

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

W. P. No.223485 of 2018

Syed Fida Hussain Shah
Versus
The Election Appellate Tribunal & others

J U D G M E N T

Date of hearing: 17.07.2018.
Petitioners by: M/s. Mubeen ud Din Qazi and Syed Sikandar Abbas Gillani, Advocates.
Respondents by: M/s. Khalid Ishaq, Wajahat Ali, Adeel Shahid Karim, Babar Afzal, Ahmed Saeed Advocates, Ch. Umer Hayat, Director (Legal), Imran Arif Ranjha, Legal Advisor and Hafiz Adeel Ashraf, Assistant Law Officer.

MUHAMMAD SAJID MEHMOOD SETHI, J.- This consolidated judgment shall dispose of instant petition alongwith following connected petition as common questions of law and facts are involved in these cases:-

W.P. No.223486 of 2018 titled Muhammad Imran v. The Election Appellate Tribunal & others

Through instant petition, petitioner has assailed order dated 25.06.2018, passed by learned Appellate Tribunal, whereby nomination papers filed by respondent No.4 for the constituency in question were accepted.

In connected petition, petitioner / Muhammad Imran has assailed orders dated 19.06.2018 and 25.06.2018, passed by the Returning Officer PP-126, Jhang-III and learned Appellate Tribunal, respectively, whereby nomination papers filed by respondent No.4 for the constituency in question were accepted concurrently.

2. Learned counsel for petitioner submit that respondent No.4 is involved in as many as 8-criminal cases / FIRs but this

fact was concealed while filing nomination papers. They add that respondent No.4 was disqualified in an earlier Bye-Election, 2016 for the constituency PP-79, Jhang-III, vide order dated 11.11.2016, passed in Election Appeal No.4A of 2016, on account of false declaration of his assets and pending criminal cases, but this material aspect of the matter was not taken into consideration while passing the impugned order by learned Appellate Tribunal. They further submit that respondent No.4 also did not disclose detail of his bank account and correct value of his assets / income in his nomination papers. In the end, they submit that impugned order is not sustainable in the eye of law.

3. Conversely, learned Legal Advisor of respondent-ECP, duly assisted by learned counsel for respondent No.4, defends the impugned order and submits that learned counsel for petitioner has failed to point out any illegality or legal infirmity in the same. He has relied upon Muhammad Afzal Khan Dhandla and 3 others v. Election Tribunal and others (PLD 2010 Supreme Court 959), Muhammad Mujtaba Abdullah and another v. Appellate Authority / Additional Sessions Judge Tehsil Liaquatpur District Rahim Yar Khan and others (2016 SCMR 893), Murad Bux v. Kareem Bux and others (2016 SCMR 2042), Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan / Member National Assembly, Prime Minister's House, Islamabad and 9 others (PLD 2017 Supreme Court 265), Sami Ullah Baloch and others v. Abdul Karim Nousherwani and others (PLD 2018 Supreme Court 405), Raja Pervaiz Ashraf v. Election Tribunal and others (PLD 2013 Lahore 552), Rai Hassan Nawaz v. The Election Commission of Pakistan and others (2013 CLC 1101), Gohar Nawaz Sindhu v. Mian Muhammad Nawaz Sharif and others (PLD 2014 Lahore 670) and Muzafar Abbas v. Maulana Muhammad Ahmad Ludhianvi and 31 others (PLD 2017 Lahore 394).

4. Arguments heard. Available record perused.

5. Petitioners in this as well as connected petition, raised objections against the candidature of respondent No.4, namely Muhammad Ahmad Ladhianavi i.e. (i) that eight criminal cases lodged against respondent No.4 being 4th Schedule offender, were not disclosed in his nomination papers; (ii) that the respondent has not declared his true assets; (iii) that the respondent has not declared his true net income; (iv) that the respondent has made misstatement qua the assets pertaining to year 2016-2017, while filing the nomination papers; (v) that the account number has not been disclosed; and (vi) that the respondent was declared disqualified because of mis-declaration through a judgment dated 11.11.2016, therefore, he is not qualified to contest the election.

