

Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT
Election Appeal No.24497 of 2023

Sheikh Muhammad Akram etc. **Versus** Returning Officer PP-126 Jhang-III etc.

JUDGMENT

Date of hearing	14.04.2023
Appellants by	M/s Khalid Ishaq, Adeel Shahid Karim, Usman Nassir, Rahil Riaz, Ahmad Saeed, Abid Hussain Sial, Faizan Ahmed and Wajahat Ali, Advocates for the appellant in this appeal as well as in the connected Election Appeal No.24499 of 2023. Tariq Aslam Sheikh, appellant in person in connected Election Appeal No.24500 of 2023.
Respondent No.2 by:	M/s Mian Abdul Rauf, Tariq Mahmood, Nadeem Irshad and M. Asad Abbas Haider, Advocate. Mr. Waqar Khalique, Law Officer and Mr. Hammad Akhtar, Officer (Legal) on behalf of the State Bank of Pakistan. Mr. Imran Arif Ranjha, Advocate/Legal Advisor for the ECP and Hafiz Adeel Ashraf, Advocate/Legal Assistant for ECP.

ABID AZIZ SHEIKH, J. This judgment will also decide Election Appeals Nos. 24499 of 2023 and 24500 of 2023 as all these appeals are against the similar impugned orders passed by the Returning Officer accepting the nomination papers of Muhammad Yaqoob Sheikh respondent No.2 (**hereinafter referred to as respondent**) regarding PP-126, Jhang-III.

2. Relevant facts are that the respondent filed nomination papers to contest Punjab Provincial Assembly election from PP-126, Jhang-III. The appellants in all these appeals filed objections on the

nomination papers, however, through separate orders of even date i.e. 22.03.2023, the objections were dismissed and nomination papers of the respondent were accepted. The appellants, being aggrieved, have filed these three separate Election appeals under Section 63 of the Elections Act, 2017 (**Act**).

3. Learned counsel for the appellants in Election Appeal Nos.24497 of 2023 and 24499 of 2023 submits that as per the State Bank of Pakistan's report dated 16.03.2023, there is not only huge outstanding liability but certain amounts were also written off by a company namely M/s Husnain Cotex Limited (**HCL**) from various financial institutions. He submits that the respondent being the majority shareholder of HCL was not only required to disclose the said liability and but also disqualified for failure to pay the said liability and written off loan. He further submits that the loan amount was obtained and written off by another company namely M/s Ibrahim (Pvt.) Limited (**IPL**) and the respondent being majority shareholder of the said company in the year 2013, will be liable for the default, hence disqualified under Article 62(1)(n) of the Constitution of Islamic Republic of Pakistan, 1973 (**Constitution**). He submits that the wife of the respondent (namely Mrs. Kousar Yaqoob) owned 10,000 shares of IPL but said shares are not disclosed in the statement of assets and liability in Form-B as required under section 60(2)(d) of the Act and therefore the respondent is disqualified under Section 60(9)(c) of the Act. He placed reliance on "Tariq Mehmood Murtaza Versus Returning Officer PP-2, Rawalpindi" (2014 CLC 94) and "Muzafar

Abbas Versus Maulana Muhammad Ahmad Ludhianvi and 31 others”

(PLD 2017 Lahore 394).

4. The appellant in Election Appeal No.24500 of 2023 appeared in person and submits that as per the judgment of the Election Tribunal dated 14.01.2016, the second wife of the respondent (Mst. Rashida Yaqoob) was de-seated from being member of Provincial Assembly and she had to return the pay and privileges received by her as member of Provincial Assembly. Submits that the said liability of spouse has neither been disclosed in the nomination papers nor the same has been cleared by the respondent, hence he is disqualified under Article 63(1)(o) of the Constitution. He further reiterated the grounds urged in other connected appeals already recorded above.

