

P L D 2015 Supreme Court 396

Present: Mian Saqib Nisar, Mushir Alam and Maqbool Baqar, JJ

HINA MANZOOR---Appellant

versus

Malik IBRAR AHMED and others---Respondents

Civil Appeal No.319 of 2014, decided on 28th April, 2015.

(Against the judgment dated 5-12-2013 of the Election Tribunal, Rawalpindi passed in E.P. No.257/2013/RWP/12/2013).

Muhammad Munir Paracha, Advocate Supreme Court for Appellant.

M. Rafique Rajwana, Advocate Supreme Court for Respondent No.1.

Date of hearing: 28th April, 2015.

JUDGMENT

MIAN SAQIB NISAR, J---Appellant, respondent No.1 and few others, contested the elections for NA-54, Rawalpindi. The appellant being the runner up filed an election petition against respondent No. 1. The Election Tribunal, however, found the petition as not verified in the manner laid down in the C.P.C., as required in terms of section 55(3) of the Representation of People Act, 1976 (ROPA) and dismissed the same under section 63(a) of the ROPA.

2. Learned counsel for the appellant refers to the last page of the election petition as originally filed by the appellant before the Election Commission, to show to us that the same has been duly signed by the appellant under the prayer clause, and also under the verification clause and submits that by so signing the petition the appellant has sufficiently complied with the requirement of verification as prescribed through the relevant provisions of Order VI, Rule 15, Code of Civil Procedure. The learned counsel further submits that the above provision, though essentially requires verification of pleadings on Oath or solemn affirmation, however, it does not require such Oath to be administered by any person. Learned counsel submits that section 139 of the C.P.C. deals with the administration of Oath and specifies the persons/officers who may administer Oath, but such, as can be seen from the said provision itself, has been mandated in respect of affidavits only and not with regard to the pleadings.

3. The contention is wholly misconceived and untenable. It is now well settled that merely affixing signature at the foot of the election petition and/or under its verification clause, without the same being attested/verified by an Oath Commissioner, or some other

authorized person, by itself, does not meet the requirement of verification as prescribed by Order VI, Rule 15, C.P.C., and thus renders the petition non-compliant with the provisions of section 55(3) of the ROPA, essentially entailing its dismissal in terms of section 63(a) of the ROPA. The first in the line of judgments in this regard is in the case of Engr. Iqbal Zafar Jhagra and others v. Khalil-ur-Rehman and 4 others (2000 SCMR 250), rendered by seven member Bench of this Court, and authored by the then Chief Justice, Hon'ble Justice Saiduzzaman Siddiqui, where objection with regard to the maintainability of an election petition in respect of election of the Senate was dealt with as follows:--

"Subsection (3) of section 36 (ibid) clearly requires that every petition and every Schedule or Annexures shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of pleadings. The verification of pleadings has been provided under Order, Rule 15, C.P.C. which when read with section 139, C.P.C. clearly shows that the pleadings are to be verified on oath and the oath is to be administered by a person, who is duly authorized in that behalf. It is an admitted position that the petition filed by Syed Iftikhar Hussain Gillani though mentions that it is on oath, the oath was neither verified nor attested by a person authorized to administer oath and as such it could not be said that requirements of section 36 of the Act were complied with. We have considered the reasons given by the learned Tribunal in holding that the petition filed by Syed Iftikhar Hussain Gillani did not comply the provisions of section 36 of the Act and are of the view that these reasons do not suffer from any legal infirmity.

For the sake of clarity, it may be noted here that section 36 of the Senate (Election) Act, 1975, referred to in the above quoted passage is couched in the same language as are the provisions of section 55 of the ROPA. The above view was reiterated by this Court in the context of section 55 of the ROPA by this Court in the case of Sardarzada Zafar Abbas and others v. Syed Hassan Murtaza and others (PLD 2005 SC 600), as under:--

"3. The verification on oath of the contents of an election petition, is provided under section 55(3) of the Representation of the People Act of 1976, (hereinafter to be referred to as the Act). It provides that every election petition and every schedule or annexure to petition shall be signed by the appellant and verified in the manner laid down in the Code of Civil Procedure, 1908. The Code contains such provisions under Order VI, rule 15, which requires the verification of pleadings, on oath. Such verification is not to be signed in routine by the deponent but being on oath, it requires to be attested either by the Oath Commissioner or any other authority competent to administer oath. It needs hardly to be emphasized that every oath is to be practically administered.