6. First objection is regarding concealment of criminal cases/ 4th Schedule offender. It is evident from record that respondent No.4 has already been exonerated / declared innocent in all the criminal cases. In some cases, he was acquitted from the Court of competent jurisdiction, thus, non-disclosure of said criminal cases in nomination papers is not fatal for respondent No.4. It has been held by Hon'ble Supreme Court that non-disclosure of a fact which otherwise, if disclosed, could not debar the candidate from contesting the election, could not be made a ground to preclude the candidate from contesting the election. Reference can be made to the case of Murad Bux supra, operative part of which is reproduced hereunder:-

“7..... The only issue is the non-disclosure of the pending criminal case in the affidavit before the Returning Officer and whether such non-disclosure would be construed as concealment of 'material particulars'. We, in the backdrop of these facts, are of the considered view that the non-disclosure of a fact which otherwise, if disclosed, could not debar the Petitioner from contesting the election, cannot be made a ground to preclude the Petitioner from contesting the election, cannot be made a ground to preclude the Petitioner from contesting the election.”

7. So far as the objections regarding true assets / net income, misstatement qua the assets pertaining to year 2016-2017 and non-disclosure of account number, are concerned, suffice it to say that nothing has been brought on record to show that any asset was concealed. Income is always counted after deduction of expenditure. The account was freezed on 13.06.2018 and it could not be operated by respondent No.4. The said objections are not substantial in nature as rightly observed by learned fora below in the impugned orders. It is well settled that failure to mention personal expenditure, source of income or bank accounts does not constitute deficiency of material particular of substantial nature attracting disqualification clauses in the matter. In the case of Rai Hassan Nawaz supra, this Court has observed that the question whether the declaration / statements of the candidate in the nomination papers were false or incorrect in any material particular, cannot be ascertained without carrying out a factual probe. This exercise cannot be undertaken in constitutional jurisdiction and could not have been gone into by the Returning Officer or the learned Appellate Tribunal in summary jurisdiction.

8. The next objection of petitioners that in the previous round of litigation, learned Appellate Tribunal has made a declaration to the effect that respondent No.4 is not a sagacious, righteous, non-profligate, honest and *Ameen* person to contest the election and this declaration is permanent in nature, hence, respondent No.4 is not entitled to contest the General Elections, 2018. Suffice it to say that learned Full Bench of this Court, vide order dated 14.12.2016, passed in **W.P. No.36879 of 2016** titled Maulana Muhammad Ahmad Ludhianvi v. Muzaffar Abbas etc., observed that the findings recorded in para 17 of the said order of the Appellate Tribunal will not prejudice respondent No.4's right to contest election in future. The said order is reproduced as under:-

“At the outset, it is apprised that petitioner did not contest election despite permission by this Court through interim order dated 28.11.2016.

2. Learned counsel for petitioner submits that he will not press this and connected petition if observations / findings in Paragraph No.17 of the impugned order are clarified to the extent that these shall not prejudice petitioner’s right to contest election in nature.

3. The impugned judgment is examined, which does not suggest that impugned observations / findings are meant for future as well.

4. In view of the clarification, *ibid*, the petitioner does not press this and connected petition, therefore, both are **disposed of**.”

9. Even otherwise, as per verdict given in the case of Imran Ahmad Khan Niazi (Panama Papers Scandal) supra, in a summary jurisdiction, findings given by learned Appellate Tribunal do not come within the meaning of declaration within contemplation of provisions of Article 62 (1) (f) of the Constitution. The relevant observations are reproduced hereunder:-

“20..... However, disqualifications envisaged by Article 62(1)(f) and Article 63(2) of the Constitution in view of words used therein have to be dealt with differently. In the former case the Returning Officer or any other fora in the hierarchy would not reject the nomination of a person from being elected as a member of Parliament unless a court of law has given a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Even the Election Tribunal, unless it itself proceeds to give the requisite declaration on the basis of the material before it, would not disqualify the returned candidate where no declaration, as mentioned above, has been given by a court of law. The expression a court of law has not been defined in Article 62 or any other provision of the Constitution but it essentially means a court of plenary jurisdiction, which has the power to record evidence and give a declaration on the basis of the evidence so recorded. Such a court would include a court exercising original, appellate or revisional jurisdiction in civil and criminal cases. But in any case a court or a forum lacking plenary jurisdiction cannot decide questions of this nature at least when disputed.....”

