

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD**

1. Election Appeal No. 07 of 2016

[Muhammad Ameen & another Vs. Jawaid Ali & 5 others]

2. Election Appeal No. 08 of 2016

[Muhammad Sharif Vs. Provincial Election Commissioner & 15 others]

3. Election Appeal No. 09 of 2016

[Mian Abdul Sattar Vs. Provincial Election Commissioner & 11 others]

4. Election Appeal No. 11 of 2016

[Muhammad Abid Vs. Provincial Election Commissioner & 18 others]

5. Election Appeal No. 18 of 2016

[Asif Hussain Junejo Vs. Election Commission of Pakistan & 8 others]

6. Election Appeal No. 19 of 2016

[Akhund Ghulam Ahmed & another Vs. Election Commission of Pakistan & 10 others]

7. Election Appeal No. 20 of 2016

[Imam Ali Vs. 1st Additional District Judge/Election Tribunal Badin & 11 others]

8. Election Appeal No. 23 of 2016

[Muhammad Iqbal & another Vs. Learned 1st Additional District Judge Badin/Election Tribunal Badin & 8 others]

9. Election Appeal No. 27 of 2016

[Hyder Khan Vs. Provincial Election Commissioner & 6 others]

10. Election Appeal No. 28 of 2016

[Ghulam Muhammad & another Vs. Election Commission of Pakistan & 6 others]

11. Election Appeal No. 29 of 2016

[Muhammad Soomar Vs. 1st Addl. District Judge/Election Tribunal Badin & 14 others]

12. Election Appeal No. 30 of 2016

[Ghulam Mustafa Vs. Election Commission of Pakistan & others]

13. Election Appeal No. 31 of 2016

[Nazar Muhammad Vs. Gul Muhammad & 4 others]

14. Election Appeal No. 32 of 2016

[Muhammad Hashim Samoo Vs. Provincial Election Commissioner & 7 others]

15. Election Appeal No. 33 of 2016

[Attaullah Shah Vs. Provincial Election Commissioner & 6 others]

- Dates of hearing : 29.11.2016, 06.12.2016, 21.12.2016 and 22.12.2016
- Date of Decision : .03.2017
- Appellants : Through M/s. Ghulamullah Chang, Kafeel Ahmed Abbasi, Syed Shahzad Ali Shah, Razia Ali Zaman Khan Patoli, Muhammad Sachal R. Awan, Raja Jawad Ali Sahar, Farhad Ali Abro, Fayyaz Ahmed Leghari, Abdul Khaliq Laghari, Advocates.
- Respondents : Through M/s. Ghulamullah Chang, Aurangzeb Talpur-Standing Counsel, Allah Bachayo Soomro-Additional Advocate General Sindh, Ashfaque Nabi Kazi-Assistant Advocate General Sindh, Ayaz Hussain Tunio, Suresh Kumar, Ghulam Sarwar Baloch, Mansoor Ahmed Laghari, Riaz Ali Panhwar Zainul Abdin Mirza, Fayyaz Ahmed Laghari, Muhammad Hashim Laghari, Advocates.

Case law cited by the Appellants' counsel.

1. 2004 S C M R page-602 (*Abdul Nasir and another Vs. Election Tribunal, Toba Tek Singh and others*),
2. P L D 1964 Supreme Court page-451 (*Province of East Pakistan and another Vs. Nur Ahmad and another*),
3. P L D 1967 Supreme Court page-486 (*S. M. Ayub Vs. Syed Yusaf Shah and others*), and
4. 2005 S C M R page-186 (*Khawaja Ahmad Hassaan Vs. Government of Punjab and others*)

Case law relied upon by Respondents' counsel.

1. 2015 S C M R page-1585 (*Lt.-Col. (Rtd.) Ghazanfar Abbas Shah Vs. Mehr Khalid Mehmood Sargana & others*),
2. 2016 S C M R page-750 (*Feroze Ahmed Jamali Vs. Masroor Ahmad Khan Jatoi and others*),

3. 2016 S C M R page-875 (*Muhammad Nawaz Chandio Vs. Muhammad Ismail Rahu and others*), and
4. 2016 S C M R page-1312 (*Sultan Mahmood Hinjra Vs. Malik Ghulam Mustafa Khar and others*).

Other Judicial Precedents.

