

2025 Y L R 1361

[Lahore]

Before Asjad Javaid Ghural, J

MUHAMMAD ISRAR---Appellant

versus

MUHAMMAD MUAVIA
and others---RespondentsElection Appeal No. 763 of 2024, decided
on 9th January, 2024.**(a) Elections Act (XXXIII of
2017) ---**

---S.60(2)(b) --- Nomination papers, rejection of ---Name of candidate listed in 4th Sched. of Anti-Terrorism Act, 1997 --- Bank accounts frozen--- Effect---Appellant (candidate) assailed order passed by the Returning Officer whereby he, by over-ruling the objections raised by appellant, accepted the nomination papers of respondent (candidate from the same constituency)---Assertion of the appellant was that respondent's name had been listed in 4th Sched. of Anti-Terrorism Act, 1997; that CNIC and account of such a person were blocked under the law; that an active account was mandatory requirement for a candidate, which requirement had not been fulfilled by the respondent --- Validity --- It was a matter of record that respondent's name had been included in the list of 4th Sched. of the Anti-Terrorism Act, 1997, by the Government of the Punjab, Home Department, vide relevant order --- According to the said order, money or any other property

owned or controlled wholly or partly, directly or indirectly shall stand frozen--- According to S.60(2)(b) of the Elections Act, 2017, opening of a dedicated account for the purpose of election expenses was essential for every candidate --- Since, during the existence of said order, respondent's account remained frozen and he was unable to utilize the same for the purpose of election expenses, therefore, said fact alone was sufficient to preclude him from contesting the elections ---Returning Officer had failed to take into consideration valid objections of the appellant and wrongly proceeded to accept the nomination papers in a hasty manner---Elections Appellate Tribunal rejected the nomination papers of the respondent from the constituency---Appeal was allowed, in circumstances. [pp. 1363, 1364]. A & D

**(b) Elections Act (XXXIII of
2017) ---**

---S. 60---Nomination papers, rejection of---Criminal case, registration of---Proclaimed offender--- Concealment of fact(s)---Effect--- Appellant (candidate) assailed order passed by the Returning Officer whereby he, by over-ruling the objections raised by the appellant, accepted the nomination papers of respondent (candidate from the same constituency)---Assertion of the appellant was that the respondent was proclaimed offender in two criminal cases but he intentionally avoided to disclose the same in the nomination papers, which tantamount to concealment of facts, as such

nomination papers of the respondent were liable be rejected --- Validity --- Admittedly, the respondent was a proclaimed offender in a criminal case (FIR) and challan against him under S.512 Cr.P.C. was already submitted in the Trial Court, but said case (FIR) was not disclosed by him in his affidavit---Although the respondent claimed ignorance of registration of any such case against him and also secured pre-arrest bail in the said case but the explanation qua non-awareness of said case did not appeal to reasons--- Respondent was declared proclaimed offender after adopting proper procedure of law, as such he could not claim that he was not aware of said case --- Further, the respondent was fugitive from law in the said criminal case for the last more than eight years, therefore, securing pre-arrest bail in the said case, after objections of the objectors did not change his status of proclaimed offender--- Furthermore, Police Officer, in attendance, had disclosed that the respondent was also a proclaimed offender in yet another criminal case (FIR) for the last more than one decade and in said case, admittedly, the respondent had not surrendered before the Court of law--- Respondent had also concealed said /second case in his affidavit which tantamount to concealment of facts, rendering the respondent ineligible to contest the elections--- Thus, the Returning Officer had failed to take into consideration valid objections of the appellant and wrongly proceeded to accept the nomination papers in a hasty manner--- Elections Appellate Tribunal rejected the nomination papers of the respondent from the

constituency --- Appeal was allowed. [pp. 1363, 1364] B, C & D

Hussain Bux and another v. District and Sessions Judge/District Returning Officer and Appellate Authority, Sanghar and others 2002 CLC 281 and Muzafar Abbas v. Maulana Muhammad Ahmad Ludhianvi and 31 others PLD 2017 Lahore 394 ref.

Usman Nasir Awan, Ahmar Waseem Malik and Faizan Ahmad for the Appellant.

Allah Bakhsh Laghari for Respondent No. 1.

Ansar Sagheer Khan, R.O. PP-127, Jhang-III and Muhammad Hussain, S.I.

