

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Election Appeal No. S – 28 of 2016

Appellant: Abdullah Bahleem,
through Mr. Umrah Khan Yousufzai Advocate.

Respondents 1 to 6: Chief Election Commissioner of Pakistan,
Chief Election Commissioner Sindh, District
Election Commissioner Khairpur, District Returning
Officer Khairpur, Returning Officer Taluka
Gambat & Presiding Officer Polling Station Ward
No.8, through Mr. Ahmed Ali Shahani, A.A.G.
Sindh.

Respondent No.7 : Asadullah Bahleem,
through Mr. Sohail Ahmed Khoso Advocate.

Respondent No.8: Asif Ali, called absent.

Dates of hearing: 06.10.2017 and 09.02.2018.

J U D G M E N T

NADEEM AKHTAR, J. : Through this appeal under Section 54 of the Sindh Local Government Act, 2013, the appellant has impugned order passed by the learned Election Tribunal Khairpur on 17.09.2016 in Election Petition No.30/2015, whereby the said election petition filed by the present appellant was dismissed under Rule 64 of the Sindh Local Councils Election Rules, 2015, (**'the Rules'**) on the ground that he did not comply with the mandatory provisions of Rules 61(b) and 62(3) of the Rules.

2. It was held by the learned Tribunal that the appellant did not join the polling staff as respondents in his petition against whom allegations were made by him in his petition for favouring private respondent No.7, and thus compliance of Rule 61(b) of the Rules was not made by him. It was further held that the photo stat copies filed by him along with the petition were not signed and verified by him, therefore, mandatory provisions of Rule 62(3) of the Rules were also not complied with by him.

3. Mr. Umrah Khan Yousufzai, learned counsel for the appellant, contended that dismissal of the petition on the ground of non-compliance of Rule 61(b) is not sustainable as the appellant had joined District Returning Officer, Returning Officer and Presiding Officer of the Polling Station as respondents in his petition against whom allegations were made by him. Regarding the other ground of non-

signing and non-verification of annexures to the petition, he submitted that since the petition itself was verified on oath, it could not be dismissed on the ground of non-verification of annexures filed therewith. He further submitted that the petition was dismissed merely on technical grounds without hearing the main grievance of the appellant. It was urged that the matter ought to have been decided by the learned Tribunal on merits rather than on technicalities. In support of his above submissions, learned counsel placed reliance on Muhammad Iqbal V/S Nabi Ahmad and 7 others, 2017 YLR 2019.

4. On the other hand, Mr. Sohail Ahmed Khoso, learned counsel for private respondent No.7, contended that there were specific allegations in paragraphs 6 to 11 of the petition that in addition to the Returning Officer and Presiding Officer, other polling staff of the polling station concerned were involved in supporting respondent No.7, who was the candidate of a political party, by rigging and casting fake votes in his favour. He further contended that the said other polling staff was not joined by the appellant in his petition as respondents, therefore, mandatory requirement of Rule 61(b) was not fulfilled by him. He also contended that annexures to the petition were admittedly not verified by the appellant and as such compliance of Rule 62(3) was also not made by him. It was urged by him that in view of violation of the above mandatory provisions of the Rules, the election petition was rightly dismissed by the learned Tribunal. In support of his submissions, he relied upon (i) Ch. Muhammad Ayaz VS Asif Mehmood and others, 2016 SCMR 849, (ii) Lt.-Col. (Rtd.) Ghazanfar Abbas Shah VS Mehr Khalid Mehmood Sargana and others, 2016 SCMR 1585, (iii) Zia ur Rehman VS Syed Ahmed Hussain and others, 2014 SCMR 1015 and (iv) Malik Umar Aslam VS Sumera Malik and another, PLD 2007 Supreme Court 362.

5. Mr. Ahmed Ali Shahani, learned Additional Advocate General Sindh, adopted the arguments advanced by learned counsel for private respondent No.7 and prayed for dismissal of this appeal.