1. 2014 S C M R page-1015
(*Zia ur Rehman Vs. Syed Ahmed Hussain and others*)
2. P L D 1985 SC 282
(*Shah Muhammad Vs. Election Tribunal, Urban Local Council, Chishtian and others*)
3. P L D 1984 Karachi 426
(*Shahenshah Humayun Co-operative Housing Society Ltd., and 2 others Vs. House Building Finance Corporation and another*)
4. PLD 1992 Karachi Page-302
(*Saeeduddin Versus Third Senior Civil Judge, East, Karachi*)

Law under discussion : (1) Sindh Local Government Act, 2013 (the “**SLGA 2013**”),

(2) Sindh Local Councils (Election) Rules, 2015 (the “**Election Rules**”).

Books referred: (1) Understanding Statutes ‘Cannons of Construction’ by Mr. S. M. Zafar, Second Edition (2002)

(2) NS Bindra’s, Interpretation of Statutes, Ninth Edition

JUDGMENT

Muhammad Faisal Kamal Alam, J: The above mentioned Election Appeals were heard on different dates and finally learned counsel for the parties have concluded their arguments on 22.12.2016.

2. The title Election Appeals contain common issues that whether the Election Tribunal was justified in dismissing the Election Petitions of the Appellants for want of proper verification clause. The other common mixed question of facts and law is that some of the Election Petitions were time barred whose numbers will be mentioned in the following paragraphs.

Through the titled Election Appeals, the present Appellants have also filed an application for recounting of votes.

3. Besides the above, various Election Appeals have taken the stance that the Respondents-Returned candidates have resorted to the corrupt practices for winning Local Bodies Elections and undue influence was used on the Polling Staff for changing the Election results. The common grievances of all the Appellants are that the official Respondent (Election Commission) has failed to discharge its statutory mandate as the Elections were not conducted in a fair manner. The thrust of the arguments from the learned counsel representing various Appellants is that instead of deciding Election Petitions on merits after giving the present Appellants an opportunity of leading evidence, the learned Election Tribunal has dismissed the same on the technical grounds. It has been further averred that the allegations contained in various Election Petitions justified a detailed scrutiny by the learned Election Tribunal, which was not done and impugned orders were passed, which are now subject matter of these titled Appeals.

4. Mr. Kafeel Ahmed Abbasi, learned counsel for the one set of Appellants, has strenuously argued that the impugned orders suffer from legal infirmities of such a nature that justifies interference by this Court, as the Election Petitions of present Appellants were dismissed by a single order of 03.05.2016 on the ground that the Election Petitions of present Appellants did not contain verification clause as required under the present scheme of Election Laws including Sindh Local Councils (Election) Rules, 2015 (the “**Election Rules**”). Learned counsel further argued that the learned Election Tribunal has erred in placing reliance on a Judgment of the Honourable Supreme Court of Pakistan reported in 2014 S C M R page-1015 (*Zia ur Rehman Vs. Syed Ahmed Hussain and others*). It was further

contended that such technicalities should not have weighed with the learned Election Tribunal and the Election Petitions should have been decided on merits, *inter alia*, after affording full opportunity to the present Appellants to present their respective cases by leading evidence, more particularly, after incorporation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. It was next argued that the impugned order of 03.05.2016 is also against statutory provisions of relevant Election Law relating to Local Government, viz. Section 46 of the Sindh Local Government Act, 2013 (the “**SLGA 2013**”), which enjoins that the Election Tribunal should hand down a decision after a proper trial. Similar arguments were advanced by all the learned counsel for the respective Appellants; according to them the Election Petitions were never tried by the learned Election Tribunal as the same were dismissed summarily on a purported legal ground. The other set of submissions from the Appellants’ side is that the judgments relied upon by the Election Tribunal are not applicable to the present set of facts as all those judicial precedents of the Superior Courts and mainly of the Honourable Supreme Court of Pakistan are in relation to the Representation of the People Act, 1976 (“**ROPA**”), which is quite different in its nature and complexion from the above referred Election Law and Rules relating to the Elections of Local Government. The other segment of the arguments from the Appellants’ side is that if the main statute, that is, the SLGA 2013 has not provided any consequence with regard to a verification clause then the learned Election Tribunal has wrongly invoked the Rules 60 to 64 of the above Election Rules in passing the impugned orders. According to the plea of Appellants’ side, learned Election Tribunal has misinterpreted the Rules while passing the impugned decision and, therefore, said decisions suffer from illegality, as it is a settled principle that Rules have to be subservient to the main

statute. To augment their arguments, learned counsel for the Appellants have relied upon the following case law:

