

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

WP No.126184 of 2017

Habib Akram

Versus

Federation of Pakistan through Ministry of Parliamentary
Affairs, Islamabad etc.

J U D G M E N T

| | |
|-----------------|--|
| Date of Hearing | 30.5.2018 |
| Petitioner By: | Mr. Saad Rasool, Mr. Hasan Majeed, Mr. Aitzaz A. Chaudhary, Mr. Shan Saeed Ghumman and M. Ali Salimi, Advocates for Petitioners in WP Nos.126184/17 and 215470/18. Mr. Muhammad Asif, Advocate for the Petitioner in WP No.177513/18. |
| Respondents By: | Mr. Muhammad Zikria Sheikh, DAG along with Ameen Ullah, Section Officer, Ministry of Parliamentary Affairs, Islamabad. Chaudhary Umer Hayat, Director Legal, Election Commission of Pakistan along with Hafiz Adeel Ashraf, Assistant Law Officer, ECP. |

Ayesha A. Malik J: The instant Petition along with WP Nos.215470/18 and 177513/18 have been filed in public interest to safeguard the constitutional as well as statutory rights of the citizens of Pakistan with reference to general elections.

2. The Petitioners have challenged the vires of Form A and Form B ("**Impugned Forms**") appended with the Election Act, 2017 ("**Act**") being the nomination form for participation in the election to an assembly and the statement of assets and liabilities under the Act on the ground that the Impugned Forms were drafted by Parliament who is not competent to enact the same as the competent authority is Respondent No.3, Election Commission of Pakistan ("**ECP**"). In this

regard, reliance is placed on the case cited as Workers' Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others v. Federation of Pakistan and 2 others (PLD 2012 SC 681). Learned counsel for the Petitioners argued that the conduct of elections is governed under Article 213 to 226 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution"). The sole responsibility to organize and conduct elections and to make all arrangements as are necessary so as to ensure honest, just and fair elections is of the ECP. Article 218 and 219 of the Constitution enumerates the duties of the ECP and this Article has been interpreted in the case cited at PLD 2012 SC 681 (*supra*) such that Parliament cannot abridge the powers of the ECP and that the ECP has exclusive powers to conduct the elections. Learned counsel further argued that in terms of the judgment of the august Supreme Court of Pakistan, drafting of nomination forms falls within the ambit of the ECP and it no longer requires the assent of the President of Pakistan. Learned counsel also argued that historically in all elections carried out in Pakistan, the ECP has made the nomination forms and this is the first time that Parliament has taken it upon itself to draft the nomination forms. In this regard, Mr. Saad Rasool, Advocate argued that Article 222 of the Constitution provides for the law making power of Parliament with reference to election matters. In terms of the stated Article, Parliament can make laws for the purposes of elections, however the said Article is subject to the Constitution and in terms of the proviso to the Article, no such law shall have the effect of taking away or abridging any power of the ECP. Hence it is his case that the Parliament cannot draft the nomination forms as it falls within the exclusive mandate of the ECP. Reliance is placed on Election Commission of Pakistan through its Secretary v. Javaid Hashmi and others (PLD 1989 SC 396), PLD 2012 SC 681 (*supra*) and Workers' Party Pakistan through General Secretary and 6 others v. Federation of Pakistan and 2 others (PLD

2013 SC 406). Mr. Muhammad Asif, Advocate argued that the nomination forms must include information and details of income tax paid, citizenship of any other country, criminal record and the assets and liabilities of all dependents of the candidate. He argued that information in the nomination forms should be maximized for the sake of transparency and democracy and to encourage informed decision making by the voter. Hence collectively the Petitioners pray that the Impugned Forms be declared unconstitutional for being in violation of Articles 218, 219 and 222 of the Constitution and for being an infringement on the constitutional authority of the ECP.

3. The second challenge to the Impugned Forms is with respect to the lack of sufficient information and for omitting mandatory declarations required under Article 62 and 63 of the Constitution as well as under the law and as per the dicta of the superior courts of Pakistan. Learned counsel argued that the Impugned Forms fail to provide for mandatory declarations as provided in Article 63 of the Constitution with specific reference to Article 63(i)(n) and 63(i)(o) of the Constitution wherein the declaration includes the disclosure of the liabilities of the candidate, his spouse and his dependents. Mr. Saad Rasool argued that the Constitution specifically states that the declarations will be made with reference to *dependents* whereas under the Act, Sections 60, 110 and 137 and the Impugned Forms specifically uses the term *dependent children*. Consequently the requirement of the Constitution for declaring liabilities with reference to dependents has been done away with by reducing the declaration to the extent of dependent children. Learned counsel also raised an objection on the lack of information with respect to the educational qualification, income tax and agriculture tax payments, dual nationality and information as to whether any criminal offences are pending against a candidate or were pending against a candidate. He argued that the contribution and expenditures undertaken by the

candidate during the election campaign also requires a declaration which is missing in the Impugned Forms. Learned counsel argued that these disclosures and information are crucial for demonstrating the legitimacy and bonafides of a candidate, his credibility, his economic resources and also reflects on the honesty and truthfulness of the candidate. Reliance is placed on Rai Hassan Nawaz v. Haji Muhammad Ayub and others (PLD 2017 SC 70). Learned counsel further argued that family business and resources, payment of taxes, educational qualifications, dual nationality are all vital and basic information which every voter has a right to obtain in order to enable him to decide how to cast his vote. Furthermore he stated that the declarations in the Impugned Forms are neither testified on oath nor under solemn affirmation, hence it will become difficult to hold any candidate responsible and liable for any mis-declaration. In support of his arguments counsel for the Petitioners has provided a comparative chart showing the difference between the 2008, 2013 and 2018 forms which as per his contentions clearly demonstrates that vital information is missing from the Impugned Forms.

4. In response to the notices issued by this Court, report and parawise comments have been filed on behalf of Respondent ECP. Chaudhary Umer Hayat, Director Legal, Election Commission of Pakistan appeared and stated that historically the ECP has always made the nomination forms and in terms of PLD 2012 SC 681 (*supra*) and PLD 2013 SC 406 (*supra*), this falls squarely within the mandate of the ECP. However, without adhering to the mandate of the law, the Parliamentary Committee on Electoral Reforms opted to draft the Impugned Forms. In this regard, the ECP voiced its opinion and complained through letter dated 18.5.2017 wherein it is requested that the ECP, in the very least, be heard by the Parliamentary Committee for Electoral Reforms before any draft is prepared. However, this request was not adhered to. He further argued that the ECP is not

satisfied with the disclosure element in the Impugned Forms as mandatory provisions of the law have been ignored and information which is vital and fundamental for just and fair elections have not been provided for in the Impugned Forms. In this regard, he supported the arguments made by the learned counsel for the Petitioners and agreed with the contents of the comparative chart provided by the learned counsel for the Petitioners. He further clarified that the ECP can rectify the disclosure requirements within one week, if required.

