

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

Case No: Writ Petition No.9676 of 2016

Muhammad Ashraf etc. Versus Additional District Judge/Appellate Authority R.Y. Khan etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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21.12.2016 Mr. Muhammad Nawazish Ali, Advocate for the petitioner.
M/s Nadeem Iqbal Chaudhry and S.M. Hussain, Advocates for
respondents Nos.3 & 4.
Mian Azhar Husain Pirzada, Advocate/Law Officer for Election
Commission of Pakistan.

Through the instant writ petition, petitioner has challenged the vires of orders dated 10.12.2016 passed by Returning Officer Municipal Committee, R.Y. Khan and dated 15.12.2016 passed by learned appellate authority whereby nomination papers of Mian Ejaz Amir and Haji Abdul Latif Bhatti, respondents Nos.3 & 4 were accepted.

2. Briefly stated, the facts of the instant case are that respondents Nos.3 & 4 filed nomination papers to contest the election for the seats of Chairman and Vice-Chairman Municipal Committee, Rahimyarkhan. Petitioner No.1 raised objection that respondent No.3 had not mentioned the detail of his four account numbers (mentioned in the petition) which petitioner No.1 claimed that the same accounts numbers are in the name and use of respondent No.3. Petitioner No.1 also raised objection that respondent No.3 also did not disclose the ownership of Ahmad & Company and Hamalya Feeds.

Likewise petitioner No.1 mentioned seven properties, mentioned in the petition, which he claimed that respondent No.4 did not mention the same in his nomination papers and both the respondents committed concealment of facts. Petitioner No.1 raised the aforesaid objections against respondents Nos.3 & 4 before Returning Officer, Municipal Committee, Rahimyarkhan who vide his order dated 10.12.2016 rejected the objections of petitioner No.1. Feeling aggrieved, petitioner No.1 moved an appeal before learned appellate authority, Rahimyarkhan which was dismissed by the learned appellate authority vide order dated 15.12.2016, hence this writ petition.

3. Learned counsel for petitioners contends that Returning Officer failed to consider the objections with regard to concealment of assets by respondents Nos.3 & 4 and neither Returning Officer nor learned appellate authority made an effort to collect information from concerned authorities regarding suppression of assets and it has been prayed that the orders passed by both the forums below may be declared illegal, against law and objection petition may be accepted and nomination papers of respondents Nos.3 and 4 may be rejected.

4. On the other hand, learned counsel for respondents and learned Law Officer for Election Commission of Pakistan fully support the impugned orders and pray for dismissal of the instant writ petition.

5. I have heard the learned counsel for the parties at length and perused the file.

6. The impugned order passed by learned appellate authority has dealt with each and every objection raised by the petitioners before learned appellate authority. The record unfolds that the list of assets is annexed to the nomination papers and it has been alleged that the detail of accounts has not been provided by respondents Nos.3 & 4 in their declaration of assets. However, no proof has been brought on the record which could show that account numbers having been mentioned in the petition are being operated by respondent No.3 and as far as the property, i.e. Himalya Feeds is concerned, it has come on record that he is not owner of the same. As far as property of respondent No.3 is concerned, same has been mentioned in Annexs-A & D. Moreover, seven properties have been attributed to respondent No.4. However, no proof has been brought on record in respect of ownership of the same and it is also on record that there is no document on record which could show that respondents Nos.3 & 4 have violated the rules of the Punjab Local Government (Conduct of Elections) Rules, 2013.

7. Under the law generally in election process the High Court cannot interfere in an election process by invoking its constitutional jurisdiction. However, this is subject to an exception that where no legal remedy is available to an aggrieved party during the process of election or after its completion, against an order of an election functionary which is

patently illegal/without jurisdiction and the effect of which is to disfranchise a candidate, he can press into service Constitutional Jurisdiction of the High Court. Moreover, the law favours liberal interpretation as to facilitate a party to contest election and secondly that writ petition disfranchising a candidate cannot be readily invoked when post-election challenge through election petition in terms of Section 38 of the Act, 2013 is available. The above view has been reaffirmed by the Hon'ble Supreme Court of Pakistan in the case reported as **“Muhammad Mujtaba Abdullah and another v. Appellate Authority/Additional Sessions Judge Tehsil Liaquatput, District Rahim Yqar Khan and others”**(2016 SCMR 893).

8. Even otherwise, once a candidate who is running for election is allowed to contest election by the Returning Officer and so also endorsed by the Appellate Authority, then in such case, as held in the case of **“Ghulam Mustafa Jatoi v. Additional District and Sessions Judge”**(1994 SCMR 1299), the apex court has set as follows:

“The upshot of the above discussion is that generally in an election process the High Court cannot interfere with by invoking its constitutional jurisdiction in view of Article 225 of the Constitution. However, this is subject to an exception that where no legal remedy is available to an aggrieved party during the process of election or after its completion, against an order of an election functionary which is patently illegal/without jurisdiction and the effect of which is to disfranchise a candidate, he can press into service Constitutional Jurisdiction of the High Court....”

9. In this case, it has not been pointed out that how the order passed by the Returning Officer and the appellate authority are patently illegal and without jurisdiction.

10. For the foregoing reasons, no illegality or infirmity has been found in the impugned orders passed by the two forums below. This petition fail, therefore, the same is dismissed.

(HABIB ULLAH AMIR)
JUDGE

Approved for reporting

JUDGE

Rana Zahid Bashir

