

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SH. AZMAT SAEED.
MR. JUSTICE IJAZ UL AHSAN.
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED.

Civil Appeal No.188 of 2019

Against judgment dated 15.01.2019 of the
High Court of Sindh, Bench at Sukkur, passed
in Election Petition No.S-01 of 2018.

Nida Khuhro.

Appellant(s)

Versus

Moazzam Ali Khan and others

Respondent(s)

For the Appellant(s):

Sardar M. Latif Khan Khosa, Sr. ASC.
Ch. Akhtar Ali, AOR.

For Respondent No.1:

Mr. Salah-ud-Din Ahmed, ASC.

Date of Hearing:

01.08.2019.

O R D E R

IJAZ UL AHSAN, J-. The Appellant calls into question a judgment dated 15.01.2019 of an Election Tribunal of the High Court of Sindh, Bench at Sukkur. Through the impugned judgment, an Election Petition bearing No.S-01 of 2018 filed by the Appellant was dismissed.

2. Briefly stated the facts necessary for disposal of the *lis* in hand are that the Appellant contested General Election, 2018 alongwith Respondent No.1 and others. Respondent No.1 was declared as the Returned Candidate. The Appellant sought a declaration from the Election Tribunal that the nomination papers of Respondent No.1 were invalid *inter alia* on the ground that he had filed a false declaration of assets. As such, it was prayed that the election of Respondent

No.1 was void and the Election Commission of Pakistan may be directed to hold fresh election in the constituency (PS-11, Larkana-II). Respondent No.1 contested the petition and filed a written statement denying all allegations levelled in the petition. The Election Tribunal framed as many as 7 issues and put the parties to trial. Such trial culminated in dismissal of the petition through the impugned judgment. Hence, this appeal.

3. The learned counsel for the Appellant submits that concealment of assets by Respondent No.1 was sufficient to warrant his disqualification and annulling his election notification as a member of the Provincial Assembly in view of the law laid down by this Court in the case of Speaker, National Assembly of Pakistan v. Habib Akram (PLD 2018 SC 678). He further maintains that besides nomination papers and false declaration, the sworn affidavit submitted by Respondent No.1 with his nomination papers provided additional grounds for his disqualification and also warranted contempt proceedings against him as per declaration of this Court in the aforementioned judgment. The learned ASC submits that Respondent No.1 is a seasoned politician and could not be granted the benefit of ignorance of the legal requirements of full and truthful disclosure of assets or *bona fide* mis-statement of his assets. He maintains that Respondent No.1 had not only mis-declared his own assets but also suppressed agricultural properties/assets of his dependent children (minor sons). He has emphasized the fact that the *mala fide* of

Respondent No.1 is conspicuous from a deliberate misstatement made by him in his nomination papers, declaration of assets and sworn affidavit clearly inferring that he was not an honest and sagacious person. The learned counsel further submits that on account of his acts and omissions, Respondent No.1 had rendered himself liable for the constitutional disqualification as envisaged in Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 (***“the Constitution”***) as well as provisions of the Election Act, 2017 (***“the Act”***) including Section 156 thereof. He maintains that wilful concealment by Respondent No.1 having been proved without any lawful justification for the same, there was no burden cast upon the Appellant to establish *mala fides* in the matter. He points out that the precedent cases relied upon by the Election Tribunal were entirely distinguishable and the Tribunal fell in error in dismissing the election petition. He further maintains that the ratio of cases reported as Muhammad Jamil v. Munawar Khan (PLD 2006 SC 24), Khaleefa Muhammad Munawar Butt v. Hafiz Muhammad Jamil Nasir (2008 SCMR 504), Muhammad Ahmad Chatta v. Iftikhar Ahmad Cheema (2016 SCMR 763), Muzafar Abbas v. Muhammad Ahmed Ludhianvi (PLD 2017 Lahore 394) and Imran Ahmed Khan Niazi v. Muhammad Nawaz Sharif (PLD 2017 SC 692) being squarely applicable to the case of Respondent No.1 should clearly have resulted in his disqualification and ouster from the Provincial Assembly. He finally submits that the judgment of the Election Tribunal suffers from patent errors of law and runs

contrary to the settled law declared by this Court from time to time in its various pronouncements noted above. It was therefore unsustainable.

