

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali, CJ
Mr. Justice Sh. Azmat Saeed
Mr. Justice Umar Ata Bandial

CIVIL APPEAL NO. 532 OF 2015

(On appeal from the judgment/order dated 12.05.2015 passed by learned Election Tribunal, Multan in Election Petition No.44/2013-ECP & 5/2013-ETM)

Rai Hassan Nawaz Appellant.

Versus

Haji Muhammad Ayub & others Respondents.

For the appellant : Mr. Uzair Karamat Bhandari, ASC.
Mr. M.A. Sheikh, AOR.

For respondent No.1 : Sardar Muhammad Aslam, ASC
Mr. Mughees Aslam Malik, ASC.
Ch. Akhtar Ali, AOR.

Date of hearing : 25.05.2016.

JUDGMENT:

UMAR ATA BANDIAL, J. – This direct appeal is filed under Section 67(3) of the Representation of the People Act, 1976 (“**ROPA**”) against the judgment dated 12.05.2015 of the learned Election Tribunal, Multan whereby the election of the appellant as returned candidate from the National Assembly constituency NA-162 Sahiwal-III was declared void for his failure to possess the qualities specified in Article 62(1)(f) of the Constitution of Islamic

Republic of Pakistan and for the commission of corrupt practice falling within the mischief of Section 78(3)(d) of the ROPA.

2. As grounds to unseat the appellant the impugned judgment of the learned Election Tribunal gives several adverse findings of facts against the appellant. However, after hearing the learned counsel for the parties and upon a reading of the impugned judgment we notice that the appellant's false statement or incorrect declaration about his assets in his nomination papers constitute the essential basis of the learned Election Tribunal's findings. Section 78(3)(d) of the ROPA provides the underlying substantive law in this respect:

"78. Corrupt practice.-- A person is guilty of corrupt practice if he --

- (1) ...
- (2) ...
- (3) makes or publishes a false statement or submits false or incorrect declaration in any particular material --
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) in respect of his educational qualifications, assets and liabilities, or any liability with regard to payment of loans or adherence to party affiliation specified in sub-section (2) of section 12.
- 4) ..." **(emphasis supplied).**

Section 12(2) of the ROPA which is mentioned in the above said provision imposes a duty of disclosure on every contesting candidate in the following terms:

"12. Nomination for election.--

- (1) ...
- (2) Every nomination shall be made by a separate nomination paper in the prescribed form which shall be signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, accompany

- (a) a declaration that he has consented to the nomination and that he fulfils the qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 or any other law for the time being in force for being elected as a member;
- (b) [Omitted].
- (c) a declaration that no loan for an amount of two million rupees or more, obtained from any bank, financial institution, cooperative society or corporate body in his own name or in the name of his spouse or any of his dependents, or any business concern mainly owned by him or the aforesaid, stands unpaid for more than one year from the due date, or has got such loan written off;
- (d) a declaration that he, his spouse or any of his dependents or a business concern mainly owned by him or the aforesaid, is not in default in 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 papers;
- (e) a statement specifying his educational qualifications, occupation, National Identity Card number and National Tax Number, if any, alongwith attested copies thereof; and
- (f) a statement of his assets and liabilities and those of his spouse and dependents on the prescribed form as on the preceding thirtieth day of June;”

The attack upon the impugned judgment by the appellant before us centers on the validity of the finding about the concealment of assets by the appellant in his nomination papers and the jurisdictional competence of the learned Election Tribunal to entertain the election petition in the form that it was filed.

3. The relevant facts of the case in relation to the allegation of false or incorrect statement of assets by the appellant under Section 12(2) of the ROPA are that in his nomination papers (Exb.P-70) he describes his sole vocation to be agriculture. To comply with the duty cast by Section 12(2) of the ROPA, he attached a statement of his assets and liabilities along with his nomination

papers. This includes a detail of the agricultural land owned by him in different revenue estates of District Sahiwal and District Vehari. However, this detailed account fails to mention land measuring 39 Kanals 19 Marlas situate in Qasba Chichawatni, Tehsil Chichawatni, District Sahiwal. The extract from the *Jamabandi* of 1997-98 and 2009-10 for the said piece of land shows its ownership to vest in the appellant. These extracts are exhibited on the record of the learned Election Tribunal as Exb.P-26/1 and Exb.P-32 (available at pages 561 & 566 of the appeal file).

