

JUDGMENT SHEET

*PESHAWAR HIGH COURT
ABBOTTABAD BENCH
(Judicial Department)*

Election Petition. No. 02-A/2024

Zareen Gul S/o Nazar Gul, Caste Pathan, R/o Post Office New Darband, Maira Mada Khel, Tehsil & District Tor Ghar, Runner-up candidate from PK-41.

(Appellant/s)

VS

Election Commission of Pakistan through its Chief Election Commissioner & Members election Commission of Pakistan, Islamabad and others.

(Respondent/s)

Present: Mr. Sardar Nasir Aslam Khan, Advocate, for the appellant.

Respondents are not represented being a motion case

Date of hearing: 07.10.2024

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Through this election petition filed under section 139 of The Elections Act, 2017 the petitioner has called in question the election for the constituency of Provincial Assembly Khyber Pakhtunkhwa PK-41, Torghar on the ground of massive rigging and corrupt & illegal

practices, whereby, the respondent No. 4 has been declared as a returned candidate.

2. Initially, when this case was fixed for preliminary hearing, a notice under sub section (1) of section 145 of The Elections Act, 2017 (*hereinafter is to be referred as The Act of 2017*) was issued to the petitioner to argue the case on the point of maintainability of the instant election petition vide order dated 28.03.2024, the same being relevant is reproduced below;

The instant election petition has been filed by the petitioner under section 139 of The Election Act, 2017 and today the office has placed the same before this Tribunal for preliminary hearing/proceedings, therefore, its contents and the documents appended therewith were minutely perused and gone through which requires that let the petitioner be issued notice qua its maintainability in the present form and as to whether while filing this election petition the petitioner has fulfilled the pre-requisite formalities as provided under sections 142,143 & 144 of The Election Act 2017 or not?. To come up for arguments on the point of maintainability on 22.04.2024.

3. Today, arguments of learned counsel for the petitioner were heard, who mainly emphasis; firstly, that petitioner has fulfilled all the pre-requisite legal formalities as required under section 142, 143 &

144 of The Act of 2017 for filing a valid election petition and secondly, that the verification at the footnote of the instant election petition and then an affidavit attached with the election petition which is duly signed by the Additional Registrar of this Court are sufficient to fulfill the requirement of law as required under sub section (4) of Section 144 of The Act of 2017 and thus this petition needs to be tried through a regular trial instead of summary rejection under section 145 (1) of the *ibid* Act.

4. In view of above submission, when learned counsel for the petitioner was confronted that as to whether the petitioner has fulfilled the pre-requisite legal formalities as contained in sections 142, 143 and specifically of sub section (4) of section 144 of The Elections Act, 2017, he though tried to establish that the same have been complied with, however, he was unable to satisfactorily explain a valid compliance of sub section (4) of Section 144 of The Act of 2017 which pertains to the verification of the election petition in the manner as laid down in The Code of Civil Produce, 1908.

5. In order to determine that as to whether the petitioner has made a valid verification of the

instant election petition or not and in case its answer is in negative then whether this election petition is liable for summary rejection on the aforesaid ground or not?. It would be relevant to mention there that earlier an election petition qua settlement of election disputes was to be tried and regulated under the provisions of The Representation of People Act, 1976 (hereinafter is to be referred as ROPA of 1976) which has recently been repealed by section 241 of The Election Act of 2017 and now the same is to be tried under the provisions of The Election Act 2017. It will also be relevant to mention here that the provisions of The Elections Act, 2017 qua the election disputes are in *paria materia* the same as were provided in The Representation of People Act, 1976, therefore, the relevant provisions of both these Acts qua procedure of filing of an election petition are reproduced below for their comparative perusal;

The Representation of People Act, 1976	The Elections Act 2017
<p>52. Election petition. – No election shall be called in question except by an election petition made by a candidate for that election (hereafter in this Chapter referred to as the petitioner.)</p> <p>(2) An election petition shall be presented to the Commissioner within forty-five days of the publication in the official gazette of the name of the returned candidate and shall be accompanied by a</p>	<p>139. Election petition.—</p> <p>(1) No election shall be called in question except by an election petition filed by a candidate for that election.</p> <p>(2) In this Chapter—</p> <p>(a) ‘corrupt or illegal practice’ means a ‘corrupt practice’ or an ‘illegal practice’ as defined in Chapter X;</p> <p>(b) ‘petitioner’ means the candidate who has filed an</p>

