

# BEFORE THE ELECTION TRIBUNAL AT KARACHI

## Election Petition No. 01 of 2018

Petitioner : Ahmed Nadim Mughal, through  
Mamoon Shirwani, Advocate.

Respondent No. 4 : Saeed Ahmed Afridi, through Syed  
Hafeezuddin, Advocate.

Date of hearing : 19.04.2021

### ORDER

**YOUSUF ALI SAYEED, J** – The captioned Petition under Section 139 of the Election Act 2017 (the “**Act**”) relates to the general election held on 25.07.2018 in respect of PS-120, Karachi West (the “**Constituency**”) – with the Petitioner having placed second in that electoral race and the final consolidated result reflecting that from amongst 176,048 registered voters, a total of 63150 votes were cast, with the Respondent No.4 shown to have secured 14561 votes as opposed to the Petitioners 12110 votes, with the differential thus being 2451 votes and 1847 votes having been held to be invalid.

2. The Petition impugns the correctness of Forms 45, Form 46, 47, 48 and 49 for the Constituency on the grounds that the same were prepared illegally/unlawfully due to non-compliance with Sections 95 and 98 of the Act, with it being sought that the same be declared null and void and be recalled/set aside/ suspended. In that context, the Petitioner has also elicited the following reliefs:

“a. To pass direction to the Returning Officer to recount the whole votes all Polling Station of the Provincial Assembly PS-120, Karachi West-IX/Senior Civil Judge Karachi-West with pursuing the respective records of the Provincial Assembly PS-120, Karachi West-IX/Senior Civil Judge, Karachi-West.

- b. To declare the Petitioner cannot be condemned due to delay caused by the Returning Officer and the Election Commission of Pakistan and cannot be deprived of his right of getting votes recounted on the pretext of consolidation of the results.
- c. To pass direction to the Respondents No.1 to 3 to secure the Election material and secure and keep the same in some safe place, so that the same are not tampered/manipulated.
- d. To pass direction hold an impartial inquiry and the installed Cameras may kindly be made part of inquiry as for impartiality of the inquiry throughout all Polling Station of the constituency Provincial Assembly PS-120, Karachi West-IX/Senior Civil Judge, Karachi-West.
- e. To issue directions to the Respondent No.1 till finalization of impartial inquiry results of the returned candidates result may kindly be declared null and void and will pass direction for stopped operation already been published/issued Gazette Notification of the returned candidates of Provincial Assembly PS-120, Karachi West-IX/Senior Civil Judge, Karachi-West in the larger interest of justice.
- f. Any other relief(ves), which deem fit by the Honourable Court under the circumstances of this Petition and cost of the Petition is awarded to the Petitioner.

3. The Petition was met with an Application under Section 145 of the Act, seeking rejection/dismissal thereof on the ground that the same does not satisfy the requirements of Section 144 of the Act, with the two Sections mandating as follows:

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

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

(2) The following documents shall be attached with the petition—

- (a) complete list of witnesses and their statements on affidavits;
- (b) documentary evidence relied upon by the petitioner in support of allegations referred to in para (b);
- (c) affidavit of service to the effect that a copy of the petition along with copies of all annexures, including list of witnesses, affidavits and documentary evidence, have been sent to all the respondents by registered post or courier service; and
- (d) the relief claimed by the petitioner.

(3) A petitioner may claim as relief any of the following declarations—

- (a) that the election of the returned candidate is void and petitioner or some other candidate has been elected; or
- (b) that the election of the returned candidate is partially void and that fresh poll be ordered in one or more polling stations; or
- (c) that the election as a whole is void and fresh poll be conducted in the entire constituency.

