

ELECTION TRIBUNAL
HIGH COURT OF SINDH, KARACHI

Election Petition No. 51 of 2024

[Syed Abbas Hasnain v. Election Commission of Pakistan & others]

- Petitioner : Syed Abbas Hasnain son of Syed Muhammad Hasnain through M/s. Shahbaz Ali and Nisar Ahmed, Advocates.
- Respondents 1-2 : Election Commission of Pakistan and another through M/s. Muhammad Haroon Kasi, Director (Law), Abdullah Hanjrah, Deputy Director (Law) and Muhammad Bilal Malik, Assistant Director (Law), ECP, Karachi.
- Respondents 3-7, 10-29 : Nemo.
- Respondent 8 : Khawaja Izhar-ul-Hassan son of Khawaja Noor ul Hassan [**Returned Candidate**] through M/s. Sabih Ahmed Zubairi, Obaid-ur-Rehman Khan, Munawar Ali Bhaagat, Muhammad Mudasir Abbasi and Saleem Raza Jakhar, Advocates.
- Respondent 9 : Danish Inder Gul Afridi through Mr. Ghulam Mustafa, Advocate.
- Date of hearing : 23-09-2025
- Date of order : 29-09-2025

ORDER

Adnan Iqbal Chaudhry J. - Along with M.A. No. 2210/2024 by Respondent No.8 (returned candidate) praying for rejection of the election petition, this order decides the preliminary issue settled on 18.09.2024 *i.e.* whether the petition is to be rejected under section 145(1) of the Election Act, 2017 [**the Act**] which stipulates:

“145. Procedure before the Election Tribunal. – (1) If any provision of section 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition.

2. Of the grounds taken for rejection of the petition, learned counsel for Respondent No. 8 presses the ground of non-compliance with section 144(2)(c) of the Act which requires the filing of affidavit of service with the petition.

3. The petition was presented on 25-03-2024 accompanied by a document titled "*Affidavit/certificate in accordance with section 144(2)(c), Election Act, 2017*". However, the document was clearly not an affidavit as it was without a verification clause, neither verified on oath nor by separate affidavit. On 09.04.2024, the Registrar also raised objection that the petition was without the requisite affidavit of service. However, the Petitioner did not take remedial steps. Realizing the defect much later, on 19.12.2024 the Petitioner moved M.A. No. 18723/2024 praying that the Tribunal may exercise powers of amendment under section 149 of the Act and allow the Petitioner to swear the affidavit of service which was overlooked at the time of presentation.

4. Learned counsel for Respondent No.8 submitted that affidavit of service under section 144(2)(c) of the Act was mandatory, and failure to do so within the period of limitation entails rejection under section 145(1) of the Act.

Learned counsel for Petitioner submitted that courier receipts on the record demonstrate that copies of the petition were dispatched to Respondents before presenting the petition, and therefore the requirement of section 143(3) of the Act was substantially fulfilled. His alternate submission was that the defect, if any, was curable by virtue of section 13 of the Oaths Act, 1873 as observed by this Tribunal in *Zain Pervez v. Election Commission of Pakistan & others* (order dated 03.10.2024 in E.P. No. 52/2024), and therefore the Tribunal can exercise powers under section 149 of the Act to allow an amendment.

5. Heard learned counsel and perused the record.

6. As discussed by this Tribunal in *Faheem Khan v. Muhammad Moin Aamer Pirzada* (E.P. No. 13/2024), section 144(2)(c) of the Act is to be read with section 143(3) of the Act. Said provisions read:

“**143(3)**. The petitioner shall serve a copy of the election petition with all annexures on each respondent, personally or by registered post or courier service, before or at the time of filing the election petition.”

“**144(2)**. The following documents shall be attached with the petition—

(c) affidavit of service to the effect that a copy of the petition along with copies of all annexures, including list of witnesses, affidavits and documentary evidence, have been sent to all the respondents by registered post or courier service;”

7. The requirement of section 144(2)(c) of the Act is that after serving the respondents with a copy of the petition and annexures under section 143(3), the Petitioner shall also file an affidavit to affirm that he has done so. Therefore, the compliance required by section 144(2)(c) is separate and in addition to the compliance required by section 143(3). That being so, nothing less than the affidavit of service will suffice to raise the presumption that respondents have been served with copies of the petition and annexures before or at the time of filing the petition. With the consequence of rejection provided in section 145(1) of the Act, the requirement of an affidavit of service in section 144(2)(c) appears to be mandatory. No argument was advanced to construe it differently. Resultantly, I am not convinced with the submission that production of courier receipts was sufficient compliance with section 144(2)(c) of the Act.

8. Reliance by Petitioner’s counsel on the case of *Zain Pervez* is misplaced. There, the affidavits under objection were affidavit-in-evidence of petitioner’s witnesses which did not reflect that oath was administered to the deponents. It was in such circumstances that this Tribunal held that when those deponents step in the witness box, take oath, produce their affidavit-in-evidence and present themselves for cross-examination then the defect in oath on those affidavits will stand cured by virtue of section 13 of the Oaths Act, 1873. The

affidavit of service required to be filed with the petition under section 144(2)(c) of the Act is not in the same situation.

9. As regards M.A. No. 18723/2024, section 149 of the Act pertaining to amendment in the election petition has no application here. Nevertheless, this Tribunal has already held in other petitions that non-compliance with section 144(4)(c) of the Act cannot be cured after expiry of 45 days prescribed for filing an election petition. To cite from *Ghulam Qadir v. Election Commission of Pakistan* (E.P. No. 57/2024), it was held :

“11. The question now is whether the affidavit of service subsequently filed by the Petitioner on 12.07.2024 can be accepted as compliance of section 144(2)(c) of the Act ?

12. *Albeit* for rectifying a defect in the verification of an election petition, a similar question came up before the Supreme Court in the cases of *Malik Umar Aslam v. Sumera Malik* (PLD 2007 SC 362) and *Hina Manzoor v. Ibrar Ahmed* (PLD 2015 SC 396). The *ratio* of those decisions seems to be that once the period of limitation for filing an election petition expires, the petitioner cannot be allowed to make amends for not complying with a mandatory provision of the statute, because by that time a valuable defense has arisen to the respondent. Applying that *ratio* to the instant case, the affidavit of service eventually filed by the Petitioner on 12.07.2024 was much after the 45 days prescribed for filing the petition, and therefore cannot be accepted as compliance of section 144(2)(c) of the Act.

10. In view of the foregoing, the objection to the affidavit of service succeeds. The petition is rejected under section 145(1) of the Act for non-compliance of section 144(2)(c) of the Act. Pending applications become infructuous.

JUDGE

Karachi
Dated: 29-09-2025
*SHABAN-SADAM