

ELECTION TRIBUNAL
HIGH COURT OF SINDH, KARACHI

Election Petition No. 15 of 2024
[Adeel Ahmed v. Election Commission of Pakistan & others]

Petitioner : Adeel Ahmed through Mr. Bahzad Haider, Advocate.

Respondent 1 : Election Commission of Pakistan through Mr. Muhammad Khalid Javed Raan, Deputy Attorney General for Pakistan alongwith M/s. M. Haroon Kasi, Director (Law), Abdullah Hanjrah, Deputy Director (Law) and Muhammad Bilal Malik, Assistan Director (Law), ECP, Karachi.

Respondents 2, 3 & 5-40 : Nemo.

Respondent 4 : Aasia Ishaque Siddiqui [**Returned Candidate**] through Ms. Mehak Azfar, Advocate.

Respondents 2, 3, 5-40 : Nemo.

Date of hearing : 08-05-2025

Date of order : 08-05-2025

ORDER

Adnan Iqbal Chaudhry J. - Along with CMA No. 1817/2024 praying for rejection of the election petition, this order decides the preliminary issue settled on 05.12.2024 as to whether the 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. Rejection of the petition is sought on grounds: (a) that the Assistant Registrar of the Affidavit & Identity Branch of the High Court was not competent to administer oath on the verification of the

petition; and (b) that an affidavit of service was not filed at the time of presenting the petition. While seized of other election petitions, this Tribunal has already declined objection (a) but has rejected petitions on objection (b). Therefore, presently, learned counsel for Respondent No.4 presses objection (b) only.

3. The facts are that when the petition was presented on 28-03-2024, it was with a 'statement of service' not on oath. An affidavit in support of that statement appears on the record as having been sworn on 05.04.2024 *albeit* sworn before an oath commissioner outside the High Court. Subsequently, another affidavit of service was filed which was sworn before the Assistant Registrar of the Affidavit & Identity Branch of the High Court on 15.04.2024. (There is another affidavit of service on the record, apparently intended for some other election petition, but mistakenly filed by the office in this petition at page 1891. The office shall file that in the relevant petition).

4. Learned counsel for Respondent No.4 submits that since affidavit of service required by section 144(2)(c) of the Act was not filed within the period of limitation, the petition is liable to be rejected under section 145(1) of the Act. On the other hand, learned counsel for the Petitioner submits that courier receipts on the record demonstrate that copies of the petition were dispatched to the Respondents on the day of presenting the petition, and therefore the requirement of section 143(3) of the Act was substantially fulfilled. He submits in the alternative, that the Tribunal can exercise powers under section 148 CPC to enlarge the time for compliance and accept the affidavit of service filed on 05.04.2024.

5. Heard learned counsel and perused the record.

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) of the Act 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 that production of courier receipts was sufficient compliance of section 144(2)(c) of the Act.

8. The question now is whether the affidavit of service subsequently filed by the Petitioner on or after 05.04.2024 can be accepted as compliance of section 144(2)(c) of the Act ? For the present, I do not examine whether an oath commissioner other than the Assistant Registrar of the High Court was competent to administer oath on such affidavit.

9. Under section 142(1) of the Act, an election petition can be presented to the Election Tribunal within 45 days of publication in the official gazette of the name of the returned candidate. The notification

declaring Respondent No.4 as returned candidate was published in the official gazette on 15-02-2024. Therefore, the period of 45 days for presenting the petition was up-till 31-03-2024. Though the petition was presented within that time on 28-03-2024, the first affidavit of service was sworn on 05-04-2024, thus filed beyond the period of 45 days.

10. This Tribunal has already held in other petitions that non-compliance with section 144(4)(c) of the Act cannot be cured after expiry of the period of 45 days prescribed for filing an election petition. To cite from the case of *Ghulam Qadir v. Election Commission of Pakistan* (E.P. No. 57/2024), this Tribunal held :

“11. The question now is whether the affidavit of service subsequently filed by the Petitioner on 12.07.2024 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 12.07.2024 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.

11. In view of the foregoing, the objection to the affidavit of service succeeds. The petition is rejected under section 145(1) of the Act for non-compliance of section 144(2)(c) of the Act. Pending applications become infructuous.

JUDGE

Karachi

Dated: 08-05-2025

*PA/SADAM