

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Mushir Alam  
Mr. Justice Munib Akhtar  
Mr. Justice Qazi Muhammad Amin Ahmed

**Civil Appeal No.1 of 2020**

*(Against the judgment dated 31.12.2019  
passed by the Election Tribunal  
Balochistan, Quetta in Election Petition No.  
No.36/2018)*

***Sardar Abdul Rehman***

*...Appellant(s)*

**Versus**

***Abdul Kareem Kehtran & others***

*...Respondent(s)*

For the Appellant(s):	Mr. Kamran Murtaza, ASC Syed Rifaqat Hussain Shah, AOR
For the Respondent(s):	Syed Iftikhar Hussain Gillani, Sr.ASC
Date of hearing:	06.10.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** After a nail biting contest, held on 25<sup>th</sup> of July, 2018 in PB-08 Barkhan, Balochistan, the appellant returned by a narrow margin of 65 votes; dissatisfied with the outcome, Abdul Karim Kethran, one of the contestants, respondent herein, approached the Returning Officer for recount of invalid ballot papers, allegedly liable to be excluded from consideration, however, credited to the appellant, materially altering the result of the election to his detriment; in his initial quest for a recount, he remained unsuccessful throughout whereafter he questioned the validity of election before the learned Election Tribunal Balochistan, Quetta, through an election petition filed by his attorney Sanaullah, decided in his favour vide impugned judgment dated 31.12.2019, in the following terms:-

*".....the Election Petition filed by the petitioner  
Abdul Kareem Khetran is accepted. The*

*Notification No.F.2(42)/2018-Cord.- dated 7<sup>th</sup> August 2018, issued by the Election Commission of Pakistan (respondent No.16), whereby the respondent No.1 (Sardar Abdul Rehman Khetran) was declared as returned candidate from PB-8-Barkhan, is set aside to his extent. The Election Commission of Pakistan is directed to de-notify the returned candidate namely Sardar Abdul Rehman Khetran (respondent No.1). The seat of returned candidate having become vacant shall be filled through re-polling in the entire constituency."*

The respondent challenged the election on a variety of grounds ranging from massive rigging at various polling stations to inclusion of invalid votes in appellant's count with a particular emphasis on 312 postal ballots. The appellant contested the petition alleging accusations as non-specific and vague as well as hit by non-compliance of various mandatory provisions of the Elections Act, 2017 "**the Act**". On divergent positions, both sides led evidence before the Tribunal, on the basis whereof, the learned Tribunal, on 11.07.2019, through an interlocutory order directed the Returning Officer to arrange verification of 3052 votes from National Database & Registration Authority, however, upon a report submitted by the Returning Officer that since the seals on the bags containing the impugned ballot papers had already been breached, the desired verification could not be carried out with any degree of certainty/authenticity, a circumstance that appears to have weighed with the learned Tribunal to direct re-poll in the entire constituency.

2. Syed Iftikhar Hussain Gillani, learned Sr.ASC, after elaborating his entire case, nonetheless, has finally confined himself to the verification of the postal ballots for the determination of their validity, a request contrarily contested by the learned counsel for the appellant, primarily on the ground that the suggested exercise cannot be allowed to be undertaken without contravening the mandatory statutory provisions that render the election petition hopelessly non-maintainable for reasons more than one; according to him, the respondent had banked upon his attorney throughout and came forward with stereotype allegations, vague as well as non-specific, and also failed to discharge the onus so as to demonstrate that the alleged rigging and non-compliance with the Rules was done on his behalf and that it materially effected the outcome of the poll, otherwise tilting in his favour. The learned counsel has referred to the flawed verification of the election petition as well as annexures thereof to argue that the omission unredeemingly closed the chapter.

