

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-3615 of 2024

Zain Pervez

Versus

Federation of Pakistan & another

Date	Order with signature of Judge
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1. For orders on M.A. No.16146/24
2. For orders on maintainability of petition.

Dated: 05.08.2024

Mian Shahbaz Ali for petitioner.

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- 1) Urgency granted.
- 2) This petition challenges the substituted Rule 140 of Election Rules 2017, which amendment is brought in vide S.R.O. No.452(I)/2023 dated 07.04.2023. The matter is coming up for maintainability; learned counsel for the petitioner at the very outset was inquired as to how this substituted rule 140 would offend any of the Articles of the Constitution of Islamic Republic of Pakistan, 1973 to which he showed his ignorance; in fact he submits that he has no idea as to which of the Article of the Constitution has been violated by substituting Rule 140 of Election Rules 2017.

On account of his inability to assist we ourselves perused the prayer clause of the petition, which provides that the amended and substituted Rule 140 would offend and is inconsistent with Section 149 of the Elections Act, 2017. The provision of Section 149 is reproduced as under:-

149. Amendment of petition.—(1) The Election Tribunal may, at any time before the commencement of recording of evidence and upon such terms and on payment of such costs as it may direct, allow the petitioner to amend the election petition in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial and for determining the real questions at issue but shall not permit raising of a new ground of challenge to the election through such amendment.

(2) ...”

The previous Rule 140 of the Election Rules, 2017 required that the petition shall be processed by the Tribunal and if not found in accordance with the laid down procedure, the petitioner shall be informed accordingly the deficiency in the petition directing him to fulfill the same within seven days of the receipt of the communication.

We do not find this amended version of Rule 140 to be in conflict with *ibid* Section 149. The amended Rule 140 provides that every petition shall be processed by the office of the Tribunal and in case petition is not found in accordance with the provisions of Section 142, 143 and 144, it shall be laid before the Tribunal for orders under Sub-Rule (1) of Section 145. Subsection (1) of Section 145 requires that the provisions of Sections 142, 143 or 144 have to be complied. This revised rule 140 of the Election Rules 2017 read with Section 145 of Election Act, 2017 in no way whisk away the entitlement of the petitioner, as identified in section 149, which empower the Election Tribunal at any time before commencement of recording of evidence and upon such terms as deem fit and necessary to allow the petitioner to amend the Election Petition. Substituted Rule 140 has to be read in line with law i.e. Sections 145 and 149 of the Elections Act, 2017, which rule does not negates and/or offends the requirement of Section 145/149 of Elections Act, 2017.

This being the situation and as deemed fit and appropriate that this is a procedural rule and while the petition was being tested before the Election Tribunal, the petitioner can pursue his matter before the Election Tribunal for a remedial compliance. We do not see any right of the petitioner being taken away by virtue of the substituted rule, impugned in this petition being read with Sections 145 and 149 of Elections Act 2017. The petition being misconceived is accordingly dismissed along with pending applications.

Chief Justice

Judge