

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Shahid Waheed  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Aqeel Ahmed Abbasi

**Civil Appeal No. 1394 of 2024**

Against the judgment dated 09.10.2024 of  
the Election Tribunal, Baluchistan, Quetta  
passed in Election Petition No. 26/2024

*Ubaidullah*

*...Appellant*

**Versus**

*Haji Atta Muhammad Bangulzai & others*

*...Respondents*

For the Appellant:	Khawaja Haris Ahmad, Sr. ASC
For the Respondent No.1:	Mr. Muhammad Masood Khan, ASC
For the Respondents No.2 to 24 & 26 to 44:	None
For ECP (Respondent No.25):	Mr. Falak Sher, Assistant Director Law Mr. Muhammad Arshad, Special Secretary Law
Date of Hearing:	20.11.2024

**JUDGMENT**

**Irfan Saadat Khan, J.-** This civil appeal has been filed against the judgment dated 09<sup>th</sup> October, 2024 passed by the Election Tribunal-1 Baluchistan, Quetta (hereinafter referred to as “**ETB**”) in Election Petition No. 26 of 2024, whereby the election petition filed by the present respondent No.1, Mir Atta Muhammad, under Section 139 of the Election Act, 2017 (hereinafter referred to as “**Act of 2017**”) was allowed.

2. Briefly stating the facts of the case, the general elections in the country took place on 8<sup>th</sup> February 2024 in which, the present appellant along with 23 other candidates, contested from PB-28 Quetta-VII. Mr. Ubaidullah, who is the present appellant, secured 8017 votes (with a lead of 1622 votes over the votes cast in favour of the present respondent No.1) and was thus declared a successful candidate, vide Notification No.F.2(12)/2024-Cord dated 22<sup>nd</sup>

February 2024 issued by the Election Commission of Pakistan (hereinafter referred to as “ECP”).

3. The respondent No.1, however, was not satisfied with the result announced by the ECP and, thereafter, challenged the said Notification issued by the ECP with the request that repolling or fresh polling may be conducted in 16-polling stations<sup>1</sup> as a great number of invalid/bogus votes were cast in these polling stations and since the result of these polling stations was manipulated/tampered, the present appellant was declared as a successful candidate, which may be declared as illegal, un-called for, null and void by setting aside the election process in these polling stations.

4. The matter proceeded before the ETB, which after detailed deliberations, vide its impugned judgment dated 09<sup>th</sup> October, 2024 allowed the election petition by de-notifying the present appellant and directing the ECP to conduct repolling in these sixteen (16) disputed polling stations of the said constituency, in accordance with law. The said order is now being challenged before us by the present appellant on the ground that the order of the ETB is not proper and may be set aside as the election process conducted in the entire constituency, including these 16-polling stations was done in a fair and transparent manner.

5. The matter was taken up on 11<sup>th</sup> November, 2024 on which date Mr. Muhammad Masood Khan, learned ASC appeared on behalf of the respondent No.1 and waived notice on his behalf. Whereas, Mr. Muhammad Arshad, Special Secretary Law alongwith Mr. Falak Sher, Assistant Director Law appeared on behalf of the ECP and waived notice on behalf of the ECP. On the said date, the office was directed to issue notice to the rest of the respondents and was also directed to requisition record from the ETB.

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S.No.	Polling Station No.	Polling Station name
1	02	Government Boys Primary School Tirkha Kasi (male)
2	06	Government Boys High School Sabzal (male), Portion No.2
3	20	Government Primary School, Khoz Bagh (Female)
4	26	Government Boys High School Sabzal (male), Portion No.2
5	35	Government Boys High School Sabzal (male), Portion No.2
6	39	Government Boys High School Sabzal (male), Portion No.2
7	53	Government Boys High School Sabzal (male), Portion No.2
8	55	Government Boys High School Sabzal (male), Portion No.2
9	56	Government Boys High School Sabzal (male), Portion No.2
10	57	Government Boys High School Sabzal (male), Portion No.2
11	72	Government Boys High School Sabzal (male), Portion No.2
12	73	Government Boys High School Sabzal (male), Portion No.2
13	77	Government Boys High School Sabzal (male), Portion No.2
14	78	Government Boys High School Sabzal (male), Portion No.2
15	82	Government Boys High School Sabzal (male), Portion No.2
16	83	Government Boys High School Sabzal (male), Portion No.2