5. Report and parawise comments have been filed on behalf of the Federation of Pakistan. Mr. Muhammad Zikria Sheikh, learned DAG argued that no *malafide* can be attributed to the legislature. The drafting of the Impugned Forms was a consultative process, with all the political parties over period of three years and ultimately with every one's consensus, Forms A and B were drafted as the nomination forms for the election and statement of assets and liability, as required under the provisions of the Act. He argued that the nomination papers are an integral part of the election process and the current Form A and B ensures that all necessary and relevant information is available for the voter so as to establish the credibility of the candidates in a transparent way. He stated that the same matter was challenged before the Hon'ble Islamabad High Court in WP Nos.476/2018 and 696/2018, of which the learned counsel before this Court was the counsel in WP No.476/2018 and the Hon'ble Islamabad High Court has passed its order dated 25.5.2018 which has not been disclosed before this Court. He argued that due to non-disclosure the *malafide* of the Petitioners is apparent and this Court should dismiss their petitions with costs. He further argued that the Petitioners have no vested right and there is nothing wrong with the nomination forms. He stated that every effort should be made to save the law and that the law should not be struck down by this Court. He placed reliance on Mehr Zulfiqar Ali Babu and others v. Government of Punjab and

others (PLD 1997 SC 11), *Dr. Tariq Nawaz and another v. Government of Pakistan through the Secretary, Ministry of Health, Government of Pakistan, Islamabad and another* (2000 SCMR 1956), *Engineer Iqbal Zafar Jhagra and another v. Federation of Pakistan and others* (2013 SCMR 1337) and *Lahore Development Authority through D.G and others v. Ms. Imrana Tiwana and others* (2015 SCMR 1739).

6. There are two questions before the Court; (i) who is competent under the Constitution to draft the nomination forms and whether the Impugned Forms as drafted by the legislature are ultra vires to the Constitution; (ii) whether the Impugned Forms fail to provide for mandatory information and declarations as required under the law and whether there are substantial deficiencies in the Impugned Forms. In this context it is also in issue as to whether there is reduced disclosure in the Impugned Forms such that it violates Article 62 and 63 of the Constitution.

Constitutional Competence

7. To answer the first question, the relevant constitutional provisions are Articles 218, 219 and 222 of the Constitution which read as follows:

218. **Election Commission.**— (1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election to such other public offices as may be specified by law, a permanent Election Commission shall be constituted in accordance with this Article.

(2) The Election Commission shall consist of

- (a) the Commissioner who shall be the Chairman of the Commission; and
- (b) four members, one from each Province, each of whom shall be a person who has been a judge of a High Court or has been a senior civil servant or is a technocrat and is not more than sixty-five years of age, to be appointed by the President in the manner provided for appointment of the Commissioner in clauses (2A) and (2B) of Article 213.

(3) It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

219. **Duties of Commission.**--- The Commission shall be charged with the duty of---

- (a) preparing electoral rolls for election to the National Assembly, Provincial Assemblies and local governments, and revising such rolls periodically to keep them up-to-date;}
- (b) organizing and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly; and
- (c) appointing, Election Tribunals;
- (d) the holding of general elections to the National Assembly, Provincial Assemblies and the local governments; and
- (e) such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament);

Provided that till such time as the members of the Commission are first appointed in accordance with the provisions of paragraph (b) of clause (2) of Article 218 pursuant to the Constitution (Eighteenth Amendment) Act, 2010, and enter upon their office, the Commissioner shall remain charged with the duties enumerated in paragraphs (a), (b) and (c) of this Article.

222. **Electoral laws.**---Subject to the Constitution, Majlis-e-Shoora (Parliament) may be law provide for ----

- (a) the allocation of seats in the National Assembly as required by clauses (3) and (4) of Article 51;
- (b) the delimitation of constituencies by the Election Commission [including delimitation of constituencies of local governments];
- (c) the preparation of electoral rolls, the requirements as to residence in a constituency, the determination of objections pertaining to and the commencement of electoral rolls;
- (d) the conduct of elections and election petitions; the decision of doubts and disputes arising in connection with elections;
- (e) matters relating to corrupt practices and other offences in connection with elections; and
- (f) all other matters necessary for the due constitution of the two Houses, the Provincial Assemblies and local governments;

but no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or the Election Commission under this Part.

8. The basic argument is that the drafting of nomination papers falls within the scope and competence of the ECP. In this regard reliance has been placed on PLD 2012 SC 681 (*supra*) in which it has been held as follows:

38. The Constitution provides a comprehensive mechanism to ensure minimal deviation from these dictates. It identifies and regulates one of the key aspects of democracy, the election process. In Article 218, the Constitution constitutes the Election Commission and empowers it to organize and oversee the election process and to ensure, inter alia, that it is conducted “honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against”.

39. The phrase “the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against” as used in Article 218(3) of the Constitution informs the content and scope of powers conferred by it on the Election Commission.

40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in *Election Commission of Pakistan v. Javid Hashmi and others* (PLD 1989 SC 396), observed that "(generally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenge the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including all stages involved in the election process. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein.

9. In terms of the dicta of the august Supreme Court of Pakistan, while interpreting Article 218 and 219 of the Constitution in the *Workers' Party Case*, the primary function of the ECP is to organize and conduct the election and for the purposes therein, it can make all necessary arrangements so as to ensure that elections are conducted honestly, justly and fairly, in accordance with law and that corrupt practices are guarded against. The ECP is therefore required to ensure that the election process does not suffer from any corrupt or illegal practices and that it is free and fair. In order to achieve this purpose all executive authorities of the Federation and the Provinces are to *assist* the ECP in the discharge of its function. Consequently the ECP is independent, having exclusive jurisdiction to conduct elections with no interference by any party, government or law enforcing agency. The august Supreme Court of Pakistan also held that the ECP can be directed to fulfill its constitutional and legislative mandate by *inter alia* bringing all political practices into conformity with the

Constitution and the law. On the strength of these findings, the Petitioners have urged that the drafting of nomination papers falls exclusively within the purview of the ECP and that Article 218 and 219 gives absolute power to the ECP to organize and conduct the elections, which by necessary implication includes drafting the nomination papers. I am of the opinion that the argument raised with respect to interpreting the legislative competence of Parliament on the basis of *necessary implication* is misconceived. The legislative competence of Parliament is clear from reading Article 222 of the Constitution which provides that Parliament can make all laws with respect to elections and includes laws related to the conduct of elections, but it cannot make law which effectively takes away or abridges any power of the Commissioner or the ECP. There is nothing in the Constitution or the cases cited which specifically provides that the ECP shall make the nomination forms. This is being constructed as being part of the function of organizing and conducting elections. No doubt historically nomination forms have been drafted by the ECP, however if Parliament has provided for the nomination forms in the Act, it cannot be declared to be beyond their legislative competence. Parliament is the supreme law making authority and the only restriction the Constitution places on Parliament, while framing elections laws is that it does not curtail or abridge any power of the ECP. When interpreting legislative competence, the Court cannot assume that Parliament is not competent to draft the nomination forms because presumption lies in favour of the constitutionality of the Act unless shown specifically that it violates the constitutional mandate. In this case there is no specific power given to the ECP for drafting nomination forms rather it is a role attributed to the ECP in the function of organizing and conducting the elections. Nomination forms are an integral part of the election process, as it is on the basis of the information provided in the forms that a candidate is declared

