

ELECTION TRIBUNAL
HIGH COURT OF SINDH, KARACHI

Election Petition No. 29 of 2024

[Agha Arsalan Khan v. Election Commission of Pakistan & others]

Petitioner : Agha Arsalan Khan Son of Agha Atta
Mohammad Khan through M/s. Ali
Tahir and Muhammad Hashim,
Advocates.

Respondents 1-2 : Election Commission of Pakistan
through (i) Chief Election
Commissioner, Islamabad and (ii)
Provincial Election Commissioner,
Sindh through Mr. M. Bilal Malik,
Assistant Director (Law), ECP,
Karachi.

Respondent 3 : Moid Anwar [Returned Candidate]
through Ms. Mehak Azfar, Advocate.

Respondents 4-47 : Nemo.

Date of hearing : 19-03-2025

Date of order : 19-03-2025

ORDER

Adnan Iqbal Chaudhry J. - This order decides CMA No. 1630/2024 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.

Objection to the oath administered on the petition:

2. The objection under this head is that the Assistant Registrar of the Identification Section of the High Court was not authorized to administer oath on an election petition; and therefore, the petition was not on oath and a non-compliance of section 144(4) of the Act. Reliance is placed on *Lt. Col. (Rtd.) Ghazanfar Abbas Shah v. Khalid Mehmood Sargana* (2015 SCMR 1585).

3. The same objection has been rejected by this Tribunal by order dated 16.09.2024 passed in the case of *Khurram Sher Zaman v. Mirza Ikhtiar Baig* (E.P. No. 02/2024), excerpted as follows:

“16. With the implementation of the Identification Section Management System (ISMS) in the High Court of Sindh in the year 2012, which linked the Identification Section to NADRA’s data-base, the Assistant Registrars of that Identification Section were appointed *ex-officio* oath commissioners by the High Court. Since then, all pleadings for use in the High Court are brought to the Identification Section for administering oath on the verification clause. The submission of counsel for the Respondent No.1 was that since the Judge of the High Court acts *persona designata* as Election Tribunal and not as the High Court, the oath commissioner appointed by the High Court has no authority to administer oath on an election petition - in other words, the High Court does not have authority to appoint an oath commissioner for an election petition intended before the Election Tribunal.

17. Section 144(4) of the Act provides that “..... the petition shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.” Order VI Rule 15 CPC then sets out the manner of verification and oath, whereas section 139 CPC provides that oath may be administered by any officer or other person “whom a High Court may appoint in this behalf”. Therefore, even though the Judge of the High Court acting as Election Tribunal is not the High Court, the authority of an officer appointed by the High Court to administer oath on an election petition emanates from section 144(4) of the Act itself by way of adopting section 139 CPC.

The fallback argument was that the High Court should have then issued a special notification appointing the Assistant Registrars of the Identification Section as oath commissioners also for election petitions. If that argument is taken to its logical end, all staff of the High Court dealing with election petitions would require fresh appointment as staff of the Election Tribunal, which would then defeat the purpose having a sitting High Court Judge act *persona designata* as Election Tribunal.

18. In view of the foregoing, the objection to the authority of the Assistant Register of the Identification Section of the High Court to administer oath on the election petition has no force. The case of *Lt. Col. (Retd.) Ghazanfar Abbas Shah* is not attracted as the petition was duly verified as per section 144(4) of the Act.”

The same order is passed in this petition as well.

Objection to the verification clause of the petition:

4. In the verification clause of the petition, the Petitioner verified the contents of the petition as “*whatever stated hereinabove is true and*

correct to the best of my personal knowledge and belief and information.”

Learned counsel for Respondent No.3 submits that such verification did not comply with sub-rule (2) of Order VI Rule 15 CPC which requires that:

“The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.”

She submits that the failure to comply with sub-rule (2) of Order VI Rule 15 CPC was a non-compliance of section 144(4) of the Act, which entails rejection under section 145(1) of the Act. On the other hand, learned counsel for the Petitioner submits that the verification clause categorically stated that contents of the petition were true and correct to the Petitioner’s own knowledge, and therefore there was no occasion to state anything further.

5. The same objection taken on the basis of sub-rule (2) of Order VI Rule 15 CPC has already been rejected by this Tribunal by order dated 03.10.2024 passed in the case of *Zain Pervez v. Election Commission of Pakistan* (E.P. No. 52/2024), excerpted as follows:

“17. As to an objection to the verification clause of an election petition on the premise of sub-rule (2) of Order VI Rule 15 CPC,¹ it was observed by the Supreme Court in the case of *Sardarzada Zafar Abbas*² that:

“Such objection is not very material because at times the entire statement happens to be given on the basis of one's knowledge and at time on the basis of information received. It depends upon the facts of each case, as to what category the assertions belong. The situation is likely to differ from case to case.”

In the case of *Abdul Qadir v. Abdul Wassay* (2010 SCMR 1877), also an election matter, the Supreme Court went on to hold that:

“This provision of law in fact cannot be considered to be mandatory as a person can verify the paras in the pleadings on his own knowledge without verifying any

¹ Adopted erstwhile by section 55(3) of Representation of the People Act 1976, a provision similar to section 144(4) of the Election Act 2017.

² PLD 2005 SC 600.

para upon receipt of the information, same are believed to be true.”

A similar view was expressed in *Feroze Ahmed Jamali v. Masroor Ahmed Khan Jatoi* (2016 SCMR 750). Counsel for the Respondent No.8 had placed reliance on *Sultan Mahmood Hinjra v. Malik Ghulam Mustafa Khar* (2016 SCMR 1312). But even in that case the petition was not rejected merely for non-compliance of sub-rule (2) of Order VI Rule 15 CPC, rather due to the fatal flaw that the verification clause did not reflect that oath was administered and there was also nothing to show how the petitioner was identified to the oath commissioner.

18. The Supreme Court having declared that sub-rule (2) of Order VI Rule 15 CPC is not mandatory even for an election petition, the petition cannot be rejected on that score.”

The same order is passed in this petition as well.

6. In view of the foregoing, grounds taken for rejection of the petition fail. CMA No. 1630/2024 is therefore dismissed.

JUDGE