IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD

Election Appeal No. 01 of 2017

DATE	**ORDER WITH SIGNATURE OF JUDGE(S)**

Date of Hearing : 14.03.2018.
Date of Order : 14.03.2018.

Appellant Fahad Ali present in person.

Mr. Irfanullah Khan Nagar, Advocate for respondents No.4 & 5 alongwith respondents.

O R D E R

AGHA FAISAL, J: This matter is an election appeal instituted on 31.01.2017, impugning the order of dismissal dated 09.01.2017 *(hereinafter referred to as the "Impugned Order"),* passed by the Court of the learned 1st Additional District Judge/ Election Tribunal Sanghar *(hereinafter referred to as the "Election Tribunal").*

2. It may be pertinent to reproduce the operative constituent of the Impugned Order herein below:

> *"From perusal of material placed on record it appeared that appellant has failed to comply with the mandatory provision of Election Laws as he was supposed to file Election Petition U/s 46(2) of Sindh Local Government Act 2013 R/W Rule 60 (2) Chapter VII of Sindh Local Council Election 2015 but appellant has filed instant Appeal instead of Petition against the order of respondents No.1 & 2 even appellant has not produced any written order of rejection of his application for recounting of ballot papers by the respondents No.1 & 2. It seem that appellant has challenged oral order of respondent No.1 & 2 which is not maintainable as per law. Furthermore, it is mandatory provision of law under Rule 62(3) of Sindh Local Council Election 2015 that every*

Election Petition and every schedule of annexure to that petition shall be signed by the petitioner and verified in the manner laid down in Code of Civil Procedure 1908 for the verification of pleadings. Here in this appeal there is no any signature of appellant on each page of Election Appeal as well as on annexure thereon, even affidavit of appellant is not in accordance with law as prescribed under the provision of section 55 (3) of representation of People Act 1976. In this regard case law is reported in 2005 CLC page 1577.

In view of above discussion and circumstances of instant Appeal I am of humble opinion that Appeal of Appellant is not maintainable according to law as discussed above, hence, Appeal in hand is dismissed being meritless with no order as to costs."

3. The matter was considered summarily during the hearing held on 06.03.2018, and then a fixed date and time was given for further proceedings. Thereafter this matter was taken up on the appointed date of 12.03.2018.

4. The Court evaluated the record on file and then reviewed the Impugned Order in the light thereof. The Court sought the contentions of learned counsel for the appellant upon the reasoning which had been relied upon by the learned Election Tribunal while rendering the Impugned Order.

5. It may be pertinent to reproduce the content of the order dated 12.03.2018:

"It is observed from the perusal of the Impugned Order that the election appeal was dismissed inter alia on three grounds being;

(i) That post issuance of the notification of a returned candidate in an election petition is required to be filed and not an election appeal, which was filed in the present case.

(ii) That the appellant had challenged oral orders supposedly passed by the Returning Officer and that no written order had been provided to the learned Trial Court and hence the

learned Trial Court had held that a challenge to a purported oral order is not maintainable within the law.

(iii) It is stated in the Impugned Order that the requirement of verification of the memorandum alongwith the annexures were not in accordance with the provisions of the law, hence the learned trial Judge was mandated to dismiss the proceedings filed there-before.

The learned Counsel for the appellant was confronted with each of these three grounds for dismissal and her response in respect thereof is encapsulated in seriatim herein below:

(a) It is contended by the learned Counsel for the appellant that an election appeal was filed in place of election petition, which was the requirement of the law, due to bonafide mistake of the appellant.

(b) It was admitted by the learned Counsel for the appellant that no written orders, purportedly dismissing a recount, were ever filed before the learned trial Court and that his ruling was sought to be obtained upon an oral order, which was allegedly passed by the Returning Officer.

(c) The learned Counsel was confronted with the memorandum of appeal / annexures and she expressed her concurrence with the same not having been verified in accordance with the law applicable thereto.

The learned Counsel states that she has been busy in the District Bar Elections and therefore is not prepared to conduct the final arguments in this matter today and requests that the matter be adjourned to day after tomorrow. The learned Counsel for the respondent No.4 and the learned A.A.G do not object to the said request and the matter is adjourned to 14.03.2018 when it shall come up for hearing at 11:00 a.m."