<p>receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury in favour of the Commissioner, under the prescribed head of account, as security for the costs of the petition, a sum of one thousand rupees.</p>	<p>election petition; and (c) 'respondent' means a person joined as respondent in the election petition under section 143.</p>
<p>53. Presentation of petition.—(1) An election petition shall be presented by a petitioner and shall be deemed to have been presented</p> <p>(a) when it is delivered in person to the Secretary to the Commission or to such other officer as may be appointed by the Commission in that behalf,</p> <p>(i) by the petitioner; or</p> <p>(ii) by a person authorised in writing in this behalf by the petitioner; or</p> <p>(b) when delivered by registered post to the Secretary to the Commission or to such other officer as aforesaid.</p> <p>(2) An election petition, if sent by registered post, shall be deemed to have been presented in time if it is posted within the period specified in sub-section (2) of section 52.</p>	<p>142. Presentation of petition.—</p> <p>(1) An election petition shall be presented to the Election Tribunal within forty-five days of the publication in the official Gazette of the name of the returned candidate and shall be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or Sub-Treasury in favour of the Commission, under the prescribed head of account, as security for the costs of the petition, such amount as may be prescribed.</p> <p>(2) An election petition shall be deemed to have been presented—</p> <p>(a) when delivered to the Election Tribunal appointed under section 140—</p> <p>(i) by the petitioner in person; or</p> <p>(ii) by a person authorized in writing in this behalf by the petitioner; or</p> <p>(b) when sent by registered post or courier service to the Election Tribunal by the petitioner.</p> <p>(3) An election petition, if sent by registered post or courier service, shall be deemed to have been presented in time if it is posted or sent within the period specified in sub-section (1).</p>
<p>54. Parties to the petition.—The petitioner shall join as respondents to his election petition</p> <p>(a) all contesting candidates; and</p> <p>(b) any other candidate against whom any allegation of any corrupt or illegal practice is made and shall serve personally or by registered post on each such respondent a copy of the petition.</p> <p>Explanation. - In this section and in the following provisions of this chapter, "corrupt or illegal practice" means a "corrupt practice" or an "illegal practice" within the meaning of Chapter VIII.</p>	<p>143. Parties to the petition.—</p> <p>(1) The petitioner shall join as respondents to his election petition all other contesting candidates.</p> <p>(2) The Election Tribunal may direct the petitioner to join any other person as respondent against whom any specific allegation of contravention of this Act has been made.</p> <p>(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.</p>
<p>55. Contents of petition.—</p> <p>(1) Every election petition shall contain,---</p> <p>(a) A precise statement of the material facts on which the</p>	<p>144. Contents of petition.—(1) An election petition shall contain—</p> <p>(a) a precise statement of the material facts on which the petitioner relies; and</p>

<p>petitioner relies;</p> <p>(b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the parties 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; and</p> <p>(c) the relief claimed by the petitioner.</p> <p>(2) A petitioner may claim as relief any of the following declarations, namely:</p> <p>(a) that the election of the returned candidate is void;</p> <p>(b) that the election of the returned candidate is void and that the petitioner or some other person has been duly elected; or,</p> <p>(c) that the election as a whole is void.</p> <p>(3) <u>Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.</u></p>	<p>(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 82 illegal act and the date and place of the commission of such practice or act.</p> <p>(2) The following documents shall be attached with the petition—</p> <p>(a) complete list of witnesses and their statements on affidavits;</p> <p>(b) documentary evidence relied upon by the petitioner in support of allegations referred to in para (b);</p> <p>(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; and</p> <p>(d) the relief claimed by the petitioner.</p> <p>(3) A petitioner may claim as relief any of the following declarations—</p> <p>(a) that the election of the returned candidate is void and petitioner or some other candidate has been elected; or</p> <p>(b) that the election of the returned candidate is partially void and that fresh poll be ordered in one or more polling stations; or</p> <p>(c) that the election as a whole is void and fresh poll be conducted in the entire constituency.</p> <p>(4) <u>An election petition and its annexures shall be signed by the petitioner and 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.</u></p>
<p>63. Dismissal of petition during trial.- The Tribunal shall dismiss an election petition, if,---</p> <p>(a) the provisions of section 54 or section 55 have not been complied with; or</p> <p>(b) if the petitioner fails to make the further deposit required under subsection (4) of section 62.</p>	<p>145. Procedure before the Election Tribunal.—</p> <p>(1) <u>If any provision of section 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition.</u></p> <p>(2) If an election petition is not rejected under sub-section (1), the Election Tribunal shall issue notice to each of the respondents through—</p> <p>(a) registered post</p>