1. 2004 S C M R page-602 (*Abdul Nasir and another Vs. Election Tribunal, Toba Tek Singh and others*),
 2. P L D 1964 Supreme Court page-451 (*Province of East Pakistan and another Vs. Nur Ahmad and another*),
 3. P L D 1967 Supreme Court page-486 (*S. M. Ayub Vs. Syed Yusaf Shah and others*), and
 4. 2005 S C M R page-186 (*Khawaja Ahmad Hassaan Vs. Government of Punjab and others*)
5. Mr. Allah Bachayo Soomro, learned Additional Advocate General Sindh while controverting the above arguments has relied upon Order VI, Rule 15 of Civil Procedure Code, 1908, in order to advance his case that all Election Petitions should contain the same form of verification clause as is mentioned for the pleadings of a civil litigation. He has further drawn the Court's attention to Section 71 of SLGA 2013, wherein it has been mentioned that provisions of ROPA will also be applicable to the Elections and the electoral process being held under the SLGA 2013. Learned Additional A.G. has further stated that this Court in few other Appeals being Election Appeals No.21, 14, 15 and 24 of 2016, have already given the verdict by maintaining decisions of the Election Tribunal, which had dismissed the Election Petitions on the same ground that the Election Petitions did not contain a properly sworn verification clause.
6. The crux of the arguments advanced on behalf of different learned counsel representing their respective clients / Respondents who were declared as Returned Candidates is as follows:

- Firstly, That election matters are different from ordinary civil litigation and any defect while filing election petition, which is

noncompliant to any or all of the above mentioned provisions / Rules 60 to 63 of the Election Rules, is not curable and the consequences provided in Rule 64 of the said Election Rules will come into play, that is, Election Petitions have to be dismissed.

- Secondly, the language of Rule 64 of the Rules 2015 is so clear that it makes the said provision a mandatory one as it provides a penalty of dismissal if the Election Petition is not filed in compliance of Rules 60 to 63 of the Election Rules 2015. The learned counsel for the Respondents have relied upon the following recent decisions of the Honourable Supreme Court of Pakistan, handed down in various election matters by expounding the relevant provisions of **ROPA**: -

1. 2015 S C M R page-1585 (*Lt.-Col. (Rtd.) Ghazanfar Abbas Shah Vs. Mehr Khalid Mehmood Sargana & others*),
2. 2016 S C M R page-750 (*Feroze Ahmed Jamali Vs. Masroor Ahmad Khan Jatoi and others*),
3. 2016 S C M R page-875 (*Muhammad Nawaz Chandio Vs. Muhammad Ismail Rahu and others*), and
4. 2016 S C M R page-1312 (*Sultan Mahmood Hinjra Vs. Malik Ghulam Mustafa Khar and others*).

7. I have taken into account the arguments advanced by both sides and with their able assistance have gone through the record of subject Election Appeals.

8. At the outset, it would be just and proper to answer the main legal objection of the Appellants' side that in terms of Section 49 of the SLGA 2013, the learned Election Tribunal should have decided the Election Petitions after a proper trial and on merits instead of dismissing the same on preliminary legal objections.

9. The two reported decisions of the Honourable Supreme Court provide a direct answer to the above objections; (i) *2014 S C M R page-1015* and (ii) *2016 S C M R 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 that objection is sustained then the Court is left with no option but to dismiss the petition.” (2014 S C M R 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 S C M R 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 statute has not provided for any such consequence.

11. I have given a thoughtful consideration to the above proposition of law. Undoubtedly, afore-referred Election Rules have been framed under the statute; SLGA 2013. Going through different treatises 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 ‘Canons 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 byelaw must not be repugnant to the statute or the general law, byelaws 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 statute 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.”

(Underling 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 thereunder 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.”

(Underling is to add emphasis)

12. Secondly, the Honourable Supreme Court of Pakistan in one of its reported Judgments, viz. P L D 1985 SC 282 (*Shah Muhammad Vs. 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 ballot-paper must be signed by the Presiding Officer, and when the ballot-boxes are opened for the purpose of counting the ballot-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 Vs. Syed Ahmed Hussain and others* (2014 SCMR 1015), the Honourable Supreme Court in paragraph-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 provision is to be interpreted as mandatory. It is also a settled Rule that 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 under this Act.”

