

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE KHILJI ARIF HUSSAIN

CIVIL APPEAL NO. 1020 OF 2014

(On appeal from the judgment dt. 20.5.14 passed by the Election Tribunal, Lahore in Election Petition No.190/13).

Muhammad Ahmad Chatta

... Appellant

VERSUS

Iftikhar Ahmad Cheema and others

... Respondents

For the Appellant:

Syed Hamid Ali Shah, ASC

For the Respondent-1:

Mr. Mubeen uddin Qazi, ASC with
Mr. Tariq Aziz, AOR

For respondent-10:

In person.

For respondents,3-9,11-16:

Ex-parte.

Date of Hearing:

25.01.2016

JUDGMENT

Khilji Arif Hussain, J.- This appeal under Section 67(3) of the Representation of the People Act, 1976 (the Act), is directed against the judgment dated 20.5.2014 passed by the Election Tribunal, Lahore whereby the learned Tribunal dismissed the petition, filed by the appellant.

2. The brief facts necessary to decide the present appeal, are that appellant and respondent No.1 (the respondent) contested the general elections, 2013 for Member, National Assembly from Constituency No.NA-101 (Gujranwala-VII). The nomination papers filed by the appellant and respondent, after scrutiny, were declared as validly filed. The appellant secured 60,795 votes whereas respondent No.1 got 99,924 votes and as such respondent No.1 declared returned candidate. The appellant in his election petition, filed before the Election Tribunal, alleged that respondent has not disclosed various properties owned by him and his spouse in the

nomination papers, the detail of which is given in para 3 of memo of petition. The appellant further questioned that respondent has concealed and deliberately avoided to provide information in respect of four accounts as highlighted in para 5 of the memo of petition. The respondent filed written statement in which he made an effort to explain properties/accounts about non disclosure of the same. After framing the issues, recording of evidence and hearing the parties, the learned Election Tribunal dismissed the petition, as mentioned above. Hence, this appeal.

3. The learned ASC for the appellant contended that respondent owned various properties/accounts, the detail whereof is given in memo of petition and the same were not disclosed by him in his nomination papers. However, after arguing at some length, the learned counsel has not pressed this issue and confined his arguments only to the extent of the property owned by his spouse and non-disclosure of some accounts, maintained by him. He then drawn our attention to the statement of accounts and contended that respondent had deliberately not disclosed these accounts in his nomination papers and concealed the facts. He further contended that respondent's wife owned undivided share of land measuring 5-kanals, 2-sarsai in joint Khewat No.19, Khatooni No.67-70 located in Aabadi of Chak No.303/JB, District Toba Tek Singh, Agricultural land meansuring 34 kanals, 18 marlas, bearing Khewat No.44, Khatooni No.207, located in Revenue Estate, Chak No.303/JB, House No.282, St. No.103, FECHS, Sector E-11/1, Islamabad and House No.1, Jami/Roomi Road, Rawalpindi Cantt. In this view of the background, the learned counsel contended that notification of respondent No.1 as returned candidate, be declared as void. In support of his contention, he relied upon Iqbal Ahmad Langrial vs. Jamshed Alam (PLD 2013 SC 179), Workers' Party Pakistan vs. Federation of Pakistan (PLD 2013 SC 406), Najeeb-ud-Din Owasi vs. Amir Yar Waran (PLD 2013 SC 482), Khalid Pervaiz Gill vs. Saifullah Gill (2013 SCMR 1310) and Muhammad Rizwan Gill vs. Nadia Aziz (PLD 2010 SC 828).

4. On the other hand, the learned counsel for respondent No.1 argued that respondent has not disclosed the properties of his spouse as they have estranged relations since long and as regards the various accounts mentioned in memo of petition are concerned, it is contended that the same were dormant and as such the respondent was not under obligation to disclose the same. He contended that appellant has failed to establish any *mens rea* against the respondent for non-disclosure of above mentioned assets/accounts and as such the Tribunal has rightly dismissed his appeal. In support of his contention, he relied upon Hassan Nawaz vs. Election Commission of Pakistan (2013 CLC 1101) and Muhammad Sameen Khan vs. Returning Officer (2012 CLC 820).