qualified to compete in the election. Since Parliament is competent to legislate on all electoral laws including the conduct of elections and since the Act was made to amend, consolidate and unify all laws relating to the elections, Parliament is competent to draft the nomination forms. In this regard, it is noted that the pith and substance of the constitutional mandate as provided in Article 222 is that Parliament shall make all electoral laws including laws to provide for the *conduct of elections* which will include making the nomination forms. Where the law fulfills its mandate and is within the legislative competence of the legislature, then such a law cannot be declared *ultra vires* on the basis of assumptions and implications. Furthermore even if in the past Parliament did not draft the nomination forms, it does not suggest that it lacks legislative competence. At the same time it is important to note that in order to safeguard the rights of the voters and to ensure free and fair elections, the ECP is fully empowered to make any additions to the nomination forms, if in its opinion it is necessary for a candidate to disclose information to ensure that elections are conducted honestly, justly and fairly and in accordance with law. In the case cited as PLD 2013 SC 406 (*supra*), the august Supreme Court of Pakistan held that the ECP is fully authorized to make additions to the nomination forms and that there is no hard and fast rule to make improvement in a proforma or nomination paper, particularly when the objective is to enforce Article 218(3) of the Constitution. The Court further held that detailed information about a candidate is essential as the mandate of the Constitution is that the people of Pakistan are governed by chosen representatives. Therefore a candidate must provide complete credentials to enable a voter to cast a vote in favour of such a person who he believes is free from disqualification under Article 63 and qualified under Article 62 of the Constitution. Consequently the ECP can improve upon the nomination forms as per its constitutional mandate. In this regard Chaudhary

Umer Hayat, categorically stated that in the opinion of the ECP the Impugned Forms do not meet with the disclosure requirements such that basic information of a candidate is missing, which information is the fundamental right of a voter. In support of his contentions he referred to the disclosure requirements in the 2013 forms, being of a higher standard. To this effect, he stated that if directed by the Court, the ECP will amend Form A and B and include all the required information, disclosures and declarations. Under the circumstances there is no merit in the challenge to the constitutional competence of Parliament.

10. The second ground of challenge is with respect to the lack of disclosure in the Impugned Forms which prohibit and prevent a voter from ascertaining all necessary information about credible candidates who are to participate in the election. There are two basic objections of the Petitioners. The first is that the Impugned Forms do not contain vital information and specific declarations which are required under the Constitution and the law. The other objection is the challenge to the phrase 'dependent children' as given in Sections 60, 110 and 137 of the Act along with Form A and B.

Challenge to missing information and insufficient declarations

11. The specific objections of the Petitioners are demonstrated through a comparative chart annexed with the petition which is reproduced below:-

Form A
(Comparison Table)

| | 2008 Form | 2013 Form | 2017 Form |
|----|--|---|--|
| 1. | SAME SAME SAME SAME SAME SAME | <p>Declaration and Oath by The Person Nominated</p> <p>I, the above-mentioned candidate, hereby declare on oath that,</p> <p>(i) I have consented to the nomination and that I fulfill the qualification specified in Article 62 of the Constitution and I am not subject to any of the dis-qualifications specified in Article 63 of the Constitution or any other law for the time being in force for being elected as a member of the National Assembly/Provincial Assembly.</p> <p>(ii) I belong to _____ and a certificate from (Name of political party) that political party showing that I am a party candidate from the above said constituency is attached.</p> <p style="text-align: center;">OR</p> <p>I do not belong to any political party.</p> | SAME SAME SAME SAME SAME SAME |
| 2. | SAME SAME SAME | <p>I, the above mentioned candidate, solemnly swear that,--</p> <p>**(i) I believe in the absolute and unqualified finality of the Prophethood of Muhammad (Peace be upon him), the last of the prophets and that I am not the follower of any one who claims to be a Prophet in any sense of the word or of any description whatsoever after Prophet Muhammad (Peace be upon him), and that I do not recognize such a claimant to be Prophet or a religious reformer, nor do I belong to the Qadiani group or the Lahori group or call myself an Ahmadi.</p> <p>(ii) I will be faithful to the declaration made by the Founder of Pakistan Quaid-e-Azam Muhammad Ali Jinnah, that Pakistan would be a democratic based on Islamic principles of social justice. I will bear true faith and allegiance to Pakistan and uphold the sovereignty and integrity of Pakistan and that I will strive to preserve the Islamic Ideology which is the basis for the creation of Pakistan.</p> | SAME SAME SAME |
| 3. | SAME SAME | <p>I hereby solemnly declare to the best of my knowledge and belief that, ---</p> <p>(i) no loan for an amount of two million rupees or more obtained from any bank, financial institution, cooperative society or corporate body in my own name or in the name of my spouse or any of my dependents, or any business concern mainly owned by me or the aforesaid, stands unpaid for more than one year from the due date, or has got such loan written off; and</p> <p>(ii) I, my spouse or any of my dependents or a business</p> | OMITTED OMITTED |

| | | | |
|----|--------------|---|--|
| | SAME | concern mainly owned by me or the aforesaid, is not in default payment of government dues or utility charges, including telephone, electricity, gas and water charges of an amount in excess of ten thousand rupees, for over six months, at the time of filing of nomination. | OMITTED |
| 4. | NOT INCLUDED | I, hereby solemnly affirm that, --- | OMITTED |
| | NOT INCLUDED | (i) The list containing the names of my spouse(s) and depends is correct and no name has been left out. (List attached) | OMITTED |
| | NOT INCLUDED | (ii) Neither I nor my spouse(s) nor any of my dependents mainly owns any company except the following : _____ _____ _____ | OMITTED |
| | SAME | Explanation. --- For the purpose of these declarations, the expression--- (i) "loan" shall mean any loan, advance, credit or finance obtained or written off on or after the 31 st day of December,1985, but shall not include the loan the recovery of which has been stayed or suspended by any order of a court or tribunal, including the High Court and the Supreme Court; | OMITTED |
| | SAME | (ii) "mainly owned" shall mean holding or controlling a majority interest in a business concern; | OMITTED |
| | SAME | (iii) "taxes" include all taxes levied by Federal Government or a Local Government, but shall not | OMITTED |
| | SAME | include taxes the recovery of which has been stayed or suspended by any order of a court or tribunal; | OMITTED |
| | SAME | (iv) "government dues and utility charges" shall, inter alia, include rent, charges of rest houses or lodges owned by the Federal Government, Provincial Governments, local governments or corporations, established or controlled by such governments, but shall not include the government dues and utilities charges the recovery of which has been stayed or suspended by any order of a court or tribunal. | OMITTED |
| 5. | NOT INCLUDED | I, the above mentioned candidate hereby declare on oath that -- | OMITTED |
| | NOT INCLUDED | (i) I have opened Account No._____ with _____ (Name and Branch of scheduled bank) and have deposited therein an amount of Rs._____(amount in words)_____ for the purpose of election expenses. | I, the above-mentioned candidate, declare that I have opened an exclusive account no. _____with (Name and Branch of Scheduled Bank) for the purposes of election expenses. |
| | NOT INCLUDED | (ii) I shall make all election expenditures out of the money deposited in the aforesaid account. | OMITTED |
| | NOT INCLUDED | (iii) I shall not make any transaction towards the election expenses through an account other than the above account. | OMITTED |
| 6. | SAME | I, hereby declare on oath that no case of criminal offences was pending against me, six months prior to filing of this nomination. OR I hereby declare on oath that following cases of criminal | OMITTED |

