

HCJDA-38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
LAHORE
(ELECTION TRIBUNAL)

Election Petition No. 18669 of 2024

Muhammad Barjees Tahir

Versus

Arslan Aswad Naeem and 18 Others

JUDGMENT

<i>Date of hearing</i>	17.10.2024
<i>Election Petitioner by</i>	Syed Muhammad Kaleem Ahmad Khurshid, learned Advocate.
<i>Respondent No. 8</i>	Sardar Abdul Majid Dogar, learned Advocate.
<i>Respondents No. 1 to 7 and 9 to 19</i>	<i>ex parte</i> vide order dated 30.05.2024.

SULTAN TANVIR AHMAD, J:— Through this election petition the election-petitioner has called into question the election in NA-111 Nankana Sahib-I, *inter alia*, on the ground that respondent No. 8 (the ‘*returned candidate*’) has failed to disclose two properties measuring approximately 02-kanal and 01-marla given as gift to his sons namely M. Ammar Arshad Sahi and Attiq-ur-Rehman Sahi, in his declaration filed along-with the nomination papers. Some other grounds as to corrupt and illegal practices on the polling day have also been taken.

2. Sardar Abdul Majid Dogar-learned counsel for the *returned candidate* at the very outset, has raised

several objections as to the maintainability of this election petition including that (i) the election petition is time barred, (ii) no affidavit of service is attached with this election petition, (iii) all the pages of the election petition are not signed as required by the Elections Act-2017 (the ‘*Act*’), (iv) verification of the election petition as well as attached affidavits are not in accordance with law and (v) failure to disclose any benefit derived from alleged non-disclosure, while contending that the same is in defiance of section 144(b) of the *Act*, which requires that full particulars of any corrupt or illegal practice or any other illegal act must be given in the election petition. He seeks outright dismissal of the election petition.

3. Syed Muhammad Kaleem Ahmad Khurshid (learned Senior-ASC) has relied upon various judgments including cases titled “Sardarzada Zafar Abbas and Others Versus Syed Hassan Murtaza and Others” (**PLD 2005 Supreme Court 600**) and “Muhammad Ibrahim Jatoi Versus Aftab Shaban Mirani and Others” (**2016 SCMR 722**) and he contended that the view adopted in “Lt.-Col (Rtd.) Ghazanfar Abbas Shah Versus Mehr Khalid Mehmood Sargana and Others” (**2015 SCMR 1585**) case has already been distinguished and when an affidavit of petitioner is attached, non-compliance of Order VI Rule 15 of the Code of Civil Procedure-1908 (the ‘*Code*’) in the petition losses significance; that the *returned candidate* is not sagacious, righteous, honest and ameen, thus, he was not qualified to contest the election. He relied upon the nomination papers as well as declaration dated 20.12.2023 and stated that the *returned candidate* has not disclosed his two properties each

measuring approximately 02-kanal and 01-marla given as gift to his sons namely M. Ammar Arshad Sahi and Attiq-ur-Rehman Sahi.