In the case of Raja Pervaiz Ashraf supra, this Court has observed that requirement of declaration by a Court of law, as provided in Article 62(1)(f) of the Constitution, had to be strictly

construed and in absence whereof neither the Returning Officer nor the Election Tribunal had power to issue any declaration by itself in a summary jurisdiction. Relevant portion from the observations is reproduced hereunder:-

“10..... Therefore, in our view, in order to deprive a citizen of his fundamental right to contest election, the requirement of a declaration by a court of law, as provided in Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 has to be strictly construed.....

Even otherwise, it is settled law that neither the Returning Officer nor the Election Tribunal has the power to issue any declaration by itself in a summary jurisdiction under the provisions of Representation of the People Act, 1976, unless there is a declaration issued by a court of law placed before them, in which event they can invoke the provisions of Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973.”

10. Needless to observe here that beside the fact that above objections are not substantial in nature, respondent No.4 has duly explained the said omissions / concealment, which appears to be reasonable / plausible. The Hon’ble Apex Court, in the case of Sh. Rasheed Ahmad, has settled this issue. The relevant part is reproduced as under:-

“13. Where a misstatement or an inaccuracy or concealment is established, the candidate/member would always have the opportunity to offer an explanation. Such explanation may or may not be found acceptable. Such is the ratio of the judgment of this Court rendered in the case reported as Sheikh Muhammad Akram v. Abdul Ghafoor and 19 others (2016 SCMR 733). In the said case, an Election Petition filed before the Election Tribunal. In the proceedings, it stood established that a criminal case registered against the candidate was not mentioned in his Nomination Papers as required. Such candidate offered an explanation which was accepted by this Court by way of the aforesaid judgment which is incidentally authorized by my learned brother Qazi Faez Isa, J., and I too was a Member of the said Bench. The said view i.e. in case of concealment, discrepancy and misstatement in the Nomination Papers an explanation thereof may be given by a candidate / member, which may or may not be accepted by the court. And only, if such explanation is found tenable no penal consequences would follow. The question of “strict liability” does not arise with regard to misstatements in the Nomination Papers. Such view was also followed in the judgments of this Court reported as Muhammad Siddique

Baloch v. Jehangir Khan Tareen and others (PLD 2016 SC 97) and Muhammad Hanif Abbasi v. Imran Khan Niazi and others (PLD 2018 SC 189). No departure has been made by this Court in the cases reported as Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan / Member National Assembly, Prime Minister's House, Islamabad and 9 others (PLD 2017 SC 265 and PLD 2017 SC 692). In the aforesaid case, the concealment of assets in the Nomination Papers filed by the Respondent in the said proceedings was established through an admission. At no point of time any explanation was offered, in this behalf. Therefore, the question of accepting or rejecting such explanation did not arise. Even in the Review Petition, no explanation was offered. However, an oblique reference in hypothetical term was only made. This aspect of the matter was dealt with and adjudicated upon by this Court in the judgment passed on such review reported as Mian Muhammad Nawaz Sharif and others v. Imran Ahmed Khan Niazi and others (PLD 2018 SC 1). Reference, in this behalf, may be made to para 11 of the said judgment. The relevant portion thereof is reproduced hereunder:

11. The argument that the omission to disclose assets could possibly be unintentional in the circumstances of the case would have been tenable had the petitioner been a novice or a new entrant in business and politics. But where he has been neck deep in business and politics ever since early 80s' it is unbelievable that he did not understand the simple principle of accounting that his accrued and accumulated salary of six and a half years was his asset and liability of the company he was an employee of. Even otherwise, this argument cannot be given much weight when it has not been pleaded by the petitioner that the omission to mention the asset was accidental, inadvertent or unintentional...."

Why no explanation was given or attempted to be given will always remain a mystery."

11. In view of the above, instant petition, along with connected petition is **dismissed** with no order as to costs.

(Amin-ud-Din Khan) **(Muhammad Sajid Mehmood Sethi)**
Judge **Judge**

APPROVED FOR REPORTING

Judge

Judge