

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Election Petition No-39 of 2024

Bashir Ahmed Sodhar

Vs.

Election commission of Pakistan & Others

HIGH COURT OF SINDH

Composition of Bench.

Single.

Mr. Justice Mohammad Karim Khan Agha

Dates of hearing : 16-12-2024

Decided on : 23 -12-2024

(a) Judgment approved for Reporting

Yes

KSA

CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/. Over-rules/ reverses/ explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

28/3/2024
Registered on

280

IN THE HONORABLE ELECTION TRIBUNAL AT HIGH COURT SINDH

Election Petition No. ³⁹ of 2024

Bashir Ahmed Sodhar Son of Buxall

Muslim, Adult, resident of House No. A-98


Street no.3, Ghareebnawaz, Muhallah Yousuf

Khan Goth, Scheme No.33 Karachi,

Contested General Election 2024 PS 97 Petitioner

Versus

1. Election Commission of Pakistan
Secretariat, Constitution Avenue G-5/2
Islamabad.
2. Provincial Election Commissioner Sindh
Having office at Saddar, Karachi
3. Sanaullah Kalwar Son of unknown
Assistant Commissioner Gulzar-e-Hijri
Returning Officer PS 97
Karachi East-1
4. Ahmed Nadeem Awan Son of Unknown (PMML)
Muslim, Adult, Resident of House No MC-65
Gali No.2 Green Town Karachi
5. Osama Bin Iqbal S/o Unknown (Independent)
Muslim, Adult, Resident of House no. L-543
Metrovile III, Scheme 33, Gulshan e Iqbal
Karachi
6. Aslam Shah S/o Unknown (Independent)
Muslim, Adult, resident of House NO
122 Hill view Apartment Block D North
Nazimabad Karachi
7. Aman ullah Khan S/o Unknown (Independent)
Muslim, Adult resident of House No 32
Zaffar Town Landi Malir Karachi
8. Shaukat Ali S/o Unknown (MQM-P)


I swear to the Best of
My Knowledge And Belief.

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Muslim, Adult, Resident of House No A-05
Gulshan e Ghazian Sector 51-A Scheme 33 Karachi

9. Amir Bux S/o unknown (Independent)
Muslim, Adult, Resident of House No.
Goth Raees Ameer Bux Imrani Post
office Shah pur Chakkar Shahdadpur Sanhgar
10. Awal Khan S/o Unknown (Independent)
Muslim, Adult Resident of House No
7 Street no. Sohrab Goth Scheme 33 Karachi
11. Adam Khan S/o unknown (Independent)
Muslim Adult resident of House No. 20
street no. 1 scheme 33-A Ghareenabad
Goth Gadap Karachi
12. Bashir Ahmed S/o Unknown (PPPP)
Muslim, Adult, Resident of Dost Muhammad
Ghoonjhar Goth Muhalla brohi
Gulshan e Maymar Malir Karachi
13. Pandhi Khan S/o Unknown (Independent)
Muslim, Adult Resident of Scheme 33
Gadap Town Dhani Buksh Barohi Goth
Malir, Karachi
14. Taj Muhammad D/o Unknown (Independent)
Muslim, Adult, resident of House No. 257
Muhammad Khan Junijo colony Spuer
Highway Sohrab Goth Karachi
15. Jalil Ahmed Mugheri S/o Unknown (Independent)
Muslim, Adult, Resident of Goth Yousuf Khan
sahb house no. 250 Gadap Town Muhalla
Gul Malir, Karachi
16. Habib Ullah S/o unknown (Independent)
Muslim, Adult Resident of house No 2/6
Gulshan Atta khail new sabzi mandi
Malir Karachi
17. Hayat Ullah S/o unknown (Independent)
Muslim, Adult Resident of Darul Aloom

