

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.Nos.D-213 to 217 OF 2024

Date Order with Signature of Judge

PRESENT:

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

C.P.No.D-213 OF 2024

Dr.Fahmida Mirza.....v/s.....Election Commission of
Pakistan & others

C.P.No.D-214 OF 2024

Dr.Zulfiqar Ali Mirza.....v/s.....Election Commission of
Pakistan & others

C.P.No.D-215 OF 2024

Dr.Zulfiqar Ali Mirza.....v/s.....Election Commission of
Pakistan & others

C.P.No.D-216 OF 2024

Dr.Zulfiqar Ali Mirza.....v/s.....Election Commission of
Pakistan & others

C.P.No.D-217 OF 2024

Dr.Zulfiqar Ali Mirza.....v/s.....Election Commission of
Pakistan & others

Date of Hearing 18-01-2024.

M/s.Shahab Sarki, Wahaj Ali Khan, Zulfiqar Ali Langah, Meraj Soomro,
Abdul Rashid Rajar and Taj Muhammad Jamali, Advocates for the
Petitioners in all petitions

M/s.Haider Waheed, Zoha Sirhindhi, Mir Moula Bux, & Eshal Khurram
Advocates for the Respondent No.5 (objector) in all petitions.

Mr.Hassan Akbar, Advocate General Sindh.

Mr.Saifullah, A.A.G.

Mr.Naeem Akhtar Talpur, A.A.G.

Ms.Saima Imdad, A.A.G.

Mr.Irshad Ali, Assistant Attorney General.

M/s.Hamid Ali Shah & Muneer Ahmed, Advocates for M.C.B.
(Respondent)

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

Mr.M.Nawaz Kalwar, Returning Officer NA 223 Badin is present in
person.

ORDER

ABDUL MOBEEN LAKHO, J:- The aforesaid Petitions filed by two petitioners are the outcome of the Orders passed by the Learned Election Appellate Tribunal on 08.01.2024; whereby, the Orders of the Returning Officer dated 30.12.2023; were upheld, and consequently, thereby, the rejection of the nomination papers of the Petitioners has been upheld. The Petitioners being aggrieved by both the orders have preferred instant Petitions, which involve similar controversy, grounds and law applicable to instant petitions, therefore, the same are being decided through common order.

2. The brief facts leading to the filing of instant Petitions are that the Petitioners being ticket holders of a political party opted to contest the forthcoming General Elections to be held on 8th February, 2024. Dr. Fahmida Mirza in C.P. No.D-213 / 2024 filed her Nomination papers from the constituency NA-223 Badin-II; whereas, Dr. Zulfiqar Ali Mirza in C.P. No. D-214 to 217 / 2024 filed his Nomination papers from the constituency NA-223 Badin-II, PS-70, PS-71 and PS-72 respectively. That the Petitioner, Dr. Fahmida Mirza as per pleadings has previously served as the Federal Minister from 2018 to 2022 as well as Speaker of the National Assembly of Pakistan from 2008 to 2013. Moreover, the said Petitioner was also elected as a Member of the National Assembly from 1997 to 1999, 2002 to 2018 and from 2018 to 2023. On the other hand, the Petitioner, Dr. Zulfiqar Ali Mirza has remained a Member of the Provincial Assembly (Sindh) till 2011 and has also served as the Home Minister of Sindh (amongst various other electoral positions).