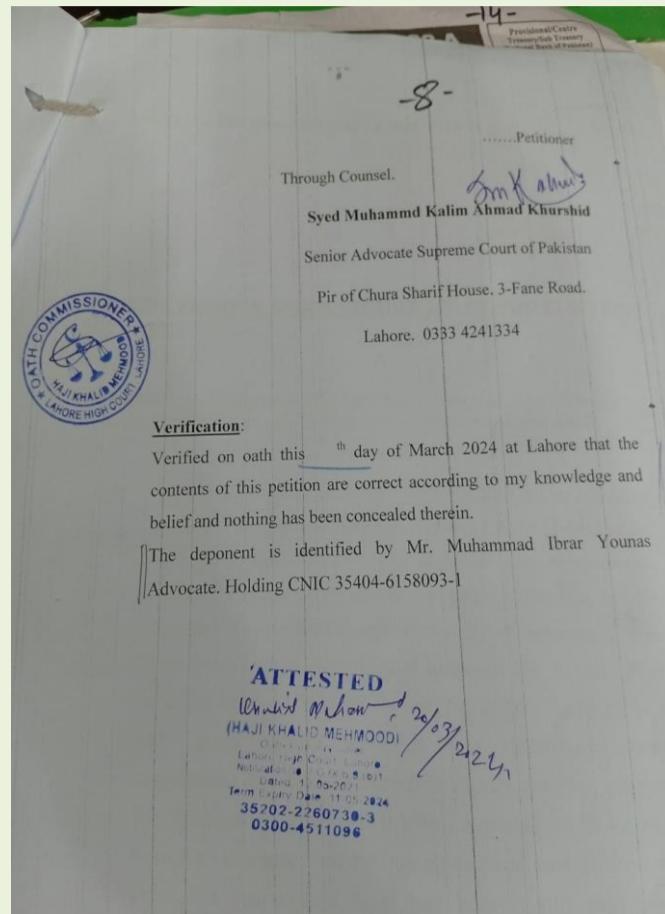
4. Heard.

5. One of the objections of Sardar Abdul Majid Dogar, learned counsel for *returned candidate*, is that as per section 144(b) of the *Act* full particulars of illegal and corrupt practice are required to be given. He states that mainly the case is being pressed on the basis of mis-declaration, however, the election-petitioner has not indicated in the entire election petition as to any benefit derived, from the purported mis-declaration, as necessitated in the case of "Khawaja Muhammad Asif v. Muhammad Usman Dar" (**2018 SCMR 2128**) and then reiterated in case titled "Shamona Badshah Qaisarani versus Election Tribunal, Multan and Others" (**2021 SCMR 988**). Facing this objection Syed Muhammad Kaleem Ahmad Khurshid instead of giving any satisfactory answer has stated that tax record reflecting some benefit derived out of mis-declaration shall be given with the written arguments. The sons of the *returned candidate* somehow also filed their declaration and separate forms, which are available on the record. Their declarations reflect the gift from their father / the *returned candidate*.

6. Now coming to the another objection of learned counsel for respondent No. 8 that no signature of the election-petitioner is available on the entire election petition including the verification. A perusal of the election petition reflects that neither the election petition itself is signed by the election-petitioner nor any signature

of election-petitioner is available on the verification.

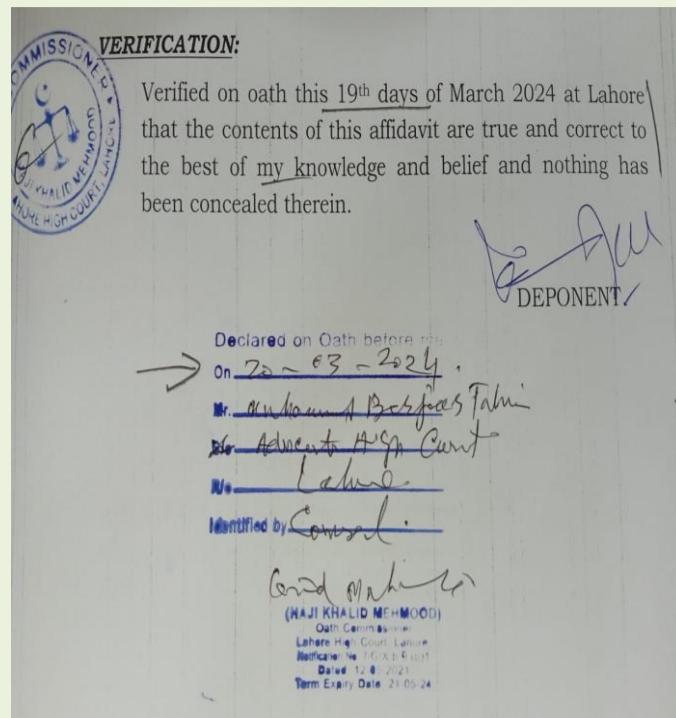
Image of page No. 8 of this petition is as under:-



