

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

*Election Appeal No.01 of 2018*

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DATE	ORDER WITH SIGNATURE OF JUDGE
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*Date of Hearing* : 12.03.2018

*Date of Order* : 12.03.2018

*Syed Shafique Ahmed Shah, Advocate for appellant.  
Mr. Allah Bachayo Soomro, Additional A.G*

## **ORDER**

**AGHA FAISAL, J:**

This election appeal has been preferred against the order dated 23.01.2018 (hereinafter referred to as the "Impugned Order") of the learned 1<sup>st</sup> Additional District & Sessions Judge / Election Tribunal Sanghar (hereinafter referred to as the "Election Tribunal"), wherein the appellant's election petition was dismissed. The operative paragraph of the Impugned Order is reproduced herein below:

"Bare perusal of the Memo of Petition and documents annexed thereto indicates that neither the Petition nor documents attached to it have been verified as required under CPC.

In the instant case the Petitioner has appended various other documents like photocopies of applications of the Registration Officer Municipal Committee, District Election Commissioner Sanghar, Memo of Election Petition and Photocopy of Order passed in CP No.D-614 of 2016 (all photocopies) besides Forms of the Election Commission, statements of count, provisional results, applications for recounting of votes etc. which ought to have been verified as envisaged under section 55 of Representation of the People Act, 1976.

Therefore, case cited by the learned counsel for the Petitioner is distinguishable with the case in hand.

Section 55(3) of Representation of the People Act, 1976 requires that every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 but in the instant case neither the Petition nor Annexure attached to it have been verified according to law which is a substantial non-compliance of the provision of law and it would necessarily attract the penal provision of dismissal of the Election Petition under section 63(a) of Representation of the People Act, 1976. I am fortified by case law, Lt. Col. (Rtd.) Ghazanfar Abbas Shah versus Mehr Khalid Mehmood Sargana and others, 2015 SCMR 1585.

In view of the above application under Order VII Rule 11 CPC is allowed and Petition is hereby dismissed accordingly.”

2. The learned Counsel for the appellant argued that the learned Election Tribunal had dismissed the petition on mere technicalities and deprived the appellant of his entitlement to the due process of the law.
3. It was further contended by the learned Counsel that the irregularities pleaded in the petition were not even adverted to by the learned Election Tribunal and that the mechanical dismissal of the election petition on technical grounds was contrary to the principles of justice.
4. It was also contended by the learned Counsel for the appellant that the Counsel appearing for the appellant before the learned Election Tribunal was also an oath commissioner, hence his signature on the annexures / pleadings in by itself satisfied any legal requirement for verification.
5. In response thereto, it was contended by the learned A.A.G that the Impugned Order has been rightfully rendered as the same is in due conformity with the law

6. It is observed that challenge to an election to the local government is made under the provisions of the Sindh Local Government Act, 2013 (hereinafter referred to as the “Act”) read in conjunction with the Sindh Local Councils (Election) Rules, 2015 (hereinafter referred to as the “Rules”).

7. Section 46 of the Act states as follows:

**“Election petition.—**(1) *Subject to this Act, an election to an office of a council shall not be called in question except by an election petition.*

(2) *A candidate may, in the prescribed manner, file an election petition before the Election Tribunal challenging an election under this Act.”*

8. The reference to “file an election petition in the prescribed manner” leads to Chapter VII of the Rules in general and for the purposes of this matter, Section 62(3) of the Rules in specific. The said sub section states as follows:

*“Section 62(3) Every election petition and every schedule or annexure to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.”*

9. The relevant provision of the CPC in regard hereof is Order VI Rule 15. The said provision lays down the manner in which the pleadings are to be verified and stipulates as follows:

*“15 Verification of pleadings. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified [on oath or solemn affirmation] at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.*

(2) *Te person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

(3) *The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*"