3. The Nomination papers of the Petitioners were filed on 22.12.2023. Objections were filed by the Respondents No. 04 and 05 before the Returning Officer on 27.12.2023 calling into question the eligibility of the Petitioners for the forthcoming General Elections, as they do not qualify under Articles 62/63 of the Constitution of Pakistan. The main objection raised by the Respondents No.04 and 05 before the Returning Officer was that since a Judgment and Decree dated 17.10.2023 and 29.11.2023 (respectively) has been passed by the Hon'ble High Court of Sindh in Suit No. B-24 of 2003 against Mirza Sugar Mills Ltd., wherein, Dr. Fahmida Mirza being the 'Personal Guarantor' of Mirza Sugar Mills Ltd. was required to disclose such liability in Form 'B' of her

Nomination Form as per Section 60(2)(d) of the Elections Act, 2017. Similarly, Dr. Zulfiqar Ali Mirza was also liable to disclose the same in his Nomination Papers by virtue of Dr. Fahmida Mirza being the spouse of Dr. Zulfiqar Ali Mirza, therefore, such non-disclosure amounts to concealment of facts and submitting incorrect information about assets and liabilities of candidates. The Returning Officer of the respective constituencies after hearing the parties, passed the Orders all dated 30.12.2023, and rejected the Nomination Forms of both the Petitioners.

4. Dr. Fahmida Mirza as a consequence preferred an Appeal No. 63 of 2024 and Dr. Zulfiqar Ali Mirza preferred Appeals No. 64 to 67 of 2024 before the Election Appellate Tribunal in the High Court of Sindh at Karachi, under Section 63 of the Act of 2017. The Learned Election Appellate Tribunal while dismissing the Appeals on 08.01.2024 refused to intervene in the Order passed by the Returning Officer. The Learned Appellate Tribunal held as follows:

"I have examined the nomination papers submitted by the appellant to contest the election and find that the appellant did not mention in her nomination papers about the financial liability by way of the aforesaid decree dated 29.11.2023, passed by this Court against her in Suit B-24 of 2003 for a huge amount in the capacity of a guarantor and the same is still unjustified. Moreover, admittedly no appeal against the said judgment and decree has been preferred till date.

In view of the above discussion and keeping in view the dictum laid down by the Supreme Court of Pakistan in the aforementioned cited cases, I am of the opinion that the appellant has failed to justify her instance in the present appeal, which is accordingly dismissed.

The Appeals filed by Dr. Zulfiqar Ali Mirza [spouse of Fahmida Mirza] challenging the order dated 30.12.2023, passed by the concerned Returning Officers whereby his nomination papers for contesting National and Provincial Assemblies were rejected on the ground that he has failed to mention the financial facility availed by the company [Mirza Sugar Mills], which is mainly owned by him and his spouse and further he has also failed to disclose about the judgment and decree passed in Suit Nos. B-24 and B-24 of 2003 against the company and the spouse Fahmida Mirza. Since the subject matters of the present appeals are identical and the same as that of Appeal No. 63 [above] as such in view of the above order, these Appeals are also dismissed."

5. According to learned counsel, since the Petitioners had no other remedy against the orders passed by the Election Tribunal, therefore, the Petitioners have preferred the instant Constitutional Petitions with a prayer to

set aside the Orders of the Learned Election Appellate Tribunal dated 08.01.2024, and allow the Petitioners to contest the forthcoming Elections.

6. Learned counsel for the petitioners has argued to contest the elections is a constitutional right of every citizen of Pakistan, whereas, in the instant case, both the Learned Election Appellate Tribunal and the Returning Officer have erred in law and facts while rejecting the Nomination papers of the petitioners through mis-interpretation of the provisions of Section 60(2)(d) of the Act of 2017 which provides that a candidate is legally bound to declare assets and liabilities acquired before the cut-off date i.e. 30.06.2023 while submitting the Nomination papers. Whereas, according to petitioners, the Hon'ble High Court of Sindh in Suit No.B-24 of 2003 has passed the judgment and decree on 29.11.2023, which has been the basis for the rejection of the Nomination papers by the Returning Officer, however, such decree is subsequent to the cut-off date [being 30.06.2023 in the case at hand], therefore, the decree which has been passed after the cut-off date, was not required to be declared in the Form-B besides being the liability of the company itself and not of the petitioner, hence, its non-disclosure is not a concealment or mis-declaration on the part of the petitioner. The learned counsel further argued that the wordings of Form-B are clear and precise while being in line with Section 60(2)(d) of the Act of 2017 and the said declaration submitted by the petitioner(s) is correct and complete as the decree was passed after the cut-off date specifically mentioned in Form-B [30.06.2023]; hence, nothing has been concealed therefrom. Learned counsel further submitted that rejection of Nomination papers is based on a decree which was passed after 30.06.2023, therefore, cannot otherwise made basis for rejection of Nomination Papers under the Election Act of 2017. To support his version, the learned counsel while relying upon the Judgment of the Hon'ble Supreme Court reported at **2022 SCMR 1344** '*Rana Muhammad Asif Tauseef V. Election Commission of Pakistan & Others*' has submitted provisions of Section 60(2)(d) of the Act of 2017 have been wrongly invoked and misinterpreted by the Learned Appellate Election Tribunal while passing the order dated 08.01.2024.

