

**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.1349 OF 2024**

*(Against the judgment dated 16.09.2024  
of the Election Tribunal, Balochistan,  
Quetta in Election Petition No.15 of 2024)*

*Ali Madad Jattak*

***... Appellant***

**Versus**

*Mir Muhammad Usman Pirkani and others*

***... Respondents***

For the Appellant: Mr. M. Shahzad Shoukat, ASC  
Ch. Akhtar Ali, AOR

For Respondent No.1: Mr. Kamran Murtaza, Sr. ASC  
Syed Rifaqat Hussain Shah, AOR

For Respondent No.31: Mr. Ajmal Ghafoor Toor, ASC

For Respondent No.17: Ghulam Rasool Mangel, in person

For ECP: Mr. Falak Sher, Assistant Director (Law)  
Mr. M. Arshad, Spl. Secretary (Law) ECP

Date of Hearing: 20.11.2024

**JUDGMENT**

**AQEEL AHMED ABBASI, J.-** The above appeal has been filed under Section 155(1) & (2) of the Elections Act, 2017 against the impugned judgment dated 16.09.2024 passed by the learned Election Tribunal Balochistan, Quetta in Election Petition No.15 of 2024 whereby the Election Petition No.15 of 2024 filed under Section 139/142 of the Election Act, 2017 by Respondent No.1

(Mir Muhammad Usman Pirkani), assailing the Notification No.F.2(12)/2024-Cord.- dated 18.02.2024 whereby the appellant Ali Madad Jattak was declared as Returned Candidate, has been allowed in the following terms:

- "a) *The Form-45, to the extent of 15-polling stations and Form, 46, 47, 48 & 49 are declared as null and void and the Notification No.F.2(12)/2024-Cord (I) dated 18.02.2024, wherein the respondent No.1 (Ali Madad Jattak) was declared as returned candidate from PB-45 Quetta-VIII, is set aside to his extent and he is de-notified and also ceased to hold the public office, while the Form-45 to the extent of remaining 34-polling stations shall remain intact;*
- b) *The seat of PB-45 Quetta-VIII having become vacant, shall be filled through re-polling in the following 15-disputed polling stations of PB-45 Quetta-VIII:-*
- 1. Polling Station Government Girls High School Pirkani Abad Portion-II (Male)-I;*
  - 2. Polling Station Govt. Girls Degree College Sariab Mill Portion-II (Female)-II;*
  - 3. Polling Station, Office of the Director General Agriculture Research Village Aid Portion-III (Male)-1;*
  - 4. Polling Station Tameer-e-Nau College Takhtani Bypass, Portion-II (Male)-I;*
  - 5. Polling Station Cambridge Islamic High School Baloch Colony Mashriqi Bypass Portion-II (Male)-I;*
  - 6. Polling Station Cambridge Islamic High School Baloch Colony Mashriqi Bypass Portion-I (Male)-I;*
  - 7. Polling Station Govt. Primary School Sadiqabad Mashriqi Bypass Portion-II (Female)-I;*

8. *Polling Station Govt. Girls Degree College, Sariab Mill Portion-I (Female);*
  9. *Polling Station Govt. Boys High School Nawab Akbar Khan Bugti Sariab Mill (Male);*
  10. *Polling Station Govt. Girls High School Labour Colony Takhtani Bypass, Portion-III (Female)-I;*
  11. *Polling Station Iqra Bait Ul Quran Islamic Middle School Barechabad Allah Wala Chowk Portion-I (Female)-I;*
  12. *Polling Station Office of the Director General Agriculture Research Village Aid Portion-I (Male)-I;*
  13. *Polling Station Allama Iqbal Open University Takhtani Bypass Portion-I (Male)-I;*
  14. *Polling Station Govt. Boys High School Nawab Akbar Khan Bugti Sariab Portion-I (Male)-I;*
  15. *Polling Station Govt. Boys High School Killi Shahnawaz Portion-II (Male);*
- c) *After holding fresh elections in the said fifteen disputed polling stations, Form-45 of each 15-polling stations be prepared and after consolidating the Forms-45 of entire constituency, the Form-47 and Form-49 be prepared and the final consolidated result shall be announced in presence of contesting candidates or their agents;*
- d) *To ensure free, fair and transparent and secured elections in the said 15-disputed polling stations, the ECP is directed to appoint fresh R.O., D.R.O. and polling staff;*
- e) *The certified copy of this judgment be sent immediately to the Election Commission of Pakistan through Provincial Election Commissioner, Balochistan. The ECP is directed to hold fresh*