4. On the other hand, learned counsel for Respondent No.1 has vigorously defended the impugned judgment. He submits that the original allegations of the Appellant were based upon misunderstanding of the property documents of Respondent No.1. He maintains that the only ground urged by the Appellant before the Election Tribunal was that Respondent No.1 just disclosed 61 acres of agricultural land in Deh Khedkar, District Larkana whereas he owns 140.24½ acres of land in the said Deh. In this regard, the learned counsel submits that Respondent No.1 in his nomination papers disclosed 61 acres of agricultural land in Deh Khedkar, District Larkana, 622 acres in Deh Raju Dero, District Khairpur and one Otaq/Bethak in Mohallah Waleed, Larkana. With great vehemence, the learned ASC submits that the explanation of Respondent No.1 for not mentioning the remaining portion out of 140.24½ acres of land admittedly recorded in his name in the relevant revenue records was that a part of the remaining land approximately 16 acres had been acquired by the Government of Sindh whereas the rest was (although nominally in his name or in the name of his minor children) actually is in the beneficial ownership, control and possession of his father. The learned counsel contends that Respondent No.1 had correctly declared the full extent of all immovable properties that are

actually in his direct ownership, control and possession. He has not committed any illegality by not declaring the land that was only nominally in his name but was actually and beneficially owned, controlled and possessed by his father. The learned counsel has drawn our attention to the relevant land revenue bills and receipts showing that the same were being issued and paid in respect of land in his possession, ownership and control. The remaining land was being cultivated by his father who was receiving revenue bills and paying the same in relation thereto. He maintains that there is no dispute regarding authenticity of the said documents. The learned ASC further submits that the land in question disclosed by him was ancestral property that devolved on Respondent No.1 through a family settlement and any omission to declare the same in the nomination papers could not be fatal for his case. The learned counsel argues that there could not have been any ill intent or motive behind the omission of Respondent No.1 to mention the said land in the nomination form. He maintains that Respondent No.1 had declared 683 acres of agricultural land in his nomination form. He would gain no conceivable incremental advantage or benefit from hiding a few acres of land specially when the same was admittedly not even purchased by him but devolved on him and his children through a family settlement. He also maintains that Respondent No.1 was contesting election for the Provincial Assembly for the first time and was not fully aware of the requirement to be fulfilled in declaration of his assets. The learned ASC has emphasized that the Appellant

seeks not the rejection of a nomination paper but the voiding of an election. Under Section 156 of the Election Act, 2017 (***“the Act”***), an election can only be declared void if the nomination of the Returned Candidate was invalid or procured or induced by any corrupt or illegal practice. He maintains that there is a higher test than that prescribed for rejection of a nomination paper and mere incorrectness in any of the particulars is not sufficient to void the election. The learned ASC maintains that in order to void an election it must be shown that mis-statement in the nomination form is of a kind to justify an inference of corrupt practice. It must be established that the candidate intentionally made a false statement/declaration or if a statement was made in the circumstances so as to rule out the likelihood of a *bona fide* error. He relies on Muhammad Hanif Abbasi v. Imran Khan Niazi (PLD 2018 SC 189), Shakeel Awan v. Rasheed Ahmed (PLD 2018 SC 643) and Muhammad Asif v. Muhammad Usman Dar (2018 SCMR 2128). He finally submits that the ratio of the judgments relied upon by the learned counsel for the Appellant in support of his contentions is not attracted to the facts and circumstances of the present case.

