

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

W. P. No.4005 of 2024

Sirdar Mohy Ud Din Khan Khosa

Versus

Election Commission of Pakistan, Islamabad & others

J U D G M E N T

Date of hearing: 04.04.2024.
Petitioner by: Mr. Mubeen-ud-Din Qazi, Advocate.
Respondents by: Mr. Muhammad Asad, Political Assistant /
Returning Officer, PP-290, D.G. Khan-V.
Mr. Tahir Mehmood, Advocate for
respondent No.3.
Mr. Fayaz Hussain Khan Laghari, Advocate
for respondent No.7.
Mr. Muzaffar Hussain, Advocate for
respondent-Election Commission of
Pakistan.
Mr. Kashif Nadeem Malik, Assistant
Attorney General.

MUHAMMAD SAJID MEHMOOD SETHI, J.-

Through instant petition, petitioner (Sirdar Mohy Ud Din Khan Khosa) has assailed orders dated 21.03.2024 and 27.03.2024, passed by the Returning Officer, and learned Election Tribunal, respectively, whereby his nomination papers for the constituency PP-290, D.G. Khan-V were rejected concurrently.

2. Learned counsel for petitioner submits that admittedly petitioner is not a default in payment of income tax as he has already paid all the taxes in view of NOC issued by the FBR and the error / defect while making certain entries in the columns of the affidavit, which found force with both the foras below to reject the nomination papers, is not substantial in nature, therefore, in view of proviso (ii) to sub-section (9) of section 62 of the Elections Act, 2017, the same could be

remedied. He contends that petitioner furnished tax returns showing correct account of paid income tax and there was no discrepancy as to paid amount of tax, therefore, some mistake / error in filling relevant column of the affidavit, mentioning *taxable incomes* in the column of *total income tax paid*, cannot be termed as false statement / untrue declaration regarding payment of income tax. He argues that even no opportunity was provided to petitioner to explain the discrepancy, hence, the impugned orders are unsustainable in the eye of law.

3. Conversely, learned counsel for Election Commission of Pakistan, duly assisted by learned Assistant Attorney General, defends the impugned orders by submitting that it was a case of false / incorrect declaration, thus, the nomination papers of petitioner was rightly rejected within the contemplation of section 62(9)(c) of the Elections Act, 2017.

Though, respondents No.3 & 7 did not raise any objections before the Returning Officer against nomination papers of petitioner, however they are duly represented before us and their learned counsel have supported the stance of learned counsel for Election Commission of Pakistan. The remaining private respondents are not in attendance despite issuance of notice, hence they are proceeded against ex parte.

4. Arguments heard. Available record perused.

5. Nomination papers of petitioner were rejected by the Returning Officer allegedly on account of furnishing a false declaration / statement with regard to payment of income tax of 03 years i.e. 2021, 2022 & 2023, and this treatment was also upheld by learned Election Tribunal. We have been invited to go through the contents of the Affidavit furnished by petitioner, relevant part whereof is as under:-

Total Income	Source of Income	Tax Year	Total Income Tax Paid
3184000	AGRI/SALARY	2021	2784000/-
2840000	AGRI/SALARY	2022	2440000/-
1619980	AGRI/SALARY	2023	1219980/-

6. The question before us is whether aforesaid error in the column *total income tax paid* is substantial in nature or could have been remedied in view of proviso (ii) to sub-section (9) of section 62 of the Elections Act, 2017. Before dilating upon the question, the aforesaid proviso is reproduced hereunder for ease of reference:-

“Provided that—

- (i)
- (ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.”

7. The income tax returns, attached with the nomination papers, reflect that for the year 2021 taxable income was Rs.2,784,000/- and chargeable tax was Rs.244,700/-, for the year 2022 taxable income was Rs.2,440,000/- and chargeable tax was Rs.186,000/- and for the year 2023, taxable income was Rs.1,219,980/- and tax chargeable was Rs.80,148/-. It is evidently clear that petitioner mistakenly mentioned the taxable income in the column of *total income tax paid* of the affidavit. Record reflects that in response to letter issued by the Returning Officer, Additional Commissioner Inland Revenue, Lahore, vide letter dated 21.03.2024, furnished details of chargeable tax as Rs.244,700/- for the year 2021, Rs.186,000/- for the year 2022 and Rs.80,148/- for the year 2023, which are the same figures reflecting in the tax returns furnished by petitioner. It is evident from the impugned order of the Returning Officer that petitioner had deposited the afore-noted due tax. Petitioner has also tendered NOC dated 15.03.2024, which reflects that no tax demand was outstanding against petitioner on account of income tax till said date. Thus, it is clear that no liability was existing against petitioner and he was not defaulter in the payment of due tax. In these circumstances, wrong entries in the columns of *total*

income and *income tax paid* of petitioner's affidavit are mere bona fide mistakes / clerical errors in preparing the affidavit, which are not so grave to invite rejection of his nomination papers. The said entries could have been fatal if the omission would have been with the purpose to avoid payment of income tax or intended to conceal some wrongdoing. Needless to observe that the Returning Officer has been given the power under proviso (ii) to sub-section (9) of section 62 of the Elections Act, 2017 to correct such defects in the nomination papers which are not of substantial nature, but no such exercise was undertaken in the instant case. In these circumstances, the impugned orders are not legally sustainable. Reference can be made to Malik Shakeel Awan v. Sheikh Rasheed Ahmed and 21 others (PLD 2018 Supreme Court 643), Khawaja Muhammad Asif v. Muhammad Usman Dar and others (2018 SCMR 2128), Nida Khuhro v. Moazzam Ali Khan and others (2019 SCMR 1684) and Shamona Badshah Qaisarani v. Election Tribunal, Multan and others (2021 SCMR 988).

8. Before parting with this judgment, we observe that right to contest election is a fundamental right guaranteed by Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and the provisions in the Elections Act, 2017 that curtail or in any manner affect this right are to be construed strictly and applied restrictively, especially when the defect is not of substantial nature and can be remedied. Steering thought can be gathered from latest decisions of the Supreme Court of Pakistan vide order dated 29.01.2024, passed in Civil Petition No.150 & 152 of 2024 titled Tahir Sadiq v. Faisal Ali, etc. and order dated 26.01.2024, passed in Civil Petition No.181 of 2024 titled Pervez Elahi v. Election Commission of Pakistan, etc. Some of the observations in the case of Tariq Sadiq supra are reproduced hereunder:-

“3. It is in this context of both the right of the candidates to contest the election and the right of the voters to vote for the candidate of their choice that the qualification and

disqualification of a candidate become material. The aim of prescribing qualifications and disqualifications for candidacies to contest elections is to maintain the integrity and effectiveness of the political process. They are designed to ensure that individuals holding public office meet certain standards. In a well-functioning democracy, the criteria for qualifications and disqualifications are clearly defined, publicly known and uniformly applied. Qualifications and disqualifications of a candidate for the electoral process must therefore be clearly spelled out in the Constitution or the law. Otherwise, electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership. With this approach rooted in the high constitutional rights and values, the courts are to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections.”

9. In view of the above, instant petition is allowed and impugned orders are set aside being illegal and without lawful authority. In consequence, nomination papers of petitioner stands accepted, he is allowed to contest the election and participate in all the subsequent steps / stages of the announced election schedule.

(Faisal Zaman Khan) (Muhammad Sajid Mehmood Sethi)
Judge Judge

APPROVED FOR REPORTING

Judge Judge

Sultan