4. In his statement recorded as RW-2 by the learned Election Tribunal, the appellant has stated that the said land belongs to Rai Cotton Factory (Pvt.) Ltd., a company that is owned by his family. Nevertheless, the appellant admits that in the revenue record the ownership of 22 Kanals of the said land are recorded in his name and the rest in names of his family members. Also that there is no mutation of transfer of ownership of the said land in favour of Rai Cotton Factory (Pvt.) Ltd. He accepts that although the land is described as agricultural land, however, it has been put to commercial and residential use by construction of buildings thereon. These comprise, *inter alia*, 22 shops that have been rented out to tenants including seven banks. The buildings also include 25 quarters and one Petrol/CNG pump depicted in the *aks shajra* (Exb.P-31) of the said land (available at page 564 of the appeal file). The appellant admits that the rent agreements of all the properties

are made in his name and he receives a total annual rent of Rs.3.778 million from the properties located in the said Qasba Chichawatni land. He conceded that neither the said land nor any of its superstructures that accommodate banks, shops, quarters and Petrol/CNG pump are mentioned in the statement of assets made and filed by the appellant with his nomination papers (Exb.P-70). It is clear that the appellant has in his own statement as RW-2 before the learned Tribunal admitted and accepted that in his nomination papers he did not disclose the Qasba Chichawatni properties belonging to him. His justification is fanciful; being based on a misplaced presumption that the said land and properties somehow belong to the Rai Cotton Factory (Pvt.) Ltd. because the income derived from these properties is statedly declared in the income tax return of the said company.

5. The explanation given by the appellant was rightly rejected by the learned Election Tribunal as being futile and meaningless. When the recorded owner of the Qasba Chichawatni properties is the appellant then merely by the declaration of its rental and other income in the income tax return filed by a family company cannot make that company the owner of such properties. Accordingly, the said arrangement does not discharge the obligation of the appellant to make a full and truthful disclosure of the Qasba Chichawatni properties in the declaration of his assets made in his nomination papers. Consequently, to our minds, the finding of

concealment of assets given by the Election Tribunal against the appellant is fully warranted on the merits and record of the case.

6. Learned counsel for the appellant has tried to demolish that finding on the basis of law declared by different High Courts in **Illahi Bux Soomro vs. Aijaz Hussain Jakhrani** (2004 CLC 1060), **Umar Ayub Khan vs. Returning Officer, NA-19** (2003 MLD 222) and **Ghazanfar Ali vs. Noor Muhammad** (PLD 2011 Lahore 11). These judgments treat a plausible explanation given by a contesting candidate for non-disclosure of assets in his nomination papers to be an exonerating factor. It is held that an element of deliberation by such candidate should be the cause of incomplete or non-disclosure of his assets or liabilities. We agree that a trifling error induced by reliance placed upon information furnished by a government functionary would not fall within the pale of Section 78(3)(d) of the ROPA. Rather this Section constitutes a false statement or incorrect declaration made by a contesting candidate in respect of a 'material' particular, *inter alia*, about his assets and liabilities, to be a corrupt practice. Indeed an error or omission that is neither intentional nor pertains to a material particular in relation to the assets or liabilities of a contesting candidate would not constitute a corrupt practice. In the present case, the facts are, however, different. Several valuable urban properties yielding income running into millions of rupees have under a conscious tax scheme, affirmed and defended by the appellant before the learned Election Tribunal, been parked in the

income tax return of a family company. With rights of ownership thereof including title, control and profits being vested in and enjoyed by the appellant, the conditions of a plausible explanation here are altogether absent.

7. An honest and truthful declaration of assets and liabilities by a returned candidate in his nomination papers furnishes a benchmark for reviewing his integrity and probity in the discharge of his duties and functions as an elected legislator. His statement of assets and liabilities alongwith other financial disclosures contemplated by Section 12(2) of the ROPA provide the Election Commission of Pakistan and the general public with a picture of both his wealth and income. Such disclosures are crucial for demonstrating the legitimacy and *bona fides* of the accrual and the accumulation of economic resources by such a candidate. In other words, the said disclosures show the returns received from his economic activities and can indicate if these activities may be tainted with illegality, corruption or misuse of office and authority. This important aspect of the financial disclosures by a contesting candidate has been noticed by this Court in **Muhammad Yousaf Kaselia vs. Peer Ghulam** (PLD 2016 SC 689).

