

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

PRESENT: Mr. Justice Anwar Zaheer Jamali, CJ.  
Mr. Justice Amir Hani Muslim.  
Mr. Justice Iqbal Hameedur Rahman.

**Civil Appeal No. 946/2014.**

(On appeal against the judgment dated 03.06.2014  
passed by the Election Tribunal, Rawalpindi,  
in E. P. No. 188/2013/RWP/05/2013)

Ch. Muhammad Ayaz.

Appellant(s).

Versus

Asif Mehmood, etc.

Respondent(s).

For the Appellant(s):

Syed Iftikhar Hussain Gillani, Sr. ASC.

For Respondent No. 1:

Dr. Babar Awan, ASC.  
Syed Rifaqat Hussain Shah, AOR.

Date of Hearing:

07.12.2015.

**JUDGMENT**

**Iqbal Hameedur Rahman, J:** - This appeal is directed against the judgment dated 03.06.2014 passed by the Election Tribunal, Rawalpindi (hereinafter to be referred as “the Tribunal”), in E. P. No. 188/2013/RWP/05/2013, whereby the said petition has been dismissed by holding that the appellant has failed to produce authentic and reliable evidence in support of his petition.

2. The relevant facts are that the appellant and respondents contested election for the slot of Member Provincial Assembly (MPA) from the constituency of PP-9 Rawalpindi-IX during the general elections held on 11.05.2013. The respondent No. 1, Asif Mehmood, was declared as a Returned Candidate who had secured 29797 votes while the appellant was the runner up candidate by securing 29524 votes, there being a difference of 273 votes. The appellant through his election petition averred that respondent No. 1 had maneuvered his win through corrupt and illegal

practices with the assistance of polling staff during the process of election who had exhorted and instigated the voters to vote for Pakistan Tehreek-e-Insaf (PTI) candidate i.e., respondent No. 1. It was further averred that the polling staff performed their duties in a partial manner on the premises of paradigm shift in the politics of the country. The appellant had stated in his petition that a complaint had been moved by one Muhammad Asim Afzal Kiani to the Returning Officer (RO) concerned against the Presiding Officer (PO) of polling station No. 53, but the same was not adhered to. It was also alleged that at polling station No. 78, from where the PO handed over a statement of count in Form-XIV to appellant's polling agent namely Talia Kanwal, respondent No. 1 had secured 413 votes whereas Form-XIV depicts that he got 295 votes which figure was tampered with after comparing the results of the constituency of NA-54. The appellant in this regard had immediately moved an application to the RO on the same day alongwith Form-XIV as a fax copy and the appellant also moved an application on the next day to the DRO, Rawalpindi, which was stated to have been forwarded to the RO, but it was not decided till 15.05.2013. In this regard the appellant asserted that he had obtained the copy of the order dated 15.05.2013, but he found that the said application had already been dismissed on 12.05.2013 instead of 15.05.2013. It was also alleged that massive irregularities and illegalities had been committed during the election process by the PO alongwith polling staff who extended undue advantage to respondent No. 1, a PTI candidate. That the RO did not count/check the rejected votes, many votes were cast in different polling stations where either the voters had died or their votes had already been casted especially indicating that such exercise was committed in Askari-14. The appellant had further alleged that mal-practices had been committed in polling stations No. 1, 2, 4 to 12, 22, 24, 32, 38, 48, 62 & 78 wherein

results were handed over to the polling agent of the appellant on plain paper instead of Form-XIV. It was also alleged that polling papers had not been got signed by the POs. The appellant also alleged that respondent No. 1 was also disqualified to contest the election having violated Articles 62 & 63 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter to be referred as “the Constitution”) as he neither showed his assets nor disclosed his spouse as serving lady. That respondent No. 1 was also a tax evader. In the light of the above, the appellant had prayed that the election of respondent No. 1 be declared void and he be declared as duly elected MPA from PP-9 Rawalpindi-IX. The petition had duly been contested by respondent No. 1 who filed written replies. Thereafter, on framing of issues and recording of pro and contra evidence, the Tribunal dismissed the election petition of the appellant vide impugned judgment by holding that he has failed to produce any authentic and reliable evidence which could entail acceptance of the petition. Being aggrieved, the appellant has now filed the instant appeal.