5. We have heard the learned counsel for the parties and examined the available record with their assistance. At the very outset, we have noticed that Respondent No.1 did not disclose his entire landholding in Deh Khedkar, District Larkana which admittedly consists of 140.24½ acres. Out of the said holding he only declared 61 acres but did not

disclose the rest which according to him had been transferred in his name by way of a family settlement agreement executed in 2014. He also admits that the holdings of his minor sons were also not disclosed in the relevant documents. Respondent No.1 attempted to explain away his failure to disclose the said assets by stating that after the demise of his paternal grandmother, the land that stood in her name was distributed amongst her legal heirs i.e. Munawar Ali Abbasi and others. At that point in time, a family settlement with regard to the entire land was entered into. In consequence, Respondent No.1 and his minor sons received substantial land. This was duly transferred in their respective names. It was further submitted that only that part of the land was disclosed in the nomination papers and other related documents which had been transferred and was in the possession of Respondent No.1. The rest was not disclosed because it was under the control and supervision of his father who was allegedly the real beneficiary of the said land. He was supervising and overseeing its cultivation and also paying land revenue on the same. This situation had allegedly existed since the private partition dated 17.10.2014. Admittedly, the family partition was duly implemented in all revenue records and the respective shares of all beneficiaries of the family partition were duly reflected in all requisite records as owners.

6. On the basis of facts and circumstances narrated hereinabove and in view of the admission on the part of

Respondent No.1 that there was failure on his part to disclose certain assets, the only question requiring determination by us is whether such disclosure was required under the law. If so whether the explanation offered by Respondent No.1 is legally acceptable so as to provide a defence against the rigours of disqualification under the Election Act, 2017 and more importantly Article 62(1)(f) of the Constitution.

7. Perusal of the record indicates that the affidavit filed by Respondent No.1 alongwith his nomination papers admittedly does not disclose all assets owned by him. Form "A" is the nomination paper whereas form "B" is the statement of assets and liabilities, which are available on the record. We also notice that the nomination papers are accompanied by a declaration which is required to be sworn under oath and was indeed sworn as such by Respondent No.1, pursuant to a judgment of this Court in the case reported as Speaker, National Assembly of Pakistan v. Habib Akram (PLD 2018 SC 678). The candidates were required by this Court to submit affidavits disclosing all assets. In paragraph 8 of the said judgment it was clarified that failure to file such affidavit before the Returning Officer would render the nomination papers incomplete and liable to rejection. In addition, if the affidavit or any part thereof was found false then it shall have consequences as contemplated by the Constitution and the law. The judgment also provided that since the affidavit was required to be filed in pursuance of the orders of this Court, if any false statement was made therein,

it would also entail such penalty as is of filing a false affidavit before this Court. Admittedly, Respondent No.1 filed such affidavit which was not true and was patently deficient insofar as it failed to accurately disclose all assets of Respondent No.1.

8. Section 137(4) of the Act provides that where a Member submits a statement of assets and liabilities which is found to be false in material particulars, he may, within 120 days from the date of submission of the statement be proceeded against for committing the offence of corrupt practice. While it is correct that the Returning Officer has been given the power to allow correction of mistakes, errors and omissions in the nomination papers within a specified time but in the instant case no attempt was made to correct such omission at any stage.

9. Section 156 of the Act provides the grounds for declaring election of a Returned Candidate as void. Grounds "a" and "c" stipulate that:

"(a) the nomination of the returned candidate was invalid or

(c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice".

10. In terms of Section 137(4) of the Act reproduced above, submission of a statement of assets and liabilities, which is found to be false in material particulars constitutes corrupt practice. More importantly, the declarations given by Respondent No.1 under solemn affirmation as part of his

nomination papers, and the affidavit submitted by him pursuant to the judgment of this Court in the case of Speaker, National Assembly *ibid* also exposes him to disqualification not only under the provisions of the Election Act but also under the provisions of Article 62(1)(f) of the Constitution. By reason of making a false statement under oath, Respondent No.1 ceases to be qualified to be elected or chosen as a Member of Majlis-e-Shoora (Parliament) because he cannot be termed as righteous and honest. The false statement having been made in the nomination papers, in the statement of assets and in the affidavit exposes Respondent No.1 to serious legal consequences under the law as well as the Constitution.