*elections immediately in the said 15-polling stations in accordance with law."*

2. On 10.10.2024 when the matter was fixed in Court the learned counsel for Respondent No.1 waved notice whereas notices were issued to the Election Commission of Pakistan and the record of the case was also requisitioned from the Election Tribunal, Balochistan and the operation of the impugned judgment was stayed till next date of hearing. Today, learned counsel for the Appellant has vehemently argued that the impugned judgment is based on misreading and non-reading of the evidence produced by the parties, as according to the learned counsel, the respondents could not establish the allegation of rigging in the subject Poling Stations nor could produce any material or evidence to support the allegation regarding tampering the results in Form-45, 47 and 49. It has been contended by the learned counsel for the Appellant that there are several procedural lapses while entertaining the unauthenticated documents as the same were initially marked and not properly exhibited, therefore, reliance placed by the learned Tribunal on such documents was illegal. According to the learned counsel, the Appellant was rightly declared as the Returned Candidate on the basis of Form-45, 47 and 49 through impugned Notification, after consolidation of result of all the polling stations, whereas, in the absence of any concrete material or evidence to support the allegation of rigging or manipulation in Form-45, 47 and 49, the Election Tribunal was not justified to pass the impugned judgment while declaring the Form-45 to the extent of 15- polling stations and Form, 46, 47, 48 and 49 as null and void, and also

to set aside the Notification dated 18.02.2024, according to which, appellant (Ali Madad Jattak) was declared as returned candidate from PB-45 Quetta-VIII. Per learned counsel, the Election Tribunal has also erred in law and fact while issuing further directions for the re-polling in piece meal to the extent of 15-disputed polling stations of PB-45 Quetta-VIII, whereas, Form-45 and the result to the extent of remaining 34 polling stations remained intact. According to learned counsel, Election Tribunal was not justified to declare the election result of 15 polling stations as void, without calling the Presiding Officer(s) nor could issue directions for partial re-poll in a constituency, without establishing that election results were materially affected by alleged rigging or corrupt practices in such polling stations. It has been prayed that the impugned judgment may be set aside and the Appellant may be declared as Returned Candidate from the PB-45 Quetta-VIII.

3. Conversely, the learned counsel representing the respondents have vehemently denied the above submissions of the learned counsel for the appellant, which according to the learned counsel, are contrary to the admitted facts and the record produced before the Election Tribunal, by the parties. While supporting the impugned judgment passed by the Election Tribunal in the instant case, Mr. Kamran Murtaza, the learned counsel for Respondent No.1 namely, Mir Muhammad Usman Pirkani, has reiterated the arguments advanced before the Election Tribunal as contained in para-6 of the impugned judgment in the following terms:-

"6. Learned counsel for the petitioner Mr. Kamran Murtaza, Advocate, contended that massive rigging was committed on the day of elections in favour of respondent No.1 and mainly 15-polling stations were targeted for rigging, where massive rigging was committed by the respondent No.1 being in league with the Polling Staff and the Returning Officer; that in the end of polling process, counting was made and accordingly Form-45 was prepared and issued to the polling agents of the contesting candidates, according to which the petitioner had secured highest votes than all the contesting candidates, but thereafter fake/forged Form-45 were prepared, which do not even bear the signatures of the polling agents of contesting candidates and on the basis of such fake/forged Form-45, the R.O. prepared the Form-47 and declared the respondent No.1 as declared candidate; that the voters of the constituency have elected the petitioner to their representative, which fact is established from the Form-45 produced by the petitioner and the respondents No.17 and 31, but subsequently the returned candidate being in league with the Presiding Officers and Returning Officer procured the election results in his favour, as such, the respondent No.1 is not elected member of provincial assembly on the basis of votes polled in his favour rather he is the product of Form-47. The learned counsel for the petitioner further added that the connivance of Returning Officer is further evident from the Consolidation Notice dated 9<sup>th</sup> February 2024 issued to the contesting candidates for pronouncement of results on 13<sup>th</sup> February 2024, but subsequently the said fixed date was antedated through a so-called Corrigendum of even dated and the Final Consolidated Result was issued, which fact itself is sufficient to establish the connivance of the R.O. with the returned candidate. It has also been placed on record that the Presiding Officer of Polling Station Govt. Boys High School Nawab Akbar Khan Bugti Sariab Mill (Male) wrote a letter to the Returning Officer that four ballot books are missing, but no action was taken by the R.O. He further argued that the evidence so produced in the shape of oral and