10. The issue of verification of pleadings and annexures, in election petitions, has come under detailed scrutiny before the superior Courts and the pronouncements thereupon include the case of *SULTAN MAHMOOD HINJRA V/S. Malik GHULAM MUSTAFA KHAR & OTHERS*, reported as 2016 SCMR 1312, the relevant portion whereof is reproduced herein below:

6. *Since the learned counsel for the Appellant at the very outset has raised the question with regard to the maintainability of the election petition filed by the Respondent No.1, hence we are fortified to address this issue first. It was objected by the learned counsel for the Appellant that the petition had not been verified in terms of the mandatory provisions of section 55 of the ROPA, 1976 read with Order VI, Rule 15, C.P.C. as neither the petition nor the annexures or schedules appended thereto had been verified, but instead an affidavit had been belatedly filed to cure such defect. It would be pertinent to reproduce the above quoted provisions of law.*

**55. Contents of Petition:-**

(1).....

(2).....

(3) *Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.*

**Order VI, Rule 15.** *Verification of Pleadings (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified on oath or solemn affirmation at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.*

(2) *The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

*(3) The verification shall not be signed by the person making it and shall state the date on which and the place at which it was signed.*

*From the above it is crystal clear that verification of an election petition in the prescribed manner is a mandatory requirement and that too in accordance with the provisions of Order VI, Rule 15, C.P.C. specifying to numbered paragraphs of the pleadings that he verifies of his own knowledge and what he verifies upon information received and believed to be true. From the record it reveals that the Appellant while filing his election petition did not comply with the mandatory requirements with regard to the verification of the election petition and to cure such defect subsequently submitted an affidavit in this regard, wherein the entire contents of his election petition were reproduced. It would be pertinent to mention at this juncture that although the provisions relating to the verification of pleading are generally directory in nature, the position is different in election laws by virtue of section 63 of the ROPA, 1976 which casts upon the Tribunal a duty to dismiss the election petition if the provisions of section 54 or 55 of the ROPA, 1976 have not been complied with, as such its compliance has been held to be mandatory in nature by virtue of the penal consequences prescribed under section 63 of the ROPA, 1976.*

*7. We would now proceed to examine the affidavit, which finds mention at the foot of the petition and purportedly serves to verify the same. In the said affidavit, the Respondent/Election Petitioner has reproduced the entire contents of his election petition. In order to determine the sufficiency of verification of affidavit, it would be useful to reproduce the provisions of High Courts Rules and Orders Chapter 12, Volume No. IV, Rules Nos. 11, 12, 14, 15 and 16 as these have material bearing on the case at hand:-*

*“11. Identification of Deponent- Every person making an affidavit, shall, if not personally known to the Court, magistrate*

*12. Mode of attestation-*

*14. Attesting Officers duty*

*15. Attesting, signing and making of affidavit.*

*16. Manner of administering oath to deponent.*

**FORM OF VERIFICATION ON OATH OR AFFIRMATION**

*(Vide paragraph 15 above)*

*Oath.*

Solemnly swear that this my declaration is true, that it conceals nothing, and that no part of it is false.....so help me God.

Affirmation.

I solemnly affirm that this my declaration is true, that it conceals nothing and that no part of it is false.

II-FORM OF CERTIFICATE

(vide paragraphs 12, 14 and 15 above)

Certified that the above was declared on.....(here enter oath) / affirmation as the case may be) before me this.....(date) day of ..... (month).....(of 19, at .....place) in the district of (name of district).....by .....(full name and description declarant) who is..... here enter "personally known to me" or identified at (time and place of identification) by (full name and description of person making the identification), who is personally known to me"

**(Full Signature) A. B.**

(Officer) District Judge (or as the case may be) of

.....

II-A

The exhibits marked A.B.C. (as the case may be) above referred to are annexed hereto under this date and my initials.

Certified further that this affidavit has been read and explained to (name) .....the declarant who seemed perfectly to understand the same at the time of making thereof."

