

ELECTION TRIBUNAL  
HIGH COURT OF SINDH, KARACHI

**Election Petition No. 46 of 2024**

[Farhan Saleem v. Election Commission of Pakistan & others]

Petitioner : Farhan Saleem son of Muhammad Saleem through Mr. Muhammad Anwar Khan, Advocate.

Respondent 1(i) & (ii) : Election Commission of Pakistan through Mr. Sarmad Sarwar, Assistant Director (Law), ECP, Karachi.

Respondent 3 : Rehan Akram son of Mirza Muhammad Akram Mr. Obaid-ur-Rehman Khan, Advocate, assisted by M/s. Muhammad Mudasir Abbasi, Sabih Ahmed Zuberi, Saleem Raza Jakhar and Muhammad Akbar Khan, Advocates.

Respondents 2, 4-29 : Nemo.

Date of hearing : 24-10-2024.

Date of order : 24-10-2024.

**ORDER**

**Adnan Iqbal Chaudhry J.** - This order decides the preliminary issue settled on 24-09-2024 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. 3 (returned candidate) submits that at the time of filing the petition the Petitioner did not file the list of witnesses required by section 144(2)(a) of the Act and the affidavit of service required by section 144(2)(c) of the Act; that both such documents were filed much after the expiry of 45 days prescribed for filing the petition and cannot be accepted; that given the consequence of rejection in section 145(1) of the Act, the

provisions of section 144 are mandatory and therefore must be construed strictly. Law officer of the Election Commission of Pakistan [ECP] adopts these submissions.

3. On the other hand, learned counsel for the Petitioner submits that by order dated 22-05-2024 passed by this Tribunal, the Petitioner was granted 7 days' time to comply with office objections, and that the list of witnesses and affidavit of service were filed on 27-05-2024 within the time allowed. He further submits that service of the petition required by section 143(3) of the Act was evident from courier receipts filed along with the petition, and therefore failure to file affidavit of service at the outset was not material.

4. Heard learned counsel and perused the record.

5. The facts are that when the petition was presented on 21-03-2024, it was not accompanied by the list of witnesses required by section 144(2)(a) of the Act and the 'affidavit of service' required by section 144(2)(c) of the Act, although the Petitioner had filed courier receipts to indicate that copy of the petition and annexures had been dispatched to the Respondents. The office had raised objections to the omissions at the outset. It is correct that when the case was first fixed before the Tribunal on 22-05-2024, the Petitioner was allowed 7 days' time to comply with office objections, and that he filed the aforesaid documents on 27-05-2024 within those 7 days. However, learned counsel for the Petitioner acknowledges that such time was granted since the copy of the Election Rules, 2017 available both with the Petitioner's counsel and the Tribunal carried an error, *i.e.* it did not reflect the amendment already made to Rule 140 to take away the discretion to grant time. Therefore, the order dated 22-05-2024 cannot be taken as a defense to non-compliance with statutory provisions. There is otherwise no argument by learned counsel for the Petitioner to construe the requirement of 'list of witnesses' as anything but mandatory.

6. 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;”

7. 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 is 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.

8. The question now is whether the list of witnesses and affidavit of service subsequently filed by the Petitioner on 27.05.2024 can be accepted in compliance of sections 144(2)(a) and 144(2)(c) of the Act ?

9. *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 list of witnesses and affidavit of service eventually filed by the Petitioner on 27.05.2024 was much after the 45 days prescribed for filing the petition, and therefore cannot be accepted in compliance of sections 144(2)(a) and 144(2)(c) of the Act.

10. For the foregoing reasons, the objections to the petition succeed. The petition is therefore rejected under section 145(1) of the Act. Pending applications become infructuous.

**JUDGE**

Karachi  
Dated: 24-10-2024