	<p>acknowledgement due;</p> <p>(b) courier service or urgent mail service;</p> <p>(c) any electronic mode of communication, which may include radio, television, email and short message service (sms);</p> <p>(d) affixing a copy of the notice at some conspicuous part of the house, if any, in which the respondent is known to have last resided or at a place where the respondent is known to have last carried on business or personally worked for gain;</p> <p>(e) publication in two widely circulated daily newspapers at the cost of the petitioner; and</p> <p>(f) any other manner or mode as the Tribunal may deem fit.</p>
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The comparative perusal of the aforesaid two statutes would show that they are verbatim copy of each other. Both the statutes had/have stipulated and prescribed that before filing of an election petition certain formalities have to be complied with and both these statutes have mandated that in case of non-compliance of any of these legal formalities, an election petition has to be summarily rejected, which further mandate that compliance of all these provisions are mandatory as non-compliance of any of them would entail the consequential penalty. In view of the above what a petitioner of an election petition is required to fulfill before or at the time of filing of an election petition or else would be liable for summary rejection. They are that: -

- (i) *An election petition has to be presented to The Election Tribunal within forty-five (45) days of the publication in the official gazette of the name of the returned candidate. (Section 142)*
- (ii) *An election petition shall be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan in favour of the commission under the prescribed head. (Section 142)*
- (iii) *The petitioner has to join as respondents all the contesting candidates and the petitioner shall serve a copy of the election petition with all annexures on each respondents personally or by registered post or by courier service before or at the time of filing an election petition. (Section 143)*
- (iv) *The petitioner has to give a precise statement of the material facts and full particulars of any corrupt or illegal practice committed with full particular of the persons who have committed the same. (Section 144)*
- (v) *Petitioner has to attach a complete list of witnesses and their statements on affidavit and documentary evidence relied upon by him. (Section 144)*
- (vi) *Petitioner has also to attach an affidavit of service to the effect that copy of petition along with copies of all annexures etc. have been sent to all the respondents by registered post or through courier service. (Section 144)*
- (vii) *Petitioner has to claim a relief in the form and manner as mentioned in the sub section (3) of section 144. (Section 144)*
- (viii) *The election petition and annexures shall be signed by the petitioner and the petition shall be*

verified in the manner as laid down in the CPC
for the verification of pleadings (Section 144)

Now if the aforesaid mandatory provisions are placed in juxtaposition with the instant election petition then the contents of the instant election petition and its annexures appended therewith would prima facie show that the pre-requisite formalities as find mentioned from serial No. (I) to (VII) have prima facie been complied with (subject to proof), however, the requirement at serial No. (VIII) which requires the verification of pleadings as provided under the Civil Procedure Code has apparently not been complied with, which is to be highlighted in the following paras.

6. It would be relevant to mention here that as per requirement of sub section (4) of section 144 of The Act of 2017, an election petition has to be verified in the manner as laid down in The Code of Civil Procedure, 1908 for verification of the pleadings. It would also be relevant to mention here that Order VI Rule 15 of The Code of Civil Produce, 1908 provides for the verification of the pleadings on oath and as such the oath has to be administered to the person, who has been appointed/authorized under section 139

of The Code of Civil Procedure 1908, both these sections being relevant are reproduced below;

Order VI Rule 15. Verification of pleadings. –

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified 1 [on oath or solemn affirmation] at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