Placing reliance on the case of Lt. Col. (R) Ghazanfar Abbas Shah v. Khalid Mehmood Sargana (2015 SCMR 1585), would be beneficial here, wherein, the issue of verification by an affidavit was agitated before this Court and while referring to the above Rules, this Court highlighted the following pre-requisites for a valid affidavit:

1. Identification of Deponent (Rule 11)
2. Particulars of deponent and identifier to be mentioned at the toot of the affidavit (Rule 11)
3. Time and place of making of the affidavit to be specified (Rule 11)

4. *Certificate of court/magistrate/other officer at the foot of the affidavit that such affidavit was made before them. (Rule 12)*
5. *Date, Signature and name of the officer and designation of the court/magistrate/other officer to be subscribed underneath the Certification. (Rule 12)*
6. *Every exhibit referred to in the affidavit to be dated and initiated by the court/magistrate/other person. (Rule 12)*
7. *Where deponent of an affidavit does not understand the contents of an affidavit, the court/magistrate/other police officer administering oath must read out the contents of the affidavit to such person magistrate/other officer shall note the foot of the affidavit that the affidavit has been read out to the deponent and he understands its contents. (Rule 14).*
8. *Deponent to sign/mark and verify the affidavit and the court, magistrate or other officer administering the oath or affirmation to attest the affidavit. (Rule 15)*
9. *Oath to be administered by the court/magistrate/other officer in accordance with the Indian Oaths Act 1878 and affidavit to be verified by the deponent and attested by court/magistrate/other officer on forms appended thereto (Rule 16)”*

*When the affidavit at hand is examined in the light of the above it transpires that certain essential requirements are missing therefrom. Firstly, it has not been mentioned whether the Respondent No.1 was administered oath by the Oath Commissioner before the attestation was made. Secondly, it has not been specified whether the Respondent No.1 was duly identified before the Oath Commissioner. In this regard, it has simply been stated at the foot of the affidavit that the Respondent No.1 was present before the Oath Commissioner in person, however, the details of the person identifying the Respondent No.1 have not been mentioned whereas according to above quoted provisions, the Oath Commissioner is bound to specify at the foot of the affidavit the name and description of the person by whom identification of the deponent was made and in this regard a certificate has to be appended. Furthermore, it is also not clear from the affidavit that the Respondent No.1 was identified with reference to his ID card and in this regard,*

no ID card number is given, as such the identification does not seem to have been made. There is yet, another aspect of the matter. The affidavit in question does not make any reference to the numbered paragraphs contained therein which the Respondent No.1 verifies on his own knowledge and what he verifies upon information received and believed to be true. Further, the affidavit in question also does not make any reference to the verification of the annexures appended along with the petition, which although have been mentioned in the said affidavit.

8. This Court in a chain of judgments has addressed the issue of verification of pleadings wherefrom reproducing the relevant portions would be beneficial here. In the case of Zia ur Rehman v. Syed Ahmed Hussain and others (2014 SCME 1015) it has been held as under:-

“10. Admittedly both the election petitions filed by the respondents in the afore-mentioned appeals were not verified on oath in the manner prescribed under the afore-quoted provision. If the law requires a particular thing to be done in a particular manner it has to be done accordingly. Otherwise it would not be in compliance with the legislative intent. Non-compliance of this provision carries a penal consequences in terms of section 63 of the Representation of the People Act whereas no penal provision is prescribed for non-compliance with Order VI, Rule 15 of the Civil Procedure Code. The effect of non-compliance of section 55 of the Representation of the People Act, 1976 came up for consideration before this Court in Iqbal Zafar Jhagra v. Khalilur Rehman (2000 SCMR 250) wherein at page 290 it was candidly held that “the verification of pleadings has been provided under Order VI, Rule 15, C.P.C. which when read with section 39, C.P.C., clearly shows that the pleadings are to be verified on oath and the oath is to be administered by a person, who is duly authorized in that behalf. It is an admitted position that the petition filed by Syed Iftikhar Hussain Gillani though mentions that it is on oath, the oath was neither verified nor attested by a person authorized to administer oath and as such it could not be said that requirements of section 36 of the Act were complied with. We have considered the reasons given by the learned Tribunal in holding that the petition filed by Syed Iftikhar Hussain Gillani did not comply the provisions of section 36 of the Act and are of the view that these reasons do not suffer from any legal infirmity.”