5. Learned counsel for the respondent, on the other hand, submits that the respondent is only 14% shareholder of HCL whereas he has no shareholding at all in IPL, hence neither liable to disclose nor pay off the liabilities of these companies. Adds that in any case liability on behalf of the said companies has already been settled. He further submits that as there is no determination and demand for the return of pay and privileges received by his wife (Rashida Yaqoob) from the concerned authorities therefore the same does not amount to “Government dues”. He submits that no doubt the wife of the respondent (Mst. Kousar Yaqoob) owned 10,000 shares, out of total five million shares of IPL but same inadvertently could not be mentioned in the statement of assets but this being an unintentional

bonafide error and also being not material and substantial in nature, can be condoned/rectified and may not be a sole ground to deprive the respondent from his fundamental right to contest the election.

6. Arguments heard and record perused. Regarding the outstanding liability against HCL and IPL, it is admitted position on record that the respondent is only 14.09% shareholder of HCL whereas he has no shareholding in IPL, therefore, the afore-said companies being independent legal entity, their liability cannot be attributable to the respondent for purpose of disqualification under Article 62(1)(n) of the Constitution. The respondent was also not required to disclose the said companies in Clause-E of the affidavit, as said companies are admittedly not mainly owned by the respondent. The record also shows that august Supreme Court of Pakistan in earlier round of litigation already turned down the aforesaid objection on the basis of default of HCL and IPL and accepted the nomination papers of the respondent vide judgment dated 19.01.2021 (in Civil Appeal No.3673 of 2018), therefore this plea cannot be agitated again.

7. The next objection of the appellant is that 10,000 shares of IPL are owned by wife of respondent (Mst. Kausar Yaqoob) but same have not been disclosed in statement, hence his nomination papers are liable to be rejected. To adjudicate this ground, it is necessary to examine the relevant provisions of the Act i.e. section 60(2)(d), section 62(9)(c) and clause (ii) of proviso to section 62(9) of the Act, which are reproduced hereunder:-

60. Nomination for election.—

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

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

62. Scrutiny.—

(9) Subject to this section, the Returning Officer may, on either of his own motion or upon an objection, conduct a summary enquiry and may reject a nomination paper if he is satisfied that—

(c) any provision of section 60 or section 61 has not been complied with or the candidate has submitted a declaration or statement which is false or incorrect in any material particular; or

Clause (ii) of proviso to section 62(9)

Provided that

(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.

(emphasis supplied)

8. Plain reading of aforesaid provisions show that under section 60(2)(d) of the Act, the candidate is required to furnish statement of assets and liabilities of candidate, his spouse and dependent children. Under section 62(9)(c) of the Act, nomination papers may be rejected, if statement is false or incorrect in any material particular. However under clause (ii) of proviso to section 62(9) of the Act, nomination papers shall not be rejected on the ground of any defect, which is not of substantial nature. Indeed under

section 62(9)(c) of the Act, the Returning Officer may reject the nomination papers if he is satisfied that statement is false or incorrect in any material particular. However, omission in the statement of assets and liabilities of candidate himself or his dependent children, cannot be equated or treated at par with the omission of assets and liabilities of his spouse/wife. There is no law under which the wife is obliged to disclose all her assets and liabilities to husband and similarly there is no enactment under which husband can compel/force the wife to inform him about all her assets and liabilities. The spouse (in this case wife) is an independent person with all fundamental rights granted under the Constitution, including right of privacy and she may not want to disclose all her assets and liabilities to husband, specifically those not acquired through him or not directly related to her husband. Even if the assets were originally acquired by wife through husband, she is not obliged under law to inform him before further transferring/alienating of those assets. Therefore, any omission of assets/liabilities in the statement regarding assets/liabilities of spouse/wife may not be alike or of same gravity as of omission in respect of assets and liabilities of the candidate himself or the one acquired by him for his dependent children. In case of incorrect and false statement of candidate's own or his dependent children's assets/liabilities the same may be fatal but in case of statement regarding assets/liabilities of wife/spouse, the omission may not be fatal unless same is not bonafide and some undue benefit/purpose was achieved or likely to be achieved by candidate for

making such incorrect and false statement. The words “may” “material particular” in section 62(9)(c) of the Act and words “substantial nature” in clause (ii) of proviso to section 62(9) of the Act also support the above explicit intention of the legislation.