3. Heard. Record perused.

4. Adverting to the fundamental issue of maintainability of the election petition, it would be pertinent to mention that the appellant had taken the plea of non-maintainability in his written statement, in consequence whereof, an additional issue in the following term was framed by the Tribunal:

*"Whether the petition filed by the petitioner is maintainable in view of legal objections 'B' 'C', 'E' & 'F' raised in the election petition?"*

The learned Tribunal, however, considering the case law cited at the bar as factually distinguishable, ignored the objections with regard to the patent flaws in verification of the petition as well as annexures and mode of presentation thereof, holding the challenge as *intra vires*. We curiously examined the question of verification to explore any sign of life in the *lis* and for the purpose went through various provisions of the Act that heavily borrows mechanism for the trial of an election petition provided under the Code of Civil Procedure, 1908 (Act V of 1998) "**the Code**" for disposal of a civil suit. Section 148 of the Act specifically provides as under:

***"Procedure before Election Tribunal for trial of petitions.- (1) Subject to this Act and Rules, the trial of an election petition, shall be as nearly as possible, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908) to the trial of suits and the Qanun-e-Shahdat Order, 1984 (President's Order. No.X of 1984)."***

We have noticed that the respondent assigned the responsibility for institution as well as prosecution of the election petition to his confidant Sanaullah, designated as attorney; he is the person who appears to have not only presented the election petition but also verified contents as well as annexures thereof as required under section 144 (4) of the Act. While Order VI Rules 14 and 15 of the Code generously permit the parties to sign pleadings or verification either personally or through their designated attorneys, section 144 (4) *ibid* mandatorily restricts the petitioner to personally undertake the exercise, violation whereof, would inevitably result into summary rejection of the petition as is evident from the plain language of subsection 1 of section 148 of the Act *ibid*. It was incumbent upon the petitioner to follow the procedure expressly provided by the Act itself; admittedly not followed by him. The same anomaly is recurring in all the annexures without exception. It was at the fag-end of the

proceedings that the respondent personally appeared to face cross-examination on detailed affidavit (Ex.P/11), again signed and submitted by the said attorney; his entry in the witness box was objected to, however, the decision thereof was deferred on the final adjudication, an omission conspicuous on the record. Statement of Abdul Kareem Khan, respondent, is the mainstay of his challenge to the election result; though in the opening part of the detailed affidavit, there is a solemn affirmation on oath, purportedly by the respondent in support of the contents thereof, nonetheless, at the bottom of the affidavit, it appears to have been sworn by Sanaullah attorney before the Oath Commissioner. As mentioned above, the provisions of Qanun-e-Shahdat Order, 1984 are also applicable before the Election Tribunal; Article 133 whereof provides order of examinations, reproduced for ready reference:

***"Order of examinations.-** (1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*

*(2) The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.*

*(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine that matter."*

Record does not suggest appearance of Sanaullah attorney before the Tribunal, however, it is manifestly clear that for detailed affidavit EX.P/11, the oath was never administered upon the respondent as is evident from the description of deponent thereof being no other than Sanaullah. Examination-in-chief, cross-examination and re-examination are in inseparable parts of a witness's deposition and it was not open for the respondent, though owned by him, nonetheless, to adopt contents of an affidavit sworn by a different deponent; the anomaly cannot be countenanced without destroying the entire scheme of law regarding examination of a witness. It may be added that verifications can compliance with the procedure provided in the High Court Rules & Orders, Volume IV, Chapter XII wherein form of oath and affirmation thereof, to be administered to the witnesses, are aptly illustrated, non compliance whereof has been held as fatal to an election petition, as is

evident by the law declared by this Court in the cases reported as "*Sardar Muhammad Naseem Khan Vs. Returning Officer PP-12 & others* (2015 SCMR 1698), *Hina Manzoor Vs. Malik Ibrar Ahmed & others* (PLD 2015 Supreme Court 396) *Zia-ur-Rehman Vs. Syed Ahmad Hussain & others* (2014 SCMR 1015) *Engr. Iqbal Zafar Jhagra & others Vs. Khalil-ur-Rehman & 4 others* (2000 SCMR 250) and *Lt. Col. (Retired) Ghazanfar Abbas Shah Vs. Mehr Khalid Mehmood Sargana & others* (2015 PSC 1214).

5. In view of the above insurmountable juridical hurdles, we do not find ourselves disposed to grant an otherwise innocuous request to examine the validity of 312 postal ballots, against the backdrop of a narrow margin of victory, notwithstanding. Examination of other issues, resting upon allegations, otherwise too broad to be specifically qualified through tangible evidence, fades into insignificance on account of our findings on the question of maintainability of the election petition. Appeal is allowed; the impugned judgment is set aside, leaving the parties to bear their own costs.

Judge

Judge

Judge

Islamabad, the  
6<sup>th</sup> October, 2020  
Not approved for reporting  
Azmat/-