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

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

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

(a) any Court or Magistrate, or

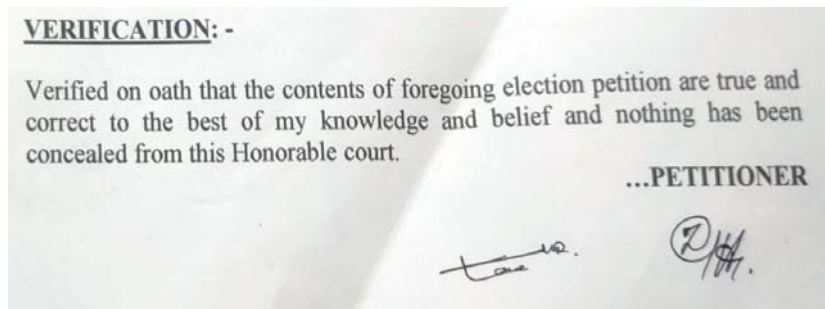
(b) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the 1 [Provincial Government] has generally or specially empowered in this behalf, may administer the oath to the deponent.

That aforesaid provisions stipulates/ prescribed and require that every pleading shall be verified on oath or solemn affirmation at the foot by the parties to the satisfaction of the Court and the person verifying the pleadings shall specify by reference to the numbered paragraphs of the pleadings that he verifies of his own knowledge and what he verifies upon information and believed by him to be true and over and above the said verification must be signed by the person making it and it shall state the date on which

and the place at which it was signed and it also requires that the pleadings have to be verified on oath and such oath is to be administered by a person who is duly appointed & authorized by the High Court and thus any verification of pleadings short of the above would not be a valid verification of the pleadings.

7. Now this Tribunal would move forward to determine that as to whether present petitioner has verified the instant petition in a manner as provided by The Code of Civil Procedure, 1908 or not?. In order to answer the above, it would be relevant to insert hereunder the verification on the instant election petition made by petitioner.



The aforesaid verification of petitioner would prima facie show that the same has not been made with reference to the numbered paragraphs of election petition which petitioner has verified on his own knowledge and what he has verified as per information received by him and which he believed them to be true. The said verification has also neither been

attested by an authorized person/the oath commissioner nor any oath has been administered by the authorized person/oath commissioner and the same also manifestly does not show that the petitioner has personally appeared for signing the same. The same also does not show the date on which and the place at which the same has been signed by the petitioner. The identity of the petitioner through his CNIC number or through any other independent person is also apparently missing, therefore, in the given facts and circumstances when the verification has not been made in the manner as required under Order VI Rule 15 of Code of Civil Procedure, 1908 and when the same has not been attested by an authorized person/the oath commissioner and when there is no endorsement that the petitioner has actually, duly and physically appeared for administering oath before the commissioner and that where there is no date on which and the place at which the said verification was signed then such verification could not be termed as a valid verification within the meaning of sub section (4) of section 144 of The Act of 2017 read with Order VI Rule 15 and Section 139 of Code of Civil Procedure, 1908 and thus the same squarely falls short of legal

requirement as required under the *ibid* provision of law and as result thereof, the petitioner has to suffer its penal consequence as provided under section 145 (1) of The Act of 2017. As stated herein above that section 144 (4) of The Act of 2017 is in the *paria materia* to section 55 (3) of The ROPA Act, 1976 and under the later law an identical circumstances The Apex Court in a case¹ has held that with regards to verification of election petitions on oath, it is clear from the provisions of section 55(3) of The ROPA that an election petition has to be verified in accordance with the provisions of Order VI, Rule 15 of The Code of Civil Procedure, 1908 which provide the basics as to how pleadings have to be verified, what shall be the contents of the verification of pleadings and how they have to be attested by the oath commissioner when read with other relevant provisions of law. Be that as it may, in addition to the law cited by both the sides (from some other dicta), it is conclusively settled by this Court that verification of an election petition is mandatory and a petition which lacks proper verification shall be summarily dismissed by the tribunal, even if the respondent has not asked for or