*documentary would be enough to declare the notification of the returned candidate as null and void and declaring the petitioner as returned candidate or as an alternate re-poll may be ordered in the said 15-polling stations"*

4. In addition to hereinabove, the learned counsel for the respondent has submitted that in the impugned judgment, all the grounds and objections raised by the appellant through instant appeal, have been duly addressed by the Election Tribunal in detail, including the objection with regard to maintainability of the petition whereas, it has been held that the Election Petition was filed after compliance of the provisions of Section 139/142 of the Election Act, 2017, and there has been no procedural irregularity found. Per learned counsel, no objection whatsoever, or any dispute with regard to admissibility of any evidence or the documents produced by the respondents was raised by the appellant before the Election Tribunal, whereas, all the witnesses examined by the respondents, including the Respondent No.1, 17 and 31 were subjected to detailed cross-examination by the appellant, however, their testimony remained unshaken. According to the learned counsel no illegality or procedural irregularity has been pointed out by the appellant in the impugned judgment, which is based on proper appreciation of evidence produced in the shape of oral and documentary primary evidence, and correct legal position, therefore, instant appeal being devoid of any merits is liable to be dismissed with costs.

5. We have heard the learned counsel for the parties and perused the record summoned from the Election Commission of Pakistan, including the original file of the Election Petition No.15 of 2024 and the evidence produced by the parties. Since an objection was raised as to maintainability of the election petition before the Election Tribunal, Balochistan, Quetta by the respondents, while alleging that same has been filed without complying with the requirements of Section 139/142 of the Election Act, 2017, therefore, we have minutely examined the entire record to verify as to whether, the said election petition was compliant of necessary procedure and the relevant provisions of Election Act, 2017 or otherwise. The record reveals that the election petition was presented by the Respondent No.1 Mir Muhammad Usman Pirkani, a contesting candidate in the general elections 2024 from PB-45 Quetta-VIII held on 08.02.2024, within the prescribed time alongwith requisite receipt of amount paid as security for the costs of the petition, assailing the Notification No.F.2(12)/2024-Cord., dated 18.02.2024 whereby, the appellant Ali Madad Jattak was declared as returned candidate, mainly on the grounds that out of Forty Nine (49) polling Stations, in Fifteen (15) polling stations as mentioned in para 6 of the memo of petition, there was massive rigging and irregularities committed by the Returning Officer and the polling staff, with the connivance of appellant on the day of polling in between 8:00 a.m. to 5:00 p.m. and even thereafter during the count, who according to the Respondent No.1 tampered, changed and manipulated the original Form-45 issued to the polling agents of Respondent No.1 and other



contesting candidates, particularly in above (15) polling stations, according to which, Respondent No.1 Mir Muhammad Usman Pirkani secured 4503 votes whereas the appellant secured only 740 votes in all over the constituency. It has been observed that in the memo of petition, minute column wise detail with specification of each (15) disputed polling stations, showing number of valid votes, invalid votes, votes secured by the appellant and votes secured by Respondent No.1 as per original Form-45, as well as the detail of change of result by the Returning Officer while issuing Form-48 in respect of disputed (15) polling stations, alongwith remarks pertaining to tampering of result by changing the votes of the Respondent No.1 and the appellant has been given. It has been further noted that with reference to telephonic/e-mail and written complaint to the Returning Officer as well as the concerned SHO(s) in respect of (15) disputed polling stations on the day of the polling has also been made, intimating the allegations of rigging, and also forcible removal of ballot books pertaining to serial Nos.0267, 0268, 0274, 0280 and 0281 by the concerned SHO. Perusal of the memo of petition further reveals that specific allegations and detail of rigging of election, manipulation and tampering in Form-45 have been made by the Respondent No.1 while filing the subject election petition before the Election Tribunal, in the memo of petition which is duly verified on Oath before the Oath Commissioner whereas, all the evidence and documents including duly sworn affidavits of Respondent No.1 alongwith fourteen (14) witnesses were also attached, whereas, list of witnesses and list of documents was also provided. The