*True & Correct to the
Best of My Knowledge and
Belief*



siddiquia house no. 3 post office Fateh
Muhammad Goth Karachi

18. Rajab Ali S/o Unknown (KS)
Muslim, Adult, Resident of House No. 198
Lassi Goth scheme 33 Gujro Malir
District Malir Karachi
19. Rehan Soomro S/o Unknown (Independent)
Muslim, Adult, Resident of House No.
C11 Yousuf Khan Sahb Goth Gulshan e
Maymar Scheme 33 Sector 51-A Malir Karachi
20. Saeed Khan S/o Unknown (PAT)
Muslim, Adult, resident of House No. A14
Pakhtoonabad Mangopir Sohrab Goth
Malir Karachi
21. Syed Uzair Ali S/o Unknown (GDA)
Muslim, Adult, Flat No. D-1 Sector 11-K
Haroon Heights new Karachi, Karachi
22. Shahab Uddin S/o Unknown (Independent)
Muslim, Adult, Resident of Pathan Khan
Goth Daak khana Gadap Jhanjhar
Malir, Karachi
23. Abdul Sattar S/o Unknown (Independent)
Muslim Adult, resident of house No. 36
sector 11-A Muhalla Lassi Goth Gulzar e
Hijri Scheme 33, Karachi.
24. Abdullah S/o Unknown (JUIP(S))
Muslim Adult, Resident of House No.
B 286 Scheme 33 Ali Muhammad Sheikh
Goth Gadap sector 7-A Karachi
25. Fahad Shafiq S/o Unknown (PML-N)
Muslim, Adult Resident of House No
R 848 Block no.17 Federal B Area Karachi.
26. Liaqat Khan S/o Unknown (Independent)
Muslim Adult, Resident of 510 Scheme 33
Super Highway Macher Colony Karachi.

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*Correct To The Best Of
Knowledge And Belief*

27. Majid Khan S/o Unknown (Independent)
Muslim, Adult, Resident of House No.
133/8 Gulshan Akakhel new sabzi
mandi Malir Karachi
28. Muhammad Aslam Ghauri S/o Unknown (JUI-P)
Muslim, Adult resident of Flat no. A-3041
Fonux Heights Block 1 Gulistan e Johar Karachi
29. Muhammad Jameel S/o Unknown (Independent)
Muslim, Adult, Resident of House No. 447
Khadim Hussain Solangi Goth, Karachi
30. Muhammad Khalid Siddiqui S/o Unknown (JI-P)
Muslim, Adult, House No. B-1/167 Sector 3 A
Quetta Town Housing Scheme 33 Karachi
31. Muhammad Rahim S/o Unknown (Independent)
Muslim, Adult, House No. A177 Etawah
cooperative Society Sector 52-A Karachi
32. Muhammad Sabir Siddiqui S/o Unknown (SKQM)
Muslim, Adult, Resident of House No. R-544
Green Park City Qaidabad, Karachi
33. Muhammad Ali S/o Unknown (Independent)
Muslim, Adult, Resident of House No. 103/2
street No.15 Khayaban e Muhafiz DHA VI, Karachi
34. Muhammad Ghayas S/o Unknown (Independent)
Muslim, Adult, Resident of Jama e Masjid
Bait ul Muqadas Scheme 33 sector 15-C, Karachi
35. Muhammad Mazhar Saeed S/o Unknown (Independent)
Muslim, Adult, Resident of House No. ST 6
Masjid Quba Block 7 Gulshan e Iqbal, Karachi
36. Maqsood Ali S/o Unknown (Independent)
Muslim, Adult, Resident of House No. 48
Bilal colony Gul Ahmed Chowrangi Landi
Malir Karachi
37. Manzoor Barfat S/o Unknown (Independent)

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and Belief

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Muslim, Adult, Resident of House No. 108
Sukhia Goth Scheme 33 Gulzar e Hijri Karachi