¹ Lt.-Col. (Rtd.) Ghazanfar Abbas Shah vs. Mehr Khalid Mehmood Sargana and others (2015 SCMR 1585)

prayed for its dismissal. Similarly, in a case² at page 290 it has clearly been held that the verification of pleadings has been provided under Order VI, Rule 15 of The Code of Civil Procedure, 1908 which when read with section 139 of The Code of Civil Procedure, 1908, clearly shows that the pleadings are to be verified on oath and the oath is to be administered by a person, who is duly authorized in that behalf. It is an admitted position that the petition filed by Syed Iftikhar Hussain Gillani though mentions that it is on oath, the oath was neither verified nor attested by a person authorized to administer oath and as such it could not be said that requirements of section 36 of the Act were complied with. We have considered the reasons given by the learned Tribunal in holding that the petition filed by Syed Ifitikhar Hussain Gillani did not comply the provisions of section 36 of the Act and are of the view that these reasons do not suffer from any legal infirmity. In a case³ The Hon'ble Apex Court has held that the election petition was not verified on oath in the manner prescribed under The ROPA Act, 1976 read with Civil Procedure Code, 1908. It was further held that if the law requires a particular thing to

² Iqbal Zafar Jhagra Vs. Khalil-ur-Rehman (200 SCMR 250)

³ Zia-u-Rehman vs. Syed Ahmed Hussain and others (2014 SCMR 1015)

be done in a particular manner it has to be done accordingly, otherwise it would not be in-compliance with the legislative intent. Non-compliance of this provision carries a penal consequence in terms of section 63 of The Representation of the People Act whereas no penal provision is prescribed for non-compliance with Order VI, Rule 15 of the Civil Procedure Code. Similarly in *Zafar Abbas v. Hassan Murtaza* PLD 2005 SC 600, the Supreme Court reiterated the similar view and it was held at page 604 that the verification on oath of an election petition though mannered in accordance with civil law yet it entails upon penal consequences and hence is mandatory. In *Abdul Qadir v. Abdul Wassay* (2010 SCMR 1877), the Apex Court had set aside the judgment of the Election Tribunal in connected appeals because the issue involved in those cases was absence of verification clause signed and verified on oath with reference to the numbered paragraphs of the pleadings and the Court was pleased to hold as follows:--

"We feel no hesitation in holding that the Election Tribunal, perhaps on account of non-availability of proper assistance, proceeded to decide the cases against the appellants for the reasons mentioned hereinabove. This Court in the case of Bashir Ahmed Bhanbhan (supra) has settled the question with regard to verifying the pleadings

notwithstanding the numbered paragraphs or the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. 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. Directly such question has been attended in another judgment in the case of Sardarzada Zafar Abbas v. Syed Hassan Murtaza and others (PLD 2005 SC 600). Relevant para therefrom is reproduced hereinbelow:--

"Learned counsel for the respondent raised another objection that the election petitioners in their verifications have failed to give reference to the paragraphs of the pleading as to what he either happened to verify on his own knowledge and what he happened to verify upon information received and believed to be true. 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."

8. It would also be relevant to mention here that the aforesaid provision of law in The Act of 2017 is also part of the election laws of The India as section 83 of The Indian Representation of People Act, 1951 which is in *paria materia* with section 55 of The ROPA of 1976 and section 144 of The Act of 2017. These sections of law being relevant are reproduced below for ready reference: -

The Elections Act 2017	Pakistani Representation of the People Act, 1976	Indian Representation of the People Act, 1951
<p>144. Contents of petition.—(1) An election petition shall contain—</p> <p>(a) a precise statement of the material facts on which the petitioner relies; and</p>	<p>"55. Contents of petition.--(1) Every election petition shall contain--</p> <p>(a) A precise statement of the material facts on which the petitioner relies;</p>	<p>"83. Contents of petition.--(1) An election petition--</p> <p>(a) shall contain a concise statement of the material facts on which the petitioner</p>