9. The present case when examined in above context, it is noted that the 10,000 shares of IPL were owned by wife of the respondent (Mrs. Kausar Yaqoob) as per Form “A” submitted with Security and Exchange Commission of Pakistan (SECP) in year 2013. The respondent was also shareholder of IPL but he sold/transferred his shares in October 2013 and since then the respondent is neither shareholder of said company nor he has any access to the documents/shareholding of the IPL. He is also not legally supposed to know if those 10,000 shares owned by his wife/spouse in year 2013 are still in her name or alienated by her. The total shareholding of IPL is 5,00,000 and wife of respondent was owning only 10,000 (2%) shareholding, which is not even a significant shareholding what to say of majority shareholding. It is not shown that what benefit even remote is likely to be obtained by the respondent by withholding said information in the statement especially when the shareholding of his wife has been disclosed to the SECP regularly in Form “A”, to which however the respondent has no legal access, being not the shareholder of company/IPL.

10. The Hon’ble Supreme Court in “Malik Shakeel Awan Versus Sheikh Rasheed Ahmed and 21 others” (PLD 2018 Supreme Court 643) allowed the correction in the land holding of the candidate on the

ground that nondisclosure or mis-declaration will not give any advantage to the candidate, hence does not amount to mis-declaration.

The August Supreme Court of Pakistan in “Khawaja Muhammad Asif Versus Muhammad Usman Dar and others” (2018 SCMR 2128)

while interpreting Section 13(3)(d) of the Representation of the People Act, 1976 (ROPA) (since repealed), which was an identical provision as of Section 60(2)(d) of the Act, held that mere omission to list an asset cannot be labeled as done dishonestly unless some wrongdoing is associated with its acquisition or retention, which is duly established in judicial proceedings. The same view was also expressed by the Hon’ble Supreme Court of Pakistan in “Shamona Badshah Qaisarani Versus Election Tribunal, Multan and others” (2021 SCMR 988). The case law relied upon by learned counsel for the appellants is distinguishable and not applicable to facts and circumstances of this case.

11. In view of the above discussion, the omission on part of the respondent to mention 10,000 shares of his wife in IPL is neither of material particular or of substantial nature nor amounts to incorrect or false statement for the purpose of Section 62(9)(c) of the Act. The same being a curable omission cannot be sole ground to reject the nomination papers of the respondent.

12. The argument of the appellant is that pay and privileges received by wife of the respondent as member of Provincial Assembly has not been paid back as directed by learned Election Tribunal, hence amount to default of “Government dues” under Article 62(1)(o) of the

Constitution. In this regard, suffice it to note that though the learned Election Tribunal passed the order dated 14.01.2016 for return of pay and privileges by wife of the respondent, however, admittedly till date neither any determination has been made by the concerned authorities regarding the exact amount of outstanding dues nor any demand notice has been issued to the wife of the respondent for said amount. The Hon'ble Supreme Court of Pakistan in "Khawaja Muhammad Asif Versus Muhammad Usman Dar and others" (2018 SCMR 2128) held that default for purpose of disqualification of candidate can only be establish, if it is shown that a demand notice was issued by the authority who is competent to recover the "Government dues" and yet the same remained unpaid. It is also held that unless the said demand is raised, the amount does not constitute the "Government dues" to disqualify the candidate. It is also relevant to note that the Hon'ble Supreme Court in "Dr. Ahmed Ali Shah Versus Syed Mehmood Akhtar Naqvi and others" (2018 SCMR 1276) even otherwise held that the order for return of salaries and pre-requisites is very harsh.

13. In view of above discussion, the impugned orders are sustained and all three appeals being meritless are **dismissed**.

(Abid Aziz Sheikh)
Judge

Approved for reporting

JUDGE