| | SAME | <p>offences were pending against me, six months prior to filing of this nomination:</p> <table border="1"> <thead> <tr> <th>Number of case</th> <th>Name of the Court</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table> | Number of case | Name of the Court | | | OMITTED | | | | | | | | | | | | |
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| Number of case | Name of the Court | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| 7. | SAME | My educational qualification is _____ (attested copies to be annexed) | OMITTED | | | | | | | | | | | | | | | | |
| 8. | SAME | My present occupation is _____ (attested copies to be annexed) | OMITTED | | | | | | | | | | | | | | | | |
| 9. | SAME | My National Identity Card No. is _____ (attested copies to be annexed) | SAME (mentioned as clause 7 after amendment) | | | | | | | | | | | | | | | | |
| 10. | SAME | My National Tax Number, if any is _____ (attested copies to be annexed) | OMITTED | | | | | | | | | | | | | | | | |
| 11. | SAME | The statement of assets and liabilities of my own, spouse(s), dependents as on 30 th June, _____ is enclosed. | SAME | | | | | | | | | | | | | | | | |
| 12. | SAME | <p>The income tax paid by me during the last three years is given hereunder :</p> <table border="1"> <thead> <tr> <th>Total Income</th> <th>**Source of Income</th> <th>Tax Year</th> <th>Total Income Tax Pa</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | Total Income | **Source of Income | Tax Year | Total Income Tax Pa | | | | | | | | | | | | | OMITTED |
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| | NOT INCLUDED | <p>Note I : Attach copies of income tax returns of the years mentioned above. **If more than one sources of income, attach detail.</p> | OMITTED | | | | | | | | | | | | | | | | |
| 13. | | How many times traveled abroad during last three years | | | | | | | | | | | | | | | | | |
| | NOT INCLUDED | and cost incurred thereon. (Attach copy of the passport and detail of expenditure). | OMITTED | | | | | | | | | | | | | | | | |
| 14. | MENTIONED AS Land revenue paid by me during the last three assessment years | <p>The agricultural income tax paid by me during the last three years is given below:</p> <table border="1"> <thead> <tr> <th>Tax Year</th> <th>Land Holding</th> <th>Agricultural Income</th> <th>Total Agricultural Income Tax Paid</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>Note II: Attach copies of agricultural tax returns of the last three years mentioned above.</p> | Tax Year | Land Holding | Agricultural Income | Total Agricultural Income Tax Paid | | | | | | | | | | | | | OMITTED |
| Tax Year | Land Holding | Agricultural Income | Total Agricultural Income Tax Paid | | | | | | | | | | | | | | | | |
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| | NOT INCLUDED | | OMITTED | | | | | | | | | | | | | | | | |
| 15. | NOT INCLUDED | If you have been elected Member of National Assembly/Provincial Assembly what according to you was the single most important contribution you have made for the benefit of your constituency (attach detail, if any). | OMITTED | | | | | | | | | | | | | | | | |
| 16. | NOT INCLUDED | Whether you have paid any sum by way of contribution or otherwise to the political party which has awarded you party ticket for this election, and if so how much (attach detail, if any). | OMITTED | | | | | | | | | | | | | | | | |
| 17. | NOT INCLUDED | Whether you have received any sum from the party which has awarded you ticket, if so how much (attach detail, if any). | OMITTED | | | | | | | | | | | | | | | | |
| | NOT INCLUDED | <p>Note III: I hereby solemnly affirm that the information given at serial No. 13, 15, 16 and 17 is true and correct and nothing has been concealed.</p> | OMITTED | | | | | | | | | | | | | | | | |
| 18. | SAME | I, hereby assure that I shall abide by the Code of | OMITTED | | | | | | | | | | | | | | | | |
| | SAME | <p>Conduct issued by the Election Commission.</p> <p>Date _____ Signature of Candidate _____</p> | <p>ADDITION (Solemn affirmation: I s/o d/o w/o _____ do hereby solemnly affirm that all the entries in the form filled by me are correct and complete to the best of my knowledge and belief, and nothing has been concealed herewith)</p> <p>OMITTED</p> | | | | | | | | | | | | | | | | |

Form B
(Comparison Table)
Statement of Assets and Liabilities

| | 2008 Form | 2013 Form | 2017 Form |
|----|---|---|---|
| | SAME (as 2013) | I _____ a candidate for election to general seat from constituency No _____, hereby declare on solemn affirmation that no immovable and movable property, including bonds, shares, certificates, securities, insurance policies and jewelry, other than specified herein below, is held by me, my spouse(s) and dependents on the 30 th day of June, _____ | SAME (except words "on solemn declaration" are omitted and word "dependents" is substituted with "dependent children") |
| | Cost of Assets | Assets | Remarks |
| 1. | NOT INCLUDED | <u>NET ASSETS AS ON 30TH JUNE OF CURRENT FINANCIAL YEAR</u> | OMITTED |
| 2. | NOT INCLUDED | <u>NET ASSETS AS ON 30TH JUNE OF PREVIOUS FINANCIAL YEAR</u> | OMITTED |
| 3. | NOT INCLUDED | <u>INCREASE/DECREASE [1-2]</u> | OMITTED |
| 4. | SAME Except "(attach location, description, built up area and present market value of the house/apartment in which you are presently living)" NOT INCLUDED | <u>IMMOVABLE PROPERTY</u> Open plots, houses, apartments, commercial buildings, under construction properties, agricultural Property, etc. (attach location, description, built up area and present market value of the house/apartment in which you are presently living). (a) <u>Held within Pakistan*</u> | SAME Except "(attach location, description, built up area and present market value of the house/apartment in which you are presently living)" NOT INCLUDED |
| | SAME | (i) (ii) (iii) (b) <u>Held outside Pakistan*</u> | SAME |
| | SAME | (i) (ii) | SAME |
| 5. | SAME | <u>MOVABLE PROPERTY</u> (a) <u>Business capital within Pakistan</u> (i) Name of business (ii) Capital amount | SAME |
| | SAME | (b) <u>Business capital outside Pakistan</u> (i) Name of business (ii) Capital amount | SAME |
| 6. | SAME | <u>Assets brought or remitted from outside Pakistan *</u> (i) Bank drafts/Remittances (ii) Machinery (iii) Other | SAME |
| 7. | SAME except instead of word "brought", "created" was used. | <u>Assets brought out of remittance from abroad*</u> | SAME |
| 8. | SAME | <u>Investments</u> (i) Stock and Shares (ii) Debentures (iii) National Investment (Unit) Trust (iv) ICOP Certificate (v) National Savings Schemes - Defence Savings Certificate | SAME |

| | | | |
|-----|--------------|---|---------|
| | SAME | - Special Savings Certificate - Regular Income Certificate (vi) Unsecured loans (vii) Mortgages (viii) Any other | SAME |
| 9. | SAME | Motor Vehicles** Make Model Reg. No. (i) _____ (ii) _____ | SAME |
| 10. | SAME | Jewellery, etc. (i) Weight (ii) Description | SAME |
| 11. | SAME | Cash and Bank Accounts* (i) Cash in hand (ii) Cash at Bank Account No. Bank & Branch Current Deposit Savings Other Deposits | SAME |
| 12. | SAME | Furniture, Fittings & articles of personal use | SAME |
| 13. | SAME | Assets transferred to any person- (i) Without adequate consideration, or (ii) by revocable transfer | SAME |
| 14. | SAME | Any other Assets | SAME |
| 15. | NOT INCLUDED | Cost of total assets [4+4] | OMITTED |
| 16. | NOT INCLUDED | Foreign passport if any (i) No. of passport _____ (ii) Name of country(s) _____ | OMITTED |