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 (lii), 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 in 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 P L D 1984 Karachi 426 (*Shahenshah Humayun Co-operative Housing Society Ltd., and 2 others Vs. 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 Versus Third Senior Civil Judge, East, Karachi*), the above principle relating to the mandatory nature of the statutory rules has been reiterated.

15. The cited case law – 2005 SCMR page-186, barely lends any support to the case of Appellants. In the above decision, the Honourable Supreme Court has reiterated the principle applicable to the subordinate legislation; that is, Subordinate Law Making Body is bound by the terms of its delegated or derived authority and the Courts in appropriate cases may enquire whether the rule making power has been exercised in accordance with the provisions of the statute and whether the procedure is duly adopted. It has been already discussed in the foregoing paragraphs that the definition clause of SLGA 2013 by adopting the term ‘Prescribed’ has conveyed the intent of the legislature that matters relating to the

proceedings arising out of election disputes will be governed by the Statutory Rules, which, in the present case, is the aforementioned Election Rules 2015, in particular, its mandatory provisions Rule 60 to 64.

16. The Judgment cited by Mr. Kafeel Ahmed Abbasi, the learned counsel for the appellants, reported in P L D 1964 SC page-451, to substantiate his arguments that Rules cannot enlarge the scope of a matter on which the main statute has a different view, is not applicable to the peculiar facts of the present Appeals. In that decision of Province of East Pakistan (*Supra*), the issue was removal of an Elected Member from a Local Council. The Honourable Apex Court was of the view that since principle of natural justice is to be read as part of every statute, therefore, an Elected Member is entitled to a Show Cause Notice before his removal and in this context, it was held that the Rule Making Authority cannot clothe itself with power, which the statute does not give. In the present Appeals, the applicable law, as already discussed in foregoing paragraphs, is the SLGA 2013 and the Election Rules and the SLGA being the governing statute has given the authority through enabling clause that matters relating to Election Disputes shall be regulated by the Statutory Rules, viz. the Election Rules 2015. Relevant Election Rules since are mandatory in nature, therefore, they have to be applied accordingly.

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 Appellants' side carry hardly any force and the mandatory effect of the afore-referred Election Rules 2015 cannot be curtailed or abridged in any manner whatsoever.

18. The Election Appeal No.07 of 2016 has been preferred against the impugned order of 21.03.2016, which was passed in Election Petition No. Nil of 2016, preferred by present Appellant, in which he has challenged the Elections of Respondent Nos. 1 and 2, who were notified as Returned Candidates for the Seat of Chairman and Vice Chairman of Union Council No.37, Khalifo Qasim, Taluka Tando Bago. The impugned order has dismissed the Election Petition of present Appellant on the ground of limitation by invoking Rule 60 (2) of the aforementioned Election Rules 2015. According to Mr. Ghulamullah Chang, learned counsel for the Appellant, the Notification issued by Respondent-Election Commission of Pakistan dated 26.12.2015 showing the above named Respondents as Returned / Successful Candidates, was not gazetted and, therefore, time as prescribed in the above Rule will start from the date when the Notification is published / gazetted. It was further argued that earlier the election was challenged in C.P.No.D-3063 of 2015 before the learned Division Bench of this Court, whereafter he filed the above mentioned Election Petition and thus the time consumed in pursuing the above Constitutional Petition may be deducted from the limitation period of 45 days.

19. The arguments of learned counsel for the Appellants were rebutted by Mr. Ashfaq Nabi Kazi, learned Assistant Advocate General Sindh, who was assisted by Mr. Muhawar Ali, the Official from the Provincial Election Commission. Learned A.A.G. has produced a copy of the Notification No.F.9(14)/2015-LGE-(S) issued by Respondent-Election Commission with regard to Elections of Local Bodies held in Province of Sindh, which has been gazetted in the Gazette of Pakistan dated 30.12.2015. If forty five (45) days' time is calculated as mentioned in the Rule 60 (2) of the Election Rules, the Election Petition should have been filed latest by 14.02.2016, but undoubtedly the same was filed on 16.02.2016. It has also been held in the

preceding paragraphs that the subject election Rules wherever have provided the consequences or penalty have to be read as mandatory provision. Since the impugned order challenged in the Election Appeal No.07 of 2016 does not suffer from any illegality, thus the same does not call for any interference and consequently, the Election Petition No.07 of 2016 is dismissed accordingly.