ORDER

ASJAD JAVAID GHURAL, J.--- Through this appeal under Section 63 of the Election Act, 2017, appellant Muhammad Israr has called in question validity of order dated 30.12.2023 passed by the Returning Officer PP-127, Jhang-III, whereby he by over-ruling the objections raised by the appellant upon the nomination papers of respondent No.1 (respondent) accepted the same from the aforesaid constituency.

2. Learned counsel for the appellant submits that the Returning Officer erred in law while accepting nomination papers of the respondent; that respondent's name has been listed in 4th Schedule of Anti Terrorism Act, 1997 vide order dated 26.12.2023; that CNIC and account of such a person has been blocked under the law; that active account is mandatory requirement for a

candidate, which could not be fulfilled by the respondent; that the respondent was proclaimed offender in two criminal cases but he intentionally avoided to disclose the same in the nomination papers, which tantamounts to concealment of facts, as such nomination papers of the respondent are liable to be rejected.

3. On the converse, learned counsel for the respondent submits that inclusion of the name of a candidate in the 4th Schedule does not debar him to contest the elections; that registration of criminal cases bearing FIR No.302/14 was not in his knowledge, however, on coming to know about this case, respondent has availed pre-arrest bail which is effective; that the explanation offered by the respondent for not disclosing criminal case has rightly been accepted by the Returning Officer and no exception can be drawn therefrom.

4. Heard. It is a matter of record that respondent's name has been included in the list of 4th Schedule of the Anti Terrorism Act, 1997 by the Government of the Punjab, Home Department, vide order dated 26.12.2023. According to the said order money or any other property owned or controlled wholly or partly, directly or indirectly shall stand frozen. According to Section 60(2)(b) of the Elections Act, 2017, opening of a dedicated account for the purpose of election expenses is essential for every candidate. Since, during the existence of aforesaid order, respondent's account remained frozen and he is unable to utilize the same for the purpose of election expenses, therefore, this fact alone is sufficient to preclude

him from contesting the forthcoming elections. A

5. Moreover, admittedly, the respondent is proclaimed offender in case FIR No.302/14 since 29.09.2015 and challan against him under section 512 Cr.P.C. was submitted in the Trial Court on 15.12.2015 but this case was not disclosed by him in his affidavit. Although the respondent claimed ignorance of registration of any such case against him and also secured pre-arrest bail in the aforesaid case but the explanation qua non-awareness of said case does not appeal to reasons. Respondent was declared proclaimed offender after adopting proper procedure of law, as such he cannot claim that he was not aware of said case. Further, he is fugitive from law in the aforesaid criminal case for the last more than eight years, therefore, securing him pre-arrest bail in the said case, after objections of the objectors does not change his status of proclaimed offender. Reliance is placed on case reported as "Hussain Bux and another v. District and Sessions Judge/District Returning Officer and Appellate Authority, Sanghar and others (2002 CLC 281)" wherein it has been laid down as under:- B

"The proclamation was issued under section 87, Cr.P.C. by the trial Court which was followed by the order of the attachment of property under section 88, Cr.P.C. However, after the nomination forms were rejected on this ground, the petitioner approached this Court and obtained protective bail. The conduct and behavior that

the petitioner No.1 demonstrates that petitioner No.1 has thwarted the process of the Court and is fugitive from law. Merely because the petitioner No.1 had sought protective bail, therefore, it cannot be said that the absconson order and proclamation orders have been undone by the grant of protective bail which was granted for a limited period."

6. Furthermore, Police Officer, in attendance, has disclosed that the respondent is also a proclaimed offender in case FIR No.222/11 dated 08.04.2011 for the last more than one decade and in this case admittedly the respondent has not surrendered before the Court of law. Respondent has also concealed this case in his affidavit which amounts to concealment of facts, rendering the respondent ineligible to contest the elections. Reliance is placed on case reported as "Muzafar Abbas v. Maulana Muhammad Ahmad Ludhianvi and 31 others (PLD 2017 Lahore 394)."

7. Returning Officer has failed to take into consideration valid objections of the appellant and proceeded to accept the nomination papers in hasty manner, which cannot be allowed to hold the field. Resultantly, instant appeal is allowed as a result whereof nomination papers of the respondent from constituency No.PP-127, Jhang-III, stands rejected.

MQ/M-50/L

Appeal allowed.