| | <u>AMOUNT</u> | <u>LIABILITIES</u> | <u>REMARKS</u> |
|--------|---------------|---|--|
| (i) | SAME | Mortgages secured on Property or land | SAME |
| (ii) | SAME | Unsecured Loans owing | SAME |
| (iii) | SAME | Bank Overdraft | SAME |
| (iv) | SAME | Bank Loans | SAME |
| (v) | SAME | Amounts due under Hire Purchase Agreement | SAME |
| (vi) | SAME | House Building Loans | SAME |
| (vii) | SAME | Advances from Provident Funds etc. | SAME |
| (viii) | SAME | Other debts due* | SAME |
| (ix) | SAME | Liabilities in the names of minor children (in respect of assets standing in their names) | SAME except word "minor" is substituted with "dependent" |
| (x) | SAME | Personal expenditure Total expenditure (i) + (x) Increase/Decrease | SAME |
| | SAME | VERIFICATION I, _____ S/o, W/o, D/o _____ do hereby solemnly declare that the above statement of the assets and liabilities of myself, my spouse(s), dependents as on 30 th June, ____ is correct and complete and nothing has been concealed. | SAME except word "solemnly" is omitted, and word "dependents" is substituted with "dependent children" |
| | | STATEMENT ON OATH I, Mr/Ms/Mrs _____ S/o, W/o, D/o | |

| | | | |
|--|--------------|--|---------|
| | NOT INCLUDED | _____ state on oath that I have not ceased to be a citizen of Pakistan nor have I acquired or applied for the citizenship of a foreign state. | OMITTED |
| | NOT INCLUDED | NO OBJECTION CERTIFICATE (a) I, Mr/Ms/Mrs _____ S/o, W/o, D/o _____ state that I have no objection if information concerning myself in relation to acquisition of citizenship of foreign State or application of such citizenship is provided by any foreign state to the Ministry of Foreign Affairs of Foreign Affairs of the Government of Pakistan or Election Commission of Pakistan. | OMITTED |
| | NOT INCLUDED | (b) I, Mr/Ms/Mrs _____ S/o, W/o, D/o _____ state that failure to give detail regarding any item of this Form shall render my nomination to contest election invalid or if any information given here in above are found incorrect at any time my election shall stand void ab initio. Date _____ Signature _____ | OMITTED |

12. In order to appreciate the arguments made before the Court it is necessary to consider the general scheme of the Act with reference to nomination and the prescribed process. The Act was passed by the National Assembly on 2.10.2017 and in terms of its preamble the Act aims to amend, consolidate and unify laws relating to the conduct of elections and matters connected therewith or ancillary thereto. In terms of Section 241 of the Act, eight electoral laws were repealed so as to achieve the purpose of consolidation and unification of election laws. Section 60 of the Act prescribes for the procedure for nomination of a candidate and requires that every nomination shall be made by separate nomination paper on Form A, signed by the proposer and the seconder and shall be on solemn affirmation made and signed by the candidate. Section 231 of the Act provides for the qualification and disqualification of a person elected or chosen as member of the Majlis-e-Shoora (Parliament) to be as provided in Article 62 and 63 of the Constitution. Consequently Form A contains a general declaration that the candidate fulfills the qualifications specified in Article 62 and is not subject to any of the disqualifications

specified in Article 63. Section 110 of the Act provides for similar requirements for nomination for election to the Senate. Section 137 of the Act specifically requires that every member of the Assembly and the Senate submit a copy of his statement of assets and liabilities, which includes the assets and liabilities of his spouse and dependent children in the manner prescribed in Form B. Section 230 of the Act requires the Prime Minister, Chief Minister or the Minister or any other member of a caretaker Government to also submit to the ECP a statement of assets and liabilities including the assets and liabilities of his spouse and dependent children on Form B and that is to be published in the official gazette. Section 232 of the Act provides for the disqualification of a candidate on account of offences, however no declaration to this effect is required in the Impugned Forms. Consequent to the judgment of the august Supreme Court of Pakistan cited as Zulfiqar Ahmed Bhutta and 15 others v. Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs and others (PLD 2018 SC 370), this section has been made subject to Article 62, 63 and 63(a) of the Constitution. Importantly Section 62(7) of the Act provides that a Returning Officer while scrutinizing the nomination papers of a candidate shall not ask any question which has no nexus with the information supplied in the nomination paper or does not arise from the objections raised by any person or from information received by him under this Section. It also provides that the declaration submitted under Section 60(d) with respect to statement of assets and liabilities can only be questioned if there is tangible material to the contrary available on the record.

13. The working of the Act is such that the nomination process is a two-step process. As a first step the nomination forms are filled by the candidate and the second step is that the information provided in the Forms is subject to scrutiny. The Returning Officer shall scrutinize the Forms in terms of the requirements of Section 62(7) of the Act

whereby based on the information provided in the Forms he will question the candidate. Form A provides for a generalized statement by the candidate that the requirements of Article 62 and 63 are met with, without any specific declarations or information from the candidate with reference to the provisions of Article 63 of the Constitution. Consequently relevant information will not be made available on the nomination forms and the Returning Officer may be constrained to fulfill his statutory requirement of scrutinizing the nomination forms due to the restriction imposed in Section 62(7) of the Act. Hence in terms of Article 63 of the Constitution, a person can be disqualified for being elected or chosen as Member Parliament amongst others, if he ceases to be a citizen of Pakistan or acquires a citizenship of foreign state is in the service of a statutory body owned or controlled by the government has been convicted by a court of competent jurisdiction involving moral turpitude. These disqualifications require information and disclosure from the candidate in order to state with certainty that the disqualification is not attracted. Effectively information pertaining to matters covered under Article 63 requires detailed information so as to ascertain whether the disqualification is attracted or not. Furthermore there are five declarations in Form A which are solemnly affirmed by the candidate. For the purposes of the election to the National Assembly there is no information regarding education, degrees or diplomas or professional experience or present occupation. This information is found in the *additional information* for the Senate elections but not in Form A for the National Assembly. Consequently for the purposes of election to the National Assembly the voter will not have the benefit of such basic information so as to be able to make an informed decision and express his or her true choice. For ease of reference Forms A and B are reproduced hereunder:-

FOR SENATE ELECTION ONLY

[Note: (1) Please fill in this page in capital letters.
(2) Strike off the words not applicable.]

(To be filled in by the proposer of a candidate for a Senate seat)

I
(Name of proposer)

a member of *National Assembly/Provincial Assembly from Constituency No.

do hereby propose the name of Mr./Mrs./Ms.....
(Name of candidate)

son/ wife/ daughter of

resident of.....
(Address)

whose name is entered at serial No.in the electoral roll of
(name of electoral area, tehsil/ taluka and district)

as a candidate for election from.....Province/ Federal Capital/
FATA against the following Senate seat.....

(2) I hereby certify that I have not subscribed to any other nomination paper in this election either as proposer or seconder.

Date..... Signature of Proposer.....

(To be filled in by the seconder of a candidate for a Senate seat)

L.....
(Name of seconder)

a member of National Assembly/Provincial Assembly from Constituency No.....
do hereby second the nomination of the above mentioned candidate against the following Senate seat.....