7. The learned counsel for the petitioners further argued that since the decree was against the company (Mirza Sugar Mills Ltd.) being the principal debtor which is a public limited company, the assets of the company are to be assessed before calling in question the liability of the petitioners, the

obligation of the petitioners is therefore, not co-extensive with the liability of the principal debtor and it only comes into existence when it no more remains legally possible to recover the same from the principal debtor. Learned counsel has further submitted that under the company law, a Public Limited Company is a separate legal identity and its assets and liabilities cannot be equated with the assets and liabilities of its shareholders. The learned counsel arrayed that the liability of the petitioners is not to be equated with the liability of the company, since the petitioner is only a guarantor and the petitioner (Dr. Fahmida Mirza) was sued in Suit No. B-24 in her capacity as indemnifier and in such capacity the recovery against the petitioner had to wait until all assets of the company were sold. The counsel relied upon **2004 CLD 162** (*Haji Fazal Elahi & Sons.....v/s.....Bank of Punjab & another*) and **2019 SCMR 812** (*Abdul Ghaffar Admanjee & others.....v/s.....National Investment Trust Limited & another*).

8. The learned counsel for the petitioners further advanced his arguments based on the pretext that the petitioners merely have minor shareholding in the Public Limited Company and have no controlling interest either on the assets or liabilities of Company and since, the petitioners don't have a major share-holding in the company; hence, the petitioner(s) cannot be arrayed as a defaulter. The counsel further submitted that the petitioner (Fahmida Mirza) was a personal guarantor to the finance facilities extended to Mirza Sugar Mills (principal debtor); hence, any personal guarantee given by the petitioner may not bring the petitioner under the ambit of a loan defaulter as per Article 63(1)(n) of the Constitution. While concluding the arguments, learned counsel has placed reliance upon following reported judgments (i) **1994 SCMR 1299** (*Ghulam Mustafa Jatoi.....v/s.....Additional District & Sessions Judge/Returning Officer NA 158 Naushero Feroze & others*), (ii) **2013 CLC 1088** (*Sardar Sarfraz Ahmad Cheema.....v/s.....Returning Officer & others*), (iii) **2016 YLR 1401** (*Amjad Hussain Khokhar.....v/s.....District & Sessions Judge, Tando Allahyar & others*) , (iv) **PLD 2018 Lahore 795** (*Muhammad Yaqoob Sheikh.....v/s.....Election Appellate Tribunal Lahore & others*) and (v) **2019 MLD 541** (*Abdul Sattar Bachani.....v/s.....Returning Officer & others*).

