

ELECTION TRIBUNAL
HIGH COURT OF SINDH, KARACHI

Election Petition No. 59 of 2024
[Sirbuland Khan v. The Returning Officer & others]

Petitioner : Sirbuland Khan son of Nazar Muhammad through M/s. Barrister Ali Tahir and Muhammad Hashim Sairani, Advocates.

Respondents 1, 3, 4, 6, 7, : Nemo.
9, 10, 12, 13, 15, 17-19,
21-23, 26 & 27

Respondent No. 2 : Election Commission of Pakistan through Mr. M. Bilawal Malik, Assistant Director (Law), ECP, Karachi.

Respondents 5, 8, 11, 14, : Tasleem Sarfaraz & others through
16, 20, 25 & 28 M/s. Hassnain Ali Choochan and Samreen Ali Rizvi, Advocates.

Respondent No. 24 : Muhammad Asif son of Moosa Yousuf through M/s. Mian Raza Rabbani and M. Zeeshan Abdullah, Advocates.

Federation of Pakistan : Ms. Rabia Khalid, Assistant Attorney General for Pakistan.

Date of hearing : 14-01-2025

Date of order : 10-02-2025

ORDER

Adnan Iqbal Chaudhry J. - CMA No. 2278/2024 by the Respondent No. 24 (retuned candidate) is for summary rejection of the election petition 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. Learned counsel for the Respondent No. 24 submitted that the Petitioner did not serve the Respondents with a copy of the election petition and its annexures before or at the time of filing the petition, hence non-compliance of section 143(3) of the Act which stipulates:

“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.”

3. The courier receipts filed with the affidavit of service to show compliance of section 143(3) of the Act are dated 16.09.2024 *i.e.* two days before the petition was presented on 18.09.2024. The affidavit of service affirms the same. Therefore, *prima facie*, notice under section 143(3) was dispatched before filing the petition. The precise objection is that there is no evidence that service was actually affected. However, as held by this Tribunal in E.P. No. 13/2024, *Faheem Khan v. Muhammad Moin Aamer Pirzada*, section 143(3) of the Act has to be read with section 144(2)(c) of the Act, which reads:

“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;”

4. While section 143(3) requires the petitioner to ‘serve’ those documents on the Respondents, from section 144(2)(c) it appears that it would suffice to show that those documents ‘have been sent’ to the respondents. It follows that if the petitioner files an affidavit of service to show *prima facie* that copy of the petition along with relevant documents were “sent” to the respondents by registered post or courier service before or at the time of filing the petition, then service under section 143(3) of the Act will be presumed to have been affected. In other words, at the time of filing the petition, the petitioner does not have to prove by evidence that service has been affected.

5. The other objection of learned counsel for the Respondent No.24 was that the petition did not contain full particulars of the corrupt or illegal practice and therefore did not comply with section 144(1)(b) of the Act which reads:

“144. Contents of petition.— (1) An election petition shall contain—
(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.”

6. While the words “corrupt practice” have been given a meaning under section 167 of the Act, and the words “illegal practice” have also been given a meaning under section 175 of the Act, the legislature has not done so for the words “other illegal act”. It appears that the latter words have been used generally.

7. The case of the Petitioner is that the order of recount dated 01.04.2024 passed by the ECP, followed by the recount conducted by the RO and the consequent notification by the ECP dated 10.09.2024 to declare the Respondent No.24 as returned candidate in place of the Petitioner, were all illegal acts as the conditions prescribed for a recount by section 95(5) and 95(6) of the Act did not exist. It has further been alleged by the Petitioner in para 16 of the petition that during the recount the RO did not count more than 6000 votes secured by the Petitioner. Therefore, the petition does contain full particulars of the ‘illegal act’ alleged to have been committed and fulfills the requirement of section 144(1)(b) of the Act.

8. Apart from objections raised above under section 145(1) of the Act, learned counsel for the Respondent No.24 had also questioned the maintainability of an election petition to challenge an order of recount passed by the ECP in exercise of powers under section 8 of the Act. The submission was not that such order is assailable before another forum, but that no challenge at all can be brought against an order of recount. In that regard, learned counsel relied on the observation of the Supreme Court in *Abdul Rehman Khan Kanju v. Election Commission of Pakistan* (2024 SCMR 1902) that a candidate cannot be said to be ‘aggrieved’ if ballot papers are recounted. Clearly, that observation is made to rule out a constitution petition under Article 199 of the Constitution of Pakistan, not an election petition before an Election Tribunal constituted under Article 225 of the Constitution. In fact, in *Kanju’s* case also, the order of recount was passed by the ECP while exercising powers under section 8 of the Act and the majority view was that once the recount culminates in an

election result, a candidate can then challenge such result by way of an election petition before the Election Tribunal. As pointed out by learned counsel for the Petitioner, C.P. No. D-1723/2024 filed by the Petitioner against ECP's order of recount was dismissed by a learned Division Bench of the High Court on the very ground that the Petitioner's remedy was before the Election Tribunal.

9. In view of the foregoing, the objections taken for rejection of the election petition under section 145(1) of the Act do not succeed. CMA No. 2278/2024 is therefore dismissed. The election petition is also maintainable to challenge the order of recount passed by the ECP.

JUDGE

Karachi
Dated: 10-02-2025