11. The learned counsel for Respondent No.1 has taken great pains to argue that the explanation for non-disclosure of some of his own assets and those of his minor children to the effect that the said land although in Respondent No.1's name was actually under the control and possession of his father who was the real beneficiary and was also paying the land revenue as evidenced by receipts of land revenue paid to the concerned authorities by his father should be accepted by this Court. He stressed that the explanation is reasonable and plausible.

12. We are unfortunately unable to agree with the contention of the learned counsel for Respondent No.1. It is clear and obvious that:

- (i) The land in question was transferred in favour of Respondent No.1 as far back as 2014 by way of a written family settlement which was duly implemented in all revenue records;
- (ii) It is not the case of Respondent No.1 that he did not know about such transfer or that such transfer was undertaken without his knowledge or consent;
- (iii) By reason of the family settlement and its implementation in the revenue records, the name of Respondent No.1 appeared and continues to appear in all records as the owner of the property;
- (iv) The proprietary rights, title and interest in such property clearly vest in him;
- (v) A part of such land was admittedly acquired by the Government of Sindh and there is no denial of the fact that compensation determined by the Land Acquisition Collector was received by Respondent No.1 as owner; and
- (vi) The fact that the father of Respondent No.1 may be administering his land as his agent or nominee and may also be receiving the benefits/income derived from the said land may reflect a mutual family arrangement. It does not detract from the fact that Respondent No.1 is the owner of the said land which constitutes his asset. All proprietary rights, title, ownership and interest in the said land vest in him. He has the power to sell, alienate and dispose of such properties without any legal or

procedural restriction, hitch or hindrance in his way.

13. The mere fact that land revenue may have been paid by the father of Respondent No.1 also does not improve his case. We have specifically asked the learned counsel for Respondent No.1 who would be liable to pay land revenue and other public dues against the said land in case there was default in payment of the same. He has hesitatingly admitted that the person liable to pay such defaulted amounts would be Respondent No.1. Even in terms of provisions of Section 74 of the West Pakistan Land Revenue Act, 1967 the land revenue and all other Government dues payable against a particular piece/tract of land are recoverable from a person whose name appears as owner of such land in the revenue records. This is irrespective of who may be cultivating or allegedly receiving its benefits as an agent or nominee of the real owner. It is also significant to note that Respondent No.1 neither produced his father as a witness before the Election Tribunal nor produced any other credible evidence to establish his half hearted plea of *Benami* ownership, other than revenue payment receipts which were found by us to be insufficient to establish his plea.

14. The learned counsel for Respondent No.1 has also emphasized the fact that a bonafide error or mistake of fact or law may be condoned and save a person from being hit by the rigours of Election Laws as well as the Constitution. In this regard, he has referred to Muhammad Asif v. Muhammad

Usman Dar (2018 SCMR 2128) and Shakeel Awan v. Rashid Ahmed (PLD 2018 SC 643).

15. As far as the case of Khawaja Muhammad Asif (*supra*) is concerned, in paragraph 9 of the said judgment it was held as follows:

"9. While considering a case of dishonesty in judicial proceedings what should not be lost sight of is that on account of inadvertence or honest omission on the part of a contesting candidate a legitimately acquired asset is not declared. This may happen as an honest person may perceive something to be right about which he may be wrong and such perception cannot necessarily render him dishonest though the omission would invariably result in rejection of his nomination paper had such a fact is pointed out to the Returning Officer at the time of scrutiny of nomination papers or in proceedings available under the election laws. There are many conceivable instances where an omission to declare an asset on the face of it cannot be regarded as dishonest concealment. For example, where an inherited property is not declared on account of mistake of fact or an asset acquired from a legitimate source of income is not listed in the nomination paper. Suchlike omissions at best could be categorized as bad judgment or negligence but certainly not dishonesty. As mentioned earlier even the proviso to section 14(3)(d) of RoPA envisaged that rejection of a nomination paper on account of failure to meet the requirements of section 12 of RoPA would not prevent a candidate of contest election on the basis of another validly filed nomination paper. Hence mere omission to list an asset cannot be labeled as dishonesty unless some wrongdoing is associated with its acquisition or retention which is duly established in judicial proceedings. In our view attributing dishonesty to every omission to disclose an asset and disqualify a member for life could never have been the intention of the parliament while incorporating Article 62(1)(f) in the Constitution. All non-disclosures of assets cannot be looked at with the same eye. In our view no set formula can be fixed with regard to every omission to list an asset in the nomination paper and make a declaration of dishonesty and impose the penalty of lifetime disqualification. In a judgment from the foreign jurisdiction in the case of Aguilar v. Office of Ombudsman decided on 26.02.2014 by the Supreme Court of Philippines (G.R. 197307) it was held that dishonesty is not simply bad judgment or negligence but is a question of intention. There has to exist an element of bad intention with regard to an undeclared asset before it is described as dishonest. Unless dishonesty is established in appropriate judicial proceedings, Article 62(1)(f) of the Constitution cannot be invoked to disqualify an elected member for life."