8. We, therefore, observe that any plausible explanation that exonerates, *inter alia*, mis-declaration of assets and liabilities by a contesting candidate should be confined to unintended and minor errors that do not confer any tangible benefit or advantage upon an

elected or contesting candidate. Where assets, liabilities, earnings and income of an elected or contesting candidate are camouflaged or concealed by resort to different legal devices including *benami*, trustee, nominee, etc. arrangements for constituting holders of title, it would be appropriate for a learned Election Tribunal to probe whether the beneficial interest in such assets or income resides in the elected or contesting candidate in order to ascertain if his false or incorrect statement of declaration under Section 12(2) of the ROPA is intentional or otherwise. This view finds support from the statutory aim and purpose of requiring all contesting candidates to file their statements and declarations as envisaged in Section 12(2) of the ROPA. Clearly there is a public interest object behind the statutory prescription for obtaining the said statements and declaration. It is to ensure integrity and probity of contesting candidates and therefore all legislators. The said purpose and object comes across clearly in **Muhammad Yousaf Kaselia vs. Peer Ghulam** (PLD 2016 SC 689):

“5. It is of utmost importance, that a contesting candidate must disclose the assets that he owns and the liabilities that he owes in his nomination form. The disclosure of liabilities is more important than disclosure of assets. It is important for the reason that while holding public office, in case the liability incurred prior to the election is liquidated, he could be called upon to explain the source from which the liability was liquidated; that is, whether the same was liquidated from his personal sources of income or that he had misused the authority of the public office in any manner that contributed to the liquidation of the liability.

Therefore, non-disclosure of any liability is to be met with penal action in the same manner as non-disclosure of any asset. ...”

It is for that reason that in a number of recent judgments, this Court has treated inaccurate disclosure of proprietary and financial resources to be fatal to the election of a returned candidate. In **Muhammad Ahmad Chatta vs. Iftikhar Ahmad Cheema** (2016 SCMR 763), the failure by a returned candidate to disclose a presumed inactive bank account and in **Shamuna Badshah Qaisarani vs. Muhammad Dawood** (2016 SCMR 1420) the omission by a lady returned candidate to disclose her agricultural land claimed to be transferred to her brothers without evidence of the mutation were held to annul their elections.

9. Considering the recorded evidence of the appellant’s conscious knowledge of his recorded ownership of the Qasba Chichawatni properties, his learned counsel has forcefully argued his jurisdictional challenge to the impugned judgment. It transpires that the person who verified the election petition and annexures thereto at the time of its filing in the year 2013 did not actually possess a Notary Public/ Oath Commissioner’s licence. Actually his licence had been terminated by the Lahore High Court in the year 2005 but he continued to deceive the public and allegedly also the respondent, election petitioner.

10. This fact was highlighted by the appellant on 12.08.2013 through an application under Section 63 of the ROPA calling for the dismissal of the respondent’s election petition for its failure to

comply with the mandatory requirement of Section 55(3) of the ROPA. This provision, *inter alia*, envisages that every election petition and annexure thereto shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. Section 63 of the ROPA mandates that a petition, which fails to, *inter alia*, comply with the requirements of Section 55 shall be dismissed. Since the attestation and verification done by a charlatan has no legal sanctity, therefore, the fatal defect in the election petition filed by the respondent is apparent on the face of the record.

11. Upon learning about the foregoing defect of non-verification of the contents of his election petition, the respondent on 27.03.2014 filed an application seeking permission for the re-verification of its contents. On 24.04.2014, the learned Election Tribunal dismissed the appellant's application under Section 63 of the ROPA and permitted the respondent to re-verify the relevant pages of and the documents attached to his election petition. Section 52(2) of the ROPA prescribes a limitation period of 45 days for filing an election petition duly compliant with the mandatory procedural requirements. However, both the filing date of application seeking re-verification of the election petition and the date of the enabling order passed thereon occurred long after the expiry of the prescribed limitation period. The learned Election Tribunal, however, held that fraud was committed by the fake Notary Public/Oath

Commissioner and, without citing any authority, concluded that in such a case limitation did not run.