5. We have heard the arguments of learned counsel for the parties and carefully gone through the available record. From the nomination paper, filed by the respondent, it appears that the respondent take all possible care as a prudent man while submitting the same which is evident from the facts that the respondent has changed many sentences not attributed to him. He categorically stated on oath that neither he nor his spouse or any other person dependent upon him owned any company. Likewise, he stated that he maintained one account bearing No.2670-5, in the National Bank of Pakistan, Main Branch, Wazirabad in which a sum of Rs.15,00,000/- is available. As regards his assets, he declared that he owned 151-kanals, 5 marlas of agricultural land and a house. The respondent in his written statement before the Tribunal admitted that apart from the account mentioned in his nomination papers, he was maintaining an account No.0010014643510016 with Allied Bank of Pakistan, Gunnianwala More Branch and at the time of submitting his nomination papers, the respondent withdraw an amount of Rs.15,00,000/- which was deposited in the account maintained by him in National Bank of Pakistan, Wazirabad Branch for election as per direction of the Election Commission of Pakistan and after withdrawal of amount of Rs.15,00,000/- from Allied Bank, petty negligible amount had left in the Allied Bank account because another cheque for

purchase of machinery was also simultaneously issued, therefore, the said account *bona fide*ly omitted in the nomination papers. The respondent further admitted that he maintain a joint account No.0010014643510022 with one Arshad Mehmood and the amount in the said account was not owned by him as it was the property of the village Mosque/Mosque Committee of village Kathor Kallan. The respondent was merely a signatory being a trustee for this charitable purpose and that after death of Arshad Mehmood, who was joint signatory of the account, about two years back, the said account is lying dormant.

6. From perusal of record, it transpires that at the time of submitting his nomination papers, an amount of Rs.25,28,893.90/-, as on 30.6.2012, was available in the respondent's account bearing No.0010014643510016 which fact was not disclosed by him in his nomination papers as required under the Act, 1976. The respondent's assertion that since on the date of submitting nomination papers, negligible amount was available, therefore, it was not considered appropriate by him to mention in the nomination papers, appears not correct. From scrutiny of record, it appears that even at the time of submitting nomination papers, a sum of Rs.2,93,342.90/- was shown on credit side in the said account. The contention of respondent that he issued another cheque for purchasing some articles on the said date when he issued cheque of Rs.15,00,000/-, is not supported by the documents on record as after withdrawal of Rs.15,00,000/- by cheque No.10965677, two cheques bearing No.10965678 and 10965679 were debited from the said account and after deducting the same amounts, there still remain much amount to be mentioned in his nomination papers. It further transpires that after the issuance of above mentioned two cheques, substantial amounts were credited in the said account which clearly established that, for all practicable purposes, the account was operative and respondent, for the reasons best known to him, deliberately not mentioned the same in his nomination papers.

7. As regards the properties owned by spouse of the respondent, the appellant categorically highlighted the property owned by spouse of the respondent

which fact is not disputed by the respondent in his written statement. The respondent stated that due to peculiar family circumstances and estranged relations with his spouse, he *bona fide* not mentioned the same in his nomination papers and he came to know about properties of his spouse first time after the filing of election petition by the appellant. He further stated that when the respondent requested his sons for the requisite information, he came to know that even his estranged spouse no longer owned the said residential properties and had already gifted the same to their sons through oral gift deed. To prove the alleged oral gift deed dated 25.12.2012, respondent produced RW-8, RW-9 and RW-10. All these witnesses attempted to prove the alleged oral gift deed but failed to prove delivery of possession of said properties which is one of the ingredients to make a valid gift. The witnesses accepted that they have not paid any tax in respect of the properties being owner of the same nor produced any rent receipts to prove that after gift, they received the rent of said properties. Even if, for the sake of arguments, it is accepted that the alleged oral gift deed was declared by the respondent on 25th December, 2012 whereas under section 12(2)(f) of the Act, the respondent had to declare all the assets owned by him or his spouse on 30th June, 2012. From the record of the register *haqdarar zamin* for the year 2008-2009 issued on 19.6.2013, it appears that the spouse of the respondent had been shown as owner of the said property. The respondent's spouse in his wealth statement for the year, 2012 declared House No.282, St. No.103, FECHS, Sector E-11/1, Islamabad and House No.1, Jami/Roomi Road, Rawalpindi Cantt., as her own property. At present, we are not touching the question whether the respondent manoeuvred the documents regarding declaration of assets submitted by him on 30.6.2012 by inserting that "*I have no knowledge about the assets of my wife because I have estranged relations with her*" because an application in this regard is already pending before the Election Tribunal. Section 12 of the Act, 1976 provided a detailed procedure for submitting nomination papers. Section 14 provided that at the time of scrutiny of the nomination papers, the Returning Officer can examine the