(2) I hereby certify that I have not subscribed to any other nomination paper in this election either as proposer or seconder.

Date..... Signature of Seconder.....

4

SOLEMN AFFIRMATION

I,S/o, W/o, D/o.....do
hereby solemnly affirm that all the entries in this Form filled by me are correct and complete to the best of
my knowledge and belief, and nothing has been concealed.

Signature of the Candidate.....

**(ADDITIONAL INFORMATION TO BE ATTACHED BY A CANDIDATE
FOR SENATE TECHNOCRAT SEAT)**

- [Note: (1) This additional information is to be attached with the Nomination Form by a candidate for Senate Technocrat seat only.
(2) Each item is to be filled in clearly and completely.
(3) The information should be typed or hand written legibly.
(4) Strike off the words not applicable.]

BIODATA

1. Name.....
2. Father/ Husband's name.....
3. Date of birth..... 4. Place of birth.....
5. Marital status: Single / Married / Divorced / Widow (er)
6. Present address:
7. Present telephone Nos. Mobile.....Office.....Home.....
8. Email address:
9. Education

| Years attended | | Name and location of Institution of learning | Academic degrees and certificates or Diplomas obtained | Main Areas of study |
|----------------|----|--|--|---------------------|
| From | To | | | |
| | | | | |

10. Professional experience
 - A. From..... to
(the date since employed)

Title of present post and nature of duties.
Employer (Name and address) and type of business.

 - B. From..... to
(the date since employed)

Title of present post and nature of duties.
Employer (Name and address) and type of business.

6

C. From..... to
(the date since employed) (Please use additional sheets if required.)

Title of present post and nature of duties.

Employer (Name and address) and type of business.

11. Please list your special qualifications and skills

12. Please list any significant publications you have written (Publications need not be attached).

13. If you have previously held public office (e.g. Minister, Advisor, Senator, Member of Parliament, Provincial Assembly or a local government) please give details:

14. Please list your present and past memberships, if any, of political parties and/ or, civil society organizations:

I declare that all the above entries and statements are correct and complete to the best of my knowledge and belief, and nothing has been concealed.

Date.....

Signature of the Candidate.....

FORM-B

[See sections 60, 110 & 137]

STATEMENT OF ASSETS AND LIABILITIES

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 movable 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,.....

ASSETS

| ASSET | COST OF ASSET | REMARKS |
|--|---------------|---------|
| 1 | 2 | 3 |
| <p>1. <u>IMMOVABLE PROPERTY</u> Open plots, houses, apartments, commercial buildings, under construction properties, agricultural property, etc.</p> <p>(a) <u>Held within Pakistan*</u></p> <p>(i) _____ (ii) _____ (iii) _____</p> <p>(b) <u>Held outside Pakistan*</u></p> <p>(i) _____ (ii) _____</p> | | |
| <p>2. <u>MOVABLE ASSETS</u></p> <p>(a) <u>Business capital within Pakistan</u></p> <p>(i) Name of business (ii) Capital amount</p> <p>(b) <u>Business capital outside Pakistan</u></p> <p>(i) Name of business (ii) Capital amount</p> <p>(c) <u>Assets brought or remitted from outside Pakistan*</u></p> <p>(i) Bank drafts/Remittances (ii) Machinery (iii) Other</p> <p>(d) <u>Assets brought out of remittances from abroad*</u></p> | | |

| ASSET | COST OF ASSET | REMARKS | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---------------|---------------|----------|----------|-----|-------|-------|-------|------|-------|-------|-------|--|-------------|---------------|---------|-------|-------|---------|-------|-------|---------|-------|-------|----------------|-------|-------|--|--|
| 1 | 2 | 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>(e) Investments</p> <p>(i) Stock and Shares</p> <p>(ii) Debentures</p> <p>(iii) National Investment (Unit) Trust</p> <p>(iv) ICP Certificates</p> <p>(v) National Savings Schemes</p> <p style="padding-left: 20px;">– Defence Savings Certificate</p> <p style="padding-left: 20px;">– Special Savings Certificate</p> <p style="padding-left: 20px;">– Regular Income Certificate</p> <p>(vi) Unsecured loans</p> <p>(vii) Mortgages</p> <p>(viii) Any other</p> <p>(f) Motor Vehicles*</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;"></th> <th style="width: 20%; text-align: center;">Make</th> <th style="width: 20%; text-align: center;">Model</th> <th style="width: 30%; text-align: center;">Reg. No.</th> </tr> </thead> <tbody> <tr> <td>(i)</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>(ii)</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table> <p>(g) Jewellery, etc.</p> <p>(i) Weight _____</p> <p>(ii) Description _____</p> <p>(h) Cash and Bank Accounts*</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;"></th> <th style="width: 30%; text-align: center;">Account No.</th> <th style="width: 40%; text-align: center;">Bank & Branch</th> </tr> </thead> <tbody> <tr> <td>Current</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Deposit</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Savings</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Other Deposits</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table> <p>(i) Furniture, Fittings & articles of personal use—</p> <p>(j) Assets transferred to any person—</p> <p style="padding-left: 20px;">(i) Without adequate consideration, or</p> <p style="padding-left: 20px;">(ii) by revocable transfer</p> <p>(k) Any other assets</p> | | Make | Model | Reg. No. | (i) | _____ | _____ | _____ | (ii) | _____ | _____ | _____ | | Account No. | Bank & Branch | Current | _____ | _____ | Deposit | _____ | _____ | Savings | _____ | _____ | Other Deposits | _____ | _____ | | |
| | Make | Model | Reg. No. | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (i) | _____ | _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (ii) | _____ | _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Account No. | Bank & Branch | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Current | _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Deposit | _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Savings | _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Other Deposits | _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | |

*Details to be annexed.

LIABILITIES

| LIABILITY | AMOUNT | REMARKS |
|--|--------|---------|
| (i) Mortgages secured on Property or land | | |
| (ii) Unsecured Loans owing | | |
| (iii) Bank Overdraft | | |
| (iv) Bank Loans | | |
| (v) Amounts due under Hire Purchase Agreement | | |
| (vi) House Building Loans | | |
| (vii) Advances from Provident Funds etc. | | |
| (viii) Other debts due* | | |
| (ix) Liabilities in the names of dependent children (in respect of assets standing in their names) | | |
| Total | | |

*Details to be annexed.

VERIFICATION

I,..... S/o, W/o, D/o
do hereby declare that, to the best of my knowledge and belief, the above statement of the assets and liabilities of myself, my spouse(s) and dependent children is correct and complete as on 30th June..... and nothing has been concealed therefrom.

Date.....

Signature of the Candidate/Member

10

Decision of Returning Officer

.....

.....

.....

.....

.....

.....

.....

.....

Date.....

Returning Officer

**ELECTION COMMISSION OF PAKISTAN
RECEIPT**

(To be filled in by the Returning Officer)
[Note: Strike off the words not applicable.]

Serial Number of nomination paper.....

The nomination paper of Mr./Ms/Mrs.....
a candidate for election to the seat from..... National
Assembly/ Senate/ Provincial Assembly of the Punjab/ Sindh/Khyber Pakhtunkhwa/Balochistan was
delivered to me in my office at(hours) on(date)
by.....(person)

This nomination paper will be taken up for scrutiny at
.....(hours) on(date) at
(place)

Date.....