6. Kh. Haris Ahmad, learned Sr. ASC has appeared on behalf of the appellant and has vehemently argued that the election process conducted in the said constituency was carried out in a congenial atmosphere and no complaint whatsoever has been made either by any Presiding Officer or any other official posted at the respective polling stations with regards to any rigging or casting of illegal and bogus votes. The learned counsel stressed that the present appellant has secured 1622 more votes than the present respondent No.1 and was thus rightly declared as a successful candidate from the said constituency. He stated that the ETB, while proceeding with the matter framed four issues and recorded the statements of seventeen witnesses, out of which the 17<sup>th</sup> witness was the present respondent No. 1 himself. The learned counsel highlighted that despite appreciating the fact that no plausible reason or cogent material was put forth by any of the witnesses called by the respondents No.1, with regard to the casting of illegal or bogus votes, the ETB still declared the result in the above referred 16-polling stations to be void.

7. The learned counsel has also raised a primary legal issue, that the respondent No.1 presented the petition on the basis of photocopies of the affidavits only, which were not solemnized on oath rather, were simple photocopies of the notarized statements only. The learned counsel stressed that as per section 144 of the Act of 2017, it was a mandatory requirement of law that a complete list of witnesses and their statements on affidavits "shall" be attached with the petition. He stated that it is an admitted position that the statements furnished by the respondents No.1 were not the original affidavits and that the witnesses were cross-examined on the basis of photocopies of the affidavits only and not on the basis of the original affidavits. He vehemently submitted that this vital legal aspect has been ignored by the ETB, hence, without going into other merits or demerits of the case, the instant appeal ought to be allowed on the basis of this primary legal objection. According to him section 145 of the Act of 2017 clearly stipulates that if the legal procedure, as provided under sections 142, 143, 144 of the Act of 2017, is not fulfilled, the said election petition is not maintainable and is liable to be summarily rejected.



To support his assertion the learned counsel placed reliance upon the decisions contained in the footnote<sup>2</sup>.

8. Mr. Muhammad Masood Khan, learned ASC has appeared on behalf of the respondent No.1 and has refuted the arguments of Kh. Haris Ahmed and stated that the issue of non-submission of original affidavits, could at best, be considered as a technical lapse. He further submitted that when the witnesses were examined on the basis of photocopies, it could be inferred that this deficiency, if any, has been ignored by the ETB, therefore, no lease in this regard could be given to the appellant. He, however, conceded that the original affidavits were not furnished and the election petition was filed before the ETB by the respondent No.1 on the basis of photocopies of the affidavits, which were notarized only and were not solemnized on oath before the oath Commissioner.

9. Additionally, Mr. Muhammad Masood Khan strongly argued that the ETB has duly noted the illegalities committed in respect of the votes cast in these 16-polling stations and on that very basis the ETB quite rightly allowed the appeal by directing the ECP to conduct fresh polls in the said polling stations. He finally submitted that this appeal being meritless may kindly be dismissed.