*And in the case of Sardarzada Zafar Abbas and others v. Syed Hassan Murtaza and others (PLD 2005 SC 600), this Court has laid the following guidelines:-*

*“The verification on oath of the contents of an election petition, is provided under section 55(3) of the Representation of the People Act of 1976, (hereinafter to be referred to as the Act). It provides that every election petition and every schedule or annexure to petition shall be signed by the appellant and verified in the manner laid down in the Code of Civil Procedure, 1908, which requires the verification under Order VI, rule 15, which requires the verification of pleadings, on oath. Such verification is not to be signed in routine by the deponent but being on oath, it requires to be attested either by the Oath Commissioner or any other authority competent to administer oath. It needs hardly to be emphasized that every oath is to be practically administered.*

*So far as, the provisions of civil law are concerned, such verifications generally are of directory nature. An omission to do so can be rectified subsequently during trial and even the Court can direct such rectification. While, on the other hand, under election laws such verification on oath is mandatory because of being followed by penal consequences under section 63(a) of the Act that makes it mandatory for the Tribunal to dismiss election petition if the provisions of section 54 and 55 of the Act have not been complied with. Similar view was taken by this Court in Iqbal Zafar Jhagra’s case (2000 SCMR 250), though related to the Senate elections. It is, therefore, settled that the verification on oath of an election petition through mannered in accordance with civil law yet it entails upon penal consequences and hence is mandatory.”*

9. *In the above perspective, and while placing reliance on the case of Lt. Col. (R) Ghazanfar Abbas Shah(supra), the affidavit at hand, can hardly be considered to be a proper verification. The learned Election Tribunal therefore, erred in holding that the election petition had been duly verified. In our considered opinion, the election petition had not been duly verified in accordance with law and even the affidavit annexed thereto could also not be considered to be proper verification as it failed to meet the criteria mentioned above, therefore, the election petition merited outright dismissal by the election tribunal.*

10. *In conclusion to our discussion we are of the opinion that when an objection with regard to the maintainability of*

*an election petition for non-compliance of a mandatory provision is raised then the Tribunal should decide that very objection first because if such objection sustained then the Tribunal left with no option but to dismiss the election petition. Mentioning the case of Zia ur Rehman (supra) would again be beneficial here wherein it has been held as under:-*

*“7. .... If an objection is raised with regard to maintainability of such a petition for non-compliance of a mandatory provision, the Court/Tribunal should decide that preliminary objection. Because if that objection is sustained then the Court is left with no option but to dismiss the petition.....”*

*11. For what has been discussed above, this appeal is allowed, impugned judgment dated 18.07.2014 passed by the Election Tribunal is set aside and the election petition filed by the Respondent No.1 is hereby dismissed under section 63 of the ROPA, 1976 as not being in conformity with the mandatory provisions of section 55 of the ROPA, 1976.”*

11. The aforesaid judgment placed reliance upon the case of Lt. Col. (Rtd.) GHAZANFAR ABBAS SHAH V/S. MEHR KHALID MEHMOOD SARGANA & OTHERS, reported as 2015 SCMR 1585, and it may be pertinent to reproduce the following passage therefrom.

*“We have applied our mind to this aspect of the matter and hold that in order to meet the real object and the spirit of the election laws which require verification on oath, in an ideal situation, the Oath Commissioner at the time of verification of the petition etc. and also the affidavit, must record and endorse verification/attestation that the oath has been actually, physically and duly administered to the election petitioner/deponent. But as the law has not been very clear till now, we should resort to the principle of presumption stipulated by Article 129(e) ibid in this case for avoiding the knock out of the petition for an omission and lapse on part of the Oath Commissioner. But for the future we hold that where the election petition or the affidavit is sought to be attested by the Oath Commissioner, the election petitioner shall insist and shall ensure that the requisite endorsement about the administration of oath is made, otherwise the election petition/affidavit shall not be considered to have been attested on oath and thus the election petition shall be liable to be, inter alia, dismissed on the above score. We consciously and deliberately neither apply this rule to the instant case nor any other manner pending at any forum (election tribunal or in appeals).*

