

ELECTION TRIBUNAL
HIGH COURT OF SINDH, KARACHI

Election Petition No. 36 of 2024

[Saeed Ahmed v. Election Commission of Pakistan & others]

Petitioner : Saeed Ahmed son of Said Ghafoor, through Mr. Faran Sardar Advocate.

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

Respondent 4 : Ali Khurshidi through M/s. Obaid-ur-Rehman Khan and Atif Rafiq Chaudhry, Advocates, assisted by M/s. Sabih Ahmed Zuberi, Saleem Raza Jakhar Muhammad Akbar Khan and Muhammad Mudasir Abbasi, Advocates.

Respondents 11, 13, 15, 18-19 : Through M/s. Hasnain Ali Chohan and Samreen Ali Rizvi, Advocates.

Respondents 2, 3, 5-10, 12, 14, 16, 17, 20-30 : Nemo.

Dates of hearing : 01-08-2024 & 16-08-2024.

Date of order : 17-10-2024

ORDER

Adnan Iqbal Chaudhry J. - This order decides the preliminary issue settled on 10.06.2024 raising the question whether this election petition is liable to be rejected under section 145(1) of the Election Act, 2017 [**the Act**] which stipulates:

“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. Learned counsel for the Respondent No.4 (returned candidate) submitted that given the consequence of rejection in section 145(1) of the Act, the provisions of sections 142 to 144 of the Act are mandatory

and therefore must be construed strictly. The submissions of learned counsel for both sides are discussed *infra*. The Election Commission of Pakistan [ECP] adopted the submissions of counsel for the Respondent No.4.

Objection to the oath administered on the petition:

3. The objection under this head was that the Assistant Registrar of the Identification Section of the High Court was not authorized to administer oath on an election petition; and therefore, the petition was not on oath and a non-compliance of section 144(4) of the Act. Reliance was placed on *Lt. Col. (Rtd.) Ghazanfar Abbas Shah v. Khalid Mehmood Sargana* (2015 SCMR 1585).

4. The same objection has been rejected by this Tribunal by order dated 16.09.2024 passed in the case of *Khurram Sher Zaman v. Mirza Ikhtiar Baig* (E.P. No. 02/2024), excerpted as follows:

“16. With 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 NADRA’s data-base, the Assistant Registrars of that Identification Section were appointed *ex-officio* oath commissioners by the High Court. Since then, all pleadings for use in the High Court are brought to the Identification Section for administering oath on the verification clause. The submission of counsel for the Respondent No.1 was that since the Judge of the High Court acts *persona designata* as Election Tribunal and not as the High Court, the oath commissioner appointed by the High Court has no authority to administer oath on an election petition - in other words, the High Court does not have authority to appoint an oath commissioner for an election petition intended before the Election Tribunal.

17. Section 144(4) of the Act provides that “..... 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.” Order VI Rule 15 CPC then sets out the manner of verification and oath, whereas section 139 CPC provides that oath may be administered by any officer or other person “whom a High Court may appoint in this behalf”. Therefore, even though the Judge of the High Court acting as Election Tribunal is not the High Court, the authority of an officer appointed by the High Court to administer oath on an election petition emanates from section 144(4) of the Act itself by way of adopting section 139 CPC.

The fallback argument was that the High Court should have then issued a special notification appointing the Assistant Registrars of the Identification Section as oath commissioners also for election petitions. If that argument is taken to its logical end, all staff of the High Court dealing with election petitions would require fresh appointment as staff of the Election Tribunal, which would then defeat the purpose having a sitting High Court Judge act *persona designata* as Election Tribunal.

18. In view of the foregoing, the objection to the authority of the Assistant Register of the Identification Section of the High Court to administer oath on the election petition has no force. The case of *Lt. Col. (Retd.) Ghazanfar Abbas Shah* is not attracted as the petition was duly verified as per section 144(4) of the Act."

The same order is passed in this petition as well.

Objection to the verification clause of the petition:

5. In the verification clause of the petition, the Petitioner verified the contents of the petition as "*true to the best of my knowledge and belief.*" Learned counsel for the Respondent No.4 submitted that such verification did not comply with sub-rule (2) of Order VI Rule 15 CPC which requires that:

"The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true."

He submitted that the failure to comply with sub-rule (2) of Order VI Rule 15 CPC was a non-compliance of section 144(4) of the Act, which entails rejection under section 145(1) of the Act. On the other hand, learned counsel for the Petitioner submitted that the verification clause categorically stated that contents of the petition were true and correct to the Petitioner's own knowledge, and therefore there was no occasion to state anything further.

6. The same objection taken on the basis of sub-rule (2) of Order VI Rule 15 CPC has already been rejected by this Tribunal by order dated 03.10.2024 passed in the case of *Zain Pervez v. Election Commission of Pakistan* (E.P. No. 52/2024), excerpted as follows:

“17. As to an objection to the verification clause of an election petition on the premise of sub-rule (2) of Order VI Rule 15 CPC,¹ it was observed by the Supreme Court in the case of *Sardarzada Zafar Abbas*² that:

“Such objection is not very material because at times the entire statement happens to be given on the basis of one's knowledge and at time on the basis of information received. It depends upon the facts of each case, as to what category the assertions belong. The situation is likely to differ from case to case.”