6. Today when this matter was taken up the appellant was present in person and he stated that this matter has been pending for last one year, whereas it was required to have been decided within three months as per law. The appellant further contended that any further delay in the adjudication hereof would be prejudicial to the interests of the justice.

7. The present election appeal has been filed under section 54 of the Sindh Local Government Act, 2013 (hereinafter referred to as the Act) which stipulates as follows:

> *"54. Appeal against the orders of Tribunal. – (1) Any person aggrieved by a final order of an Tribunal may, within thirty days of the communication of such order, prefer an appeal to the High Court.*
>
> *(2) The High Court shall decide an appeal preferred under sub-section (1) within three months".*

8. The final orders of a tribunal, as referred to supra, are rendered in election petitions as provided in Section 46 of the Act, which stipulates as follows:

> "46. 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."

9. The term "*prescribed*" has been defined in section 3(lii) of the Act and states "*prescribed means prescribed by rules*".

10. It follows that an election petition was required to be filed by the appellant, challenging the election to an office of a council, before the learned Election Tribunal in the manner prescribed by the Sindh Local Councils (Election) Rules 2015 (hereinafter referred to as the "Rules").

11. It has been recorded in the Impugned Order that instead of filing an election petition, as required under the law, the proceedings filed before the Election Tribunal comprised of an election appeal, which is filed under section 18(5) of the Rules.

12. It is pertinent to reproduce section 18 of the Rules herein below:

> *"18. (1) The candidates, their election agents, proposers and seconders, and one other person authorized in this behalf by each candidate and the person who made a representation against the nomination paper may attend the scrutiny of nomination papers, and the Returning Officer shall give them reasonable opportunity for examining all nomination papers delivered to him under rule 16.*
>
> *(2) The Returning Officer shall in the presence of the persons attending the scrutiny under sub-rule (1), examine the nomination paper and decide any objection raised by any such person to any nomination.*
>
> *(3) The Returning Officer, may either on his own motion or upon any objection, conduct such summary enquiry as he may think fit and reject a nomination paper if he is satisfied that-*
>
> *(a) the candidate is not qualified to be elected as a member;*
>
> *(b) the proposer or the seconder is not qualified to subscribe to the nomination paper;*
>
> *(c) any provision of rule 16 or rule 17 has not been complied with; or*
>
> *(d) the signature of the proposer or the seconder is not genuine:*
>
> *Provided that –*
>
> *(i) the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper;*
>
> *(ii) the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to the remedied forthwith;*
>
> *(iii) the Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.*
>
> *(4) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it, and shall, in the case of rejection, record reasons therefor.*
>
> *(5) <u>An appeal against the decision under sub-rule (4) shall lie to Appellate Authority appointed by the Election</u>*

Commission and shall be filed and disposed of by the date specified in the election programme.

(6) An appeal shall be disposed of either summarily or after summary enquiry as the Appellate Authority may consider necessary.

(7) The order passed under sub-rule (5) shall be final.

(Underline added for emphasis.)

13. The learned counsel for the appellant was confronted with this issue during hearing on 12.03.2018 and while admitting the improper nature of proceedings instituted by the appellant she stated that same was due to *bona fide* mistake of the appellant.

14. This Court is conscious of the legal maxim "*ignorantia legis neminem excusat*" (ignorance of the law excuses no one) and it follows that a plea of ignorance of law could not be construed or sustained as a bona fide excuse. This court is fortified by the ratio of the following pronouncements of this High Court in regard hereof.

(i) *2017 YLR NOTE 429 (MUHAMMAD AMEEN & ANOTHER V. JAWAID ALI & 5 OTHERS.*

25……….First, ignorance of law is not an excuse and secondly, when Appellants were participating in an election process and wanted to be the elected representatives of their constituency, all the more they should have been vigilant and not indolent.

(ii) 2017 YLR 353 (ZAMAN & 2 OTHERS V. MUHAMMAD KHAN)

9. I am of the considered view that the illiteracy and ignorance of law is no ground to condone the delay of 10 days in filing of Second Appeal. All that needs to be stated is that ignorantia juris non excusat i.e. ignorance of law is not an excuse. In any case, I fail to believe that in today's date and age people are not aware of their legal rights of being entitled to file appeals against the judgments of the courts below. Therefore, the cause shown by the appellants for condonation of delay being unsound and illogical is declined.