Respondent No.1 produced (16) witnesses including himself, whose duly sworn original affidavits were already filed alongwith the election petition, the contents of which were duly owned and reiterated by the witnesses in their examination-in-chief, whereas, all such witnesses were subjected to cross-examination by the appellant. Whereas, in rebuttal, the appellant produced one witness i.e. Abdul Jabbar Baloch, Returning Officer of the constituency and also recorded his own statement. From perusal of the memo of petition, the evidence and the documents produced by Respondent No.1 it can be safely concluded that compliance of the provisions of Section 139/142 of the Election Act, 2017 has been made substantially as rightly held by the Election Tribunal in the impugned judgment, whereas, the learned counsel for the appellant could not point out any legal infirmity or procedural irregularity committed by the Election Tribunal, while passing the impugned judgment, by holding that Form-45 to the extent of above mentioned (15) polling stations and Form-46, 47, 48 and 49 while declaring as null and void and resultantly the Notification No.F.2(12)/2024-Cord(I), dated 18.02.2024, whereby, the Ali Madad Jattak was declared as returned candidate from PB-45 Quetta-VIII, was set aside to his extent and he was de-notified and also ceased to hold the public office. Whereas the Form-45 to the extent of remaining 34 polling stations were kept intact. The learned counsel for the appellant could not dislodge the specific allegations of rigging and tampering of Form-45 as per averments made in the memo of petition filed by Respondent No.1 before the Election Tribunal, which were duly supported by affidavits of (16) witnesses who

also produced the relevant Forms including original Form-45 issued to the polling agents of the Respondent No.1, as well as respondents No.17 and 31, who have also been subjected to detailed cross-examination. However, the testimony of the witnesses produced by Respondent No.1 could not be shaken, whereas, the sufficient material was produced by Respondent No.1 before the Election Tribunal to substantiate the allegations of rigging and tampering of the Form-45 to 49 whereby, the votes of the appellant (Ali Madad Jattak) were substantially increased with the connivance of the appellant (beneficiary) and the Returning Officer alongwith polling staff, as the entire record was in their custody. It is pertinent to note that while arguing the matter before us the learned counsel for the appellant, except raising a technical objection that the documents/evidence produced by the Respondent No.1 were simply marked, and not properly exhibited by the Election Tribunal, therefore, the same were not admissible and could not be relied upon. However, such objection, besides being factually incorrect, has no bearing on the merits of the instant case, for the reason that entire oral as well as documentary evidence was properly produced by the respective witnesses alongwith their duly sworn affidavits, the contents of which were duly reiterated in the examination-in-chief, and their testimony was also subjected to detailed cross-examination by the petitioner/appellant, and it remained unshaken. It has also been noted that there has been no valid objection as to admissibility of the documents or the evidence produced by the Respondent No.1, and the same was made part of the judicial record by the Election Tribunal. Therefore, the

Election Tribunal, in the absence of any lawful objection as to admissibility of the said evidence or the documents produced by the Respondent No.1, was fully justified to rely on such evidence, while exercising the discretion as vested in the Election Tribunal under the law.

6. The Election Act, 2017, empowers Election Tribunals with the same powers as of a civil court under the Civil Procedure Code (CPC). Sections 139-144 of the Act specifically deal with the Tribunal's powers regarding taking of evidence, the manner in which the proceedings are to be conducted by the Election Tribunal and the necessity of compliance with the procedural norms. Whereas, Section 144 (b) of Act, 2017 is significant to this appeal as it provides that the election petition should contain; *"full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including names of the parties who are alleged to have committed such corrupt or illegal practice or 82 illegal act and the date and place of the commission of such practice or act."*

