

**BEFORE THE ELECTION TRIBUNAL SINDH,
AT KARACHI**

Election Petition No.-01 of 2022

Shahzada Shahbaz.....Petitioner

v.

Election Commission of
Pakistan and others.....Respondents

Mamoon K. Shirwani, Advocate for the Petitioner
Abdullah Hanjrah, Sr. Law Officer, Election Commission of
Pakistan

Date of hearing : 14.01.2023

ORDER

YOUSUF ALI SAYEED, J. The captioned Petition under Section 139 of the Election Act 2017 (the “**Act**”) relates to the Bye-Election held on 16.06.2022 in respect of NA-240, Korangi, Karachi- II, with the Respondent No.4 having secured the highest number of votes as per the final consolidated result and being notified as the returned candidate.

2. The Petitioner, having placed second in that electoral race, has preferred the captioned Petition praying that:

- “a. The election of the returned candidate procured through corrupt practices, be declared an illegal and unlawful.
- b. Corrupt and illegal practices has been carried by the returned candidate with the connivance of the other concerned respondents and hence the declaration of election of the returned candidate be declared as void.
- c. Direct the official Respondents to conduct recounting/rechecking of votes cast in all polling stations of bye-elections NA 240 Korangi and after considering the illegal cancelled votes as valid and the result for the said Bye-Election NA-240 may please withhold till final recounting / rechecking of votes casted in all the polling stations of NA-240.
- d. Suspend the Gazette Notification dated 21.06.2022 whereby respondent No.4 was declared as successful elected candidate till final decision of the instant Petition.
- e. Any other relief by this Honorable Court may deem fit and appropriate in the circumstances of the case may also be granted to the petitioner.”

3. On presentation of the Petition an objection had been raised by the office as to its maintainability in view of the pleadings lacking full particulars of the corrupt and illegal practice alleged to have been committed, including names of the complicit parties and the date and place of commission, with a question of maintainability then having been framed in that regard during the course of proceedings.

4. In that regard, it is noteworthy that Sections 144 of the Act *inter alia* mandates as follows:

“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;

(b) documentary evidence relied upon by the petitioner in support of allegations referred to in para (b);

(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

(d) the relief claimed by the petitioner.

5. Furthermore, Section 145(1) of the Act prescribes the consequences of non-compliance in the following terms:

“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.

6. Indeed, the requirement of specificity stands well settled in terms of the Judgment of the Honourable Supreme Court of Pakistan in Civil Petition No.13-O of 2019, the operative part of which reads as follows:-

“Having heard the learned counsel for the appellant and going through the record, we find that the very election petition through which the appellant had challenged the election notification of Respondent No.1 was defective in its content. We have gone through the election petition and find that the mandatory requirements of Section 144 (1) (b) of the Election Act, 2017 were not met. Further, the petition was deficient insofar as it lacked particulars of any corrupt or illegal practices or other illegal act that was alleged to have been committed. Further, neither the petition nor the affidavit in evidence submitted by or on behalf of the appellant contained names and other particulars of the persons who were alleged to have committed the corrupt or illegal practices or illegal acts. The date, time and place of the commission of such practices was not mentioned either. Therefore, the petition was liable to be dismissed on that short ground alone in terms of powers available to the Election Tribunal under Section 145 of the Election Act, 2017.”

7. As it stands, a perusal of the pleadings in the matter at hand reveals that the same largely lack elucidation and clarity. As can best be discerned, the Petition proceeds on vague and general allegations as to theft of ballot papers, the manipulation and stuffing of ballot boxes, and with the Petitioner having also sought to impugn the veracity of the count and consolidation of votes on the basis of the bare assertion that his agents were forcibly removed from the polling stations on the polling day and that the counting and tabulation of votes has not taken place in accordance with the provision of the Act, thus does not reflect the true result of the election.

8. However, no particulars by way of identification of the name(s) of the culpable parties or election staff have been provided, nor have any further material particulars been disclosed as to the time and manner of the alleged acts. Furthermore, the Petition fails to properly disclose the particulars of any corrupt or illegal practice on the part of the Respondent No.4 or his connivance in the alleged non-compliance on the part of the election staff with the provisions of the Act. The Affidavits-in-Evidence filed in support of the Petition are similarly deficient in that regard.

9. As such, it is apparent that the Petition is not in consonance with the scheme of the Act in as much as the pleadings and Affidavits-in-Evidence are bereft of the material particulars required to have been disclosed in terms of S.144(1)(b), as held by the Honourable Supreme Court of Pakistan in Civil Petition No.13-O of 2019.

10. That being so, the Petition is not maintainable and stands dismissed accordingly.

JUDGE

Karachi
Dated _____