

JUDGMENT SHEET

**PESHAWAR HIGH COURT
ABBOTTABAD BENCH
[APPELLATE ELECTION TRIBUNAL]**

(Judicial Department)

Election Appeal No. 01-A/2025

Sajid Mehmood

Appellant(s)

V e r s u s.

Babar Nawaz Khan and others

Respondent(s)

For Appellant(s): *Abdur Rehman Qadir, Advocate & Barrister Hassan Qadir.*

For Respondent:
(Babar Nawaz Khan) *Barrister Sajeel Swati, M/s. Sohail Sheryar Afridi, Muhammad Ibrahim Khan and Dua Wajid Khan, Advocates*

For Respondent:
(Election Commission) *Ms. Saira Afridi Law Officer & Naveed-ur-Rehman, Returning Officer.*

Date of hearing: ***31.10.2025.***

JUDGMENT

SYED MUDASSER AMEER, J. Through this Election Appeal, filed under section 63 of *The Elections Act, 2017* read with Rule 54 of *The Election Rules, 2017*, the appellant has impugned the order dated: 22.10.2025 passed by the Returning Officer, NA-18, Haripur,

whereby nomination papers of respondent No. 1 were accepted and the objections of the appellant and one Muhammad Idrees were rejected.

2. On 8th October 2025, the Election Commission published the election schedule for the bye-election to be held in NA-18, Haripur. Among fourteen candidates, respondent No.1, Mr. Babar Nawaz Khan, also submitted his nomination papers within the prescribed period. Upon publication of the candidate list on 18th October 2025, objections were raised against his candidature by two individuals, Mr. Sajid Mehmood (appellant herein) and Mr. Muhammad Idrees. Respondent No.1/Babar Nawaz Khan had submitted two sets of nomination papers. Each objector targeted one set, though both objections were identical in substance. They alleged that respondent No.1 had intentionally furnished false information in the forms and documents accompanying his nomination papers. According to them, discrepancies existed between the details of his assets and liabilities declared in Form-B and those reflected in his Income Tax and Wealth Tax returns for the fiscal year 2024–25, submitted along with the nomination papers.

3. To illustrate these alleged inconsistencies, the objectors provided a comparative table. They sought rejection of his nomination papers under Section 60 of

the *Elections Act, 2017*, read with Article 62(1)(f) of the *Constitution of the Islamic Republic of Pakistan, 1973*. It was argued that respondent No.1, by making a false declaration under oath, had displayed lack of honesty and integrity, thereby failing to meet constitutional standards. The learned Returning Officer, vide order dated 22.10.2025, dismissed the objections and accepted respondent No.1's nomination papers. Aggrieved, the appellant filed the present election appeal.

4. Arguments heard and record perused.

5. Before examining the merits, it may be noted that proceedings under Section 63 of *The Elections Act, 2017* are of a summary nature, as provided in subsection (2) thereof:

“63. Appeal against scrutiny order.

(2) An Appellate Tribunal shall summarily decide an appeal filed under sub-section (1) within such time as may be notified by the Commission and any order passed on the appeal shall be final.”

(Underlining supplied)

It is also settled that electoral laws are to be interpreted in favor of enfranchisement, not dis-enfranchisement. More so, while dealing with the question of acceptance or rejection of nomination papers. This approach was

reaffirmed by the honourable Supreme Court in the case of *Tahir Sadiq-Vs-Faisal Ali and others (2024 SCMR 775)* as follows:

“...electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership. With this approach rooted in the high constitutional rights and values, the courts are to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections.”

6. On merits, the learned counsel for appellant reiterated the following two (2) objections raised before the Returning Officer:

firstly, that respondent No.1 failed to swear and submit the mandatory affidavit with his nomination papers, as required by the Supreme Court in *Habib Akram's case*; and

secondly, that discrepancies existed between the details of assets and liabilities declared in Form-B and those stated in Income Tax and Wealth Tax returns for 2024-25.

7. On the first objection, learned counsel for the appellant argued that respondent No.1 did not file the affidavit mandated by the Honourable Supreme Court in *Speaker National Assembly v. Habib Akram and others (PLD 2018 SC 678)*. He contended that non-filing of this affidavit, which had been approved by the

apex Court and declared mandatory, was fatal to the nomination papers. The Returning Officer, by accepting the papers without it, allegedly violated binding directions of the Supreme Court. Thus, it was contended that, quite apart from any other ground, the non-filing of the said affidavit must *ipso facto* result in rejection of nomination papers.

8. In response, learned counsel for respondent No.1 submitted that the affidavit requirement was only an interim measure meant for the 2018 elections and was not intended to apply to subsequent election cycles. He relied on *Umer Farooq v. Sajjad Ahmad Qamar and others (PLD 2024 SC 688)*, wherein the Supreme Court clarified:

“13. ...Therefore, it is our view that Habib Akram, being an interim measure, has ceased to be operative, since the 2018 election cycle has come to an end. It had, and has, no application for the General Elections of 2024 or for any elections held or to be held in the present election cycle. Inasmuch as candidates have been required to file affidavits in terms thereof or with reference thereto for the said General Elections or any elections thereafter, that cannot entail any legal consequences or penalties at any stage of the relevant electoral process, including any election dispute taken, or to be taken, to an Election Tribunal set up under Article 225.”