7. The Election Tribunal, while exercising the powers of a Civil Court, has to adopt the procedure as provided under CPC as well as under the Qanun-e-Shahadat Order, 1984 when recording evidence, however, in appropriate cases, *stricto sensu* adherence or compliance can be relaxed, provided the purpose is served, and fair opportunity is provided to the parties to the litigation while confronting with the material and the documents being relied upon by either party. The Qanun-e-Shahadat Order governs the admissibility of evidence in Pakistan. Article 2

defines "document," and Article 72-77 sets out the requirement for formal exhibition of documents for them to be admissible. Provisions of Order XIII Rule 1 & 4 CPC provides for the procedure relating to the production impounding and return of documents. In the case of Khurshid Ali and 6 others vs. Shah Nazar (PLD 1992 SC 822) while explaining the scope of Order XIII Rule 4 CPC it has been held "***Mere failure to exhibit a document formally, would not make any difference and if it was necessary for just decision of the case, to summon the material relied upon by the party it should be summoned and treated as evidence in the matter without any formalities***". Reliance in this regard can also be placed in the following cases:-

- (1) Azizullah through Legal heirs vs. Muhammad Hanif through Legal heirs (PLD 2018 Lahore 132)
- (2) Muhammad Ashiq vs. Additional District Judge, Vehari/Election Tribunal Khanewal camp at Vehari and others (2005 MLD 1577)
- (3) Hakim Khan vs. Aurangzeb and another (PLD 1975 Lahore 1170)

8. It may be observed that in case of substantial compliance of legal procedure, the formal exhibition requirement is not absolute and can be relaxed under certain circumstances, particularly, in election matter pending before the Election Tribunal, which can adopt any course of action to regulate its proceeding instead of following the technicalities of CPC, except such provisions specifically made applicable for limited purposes. Reliance in this regard can be placed in the case of Muhammad Ijaz Ahmed Chaudhary vs. Mumtaz Ahmed Tarar and others (2016 SCMR 1), wherein, it has been held as under:-

"13. As already noted there is no prohibition in the ROPA against reception of fresh evidence by an Election Tribunal at any stage of its proceedings. Consequently, the Election Tribunal can devise its own procedure to promote the cause of justice. Such a course of action that is adapted by an Election Tribunal to regulate its proceedings instead of following the technicalities of C.P.C., except some provisions specifically made applicable for limited purposes, has been approved in *Umar Aslam v. Sumera Malik* (PLD 2007 SC 362). Now the documents Exb.P-4 and Exb.P-8 are admissible for being certified in terms of Article 89(5) of the QSO. Their contents are directly germane to the question of genuineness of the appellant's claimed foreign BSC qualification. According to *Zafarullah Khan's case* (supra), the reception of such documents by the Election Tribunal in evidence is a fair decision provided this is done under a procedure that avoids prejudice to the appellant and complies the rules of natural justice."

9. Reference in this regard can be made to the case of *Sudir Engineering Company vs Nitco Roadways Ltd* [1995 (34) DRJ 86] wherein, admissibility of document has been dealt with in detail. It has been held in the above cited judgment that marking of a document is purely for identification purposes. It is when a document is identified and given a label or number during a trial and is an administrative step to reference documents and organize them during hearing. Formal exhibition of a document is when it is introduced into evidence through a proper legal process. Original documents are given the nomenclature of 'Exhibits' by the Court and accepted in evidence as 'Exhibit A' or 'Exhibit B'. It involves a process when a document is presented through a witness or an affidavit, verifying its authenticity and demonstrating its relevance to the case. When the question of admissibility of document arises in a court, the court focuses solely on the relevance of the document and if it has met the legal requirements laid down in Qanun-e-Shahadat Order or it follows the evidentiary law of Pakistan. The formal exhibition of a document solely doesn't guarantee its

proof or admissibility. Similarly, the absence of a formal exhibit marking doesn't necessarily mean that the document cannot be considered as evidence, provided other evidentiary requirements are met. Same has been established in para Nos.14 and 15 of the Sudir (*supra*) case in the following terms:-

*“(14) When the Court is called upon to examine the admissibility of a document it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved, disproved or not proved the Court would look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilities of the case as emerging from the whole record. It could not have been intendment of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case, each time a document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit. (emphasis supplied)*

*(15) The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the Court should be able to know which was the document before the witness when he was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was referring to which deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit.” (emphasis supplied)*

10. Reference in this regard can also be made in the case of R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami &

V.P. Temple (**Appeal (civil) 10585 of 1996**) regarding objections as to admissibility of documents wherein it has been held as under:-