(iii) <u>2016 CLC 919 (CANTONMENT BOARD CLIFTON THROUGH CANTONMENT EXECUTIVE OFFICER V. SULTAN AHMED SIDDIQUI & 03 OTHERS.</u>

> *"12………for a thing required to be done in a particular manner under the law has to be done in that manner otherwise it would be deemed illegal. No one can be allowed to plead ignorance of the relevant law to justify taking a course for alleviating his problems which is alien to the relevant law.*

15. It would follow that institution of the incorrect proceedings could prima facie disentitle the appellant from the grant of the relief sought.

16. It was submitted by the appellant that he was misguided, with respect to the proper proceedings that were required to be instituted, by the improper assistance received from his legal Counsel.

17. The said contention does find favor with this Court *inter alia* in view of the pronouncement of the Honourable Supreme Court of Pakistan in the case of *KHUSHI MUHAMMAD THROUGH L.RS AND OTHERS V. MST. FAZAL BIBI AND OTHERS (PLD 2016 SUPREME COURT 872),* wherein it was held that even if the contention of the appellant was based upon the improper advice of the legal counsel the same could not prima facie absolved the appellant from pursuing the correct process of the law. The relevant portion of the judgment is reproduced herein below:

> *"48. Learned counsel for the appellant has argued that it was through the inadvertent mistake of the counsel that the appeal had been filed before the wrong forum, suffice it to say that as declared earlier, such mistake advice, even if unintentional, simpliciter does not constitute a sufficient cause in terms of Section 5 of the Act, instead there have to be cogent reasons, clearly spelt out and proved on the record, for that purpose. We have perused the application for condonation of delay and as rightly observed by the learned High Court in the impugned judgment, the said application contains a mere narration of the facts leading up to the filing of the appeal before the learned District Judge, and there are no plausible reasons*

> *or justifications given for the filing of such appeal before the wrong forum, apart from a feeble assertion that "the delay for filing the Regular First Appeal was not intentional on the part of the petitioner." As regards the averment in the said application that the time period from the date of filing of the appeal before the wrong forum till the return of the memorandum of appeal for filing before the correct forum should be condoned "because the petitioners' appeal remained pending before Additional District Judge", we may observe (as held in the earlier part of this opinion) that mere pendency of an appeal before the wrong forum especially when no sufficient cause has been made out shall not be a ground per se or simpliciter for condonation of delay. Besides as mentioned above the memorandum of appeal was ordered to be returned on 23.6.1994 and the appellant never approached the Court for receiving the same within reasonable time rather, after considerable lapse of time of about 18 months, it was received on 2.1.1996. There is/was no explanation for such delay, i.e. 18 months and 10 days. It is not the case of the appellant that after the order of return of the memorandum of appeal it approached the Court promptly and it was the Court which took delayed in returning the memorandum of appeal. In light of the above, interference with the impugned judgment of the learned High Court is not warranted, thus the appeal merits dismissal."*

18. The second issue raised by the learned Election Tribunal in the Impugned Order was that the appellant sought to challenge purported oral orders of the respondent/s therein, which could not be sanctioned by the Court.

19. In this regard learned counsel for the appellant had submitted on 12.3.2018 that it was correct that no written orders were presented before the learned Election Tribunal. However, it was argued that it was the prerogative of the appellant to obtain the ruling of the learned Election Tribunal upon oral orders, which were duly conveyed to the Election Tribunal by the counsel for the appellant.

20. This Court finds no merit in this argument and is of the view that the learned Election Commission was rightfully disinclined to entertain the appellant's challenge to purported oral orders of the respondents.

21. The third point raised by the learned Election Tribunal in the Impugned Order was that the verification of the pleadings and annexures thereto was not in due conformity with the law. In regard hereof the learned Counsel for the appellant had stated, during the hearing dated 12.03.2018, that the said observation of the learned Election Tribunal was correct. However, she submitted that the same cannot be made the ground for dismissal of the election appeal since it was just and proper for the same to be heard and decided on merits and not mechanically dismissed on the basis of mere technicalities.

22. It is noted that the manner of verification of pleadings and annexures thereto has been prescribed by virtue of section 62 (3) of the Rules which states as follow:

> *"(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."*

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

24. It was also noted that 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."*

25. It would follow that the Election Tribunal has no option but to dismiss any proceedings instituted there before which were not in due compliance with the mandatory provisions of applicable law.

26. The superior Courts have maintained that the requirements prescribed for verification of pleadings and annexures are mandatory in nature.