16. It is clear from perusal of the afore-noted paragraph that no set formula can be fixed with regard to any omission to list an asset in the nomination papers and make

a declaration of dishonesty and impose the penalty of lifetime disqualification. It has been held that unless dishonesty is established in appropriate judicial proceedings, Article 62(1)(f) of the Constitution cannot be invoked to disqualify an elected member for life. In the same vein, in the case of Malik Shakeel Awan (*ibid*), while summing up the law on this aspect of the matter, Sh. Azmat Saeed, J (in his majority opinion) held as follows:

“3. Even otherwise, the present lis pertains to the validity of a judgment of the Election Tribunal challenged through the instant appeal under Section 67(3) of the Representation of the People Act, 1976 (RoPA) while through the question raised a very wide net has been cast encompassing also the jurisdiction of this Court under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 as well as the impact of various provisions relating to qualifications and disqualifications of Members of the Parliament and the Provincial Assemblies. Several of the questions raised obviously do not arise at the lis at hand, while the other have been answered definitively by this Court in its various judgments.

4. In our legal system, law evolves brick by brick and from judgment to judgment. If the judgments pertaining to electoral disputes rendered by this Court are carefully read, objectively understood and the ratio thereof correctly identified, it would be clear and obvious that principles of law, in this behalf, appear to have been settled and consistently applied to the facts of each individual case. The difference in outcome, if any, is the result of difference in the facts of each case. Such principles of law do not require any further clarification on hypothetical considerations. The confusion, if any, is not in the judgments.

5. This Court, for that matter any court, seized of a lis is required to decide the same rather than to embark upon an academic exercise. We cannot shy away from adjudicating upon the lis that comes before the Court without attempting to ascertain and identify the principles of law as developed through the interpretative process of the previous judgments of this Court and apply the same to the facts of the case.”

17. Therefore, we have no hesitation in holding and reaffirming that this Court is indeed also a “Court of Law” which can issue a “declaration” within the purview of Article 62(1)(f) of the Constitution. Any other interpretation would be absurd and illogical. It would amount to holding that this

Court despite being the highest Court of the land is not a "Court of Law" within the meaning of Article 62(1)(f) of the Constitution. Surely the legislature when framing the Constitution (Eighteenth Amendment) Act, 2010 could not have intended to introduce such a blatant and glaring absurdity in as important a document as the Constitution of the country.

