

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Election Appeal No. S – 08 of 2016

Appellants : Faraz Khan Dahraj and Allah Dad Hisbani,
through appellant No.1 Faraz Khan Dahraj
in person.

Respondent No.1 : Chief Election Commissioner Sindh Karachi,
through Mr. Abdul Ghaffar Memon, State Counsel.

Respondents 2 & 3 : Shahid Hussain Tanwari and Nazar Muhammad,
through Mr. Nisar Ahmed Bhanbhro, Advocate.

Respondents 4 to 11 : Abdul Hameed Tanwari and others, called absent.

Date of hearing : 30.03.2018.

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 appellants have impugned the order passed on 02.03.2016 by learned 1st Additional District Judge / Election Tribunal Naushahro Feroze in Election Petition No.01/2016, whereby the said election petition filed by the present appellants was dismissed under Rule 64 of the Sindh Local Councils Election Rules, 2015, (**'the Rules'**) on the ground that they did not comply with the mandatory provisions of Rules 61(b) and 62(3) of the Rules.

2. The case of the appellants, as averred in their above noted election petition, was that the appellants and respondents 2 and 3 contested the Local Bodies Elections 2015 for the posts of Chairman and Vice Chairman, Union Council No.3, Shaikhani, Taluka Kandiaro, District Naushero Feroze ; since the Returning Officer concerned was a close relative of respondents 2 and 3, the appellants filed applications before the District Returning Officer concerned and Chief Election Commissioner Sindh, informing them about the illegal, corrupt and collusive practices of the said Returning Officer and also that they had lost faith in him ; no action was taken by the above authorities despite the appellants' complaints ; resultantly, election was conducted by the same Returning Officer who openly supported respondents 2 and 3 by committing all such illegal and collusive acts that were alleged in paragraphs 4 to 11 of the petition ; and, as a result of such unfair, collusive and illegal support by the said Returning Officer, respondents 2 and 3 were declared as successful / returned candidates. In view of the above allegations, it was prayed by the appellants in

their petition that recounting of the polled votes / ballot papers and the remaining ballot papers be ordered by the learned Tribunal, and in case of any difference in the issued and polled ballot papers, the election result of respondents 2 and 3 be declared as void and the appellants may be declared as the successful candidates.

3. An application under Rule 64 of the Rules was filed by respondents 2 and 3 before the learned Tribunal seeking dismissal of the appellants' election petition mainly on the grounds that Rule 62(3) of the Rules was violated by the appellants as the petition was not verified by them on oath before the competent authority and the annexures thereto were not signed by them ; and, the appellants also did not comply with the requirements of Rule 61 of the Rules as copy of the petition was not served upon any of the respondents. It was held by the learned Tribunal that the election petition filed by the appellants was not verified on oath before the competent authority in accordance with law, and copy of the petition was not served by them either personally or by courier service or by registered post upon the respondents who were joined by them as respondents in their election petition and against whom allegations of corrupt and illegal practice were made by them ; and thus, compliance of Rules 61(b) and 62(3) of the Rules was not made by them. In support of his above findings, learned Tribunal had relied upon the cases reported as 2015 SCMR 1585 and SBLR 2014 SC 157. In view of the above, the election petition was dismissed by the learned Tribunal.

4. The first ground on which the appellants' election petition was dismissed was that copy of the election petition was not served by them upon the respondents in terms of Rule 61(b) against whom allegations of corrupt and illegal practice were made by them in their petition. Rule 61(b) specifically provides that all contesting candidates and any other person against whom any allegation of corrupt or illegal practice is made in an election petition shall be joined by the petitioner as respondents, and he shall serve a copy of his petition on each such respondent personally or by courier service or registered post. It is not the case of the appellants that copy of the petition was served by them on all the respondents through any of the prescribed modes in compliance of Rule 61(b). It was their case before the learned Tribunal that such default was not deliberate or intentional nor was such requirement mandatory, therefore, the petition could not be dismissed on such ground. Thus, it is an admitted position that compliance of Rule 61(b) was not made by them. In this context, reference may be made to the case of Inayatullah V/S Syed Khursheed Ahmed Shah and others, **2014 SCMR 1477**, wherein it was observed by the Hon'ble Supreme

