

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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ELECTION PETITION NO.01 of 2022

COL. (R) MUHAMMAD SHABIR AWAN

Versus

RAJA SAGHIR AHMED and 4 others

JUDGMENT

Date of hearing: 09.01.2023

Petitioner by: Raja Habib ur Rehman,
Advocate.

Respondent No.1 by: Barrister Taimoor Aslam Khan.

Respondents No.2 to 5 by: Ex-parte.

MIRZA VIQAS RAUF, J. The petitioner namely Colonel Retired Muhammad Shabir Awan contested bye-election held on 17th July, 2022 for the Punjab Provisional Assembly Seat PP-VII Rawalpindi-II alongwith respondents No.1 to 5 and on the completion of voting process, respondent No.1 (hereinafter referred to as “respondent”) was declared as returned candidate, who secured 68918 votes as compared to 68863 votes of the petitioner. Through instant petition under section 139 of the Elections Act, 2017 (hereinafter referred to as “Act, 2017”) the petitioner calls in question the candidature of “respondent” on various grounds enumerated in the petition.

2. In response to this petition, the “respondent” submitted his reply wherein he raised certain objections on maintainability of instant

petition, including an objection to the effect that the petitioner failed to adhere the requirements as contemplated under sections 144(4) and 145 of the “Act, 2017” read with order VI rule 15 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as “C.P.C.”).

3. Treating the above objections as legal, going to the root of the case both the counsel were heard at length.

4. Learned counsel for the “respondent” Barrister Taimoor Aslam Khan contended that in terms of sub-section (4) of section 144 and section 145 of the “Act, 2017” the petitioner was obliged to get his petition verified in the manner laid down in the “C.P.C.” for verification of the pleadings. While drawing attention of this Court to the petition, learned counsel emphasized that it is not verified as required under the law. Learned counsel added that petition was got verified from Notari Public who was not the Oath Commissioner and as such petition merits rejection. In order to support his contentions, learned counsel placed reliance on MUSHTAQ AHMED versus Sardar AFTAB AKBAR KHAN and others (2019 MLD 1313).

5. Conversely, Raja Habib ur Rehman, Advocate learned counsel representing the petitioner submitted that there is no denial that the petition shall be verified in the manner provided under “C.P.C.” but due compliance was made as it was got verified from Notary Public. Learned counsel contended with vehemence that verification/attestation from Notary Public is sufficient compliance of Section 144(4) of the “Act, 2017” and the objection is highly misconceived. In support of his contentions learned counsel has placed reliance on Rai HASSAN NAWAZ versus Haji MUHAMMAD AYUB and others (PLD 2017 Supreme Court 70).

6. After having heard learned counsel for the parties at considerable length, I have perused the record with their able assistance.

7. In order to amend, consolidate and unify laws relating to the conduct of elections and matters connected therewith or ancillary thereto, the “Act, 2017” was promulgated by the *Majlis-e- Shoora* (Parliament) with the assent of the President of the Islamic Republic of Pakistan on 2nd October, 2017. Chapter IX lays down a procedure for

the settlement of election disputes. In terms of section 139 of the “Act, 2017” no election shall be called in question except by an election petition filed by a candidate for that election. For the trial of election petitions under the “Act, 2017”, the Election Commission of Pakistan constituted under Article 218 of the Constitution of the Islamic Republic of Pakistan, 1973, appointed as many Election Tribunals as may be necessary for swift disposal of election petitions. Needless to observe that this petition is before this Tribunal in pursuance thereof. Election petition is to be presented in a manner provided under section 142 of the “Act, 2017” and Section 144 lays down necessary pre-conditions for the election petition. Sub-section (4) of section 144 of the Act *ibid* ordains that an election petition and its annexures shall be signed by the petitioner and the petition shall be verified in the manner laid down in the “C.P.C.” for the verification of pleadings. Section 145 of the “Act, 2017” prescribes a procedure before the Election Tribunal. Sub-section (1) of section 145 of the “Act, 2017” contemplates that if any provision of sections 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition. It would not be out of context to mention here that the Tribunal when once reaches at the conclusion that petition is not proceedable it cannot wait till the culmination of the proceedings through regular trial. The mandate of law is to nip the evil in the bud. The “C.P.C.” also bestows power upon the Civil Court to reject the plaint summarily in terms of Order VII Rule 11, if it suffers with the flaws mentioned in the said provision. The Tribunal, thus, can proceed on the same paramateria and to reject the election petition at any stage. The Tribunal is even vested with the power to adopt any other procedure for the expeditious disposal depending upon the circumstances of the case. The provisions of the “Act, 2017” are unequivocal and clear to this extent that a petitioner while presenting the election petition, is obliged to adhere the mandate of sections 142, 143 and 144 of the “Act, 2017”. Non-compliance of any of the said provisions renders automatic rejection of the election petition. Reliance in in this respect can be placed on *Lt. Col. (Rtd.) GHAZANFAR ABBAS SHAH versus Mehr KHALID MEHMOOD SARGANA*

and others (2015 SCMR 1585) and *Engr. IQBAL ZAFAR JHARGA and others versus KHALILUR REHMAN and 4 others* (2000 SCMR 250).