3. The learned counsel for the appellant at the very outset argued that there is a very minor difference of 273 votes between the appellant and respondent No. 1 and that had occurred on account of clear interpolation of the result of polling station No. 78 wherein on the maneuvering of respondent No. 1 the PO had made interpolation on the statement of count by cutting the figure of 295 and awarding the respondent No. 1 with 413 votes, and if those are reversed the result would be in favour of the appellant and the said error had not been rectified through any counter signature by the PO as such the figure of 413 in favour of respondent No. 1 stands disputed, hence it could not have been taken into consideration. That respondent No. 1 in this regard failed to produce the PO, Mrs. Shaista Banu, in order to discharge his burden that the statement of count was

correctly prepared whereas the appellant in support of his case produced Sabir Ayaz (PW-1) and Mst. Shaban Jumshad (PW-10) and their evidence had not been rebutted by respondent No. 1. He next vehemently argued that it was an established fact that in seven polling stations counting was done in the absence of the polling agent of the appellant and in this regard an application had been moved for recount, but the same had not been done. The main stress of the learned counsel for the appellant was that respondent No. 1 stood disqualified under Sections 12 & 14 of the Representation of the People Act, 1976 (hereinafter to be referred as “the Act”) and Articles 62 & 63 of the Constitution for concealment of his assets while filing nomination papers as was required under an oath but he had failed to give complete details of his property i.e., H. No. 39/10-B-III, Usman Street, Abadi No. 2, Tench Bhata, Rawalpindi, and in this regard the Tribunal had only held that the same being inherited property does not come within the circumference of assets. While relying upon the case of *Iqbal Zafar Jhagra and others vs. Khalilur Rehman and 4 others* (2000 SCMR 250), he argued that respondent No. 1 while filing his nomination papers was required to declare the same and by not declaring the said property he stood disqualified under the above referred provisions of laws because his mother had passed away on 07.03.2012 and he inherited H. No. 39/10-B-III, Usman Street, Abadi No.2, Tench Bhata, Rawalpindi, but the said property had not been declared by respondent No.1 and in this regard adverted our attention to nomination papers wherein respondent No. 1 under solemn affirmation had filed the said papers without declaring the said ancestral property as his asset. It was also further argued that there is a verification under oath that he has made a correct declaration, but by concealing the said property the respondent No. 1 comes within the purview of Articles 62 & 63 of the Constitution, which the Tribunal has failed to appreciate as

such the instant appeal deserves acceptance and impugned judgment be set aside.

4. On the other hand, learned counsel for respondent No. 1 submitted that respondent No. 1 had filed written reply with certain preliminary objections that the election petition of the appellant is liable to be dismissed under Section 63 of the Act because the requirements of Section 55 of the Act have not been fulfilled. The appellant did not verify the contents of the petition alongwith schedule and annexures which was clear violation of Section 55 of the Act. Even the affidavit was not filed with the titled petition and the same fact was admitted by the appellant when he had filed an application under Section 62 of the Act seeking amendment in the election petition wherein para-2 he admitted that, “*at the time of filing of election petition by inadvertence, the petitioner has not signed the verification, however the counsel for the petitioner has signed the certificate underneath the verification. This act of the petitioner was a human error as to overlook to do the needful.*” It was further stated in the application that non-signing of the verification is a mere irregularity. The learned counsel further submitted that the said application had been filed with a considerable delay as such an application for condonation of delay was also filed. Even the petition had not been sworn on solemn affirmation. While relying upon the cases of *Zia-ur-Rehman vs. Syed Ahmed Hussain and others* (2014 SCMR 1015), *Inayatullah vs. Syed Khursheed Ahmed Shah and others* (2014 SCMR 1477) and *Muhammad Naseem Khan vs. Returning Officer, PP-12 and others* (2015 SCMR 1698), the learned counsel submitted that from day one the petition of the appellant was *non est*. The learned counsel secondly controverted the contention of the appellant, that respondent No. 1 had failed to disclose in his list of assets the inherited house, by asserting that the same was in the name of his