9. On the other hand, the learned counsel for Respondent No.05 while submitting his objections on the instant petitions, supported the version as of the order of the Learned Election Appellate Tribunal dated 08.01.2024 and submitted that the instant petitions are liable to be dismissed. The learned

counsel submitted that the Petitioner has concealed a material liability in her Form-B (Statement of Assets and Liabilities) which is a grave violation of Section 60(2)(d) r/w. 62(9)(c) and 173(d) of the Elections Act, 2017. That the personal guarantee of the petitioner (Fahimida Mirza) dated 15.01.2001 to secure the financial liability from MCB Bank (Respondent No. 04) in her company / business namely Mirza Sugar Mill Ltd cannot be equated with the default irrespective of any default to a financial obligation, liability gets created the moment a person takes upon himself the obligation to settle that liability in future. Furthermore, the learned counsel argued that the liability of the principal debtor is co-extensive and co-shared with the petitioner and the petitioner is considered to be jointly and severely liable in light of the decree dated 29.11.2023. Moreover, the learned counsel submitted that the liability of the petitioner (Fahmida Mirza) is to be considered from the date of the instant default i.e. 28.05.2003 as mentioned in the judgment dated 17.10.2023 in Suit No.B-24 of 2003 with regards to Section 3(2) of Financial Institutions Ordinance, 2001. Hence, the petitioners are ousted from contesting elections upon concealment of the liability. The learned counsel while relying upon Section 128 of the Contract Act, 1872 submitted that the liability of the petitioner (Fahmida Mirza) being a guarantor is co-extensive with that of the principal debtor, unless it was otherwise provided by the contract act as envisaged in Section 128 of the Act (1872). Furthermore, the learned counsel has invited the attention of the Court to the personal guarantee submitted by the petitioner (Fahmida Mirza) and submitted that as per the guarantee, the liability of Fahmida Mirza is to be considered that of the principal debtor; therefore, the Petitioner Fahmida Mirza for all purposes is to be considered as a defaulter of the finance facility extended to Mirza Sugar Mills Ltd. and, therefore, the petitioner's not declaring the same in Form-B of the Nomination Papers is to be considered as violation under Article 63(1)(n) of the Constitution and 60(2)(d) of the Elections Act, 2017. To support his version, the learned counsel relied upon the following cited judgments **(i) PLD 2016 SC 689** (*Ch. Muhammad Yousaf Kaselia.....v/s.....Peer Ghulam Mohy-ud-din Chishti & others*) **(ii) PLD 2003 Lahore 106** (*Khawaja Muhammad Daud Sulaimani....v/s.....Election Tribunal & others*) **(iii) PLD 2003 Lahore 169** (*Rao Tariq Mehmood.....v/s.....Election Tribunal Punjab, Lahore & another*) **(iv) PLD 2008 Lahore 134** (*Ch. Mubashar Hussain.....v/s.....Returning Officer, Kharian, District Gujrat & others*) **(v) PLD 2008 SC 326** (*Khayal Ahmed.....v/s.....Election*

Tribunal Punjab, Lahore & others) **(vi) PLD 2013 Lahore 509** *(Rashid....v/s....Returning Officer, Nankana Sahib)* **(vii) 2013 CLC 512** *(Muhammad Zia—ur-Rehman & others.....v/s.....University of Engineering & Technology & others)* **and (viii) PLD 2003 Lahore 165** *(Rao Tariq Mehmood....v/s.....Election Commission of Pakistan, Islamabad & another).*

10. Learned counsel for the Respondent No. 04, MCB Bank also supported the arguments advanced by the learned counsel for the Respondent No. 05, and submitted that the guarantor is jointly liable in the loan of the company as per Section 128 of the Contract Act. According to learned counsel, the liability of the guarantor in the instant case has to be regulated by the terms of the personal guarantee dated 15.01.2001. Since the petitioner (Dr. Fahmida Mirza) gave a guarantee to the effect that in case of default in payment of loan by the Public Limited Company, she is to be considered as a defaulter, therefore, she has concealed the liability by not declaring the same in Form-B of the Nomination Papers. In addition to above submission, the learned counsel further argued that the personal guarantee is a stand-alone document and in light of the same the liability of the company can be considered as the liability of the petitioner Fahmida Mirza. He further contended that the role of Dr. Fahmida Mirza in the finance facility is pivotal as the facility would not have been extended to the company without the personally guarantee of the petitioner (Dr. Fahmida Mirza). The learned counsel has placed reliance in the case of **(i) PLD 2008 SC 326** *(Mst. Riffat Shaheen.....v/s.....District Public Safety Commission, Rawalpindi & others)*, **(ii) PLD 2009 SC 284** *(Federation of Pakistan & others....v/s....Mian Muhammad Nawaz Sharif & others)*, **(iii) 2004 CLD 1344** *(M/s.State Engineering Corporation Limited, Islamabad.....v/s.....National Development Finance Corporation & another)* **and (iv) 2005 SCMR 72** *(Rafique Hazquee Masih.....v/s.....Bank Alfalah & others)*

