

IN THE HIGHCOURTOFSINDHCIRCUITCOURTHYDERABAD

Election Appeal No.11 of 2023

Appellant: Imdad son of Ghulam Qadir through Mr. Taj Muhammad Keerio, Advocate.

Respondent No.1: Taj Muhammad son of Moula Bux Hajano through Mr. Ghulam Sarwar Baloch, Advocate.

Respondents No.2&3: Nemo.

Official respondents: Through Ms. Shamim Mughal, Assistant Attorney General for Pakistan along with Mr. Zaheer Abbas, Law Officer, Election Commission of Pakistan.

Date of hearing: 24.07.2023.

Date of judgment: 04.08.2023.

JUDGMENT

ARBAB ALI HAKRO, J-This appeal has been initiated under Section 54 of the Sindh Local Government Act, 2013 ("**SLGA, 2013**") challenging Order dated 11.4.2023 by the Election Tribunal Matiari in Election Petition No.04 of 2023, whereby the Election Tribunal dismissed the aforementioned Election Petition filed by the present appellant because the appellant has failed to comply with the mandatory provisions stated in Rules 60(2) and 61(b) of the Sindh Local Councils (Election) Rules, 2015 ("**the Rules, 2015**").

2. Learned counsel for the appellant contended that the impugned Order suffers from legal infirmities of such a nature that justifies interference by this Court; that the Tribunal has dismissed the election petition of the appellant on technical grounds instead of providing an opportunity of

leading evidence; that such technicalities should not have weighed with the Election Tribunal and the election petition should be decided on merits, *inter alia*, after affording the full opportunity of hearing to the appellant to present the case by leading evidence, more particularly, after incorporation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; that the requirement of Rule 40 Sub-Rule (1) of the Rules, 2015 is to put notice to all contesting candidates before the consolidation of the votes of either party; that an application u/Section 149 CPC for grant of time to submit challan of fee was moved by the appellant, but the election tribunal without passing any order on it, dismissed the election petition of the appellant and that the Election Commission has failed to discharge its statutory mandate as the elections were not conducted in a fair manner. The Tribunal should have decided the matter on merits rather than on technicalities.

3. On the other hand, learned counsel representing private respondent No.1 argued that the provisions of Rules 60(2) and 61(b) hold mandatory status and should not be regarded as mere technicalities. Failure to adhere to any of these provisions will lead to the dismissal of the election petition, as stated in Rule 64 of the Rules, 2015. He submitted that in view of violating the above mandatory provisions of the Rules, the Tribunal rightly dismissed the election petition.

4. With the assistance of the Law Officer ECP, the Assistant Attorney General supported the impugned Order passed by the Election Tribunal. Additionally, she adopted the arguments put forth by the counsel for private respondent No.1

and prayed for the dismissal of this appeal.

5. I have heard learned counsel for the parties and, with their assistance, have perused the material available on record.

6. Firstly, the Tribunal determined that the appellant has neither filed a receipt showing that he has deposited in a scheduled bank in favour of the Election Commission a fee of Rs.2000/- nor has he mentioned in the Petition that the fee so payable stands deposited. Secondly, the Tribunal determined that the appellant still needs to provide proof in the form of postal or courier receipts to substantiate that copies of the Petition were sent to each respondent before filing it. Thus, the appellant must comply with the requirement outlined in Rules 60(2) and 61(b) of the Rules 2015. It would be advantageous to reproduce the aforementioned rules as well as Rule 64 of the said Rules as follows: -

"60. (2)An election petition shall be presented to the Tribunal within forty five days of the publication in the official Gazette, the names of the returned candidate and shall be accompanied by a receipt showing that the petitioner has deposited in a Scheduled Bank in favour of the Election Commission, a fee of rupees two thousand.

61(b) any other person against whom any allegation, if any, of corrupt or illegal practice is made and shall serve personally or by courier service or registered post on each such respondent a copy of his Petition.

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."

7. Admittedly, the appellant has not annexed /

produced a receipt showing that he has deposited a fee of Rs.2000/-. In this regard, learned counsel for the appellant urged that the appellant filed an application under Section 149 C.P.C before the Tribunal for a grant of time. However, without passing any order on it, the Tribunal dismissed the appeal. The amount of Rs.2000/- as prescribed by the Election Commission is reasonable to grant time to the appellant. Even otherwise, the appellant, to date, still needs to deposit the said amount. Even if the time is granted for the deposit prescribed fee and condone the delay, even then, the Petition is not entertain-able for trial as the appellant has also not complied and violated Rule 61(b) of Rules 2015, as he has not served a copy of the Petition to each respondent individually or through courier service or registered post. According to Rule 64, in the event that the Election Tribunal determines that any or all of the preceding stipulations, which notably include Rules 60(2) and 61(b), have not been duly adhered to, the Petition shall be promptly dismissed. In order to maintain adherence to the legislative intent, actions mandated by the law must be executed in the prescribed manner. Failure to do so would result in non-compliance and dismissal of the Petition. In this context, I am fortified with the case of **Zia ur Rehman vs Syed Ahmed Hussain and others (2014 SCMR 1015)**, wherein Apex Court has held as under: -

"When the law prescribes a certain format of an Election Petition and its verification on oath and entails a penal consequence of its non-compliance, it is a mandatory provision. 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."

8. In view of hereinabove facts and circumstances and the legal position, I am confident that the dismissal of the appellant's election petition for non-compliance with the mandatory provisions outlined in Rules 60(2) and 61(b) was fully justified. Such a finding of the Tribunal does not require any interference by this Court. Accordingly, the appeal is **dismissed**, with no order as to costs.

JUDGE