<p>(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 82 illegal act and the date and place of the commission of such practice or act.</p> <p>(2) The following documents shall be attached with the petition—</p> <p>(a) complete list of witnesses and their statements on affidavits;</p> <p>(b) documentary evidence relied upon by the petitioner in support of allegations referred to in para (b);</p> <p>(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; and</p> <p>(d) the relief claimed by the petitioner.</p> <p>(3) A petitioner may claim as relief any of the following declarations—</p> <p>(a) that the election of the returned candidate is void and petitioner or some other candidate has been elected; or</p> <p>(b) that the election of the returned candidate is partially void and that fresh poll be ordered in one or more polling stations; or</p> <p>(c) that the election as a whole is void and fresh poll be conducted in the entire</p>	<p>(b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the parties 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; and</p> <p>(c) the relief claimed by the petitioner.</p> <p>(2) A petitioner may claim as relief any of the following declarations, namely:--</p> <p>(a) that the election of the returned candidate is void;</p> <p>(b) that the election of the returned candidate is void and that the petitioner or some other person has been duly elected; or</p> <p>(c) that the election as a whole is void.</p> <p>(3) <u>Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.</u></p>	<p>relies;</p> <p>(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and</p> <p>(c) <u>shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:</u> Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.</p> <p>(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."</p>
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<p>constituency. <u>(4) An election petition and its annexures shall be signed by the petitioner and 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.</u></p>		
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The comparative perusal of aforesaid three laws shows that all the three statutes requires verification of pleading in the manner as laid down in The Code of Civil Produce, 1908 and its non-compliance carry the penal consequences of dismissal of an election petition. The Indian Supreme Court has also dilated upon the effect of the aforesaid provision of Act of 1951 and its non-compliance. In a case⁴ The Indian Supreme Court has held that;

"verification by a Notary or any other prescribed authority is a vital act which assures that the election petitioner had affirmed before the notary etc. that the statement containing imputation of corrupt practices, was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition and affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, form 25 mandates verification before the prescribed authority. The object appears to be that the returned candidate is not misled that it was not duly verified. The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the returned candidate as true copy cannot be said to be a curable irregularity.

⁴ Dr. (Smt.) Shipra etc. Vs. Shanti Lal Khoiwal etc. (AIR 1996 SC 1691)

Allegations of corrupt practices are very serious imputations which, if proved, would entail civil consequences of declaring that he became disqualified for election to a maximum period of six years under section 8A, apart from conviction under section 136(2). Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a sine qua non contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliance cannot be accepted in the fact situation." The Court in the said judgment further came to the conclusion that if an objection with reference to the afore-referred provision qua the maintainability is raised, it has to decide it as a preliminary objection. The Court held "when so read, if the Court finds on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the Court is required to go into the question and decide the preliminary objection. In case the Court does not uphold the same, the need to conduct trial would arise. If the Court upholds the preliminary objection, the election petition would result in dismissal at the threshold, as the Court is left with no option except to dismiss the same."

Similarly, in another case⁵ it has been held by Indian Supreme Court that when the verification was not found in the prescribed form and keeping reliance on previous precedent of the Indian Supreme Court it was held that a valid verification is essential or else or in case of a defective verification the election petition has to be rejected.

9. Now we move forward to address the second limb of the arguments of learned counsel for the petitioner that as to whether the affidavit inscribed/annexed/enclosed with the election petition

⁵ H.D Revanna vs. G. Puttaswamy & others (AIR 1999 SC 768)

is sufficient for establishing that the election petition has been verified in accordance with law or not?. The said affidavit being relevant for addressing this question is inserted below.

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH/
ELECTION TRIBUNAL FOR HAZARA DIVISION,
AT ABBOTTABAD**

Election Petition No. _____-A/2024

Zareen Gul S/o Nazar Gul, Caste Pathan, R/o Post Office New Darband, Maira Mada Khel, Tehsil & District Tor Ghar, Runner-up candidate from PK-41 Tor Ghar.

...PETITIONER

V E R S U S

Election Commission of Pakistan through its Chief Election Commissioner, Islamabad & three others.

...RESPONDENTS

ELECTION PETITION

AFFIDAVIT

I, Zar Lasht S/o Zar Gul Khan, R/o Post Office New Darband, Maira Mada Khel, Tehsil & District Tor Ghar (Special Attorney) do hereby affirm and declare on oath that the contents of foregoing Election Petition are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honorable Court.

19504-9489923-7

(P.H.)
DEPONENT

S.#: 166/253 **AFFIDAVIT** Receipt # 253

Certified that the above was verified before me on this 12 day of May 2024 by Zar Lasht s/o Zar Gul Khan R/o Maira Mada Khel Tor Ghar who is personally known to me.