*Resultantly, we are not inclined to accept the plea of the learned counsel for the respondents that the omission on the part of the oath commissioner must be made the basis of dismissal of the petition of the appellant. This, as we have mentioned above, should be taken into account in case of future election petitions, i.e. filed after enunciation of the law herein laid down.”*

12. It is observed that the learned Election Tribunal has referred to the provisions of the Representation of Peoples Act 1976 while dismissing the election petition, when in fact the appropriate reference should have been to the Act and the Rules.

13. The case law cited supra also refers to elections held pursuant to the Representation of Peoples Act 1976 and not those pertinent to the local government.

14. It is however the view of this Court that the ratio cited supra applies equally to the electoral matters arising out of the Act (and the Rules) in view of the following rationale:

- i. The august Supreme Court has interpreted the provisions of the Representation of Peoples Act 1976, section 55(3) in particular, and maintained that the prescriptions therein regarding the verification of pleadings and annexures are mandatory in nature.
- ii. Section 62(3) of the Rules is precisely the same as section 55(3) of the Representation of Peoples Act 1976, and the said prescription of the Rules is anchored by section 46 of the Act.
- iii. Section 64 of the Rules stipulates as follows:

*“64. If the Tribunal is satisfied that all or any of the preceding provisions have not been complied with, the petition shall be dismissed forthwith and submit its report to the Election Commission.”*

- iv. In addition thereto section 71 of the Act stipulates that *“Save as provided under this Act the provisions of the Representation of Peoples Act 1976 shall be applicable to the elections and the electoral process under this Act.”*
- v. Therefore, the requirements for verification of pleadings and annexures imposed by the Representation of Peoples Act 1976 are identical of requirements prescribed by the Act (and the Rules) and hence the interpretation of the said requirements, undertaken by the superior Courts in matters pertaining to the Representation of Peoples Act 1976, shall apply *mutatis mutandis* to requirements prescribed by the Act (and the Rules).

15. It is prima facie apparent from the foregoing that the provisions of the law specifying the manner in which the pleadings / annexures are to be verified are of a mandatory nature and the learned Election Tribunal is devoid of any inherent powers to condone the presence of any such violation.

16. The pleadings / annexures filed before the learned Election Tribunal, copies whereof were available on file, were shown to the learned Counsel for the appellant herein and he was asked as to whether the same conformed to the prescription of Order VI Rule 15 CPC.

17. It was contended by the learned Counsel that it was prima facie apparent that the prescriptions of Order VI Rule 15 have not been complied with by the appellant, however, it was incumbent upon the learned Election Tribunal to decide the petition on its merits and not to dismiss the same on technical objections.

18. The aforementioned contention of the learned counsel cannot be sustained by this Court as it is settled law that if an objection is raised, with regard to maintainability of a petition for being in dissonance with a mandatory provision of the law, the learned Election Tribunal would be required to decide that preliminary objection at the first instance. Because if that objection is sustained then the Court is left with no option but to dismiss the petition.

19. This Court has considered the arguments advanced by the learned Counsel and is of the view that the pronouncements of the cases supra make it very clear that an election petition is required to be dismissed by the learned Election Tribunal, seized of the matter, if the pleadings filed therein do not satisfy the requirements of the law that prescribed the same.

20. In view of the foregoing, this Court concurs with the decision arrived at by the learned Election Tribunal and the same is hereby upheld.

21. The present election appeal was thus dismissed vide a short order passed in the open Court dated 12.03.2018, the contents whereof are reproduced herein below:

*“For the reasons to be recorded later, the present election petition is dismissed.”*

22. These are the reasons for the above short order dated 12.03.2018, wherein subject election appeal was dismissed.

**JUDGE**

