IN THE HIGHCOURTOFSINDHCIRCUITCOURTHYDERABAD

Election Appeal No.05 of 2023

Appellant:	Asif Khan S/o Ghulam Hussain through Mr. Imtiaz Ali Chanhio, Advocate
Official respondents 1to8:	Through Ms. Shamim Mughal, Assistant Attorney General for Pakistan along with Mr. Zaheer Abbas, Law Officer, Election Commission of Pakistan.
Respondent No.9:	Muhammad Ramzan S/o Ali Akbar through Mr. Awais Khan Laghari, Advocate
Respondents No.10:	Nil.
Date of hearing:	24.07.2023.
Date of judgment:	04.08.2023.

JUDGMENT

ARBAB ALI HAKRO, J- This appeal has been initiated under Section 54 of the Sindh Local Government Act, 2013 ("**SLGA, 2013**") challenging Order dated 14.12.2022 passed by the Election Tribunal Sanghar in Election Petition No.17 of 2022, whereby the Election Tribunal dismissed the aforementioned Election Petition filed by the present appellant on the grounds that; he failed to comply with the mandatory provisions enunciated under Rules 61(a), 61(b), and 62(3) of the Sindh Local Councils (Election) Rules, 2015 ("**the Rules, 2015**").

2. Learned counsel for the appellant contended that the impugned Order suffers from legal infirmities of such a nature that justifies interference by this Court; that the Tribunal has dismissed the election petition of the appellant on

technical grounds instead of providing an opportunity of leading evidence; that such technicalities should not have weighed with the Election Tribunal and the election petition should be decided on merits, *inter alia*, after affording the full opportunity of hearing to the appellant to present the case by leading evidence, more particularly, after incorporation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; that the requirement of Rule 40 Sub-Rule (1) of the Rules, 2015 is to put notice to all contesting candidates before the consolidation of the votes of either party; that the Election Commission has failed to discharge its statutory mandate as the elections were not conducted in a fair manner. It was urged that the matter ought to have been decided by the Tribunal on merits rather than on technicalities.

3. On the other hand, learned counsel representing private respondent No.9 argued that the provisions of Rules 61(b) and 62(3) hold mandatory status and should not be regarded as mere technicalities. Failure to adhere to any of these provisions will lead to the dismissal of the election petition, as stated in Rule 64 of the Rules, 2015. He submitted that in view of violating the above mandatory provisions of the Rules, the Tribunal has rightly dismissed the election petition.

4. With the assistance of the Law Officer ECP, the Assistant Attorney General supported the impugned Order passed by the Election Tribunal. Additionally, she adopted the arguments put forth by counsel for private respondent No. 9 and prayed for dismissal of this appeal.

5. I have heard learned counsel for the parties and, with their assistance have perused the material available on record.

6. Firstly, the Tribunal determined that the appellant did not duly verify the Election Petition and its accompanying Annexures under Order VI Rule 15 of the Civil Procedure Code, 1908. Consequently, the appellant failed to adhere to the mandatory provisions outlined in Rule 62(3) of the Rules, 2015. Secondly, the Tribunal determined that the proposed Vice-Chairman of the appellant failed to appear alongside the appellant to submit the Petition. Additionally, he did not include the two remaining contesting candidates as a party to the proceedings. Moreover, the appellant has not provided proof in the form of postal or courier receipts to substantiate that copies of the Petition were sent to the two contesting candidates before filing it. Thus, the appellant must comply with the requirement outlined in Rule 61(a) (b) of the Rules, 2015. It would be advantageous to reproduce the aforementioned rules as well as Rule 64 of the said Rules as follows: -

> *"61. The Petitioner shall join as respondents to his election petition-*
> *(a) all contesting candidates; and*
> *(b) any other person against whom any allegation, if any, of corrupt or illegal practice is made and shall serve personally or by courier service or registered post on each such respondent a copy of his Petition.*
> *62(3). Every election petition and every schedule or annexure to that Petition shall be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.*

> *64. If the Tribunal is satisfied that all or any of the preceding provisions have not been complied with, the Petition shall be dismissed forthwith and submit its report to the Election Commission."*

7. Admittedly, the appellant, in the Petition, has failed to join all the contesting candidates as respondents/parties and has not served a copy of the Petition to each respondent individually or through courier service or registered post. The election petition filed by the appellant, in addition, did not adhere to the prescribed procedure outlined in the provision as mentioned earlier concerning the verification on oath as provided under the above provisions of Law and Rules. According to Rule 64, in the event that the Election Tribunal determines that any or all of the preceding stipulations, which notably include Rules 61(a) (b) and 62(3), have not been duly adhered to, the Petition shall be promptly dismissed. In order to maintain adherence to the legislative intent, it is imperative that actions mandated by the law are executed in the prescribed manner. Failure to do so would result in non-compliance and dismissal of the Petition. In this context, I am fortified with the case of **Zia ur Rehman vs Syed Ahmed Hussain and others (2014 SCMR 1015)**, wherein Apex Court has held as under: -

> *"When the law prescribes a certain format of an Election Petition and its verification on oath and entails a penal consequence of its non-compliance, it is a mandatory provision. If an objection is raised with regard to maintainability of such a petition for non-compliance of a mandatory provision, the Court/Tribunal should decide that preliminary*

objection. Because if that objection is sustained then the Court is left with no option but to dismiss the Petition."

8. In view of hereinabove facts and circumstances and the legal position, I am of the considered opinion that dismissal of the appellant's election petition for non-compliance of the mandatory provisions outlined in Rules 61(a) (b) and 62 (3) was fully justified. Such a finding of the Tribunal does not require any interference by this Court. Accordingly, the appeal is **dismissed**, with no order as to costs.

JUDGE