*"The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. **In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit.** The later proposition is a rule of fair play. **The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular.**"* (emphasis supplied)

Furthermore, in the case of R.V.E. Venkatachala Gounder (*supra*) it was ruled that **"Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently"**. In our present case the objection as to admissibility was taken in appeal and not at the earliest. The appellant did not take this objection in the Election Tribunal. In Sudir's case (*supra*) the High Court of Delhi has elucidated the practice of marking of exhibits as under:-

*"Any document filed by either party passes through **three stages before it is held proved or disproved.** These are: First stage: when the documents are filed by either party in the Court; these documents though on file, do not become part of the judicial record;*



Second stage: when the documents are tendered or produced in evidence by a party and the court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence; Third stage: the documents which are held "proved, not proved or disproved" when the court is called upon to apply its judicial mind by reference to Section 35 of the Evidence Act. Usually, this stage arrives at the final hearing of the suit or proceeding...." (emphasis supplied)

11. According to the stages as stated above, the documents and the evidence produced by the Respondent No.1 fall under the category of exhibited documents, as they were tendered and produced as evidence in the Election Tribunal and were duly admitted by the Election Tribunal as evidence without any objection, thus becoming part of judicial record. Moreover, in the instant matter except Form-45 of the respective parties produced before the Election Tribunal all the documentary evidence has been duly accepted including affidavits of the parties which was subjected to cross-examination, whereby, all the relevant documents including the marked Form-45 were produced and made part of the judicial record, and no specific objection was raised before the Election Tribunal to this effect. Even before us, there is no objection as to very admissibility of documents/evidence, rather a technical objection has been raised to the effect that such evidence/documents, were only 'Marked' but not properly Exhibited hence could not be relied upon. In view of hereinabove factual and legal position as emerged in the instant case we have no hesitation to hold that petition filed before the Election Tribunal by the Respondent No.1 was fully compliant with the provisions of Election Act, 2017, whereas, there is no legal infirmity, material irregularity or

procedural defect pointed out by the learned counsel for the appellant requiring this Court, to set aside the same on mere technicalities, while ignoring the merits of the case and by ignoring the oral testimony as well as the documentary evidence produced by the parties before the Election Tribunal. Reliance in this regard can be placed in the case of Shahin Shah vs. Government of Khyber Pakhtunkhwa through Secretary Irrigation Department Peshawar and others (2022 SCMR 1810), wherein, while explaining the scope of doctrine of substantial compliance, it has been held as under:-

"18. ...In such circumstances, the doctrine of substantial compliance would apply which provides that the procedural fault in complying strictly with a provision of the law is so minor that it does not have a bearing on the essence of the dispute and the object sought to be achieved. The applicability of the doctrine of substantial compliance depends on the facts and circumstances of a dispute. It is for the Court to determine whether the object, purpose, and intent of a statutory prerequisite have been fulfilled and, formal compliance would be unimportant..."

12. Having dealt with above aspects of the matter relating to maintainability of petition and the admissibility of documents/evidence, we may now dilate upon the merits of the instant case. From perusal of the original record produced before us by the Election Commission of Pakistan, which also included the carbon copies of Form-45, it has been observed that the same have been duly compared and verified from the official record produced before the Election Commission of Pakistan, whereas, while comparing Form-45 produced by the Respondent No.1 and respondents No.17 and 31, the Election Tribunal, after detailed scrutiny, through a detailed chart, has pointed out the substantial discrepancies which according to the Election

Tribunal is a result of manipulation and tampering in the Form-45 by the appellant with the connivance of the Returning Officer and their staff which resulted in the increase of votes in favour of the appellant. It will be advantageous to refer to the table drawn by the Election Tribunal to compare the differences of votes in the Forms-45 produced by the rival parties, which is reproduced hereunder:-