The above reflects that this petition is only signed by the learned counsel for the election-petitioner. The date when the oath was taken is left blank and then the election-petitioner neglected to even sign this verification. Beneath the same, a stamp by Haji Khalid Mehmood, oath commissioner, is available which contains date of 20.03.2024 but the said oath commissioner has not declared that oath was administered before him. When confronted Syed Muhammad Kaleem Ahmad Khurshid states that this is accompanied by a full affidavit. There is no denial of the fact that if the verification in the election petition is not in accordance with law but the same is accompanied by an affidavit verifying the contents of the petition and it fulfills the

requirements of the *Act*, there are some judgments which recognize that the election petition shall be taken as validly instituted. In case titled “Abdul Wahab Baloch Versus Imran Ahmad Khan Niazi and Others” (**PLD 2019 Lahore 119**) after survey of the entire case law of the Honourable Supreme Court of Pakistan, this Court reached to the conclusion that even a short affidavit is sufficient if it duly fulfills the requirement of Order VI Rule 15 of the *Code*. It is also settled that when the election-petitioner is not personally known to the oath commissioner, he can be identified by an advocate, who is then required to state that election-petitioner is personally known to him but the name of the learned Advocate identifying the deponent when not mentioned on the verification, the same is not valid.

7. Perusal of verification on the affidavit relied by Syed Muhammad Kaleem Ahmad Khurshid reflects that the election-petitioner declared that he verified his affidavit on 19th March, 2024 without specifying which paragraphs he is verifying from his personal knowledge and which paragraphs are correct to his belief. There is a stamp of oath commissioner which reflects a different date of oath i.e. 20.03.2024. Not just the dates, one given by the election-petitioner and other by oath commissioner, are different but at the same time it is simply stated that the deponent is identified by some learned counsel. No name of the learned advocate is given. Relevant part of the affidavit is as under:-



8. As already discussed above, when the identification is to be made by an advocate, his name and particulars are required to be mentioned. In response to the same Syed Kaleem Ahmad Khurshid has relied upon "Sardarzada Zafar Abbas and Others" and "Muhammad Ibrahim Jatoi" cases (*supra*). I am afraid that none of those judgments are applicable to the facts of the present case. It is observed by the Honourable Supreme Court of Pakistan in the above referred cases that when the affidavit fulfills the requirement of Order VI Rule 15 of the *Code* then even the short affidavit is sufficient. However, in the present case, the deficiencies in the verification of the referred affidavit are amply clear.

9. Now coming to another objection raised by Sardar Abdul Majid Dogar. In "Abdul Wahab Baloch" case (*supra*) it has been entrenched that section 144 of the *Act* requires appending an affidavit of service with the election petition to the effect that copies of the election petition along-with the copies of all annexures, including list of witnesses, affidavit(s) and documentary evidence

have been sent to the respondents by registered or courier service. Even an ambiguous affidavit of service was found defective and invalid. In “Syed Atta Ul Hassan Versus Ahmad Nawaz and Others” (**2019 MLD 1013**) with respect to affidavit of service, it has been observed that postal receipts are not sufficient to meet the requirement of section 144(2)(c) of the *Act*. Paragraph No. 8 of the said judgment reads as under:-

“8. I am similarly not convinced by the arguments of the learned counsel for the petitioner that in absence of the affidavit of service, the postal receipts are sufficient to serve the purposes of Section 144(2)(c), for the reason that under Section 145 of the Act if any of the provisions of Sections 142 to 144 of the Act have not been complied with by a petitioner, the petition is not maintainable. The filing of the affidavit of service is one of the mandatory under Section 144(2)(c) of the Act. The petitioner has not filed the said affidavit, therefore, his petition is bad in law for that reason too.”

10. Crux of above discussion is that this election petition is found deficient in many respects, therefore, the same is **dismissed** in terms of section 145(1) of the *Act*.
No order as to cost.

(Sultan Tanvir Ahmad)
Judge / Tribunal

Announced in open Court on 24.10.2024.

Judge

J.A. Hashmi/-