

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Election Petition NO. 01 of 2024

Haloom Adil Sholkh

Vs

ECP & Others

HIGH COURT OF SINDHComposition of Bench. S.B.

Mr. Justice Muhammad Karim Khan Agha

Date of hearing: 09-09-2024

Decided on : 23-09-2024

Judgment approved for Reporting

YesCERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

767
Dr

BEFORE THE ELECTION TRIBUNAL, KARACHI

AT THE HIGH COURT OF SINDH, KARACHI

Election Petition No. 61/2024

Presented on 15-3-2024

Registered on 15-3-2024

HALEEM ADIL SHEIKH : Runner up

THE TRUE RETURNED CANDIDATE FOR NA-238 (KARACHI EAST IV)

S/o Imam Uddin Adil

President, Pakistan Tehreek-e-Insaf (PTI) Sindh

EX-OPPOSITION LEADER SINDH

EX- MEMBER OF PROVINCIAL ASSEMBLY OF SINDH

R/o House No. 23, St-3, Generals Society AOSH, near National Stadium, Karachi

PETITIONER

VERSUS

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ELECTION COMMISSION OF PAKISTAN

Through;

i) CHIEF ELECTION COMMISSIONER, PAKISTAN

Having its Secretariat at Constitution Avenue G-5/2 Islamabad.

ii) PROVINCIAL ELECTION COMMISSIONER, SINDH

Saddar, Karachi.

2. THE RETURNING OFFICER, = Respondent No. 27
National Assembly - 238 (NA-238 (Karachi East IV))
Through the Respondent No. 1

3. SADIQ IFTIKHAR - winner
THE SHAM RETURNED CANDIDATE FOR NA-238 (KARACHI EAST IV)
R/o House# 143 PECHS, Karachi

4. Pir Omer Uddin Zafar
R/o House # 52/1, St#24, Khayaban e Bayan DHA, Phase-7, Karachi

5. Tabassum Abdul Qadir
R/o House# 72-II/B DHA phase-2Ext. Karachi

6. Jalal Uddin Bachlani
R/o House# 636, St#44 Sec- G-9, Islamabad.

7. Rehan Uddin
R/o House# f 18 Jamshaid Qrt., Karachi

8. Sehar Yahya
R/o Flat# 501-A, Habib residency, Civil Line, Karachi

1. Peg. 9
Identity (A/B) House# 784/14, Water Pump, PB Area, Karachi
Court of Sindh
Karachi

Handwritten signature

10. Syed Arshad Hasan
R/o HOUSE # C-3 BLOCK 7, GULSHAN IQBAL KARACHI

11. Syed Marghoob Hussain Abidi
R/o Flat#5/3-D, St#33, DHA Phase-V, Karachi.

12. Saif Uddin - 3rd Floor
R/o house # 76 F -4 PECHS, Karachi

13. Shoaib Akhter
R/o HOUSE #181 PIB COLONY, KARACHI

14. Aziz Ur Rehman
House # 355 A, PECHS, Old Sabzi Mandi, Karachi.

15. Ali Ahmed Palh
R/o HOUSE # 76 A KHABANAY, SAHER DHA KARACHI

16. Kausar Fatima Zaidi
R/o House# R-992, Gulburg Town, Block-16, Karachi

17. Muhammad Ihtisham
R/o House #G63 FC AREA, KARACHI

18. Muhammad Ashraf
R/o house# 123-K, Block-2, PECHS, Karachi

19. Muhammad Ayub Awan
R/o House # G-3 Kashwidh Colony, Karachi

20. Muhammad Shahid
R/o HOUSE# 49 GUJRAT COLONY, KARACHI

21. Muhammad Imran
R/o Flat# 155/4 Martin Qrt. Jahangir road, Karachi

22. Muhammad Waseem
R/o house# 159-b st -16 Khayaban e Romi, DHA Karachi

23. Mahmood Baqi Molvi
R/o House# 76, St#2, Kahayan ban e badar, DHA phase-6, Karachi

24. Mushtaq Ahmed
R/o House # 12 PIA Town Ship, Airport Karachi

25. Nadeem Sabir
R/o house #712 Jamshed Road, Karachi

26. Nawab Salim Khan
R/o House# H-456, PIB Colony, Behind Jail, Karachi East

27. Farooq Ahmed Qazi, z R/O
The Erstwhile Returning Officer, National Assembly - 238 (NA-238 (Karachi East IV))
Additional Director, Local Government Karachi East, through the Respondent No. 1