8. As already observed that sub-section (4) of section 144 of the “Act, 2017” prescribes that the election petition and its annexures shall be signed by the petitioner and it shall be verified in the manner laid down in the “C.P.C.” for the verification of pleadings. The manner of verification of the pleadings is laid down in Order VI Rule 15 of “C.P.C.” in the following way :-

“15. Verification of pleadings.”---(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified on oath or solemn affirmation at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.
(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.
(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.”

The above provision of law shall be read with section 139 of the “C.P.C.” which is reproduced below for ready reference and convenience :-

“139. Oath on affidavit by whom to be administered.”--In the case of any affidavit under this Code--
(a) any Court or Magistrate, or
(b) any officer or other person whom a High Court may appoint in this behalf, or
(c) any officer appointed by any other Court which the Provincial Government has generally or specially empowered in this behalf, may administer the oath to the deponent.”

The joint reading of both the above provisions clearly shows that the pleadings shall be verified on oath and said oath to be administered by a person who is duly authorized in this behalf.

9. The pivotal and frizzy question thus arises for the determination of this Court is as to **{whether “Oath Commissioner” and “Notary Public” is the same thing for the purposes of Section 144 of the “Act, 2017”}**.

10. A Notary is to be appointed under the Notaries Ordinance (XIX of 1961) (hereinafter referred to as “Ordinance, 1961”). Power to appoint Notary vests in the Provincial Government. Functions of the

Notary are laid down in section 8 of the “Ordinance, 1961” which read as under :-

- “8. Functions of notaries.--**(1) A notary may do all or any of the following acts by virtue of his office, namely:--
- (a) verify, authenticate, certify or attest the execution of any instrument;
 - (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;
 - (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;
 - (d) note and draw up ship’s protest, boat’s protest or protest relating to demurrage and other commercial matters;
 - (e) administer oath to, or take affidavit from, any person;
 - (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;
 - (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside Pakistan in such form and language as may conform to the law of the place where such deed is intended to operate;
 - (h) translate, and verify the translation of, any document from one language into another;
 - (i) any other act which may be prescribed.
- (2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.”

In exercise of the powers conferred by section 15 of the “Ordinance, 1961” the West Pakistan Notaries Rules, 1965 (hereinafter referred to as “Rules, 1965”) were framed.

11. Learned counsel for the petitioner while reading sub-rule (8) of rule 12 of the Rules *ibid* submitted that a Notary in addition to the functions specified in clauses (a) to (h) of sub-section (1) of section 8 can attest or certify document. In furtherance thereof, he relied upon *Rai HASSAN NAWAZ versus Haji MUHAMMAD AYUB and others* (PLD 2017 Supreme Court 70) and submitted that in the light thereof there is no distinction between Notary Public and Oath Commissioner, suffice to observe that in the case of *Rai Hassan Nawaz supra* the person, who verified the election petition and annexures appended thereto at the time of its filing, was actually neither holding any valid license of Notary Public nor Oath Commissioner and in this backdrop a passing reference was given to both the terms in Para No.9 of the judgment. It is nowhere held by the Hon’ble Apex Court that Notary and Oath Commissioner are the same and synonymous terms/offices.

12. Contrary to this an Oath Commissioner is to be appointed by the High Court under section 139(b) of “C.P.C.” and section 539 of the Code of Criminal Procedure, 1898. The prime object of appointing Oath Commissioner is to attest affidavits to be produced before a court to prove any particular fact or facts. Rules and Orders of the Lahore High Court, Lahore Volume IV Chapter 12 prescribes the forms of oaths and affirmations to be administered to witnesses, who may be required for evidence before any court or interpreter and juror. Part B of the said chapter deals with the affidavits wherein the manner of appointment and charging of fee by the Oath Commissioner is provided alongwith mode of administering of oath as well as attesting, signing and verification of affidavits whereas Volume V Chapter 1 Part E of the Rules and Orders of the Lahore High Court, Lahore lays down the procedure for making and filing of affidavits in the High Court. In short when sub-section (4) of Section 144 of the “Act, 2017” mandates that an election petition and its annexures shall be signed by the petitioner and affidavit shall be verified in the manner laid down in the “C.P.C.” for the verification of pleadings, so one would have no other option except to proceed strictly in terms thereof.

13. As already observed that while reading jointly order VI rule 15 and section 139 of “C.P.C.” no other inference can be drawn except that pleadings shall be verified on oath and said oath to be administered by a person who is duly authorized in this behalf. In terms of section 139(b) of “C.P.C.” such an officer or person can only be whom the High Court may appoint in this behalf, which in no way can be Notary. An “Oath Commissioner” and “Notary” are both different and distinct terms/offices. The intermingling of both would result into serious legal complications. It is trite law that when a procedure is prescribed by law for the performance of an act that should be done in that way but in no other way, which command of law is always deemed to be mandatory. Reference to this effect can be made to ATTAULLAH KHAN versus ALI AZAM AFRIDI and others (2021 SCMR 1979) and MUHAMMAD ANWAR and others versus Mst. ILYAS BEGUM and others (PLD 2013 Supreme Court 255).

14. The crux of above discussion is that the petitioner has failed to abide the necessary requirements of section 144(2) of the “Act, 2017”. Resultantly this petition fails and **rejected** with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Dictated
24.01.2023

Signed

Announced in open Court on **26.01.2023.**

JUDGE

APPROVED FOR REPORTING

JUDGE

*Shahbaz Ali**