6. I have heard learned counsel for the parties and have also perused the material available on record and the law cited at the bar with their assistance. A perusal of paragraphs 6, 7, 8, 9, 10 and 11 of the appellant's election petition shows that specific allegations were made by him against Returning Officer, Presiding Officer and other polling staff for supporting the candidate of a political party (respondent No.7) by casting fake votes in his favour including votes of dead persons viz. Mst. Fehmida Khatoon and Mst. Ameenat Khatoon. It was also alleged that the said other polling staff was posted at the polling station by the

ruling party who took the above illegal actions in collusion withits candidate. It is clear from the contents of paragraphs 6 to 11 of the election petition that specific allegations of collusion and rigging were made by the appellant not only against District Returning Officer, Returning Officer and Presiding Officer of the polling station, but also against other polling staff. Despite these specific allegations, only District Returning Officer, Returning Officer and Presiding Officer of the polling station were joined in the petition as respondents, and the appellant neither disclosed any details of the said other polling staff in his petition nor did he join them as respondents. Rule 61(b) specifically provides that all contesting candidates and any other person against who any allegation of corrupt or illegal practice is made in an election petition shall be joined by the petitioner as respondents. Because of the word “shall” used in Rule 61(b), the provisions thereof are mandatory in nature. Thus, the finding of the learned Tribunal in this context appears to be correct.

7. Regarding the other ground on which the petition was dismissed viz. non-verification of annexures to the petition, it is clear from the record that the said annexures were not signed or verified by the appellant as required under Rule 62(3). In any event, learned counsel for the appellant has conceded that the annexures were not signed and verified by the appellant though he had initially argued that the same did not require signature and/or verification as the petition itself was verified by the appellant on oath. Rule 62(3) provides that every election petition and every schedule or annexure thereto shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for verification of pleadings. In *ZiaurRehman (supra)*, it was held by the Hon’ble Supreme Court in paragraph 8 that every election petition and every schedule or annexure thereto has to be signed and verified by the petitioner in the manner laid down in the Code of Civil Procedure, 1908. It was also held in paragraph 10 of this authority that if the law requires a particular thing to done in a particular manner, it has to be done accordingly, otherwise it would not be in compliance with the legislative intent. In *Feroze Ahmed Jamali V/S Masroor Ahmad Khan Jatoi*, **2016 SCMR 750**, the Hon’ble Supreme Court was pleased to hold that only those annexures to the election petition require verification which fall within the category described in paragraph 7 of this authority viz. documents *“propounding and setting out any independent or additional substantial grounds for challenging the election or furnishing at least better particulars of the allegations in the petition so as to give such documents a status of independent and substantial grounds of the petition itself challenging the election on the basis thereof.”* It was further held in the above-cited authority that notification of the

Election Commission of Pakistan, statements of count, various provisional results, applications for recounting of votes and complaints regarding anomalies in the election process, were not of the above character and as such they did not require verification in the prescribed manner.

8. In the present case, the annexures / documents filed by the appellant in support of his petition included copies of the Statement of Count in Form XI, Return of Election in Form XIV and his application to the District Returning Officer for recounting of votes, which did not require verification in view of Feroze Ahmed Jamali (supra). In addition to the above, he had also filed a copy of the death certificate of one of the dead persons whose name was allegedly used by the respondents and other polling staff to cast bogus vote in favour of private respondent No.7. Since in his petition this document was used and relied upon by the appellant to make additional allegations of a substantive character against the opposite party so as to give them the status of substantive ground of the petition itself, the said document ought to have been verified by the appellant in the prescribed manner as laid down by the Hon'ble Supreme Court in the above-cited authority.

9. Rule 64 provides that if the Election Tribunal is satisfied that all or any of the preceding provisions, which obviously include Rule 61(b) and 62(3), have not been complied with, the petition shall be dismissed forthwith. In paragraph 7 of ZiaurRehman (supra), it was held by the Hon'ble Supreme Court that when the law prescribes a certain format of an election petition and its verification on oath and entails penal consequences for its non-compliance, it is a mandatory provision. In view of the law laid down by the Hon'ble Supreme Court, I am of the considered view that dismissal of the appellant's election petition for non-compliance of the mandatory provisions of Rules 61(b) and 62(3) was fully justified, and such finding of the learned Tribunal does not require any interference by this Court.

10. As a result of the above discussion, the appeal is dismissed with no order as to costs.

J U D G E