12. Learned counsel for the appellant has strenuously argued that the amendments made in an election petition beyond the prescribed period of limitation are illegal and void. He has relied upon the cases of **Umar Aslam vs. Sumera Malik** (PLD 2007 SC 362), **Zia ur Rehman vs. Ahmed Hussain** (2014 SCMR 1015) and **Hina Manzoor vs. Ibrar Ahmed** (PLD 2015 SC 396).

13. We find that the law referred by the learned counsel for the appellant is clear and emphatic in making the bar of limitation in the given facts of the case to be inflexible. The exception of fraud vitiating the most solemn proceedings invoked by the learned Election Tribunal cannot arrest the limitation from running altogether. In such cases convincing evidence of fraud combined with evidence of timely reaction from the date of knowledge of such fraud must be established by the affected election petitioner. Here the application by the respondent for re-verification of the election petition was filed on 27.03.2014 more than seven months after receipt of notice of the defect on 12.08.2013. On the other hand, the prescribed limitation period under Section 52(2) of the ROPA for filing an election petition and therefore an amendment thereto is 45 days. From the record we do not find convincing proof either of commission of fraud against the respondent or of the sufficient cause inducing the delay by him. We consider the application by the

respondent for amendment through re-verification of the election petition to be time barred and liable to dismissal as held in the cases of **Umar Aslam** (PLD 2007 SC 362) and **Zia ur Rehman** (2014 SCMR 1015).

14. Be that as it may, notwithstanding the bar of limitation it must be observed that the matter does not end here. By the incorporation of Section 76A in the ROPA, the Legislature has invested an extra-ordinary jurisdiction in the Election Tribunal, *inter alia*, in matters pertaining to financial statements, declarations and disclosures made by returned candidates in their nomination forms.

The said provision is reproduced hereunder:

76A. Additional powers of Election Tribunal.-(1) If an Election Tribunal, on the basis of any material coming to its knowledge from any source or information laid before it, is of the opinion that a returned candidate was a defaulter of loan, taxes, government dues or utility charges, or 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, it may, on its own motion or otherwise, call upon such candidate to show cause why his election should not be declared void and, if it is satisfied that such candidate is a defaulter or has submitted false or incorrect declaration or statement, as aforesaid, it may, without prejudice to any order that may be, or has been made on an election petition, or any other punishment, penalty or liability which such candidate may have incurred under this Act or under any other law for the time being in force, make an order -

- (a) declaring the election of the returned candidate to be void; and
- (b) declaring any other contesting candidate to have been duly elected.

(2) If on examining the material or information referred to in sub-section (1), an Election Tribunal finds that there appear reasonable grounds for believing that a returned candidate is a defaulter or has submitted a false or incorrect declaration referred to in sub-section (1) it may, pending decision of the motion under subsection (1), direct that the result of the returned candidate shall not be published in the official Gazette.

(3) No order under sub-section (1) or sub-section (2) shall be made unless the returned candidate is provided an opportunity of being heard. (*emphasis supplied*)

It is clear from a plain reading of Section 76A of the ROPA that the power conferred on the Election Tribunal is exercisable on its own motion on the basis of material brought to its knowledge from any source. The Election Tribunal is therefore vested with a suo moto power to scrutinize, *inter alia*, false or incorrect statements made by a returned candidate in respect of his own assets and liabilities and those of his spouse or his dependents. These attributes dispense with any locus standi requirement for the informant, excludes any constraint of a prescribed limitation period, empowers the Election Tribunal to adopt a summary procedure initiated from a show cause notice. Section 76A *ibid* does not envisage opposing parties in its proceedings which are therefore not adversarial in nature. It is also clear that to obtain its satisfaction an Election Tribunal can summon requisite evidence on its own motion.