27. It was held in the case of *MUHAMMAD AMEEN & ANOTHER V. JAWAID ALI & 5 OTHERS,* reported as *2017 YLR NOTE 429,* as follows:

> *9. The two reported decisions of the Honourable Supreme Court provide a direct answer to the above objections; (i) 2014 SCMR page-1015 and (ii) 2016 SCMR page-1312; after considering contentions of the parties, Court in these two reported decisions has very clearly laid down that if the issue of maintainability is raised then it is to be decided first by the Election Tribunal. It would be advantageous to reproduce the relevant portion of the judgments in seriatim as follows:-*
>
> > *"……….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 the objection is sustained then the Court is left with no option but to dismiss the petition." (2014 SCMR page-1015).*
> >
> > *"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." (2016 SCMR page-1312).*

Since in all the Election Petitions the legal issue about their maintainability was involved, therefore, in my view the learned Election Tribunal was justified to the extent of taking up the preliminary legal issue first before proceeding further.

10. Adverting to the other limb of arguments of Appellant's side that the main statute governing the election matters, viz. the SLGA 2013, since does not provide for any such penal consequence of dismissal of petition in case the said Election Petitions were not properly verified, hence, the afore-referred Election Rules framed under the above statute cannot enlarge the scope of the main statute; in other words, the above mentioned Election Rules cannot operate as mandatory provisions if the main statue has not provided for any such consequence.

11. I have given a thoughtful consideration to the above proposition of law. Unfortunately, afore-referred Election Rules have been framed under the statute; SLGA 2013. Going through different treaties on the Interpretation of Statutes, the position, which emerges is that if the Rules are framed under an enabling clause of a main statute then such Rules become Statutory Rules and are to be considered part and parcel of the Statute; consequently, such Statutory Rules then deserve to be governed by same principle of interpretation which is applicable to the Enactment itself. Meaning thereby that if a Rule provides a penalty or punishment for its non-compliance, then that Rule shall be interpreted as a mandatory Rule. It is also necessary to give reference of well-known commentaries on the above point of law (i) Understanding Statutes 'Cannons of Construction' by Mr. S.M. Zafar, Second Edition (2002), relevant pages-783 and 784, and the relevant paragraphs whereof are reproduced hereunder:--

> *"………..Statutory rules stand on a different footing. Though a bye-laws must not be repugnant to the statute or the general law, bye-laws and rules made under a rule-making power conferred by a statute do not stand on the same footing as rules are part and parcel of the statute. Parliament or Legislature instead of incorporating them into the statute itself ordinarily authorizes Government to carry out the details of the policy laid down by the Legislature by framing rules under the statute and once the rules are framed, they are incorporated in the statue itself, and become part of the statute and the rules must be governed by the same rules as the statute itself.*

Hence, a statutory rule cannot be challenged as unreasonable."

"Mandatory and Directory rules:

A rule is mandatory if violation thereof entails any penalty or punishment. If non-compliance of a rule entails no penalty, rule is directory. Act done in disregard of a mandatory provision of law or rule is only invalid and unlawful. Such is not the case where only some rule of directory nature has been violated."

(Underlining is to add emphasis)

and (ii) NS Bindra's, Interpretation of Statutes, Ninth Edition, the relevant paragraph whereof is reproduced hereunder:-

"The right to hold an election, to stand in an election, and to be elected thereto as commissioner, are all rights which spring under the statute. There is no common law right which is involved. Therefore, the provisions of the Act and the rules made hereunder must be strictly followed in constituting the municipality and in regulating the functions thereof. Similarly, a disqualifying or disabling provision of law, for instance election rules, must be subject to strict construction."

(Underlining is to add emphasis)

12. Secondly, the Honourable Supreme Court of Pakistan in one of its reported Judgments, viz. PLD 1985 SC 282 (Shah Muhammad v. Election Tribunal, Urban Local Council, Chishtian and others), after taking into account various case laws, has interpreted the provisions of Punjab Local Council (Election) Rules, 1979 to be mandatory in nature and held as under:--

"…….Thus there is no escape from the conclusion that the law requires that every balloting paper must be signed by the Presiding Officer, and when the ballot-boxes are opened for the purpose of counting the ballet-papers, all these ballot-papers which do not bear the signatures of the Presiding Officer must be excluded. These provisions are express and categorical and there is no scope for considering these provisions to be of a directory nature." (Underlining is to add emphasis)