10. Mr. Muhammad Arshad, Special Secretary Law and Mr. Falak Sher, Assistant Director Law have appeared on behalf of the ECP and stated that

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Col. (R) Muhammad Shabir Awan vs. Raja Saghir Ahmed and 4 others (PLD 2023 Lahore 458)  
 Abdul Qahar Khan Wadan vs. Zamarak Khan Achakzai and 2 others (PLD 2020 BHC 47)  
 Malik Umar Aslam vs. Sumera Malik and another (PLD 2007 SC 362)  
 Lt. Col. (Rtd.) Ghazanfar Abbas Shah vs. Mehr Khalid Mehmood Sargana and others (2015 SCMR 1585)  
 Hina Manzoor vs. Malik Abrar Ahmed and others (PLD 2015 SC 396)  
 Zia ur Rehman vs. Syed Ahmed Hussain and others (2014 SCMR 1015)  
 Engr. Iqbal Zafar Jhagra and others vs. Khalilur Rehman and 4 others (2000 SCMR 250)  
 Attaullah Khan vs. Ali Azam Afridi and others (2021 SCMR 1979)  
 Mst. Noor Jehan and another vs. Saleem Shahadat (2022 SCMR 918)  
 State Life Insurance Corporation of Pakistan and another vs. Javaid Iqbal (2011 SCMR 1013)  
 Azhar Abbas and others vs. Haji Tahir Abbas and another (2021 CLC 1351 Lahore)  
 Abdul Majeed vs. Abdul Rasheed (PLD 2016 Lahore 383)  
 Province of Punjab through Collector, Faisalabad and another vs. Rana Hakim Ali and another (2003 MLD 67 Lahore)  
 Sait Tarajee Khimchand and others vs. Yelamarti Satyam and others (AIR 1971 SC 1865)  
 Aas Muhammad vs. Chahat Khan (2004 SCMR 770)  
 Muhammad Yusuf Khan Khattak vs. S.M. Ayub and 2 others (PLD 1973 SC 160)  
 State Life Insurance Corporation of Pakistan vs. Mst. Bibi Reema (2023 CLD 912 Lahore)  
 Water and Power Development Authority vs. Ghulam Shabbir (1998 MLD 1592 Lahore)  
 Messers Foremost Trading Company vs. Messers Caledonian Insurance Company Limited (PLD 1988 Karachi 131)  
 Nawab Ali Wassan vs. Syed Ghous Ali Shah and others (2018 SCMR 87)  
 Muhammad Saeed and 4 others vs. Election Petitions Tribunal, West Pakistan, etc. [PLD 1957 SC (Pak) 91]  
 Usman Dar and others vs. Khawaja Muhammad Asif and others (2017 SCMR 292)  
 Syed Khaliq Shah vs. Abdul Raheem Ziaratwal and others (PLD 2017 SC 684)  
 Syed Hafeezuddin vs. Abdul Razzaq and others (PLD 2016 SC 79)  
 Muhammad Yusuf Khan Khattak vs. S. M. Ayub and 2 others (PLD 1973 SC 160)  
 Lt. Col. (Rtd.) J. Abel vs. Emmanul Zafar and others (1987 MLD 1372)



whatever orders are passed by this Court would be complied with in letter and spirit.

11. No body has appeared on behalf of the rest of the respondents, despite proper service.

12. We have heard all the learned counsel for the parties at length and have gone through the available record with their assistance. We have also perused the decisions relied upon by the learned counsel for the appellant.

13. We will firstly, take-up the legal issue raised by Kh. Haris Ahmed, learned Sr. ASC with regards to the furnishing of original affidavits which, as per him, was a mandatory requirement of law and ought to have been fulfilled, and this aspect, according to him, has been overlooked/ignored by the ETB, thereby rendering the decision to be non-maintainable and liable to be set aside.

14. The requirement of furnishing the original affidavits is a mandatory requirement, as clearly spelt out in Section 144(2)(a) of the Act of 2017, which stipulates the submission of a complete list of witnesses and their statements on affidavits which "shall" be attached with the petition. The wording used in this section makes it a mandatory requirement to file statements of witnesses on affidavits, alongwith the election petition, otherwise the said petition would be considered deficient and as per sub-section 1 of section 145 of the Act of 2017, if provisions under Sections 142, 143 and 144 of the Act of 2017 are not complied with, then the Election Tribunal shall summarily reject the election petition. In the instant matter the ETB seems to be swayed away on the ground that the polling conducted in the 16-polling stations was dubious, however, the ETB has not considered the primary issue of non-furnishing of original affidavits by the present respondent No.1 arising in the instant matter. Had the ETB firstly decided this legal issue and then proceeded, with regard to the alleged dubious polling in the 16-polling stations, then in our view, the position would have been quite different. In the instant matter, it is an admitted position that the mandatory requirement of furnishing original affidavits was never complied with. The learned counsel appearing for the respondent No.1 has even conceded before us that no original affidavits were filed with the petition, however, has argued that the photocopies of the affidavits were furnished, which were duly notarized.



