

ELECTION TRIBUNAL
HIGH COURT OF SINDH, KARACHI

Election Petition No. 21 of 2024

[Ali Ahmed Palh v. Election Commission of Pakistan & others]

Petitioner : Ali Ahmed Palh through Mr. Zeeshan Ali, Advocate, holds brief for Mr. Abdul Wahab Baloch, Advocate.

Respondent 1(i) & (ii) : Election Commission of Pakistan through Mr. Muhammad Javed Khalid Raan, DAG alongwith M/s. M. Haroon Kasi, Director (Law), Abdullah Hanjrah, Deputy Director (Law) and Bilal Malik, Assistant Director (Law), ECP, Karachi, all are present in Court.

Respondent 3 : Faisal Rafiq [**Returned Candidate**] through Mr. Basim Raza, Advocate.

Respondents 2, 4-34 : Nemo.

Date of hearing : 08-04-2025

Date of order : 08-04-2025

ORDER

Adnan Iqbal Chaudhry J. - This order decides CMA No. 1554/2024 praying for 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. Rejection of the petition is sought on grounds: (a) that oath administered on the verification of the petition was by an unauthorized person; (b) that the petition does not give ‘full particulars’ of the alleged corrupt or illegal practices; and (c) that an affidavit of service was not filed. While seized of other election petitions, this Tribunal has already declined objections (a) and (b) in similar circumstances but has rejected petitions on objection (c).

Therefore, presently, learned counsel for the Respondent No.3 presses objection (c) only.

3. It is a fact that when the petition was presented on 27-03-2024, it was without the 'affidavit of service' required by section 144(2)(c) of the Act. This fact was admitted by the Petitioner himself *vide* order dated 26.02.2025.

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) of the Act 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.

6. This Tribunal has already held in other petitions that non-compliance with section 144(4)(c) of the Act cannot be cured after expiry of the period of 45 days prescribed for filing an election

petition. To cite from the case of *Ghulam Qadir v. Election Commission of Pakistan* (E.P. No. 57/2024) this Tribunal held :

“11. The question now is whether the affidavit of service subsequently filed by the Petitioner on 12.07.2024 can be accepted as compliance of section 144(2)(c) of the Act ?

12. *Albeit* for rectifying a defect in the verification of an election petition, a similar question came up before the Supreme Court in the cases of *Malik Umar Aslam v. Sumera Malik* (PLD 2007 SC 362) and *Hina Manzoor v. Ibrar Ahmed* (PLD 2015 SC 396). The *ratio* of those decisions seems to be that once the period of limitation for filing an election petition expires, the petitioner cannot be allowed to make amends for not complying with a mandatory provision of the statute, because by that time a valuable defense has arisen to the respondent. Applying that *ratio* to the instant case, the affidavit of service eventually filed by the Petitioner on 12.07.2024 was much after the 45 days prescribed for filing the petition, and therefore cannot be accepted as compliance of section 144(2)(c) of the Act.

7. In view of the foregoing, the petition is rejected under section 145(1) of the Act for non-compliance with section 144(2)(c) of the Act. Pending applications become infructuous.

JUDGE

Karachi

Dated: 08-04-2025

**PA/SADAM*