S.No.	Name of Polling Stations	Form 45 produced by the petitioner and the respondent No.17 & 31		Form 45 produced by the respondent No.1		Increased votes of respondent No.1
		Votes secured by the petitioner	Votes obtained by the respondent No.1	Votes secured by the petitioner	Votes secured by the respondent	
1.	Polling Station Govt. Girls High School Pirkani Abad Portion-II (Male)-1;	321	18	321	218	200
2.	Polling Station Govt. Girls Degree College Sariab Mill Portion II (Female)-II;	39	11	39	400	389
3.	Polling Station, Office of the Director General Agriculture Research Village Aid Portion-III (Male)-I;	31	22	31	476	454
4.	Polling Station Tameer-e-Nau College Takhtani Bypass, Portion-II (Male)-1;	72	05	72	205	200
5.	Polling Station Cambridge Islamic High School Baloch Colony Mashriqi Bypass Portion-II (Male)-I;	136	10	136	510	500
6.	Polling Station Cambridge Islamic High School Baloch Colony Mashriqi Bypass Portion-I (Male)-I;	100	01	100	601	600
7.	Polling Station Govt. Primary School Sadiqabad Mashriqi Bypass Portion-I (Female)-I;	39	10	39	310	300
8.	Polling Station Govt. Girls Degree College, Sariab Mill Portion-I	85	19	85	119	100

	(Female);					
9.	Polling Station Govt. Boys High School Nawab Akbar Khan Bugti Sariab Mill (Male);	193	33	193	433	400
10	Polling Station Govt. Girls High School, Labour Colony Takhtani Bypass, Portion-III (Female)-1;	60	00	60	300	300
11	Polling Station Iqra Bait Ul Quran Islamic Middle School Barechabad Allah Wala Chowk Portion-I (Female)- 1;	112	21	112	521	500
12	Polling Station Office of the Director General Agriculture Research Village Aid Portion-I (Male)-I;	71	11	71	411	400
13	Polling Station Allama Iqbal Open University Takhtani Bypass Portion-I (Male)-I;	178	06	178	306	300
14	Polling Station Govt. Boys High School Nawab Akbar Khan Bugti Sariab Portion-I (Male);	71	10	71	210	200
15	Polling Station Govt. Boys High School Killi Shahnawaz Portion- II (Male);	115	18	115	87	69
	<b>Total:</b>	<b><u>1623</u></b>	<b><u>195</u></b>	<b><u>1623</u></b>	<b><u>5107</u></b>	<b><u>4912</u></b>

13. It has been observed that while passing the impugned judgment, the Election Tribunal has taken note of all the factual and legal aspects as well as all the objections raised by the appellant, including the objection as to maintainability of the petition, and formulated the following five issues for determination which read as under:-

*“1. Whether the Election Petition is not maintainable in view of the objections raised by the respondent No.1?*

2. *Whether result of Form 45, 47 and 49 were tampered, manipulated and changed in favour of respondent No.1?*
3. *Whether massive rigging committed by the respondent No.1 with connivance of R.O. and Polling Staff in the entire constituency of P.B. 45?*
4. *Whether the respondent No.1 with connivance of R.O. and election staff procured the election result in his favour by means of corrupt and illegal practices?*
5. *Relief?*

14. The Election Tribunal has dealt with all the above issues and recorded its detailed finding in paragraphs 15 and 16 of the impugned judgment in the following terms:-

*"15. That above table has made clear the actual votes secured in the said 15-polling stations by the petitioner as well as by the respondent No.1. As per Form-45 issued to polling agents at the end of polling of the said polling stations, the respondent No.1 only secured 195 votes, but in the subsequent Forms-45 his votes were increased and shown as 5107 votes. Meaning thereby that from the actual votes of 195 secured by him, 4912-votes were increased in his count, while to the contrary the number of votes secured by the petitioner i.e. 1623 votes were remained the same in both the forms produced by both the parties. Not only the petitioner, but also the remaining contesting respondents have also produced the earlier Form-45 issued to their polling agents soon after end of polling process, which also contain the signatures of their polling agents, details whereof have been given in the above table, which also confirms that not only the petitioner's, but also the polling agents of remaining contesting candidates have received the Form-45, but subsequently the actual Form-45 were changed/manipulated and tampered, which fact is further evident from the*

*perusal of Form-45 produced by the returned candidate as Mark.R/2-1 to Mark.R/2-30, as in most of the said Form-45 the polling agents have not signed at all and in some Forms instead of their signatures, only their names in Urdu have been written, while same pens were used in filling the names of polling station, the number of votes obtained by the contesting candidates and even same pen was used in the column of signatures of polling agents. Furthermore, over writing and cuttings were observed in the Form-45 so produced by the returned candidate, thus I have no hesitation to hold that the Form-45 so produced by the returned candidate are the product of fraud and misrepresentation, for which not only the respondent No.1, but also the Returning Officer of the said constituency is equally responsible.*