13. Thirdly, even in the above mentioned reported case of Zia-ur-Rehman v. Syed Ahmed Hussain and others (2014 SCMR 1015), the Honourable Supreme Court in para-graph-7 has held, that when the law, prescribed

certain form for Election Petition and its verification on oath and entails a penal consequence for its noncompliance, the provisions is to be interpreted as mandatory. It is also a settled Rule and the term "Law" is of wide import and it does include the Statutory Rules. Fourthly, the relevant law in the instant case is the SLGA 2013 and its Section 46 pertains to Election Petitions. It would be advantageous to reproduce Section 46 of SLGA 2013 as under:--

> ***"46. 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 petition.*

14. From the above, It is not difficult to ascertain the mandate of law, that is, the governing statute SLGA, which enjoins that Election Petitions are to be filed in the "Prescribed Manner". This term 'Prescribed' is mentioned in the definition clause of the said SLGA 2013; Section 2 (iii), which means Prescribed by Rules. It means that the Election Petitions are to be filed as mentioned in the relevant Election Rules, which have already been referred to in the preceding paragraphs. If the main Statute-SLGA 2013 had contained the provisions about verification of petitions/pleadings without a consequence or penalty, then the arguments of learned counsel for the Appellants would have been sustained, that if the main Statute is not providing a penal consequence then the Rules governing the same subject cannot travel beyond the express statutory provisions. But here the undisputed factual and legal position is altogether different. It is basically the Election Rules, which regulate the proceedings at the Election Tribunals and the Rule 65 is an unequivocal term has provided a penalty / penal consequence of dismissal of petition if the same is not filed in compliance of Rules 60 to 63 of the Election Rules 2015. The above legal position with regard to the status of Statutory Rules is further reinforced by another learned Division Bench Judgment of this Court reported in PLD 1984 Karachi 426 (Shahenshah Humayum Co-operative Housing Society Ltd. and 2 others v. House Building Finance Corporation and another), wherein, it has been held, inter alia, that if the rule-making authority validly frames/makes Regulations then such Regulations which are intra vires, be regarded as part of the enactment itself. In a subsequent decision of this Court reported in PLD 1992 Karachi Page-302 (Saeeduddin v. Third Senior Civil Judge, East, Karachi), the above principle relating to the mandatory nature of the statutory rules has been reiterated.

> *17. Therefore, in view of the above discussion, I can safely hold that (a) as an analogy and by virtue of section 71 of SLGA 2013, the principle laid down through judicial pronouncements vis-à-vis ROPA is also applicable to the Local Government Elections, that is, present Election Appeals, and, (b) submissions of Appellant's side carry any force and the mandatory effect of the afore-referred Election Rules 2015 cannot be curtailed or abridged in any manner whatsoever.*

28. The aforesaid judgment went on to stipulate that not only were the verification requirements mandatory but that an infirmity in respect thereof was also incurable. The relevant portion of the judgment is reproduced herein below:

> *28. If the above discussion is summed up, then the conclusion would be as follows:-*
>
> *(iv) It is also a settled rule as laid down in various judicial pronouncements including the afore referred reported decisions that shortcomings in the verification clause of a civil litigation is a curable defect, but in case of Election Petition it is incurable (cannot be cured) and, therefore, if the Election Petition or Election Appeal does not contain a prescribed verification clause or other infirmity entailing a consequence then such Election Petition or Election Appeal is liable to be dismissed.*

29. 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 framed thereunder.

30. The issue of verification of pleadings and annexures, in election petitions, has come under detailed scrutiny before the august Supreme Court 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. (Rile 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."

31. 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 relevant to reproduce a pertinent 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."*

32. It is the view of the Court, fortified by the judgment reported as 2017 YLR Note 429, that the requirements for verification of pleadings and annexures imposed by the Representation of Peoples Act 1976 are identical to 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).

33. In view of the foregoing it is patently apparent that the Impugned Order as has been rendered in due consonance with the law and no infirmity and illegality has been identified therein by the appellant or his legal counsel.

34. Therefore, in view of the foregoing Impugned Order is hereby upheld and maintained and subject election appeal is hereby dismissed.

35. The office is directed to convey a copy hereof to the learned Election Tribunal for reference and record.

Announced in open Court.

JUDGE

Shahid