(4) An election petition and its annexures shall be signed by the petitioner and the petition shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

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

(2) If an election petition is not rejected under sub-section (1), the Election Tribunal shall issue notice to each of the respondents through—

- (a) registered post acknowledgement due;

- (b) courier service or urgent mail service;
- (c) any electronic mode of communication, which may include radio, television, email and short message service (sms);
- (d) affixing a copy of the notice at some conspicuous part of the house, if any, in which the respondent is known to have last resided or at a place where the respondent is known to have last carried on business or personally worked for gain;
- (e) publication in two widely circulated daily newspapers at the cost of the petitioner; and
- (f) any other manner or mode as the Tribunal may deem fit.”

4. Furthermore, on 31.01.2109 an issue of maintainability had inter alia been framed in the matter, which was then refined vide the Order made on 14.12.2020 with reference to the Judgment of the Honourable Supreme Court of Pakistan in Civil Petition No.13-O of 2019. The operative part of the Judgment of the Apex Court is reproduced as under:-

“Having heard the learned counsel for the appellant and going through the record, we find that the very election petition through which the appellant had challenged the election notification of Respondent No.1 was defective in its content. We have gone through the election petition and find that the mandatory requirements of Section 144 (1) (b) of the Election Act, 2017 were not met. Further, the petition was deficient insofar as it lacked particulars of any corrupt or illegal practices or other illegal act that was alleged to have been committed. Further, neither the petition nor the affidavit in evidence submitted by or on behalf of the appellant contained names and other particulars of the persons who were alleged to have committed the corrupt or illegal practices or illegal acts. The date, time and place of the commission of such practices was not mentioned either. Therefore, the petition was liable to be dismissed on that short ground alone in terms of powers available to the Election Tribunal under Section 145 of the Election Act, 2017.”

5. Turning accordingly to the subject of maintainability, it merits consideration that the scope of an order which may be made by the Tribunal upon conclusion of the trial of an Election Petition is prescribed by S. 154(1) of the Act, and the nature of declarations as may be made are naturally coextensive with the scope of the reliefs that a Petitioner may claim in terms of Section 144(3) thereof, as reproduced herein above, with the latter provision reading as follows:

**“154. Decision of the Election Tribunal.—(1)**  
The Election Tribunal may, upon the conclusion of the trial of an election petition, make an order—

(a) dismissing the petition;

(b) declaring—

(i) the election of the returned candidate to be void and directing that fresh poll be held in one or more polling stations;

(ii) the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been elected; or

(iii) the election as a whole to be void and directing that fresh election be held in the entire constituency.”

6. Whilst certain powers in so far as the aspect of recount is concerned are conferred in terms of Section 101 of the Act, read with Rule 139 of the Election Rules, 2017, which provide for the opening of packets of counterfoils and certificates or the inspection of any counted ballot papers, such an exercise does not appear to be an end unto itself as those powers have to be viewed in conjunction with Sections 144(3) and 154(1) of the Act, circumscribing the overall scope of an Election Petition, so as to ascertain whether such an exercise would advance a purpose that is ultimately in consonance with those provisions in that particular case.

7. In the Petition at hand, the pleadings largely lack clarity, however, as can best be discerned, the Petitioner has sought to impugn the veracity of the count and consolidation of votes on the basis of the bare allegation that his agents were forcibly removed from the Polling Stations on the Polling day and that the aforementioned exercise has not taken place in accordance with the provision of the Election Act, 2017, and does not reflect the true result of the election. However, no particulars by way of identification of the particular polling station(s) or name(s) of the culpable election staff have been provided, nor have any further material particulars been disclosed as to the time and manner of the alleged expulsion of the Petitioner's representatives. Instead, the Petitioner has merely attached photocopies of the list of his Polling Agents and the list of Polling Station for consideration as Annexures "E" and "F" respectively, which are said to constitute proof of the alleged removal, whereas photocopies of Forms 45 and 46 relating to the various polling stations have also been filed along with photocopies of Forms 47 to 49 and a self-prepared table said to reflect the contradictions in the result. Furthermore, the Petition is absolutely silent as to any corrupt or illegal practice on the part of the Respondent No.4 or indeed as to his connivance in the alleged non-compliance on the part of the election staff with the provisions of the Act. The Affidavits-in-Evidence filed in support of the Petition also follow suit.

