

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ  
MR. JUSTICE SH. AZMAT SAEED  
MR. JUSTICE FAISAL ARAB

**CIVIL APPEAL NO. 1628 OF 2014**

(On appeal against the judgment dated 19.11.2014 passed by Election Tribunal, Bahawalpur & D.G. Khan Divisions in Election Petition No. 13/2013)

Ms. Shamuna Badshah Qaisarani

... Appellant

**VERSUS**

Khuwaja Muhammad Dawood and others

... Respondents

For the Appellant: Mr. Khadim Nadeem Malik, ASC  
Mr. Arshad Ali Ch, AOR

For the Respondent (1): Sardar Muhammad Aslam, ASC  
Mr. M.S. Khattak, AOR

Date of Hearing: 09.05.2016

**JUDGMENT**

**FAISAL ARAB, J.-** In the bye-election that was held for the Punjab Assembly constituency PP-240 D.G. Khan-I, the appellant was declared returned candidate. Her election was challenged by losing candidate i.e. respondent No. 1 through an election petition filed in the Election Tribunal, Bahawalpur and D.G. Khan Divisions under Section 52 of the Representation of the People Act, 1976. Corrupt and illegal practices were alleged. During pendency of the election petition, the respondent No. 1 moved an application under Section 76A of the Representation of the People Act, 1976. This provision of law entrusts the Election Tribunal with additional power to declare an election of the

returned candidate void if any material from any source or information is laid before it that the returned candidate had *inter alia* submitted a false or incorrect statement of assets and liabilities of his own or his spouse or his dependents. Before the Tribunal though the allegations of corrupt practices could not be established however while hearing the application filed under Section 76A of the Representation of the People Act, 1976 it transpired that the respondent No. 1 in her nomination form failed to disclose properties such as (i) land measuring 448 kanals 4 marlas situated in Moza Bairoot Mandhawani, Tribal District Khazi Khan (owned by husband of the appellant) and (ii) land measuring 263 kanals 14 marlas situated in Moza Bait Wasava Khan Wala Tehsil and District Layyah and (iii) land measuring 13 kanals 16 marlas situated in Bait Wasava Kalroo Tehsil and District Layyah, and (iv) land measuring 77 acres situated in Mouza Khanwala, Wasavewala, Layyah (owned by the appellant) were not disclosed in the nomination papers. Consequently, the election of the appellant was declared void and fresh elections were ordered to be held in the constituency. Against such decision, the present appeal has been filed.

2. Learned counsel for the appellant contended that Section 76A of Representation of the People Act, 1976 is contrary to the provisions of Article 225 of the Constitution. He submitted that according to Article 225 of the Constitution, no election to a House or Provincial Assembly can be called in question except by election petition and in the election petition the respondent No. 1

failed in establishing plea of corrupt and illegal election practices. He submitted that in the circumstances the Election Tribunal ought not to have entertained the application filed under Section 76A of Representation of the People Act, 1976. In support of his contention, he relied upon the case of Muhammad Ahmad Chatta Vs. Iftikhar Ahmed Cheema (2016 SCMR 763).

3. In rebuttal, learned counsel for the respondent No. 1 contended that in the application filed by the respondent No. 1 under Section 76A of the Representation of the People Act, 1976, he has clearly mentioned certain properties owned by the appellant and her husband, which were admittedly concealed by the appellant at the time of filing her nomination papers. He submitted that even in the nomination papers that were filed in the General Elections 2013, the appellant had disclosed one of her properties measuring 77 acres in Mouza Khanwala, Wasavewala, Layyah but at the time of contesting bye-election the same and some other properties were not disclosed.

4. The fact that certain properties were not disclosed in the nomination papers was not denied. The only defence that was taken was that as these properties have already been transferred in the names of appellant's brothers, therefore, the same were not disclosed in nomination form. It is an admitted position that only in an affidavit it has been disclosed that the properties have been transferred to her brothers. At the time of filing of the nomination papers these properties were admittedly in the name of the

appellant and her spouse in the revenue record. With regard to the legal objection that Section 76A of Representation of the People Act, 1976 is contrary to the provisions of Article 225 of the Constitution, the same is misconceived. Article 225 of the Constitution clearly provides that no election to a House or Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Parliament. The Representation of the People Act, 1976 is an Act of the Parliament, which has provided the manner in which election is to be challenged before the Election Tribunal. The scope of challenge, which covers the acts of corrupt and illegal practices committed by or on behalf of the returned candidates in the conduct of the elections, is mentioned in Section 68 of Representation of the People Act, 1976 whereas Section 76A grants suo moto powers to the Election Tribunal to declare election of a returned candidate void on certain grounds which include non-disclosure or incorrect disclosure of assets of the candidate or his spouse or his dependents. Under Section 76A such disclosure can come from any source before the Election Tribunal, which in the present case came from respondent No. 1. The procedure adopted by the respondent No.1 and entertained by the Election Tribunal in an election petition being very much within the confines of Article 225 of the Constitution, it cannot be said to be unconstitutional. Article 225 clearly provides that the forum to challenge the election to a House or Provincial Assembly is the Election Tribunal and the manner in which such challenge is to be made is to be determined by the Parliament and for the

purposes of the present proceedings, the manner is provided in Section 76A of the Representation of the People Act, 1976.

5. The above are the detailed reasons of our short order of even date vide which we had dismissed this appeal.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the  
9<sup>th</sup> of May, 2016  
Not Approved For Reporting  
Khurram