

ELECTION TRIBUNAL
HIGH COURT OF SINDH, KARACHI

Election Petition No. 20 of 2024

[Aftab Jahangir v. Election Commission of Pakistan & others]

Petitioner : Aftab Jahangir son of Malik Muhammad Akram through Ms. Samreen Ali Rizvi, Advocate for the Petitioner.

Respondents 1-3 : Election Commission of Pakistan & 02 others through Mr. Nisar Ali Noushad, Assistant Attorney General for Pakistan alongwith M/s. Riaz Ahmed, Director (Law), Abdullah Hanjrah, Deputy Director (Law) and Sarmad Sarwar, Assistant Director (Law), ECP, Karachi.

Respondent 4 : Muhammad Farooq Sattar son of Abdul Sattar Noor Muhammad Pirwani [**Returned Candidate**] through M/s. Obaid-ur-Rehman, Chaudhry Atif Rafiq, Sabih Ahmed Zubairi, Saleem Raza Jakhar, Muhammad Akbar Khan and Muhammad Mudasir Abbasi, Advocates.

Respondents 5-26 : Nemo.

Date of hearings : 03-12-2024

Date of order : 03-12-2024

ORDER

Adnan Iqbal Chaudhry J. - On the preliminary issue of maintainability of the petition, learned counsel for the Respondent No.4 had concluded submissions on 08-07-2024 when the case was adjourned on the request of the Petitioner's counsel who sought time to prepare himself. Thereafter, on 01-08-2024, 19-09-2024, 22-10-2024 and again on 14-11-2024, the case was repeatedly adjourned due to the unavailability of the Petitioner's counsel. Today again, an adjournment is sought on his behalf. However, today, I am not inclined to grant the same.

2. This order decides the preliminary issue settled on 03-06-2024 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.

3. On 02-07-2024, when submissions were first made by learned counsel for the Respondent No.4, the objections raised were: (a) that the first challan submitted for security costs was not in the prescribed head of account; (b) that oath administered on the verification of the petition was by an unauthorized person; and (c) that an affidavit of service was not filed at the time of presenting the petition. Since then, while seized of other election petitions, this Tribunal has already declined objections (a) and (b) and accepted objection (c) in similar circumstances. Therefore, presently, Mr. Obaid-ur-Rehman, learned counsel for the Respondent No.4, presses objection (c) only.

Objection to the affidavit of service:

4. The facts are that the petition was presented on 25-03-2024 without an ‘affidavit of service’ as required by section 144(2)(c) of the Act. Instead, the Petitioner had filed a ‘statement of service’ which was not on oath. It appears that on realizing the omission, the Petitioner filed an affidavit of service sworn on 09-04-2024. The postal receipts annexed thereto are dated 06-03-2024 i.e. one day after presenting the petition.

5. Learned counsel for the Respondent No.4 submits that the failure to file the affidavit of service was a non-compliance of section 144(2)(c) of the Act, for which the petition is liable to be rejected under section 145(1) of the Act; and that the affidavit of service filed after the period of 45 days prescribed for a petition does not cure the defect. On the other hand, counsel holding brief for the Petitioner’s

counsel submits that copies of the petition were dispatched to the Respondents right after presenting the petition, which was substantial compliance with the provision of section 143(3) of the Act, and therefore the failure to file affidavit of service at the outset was not material.

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 was advanced to construe it differently.

8. The question now is whether the affidavit of service subsequently filed by the Petitioner on 29-04-2024 can be accepted as compliance of section 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 affidavit of service filed by the Petitioner on 29-04-2024 was 9 days after the 45 days prescribed for filing the petition, and therefore cannot be accepted as compliance of section 144(2)(c) of the Act.

10. 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: 03-12-2024

*PA/SADAM