

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:**

MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE GULZAR AHMED  
MR. JUSTICE MAQBOOL BAQAR

**Civil Appeal No.394 of 2014**

(Against the judgment dated 4.2.2014 of the Election Tribunal,  
Rawalpindi passed in E.P. No.187/2013/Rwp/04/0013)

Sardar Muhammad Naseem Khan

**Appellant(s)**

**VERSUS**

Returning Officer, PP-12, etc

**Respondent(s)**

For the Appellant(s) : Mr. Muhammad Ilyas Sheikh, ASC  
Syed Rifaqat Hussain Shah, AOR

For Respondent No.2 : Mr. Muhammad Aurangzeb Khan, ASC

Date of Hearing : 22.04.2015

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**ORDER**

**MIAN SAQIB NISAR, J.-** The appellant and respondent No.2 (*the respondent*) contested the (*General*) election for PP-12, Rawalpindi. Respondent is the returned candidate, whereas appellant is the runner up, who filed an election petition challenging the election of the former. An objection was raised by the respondent that such petition is not duly verified and, therefore, is liable to be dismissed in terms of provisions of Article 63 of the Representation of the People Act, 1976 (*the Act*). However, the objection was overruled by the learned Election Tribunal holding that the petition is duly verified. Subsequently, in furtherance to the above challenge the appellant moved an application seeking amendment in the election petition so as to add two grounds i.e. 'h' and 'i'. The claim for seeking amendment(s) obviously was founded on the plea that such grounds (*amendments*) are expedient and

imperative for the cause of the appellant. This request was allowed by the Tribunal and two grounds, mentioned above, were added and an amended petition was filed. The added grounds challenging the election of the respondent read as under:-

“h. *That the respondent namely Mr Ejaz Khan Jazi has been declared returned candidate on the basis of fake documents attached by him while contesting the elections from PP-12 in the recent elections. It is important to mention here that Mr. Ejaz Khan Jazi has not even passed Intermediate. Prior to this, he contested elections in 2012 when the condition of BA was a pre-requisite. Thereafter he contested zimni elections in 2008 and in 2009. Article 62 of the Constitution of Islamic Republic of Pakistan 1973 fully applies/attracts to his case. Likewise, Article 63 of the Constitution completely debar Mr. Ejaz Khan Jazi to contest elections. He does not possess the qualification required for a Member of Provincial Assembly, hence he was not eligible at all to contest the elections but to my utter surprise, he has been declared as a returned candidate. He is thus liable to be disqualified. Detail of letters issued to the respondent for production of Intermediate certificate, BA and others degrees is as under:-*

- (1) *Notification No.Admin/94-835 dated 6.7.1994 issued to Mr. Ejaz Khan Jazi by the Assistant Registrar that admission of the student was cancelled as he had sought admission on the basis of a fake F.A. Marks sheet in M.Sc Ist Semester Spring 1992.*
  - (2) *Letter No.NIPS-D-391 dated 20.4.1994 to appear before Dr. G.A. Murtaza, Professor, for inquiry.*
  - (3) *Letter No.F.9-6/HSSC/SEC/93/9848 dated 13.3.1993 for verification of marks sheet of respondent.*
  - (4) *Letter No.F.7-1/92 dated January 1992 issued to the respondent for production of educational documents.*
- (2) *In the light of above narration of facts, respondent No.2 was not eligible: at all to contest the elections from PP-12 but even then he has been declared as a returned candidate. Hence he is liable to be disqualified outrightly.*

- i. *That respondent No.2 has not fulfilled the correct and exact statement of accounts about the expenses e.g. in the gowshwara he has shown the expenses of only petrol and load (sic) speaker. Likewise respondent No.2 has concealed the expenses incurred on posters, stickers, banners and his central office.*

*For getting voter list from the Election Commission for PP-12, Rs.14,000/- or 15,000/- are to be paid as official fee but respondent No.2 did not pay the said amount.*

*Respondent No.2 has also not shown the expenses incurred on different polling stations, booths, distribution of voter list and other expenses of stationary. This act of respondent No.2 is against the election laws and is in violation of Election Rules.”*

It is quite clear from the above that the amendments are material and independent in nature and by themselves are a substantial challenge to the election of the respondent, but the amended election petition was neither duly verified by the appellant in terms of Order 6 Rule 15, CPC read with Section 55(3) of the Act nor was got attested from the Oath Commissioner. Therefore an objection was raised qua non-verification of election petition by the respondent, who sought its summary dismissal *per* Section 63 *supra*. This time the learned Election Tribunal held that as the amended petition was not duly verified, it came within the mischief of the law *supra* and accordingly dismissed the petition *vide* the impugned judgment. Hence this appeal.

2. Learned counsel for the appellant has argued that the amended election petition, in fact, was part and parcel of the original election petition and was an addition thereto, thus in law it (*the amended petition*) has merged in the original petition; and as the original petition

was verified and earlier held by the Tribunal to be so in accordance with law, therefore regardless of whether the amended petition was verified or not, the defect shall not fall within the purview of Section 55(3) *ibid*. It is also submitted, that an amended (*election*) petition means that something is being added to a thing which is already in existence and as election petition of the appellant was already in existence and contained proper verification, non verification of the amended petition shall not attract any penal consequences (*of Section 55(3) and Section 63 ibid*). Lastly, it is urged that at best the learned Tribunal could strike out the grounds 'h' and 'i' which were brought by way of amendment in the original election petition and the original petition should have been tried and decided on its own merits.