15. In view of the above uncontroverted facts, we tend to disagree with the contention of Mr. Khan, counsel for the respondent No.1, that non-furnishing of original affidavits, which were notarized only and not solemnized before the Oath Commissioner, was a technical lapse. If the wordings of section 145 of the Act of 2017 are examined then it is quite evident that in case of non-compliance of sections 142, 143, 144 and 145 of the Act of 2017, the matter could be summarily rejected by the ETB. Mr. Khan has also conceded during the course of his arguments that original affidavits were not produced rather, only “marked” or “identified affidavits” were produced, which in our view by no stretch of imagination could be considered as fulfillment of the mandatory requirement provided under the law. It is also a settled proposition of law that in case of non-compliance of any mandatory requirement, it is the person presenting those documents, who has to face the brunt of non-compliance<sup>3</sup>.

16. This Court in the case of Lt. Col. (Rtd.) Ghazanfar Abbas Shah has categorically observed that if the affidavits filed by a party are flawed in any way and are not verified on oath, then it will be considered that the same have not been attested on oath and accordingly, the election petition is liable to be, *inter alia*, dismissed on this basis alone. Needless to state that there is a plethora of judgments on this issue which state that when anything is prescribed to be done in a particular manner, it needs to be done in that manner, otherwise, it will be considered to be *non-est* in the eyes of law<sup>4</sup>.

17. We were able to lay our hands upon the decision given in the case of Amirzada Khan<sup>5</sup> wherein it was observed that:

*“We were amazed to find that instead of original document a photostat copy was exhibited in evidence without the leave of the Trial Court to lead secondary evidence, after the proof of loss or destruction of the original one. Since the respondents did not plead loss or destruction of the original agreement, we would be legally justified in presuming that they are guilty of withholding best available primary evidence”.*

In the case of Allah Rakha<sup>6</sup> it was held that:

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<sup>3</sup> State Life Insurance Corporation of Pakistan and another versus Javaid Iqbal (2011 SCMR 1013)

<sup>4</sup> Attaullah Khan versus Ali Azam Afridi, (2021 SCMR 1979) also Muhammad Anwar and others versus Mst. Ilyas Begum and other (PLD 2013 SC 255), Malik Umar Aslam versus Sumera Malik (PLD 2007 SC 362)

<sup>5</sup> Amirzada Khan and others versus Ahmad Noor and others (PLD 2003 SC 410)

<sup>6</sup> Allah Rakha versus Muhammad Riaz (2009 SCMR 1045)

*"The original agreement to sell dated 06.04.1957 executed in favour of Daulat Ali by vendors was admittedly not produced. This fact was noted significantly by the learned Courts below also. As the original agreement to sell executed by Allah Baksh and Ghulam Muhammad in favour of Daulat Ali on 06.04.1957, was not produced, therefore, the suit for specific performance was held to be not competent and rightly so by the learned Courts below."*

18. Therefore, considering the above facts, we are of the view that the judgment passed by the ETB requires interference as, the ETB has not dealt with the *lis* before it in a proper and legal manner. We, therefore, allow this appeal and hereby set aside the judgment dated 09.10.2024, of the Election Tribunal, Baluchistan. There shall however be no order as to costs.

19. Above are the reasons of our short order dated 20.11.2024, whereby we have allowed the instant appeal.

Islamabad  
20.11.2024  
Arshad

~~Not~~ Approved for Reporting