18. It was further held in the said case as follows:

"13. Where a misstatement or an inaccuracy or concealment is established, the candidate/member would always have the opportunity to offer an explanation. Such explanation may or may not be found acceptable. Such is the ratio of the judgment of this Court rendered in the case reported as Sheikh Muhammad Akram v. Abdul Ghafoor and 19 others (2016 SCMR 733). In the said case, an Election Petition filed before the Election Tribunal. In the proceedings, it stood established that a criminal case registered against the candidate was not mentioned in his nomination papers as required. Such candidate offered an explanation which was accepted by this Court by way of the aforesaid judgment which is incidentally authorized by my learned brother Qazi Faez Isa, J., and I too was a Member of the said Bench. The said view i.e. in case of concealment, discrepancy and misstatement in the nomination papers an explanation thereof may be given by the candidate/member, which may or may not be accepted by the court. And only, if such explanation is found tenable no penal consequences would follow. The question of "strict liability" does not arise with regard to misstatements in the nomination papers. Such view was also followed in the judgments of this Court reported as Muhammad Siddique Baloch v. Jehangir Khan Tareen and others (PLD 2016 SC 97) and Muhammad Hanif Abbasi. v. Imran Khan Niazi and others (PLD 2018 SC 189). No departure has been made by this Court in the cases reported as Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others (PLD 2017 SC 265 and PLD 2017 SC 692). In the aforesaid case, the concealment of assets in the nomination papers filed by the Respondent in the said proceedings was established through an admission. At no point of time any explanation was offered, in this behalf. Therefore, the question of accepting or rejecting such explanation did not arise. Even in the Review Petition, no explanation was offered. However, an oblique reference in hypothetical term was only made. This aspect of the matter was dealt with and adjudicated upon by this court in the judgment passed on such review reported as Mian Muhammad Nawaz Sharif and others v. Imran Ahmed Khan Niazi and others (PLD 2018 SC 1). Reference, in this behalf, may be made to para 11 of the said judgment. The relevant portion thereof is reproduced hereunder:

11. *The argument that the omission to disclose assets could possibly be unintentional in the circumstances of the case would have been tenable had the petitioner been a novice or a new entrant in business and politics. But where he has been neck deep in business and politics ever since early 80's it is unbelievable that he did not understand the simple principle of accounting that his accrued and accumulated salary of six and a half years was his asset and liability of the company he was an employee of. Even otherwise, this argument cannot be given much weight when it has not been pleaded by the petitioner that the omission to mention the asset was accidental, inadvertent or unintentional."*

19. It may also be noted that in the case of Malik Shakeel Awan (*ibid*), the entire holding of the Respondent in the said case had been disclosed in the form of revenue records and other related documents and this Court came to the conclusion that a simple mathematical exercise revealed that as per the details provided by the Respondent in his nomination papers at page 79 he owned 1081 kanals and 17 marlas of land and in the grand total it had been incorrectly mentioned as 983 kanals 17 marlas. This error appeared to have crept into the printed nomination papers. The miscalculation between the area of agricultural land owned by the Respondent scribed in the printed form and as mentioned item wise in the details of the nomination papers was self evident. Further, the Respondent in the said case perhaps declared a little more land than as alleged by the Appellant thus he could hardly be accused of concealing any asset especially so as a portion of the land appeared to be undivided share in various *Khasra* numbers. It was in the peculiar circumstances of the said case that the explanation offered by the Respondent was found to be reasonable and logical. Consequently, the conclusion drawn by the Election

Tribunal in that case that there was no concealment of agricultural land in the nomination papers filed by the Respondent was found to be based upon a correct and judicious appreciation of the evidence available on the record and in accordance with law as laid down by this Court.

20. As opposed to the above, in the instant case, there was neither any accidental error nor omission in the nomination papers of Respondent No.1 in the present case. There was no error of calculation either. Further, the declarations repeatedly given were given under solemn affirmation which has its own sanctity and solemnity. The consequence of filing a false affidavit with the nomination papers have clearly and unambiguously been spelt out in the judgment of this Court in the case of Speaker, National Assembly of Pakistan (*ibid*). Further, the explanation offered by Respondent No.1 neither appeals to reason nor logic especially so where the Respondent being the scion of a well off, educated political family and having free access to legal advice (if he so desired) could have sought clarification of any ambiguity that may possibly have existed in his mind, although in our opinion there was no ambiguity either in the law or in the specific facts and circumstances of this case. In addition, the fact that Respondent No.1 was aware of the extent of his ownership and the benefits of the same. He actually received compensation in Millions of Rupees for a portion of his holding acquired by the Sindh Government which shows that Respondent No.1 was fully aware of his

rights, title and interest in the property and enjoyed full freedom to exercise proprietary rights thereon without any let or hindrance.