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Assistant Registrar
Cit & Identity (A.S.)
Court of Sindh
Karachi



92

BEFORE THE ELECTION TRIBUNAL KARACHI
AT HIGH COURT OF SINDH KARACHI

Election Petition No.01 of 2024

Date	Order with signature(s) of Judge(s)
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1. For settlement of issues
2. For hearing of MA No.1492 of 2024
3. For hearing of MA No.1493 of 2024
4. For hearing of MA No.1808 of 2024

Barrister Ali Tahir for the Petitioner.
Barrister Iftikhar Ahmed Shah along with M/s. Raja Zeeshan and
Muhammad Naeem, advocates.
Mr. Ghulam Sarwar Baloch, Assistant Attorney General of
Pakistan along with Mr. Abdullah Hanjra, Deputy Director (Law)
ECP.

Date of hearing : 09.09.2024.
Date of Announcement : 23.09.2024

ORDER

Muhammad Karim Khan, Agha, J. Through the Election Petition No.01 of 2024 petitioner Haleem Adil Shaikh (Runner up Candidate) had challenged the notification and conduct of the election whereby Respondent No.3 Mr. Sadiq Iftikhar was declared as Returned Candidate and other respondents in respect of his defeat in general election 2024 in respect of the election to NA 238 Karachi East-IV.

2. The Returned Candidate had filed CMA No.1493 of 2024 whereby he had challenged the maintainability of the Election Petition No.01 of 2024 filed by the Runner up Candidate against himself and other respondents.

3. Learned counsel for the Returned Candidate in terms of maintainability made three main arguments; the first one was that since this Court vide order dated 13.02.2024 (CP Order) had converted the constitutional petition filed by the Runner Up Candidate into a complaint under section 8 and 9 of the Elections Act, 2017 which was to be heard and decided by the Election Commission of Pakistan (ECP). When the petition was brought before the ECP it was dismissed vide order dated 21.02.2024 (ECP

Order) with remarks that the Runner up Candidate may resort to the Election Tribunal concerned if so advised. It was submitted that the ECP Order amounted to a declaration under Section S.9 (1) of the Elections Act 2017 and as such the Runner up Candidate had to approach the Supreme Court of Pakistan under S.9(5) of the Elections Act 2017 at the first instance rather than this Tribunal and since it had failed to do so the Election Petition should be summarily dismissed by this Tribunal.

4. The second argument was that the Election Petition did not comply with section 144 of the Election Acts, 2017 and that it was liable to be dismissed by virtue of Section 145 of Election Act, 2017.

5. Finally he argued that the Election Petition had been filed in violation of Section 142(2)(a) of Elections Act, 2017 and as such it should also be summarily dismissed by this Tribunal on this ground as well. In support of his contentions he placed reliance on the cases of **Mushtaq Ahmed v Sardar Aftab Akbar Khan** (2019 MLD 1313), **Khair Jan v Abdul Qudoos Bizanjo** (2019 CLC 1520), **Malik Muhammad Nawaz v Khayal Ahmad** (2019 CLC 960), **Mir Muji-ur-Rehman Muhammad Hassani v Returning Officer PB-41 WASHUK** (PLD 2020 SC 718) and **Trading Corporation of Pakistan v Deven Sugar Mills Limited** (PLD 2018 SC 828).

6. Learned counsel for the Runner up Candidate refuted all the aforesaid arguments advanced by the learned counsel for the Returned Candidate by pointing to the material available on record which was supported by the Representative of ECP except with regard to Section 144(b) of Elections Act, 2017.

7. I have heard learned counsel for the parties as well as Assistant Attorney General of Pakistan along with Representative of ECP and perused the record as well as case law cited.

8. It is true that immediately after the general election 2018 the Runner up Candidate along with others approached this Court by way of filing constitutional petition for their grievances in respect of the conduct of 2024 elections in respect of various constituencies including NA-238 Karachi-East IV which is the subject matter of this petition. As rightly pointed out by the learned counsel for the

Returned Candidate the petitions were converted into complaints in terms of Section 8 and 9 of Elections Act, 2017 and were heard by the ECP. For ease of reference Section 9 of Elections Act, 2017 is set out below:-

9. Power of the Commission to declare a poll void.—(1) Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such enquiry as it may deem necessary, the Commission is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as have materially affected the result of the poll at one or more polling stations or in the whole constituency including implementation of an agreement restraining women from casting their votes, it shall make a declaration accordingly and call upon the voters in the concerned polling station or stations or in the whole constituency as the case may be, to recast their votes in the manner provided for bye-elections."