11. The Learned Advocate General Sindh adopted the arguments advanced by the Learned Counsel for the Respondent No. 05. In addition to such arguments, the Learned AG Sindh has submitted that as per Article 63(1) of the Constitution the word “person” mentioned therein is to be read with the definition of persons provided under Article 260 of the Constitution which states that “person” includes any body politic or corporate. The Learned AG Sindh also referred to Article 62(9)(c) of the Constitution and submitted that

the Returning Officer has correctly rejected the Nomination Papers of the petitioners upon the objection raised by the Respondent No. 04 and 05.

12. The learned counsel for the petitioners while exercising his right of rebuttal has submitted that the case laws relied upon by the learned counsels for the Respondents are distinguishable and do not attract in the instant case. Moreover, while relying on the short order passed by the Hon'ble Apex Court in **Civil Appeal No. 982 of 2018 & others** in January, 2024, submitted that there should be a harmonious interpretation of the Articles of Constitution and the Election Laws. The learned counsel submitted that as per Section 241 of the Elections Act, 2017, the Representation of the People Act, 1976 has been repealed and the case laws advanced by the learned counsel for the Respondents are relatable to the provisions of the said Act which has been expressly repealed and, therefore, while dealing with Election matters, reliance has to be placed on the prevailing law i.e. Election Act of 2017. The learned counsel once again invited the Court's attention to Section 60(2)(d) of the Elections Act which expressly talks about the cut-off date [30.06.2023] and submits that the petitioners not disclosing the decree dated 29.11.2023 passed in Suit No. B-24 of 2003 does not amount to concealment or mis-declaration as the details of Assets/Liabilities, if any, of the candidate as on 30.06.2023 were to be declared and not beyond above cut-of-date. It has been prayed that petitioners may not be prevented from exercising their fundamental rights to contest Elections on flimsy technical grounds and the impugned orders passed by the Returning Officer and the Election Tribunal may be set aside.

13. We have heard the learned Counsels for the Petitioners as well as the learned Counsels for the Respondents and learned A.G Sindh, at length and perused the record along with the case laws cited at the bar. It would be conducive to reproduce the provision of Section 60(2)(d) of the Election Act, 2017 which reads as follows:

60. Nomination for election. – (1) ...

(2) Every nomination shall be made by a separate nomination paper on Form-A signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, be accompanied by :-

(d) a statement of his assets and liabilities and of his spouse and dependent children as on the preceding thirtieth day of June on Form B.

14. It would also be imperative to reproduce the wordings of Form-B of the Nomination Paper which states:

“I _____ candidate/member, National Assembly/Senate, Provincial Assembly, Punjab/Sindh/Khyber Pakhtunkhwa/Balochistan from constituency _____/from the seats reserved for women/non-Muslims hereby declare that no immovable and moveable property, including bonds, shares, certificates, securities, insurance policies and jewellery, other than specified herein below, is held by me, my spouse(s) and dependent children on 30th day of June, _____”