8. As it stands, an allegation as to the failure of the electoral officials to comply with the provisions of the Act, even if taken as true and correct for the sake of argument, does not furnish cause for declaring the result to be null and void, as sought by the Petitioner, as the grounds on which such a declaration may conceivably be made are as delineated in Section 156 or 158 of the Act, whichever may be applicable in a given case, which stipulate that:

**“156. Ground for declaring election of returned candidate void.—**(1) The Election Tribunal shall declare the election of the returned candidate to be void if—

(a) the nomination of the returned candidate was invalid; or

(b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a Member; or

(c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or

(d) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the consent or connivance of the candidate or his election agent.

(2) If the contravention or corrupt or illegal practice is proved at a polling station, the Election Tribunal may, while declaring election of the returned candidate void, direct re-poll at the polling station.

(3) The election of a returned candidate shall not be declared void on the ground—

(a) that any corrupt or illegal practice has been committed, if the Election Tribunal is satisfied that it was not committed by or with the consent or connivance of that candidate or his election agent and that the candidate and the election agent took all reasonable precaution to prevent its commission; or

(b) that any of the other contesting candidates was, on the nomination day not qualified for or was disqualified from, being elected as a Member.”

**“158. Ground for declaring election as a whole void.—**The Election Tribunal shall declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by reason of—

(a) the failure to comply with the provisions of this Act or the Rules in connivance with the returned candidate; or

(b) the prevalence of extensive corrupt or illegal practices at the election.”

9. The term “corrupt or illegal practice” has been exhaustively defined in various sections falling under Chapter X of the Act, and in the absence of any allegation in that regard on the part of the returned candidate or connivance in the alleged non-compliance on the part of the election staff with the provisions of the Act, the mere failure on the part of electoral officials to comply with the Act or Rules at best falls under within the ambit of S.184 of the Act, for which the punishment and separate forum for trial are prescribed in terms of Sections 188 and 190 respectively, which provide that:

“184. **Violation of official duty in connection with election.**—A person appointed to perform any function in connection with an election is guilty of violation of official duty, if he wilfully or negligently—

(a) tampers with papers as mentioned in section 172;

(b) influences a voter as mentioned in section 186; or

(c) fails to discharge any duty entrusted to him under this Act or Rules or any other law.”

“188. **Penalty for violation of official duty in connection with election.**—An election official or any other person on duty in connection with an election who is guilty of an offence under section 184, section 186 or section 187 shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one hundred thousand rupees or with both.”

“190. **Cognizance and trial.**—(1) Notwithstanding anything contained in any other law but subject to section 193, an offence under this Chapter shall be tried by the Sessions Judge and any aggrieved person may, within thirty days of the passing of the final order, file an appeal against the order in the High Court which shall be heard by a Division Bench of the High Court.



(2) The proceedings against a person for being involved in corrupt or illegal practice may be initiated on a complaint made by a person or by the Commission but if a complaint made by the person proves to be false, based on bad faith or is made for any ulterior motive to provide benefit to another person, the complainant shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

(3) The Commission may direct that the summary trial of an offence under this Act may be conducted in accordance with the provisions of Chapter XX of the Code.

*Explanation.*—In this section, Sessions Judge includes an Additional Sessions Judge.”

10. As such, it is apparent that the Petition does not lie within the scope of Sections 154 to 158, hence is not in consonance with the scheme of the Act, and is even otherwise deficient as noted herein above, in as much as the pleadings and Affidavits-in-Evidence are bereft of the material particulars required to have been disclosed in terms of S.144(1)(b), as held by the Honourable Supreme Court of Pakistan in Civil Petition No.13-O of 2019. That being so, the Petition stands dismissed accordingly.

**JUDGE**

Karachi  
Dated \_\_\_\_\_