper for the seat PS-76 Thatta-II deserve to be accepted as there is no defect of substantial nature; if this Constitutional Petition is not allowed, the Petitioner shall be prejudiced and the same will amount to deprive him from his Constitutional right to contest the General Elections mere on technicalities.

4. Learned Assistant Attorney General as well as learned DAG argued that the petitioner has not filed any proof in support of his contentions and have fully supported the order passed by the returning officer who rejected the nomination papers of the Petitioner which was upheld by the Election Appellate Tribunal in appeal filed by the petitioner. Lastly, they prayed that the petition filed by the petitioner may be dismissed.

5. Learned counsel for the objector adopted the arguments of learned Assistant Attorney General as well as learned DAG.

6. We have heard learned counsel for the parties and perused the record and considered the facts. It is settled law when 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. The learned

Election Appellate Tribunal has rightly observed that the nomination form of the appellant is incompletely filled, the applicant's particulars and signature on the verification on oath and agreement to the code of conduct to be observed during the election are missing. The appellant has even failed to disclose a Bank account for the purpose of election expenses, rather he has mentioned "NIL" within the provided space. Bare reading of section 62(9)(c) of the Act provides that the RO may reject a nomination paper if 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. Section 60(2)(b) of the Act provides that the bank account needs to be created or dedicated for election expenses prior to the nomination of the forms, however it appears from the record that the appellant did not disclose any bank account in his nomination form for the purpose of election expenses; he could have either created one or dedicated one, however his nomination form under assets do not even disclose whether the appellant possesses an account. The appellant appears not to have been wary of the requirements expected of a candidate to fulfil before he could go and contest for seats to lead people of this nation. The impugned order does not require any interference and as such the instant appeal is dismissed.

7. Reverting to the case in hand, we have examined the order rendered by the learned Election Tribunal of this Court and find that the impugned order is legal, unexceptionable, apt to the facts and circumstances of the case, which suffering from no jurisdictional defect, do not call for any interference by this Court in exercise of its Constitutional jurisdiction. We vide our short order dated 15.01.2024 had dismissed this petition and these are the reasons thereof.

J U D G E

CHIEF JUSTICE