

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. 321-L OF 2014

(On appeal against the judgment dated 30.9.2014
passed by the Election Tribunal, Multan in Election
Petition No. 179/2013 ECP, 13/2013 ETM)

Ch. Muhammad Yousaf Kaselia

... Appellant

VERSUS

Peer Ghulam Mohy-ud-Din Chishti, etc

... Respondents

For the Appellant: Mr. Muhammad Shahzad Shaukat, ASC
Barrister Jehanzeb Raheem, ASC

For the Respondent (1): Syed Najmul Hassan Kazmi, Sr. ASC
Mr. M.S. Khattak, AOR.

For Respondents (2-4): Ex-parte

Date of Hearing: 16.05.2016

JUDGMENT

FAISAL ARAB, J. - In the General Elections that were held on 11.5.2013, the appellant and the respondent No. 1 were the main contesting candidates from the Provincial Assembly constituency No. PP-232 Vehari-I. The appellant secured 50350 votes and was declared returned candidate, whereas the respondent No. 1 was runner-up who secured 43751 votes. The respondent No. 1 filed Election Petition before the Election Tribunal, Multan under Section 52 of the Representation of the People Act, 1976 alleging corrupt and illegal practices on the part of the appellant. It was alleged that the

appellant won the elections by influencing the election staff. Additionally, it was also alleged that in his nomination form, the appellant submitted false statements of election campaign expenses as well as of his assets and liabilities. The Election Tribunal vide impugned judgment accepted the election petition after holding that the appellant had filed false statements of election campaign expenses and did not disclose certain liabilities. The election of the appellant was declared void and fresh election in the constituency was ordered. Aggrieved by such decision the present appeal has been filed.

2. In his nomination form, the appellant disclosed that he owns a business, which is being run in the name of 'Younas Brothers Cotton Ginning and Oil Factory' and showed his investment therein to the extent of 6.3 million rupees. In the nomination form under the item where liabilities of bank loans were to be stated, no disclosure was made. It was only in the evidence it surfaced that the appellant had mortgaged his property to obtain loan for the running of his business. An officer of the bank from which loan was obtained appeared as the appellant's witness. He stated that upto 30.6.2013 financial facility to the tune of 70 million rupees was availed from the bank by Younas Brothers Cotton Ginning and Oil Factory. From this, it is clearly evident that a financial liability of 70 million rupees was incurred and secured by creating mortgage on immovable property owned by the appellant. Admittedly, the appellant was one of the signatories to the mortgage deed but he failed to disclose this liability incurred upon himself in his nomination form.

3. Learned counsel for the appellant argued that the loan that was obtained from the bank for the joint family business had not become due for payment on 30.06.2012, therefore, the provisions of Section 12 (f) of the Representation of the People Act, 1976, which require a candidate to file statement of his assets and liabilities and those of his spouse and dependents are to be read with the provisions of Section 12(c) of the said Act which requires submission of 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, remains unpaid for more than one year from the due date, or that he has got such loan written off. He submitted that in the present case, firstly, the loan of 70 million was not even due on the requisite date and secondly the appellant holds only 1/8th share in the said business so it was not mainly owned by the appellant, therefore penal consequence for such non-disclosure ought not to have followed.

4. As to the non-disclosure of election campaign expenses, learned counsel explained that certain expenses of election meetings are borne by friends and the people of the area who invite the candidate and it is not within the domain of the candidate to account for it. He submitted that the Election Tribunal non-seated the appellant after finding an expenditure of only Rs.50,000/- in excess of the permissible limited prescribed under the election laws which being a very harsh decision is liable to be set-aside on that score.

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. We are not impressed by the argument of the appellant's counsel that provisions of sub-section (f) of Section 12 of the Representation of the People Act, 1976 are to be read with sub-section (c) of section 12 of the said Act. Sub-section (c) of Section 12 speaks about disclosures, either of any write off or of default that remains unpaid for more than a year, of any financial obligation towards a bank, financial institution, co-operative society or corporate body whereas sub-section (f) speaks about disclosure of assets and liabilities. A financial liability cannot be equated with default committed with regard to any financial obligation. A financial liability is incurred the moment an obligation is created to discharge the same, which by efflux of time either has already become due or is to fall due sometime in future. Therefore, irrespective of any default relating to a financial obligation, liability gets created the moment a person takes upon himself the obligation to settle the same in future. In the present case, a financial obligation of 70 million rupees towards a bank did exist at the time of filing of the nomination form

which ought to have been disclosed by the appellant irrespective of the fact that the same had not become due but he failed to do so, thereby incurring the penal consequences of non-disclosure.

6. As to the excessive election campaign expenses, the same being only to the extent of Rs.30,500/- over and above the permissible limit, which being not a significant amount, the same ought not to have been made basis for declaring appellant's election as void.

7. We are, therefore, of the view that the Election Tribunal rightly non-seated the appellant on account of his failure to disclose in the nomination form his financial obligation of 70 million rupees which he secured by executing a mortgage deed.

8. This appeal was dismissed vide short order dated 16.05.2016 and these are the reasons for the same.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
16th of May, 2016
Approved For Reporting
Khurram

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12. Nomination for election.— (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;

48. Definitions.—For the purpose of this Act, “election expenses” means any expenditure incurred before, during and after an election or payment made, whether by way of gift, loan, advance, deposit or otherwise, for the arrangement, conduct or benefit of, or in connection with or incidental to the election of a candidate, including the expenditure on account of issuing circulars or publications, but does not include the deposit made under section 13.

49. Restriction on election expenses.—(1) No person other than the candidate shall incur any election expenses of such candidate:

Provided that where any person incurs any election expenses on behalf of such candidate, whether for stationery, postage, telegrams, advertisement, transport or for any other item whatsoever, such expenses shall be deemed to be the election expenses incurred by the candidate himself.

(2) The election expenses of a contesting candidate shall not exceed, in the case of an election to a seat in the National Assembly, one million and five hundred thousand rupees and, in the case of an election to a seat in a Provincial Assembly, one million rupees.