20. Similarly, the Election Appeal No.33 of 2016, filed by one Attaullah Shah, has assailed the impugned order dated 28.07.2016 of the learned Election Tribunal, whereby the Election Petition of the above named Appellant was dismissed. Mr. Muhammad Hashim Laghari, learned counsel for Respondent No.5, who was declared as the Returned / Successful Candidate, has supported the impugned decision and, according to him, the same has been passed after application of judicial mind to the facts of the case and legal principles evolved by various judicial pronouncements in respect of the election matters.

21. I have perused the record and proceedings of Election Petition No.43 of 2016, which is available with present Election Appeal No.33 of 2016. The Election Petition contains a supporting affidavit, which though mentions at its bottom, the clause about Commissioner for Taking Affidavits. This supporting affidavit is now in vogue in the Province of Sindh, wherein at the right side, a photo of the Petitioner (or any other party filing the pleadings) is mentioned, besides, mentioning CNIC and contact number of person, which in the present case, is the present Appellant. It also contains the thumb impression which has been duly verified by National Database and Registration Authority (NADRA). In addition to this, another supporting affidavit is also enclosed with the Petition, which is in the general format. However, undisputedly there is no verification / swearing on oath at the end of the Petition itself, which should have been

there in terms of the present verification procedure in place in the Province of Sindh, therefore, even this Election Petition is not properly verified. In this regard, learned Additional Registrar, High Court of Sindh, Circuit Court, Hyderabad (Mr. Nasrullah Korai) has provided a Circular, format of verification and the list of Districts, wherein, verification system has been upgraded by establishing a designated Affidavit and Identification Branch, which is linked up with the National Database and Registration Authority (NADRA).

22. Notwithstanding the above, the inescapable factual aspect of the case that escaped the notice of the learned Election Tribunal is that the Election Petition No.43 of 2016 was filed on 17.05.2016, whereas the Respondent-Election Commission of Pakistan had issued a Notification dated 09.02.2016, *inter alia*, declaring the present Respondent No.5 as a Returned / Successful Candidate for the Seat of Member District Council, U.C. No.28, Dadha. In terms of Rule 60(2) of the Rules 2013, an Election Petition challenging the election of Respondent No.5 should have been filed within forty five (45) days from the publication of Notification. If forty five days are calculated from the Notification dated 09.02.2016, which is the part of record and proceedings, the said Election Petition No.43 of 2016 should have been filed by 26.03.2016, but the same was filed on 17.05.2016; hence is barred by time. Since it is also a settled rule that appeal proceeding is a continuity of the proceeding of the forum of first instance, therefore, I hold that the Election Petition No.43 of 2016 was also time barred and thus was not maintainable, hence, was liable to be dismissed at the outset, therefore, the fate of present Election Appeal would be that the same is hereby dismissed.

23. With regard to the Election Appeal No.28 of 2016, a preliminary objection with regard to the said Appeal being time barred has been raised

by Mr. Riaz Ali Panhwar, learned counsel representing Respondents No. 6 and 7. Mr. Farhad Ali Abro, learned counsel for the Appellant has submitted that it is a settled law now, which has been further fortified by the Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, that every person is entitled to a fair trial. According to learned counsel for the Appellant, the instant Election Appeal involves important question of law and facts. It is further argued that the impugned order is a result of non-applicability of judicial mind.

24. I have perused the record of Appeal No.28 of 2016 with the able assistance of learned counsel for the parties.

25. The undisputed factual position is that the impugned order was passed on 24.05.2016, whereas, present Election Appeal No.28 of 2016 was presented / filed on 22.07.2016. The Appellants have also filed an application under Section 5 of the Limitation Act, 1908, for condonation of delay and the reasons they have assigned are that they (present Appellants) were advised that prescribed time for preferring an appeal against an order of the Election Tribunal is three (03) months. Firstly, 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. Thirdly, Section 54 of the SLGA 2013 prescribes the time of thirty (30) days for filing of an appeal against the order of Election Tribunal. In view of such an express provision of law and failure of the present Appellants to file instant Appeal within time, the subject Appeal is consequently dismissed being time barred.

26. It is relevant to mention that in all those Election Appeals, except those which are separately mentioned, where the impugned orders have

dismissed the Election Petitions for want of proper verification clause, none of the learned counsel for the Appellants have challenged the factual finding of the learned Election Tribunal by producing certified copies of Election Petitions containing a proper verification clause.