Returning Officer.....

14. In this regard, the august Supreme Court of Pakistan over the years has developed jurisprudence with reference to the qualification and disqualification of members of Parliament and Provincial Assemblies. Issues with reference to fake or bogus degrees, concealment of dual nationality, of assets and liabilities of the candidate, spouse and dependents as well as submission of false declarations have resulted in the development of law with reference to what is considered necessary and mandatory for the purposes of the nomination forms. Consequently the august Supreme Court of Pakistan has declared certain information as mandatory for the purposes of disclosure and declarations in the election nomination forms and time and again has emphasized on full and credible disclosure. In the cases “Dr. Shaukat Ilahi v. Ch. Mubashar Hussain and another” (2008 CLC 341), “Muhammad Nasrullah v. Election Commission of Pakistan and 9 others” (2009 CLC 1167), the Court held that declaration of criminal record is necessary. In **PLD 2013 SC 406** (*supra*), the august Supreme Court of Pakistan requires a candidate to provide his complete credentials for the benefit of the voter. In “Muhammad Ahmad Chattha v. Iftikhar Ahmad Cheema and others” (2016 SCMR 763), the august Supreme Court of Pakistan has held that declaration of banks accounts of candidates and their dependents are mandatory. In the case “Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarar and others” (2016 SCMR 1) the august Supreme Court of Pakistan requires that correct educational qualification be declared. In the case Ms. Shamuna Badshah Qaisarani v. Khawaja Muhammad Dawood and others (2016 SCMR 1420), the Court held that declaration of property, income and assets is necessary along with information regarding travel abroad and foreign residency or “iqama” which is also necessary. In the case “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), the august Supreme Court of Pakistan declared that family business and resources which include assets of a candidate and his family members must be disclosed in the nomination forms. These requirements are now part of the law and require compliance for the purposes of inclusion in the nomination forms. I am cognizant of the fact that these cases pertain to different elections over the time, however the issue is not election specific, rather it relates to necessary information and declaration in order to ensure that the voter is able to take an informed decision and chose the candidate that he or she thinks is most suited for the position.

15. Another aspect that requires attention is with respect to the declarations regarding election expenses. In terms of Section 132 of the Act, election expenses of a candidate shall include all expenses incurred by any person or a political party on behalf of the candidate or incurred by a political party specifically for the candidate. The election expenses includes expenses of stationary, postage, advertisement, transport or any other item deemed to be the election expenses incurred by the candidate for the election purposes. Section 132 of the Act limits election expenses up to one million rupees for the National Assembly and requires a candidate to provide bills, receipts and documents for every payment made in respect of election expenses. If election expenses are disputed, the ECP can conduct an inquiry to resolve the dispute. A candidate in terms of Section 133 of the Act must open an exclusive account with the scheduled bank before the date fixed for scrutiny of nomination papers and maintain a register of receipts and expenditures. A candidate cannot make any transaction towards the election from any other account and a candidate must provide a return of all election expenses on Form C within thirty days from the date of publication of his name as a returned candidate. The co-relating statement is provided for in Form

A in the form of a declaration that the candidate has opened an exclusive account for the purpose of election expenses with the name of a scheduled bank. This declaration does not fulfill the mandatory requirements of Sections 132 and 133 of the Act. A candidate must make a declaration that he did not exceed the amount given in Section 132 of the Act with respect to election expenses and also that this is the only account from which all election expenses have been made. Without these declarations the purpose of providing the bank account information is of no use as it does not bind the candidate to the declarations specifically provided for in Section 132 and 133 of the Act.

16. The lack of disclosure and information in the Impugned Forms essentially means that a voter will not have the required information on the basis of which an informed decision can be made. To make an informed decision voters require basic information about a candidate which includes information about educational qualifications, profession and/or business/jobs held, travel abroad. Voters also require information to establish the credibility of a candidate meaning thereby information about dual nationality, income tax paid, agriculture tax paid, loan default, government due defaults, criminal record and information of assets and liabilities. Finally the third set of information required is information which enables a voter to assess the track record of the candidate, in terms of what he has done, especially if he or she has served as Member Parliament or Senate. Hence information such as major contributions made, issues raised, and positions taken by the candidate over the years is relevant for the voter. There are two important aspects to this issue. First that a voter must be well informed about all the credentials of a candidate on the basis of which he or she can decide how to cast their vote. Decisions should not be based on campaign slogans and posters. Second is that when candidates present themselves for the National Assembly it is

incumbent upon them to declare vital and relevant information which establishes their credibility and remains the barometer against which it can be determined whether the candidate is honest and fulfills the qualification requirements of Article 62 of the Constitution.

17. Furthermore while drafting nomination forms the lack of accessible and objective information in the public domain must be considered. In this regard it is also noted that it is not necessary that every member of the public or every voter is aware of the qualifications and disqualifications specifically enumerated in Article 62 and 63 of the Constitution. Hence by generalizing the declaration for the purposes of Article 62 and 63 of the Constitution a voter is deprived of essential information and required disclosure on the basis of which an informed decision can be made. Additionally for the purposes of raising objections and scrutinizing the nomination forms, the lack of information and declaration essentially erodes the constitutional mandate and the whole purpose of scrutiny is diluted. Parliament consists of political actors who have a keen interest in the quantity and quality of information available in the public domain. They are also interested in the nature of the disclosure and quantity of information that is required to be made in the nomination forms. It is for this reason that the Constitution protects the rights of the voters through the ECP, to ensure that at the time of election an informed decision is made. The requirement of Article 218, casting a duty on the ECP to organize and conduct honest, just and fair elections as per law, includes the duty to ensure that all necessary and required information, disclosure and declarations are made by a candidate. While Parliament can make the laws to regulate the conduct of elections, the ultimate authority and responsibility to ensure free and fair elections is of the ECP. Hence ECP is responsible to ensure that a voter is able to make an informed decision and that the nomination forms achieve this objective.

18. In the book titled *International Principles for Domestic Elections, published in June 2008, Chapter 2 by Patrick Merlone on Human Rights-The basis for inclusiveness, transparency, accountability and public confidence in elections*, the author states that for elections to be genuinely democratic, the right to freedom of political expression, includes the freedom to seek, receive and impart information and ideas in order to develop informed choices. In support thereof the author explains that transparency is the byword of democratic elections and the basis for the requirement of transparency is the freedom to receive and impart information. The right to vote and to be elected cannot be exercised without the right to receive information. In the electoral process where those who seek to be elected do not impart necessary information to the electoral or where the voters go to the polls without receiving necessary information it cannot be called a democratically held free and fair election. The voter has the right to know basic information about the candidate along with relevant information to establish the credibility and honesty of a candidate.