9. After hearing the parties the ECP passed a short order on 21.02.2024 (ECP Order) in the following terms:-

"Mr. Nisar Ahmed Durrani, Member—For detailed reasons to be recorded separately, instant petition / complaint is dismissed with remarks that the petitioner may resort to the Election Tribunal concerned, if so advised." (bold added)

Sd/- 21.02.2024
Nisar Ahmed Durrani"

10. It is apparent from the ECP Order that the ECP while dismissing the complaints gave the petitioner full opportunity to resort to the Election Tribunal concerned if so advised. Hence the Runner up Candidate approached this Election Tribunal through Election Petition No.01 of 2024.

11. It is noted that nowhere in the short order any declaration is made. My interpretation with regard to Section 9 of the Elections Act, 2017 is that Section 5 (2) which allowed an aggrieved person to challenge such declaration made under Section 9(1) of Elections Act, 2017 to the Supreme Court would only apply if the Runner up Candidate had been successful under section 9 and the ECP made a declaration to that effect and called upon the voters in the concerned polling station or stations or in the whole constituency

as the case may be, to recast their votes in the manner provided for bye-elections and then S.5(2) would have come into play.

12. In this case I find that no such declaration was made and even otherwise the ECP Order led to the Runner up Candidate being unsuccessful under section 9(1) of Election Act, 2017 and as such section 9(5) of Election Act, 2017 never came into play (as it would have been applicable to the aggrieved party which in this case would have been the Returned Candidate had the Runner Up Candidate been successful under S.9(1) hence there is no need for the Runner up Candidate to approach the Supreme Court rather he could approach this Election Tribunal if he so desired as set out in the ECP Order which he did and I am fortified by my finding by Paragraph 3 of CP Order made by this court in the Runner Up candidates constitution Petition dated 13.02.2024 which is reproduced hereunder:-

"In case of any further grievance, the aggrieved parties will be at liberty to seek their remedy as available to them under the Election Act, 2017 by approaching the relevant forum, including Tribunal etc. constituted for such purposes in accordance with law."(Bold added)

13. As such I find the above argument to be with out merit.

14. With regard to the second argument made by the learned counsel for the Returned Candidate that the Election Petition was in violation of Section 144(a) of Elections Act, 2017. The aforesaid section is set out below for ease of reference:-

"144. Contents of petition.—(1) An election petition shall contain—

- (a) a precise statement of the material facts on which the petitioner relies; and*
- (b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including names of the parties who are alleged to have committed such corrupt or illegal practice or illegal act and the date and place of the commission of such practice or act."*

15. Having examined the concise statement in the Election Petition I find it is full conformity with the provisions of Section 144(1) (a) of Elections Act, 2017 namely concise/precise statement has been given in respect of material facts upon which the

petitioner relies in which I have gone through carefully, which is available at page-5 of Election Petition, and makes it quite clear and understandable for the Returned Candidate to make his reply in his written statement as it includes allegations of electoral tampering and forgery and other electoral malpractices which are sufficiently elaborated on in the concise statement, which is reproduced hereunder for ease of reference:-