15. The object of Section 76A *ibid* is clearly meant to promote public interest by ensuring that elected public representatives have untainted financial credentials of integrity, probity and good faith. The Election Tribunal can summon evidence

on a matter in issue to the point of its satisfaction as to whether the allegation under scrutiny is justified or not. In this background the power vested by Section 76A *ibid* in an Election Tribunal is therefore inquisitorial rather than adversarial in nature. This principle finds recognition in **Watan Party vs. Federation of Pakistan** (PLD 2011 SC 997) as under:

“49. The proceedings, which are initiated as public interest litigation in civil or criminal matters cannot be treated as adversarial because of the definition of nature of the proceedings where without contest between the parties a final finding has to be recorded, as it has so been held in the case of **Tobacco Board v. Tahir Raza** (2007 SCMR 97). In this judgment, matter relating to maintainability of writ of quo warranto was considered and it was held that such writ is to inquire from a person the authority of law under which he purports to hold public office and it is primarily inquisitorial and not adversarial, for the reason that a relater need not be a person aggrieved; such exercise can be done suo motu, even if attention of High Court is not drawn by the parties concerned. The same principle has been followed by the Court in **Ch. Muneer Ahmad vs. Malik Nawab Sher** (PLD 2010 Lahore 625).”

The aforesaid rule has been reiterated in **Riaz-ul-Haq vs. Federation of Pakistan** (PLD 2013 SC 501) with reference to suo moto matters involving public interest.

16. Indeed, honesty, integrity, probity and *bona fide* dealings of a returned candidate are matters of public interest because these standards of rectitude and propriety are made the touchstones in the constitutional qualifications of legislators laid down in Articles 62 and 63 of the Constitution of Islamic Republic of

Pakistan. In the present case, the delay in obtaining verification of the election petition and its annexures by the respondent becomes immaterial because the allegation under scrutiny is covered by Section 76A of the ROPA. As already noted above, for triggering the remedy under Section 76A of the ROPA there is no requirement of an election petition to be filed let alone for its contents to be verified. The learned counsel for the appellant was invited to comment upon as to why proceedings undertaken by the learned Election Tribunal in relation to the allegation of false and incorrect statement by the appellant of his assets and liabilities should not be treated as having been conducted under Section 76A of the ROPA. He pointed out that the learned Election Tribunal had not done so. That is inconsequential; appellate proceedings are a continuation of the original proceedings. Sitting in appeal we can and do order so. Thereafter learned counsel has but merely emphasized that the disclosure of the property of the appellant in the income tax return of Rai Cotton Factory (Pvt) Ltd. constituted a plausible defence and in this behalf he referred the case law from the learned High Court that has already been mentioned above.

17. We consider that said plea taken by the learned counsel for the appellant acknowledges that the proceedings of the learned Election Tribunal against the appellant complied the requirements of due process; indeed the appellant was provided a right of written and oral defence, of cross-examining the election petitioner's

witnesses and of producing his own documentary as well as oral evidence on the matter in issue. These safeguards are the requisities of a regular trial and were adopted by the learned Election Tribunal. The show cause notice procedure envisaged by Section 76A *ibid* is more than sufficiently satisfied by the same. Therefore, the only conclusion that can be drawn from arguments rendered by the learned counsel for the appellant is that the property owned by the appellant from which he regularly derives substantial income is disclosed and declared with his knowledge in the income tax returns of a private limited company owned by the appellant and his family. This plea is totally irrelevant, facile and meritless to rebut the allegation under Section 78(3) ROPA regarding the false statement with respect to the concealment of ownership of urban commercial property by the appellant. Further more, it is apparent that the disguised ownership of the said properties is aimed at avoiding the personal scrutiny and accountability of the appellant under the Income Tax Ordinance, 2001. At the level of income derived by the appellant that process also requires the disclosure of wealth of an assessee and a reconciliation of his total means and total expenditures. The statement of assets and liabilities made by the appellant in his nomination papers is, therefore, intentional and not a *bona fide* or an innocuous omission made without design or purpose. It does not exonerate the appellant.

18. For the foregoing reasons, we do not find any defect in the findings given by the learned Election Tribunal in its judgment dated 12.05.2015 against the appellant and therefore, affirm the declarations made therein in relation to the person and the election of the appellant from the National Assembly constituency NA-162 Sahiwal-III. Consequently, this appeal is dismissed with no order as to costs.

19. Herein above are the reasons of our short order of even date which reads as under:

“We have heard arguments of the learned ASCs. For the reasons to be recorded separately, this appeal is dismissed.”

Chief Justice

Judge

Judge

Islamabad,
25.05.2016.
*Irshad Hussain /**

APPROVED FOR REPORTING.