38. Naseeb ullah S/o Unknown (TLP)
Muslim, Adult, Resident of House No. 409
street No. 13 Jhanabad Block 5 Gujro
Malir, Karachi
39. Noor ullah S/o Unknown (ANP)
Muslim, Adult, Resident of Flat No. A75
Dawood Banglows Sector 15-B Gulzar e Hijri
Scheme 33 Karachi
40. Noor ullah S/o Unknown (Independent)
Muslim, Adult, Resident of House No.
R-88 Pir bux Gadap Ghaniabad Block 5-A
Malir, Karachi
41. Noor Zaman S/o Unknown (Independent)
Muslim, Adult, Resident of House No. 269
sector 11-A Lassi Goth Scheme 33 Karachi
42. Waseem Akram S/o Unknown (Independent)
Muslim, Adult, Resident of House No. R212
street no. 8 Yousuf Sahb Khan Goth
Gulshan e Maymar Karachi

ELECTION PETITION UNDER SECTION 139 OF ELECTION ACT 2017

Being aggrieved and dissatisfied from result the general elections 2024 for seat of Provisional Assembly of Pakistan, PS-97, the Petitioner respectfully seeks to challenge notification dated 13th February 2024 of the alleged returned candidate and invoke section 139 of the Election Act 2017 for intervention of this Honorable Tribunal Hence this Election Petition.

BRIEF FACTS OF THE CASE

That the petitioner contested general elections 2024 held on 8th of February 2024 throughout the Pakistan, from PS-97 Karachi East-1 (hereinafter referred as "Subject Constituency") and in the election, petitioner secured the highest number of votes in accordance with the form 45 issued under

IN THE HIGH COURT OF SINDH AT KARACHI

ELECTION PETITION NO.39 OF 2024

Petitioner:	Bashir Ahmed Sodhar son of Buxial through Barrister Main Shahbaz Ali
Respondent Nos.1 & 2:	Election Commission of Pakistan and another through Mr. Abdullah Hanjra, Law Officer.
Respondent No.8:	Shakat Ali s/o unknown through M/s. Raj Ali Wahid Kunwar and Zahoor Ahmed Chadhar, Advocates.
Respondents No.9 to 42	Nemo.
Date of Hearing	16.12.2024
Date of Order	23.12.2024

ORDER

Mohammed Karim Khan Agha J. The Petitioner contested the general elections of 2024 for the seat of the Provincial Assembly of Sindh (PS 97) however Respondent No.8 (Mr.Shaukat Ali) was declared as the returned candidate (Returned Candidate) by notification dated 13.02.2024 (the Notification) by the Election Commission of Pakistan (ECP).Being dissatisfied with the Notification of the Returned Candidate the petitioner has challenged the same through this election petition.

2. At the very outset learned counsel for the Returned Candidate conceded that although the election petition had been filed within the permissible time frame he contended that the election petition had not been filed in accordance with some of the mandatory provisions of the Election Act 2017 (the Act) and in particular Section 144 (2) (a) which would render the election petition liable to be summarily dismissed under Section 145 (1) of the Act. His main contention was that the witness's statements on affidavit (the Statements) had not been filed within time as they had been filed on 03.04.2024 instead of the cut off date of 28.03.24.Learned representative of the ECP agreed with the stance taken by learned counsel for the Returned Candidate although he contended that the relevant cut off date for filing the election petition was 01.04.2024.

3. On the other hand learned counsel for the petitioner contended that he had filed the statements within time as the statements had been filed on 27.03.2024 along with his petition. In this respect he placed reliance on Section 139 of the CPC.

4. I have heard the parties and examined the record along with the relevant case law along with the assistance of learned counsel and the representative of the ECP.

5. At the out set I find that the cut off date whether it be 28.03.2024 or 01.04.2024 for filing the election petition and its required annexures (including the statements) is of little significance based on the particular facts and circumstances of this case as the contention of the Returned candidate is that the statements were filed on 03.04.2024 which is even after the cut of date of 01.04.24 as contended by the representative of the ECP.

