

THE HIGH COURT OF SINDH KARACHI
[Election Tribunal]

Election Petition No. 04 of 2024

[Irfanullah Khan Marwat v. Election Commission of Pak & others]

Petitioner : Irfanullah Khan Marwat son of Abdullah Khan Marwat through Mr. Muhammad Aziz Khan, Advocate assisted by M/s. Aamir Raza and Hassan Shams Dar, Advocates.

Respondent 1 : Election Commission of Pakistan through Ms. Alizeh Bashir, Assistant Attorney General for Pakistan alongwith M/s. Abdullah Hanjrah, Deputy Director (Law) & Sarmad Sarwar, Assistant Director (Law), ECP, Karachi.

Respondent 2 : Saeed Ghani son of Usman Ghani [Returned Candidate] through M/s. Agha Shahzaib & Mukesh Kumar, Advocates.

Respondents 3-32 : Nemo.

Date of hearing : 13-06-2024

Date of order : 13-06-2024

ORDER

Adnan Iqbal Chaudhry J. - CMA No. 1468/2024 is for summary rejection of the election petition under section 145(1) of the Election Act, 2017. In view of the case of *Zia Ur Rehman v. Syed Ahmed Hussain* (2014 SCMR 1015), the objections raised by the application are treated as a preliminary issue and decided at the outset.

2. Of the objections taken in the application, learned counsel for the Respondent No. 2 (returned candidate) presses two objections emanating from section 144 of the Election Act, and submits that the failure to fulfill those requirements attracts the penal consequence of rejection provided in section 145(1) of the Election Act. On the other hand learned counsel for the Petitioner submits that the required

compliance had been made and that is why the Tribunal was inclined to issue notice.

3. Heard learned counsel and perused the record.

4. The first objection is that the petition does not give 'full particulars' of the 'corrupt and illegal practice or other illegal act' alleged in the petition, and does not enclose documentary evidence in support thereof as required by section 144(1)(b) and 144(2)(b). To illustrate his point, learned counsel for the Respondent No.2 places reliance on the case of *Usman Dar v. Khawaja Muhammad Asif* (2017 SCMR 292). However, that case was on the provisions of the Representation of the People Act, 1976 [ROPA]. Under ROPA, unlike the Election Act 2017, the failure to give full particulars of the corrupt or illegal practice was not a ground under section 56 thereof for dismissal of the petition at the outset. Rather, it was a ground for dismissal at the trial under section 63 ROPA i.e. when the Tribunal had the occasion to appraise some evidence brought in support of the allegations. Even in *Usman Dar*, the election petition was not dismissed for failure to give full particulars, but it was dismissed on the merits after trial. Therefore, the case of *Usman Dar* is distinguishable. Having said that, the requirement of 'full particulars' in section 144(1)(b) of the Election Act appears to be explicit. Therefore, if the petition is vague in that regard, it can be rejected summarily under section 145(1).

5. In paras 2, 3 and 9 of the petition, the Petitioner has pleaded precise facts and figures with dates and the number of polling stations where rigging was allegedly carried out at the behest of the returned candidate. In paras 10 to 13 it is categorically pleaded that the polling agent of the Petitioner was ousted from the consolidation proceedings and the Forms 45 released to the Petitioner do not reconcile with the consolidation of the count in Form 48. In support of those allegations, Forms 45 and Form 48 have been filed, so also the affidavit of the polling agent. Now, whether the alleged acts fall

within the special definitions of 'corrupt practice' and/or 'illegal practice', or whether those acts could be construed as 'other illegal act' which is undefined, that is a different matter and one which will be examined in due course of these proceedings. For the time being, it cannot be said that the petition does not give full particulars of the offending acts. Therefore, the petition complies with the requirements of section 144(1)(b) and 144(2)(b) of the Election Act and cannot be rejected on that score.

6. The second objection is that the petition is not verified as required by section 144(4) of the Election Act which reads as follows:

"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."

The relevant provisions of the CPC are section 139, which provides that oath may be administered by any officer whom a High Court may appoint, and Order VI Rule 15 CPC which sets out the manner of verification and oath.

7. Learned counsel for the Respondent No. 2 relies on the case of *Ghazanfar Abbas Shah v. Khalid Mehmood Sargana* (2015 SCMR 1585), which is the leading case on the objection to the verification of an election petition, and where it was held that "verification of an election petition is mandatory and a petition which lacks proper verification shall be summarily dismissed by the tribunal, even if the respondent has not asked for or prayed for its dismissal." At that time, provisions similar to sections 144(4) and 145(1) of the Election Act existed in sections 55(3) and 63 of the ROPA.

8. The aforesaid objection is premised on the fact the verification clause at the end of the petition, though signed by the Petitioner and the Assistant Registrar, Affidavit & Identity (A.S.) of the High Court, it does not bear the note that oath was administered to the Petitioner. However, on the very next page is the following affidavit:

“AFFIDAVIT IN SUPPORT OF VERIFICATION OF PETITION

Mr. A son of B resident of X affirmed on oath before me at Karachi on this day-month-year in the Identity Section of this court.

*Assistant Registrar
Affidavit & Identity (A.S.)
High Court of Sindh
Karachi*

*(-sd-)
COMMISSIONER FOR TAKING AFFIDAVIT”*

The above affidavit manifests that oath was administered to the Petitioner on the verification clause of the petition by the Assistant Registrar of the Identification Section of the High Court. The case of *Ghazanfar Abbas Shah* also holds that administration of oath can reflect on the affidavit filed in support of the petition.

9. Ever since the implementation of the Identification Section Management System (ISMS) in the High Court of Sindh in the year 2012, which linked the Identification Section to the data-base of NADRA, the Assistant Registrars of that Identification Section were appointed as ex-officio oath commissioners by the High Court.¹ Since then, all pleadings intended for use in any of the High Courts in the country are brought to the said Identification Section for administering oath to the deponent on the verification clause. The affidavit above is in the form prescribed by the High Court and it is generated by the ISMS itself once oath is administered. The print of the affidavit is then annexed to the pleading of a party and forwarded to the relevant Branch of the High Court. Therefore, both the verification clause of the petition and the oath administered thereon comply with section 139 and Order VI Rule 15 CPC. Reliance can be placed on the cases of *Muhammad Nawaz Chandio v. Muhammad Ismail Rahu* (2016 SCMR 875); *Feroze Ahmed Jamali v. Masroor Ahmad Khan Jatoi* (2016 SCMR 750); and *Zawwar Hussain Warraich v. Muhammad Aamir Iqbal* (2015 SCMR 1186).

¹ Circular No.HC/I.T./SA/290 dated 02.07.2012, and Notification No. Admin/X.B.9(b)(1) dated 11.09.2012.

10. Learned counsel for the Respondent No.2 points out errors in the numbers of paragraphs mentioned in the verification clause. That is at best a typographical error which is not of any material affect.

11. When confronted with the above affidavit of verification and the oath administered thereon, the objection of learned counsel for the Respondent No. 2 recedes to the following observation in *Ghazanfar Abbas Shah* viz. that “the affidavit, must record and endorse verification/attestation that the oath has been actually, physically and duly administered to the election petitioner/deponent.” But then, the fact that the affidavit of verification also carries the photograph, finger print and signature of the deponent taken on the spot at the time of administering oath, again manifests that the oath was actually, physically and duly administered.

12. For the foregoing reasons, none of the objections taken for rejection of the petition have any force. CMA No. 1468/2024 is therefore dismissed.

SHABAN*

JUDGE