27. Adverting to the Election Appeal No.31 of 2016, which arises from the impugned order dated 19.07.2016 passed in the Election Petition No.15 of 2016. M/s. Abid Thebo and Abdul Khaliq Leghari, learned counsel for the Appellant (Nazar Muhammad) have argued that the impugned order is a result of an improper exercise of jurisdiction and the said Election Petition was dismissed in a slipshod manner. The above Election Petition (No.15 of 2016) was dismissed on two grounds; firstly that notices were not dispatched to the Respondents before filing of the above Election Petition and the said Election Petition was not verified on oath as per the laid down procedure. The record and proceeding of the said Election Petition has been examined; the Election Petition does contain a verification clause at the end of the Petition on which Oath Commissioner has put his signature and stamp along with date. In addition to this, another Affidavit in support of Election Petition is also attached as per the aforementioned current prescribed form as in vogue in the Province of Sindh. Similarly, there is treasury challan showing payment of costs of Rs.2,000/- (Rupees Two Thousand Only). Each annexure on which the present Appellant has relied upon, has been duly verified, therefore, the determination of the learned Election Tribunal in respect of the verification clause is erroneous. Record and proceeding of the above Election Petition also contains the courier receipt of the notices of aforesaid Election Petition that was sent to the present Respondents and they all dated 06.02.2016, that is, the day when the above Election Petition was presented / filed. In the said notice, which has been addressed by the present counsel of Appellant to Respondents, it

has been specifically mentioned in the end that copy of Election Petition along with all annexures are also enclosed. Thus in my considered view, the present Appellant has followed the Election Rules properly and the finding of the Election Tribunal that the notices of Election Petition should have been first dispatched to the Respondents and then Election Petition should have been filed, is misconceived in nature and is accordingly set aside. Resultantly, the present Election Appeal No.31 of 2016 (Nazar Muhammad Versus Gul Muhammad Sarewal and others) is allowed and the learned Election Tribunal is directed to decide the Election Petition No.15 of 2016 on merits and after a proper trial.

28. If the above discussion is summed up, then the conclusion would be as follows: -

- i) The aforementioned provisions of the Election Rules providing penalty and / or adverse consequence for its noncompliance, in particular, relating to the Election Petitions/cases, are mandatory in nature and failure to act accordingly will attract the penalty provided in Rule 64 of the Election Rules, that is, dismissal of Election Petition.
- ii) The criteria laid down by the Honourable Supreme Court of Pakistan in 2016 SCMR 750-Masroor Jatoi's case (*ibid*) and more particular at pages-758 and 759; (A to C); paragraphs-6 and 7, are most relevant and provide a guidance for filing / instituting Election Petitions. The present Computerized Verification System in vogue in the Province of Sindh if followed then it is in effect a compliance of the observations mentioned in the aforesaid Masroor Jatoi's case and other referred decisions. But, where the said automated Facility is not available, the

verification is to be done in terms of relevant provisions / Rules of the Sindh Civil Court Rules. In short, there is/was no ambiguity in getting the pleadings/Election Petitions verified in the prescribed form and failure to do so resulted in passing of the subject impugned Orders {in different Election Petitions}, which do not call for any interference in the present proceeding, barring one exception; Election Appeal No. 31 of 2016.

- iii) With regard to the presence of verification clause on every schedule and annexures, again the aforementioned Judgment of Honourable Apex Court (2016 SCMR 750) and the earlier decision handed down in S. M. Ayub's case (*supra*), which was cited by the learned counsel for the Appellants, provide a solution, that is to say, only those schedule or annexures attached with the Election Petition are required to be verified on oath (in the prescribed form) which are those documents supporting the allegations as already mentioned in the Election Petition with additional grounds or some better particulars on such allegations, whereas, Statement of Count, various Provisional Results, Notification, etc. are not mandatorily required to be verified.

In other words, the otherwise mandatory requirement of verification is not attracted to public documents which fall under Article 85 of the Qanoon-e-Shahadat Order, 1984.

- 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 any other infirmity entailing a consequence then such Election Petition or Election Appeal is liable to be dismissed.

29. If applying the afore stated criteria to the subject Election Appeals, the result is that except for the Election Appeal No.31 of 2016, the other subject Election Appeals are hereby dismissed.

30. However, Parties are left to bear their own costs.

Dated 25.03.2017

JUDGE

Riaz P.S.