4. So far as, the provisions of civil law are concerned, such verifications generally are of directory nature. An omission to do so can be rectified subsequently during trial and even the Court can direct such rectification. While, on the other hand, under election laws such verification on oath is mandatory because of being followed by penal consequences under section 63(a) of the Act that makes it mandatory for the Tribunal to dismiss election petition if the provisions of sections 54 and 55 of the Act have not been

complied with. Similar view was taken by this Court in Iqbal Zafar Jhagra's case (2000 SCMR 250(n), though related to the Senate elections. It is, therefore, settled that the verification on oath of an election petition though mannered in accordance with civil law yet it entails upon penal consequences and hence is mandatory."

To the same effect are the judgments in the cases of Malik Umar Aslam v. Sumaira Malik and others (PLD 2007 SC 362) and Zia-ur-Rehman v. Syed Ahmed Hussain and others (2014 SCMR 1015).

4. We are not inclined to agree with the learned counsel that the law laid down in the above noted judgments is a result of incorrect enunciation or exposition of the relevant provisions and that the same need to be re-visited. The judgments being based on sound reasoning and correct appreciation of the law, need no interference.

5. Learned counsel further submits that even in case the memo of the petition as originally submitted by the appellant was found to be lacking in meeting the requirements of section 55(3) of the ROPA, such shortcoming was rectified by the appellant by filing a fresh memo of petition which was duly verified/attested by an Oath Commissioner and such memo replaced the original one, and the same ought to have been entertained instead of dismissing the petition. However, in our view, filing of subsequent memo of petition was of no avail, as admittedly the same was filed after lapse of the time of 45 days prescribed by section 52(2) of the ROPA and thus fresh/amended memo, which was barred by limitation, could not have been entertained, such being violative of the right of dismissal of the petition accrued in favour of the respondent No.1.

6. It is, indeed true that in suitable cases and where the amendment sought is necessary for the purposes of determining the real issue, the bar of limitation may be overlooked, however, the amendment, rather the making up of the lacuna, sought to be allowed cannot be considered to be an amendment necessary for the adjudication of the controversy/allegations pertaining to rigging and corrupt practices in the election process, as were involved in the present case. Furthermore, since the petition suffered with the inherent defect of non-compliance of section 55(3) of the ROPA, consequently resulting in its summary dismissal as prescribed by section 63 of the ROPA, the petitioner cannot be allowed to circumvent the purpose of law in the manner sought by him. Reliance in this regard is placed on the case of Malik Umar Aslam (supra), where amendment sought in the memo of an election petition in similar circumstances was dealt with as follows:-

"9.....This Court in the case of Ghulam Bibi (ibid) observed that the question of limitation can be overlooked, once the Court decides that amendment is necessary for the purpose of determining the real question. Applying this test on the case in hand, even if we were to allow the application for amendment, we have to conclude that as far as the amendment in the verification clause is concerned, it would not essentially determine the real issue i.e. controversy between the parties namely respondent No.1 was not a graduate and as such was not qualified to contest election or she has secured false and fictitious bachelor degree through foul means or she is a loan defaulter, etc. It may be noted that in the case of S.M. Ayub (ibid), which has been heavily relied upon by the learned counsel

for appellant, this Court noticed that if defect in the pleadings is of such a nature that same would not be sufficient to non-suit the petitioner, amendment can be allowed, but if defect is of such a nature which if allowed to be cured will change the complexion of the proceedings, then the amendment cannot be allowed, but if defect is of such a nature which if the amendment cannot be allowed. Had the appellant sought amendment in pleadings for determination of real issue, relating to merits of the case, the Court could have considered the request of amendment but verification on oath in absence of administration oath by an authorized person, by no stretch of imagination, is an amendment to determine the real issue between the parties..... Therefore, we are of the opinion that amendment in the verification clause of the petition was not permissible, as the application was submitted much after the period of limitation i.e. 45 days as provided in section 52(2) of the Act 1976 for filing of election Petition. In addition to it, a right in favour of the respondent has been created, as such we are not persuaded to subscribe to the view point of the learned counsel for appellant.

An order of the Election Tribunal permitting amendment to cure the defect in the verification, sought after expiry of the period of limitation was set aside by this Court in the case of Engr. Zafar Iqbal Jhagra (supra) which view has been reiterated by this Court in the case of Zia-ur-Rehman (supra) in the following words:-

"13.

In the instant case, the application for amendment dated 14th October, 2013 was apparently filed on 23rd October, 2013 well beyond the period of limitation i.e. 45 days for filing of an election petition, as provided by section 52 subsection (2) of the Representation of the People Act, 1976, hence, could not have been allowed by the Election Tribunal through the impugned judgment.

7. In view of the foregoing, we do not find any substance in the submission advanced on behalf of the appellant and there being no lacuna, either factual, or legal, justifying interference with the impugned judgment, dismiss the appeal.

MH/H-4/S

Appeal dismissed.