"The Petitioner, a law-abiding citizen of Pakistan, contested the general elections held on 08.02.2024, from NA-238 Karachi East-IV ("Constituency"), securing the highest number of votes, totaling eighty-four thousand and forty nine (84,049). However through tampering and forgery in Form 45, Form 47, and Form 48, the Petitioner's votes were reduced to 'thirty-six thousand eight hundred and eighty-five (36,885), while the votes of the sham returned candidate (Respondent No. 3) were inflated 'to fifty-four thousand eight hundred and eighty-five (54,385) when in actuality he polled only ten thousand three hundred and two (10,302) votes. Committed to serving Pakistan, the Petitioner seeks redress through this Election Petition, highlighting violations of fundamental rights guaranteed by Articles 4, 9, 10, 14, 16, 17, 19, and 25 due to electoral malpractices by the Respondents 1 and 2. Pursuant to Sections 76, 92 and 95 of the Elections Act, 2017, and Rule 85 of the Election Rules, 2017, the Petitioner or his Election Agent is entitled to be present during the consolidation of election results, both at the provisional and final stages. However, despite the initial presence of the Election Agent, they were forcibly removed by officials of law enforcement agencies in connivance with the Returning Officer, hindering the consolidation process. The actions of the Respondents contravene electoral laws and regulations, particularly Section 92 and 95 of the Elections Act, 2017, which mandate the proper announcement and consolidation of results in the presence of candidates or their agents. Notably, the issuance of Form 47, 48 and 49 and the subsequent gazette notification in haste without adherence to due process, the absence of notice for consolidation, and evident forgery in Form 45s, Form 47s, Forms 48 and 4. Through this petition, the Petitioner seeks to challenge that very notification of the returned candidate and to invoke the intervention of this Tribunal to rectify the breaches, restore the integrity of the electoral process, and uphold the fundamental rights enshrined in the Constitution, whereby the Honorable Tribunal is urged to declare the election of the returned candidate to be void and

the Petitioner to have been elected to the constituency."

16. With regard to section 144(1) (b) of the Elections Act, 2017, which subsection deals with the corrupt and illegal acts by particular parties I find that this aspect of the Election Petition has been fulfilled through a number of paragraphs for example, amongst others, paragraphs 27, 28 ,36 and 38 of Election Petition which are set out below for ease of reference;

27. After the blatant rigging and manipulation, Respondent No.1 failed to upload its Form 45s for the 292 polling stations in the constituency, disregarding the legal requirement to do so within 14 days of polling as stipulated in Section 95(10) of the Elections Act, 2017. On March 5th at 2:01 pm, Respondent No.1 finally uploaded the Form 45s for most constituencies on their website, which included the Form 45 for the relevant constituency. The Petitioner promptly downloaded these forms from the Google Docs link attached by the Election Commission to their website. Notably, the owner of this file is identified as "PEC Sindh," and its creation date is indicated as March 5th. This delayed and seemingly haphazard upload process raises significant concerns regarding transparency, accountability, and adherence to electoral laws by Respondent No.1, and of course the delay was only to engineer forgery in the said Form 45s.(bold added)

28. These uploaded fake and forged forms epitomize the height of manipulation and rigging, veering drastically from the legal consolidation process mandated for Form 45s to Form 47. The alterations made to these Form 45s were orchestrated to distort the election outcome by unfairly reducing the votes obtained by the Petitioner while unjustly inflating those attributed to the Respondent No.13, positioning him as the victor. Upon closer examination, it becomes apparent that the tampering with these forms was not incidental but systematic and purposeful, aimed at subverting the sanctity of the electoral process. It's important to underscore that despite these alteration, essential details such as the signatures of polling agents and the names of presiding officers remained unchanged, suggesting a calculated effort for conceal the malpractice in the forms were identical in all respect, except for the interpolation and manipulation visible to the naked eye. **Analyzing several instances of tampering evident in these Form 45s is essential to fully comprehend the extent of electoral misconduct perpetrated by Respondent No. 1, 2, 3 and their accomplices. (bold added)**