6. Some of the provisions of the Act are mandatory and one of them is S.144 (2) (a) which is set out below for ease of reference:

"144. Contents of petition. – (1) An election petition shall contain---

- (a) a precise statement of the material facts on which the petitioner relies; and*
- (b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including names of the parties who are alleged to have committed such corrupt or illegal practice or illegal act and the date and place of the commission of such practice or act.*
- 2) The following documents shall be attached with the petition—*
 - (a) complete list of witnesses and their statements on affidavits; (bold added)*
 - (b)*
 - (c)*
 - (d)*

It is clear from the wording of S.144 (2) (a) that the statements are affidavits.

7. The statement of Muhammed Jurial who was the chief polling agent of the petitioner is on RS100 stamp paper and is signed by the deponent and attested by Muhammed Umer Panhwar Oath Commissioner on 27.03.2024 hence the petitioners reliance on S.139 CPC which is set out as under;

"139. Oath on affidavit by whom to be administered. In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or*
- (b) any officer or other person whom a High Court may appoint in this behalf, or*
- (c) any officer appointed by any other Court which the [Provincial Government] has generally or specially empowered in this behalf, may administer the oath to the dependent."*

8. Notwithstanding S.139 CPC the deponent had to be identified by the Commissioner for taking oaths and his affidavit had to be sworn under oath so it appears that the initial statements were not made in accordance with law and does not meet the requirements of S.144 (2) (a).

9. Further weight to these statements not being in accordance with law is given by the fact that the petitioner did not continue to rely on the original attestation of the statements and instead filed a further and identical Statement/Affidavit in the identification branch of the Sindh High Court on 03.04.2024 which was duly affirmed on oath by a Commissioner for taking affidavits. It follows that if the initial statement had been in accordance with law then there would have been no need for another identical statement to be filed the intent and purpose of which was to validate the original statement which had not been filed in accordance with law.

10. I also called for a report form the Registrar of the Election Tribunal Sindh which vide its compliance report also found that the second set of statements (those under challenge) had been filed on 03.04.2024 **after** the 45 day deadline imposed under Section 142 of the Act.

11. The Supreme court has recently ruled on the mandatory requirement of the statement of affidavits under S.144(2) (a) of the Act in the case of **Mir Hamal Khan V ECP** in Civil Appeal No.1357 of 2024 on 20.11.24 in the following terms;

“.....The requirement of the furnishing affidavits is a mandatory requirement as clearly spelt out under Section 144(2)(a) of the Act of 2017 which stipulates that submission of “complete list of witnesses and their statements on affidavits”. The wording used under this section makes it a mandatory requirement that while presenting the election petition some documents, which include the statements on affidavits have to be filed otherwise the said petition would be considered as deficient or lacking and as per sub section 1 of section 145 of the Act of 2017, if provisions under Section 142, 143 and 144 of the Act of 2017 have not been complied with then the Election Tribunal shall summarily reject the election petition.”

18. *It is an admitted position that the affidavits were not solemnized on oath through oath Commissioner rather the same were notarized only. A question in this regard was posed to Mr. Khan though he tried to wriggle out of the situation by stating that it was only a technical lapse, as “marked” or “identified affidavits” were presented on which cross-examinations were duly conducted. However, he conceded that original affidavits were not produced by the appellant. It is again a settled proposition of law that if a document is produced as evidence but was only categorized as “marked” or “identified”, it cannot be fulfilled and in case of non-compliance the person presenting those documents has to face the brunt of non-compliance.”*

19. *This Court in the case of Lt. Col. (Rtd.) Ghazanfar Abbas Shah has categorically observed that if the affidavits filed by a party are flawed in any way and are not verified on oath, it will be considered that the same have not been attested on oath and the election petition is liable to be, inter alia, dismissed on this basis alone. Needless to state that there are plethora of judgments on this issue observing that when anything is prescribed to be done in a particular manner, it needs to be done in that manner, otherwise, it will be considered to be non-est in the eyes of law.*"
(bold added)

12. As such I find that the statements were filed after the mandatory time period of 45 days in which they had to be filed and this being the case this election petition is summarily dismissed under S.145 (1) of the Act.

13. The election petition is disposed of in the above terms along with all pending applications.