9. It is thus clear that the affidavit requirement applied only to the 2018 elections and has since been

dispensed with. The representative of the Election Commission of Pakistan also produced Circular No. _____ dated 29th August 2025, confirming:

“I am directed to say that in pursuance of the order dated: 30th January, 2024, passed by the Supreme Court of Pakistan in C.PLAs Nos. 210, 211, 212, 213 and 244, henceforth, the printing of affidavit (annexed with nomination papers) shall be dispensed with, for future elections to the Parliament and Provincial Assemblies. Moreover, the Returning Officers appointed for ongoing bye-elections shall also be directed not to obtain affidavit from the candidates while receiving the nomination papers, which were being obtained from the contesting candidates for Parliament and Provincial Assemblies in pursuance of earlier order of Supreme Court dated: 6th June, 2018.”

(Underlining supplied)

Accordingly, this objection holds no merit and stands dismissed.

10. As to the second objection; four (4) alleged discrepancies were pointed out. Their factual aspects are examined one by one:

- i) The first related to differences in land value shown in Form-B and the FBR record. The amount of Rs.39 Crore mentioned in Form-B represented proceeds from a transaction with China Fertilizer, duly reflected in FBR statements

under “Advance.” The Rs.6 Crore and 25 Kanal were anticipated future receipts, not current assets, and therefore absent from the tax return.

- ii) The second objection concerned an advance payment of Rs.18 Crore to Pak China Fertilizer, allegedly omitted from Form-B. This claim was factually incorrect. Respondent No.1 filled Form-B in Urdu, stating that all assets were detailed in annexures; the FBR statements. As the Rs.18 Crore appeared therein, it was effectively disclosed. The advance had been paid in 2018 from proceeds of earlier asset sales, not from annual income.
- iii) The third objection referred to Rs.15 Lakh cash declared in Form-B versus a higher figure in FBR returns. The difference was explained: the FBR code included cash, bank balances, and bonds collectively; Rs.15 Lakh was the cash component.
- iv) The fourth objection related to a liability of Rs.39 Crore shown in the FBR record but not in Form-B. This omission was justified, as the liability was already reflected in the tax returns filed with the nomination papers. Moreover, the liabilities column in Form-B pertains only to loans from scheduled banks; none existed here.

11. It is evident that all objections concern reconciliation between Form-B and tax returns; both filed by respondent No.1 himself. There was, therefore, no concealment. The annexures submitted with nomination papers are an integral part thereof; a detail disclosed in an annexure cannot be treated as concealed merely because it was not repeated in the main form. The Sindh High Court in *Aijaz Hussain Jakhrani v. Muhammad Mian Soomro and others* (**2020 MLD 551**) observed:

“The objections raised by the learned counsel for the appellant are properly replied by the learned counsel for the respondent No.1. The annexures of nomination form contains every details of property of respondent No.1 and if any omission is found in nomination form, same cannot be considered as a concealment on the part of respondent No.1, when details have been disclosed through annexures. If any omission is there, same can be corrected at the time of scrutiny or even thereafter if required.”

12. Had respondent No.1 concealed an asset unearthed during scrutiny, the issue of honesty could arise. Here, there was none. Any lapse in Form-B appears inadvertent; an error of judgment, not deceit. The honourable Supreme Court in *Khawaja*

Muhammad Asif v. Muhammad Usman Dar and others

(**2018 SCMR 2128**) held:

“It is the credibility of the explanation that would be the determining factor as to whether non-disclosure of an asset carries with it the element of dishonesty or not. The test of honesty with regard to non-disclosure of assets and liabilities is to be applied in that context only and certainly not in a case where a clean asset has not been declared on account of bad judgment or inadvertent omission.”

13. The appellant also invoked Article 62(1)(f) of the Constitution, alleging lack of honesty. The law, however, is settled by the Supreme Court in *Hamza Rasheed Khan v. Election Tribunal* (**PLD 2024 SC 1028**):

“29. In making this addition, the legislature's intent is more than clear in that every person must be presumed sagacious, righteous, non-profligate, honest and ameen unless a court of law has made a declaration against him to the contrary. Holding that the special forums under the elections law or the constitutional courts can declare a person disqualified under Article 62(1)(f) in the same way as they were doing before the addition of that phrase would be a sheer negation of the legislature's intent. By adding that phrase, the legislature made it clear that Article 62(1)(f) is not self-executory and therefore cannot be applied by the special forums under the elections law or by the constitutional courts to disqualify a person from contesting the election for, or holding, the office of a

member of Parliament, unless a court of law has made a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Therefore, Article 62(1)(f) of the Constitution, in our considered opinion, is not a self-executory provision.”

(Underlining supplied)

There being no declaration by a court of law against respondent No.1, the presumption of honesty prevails. Neither the Returning Officer nor this Tribunal has the authority to declare otherwise.

14. In view of the above, the learned Returning Officer rightly accepted the nomination papers of respondent No.1 and dismissed the objections. The impugned order addresses all relevant facts and law correctly. Finding no illegality or infirmity therein, this appeal, being without merit, is dismissed.

Announced.

31.10.2025.

Tahir CS.

J U D G E