36. The discrepancies revealed in the Form 45s from ten polling stations selected at random and per example

offer a stark illustration of systematic manipulation aimed at altering the election results in favor of Respondent No. 3, Sadiq Iftikhar. At Polling Station no 2, KDA Girls & Boys Secondary Model School Block-17 Gulshan-e-Iqbal, the Petitioner's votes were drastically reduced from 263 to 63, with the number '2' being whited out, while Respondent No. 3's votes were inflated from 19 to 219 by adding a '2'. Moreover, whiteout marks were strategically added to Shoaib Akhtar's votes to create an illusion of common usage. A similar pattern emerged at Polling Station no 5, City School Plot No. E-2 Block-17 Building No.2 Gulshan-e-Iqbal, where the Petitioner's votes plummeted from 496 to 26, and Respondent No. 3's votes surged from 26 to 496 through the manipulation of numbers. This trend persisted at Polling Station no 6. Seedling Public School Block-18 Gulshan-e-Iqbal, where the Petitioner's votes were once again substituted with those of Respondent No. 3, accompanied by the exclusive use of whiteout on the Petitioner's votes. The pattern continued in subsequent polling stations, such as Polling Station no 121 at Brazeel GGSS Block-02 PECHS, where the Petitioner's votes were reduced from 167 to 67, and the same 100 votes were added to Respondent No. 3's tally. Similarly, at Polling Station no 128, Meritorious College near Noor Ground, the votes were interchanged between the two candidates using whiteout and rewrites. The manipulation persisted at Polling Station no.3, KDA Girls & Boys Secondary Model School Block-17 Gulshan-e-Iqbal, where the Petitioner's votes were altered from 322 to 122, and Respondent No. 3's votes were changed from 11 to 211. The saga continued at Polling Station no 129, where the Petitioner's 389 votes were transformed to 89, and Respondent No. 3's 30 votes were elevated to 330. Moreover, at Polling Station no 131, the Petitioner's votes were reduced from 189 to 89, while Respondent No. 3 received the additional 100 votes omitted from the Petitioner's total. The manipulation persisted at Polling Station no 54, where the Petitioner's 407 votes were converted to 007, and despite subtracting 400 votes, the total remained unchanged at 753. Finally, at Polling Station no 154, the Petitioner's 292 votes were altered to 92, while Respondent No. 3's 31 votes were changed to 231. These instances underscore a concerted effort to subvert the electoral process and manipulate the outcome, necessitating urgent intervention to safeguard the integrity of the democratic process. **The Petitioner, vide a schedule to this Memorandum, lists all the polling stations and highlights the one where tampering took place. The Petitioner also annexes with this schedule all the Form 45s in the chronological order from Polling Station No. 1 to 292, along with the tampered and manipulated Form 45's uploaded and then deleted from the website of the Respondent No.1, for the convenience of this tribunal.**(bold added)

38. That I say on February 8th, polling agents for the constituency received the original Form 45s from various polling stations, marking a pivotal moment in the electoral process. The following day, on February 9th, at 09 pm, Respondent No.1 uploaded the manipulated Form 47 for the constituency, raising immediate concerns about the integrity of the electoral outcome. Subsequently, on March 5th, at 02 pm, Respondent No.1 further exacerbated doubts by uploading manipulated Form 45s for the constituency. However, this move only intensified public scrutiny, leading to widespread outcry on social media platforms. In a surprising turn of events, by 6 pm on the same day, Respondent No.1 hastily removed the manipulated Form 45s from their website, erasing crucial evidence of electoral malpractice. These rapid developments underscore the urgency of ensuring transparency and accountability within the electoral process to uphold the democratic rights of citizens. The Respondent No.1 thus has effectively removed any evidence of the constituency results from their website, having promptly deleted the forged results on the same day they were initially uploaded. This conspicuous action suggests a concerted effort by the Respondent No.1 to obscure the evidence of manipulation. It can be surmised that the ECP is now grappling with the challenge of salvaging their credibility amidst mounting scrutiny. There are concerns that they may be strategizing alternative methods as the blatant rigging as described in paragraph 37 came to the public eyes." (bold added)

17. As such I find no substance in the contentions of learned counsel for the Returned Candidate in this respect.

18. Finally the Returned Candidate had contended that section 142(2) had been violated. Section 142 (a) is reproduced hereunder for ease of reference:

142. Presentation of petition.—(1) An election petition shall be presented to the Election Tribunal within forty-five days of the publication in the official Gazette of the name of the returned candidate and shall be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or Sub-Treasury in favour of the Commission, under the prescribed head of account, as security for the costs of the petition, such amount as may be prescribed.

(2) An election petition shall be deemed to have been presented--

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- (a) **when delivered to the Election Tribunal appointed under section 140—**
 (i) **by the petitioner in person; or**
 (ii) **by a person authorized in writing in this behalf by the petitioner; or**
- (b) *when sent by registered post or courier service to the Election Tribunal by the petitioner".(Bold added)*

19. It is quite apparent from Election Petition itself that it was presented by Runner up Candidate before the Assistant Registrar (AS) Identification Branch, Sindh High Court in presence of his counsel and even his photograph is accompanied with the Election Petition which contains his affidavit sworn before the Assistant Registrar (AS) Identification Branch, Sindh High Court which can be found at page-41 & 41-C of the Election Petition as such once again I find the contentions raised by the learned counsel for Returned Candidate in this respect to be without substance.

20. Accordingly I find the Election Petition to be maintainable and as such dismiss CMA No.1493 of 2024 in the above terms.

21. To come up on **21.10.2024 at 11:00 a.m.**