16. *The connivance of Returning Officer is further evident from the fact that he issued Consolidation Notice vide letter N.7D/RO/202 dated 9<sup>th</sup> February, 2024, whereby all the contesting candidates were informed that the Final Consolidated Result i.e. Form-49 will be issued on 13<sup>th</sup> February 2024 at 10:00 a.m., but subsequently on the said date he issued Final Consolidated result i.e. Form-49, Form-47 and Form-48, which otherwise is surprising, as on the one hand the Returning Officer satisfied all the contesting candidates by directing them to appear on 13<sup>th</sup> February 2024, but thereafter without any cogent reasons he has issued the same on the said date of issuance of Consolidation letter dated 9<sup>th</sup> February 2024 through a Corrigendum of even dated. The Returning Officer Abdul Jabbar Baloch, appeared in the Tribunal as RW-1 and exhibited the Corrigendum dated 9<sup>th</sup> February 2024 as Ex.R/1, wherein he on account of security reasons directed the parties for consolidation of results on the said date at about 06:00 p.m. The R.O. in his cross examination admitted the consolidation letter was served upon all the government departments and all the contesting candidates were also knew about fixation of consolidation of results as 13<sup>th</sup> February 2024, while he having no evidence that the corrigendum was received by all the contesting candidate or the*

*concerned department. He further admitted that no objection was received from any candidate with regard to Consolidation letter dated 9<sup>th</sup> February 2024. He also admitted that prior to issuance of Consolidation letter, he had issued Form-47."*

15. From perusal of the hereinabove finding as recorded by the Election Tribunal and the detailed chart prepared by the Election Tribunal after comparing the Form-45 produced by respective parties with the official record to demonstrate as to how the original Form-45 issued to the Polling Agents of the contesting candidates has subsequently been changed/manipulated and tampered by the Returning Officer, the polling staff, with the connivance of the appellant (beneficiary) it is *prima facie* established that through fraud, misrepresentation and by manipulation of record including Form-45, votes of the appellant (Ali Madad Jattak) were increased from 195 (as per original Form-45) to 5107 (increase of 4912 votes), whereas, the number of votes secured by the Respondent No.1 (Mir Muhammad Usman Pirkani) i.e. 1623 remained the same. Perusal of the comparative chart prepared by the Election Tribunal reflects that how conveniently, while adding one digit on the left side of the two figures of votes in the original Form-45 issued to the Polling Agents on the day of election were converted into three digits, thus increasing the number of votes of appellant, and the results of the above Polling Stations have been changed while declaring the losing candidate as returned candidate. While reaching to such conclusion, the Election Tribunal has taken pains to scrutinize the entire election material and the record, relevant Forms, and even noted the over

writing and cutting made in the Form-45, and thereafter scrutiny and appraisal of the evidence reached to the conclusion that the Form-45 produced by the returned candidate (appellant) are the product of fraud and misrepresentation for which not only the appellant Ali Madad Jattak, but also the returning officer of the said constituency is equally responsible.

16. It is also pertinent to note that no valid reason or lawful justification whatsoever was assigned by the Returning Officer to change the date for consolidation of result from 13.02.2024 to 09.02.2024 while antedating the same without notice to all the contesting candidates nor even the service of purported Corrigendum dated 09.02.2024 upon the parties concerned could be established from record, which fact alone is sufficient not only to create serious doubts on the so called consolidation made by the Returning Officer on 09.02.2024 in the absence of all the contesting candidates and/or their representatives but also reflects upon the credibility of the Election Commission and the Returning Officer of the subject constituency particularly the above fifteen (15) polling stations. In view of hereinabove factual and legal position as emerged in the instant case, we are of the considered opinion that instant appeal is devoid of any merits, whereas, no illegality or procedural defect could be pointed out by the learned counsel for the appellant which may require this Court to interfere in the impugned judgment passed by the Election Tribunal. Accordingly, instant civil appeal was dismissed vide our short



order dated 20.11.2024, and above are the reasons of such short order.

Judge

Judge

Judge

**Islamabad.**  
20.11.2024.  
*'Approved for Reporting'*  
*(Zubair)*