3. Heard. In election disputes, the petition (*the election petition*) and the reply thereto are the foundational documents, which are of utmost importance and significance. And undoubtedly for all intents and purposes these are akin to the pleadings of the parties in a purely civil litigation, which (*pleadings*) are structural in nature, whereupon the edifice of the case is rested. The election petition lays down the foundation of the claim of an election petitioner, whereas the written reply thereto of the respondent (*returned candidate*) is the underpinning of his defence. The importance of the pleadings and its legal value and significance can be evaluated and gauged from the fact that it is primarily on the basis thereupon that the issues are framed; though the pleadings by themselves are not the evidence of the case, the parties to a litigation have to lead the evidence strictly in line and in consonance thereof to prove their respective pleas. In other words, a party is bound by the averments made in its pleadings and is also precluded from leading evidence except precisely in terms thereof. A

party cannot travel beyond the scope of its pleadings. It may be pertinent to mention here, that even if some evidence has been led by a party, which is beyond the scope of its pleadings, the Court shall exclude and ignore such evidence from consideration. Thus, it is clear that if any party to a *lis* wants to prove or disprove a case and some material has to be brought on the record as part of the evidence, which (*evidence*) otherwise is not covered by the pleadings, it shall be the duty of such party to first seek amendment of its pleadings (*note:- for the support of the opinion, see judgments<sup>1</sup>*).

4. Attending to the question of whether the amended pleading shall merge into the original pleading or otherwise, we have not been able to lay our hands on any case law from our jurisdiction, however some jurisprudence has been developed in foreign jurisdictions, such as in the English case of **Warner Vs. Sampson and another** (1959) 2 WLR 109 wherein the Court of Appeal has propounded:- “*once pleadings are amended, that which stood before amendment is no longer material before the Court*”. Per a judgment of Allahbad High Court reported as **Brij Kishore Vs. Smt. Mushtari Khatoon** (AIR 1976 Allahabad 399) it has been concluded:- “*the amended pleading alone should be considered and no reference ought to be made to the original pleadings while deciding an issue*”. Another judgment from the same jurisdiction is **B. Parbhu Narain Singh and others Vs. B. Jitendra Mohan Singh and another** (AIR (35) 1948 Oudh 307) in which it has been held:- “*Court must take the pleadings in the case as they stand and leave out of consideration the pleadings as they stood before the amendment*”.

5. From the ratio of the above case law and from our own understanding of law, we are of the considered view that principle of

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<sup>1</sup> Muhammad Akram and another Versus Mst. Farida Bibi and others (2007 SCMR 1719), Aurangzeb through L.Rs and others Versus Muhammad Jaffar and another (2007 SCMR 236), Sh. Fateh Muhammad Versus Muhammad Adil and others (PLD 2007 SC 460), Binyameen and 3 others Versus Chaudhry Hakim and another (1996 SCMR 336)

merger as put forth by the learned counsel is neither relevant nor shall apply in this situation, rather it is the principle of **substitution** which shall be attracted. For the determination and resolution of issues in disputes before the Court, it is the amended pleading which shall be taken into consideration and not the former pleadings. It is on the basis of the amended pleadings that the issues shall be framed; and if already so framed, shall be modified to either score off any existing issue or to add the issues arising out of the amended pleadings (*note:- however in the cases where there is any unauthorized addition in the amended pleadings for scoring it off or for the purposes of confronting someone within the earlier pleadings as a previous statement, the earlier pleadings may have some relevance*). The amended petition in this case for all intents and purposes shall be a final, independent and separate document (*election petition*) which had to be verified per the mandate of law. It is conceded by the learned counsel for the appellant, when confronted with the fact that the amended election petition filed by the appellant has not been verified in accordance with law, that if the original election petition is ignored from consideration, the amended petition will be hit by the provisions of Sections 55(3) and 63 of the Act. Obviously on account of the above, the impugned decision of the Tribunal is unexceptionable.

As regards the other argument of the learned counsel that grounds 'h' and 'i', which were part of the amended petition, should be struck off or ignored from consideration and the Election Petition should be tried per its original contents, suffice it to say that, as has been opined above, once the original petition was replaced and substituted by the amended petition, the earlier could not be resorted to and it is not left to the choice of the appellant to fall back on the original petition and have the two grounds deleted for the resolution of

the election dispute agitated by the appellant. Besides, the striking off of the two grounds mentioned above was not the case of the appellant before the Election Tribunal and such a prayer even does not fall within the purview of Order 6 Rule 16 of the Code of Civil Procedure, which stipulates the striking off the pleadings in the following terms:-

*“Striking out pleadings.---The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.”*

It may be pertinent to mention here, that *per* Section 64 of the Act, Code of Civil Procedure is attracted and no case has been made out by the appellant in terms of the provisions *ibid* (*for striking off the pleadings*). It may further be added that even in the present appeal, the plea that grounds 'h' and 'i' to the amended election petition must be scored out has not been set out in particular, therefore such plea cannot be allowed. In light of the above, no case for interference has been made out. Dismissed accordingly.

JUDGE

JUDGE

JUDGE

Islamabad, the  
22<sup>nd</sup> April, 2015  
**Approved For Reporting**  
Ghulam Raza/\*