nomination papers and decide any objection raised by any such person to any nomination and after summary inquiry can reject the nomination papers of a candidate if he is satisfied that the candidate is not qualified to be elected as a member, the proposer or the seconder is not qualified to subscribe to the nomination paper, any provision of section 12 or section 13 has not been complied with or submits any false or incorrect declaration or statement in any material particular or the signature of the proposer or the seconder is not genuine. Section 76A of the Act, 1976 which was inserted on 31.7.2002, give additional power to the Election Tribunal which stipulates that *"the Election Tribunal can declare election of the returned candidate as void if he has submitted a false or incorrect declaration regarding payment of loans, taxes, government dues or utility charges or has submitted a false or incorrect statement of assets and liabilities of his own, his spouse or his dependents under section 12"*.

8. The learned counsel for the respondent relied upon the case of Malik Muhammad Sameen Khan vs. Returning Officer (2012 CLC 820) wherein the Lahore High Court held that appellant had provided approximate information of loan, and had not concealed factum of securing the loan from Zarai Taraqati Bank Ltd. In this matter appellant mentioned that he secured Rs.3,50,000/- as loan whereas correct figure was Rs.3,95,000/-. In the case of Hassan Nawaz vs. Election Commission of Pakistan (2013 CLC 1101), it was alleged that candidate maneuvered release of personal guarantee issued to secure finance from a Bank, the learned High Court held that no one has questioned the release of personal guarantee and even Banking Court deleted the name of the candidate from array of defendants and on the basis of these facts set aside the order of rejection of nomination papers. The issues of both the referred judgments are clearly distinguishable as to the matter in hand. In the case of Khaleefa Muhammad Munawar Butt vs. Hafiz Muhammad Jamil Nasir (2008 SCMR 504) the appellant has not declared the amount received by him as part payment of sale consideration of his property and this Court held that petitioner was bound to have shown said amount as his asset in the column of nomination paper.

Same view was earlier taken by this Court in the case of Muhammad Jamil vs. Munawar Khan (PLD 2006 SC 24).

9. From the perusal of record, it is established that while submitting the nomination papers, the respondent has not submitted statement regarding assets of his spouse as required under section 12 of the Act, 1976. The learned Election Tribunal, without taking into consideration this aspect of the case and while holding that respondent has not disclosed assets owned by his spouse and the account maintained by him, dismissed the election petition merely on the ground that *mens rea* is not proved and further the government exchequer has not suffered any loss on account of non-disclosure of these material facts. This finding of the Tribunal is against the spirit of law and as such calls for interference.

10. Before parting with the judgment we will like to expunge the observation made by the learned Presiding Officer that "*subject to a few and very few exceptions, the female legal heirs in Rural Punjab after having inherited agricultural land from their predecessor-in-interest, surrender their inherited rights in favour of the male legal heirs*". Even if, there is any such custom of surrendering inherited share by female legal heirs in agriculture land to male legal heirs, the same is not only against the injunction of Islam but also violative of law and Constitution of Pakistan and the Courts should not take notice of any such custom, if any.

11. In the foregoing discussions, this appeal is allowed. These are the reasons of our short order announced today in Court.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
25th of January, 2016

A.Rehman

APPROVED FOR REPORTING