

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Election Appeal No.04 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA-725/2023.
2. For hearing of main case.

Date of Hearing : 03.05.2023
Date of Order : 03.05.2023

Mr. Dilber Khan Laghari, Advocate for Appellant.

Mr. Wali Muhammad Khoso, Advocate for Respondent No.11.

Mr. Bashir Ahmed Almani, Deputy Attorney General

Mr. Zaheer Abbas, Law Officer, Election Commission of Pakistan
alongwith Mehboob Ali and Ali Akbar Brahmani Assistant Returning
Officers MC Tando Adam.

ORDER

MUHAMMAD FAISAL KAMAL ALAM- J,- This Election Appeal is filed against the Order dated 28.01.2023, dismissing the Election Petition of present Appellant on the ground mentioned in Paragraphs No.5 and 6 of the impugned Order, *inter alia*, that Rules 61(A) and 62(3) of Sindh Local Councils (Election Rules, 2015) have been violated while filing the Petition, concerning impleading of those persons as parties against whom allegations of corrupt practice and illegalities have been mentioned in the Petition, non-service upon the Respondents with the copies and Annexures of the Petition as per Rules; verification clause and signatures by Petitioner on every Annexure of the petition.

2. Learned Counsel for the Appellant has referred to the record from R&Ps to show that SSP Sanghar has been impleaded as Respondent No.10, as allegations against police officials have been made in the Petition, so also Respondent No.5, the Returning Officer against whom the allegation is, *inter alia*,

that he in collusion with the Respondent No.11-Muhammad Asif Ansari has manipulated the election results and election record. He has further referred to Form-XI (At Page-75) to show that present Appellant was leading in Poling Station-617; referred to the Provisional Result (At Page-91) in which the Appellant has secured 486 votes as against Respondent No.11, who has secured 467 votes. Further contended that during re-counting of votes the results were changed together with other malpractice committed by the Respondents. He has cited the case of MOULVI ABDUL QADIR and others v. MOULVI ABDUL WASSEY and others-2010 PSC 1323. In the cited Decision, the Hon'ble Supreme Court remanded the matter to Election Tribunal. In the said case issue of verification of pleading and verification of every schedule or annexure appended with the Petition was discussed; observing, *inter alia*, that such an omission is not fatal.

3. The above line of argument is rebutted by Mr. Wali Muhammad Khoso, the learned Counsel appearing for the Returned Candidate-Muhammad Asif Ansari. He has referred to the above provisions and states that they are mandatory in nature and omission to comply the same will result in dismissal of Election Petition and the Order is correctly passed. Mr. Khoso has also stated that the Election Petition itself was time barred as earlier Appellant approached the Election Commission of Pakistan which has passed the Order dated 21.07.2022 (At Page-121 of the File). He has relied upon the case of ZIA UR REHMAN v. SYED AHMED HUSSAIN and others-2014 SCMR 1015. The Hon'ble Supreme Court in the cited case has held, that issue of maintainability raised by a returned candidate is to be decided first as a preliminary objection; if it is in favour of the petitioner, only then the trial will commence; when an Election Petition is to be submitted on a prescribed format then its non-compliance shall entail adverse consequence, as such provisions are mandatory in nature.

4. Learned Counsel appearing for ECP [the Election Commission of Pakistan], stated that the above provisions are mandatory and they were not complied with by the Appellant, hence, the Order impugned is correct. However, on a specific question that the initial result shows that Appellant was leading in the Election which was subsequently changed; the ECP Counsel states by referring to the Order of Election Commission of Pakistan (*ibid*) that *pro* and *contra* evidence was required to be led; thus, the matter can be remanded.

5. Arguments heard and record perused.

6. **Pages-157 and 165 to 169 of R&Ps** have been perused, confirming that the Appellant has sent the Petition under the covering notice of his Counsel to all the Respondents and particularly the Returned Candidate-Respondent No.11, bearing Receipt No.1022. As far as verification clause is concerned, the Petition itself contains a verification clause alongwith supporting Affidavit which is sworn in the Affidavit and Identification Branch of the District and Sessions Court (Sanghar). The Annexures alongwith the Petition bear attestation of Oath Commissioner; secondly, these (Annexures) are the official documents, except a Photograph and thus their authenticity can be confirmed by the official Respondents, in particular, Respondent-ECP. As far as the observation in the impugned Order is concerned about non-impleading of police officials, it is observed here that Respondent No.10-SSP Sanghar has been impleaded in whose control the police force deployed at the Police Stations were functioning; hence, this objection is not a good ground to dismiss the Election Petition.

7. From the above record, it is clear that substantial compliance has been made by the Appellant; in particular when the Appellant is relying upon the official record to show that he secured more votes than the Respondent No.11, the proper course would be that learned Election Tribunal should have decided the matter after giving opportunity to parties to lead the evidence, so also observed by

the Election Commission of Pakistan in its above Order. Secondly, the perusal of the impugned Order shows that it is given in a slipshod manner, as Paragraph-5, in particular, is incomplete.

8. The Judgment cited by the learned Counsel for Respondent No.11 is distinguishable. Consequently, this Appeal is allowed only to the extent that impugned Order is set aside. The matter is remanded to the Election Tribunal for deciding the same afresh within four (04) weeks from the receipt of Copy of this Order and Record and no adjournment shall be allowed to any of the parties.

JUDGE

Shahid