21. In the afore-noted context, reference may usefully be made to Hassan Nawaz v. Muhammad Ayub (PLD 2017 SC 70), where it was held as follows:

"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 along with 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 v. 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. 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 above purpose and object comes across clearly in Muhammad Yousaf Kaselia v. Peer Ghulam (PLD 2016 SC 689):

"..... 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 v. Iftikhar Ahmad Cheema (2016 SCMR 763), the failure by a returned candidate to disclose a presumed inactive bank account and in Shamuna Badshah Qaisarani v.

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."

22. Likewise in the case of Sher Baz Khan Gaadhi v. Muhammad Ramzan (2018 SCMR 1952), it was held by this Court as follows:

"Constitution of Pakistan-

---Art. 63(1)(c)---Representation of the People Act (LXXXV of 1976), S. 12(2)(a)---Candidate contesting General Elections—Nomination papers, rejection of—Dual citizenship—Submitting false affidavit with respect to dual citizenship—Record indicated that the respondent-candidate submitted his nomination papers on 10.6.2018 and filed the relevant affidavit in such regard on 11.6.2018. Two days later, he renounced his foreign citizenship on 13.6.2018. On the day the respondent filed his nominated papers he had not renounced his foreign citizenship and was a foreign citizen. Even, if it was assumed that the application of renunciation of foreign citizenship had been filed earlier, no disclosure of the same had been made by the respondent in the relevant column of the affidavit. Respondent had filed a false affidavit and made a false declaration on oath, therefore, he was disqualified from contesting elections. Appeal was allowed accordingly.

Constitution of Pakistan-

Art. 62(1)(f)—Representation of the People Act (LXXXV of 1976). S. 12(2)(a)---Candidate contesting General Elections — Nomination papers, rejection of — Failure to disclose expenses incurred on foreign travel — Affidavit that had to be submitted along with nomination papers required a candidate to disclose his foreign travels during the last three years and the costs incurred thereon. Respondent-candidate crossed out the column on the affidavit requiring details of such travels and their costs. Report submitted before court by the relevant Authority showed that the respondent had a rich travelling history during the last three years. Respondent did not deny his travel history but tried to argue that at the relevant time he was a foreign national and thus not required to disclose his travel history. Such argument could not be accepted by the court. Respondent deliberately concealed his travel history in the relevant affidavit at the time of filing his nomination papers. Respondent concealed material facts under oath which he was required to disclose in his nomination papers/affidavit, therefore, he was disqualified from contesting elections. Appeal was allowed accordingly."

23. In the case of Muhammad Nawaz Sharif v. Imran Ahmed Khan Niazi (PLD 2018 SC 1), while dealing with the similar proposition this Court held as follows:

"9. The argument that even if it is assumed that unwithdrawn salary constitutes an asset, omission to

disclose it involving a violation of sections 12 and 13 of the Representation of Peoples Act calls for the rejection of nomination papers or at its worst, removal of the petitioner from the public office and not his disqualification in terms of section 99(1)(f) of the ROPA and Article 62(1)(f) of the Constitution is devoid of force when the petitioner deliberately concealed his assets and wilfully and dishonestly made a false declaration on solemn affirmation in his nomination papers. It is not something to be looked at with a casual eye and outlook. It is not only a legal duty but a qualifying test for the candidates who in the later days preside over the destiny of the people. This duty has to be performed without a taint of misrepresentation. This test has to be qualified without resorting to unfair means. Any concession at this stage or any leniency to the candidates or the person elected would be a prelude to a catastrophe in politics, which has already had enough of it. Since it is already touching the extreme, extreme measures have to be taken. The culture of passing the candidates by granting grace marks has not delivered the goods. It has rather corrupted the people and corrupted the system. This aspect of the case has been beautifully highlighted in the case of *Rai Hassan Nawaz v. Haji Muhammad Ayub and others* (PLD 2017 SC 170) by holding as under:

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 along with 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, they 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 v. Peer Ghulam* (PLD 2016 SC 689)."

