

JUDGMENT SHEET

BEFORE THE ELECTION TRIBUNAL, BALOCHISTAN,
QUETTA.

Election Appeal No.19/2024

(CC-180307700009)

Muhammad Nawaz.

v.

Returning Officer PB-1, Sherani-Cum-Zhob.

Date of hearing 04.01.2024 Announced on _____

Appellant: M/s. Adnan Ejaz Sheikh, Najam-ud-Din Mengal and
Muhammad Naeem Kakar, Advocates .

Respondent
Nos. 1 to 3 by: Mr. Shehzad Aslam, Law Officer, Election
Commission of Pakistan.

Respondent
Nos. 4 by: Syed Ayaz Zahoor and Aster Mehak, Advocates.

ORDER

Muhammad Aamir Nawaz Rana, J.- This appeal is directed against the order dated 28.12.2023, whereby the Returning Officer of Constituency BP-01, Sherani-cum-Zhob rejected the nomination papers of the appellant mainly on the ground that the appellant had not disclosed the assets of his wife which according to affidavit submitted by the appellant was his dependent.

2. Learned counsel for the appellant mainly contended that the appellant had disclosed his assets alongwith detail of his family members in the affidavit submitted by the appellant, the name of spouse and dependent was also provided. Per learned counsel, the spouse of appellant infact was not dependent, as she is retired civil servant and whatever assets are in the name of wife of appellant

exclusively belongs to her, therefore, no such detail was provided. Per learned counsel, the appellant had provided the detail of Computerized National Identity Card ('CNIC') of his spouse and children in the affidavit and as per understanding of the appellant, the CNIC Number are infact National Tax Number (NTN) Number, therefore, nothing had been concealed by the appellant as complete detail of the property of his wife had been provided in the Tax Returns submitted to the Federal Board of Revenue (FBR).

3. Syed Ayaz Zahoor, Advocate appearing on behalf of respondent No.4 (objector) contended that appellant is disqualified to contest the Election in view of Article 62 (1) (f) of the Constitution of Islamic Republic of Pakistan, 1973 as despite mentioning his wife as dependent in the affidavit submitted by him to the Returning Officer, the assets of her wife were not mentioned. Per learned counsel, the appellant deliberately concealed such facts, therefore rightly declared disqualified by the Returning Officer.

Arguments heard. Relevant record Perused.

4. The appellant is aspiring to contest the forthcoming Election of Provincial Assembly seat i.e., BP-01 Sherani-Cum-Zhob and had filed the nomination papers, which were rejected by the Returning Officer mainly on the ground that the appellant had concealed the assets of his wife in the affidavit submitted by the appellant to Returning Officer.

5. I have gone through the affidavit submitted by the appellant to the Returning Officer, the appellant at S.No. D of his

affidavit has given the name of his spouse as well as dependents and the name of wife of appellant (Dr. Fareeda Nawaz) is mentioned along with her CNIC Number.

6. Admittedly, the wife of appellant is retired government servant and is filing separate Income Tax Returns to FBR. The registration number issued by FBR is infact the CNIC Number of Dr. Fareeda Nawaz (wife of appellant), which was provided by the appellant in his affidavit.

7. At the time of scrutiny, when objections were filed, the appellant specifically had provided explanation regarding this objection and had categorically stated before the Returning Officer that his wife, being a retired Government Servant is not his dependent. The relevant excerpt of the impugned order is reproduced herein below:

“Moreover, the candidate was given the opportunity to address and he accepted all the evidences but argued that as his wife (being a retired government servant) is not his dependent, that is why he did not disclose her assets in the Form-B of the nomination form.”

(Emphasizes provided)

8. That any bona-fide mistake, while filing up the nomination papers or affidavit can not disqualify the candidates as mala fide intention is Sine qua non for any such concealment of the fact; in the case in hand though, the appellant in his nomination papers had mentioned the name of his spouse as dependent but infact record transpires that she was not dependent and being retired Government Servant, is filing her own Tax

Returns, therefore, absolutely no mala-fide of the appellant can be established as he himself erroneously mentioned his wife a dependant. In case appellant had to conceal property acquired by him which is in the name of his wife definitely the applicant would have mentioned his wife as not dependent. So in such view of the matter, legally the guilty intention of the appellant is not proved provided the fact that at the time of scrutiny and objections, the appellant had categorically stated before the Returning Officer that his wife is not dependant and files her own Income Tax Returns.