15. To start with Section 60(2)(d) of the Elections Act, 2017, we are of the view that the wording of the Section is monosemous and the petitioners, were thus required to declare their assets and liabilities and of their spouse and the dependent children as on 30th day of June 2023. The wordings of Form-B duly issued by the Election Commission of Pakistan are unequivocal/unambiguous as well casting no doubt as to the cut-off date being 30.06.2023 for the declaration of assets and liabilities. Hence, under the circumstances and the prevailing position as per the Act of 2017, the petitioners *prima facie* committed no illegality in not declaring the effect of the decree dated 29.11.2023 which falls beyond the period of the cut-off date, specifically mentioned under section 60(2)(d) and the Form-B. Since the decree was passed after the cut-off date, suffice to suggest that no liability was incurred or determined by the company (Mirza Sugar Mills Ltd) being the principal debtor or by the petitioners who has minor shareholding in the Public Limited Company, before the cut-off date. In this regard, reliance is to be placed upon the dictum laid by the Hon’ble Supreme Court of Pakistan in the case reported as **2022 SCMR 1344** *‘Rana Muhammad Asif Tauseef V. Election Commission of Pakistan & Others’*, in which the Hon’ble Hon'ble Supreme Court of Pakistan has been pleased to hold as follows:

8. “....Plain reading of the above said provision [section 60(2)(d)] demonstrates without any ambiguity that the assets, liabilities of the appellant, his spouse and dependent children were to be disclosed on the proceeding 30th day of June as required in From-B duly issued by the ECP i.e. 30.06.2017. there is no denial to this fact that according to the election schedule announced by the ECP, General Election was to be held in 2018 while the appellant was supposed to furnish the details of personal assets and liabilities and dependents including spouse till 30th June, 2017 as per the demand of law duly mentioned in section 60(2)(d) of the Act...”

16. Although there is no denial to the proposition that the liability of the personal guarantor is co-extensive with that of the principal debtor under the Banking jurisdiction as reported under **PLD 2008 SC 326** '*Khayal Ahmed V. Election Tribunal Punjab, Lahore & Others*' and **PLD 2016 SC 639** '*Ch. Muhammad Yousaf Kaselia V. Peer Ghulam Mohy-Ud-Din Chishti & Others.*' However, we do not find any force in the arguments advanced by the learned counsel for the Respondents, suggesting that the liability of the personal guarantor will automatically be that of the principal debtor. It is imperative to note that the prevailing law [*ROPA, 1976*] at the time of the mentioned judgments has been repealed. Nevertheless, the facts prevailing at hand are different to the facts and circumstances of the cases reported at **PLD 2008 SC 326** and **PLD 2016 SC 639**:-

(1) PLD 2008 SC 326 '*Khayal Ahmed V. Election Tribunal Punjab, Lahore & Others*': The decree in the instant case was passed before the cut-off date i.e. 30th June of 2007, as the decree was passed on 15.05.2007; therefore, the appellant was under an obligation to declare the same in his nomination papers, Form-B duly required by the ECP.

(2) PLD 2016 SC 639 '*Ch. Muhammad Yousaf Kaselia V. Peer Ghulam Mohy-Ud-Din Chishti & Others.*': That the appellant owned a business, which was being run in the name of 'Younas Brothers Cotton Ginning and Oil Factory'. That the finance liability of 70 million was incurred and secured by creating a mortgage on immovable property owned by the appellant. Admittedly, the appellant was one of the signatories to the mortgage deed but has failed to disclose this liability, incurred upon himself in his nomination form. To draw a distinction, in the instant petition the company is a public company limited by shares whereas in the case at hand the company is a partnership concern wherein the facility was obtained on a mortgage charge made by the owner/candidate on immovable property owned by the candidate; therefore, he was liable to disclose the same in his nomination papers as he himself had incurred the said liability.

17. We would now turn to the importance of disclosure of assets and liabilities. There is no second thought to the proposition that disclosure of assets and liabilities is an essential part of the nomination form. Reliance is again placed on **PLD 2016 SC 689** (*Ch. Muhammad Yousaf Kaselia.....v/s.....Peer Ghulam Mohy-ud-din Chishti & others*):-

[Para 05] "...the disclosure of liabilities is more important than disclosure of assets....."