Court that the election petition was not served on the 19 respondents personally or through registered post, and the question whether the courier service employed by the appellant could be construed as service personally effected on the respondents by the appellant, was considered. In paragraph 3 of the above-cited authority, it was held by the Hon'ble Supreme Court as under :

“ 3. Considering the provisions of the various statues including the Civil Procedure Code (C.P.C.) the distinction between personal, service / appearance etc. and appearance / service etc. through an agent is well recognized. The courier service can at best be treated as an agent of the appellant. Service through an agent, keeping in mind the similar provisions of the Civil Procedure Code (C.P.C.) and other statutes will not constitute service effected personally. As far as service through registered post is concerned, that has not even been claimed by the appellant. In any event, the Postal Service of Pakistan has been created under the Post Office Act, 1898. There are a number of courier service operating in Pakistan. Our research staff has accessed reports which show that legislative efforts are a foot to regulate the services of couriers. As a result, the Pakistan Private Courier Regulatory Bill, 2012, was prepared. However, the said Bill has not become a law. In any event, service through registered post raises statutory presumptions in the ordinary course. No such presumption attaches to service through courier. Learned counsel for the appellant made a feeble attempt to argue that service through courier could be considered valid on the ground of practice and usage. This plea is not legally tenable in view of the express wording of the Act.”

5. It would be seen that in the above-cited authority service on the respondents was not effected either personally or through registered post, and it was held that service through courier service was not a valid service. In the present case, service on the respondents was admittedly not effected by the appellants either personally or through registered post or even by courier service. It may be noted that because of the word “shall” used in Rule 61(b), the provisions thereof are mandatory in nature, therefore, the appellants were duty-bound to comply with such mandatory requirement. In the above circumstances, especially in view of the law laid down by the Hon'ble Supreme Court in Inayatullah (supra), the election petition of the appellants was rightly dismissed by the learned Tribunal being barred under Rule 61(b).

6. Regarding non-verification of the petition and schedule / annexures thereto, it was the case of the appellants before the learned Tribunal that such omission was not deliberate or intentional and such requirement was merely procedural, therefore, the election petition could not be dismissed on such technical ground. Thus, it is an admitted position that the election petition and schedule / annexures thereto were not verified by the appellants. 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 Zia ur Rehman VS Syed Ahmed Hussain and others, **2014 SCMR 1015**, 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 be done in a particular manner, it has to be done accordingly, otherwise it would not be in compliance with the legislative intent. In Lt.-Col. (Rtd.) Ghazanfar Abbas Shah VS Mehr Khalid Mehmood Sargana and others, **2016 SCMR 1585**, and Sultan Mehmood Hinjra V/S Malik Ghulam Mustafa Khar and others, **2016 SCMR 1312**, wherein the election petitions were not verified on oath and instead affidavits containing verification of the petitioners were filed therewith, it was held by the Hon'ble Supreme Court that on account of this deficiency and other deficiencies verification of the election petitions was not valid and in such circumstances they were rightly dismissed by the Election Tribunal. It is, therefore, clear that even an affidavit in support of the election petition cannot be accepted in lieu of proper verification thereof in the manner laid down in the Code of Civil Procedure, 1908.

7. Rule 64 provides that if the Election Tribunal is satisfied that all or any of the above provisions have not been complied with, the petition shall be dismissed forthwith. In paragraph 7 of Zia ur Rehman (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 as discussed above, I am of the considered view that dismissal of the appellants' 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. Accordingly, the present appeal is liable to be dismissed.

8. Foregoing are the reasons of the short order announced by me on 30.03.2018, whereby this appeal was dismissed with no order as to costs.

J U D G E