REGISTRAR
Election Tribunal
26/3/24

ADDITIONAL REGISTRAR
Peshawar - Abbottabad Bench
11/2/24

The aforesaid affidavit would show that the same has been attested by the Additional Registrar

Peshawar High Court, Abbottabad Bench and even there is no reference to any of the of the numbered paragraph of the election petition. It would also be relevant to mention here that the said affidavit is attested under The High Court Rules and Orders and the same has no relevancy with the provisions of The Act of 2017 and The Code of Civil Produce, 1908. It would not be out of place to mention here that the aforesaid affidavit has been made under The High Court Rules & Orders and the relevant Chapter No. 12, Volume No. IV, Rules Nos. 11, 12, 14, 15 and 16 of The High Court Rules being relevant are reproduced below;

"11. Identification of deponent.---Every person making an affidavit shall, if not personally known to the Court, Magistrate or other officer appointed to administer the oath or affirmation, be identified to such Court, Magistrate or officer by some person known to him; and such Court, Magistrate or officer shall specify at the foot of the affidavit, the name and description of the person by whom the identification is made, as well as the time and place of the making of the affidavit.

12. Mode of attestation. ---The Court, Magistrate, or other officer as aforesaid, before whom an affidavit is made, shall certify at the foot of the affidavit the fact of the making of such affidavit before him, and shall enter the date and subscribe his signature to such certificate, and shall, for the purpose of identification, mark date, and initial every exhibit referred to in the affidavit. The name of the verifying authority must be signed in full, and care must be taken that his proper designation as a Civil Court or Magistrate is added.

14. Attesting Officer's duty.--If any person making an affidavit appears to the Court, Magistrate or other officer administering the oath or affirmation,

to be ignorant of the language in which it is written, or to be illiterate, or not fully to understand the contents of the affidavit, such Court, Magistrate or officer shall cause the affidavit to be read and explained to him in a language which both he and such Court, Magistrate or officer understand; either doing so himself, or causing another person to do so in his presence. When an affidavit is read and explained as herein provided, such Court, Magistrate or other officer as aforesaid shall certify in writing at the foot of the affidavit that it has been so read and explained, and that the declarant seemed perfectly to understand the same at the time of making it.

15. Attesting, signing and verification or affidavit.--
-Every affidavit shall be signed or marked and verified at foot by the declarant and attested by the Court, Magistrate or other officer administering the oath or affirmation, the verification, by the declarant shall be in one of the forms attached thereto, and shall be signed or marked by the declarant the attestation of the Court, Magistrate or other officer administering the oath or affirmation shall also be in the form prescribed below.

16. Manner of administering oath to deponent.--
In administering an oath or affirmation to the declarant in the case of any affidavit under the Code of Civil Procedure, the Court, Magistrate or other officer appointed in that behalf shall be guided by the rules under the Indian Oaths Act, 1878, printed in Part A of this Chapter and shall follow the form of verification by oath or affirmation thereto appended.

The aforesaid provision of High Court Rules & Orders speak of the mechanism of making an affidavit before the Court or magistrate or any other officer appointed to administrate the oath or affirmation which also requires the proper identification of the deponent and such officer or Court or magistrate is bound to enter the date and subscribe the signature of the deponent and if the deponent is ignorant of the language of affidavit, then the officer has to

understand the contents of the affidavit to the deponent and thereafter the same is to be attested by the Court or magistrate or officer concerned.

10. We have also applied our anxious consideration to the aforesaid affidavit of the petitioner as well, however, we are unable to agree with the submission of the learned counsel for the petitioner that the said affidavit does fulfill the object as well as the intention of the legislatures as prescribed and required under sub section (4) of section 144 of The Act of 2017 as the same is not in line with the spirit of the verification on oath as required under the election law(s).

11. In view of the above discussion & exposition of law on the subject, it is held and declared that petitioner has not made a valid verification of the instant election petition as requires under sub section (4) of section 144 of The Elections Act of 2017 read with order VI Rule 15 & section 139 of The Code of Civil Produce, 1908 and thus the same is liable for summary rejection as mandated under sub section (1) of section 145 of the ibid Act. Order accordingly.

Announced
07.10.2024

JUDGE