Since, in the instant petitions, as mentioned above, the decree was after the cut-of-date as prescribed by the Election Act of 2017 as well as the date duly

mentioned in the Form-B, the petitioners in the instant petitions, therefore, have not committed any illegality/irregularity with respect to the non-disclosure of the decree against the principal debtor i.e. Mirza Sugar Mills Ltd., wherein, the petitioner Dr. Fahmida Mirza is a minor shareholder, however, furnished personal guarantee as well.

18. Furthermore, Article 63(1)(n) of the Constitution talks about the disqualification of members pertaining to obtaining a financial facility. The said Article is reproduced as follows:

63. Disqualifications for membership of Majlis-e-Shoora (Parliament)

(1) A person shall be disqualified from being elected or chosen as, and from being, a member of Majlis-e-Shoora (Parliament), if -

(n) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off; or ...

It is observed that Article 63(1)(n) is conclusive to the extent that it does not talk about the liability of the business/company or the liability of the guarantors. Admittedly, Dr. Fahmida Mirza did not obtain any personal loan, whereas, the loan was obtained by Public Limited Company in the name of Mirza Sugar Mills Limited. Any different interpretation apart from the simple wordings of the said Article would amount to reading into the Constitution, which the Hon'ble Apex Court in January 2024 has disapproved in the **Civil Appeal No. 982 of 2018 and others** as follows:

'such reading into the constitution is against the principle of harmonious interpretation of the provisions of the constitution as it abridges the fundamental rights of the citizens to contest elections and vote for a candidate of their choice enshrined in Article 17 of the Constitution, in absence of reasonable restrictions imposed by the law.'

19. Now turning to the case laws cited by the Respondent No. 04 (the Bank), it is observed that the citations mainly concern the established principles of Banking and Contract Laws to which there is no denial. We are not going into the details of the same at this juncture as the issue at hand mainly pertains to the electoral laws before us and the point of consideration

revolves around the interpretation of Article 63(1)(n) of the Constitution read with section 60(2)(d) of the Act of 2017.

20. Since, we are of the opinion that the petitioner namely Dr. Fahmida Mirza was not under an obligation to declare the liability of Mirza Sugar Mills Ltd. as per the decree dated 29.11.2023 in Suit No. B-24 of 2003 as the decree was passed after the prescribed cut-off date [30.06.2023] by the Elections Act 2017. In light of the same, Dr. Zulfiqar Ali Mirza did not commit an illegality/irregularity by not declaring the same in his electoral forms as per Article 63(1)(n) of the Constitution whereby he had to declare the liability of his spouse.

21. We further note that, even otherwise, the liability/obligation undertaken by the principal debtor (Mirza Sugar Mills) and the petitioner (Dr. Fahmida Mirza) under the personal guarantee is not co-extensive at the point in time as it does not come into existence until and unless the recovery of the Bank becomes impossible to recover from the principal borrower. It is needless to state that the first liability will be that of the principal debtor and the *“guarantor will become liable only when the loss caused to the other party is finally determined and all possible recoveries have been effected from the party (principal debtor) that caused the loss”*. Since the petitioner (Dr. Fahmida Mirza) was sued in Suit No. B-24 of 2003 in her capacity as an indemnifier and in such capacity recovery against her has to wait until all assets of the liquidated company are sold. Reliance is placed on **2019 SCMR 812 Abdul Ghaffar Adam Jee and Others v. National Investment Trust Limited & another** [08 para].

22. These are the detailed reasons for our short order dated 18.01.2024, whereby, instant petitions were allowed and the impugned order dated 30.12.2023 of the Returning Officer as well as the Order of the Learned Election Appellate Tribunal dated 08.01.2024 were set aside.

Judge

Chief Justice