19. Therefore based on the aforesaid the Impugned Forms do not provide for the following mandatory information and declarations which should be made on integral part of Form A and Form B. In this regard, it is noted that the stated information and declarations were available in the 2013 Forms:

- (i) Educational qualifications of the candidate
- (ii) Current occupation/job/profession/business of the candidate
- (iii) Dual nationality, if any
- (iv) National Tax Number/Income tax returns/ and payment of income tax
- (v) Agriculture tax returns and payment of agriculture tax
- (vi) Criminal record, if any
- (vii) Assets and liabilities of dependents
- (viii) Declaration pertaining to election expenses
- (ix) Declaration pertaining to any default in loan or government dues by dependents

- (x) Declaration that the candidate will abide by the code of conduct issued by the Election Commission

Challenge to the phrase 'dependent children'

20. The basic challenge is that the Constitutional requirement is for information to be provided with respect to assets and liabilities of all dependents whereas the Act only calls for declarations with respect to the assets and liabilities of dependent children. For ease of reference the relevant constitutional provisions and provisions of the Act are reproduced hereunder:

Article 63 Disqualifications for membership of Majlis-e-Shoora (Parliament).- (1) A person shall be disqualified from 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
- (o) he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers;

Sections 60, 110 and 137 of the Act are also reproduced below:

60 Nomination for election (1) Any voter of a constituency, may propose or second the name of any qualified person to be a candidate for Member for that constituency;

Provided that no voter shall subscribe to more than one nomination papers either as proposer or seconder.

(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

- (a) a declaration that he has consented to the nomination and that he fulfills the qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 for being elected as a Member;
- (b) a declaration that he has opened an exclusive account with the scheduled bank for the purpose of election expenses;
- (c) an attested copy of his National Identity Card; and
- (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.

110 Nomination for election.---(1) A voter may propose or second the name of any person qualified for election to the Senate from a Province, Islamabad Capital Territory or the Federally Administered Tribal Areas, as the case may be.

(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, be made and signed by the candidate and shall be accompanied by---

- (a) a declaration that he has consented to the nomination and that he fulfills the qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 for being elected as a Member of the Senate;
- (b) a declaration that he is a technocrat or aalim, if the nomination papers are filed for a seat reserved for technocrat or aalim;
- (c) a declaration that he has opened an exclusive account with a scheduled bank for the purpose of election expenses;
- (d) an attested copy of his National Identity Card; and
- (e) 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.

137 Submission of statement of assets and liabilities.__ (1) Every Member of an Assembly and Senate shall submit to the Commission, on or before 31st December each year, a copy of his statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding thirtieth day of June on Form B.

21. As per the constitutional mandate a person shall be disqualified from being elected or chosen as a member of Majlis-e-Shoora (Parliament) if he, his spouse or dependents are in default of a loan of an amount of two million or more from any bank for more than one year or if he has gotten that loan written off. The Constitution provides that the loan can be in his own name or in the name of his spouse or any other of his *dependents*. In the same way if a person or his spouse or any of his dependents are in default of government dues, utility expenses, telephone, electricity, gas and water charges at the time of filing of the nomination papers, he stands disqualified in terms of Article 63(i)(o) of the Constitution. However as per the Act, a candidate is to make declaration with respect to his dependent children. Affectively the phrase ‘dependent children’ has diminished the scope of the constitutional requirement to make declaration with regard to ‘dependents’ be they children or any other relative which can include parents, siblings or any other dependents. A bare reading of the Constitution shows that the requirement for declaration is of spouse or any dependent. There can be no cavil with the legal sanctity of the constitutional mandate and the fact that all laws must be in consonance with the Constitution. By requiring the statement of assets and liabilities for dependent children, the legislature has in fact

ignored the constitutional mandate. The learned DAG with reference to this omission argued that no *malafide* can be imputed to the legislature while considering the vires of law. However, in this regard, I am reminded of the findings of the august Supreme Court of Pakistan in the case cited at “Contempt Proceedings Against Chief Secretary, Sindh and others: In the matter of (2014 PLC (C.S) 82) wherein it has fairly commented that while it is true that judicial precedent available thus far declares that *malafide* cannot be attributed to the legislature but if a legislature deliberately and repeatedly embarks upon a venture to nullify considered judicial verdict in an unlawful manner, trample the constitutional mandate and violate the law in the manner it was done in the present case then it is difficult to attribute *bonafide* to it either. In a recent judgment cited as Messrs Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others (2018 SCMR 802), the august Supreme Court of Pakistan held that:

It is well established by this Court, while considering the vires of a legislative enactment under its powers of judicial review, can consider not only the substance of the law but also the competence of the legislature. Further, though it is an accepted principle that no mala fide can be attributed to the legislature, however, the bonafides of the legislature as also the purpose and object of a statute may also be considered in the determination of the vires of a statute. The vires of a statute can also be determined on the ground that the legislation is colourable. In the instant case, the only issue involved in the legislative competence of the Parliament vis-à-vis the legislative authority of the provincial legislature. In this regard it is to be noted that there is always a presumption in favour of the constitutionality of a legislative enactment unless *ex facie* it appears to be violative of any of the constitutional provisions and in a case where two opinion with regard to the constitutionality of an enactment are possible, the one in favour of the validity of the enactment is to be adopted. Meaning thereby that when a law is enacted by the Parliament, the presumption lies that Parliament has competently enacted it (law), and if the vires of the same (law) are challenged, the burden always lies upon the person making such challenge to show that the same (law) is violative of any of the fundamental rights or the provisions of the constitution. It is also a cardinal principle of interpretation that law should be interpreted in such a manner that it should be saved rather than destroyed. The Courts should learn in favour of upholding the constitutionality of a legislation and it is thus incumbent upon the Courts to be extremely reluctant to strike down laws as unconstitutional. This power should be exercised only when absolutely necessary for injudicious exercise of this power might well result in grave and serious consequences.

22. Therefore with respect to the challenge of the use of the phrase 'dependent children' instead of 'dependent' in Sections 60, 110 and 137 of the Act, there is merit as the said Sections are in clear derogation of the constitutional mandate. Under the circumstances the words *dependent children* shall be read down such that it will be read to be in conformity with the constitutional requirement of Article 63(1)(n) and (o) of the Constitution.

23. One of the objections raised by the learned DAG is with respect to the disclosure of filing a similar petition before the Hon'ble Islamabad High Court by the same Petitioner, in which his petition along with connected petitions were decided through a short order passed on 25.5.2018. There appears to be no merit in this objection as the instant Petition has been pending since 2017 and in fact, it took more than six months for the Federation to file its reply. Furthermore the counsel for the Petitioner did disclose the pendency of several petitions before the Hon'ble Islamabad High Court with similar prayers, however at that time there was no order in the said petitions. In terms of the short order of the Hon'ble Islamabad High Court the vires of Form A and Form B were challenged and the Court through a short order, while relying on the Workers' Party Case held that the ECP was empowered to add any information or improve Form A and Form B.

24. In view of the aforesaid, these petitions are **partially allowed** in the following terms:

- (a) The challenge to the drafting of the Impugned Forms by Parliament so as to become a part of the Act, is dismissed having no merit;
- (b) The term '*dependent children*' used in the Act, specifically in Sections 60, 110 and 137 and in Form A and Form B is held to be read down to be construed and interpreted in terms of the constitutional requirement

provided for in Article 63(1)(n) and (o) of the Constitution;

- (c) The Impugned Forms do not provide for mandatory information and declarations as required by the Constitution and the law and the ECP is directed to ensure that all mandatory information and declarations are included in the Impugned Forms;
- (d) The ECP is empowered to add or improve Form A and Form B of the Act so as to fulfill its constitutional mandate of ensuring honest, just and fair elections.

(AYESHA A.MALIK)
JUDGE

Approved for Reporting

JUDGE