In the case of *Abdul Qadir v. Abdul Wassay* (2010 SCMR 1877), also an election matter, the Supreme Court went on to hold that:

“This provision of law in fact cannot be considered to be mandatory as a person can verify the paras in the pleadings on his own knowledge without verifying any para upon receipt of the information, same are believed to be true.”

A similar view was expressed in *Feroze Ahmed Jamali v. Masroor Ahmed Khan Jatoi* (2016 SCMR 750). Counsel for the Respondent No.8 had placed reliance on *Sultan Mahmood Hinjra v. Malik Ghulam Mustafa Khar* (2016 SCMR 1312). But even in that case the petition was not rejected merely for non-compliance of sub-rule (2) of Order VI Rule 15 CPC, rather due to the fatal flaw that the verification clause did not reflect that oath was administered and there was also nothing to show how the petitioner was identified to the oath commissioner.

18. The Supreme Court having declared that sub-rule (2) of Order VI Rule 15 CPC is not mandatory even for an election petition, the petition cannot be rejected on that score.”

The same order is passed in this petition as well.

Objection to the affidavit of service:

7. The facts are that when the petition was presented on 28.03.2024, instead of filing an ‘affidavit of service’ as required by section 144(2)(c) of the Act, the Petitioner filed a ‘statement of service’ and enclosed courier receipts to state that copy of the petition and

¹ Adopted erstwhile by section 55(3) of Representation of the People Act 1976, a provision similar to section 144(4) of the Election Act 2017.

² PLD 2005 SC 600.

annexures had been dispatched to the Respondents. It appears that on realizing the omission, the Petitioner filed an affidavit of service on 04.07.2024.

8. Learned counsel for the Respondent No.4 (returned candidate) submitted that the affidavit of service was filed much after the period of 45 days prescribed for a petition, and therefore could not be accepted; that the failure to file the affidavit of service at the time the petition was presented was a non-compliance of section 144(2)(c) of the Act, and therefore the petition is liable to be rejected in view of section 145(1) of the Act. On the other hand, learned counsel for the Petitioner submitted that service of the petition required by section 144(2)(c) was evident from courier receipts filed along with the petition, and therefore failure to file affidavit of service at the outset was not material.

9. As discussed by this Tribunal in the case of *Faheem Khan v. Muhammad Moin Aamer Pirzada* (E.P. No. 13/2024), section 144(2)(c) of the Act is to be read with section 143(3) of the Act. Said provisions read:

“**143(3)**. The petitioner shall serve a copy of the election petition with all annexures on each respondent, personally or by registered post or courier service, before or at the time of filing the election petition.”

“**144(2)**. The following documents shall be attached with the petition—

(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;”

10. The requirement of section 144(2)(c) is that after serving the respondents with a copy of the petition and annexures under section 143(3), the Petitioner shall also file an affidavit to affirm that he has done so. Therefore, the compliance required by section 144(2)(c) is separate and in addition to the compliance required by section 143(3). That being so, nothing less than the affidavit of service will suffice to

raise the presumption that the respondents have been served with copies of the petition and annexures before or at the time of filing the petition. With the consequence of rejection provided in section 145(1) of the Act, the requirement of an affidavit of service in section 144(2)(c) appears to be mandatory. No argument was advanced to construe it differently. Resultantly, I am not convinced with the submission of the Petitioner's counsel that production of courier receipts was sufficient compliance of section 144(2)(c) of the Act.

11. The question now is whether the affidavit of service subsequently filed by the Petitioner on 04.07.2024 can be accepted as compliance of section 144(2)(c) of the Act ?

12. *Albeit* for rectifying a defect in the verification of an election petition, a similar question came up before the Supreme Court in the cases of *Malik Umar Aslam v. Sumera Malik* (PLD 2007 SC 362) and *Hina Manzoor v. Ibrar Ahmed* (PLD 2015 SC 396). The *ratio* of those decisions seems to be that once the period of limitation for filing an election petition expires, the petitioner cannot be allowed to make amends for not complying with a mandatory provision of the statute, because by that time a valuable defense has arisen to the respondent. Applying that *ratio* to the instant case, the affidavit of service eventually filed by the Petitioner on 04.07.2024 was much after the 45 days prescribed for filing the petition, and therefore cannot be accepted as compliance of section 144(2)(c) of the Act.

13. Therefore, the objection to the affidavit of service succeeds. Since the petition was filed without the affidavit of service mandated by section 144(2)(c) of the Act, it is rejected under section 145(1) of the Act. Pending applications become infructuous.

JUDGE

Karachi
Dated: 17-10-2024