24. In the case of Imran Ahmed Khan Niazi v. Muhammad Nawaz Sharif (PLD 2017 SC 692), this Court held as follows:

"2. It is hereby declared that having failed to disclose his un-withdrawn receivables constituting assets from Capital FZE Jebel Ali, UAE in his nomination papers filed for the General Elections held in 2013 in terms of section 12(2)(f) of the Representation of the People Act, 1976 (ROPA), and having furnished a false declaration under solemn affirmation respondent No 1 Mian Muhammad Nawaz Sharif is not honest in terms of section 99(f) of ROPA and Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 and therefore he is disqualified to be a Member of the Majlis-e-Shoora (Parliament)."

25. In the case of Muhammad Ahmad Chatta v. Iftikhar Ahmad Cheema (2016 SCMR 763), the question of *mens rea* or absence thereof was examined by this Court and it was authoritatively held as follows:

“a) Representation of the People Act (LXXXV of 1976.

---- Ss. 12(2)(f) & 76A---Nomination papers, rejection of---Non-disclosure of Bank account and properties belonging to spouse---When the case record established that returned candidate neither submitted statement regarding assets of his spouse nor disclosed one of his Bank accounts at the time of filing nomination papers, the Election Tribunal should not have dismissed the election petition on the grounds that mens rea was not proved and that Government exchequer had not suffered any loss on account of such non-disclosure. Supreme Court declared election of returned candidate as void.”

26. The cases decided by this Court which had somewhat similar facts obligate a person to truthfully and faithfully disclose all his moveable and immovable assets and those owned by his spouse(s) and dependent(s). In this regard, reference may be made to Shamuna Badshah Qaisarani v. Muhammad Dawood (2016 SCMR 1420), wherein it was held as follows:

“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 Mouza Bairoot Mandhawani, Tribal District Khazi Khan (owned by husband of the appellant) and (ii) land measuring 263 kanals 14 marlas situated in Mora 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, Wasavawala, 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.

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 motu 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."

27. In the case of Khaleefa Muhammad Munawar Butt v. Hafiz Muhammad Jamil Nasir (2008 SCMR 504), this Court refused to interfere in a case where the learned High Court had disqualified a candidate for failure to declare the amount received by him as part payment of the sale consideration of his property in pursuance of an agreement holding that till such time that the sale had been completed he continued to own the property and was under a legal obligation to disclose the same as a part of his assets.

28. On the basis of material available on record, we are satisfied that :

- (i) Respondent No.1 concealed his own assets as well as those of his dependent minor children in his nomination papers;
- (ii) He filed a false affidavit, which in itself entails serious legal consequences. A detailed inquiry or investigation is not required in the matter in view of admission of non disclosure by Respondent No.1. It is trite that admitted facts need not be proved;
- (iii) We are also satisfied that there was no *bona fide* mistake, mathematical error or clerical mistake in preparing and filing the nomination papers and the affidavit filed in compliance of the order of this Court in Speaker, National Assembly of Pakistan's case *ibid*; and
- (iv) The explanation offered for the admitted concealment/misdeclaration neither appeals to reason nor logic. We have unfortunately been unable to persuade ourselves to accept it.

28. After considering the arguments advanced by learned counsel for the parties, having carefully examined the record and the case law cited at the bar, we find that the judgment of the Election Tribunal dated 15.01.2019 is unsustainable and runs contrary to the ratio *decidendi* of the law enunciated by this Court in the judgments cited above. Therefore, for reasons recorded above, this Appeal is allowed and the impugned judgment dated 15.01.2019 passed by the Election Tribunal of the High Court of Sindh, Bench at Sukkur is set aside. In consequence, the Election Petition bearing No.S-01 of 2018 filed by the Appellant is accepted. It is declared that nomination of Respondent No.1 (Moazzam Ali Khan) was invalid. As a result, his declaration as a Member of the Provincial Assembly of Sindh issued vide notification dated 07.08.2018 is annulled. He shall immediately cease to be a member of

the Provincial Assembly. The Election Commission of Pakistan is directed to hold fresh elections in the constituency (PS-11 Larkana-II) in accordance with law.

JUDGE

JUDGE

JUDGE

Announced in open Court at
Islamabad on _____

JUDGE