9. The Hon'ble Supreme Court in case of Shahmona Badshah Qaisrani v. Election Tribunal, Multan and others¹ has dilated upon this issue in detail, the relevant excerpt is reproduced herein below:

"7. it is now a well settled principle that every nondisclosure or mis-declaration would not be sufficient enough to permanently disqualify a member of the Parliament or a candidate. The purpose and intention needs to be seen behind the nondisclosure or mis-declaration. The returned candidate would be disqualified only when if he/she has dishonestly acquired assets and is hiding them to derive certain benefits. If the non-disclosure or mis-declaration is such that it gives an illegal advantage to a candidate then it would lead to termination of his candidature. This Court in the case of Khawaja Muhammad Asif v. Muhammad Usman Dar (2018 SCMR 2128) has candidly held that merely the fact that a candidate has not declared an asset in the nomination papers would not end in his disqualification but it has to be seen whether the act of non-disclosure of the asset is with dishonest intent or not and only if there is dishonest intent behind the non-disclosure, the candidate would be disqualified. 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

¹ 2021 SCMR 988

element of dishonesty or not. It would be advantageous to reproduce the relevant portion of the judgment, which reads as under-

"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 required 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 to 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)(1) 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

10. Where a matter with regard to an undisclosed asset is taken to court, it would not form the opinion that it is a case of dishonest concealment without first calling upon the elected member to explain the source from which such an asset was acquired. Where no satisfactory explanation is forthcoming and the undeclared asset also does not commensurate with the elected member's known sources of income, it would give rise to the presumption that unlawful means may have been applied with regard to such an asset. 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 abilities 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. In the impugned judgment, the learned High Court itself was conscious of the fact that where there is a case of non-disclosure of an asset the same ipso facto does not render a person to be dishonest. In this regard, a judgment of this Court cited by respondent No. 1's counsel

in the case of Rai Hassan Nawaz v. Haji Muhammad Ayub (PLD 2017 SC 70) was referred where it was held as follows:-

"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"

(Underlined to lay emphasis)

8. In the case of Shakeel Awan v. Sheikh Rasheed Ahmed (PLD 2018 SC 643) the appellant had sought disqualification of the respondent on the ground that the returned candidate/respondent has deliberately concealed certain agricultural land in his nomination papers; has declared his land holding to be 983 Kanals 17 Marlas while it has been established on record that the respondent owned 1049 Kanals and 13 Marlas and also not correctly disclosed the market value of certain immovable property. This Court while dismissing the appeal held that in cases where the non-disclosure or

mis-declaration gives an illegal advantage to a candidate then such non-disclosure or mis-declaration would terminate his candidature, and if he has been elected to his disqualification and consequent removal but the mis-declaration made by the respondent apparently did not offend any law, in that if he had disclosed his entire land holding and had shown the value of the said house to be forty eight million rupees he would still be able to contest the elections, In Muhammad Hanif Abbasi v. Imran Khan Niazi (PLD 2018 SC (89), Faisal Arab, J, as he then was, while agreeing with the majority view observed that there can be many examples where it can be safely said that an omission on the face of it is not dishonest. Omission to list an inherited property or the pensionary benefits received by one's spouse or the plot allotted by the government in acknowledgment of services rendered are some of the instances which cannot be said that a member intentionally concealed its disclosure in order to cover some financial wrongdoing Suchlike omissions at best could be categorized as bad judgment or negligence but not dishonesty. In Murad Bux v. Kareem Bux (2016 SCMR 2042), the petitioner in the nomination papers filed for contesting local council election had failed to disclose that a criminal case is pending against him, which on objection raised by the respondent, led to rejection of his nomination papers. However, this Court allowed the petition by holding that where the explanation of a party contesting the election is plausible in regard to non- disclosure of any fact in the affidavit, it cannot be denied the right to contest for elections and that the non-disclosure of a fact which otherwise, if disclosed, could not debar the Petitioner from contesting the election, cannot be made a ground to preclude the Petitioner from contesting the election"

(Emphasize provided)

10. In view of the observations made by the Hon'ble Supreme Court in the ibid judgment and considering the relevant provision of Election Act, 2017 i.e. Section 62 (9) (d) (ii) of the Election Act, 2017 which has provided safeguard to the candidate from the technical knockout,

the Returning Officer should have provided an opportunity to the appellant to rectify any information which inadvertently was omitted or through bona-fide mistake was wrongly mentioned, no such effort was made by the Returning Officer, therefore, the impugned order being devoid of merit is set aside. The nomination papers of the appellant are accepted. The Returning Officer is directed to include the name of the appellant in the list of validly nominated candidate of BP-01 Sherani-Cum-Zhob.

The appeal stands allowed.

Announced in open Court
On ____ January, 2024.

Election Tribunal

UNATTTESTED COPY