

**ELECTION TRIBUNAL**  
**HIGH COURT OF SINDH, KARACHI**

**Election Petition No. 03 of 2024**

[Fauzia Siddiqui v. Election Commission of Pakistan & others]

Petitioner : Fauzia Siddiqui daughter of Shafqat Ali Siddiqui through Ms. Samreen Ali Rizvi, Advocate for the Petitioner.

Respondents 1&2 : Election Commission of Pakistan & another through Mr. Sarmad Sarwar, Assistant Director (Law), ECP, Karachi.

Respondent 4 : Syed Adil Askari son of Muhammad Askari [**Returned Candidate**] through M/s. Obaid-ur-Rehman, Sabih Ahmed Zubairi, Saleem Raza Jakhar and Muhammad Akbar Khan, Advocates.

Respondents 3&5-38 : Nemo.

Date of hearing : 04-12-2024

Date of order : 04-12-2024

**ORDER**

**Adnan Iqbal Chaudhry J.** - This order decides the preliminary issue settled on 12-06-2024 raising the question whether this election petition is liable to be rejected under section 145(1) of the Election Act, 2017 [**the Act**] which stipulates:

**“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.

2. On 10-07-2024, when submissions were first made by learned counsel for the Respondent No.4 (returned candidate), the objections raised were: (a) that the first challan submitted for security costs was not in the prescribed head of account; (b) that oath administered on the verification of the petition was by an unauthorized person; and (c) that an affidavit of service was not filed. Since then, while seized of

other election petitions, this Tribunal has already declined objections (a) and (b) and accepted objection (c) in similar circumstances. Therefore, presently, learned counsel for the Respondent No.3 presses objection (c) only.

**Objection to the affidavit of service:**

3. The facts are that the petition was presented on 25-03-2024 without the 'affidavit of service' required by section 144(2)(c) of the Act. Instead, the Petitioner had filed a 'statement of service' which is not on oath. Therefore, learned counsel for the Respondent No.4 submits that the petition is liable to be rejected under section 145(1) of the Act. On the other hand, learned counsel for the Petitioner submits that courier receipts on the record demonstrate that copies of the petition were dispatched to the Respondents before presenting the petition, thus complying with section 143(3) of the Act, and in such circumstances the failure to file affidavit of service is not material.

4. As discussed by this Tribunal in the case of *Faheem Khan v. Muhammad Moin Aamer Pirzada* (E.P. No. 13/2024), section 144(2)(c) of the Act is to be read with section 143(3) of the Act. Said provisions read:

**"143(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."

**"144(2).** The following documents shall be attached with the petition—

(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;"

5. The requirement of section 144(2)(c) is that after serving the respondents with a copy of the petition and annexures under section 143(3), the Petitioner shall also file an affidavit to affirm that he has done so. Therefore, the compliance required by section 144(2)(c) is separate and in addition to the compliance required by section 143(3). That being so, nothing less than the affidavit of service will suffice to

raise the presumption that the respondents have been served with copies of the petition and annexures before or at the time of filing the petition. With the consequence of rejection provided in section 145(1) of the Act, the requirement of an affidavit of service in section 144(2)(c) appears to be mandatory. No argument was advanced to construe it differently. Resultantly, I am not convinced with the submission of the Petitioner's counsel that production of courier receipts was sufficient compliance of section 144(2)(c) of the Act. This Tribunal has already held in the case of *Ghulam Qadir v. Election Commission of Pakistan* (E.P. No. 57/2024) and other petitions that non-compliance of section 144(4)(c) of the Act cannot be cured after expiry of the period of 45 days prescribed for filing an election petition.

6. Therefore, the objection to the affidavit of service succeeds. Since the petition was filed without the affidavit of service mandated by section 144(2)(c) of the Act, it is rejected under section 145(1) of the Act. Pending applications become infructuous.

**JUDGE**

Karachi  
Dated: 04-12-2024

\*PA/SADAM