mother who died on 07.03.2012 as such at the time of filing of nomination papers the same had not been got transferred in his name and it is yet to be seen whether the said house devolves on the respondent or otherwise. He further submitted that the plea regarding the said property had not been pleaded by the appellant in his election petition as such he cannot go beyond his pleadings and in this regard he relied upon the case of *Muhammad Saeed Awan and another vs. District Returning Officer, Attock and others* (2006 SCMR 1495). While advertng to the allegation of the appellant regarding interpolation in the statement of count of polling station No. 78, the learned counsel for respondent No. 1 submitted that the same was signed by the PO and in this regard the application of the appellant was entrusted to the RO who justified the cutting on statement of count and resultantly the said application was dismissed vide order dated 12.05.2013 which had attained finality. In rebuttal, the learned counsel for the appellant adverted our attention to the affidavit of the appellant filed before the Tribunal and submitted that the same was signed by the appellant.

5. We have heard the arguments of the learned counsel for the parties and have perused the impugned judgment of the learned Tribunal as well as the material placed on record.

6. Before proceeding with the appeal in hand it would be appropriate and proper to discuss the thrust of the arguments of the respondent's learned counsel with regard to maintainability of the election petition on account of non-compliance of the mandatory provisions contained in Section 55(3) of the Act as well as Order VI Rule 15(2) CPC as to the verification of the election petition alongwith schedule and annexures. He has adverted our attention to the fact that upon filing of the election petition certain preliminary objections had been raised by the respondents that the appellant

while filing his election petition had not verified the contents of the petition alongwith schedule and annexures which was clear violation of Section 55(3) of the Act and on taking of such objection, an application had been filed by the appellant under Section 62(3) of the Act seeking amendment in the election petition wherein in para-2 it has been admitted that *at the time of filing of election petition by inadvertence, the petitioner has not signed the verification, however, the counsel for the petitioner has signed the certificate underneath the verification. This act of the petitioner was a human error as to overlook to do the needful.* It has been further asserted that the said application had been filed after considerable delay and as such an application for condonation of delay had also been filed. In the light of the above it would be appropriate to reproduce Section 55(3) of the Act which reads as under:-

**55. Contents of Petition:-**

(1).....

(2).....

(3) Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.

Since the verification as per the above provisions is to be made according to the provisions of Order VI Rule 15 CPC, the same is also reproduced for ready reference:-

**Order VI Rule 15. Verification of Pleadings** (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified on oath or solemn affirmation at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies on information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

From the perusal of the election petition it is apparent that the verification at the time of its filing had not been made by the appellant and neither the annexures alongwith schedule had been signed which had been sought to be rectified through amended application subsequently submitted by the appellant after a considerable delay and also after passing of the period of limitation. It has been observed that the above quoted provisions specifically state that verification is to be made at the time of filing of the election petition and any default in this regard would be considered to be a significant omission and fatal. Admittedly the appellant had sought amendment in the election petition after the period of limitation as such the petition, in the light of the above provisions, could not have been considered and allowed and warranted dismissal being not maintainable on this very score. Keeping in view the above provisions verification of the election petition was a mandatory requirement and that too in accordance with the provisions of Order VI Rule 15(2) of CPC specifying to numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. It is an admitted position that the appellant had initially not verified the election petition filed by him which is apparent as he subsequently filed application seeking amendment to do so and that also with an application for condonation of delay. In the light of the above whether the election petition was maintainable and the deficiency could have been allowed to be rectified and that also after the passing of the period of limitation and in circumstances non-compliance of the mandatory provisions of Section 55(3) of the Act is fatal to the maintainability of the election petition. We are benefited here from the dictums laid down by this Court in chain of judgments. In the case of Malik Umar Aslam Vs. Sumera Malik (PLD 2007 SC 362) it has been held that non-verification of pleadings on oath or



solemn affirmation before the person authorized to administer oath, such pleadings would be deemed not to be duly verified on oath, relevant part whereof is reproduced as under:-

"5. We have heard parties' counsel at length and have also taken into consideration the material so made available on record. A perusal of the scheme of the Act, 1976 relating to filing of Election Petition under Chapter VII reveals that the lawgivers, to ensure expeditious decision of election disputes, has authorized the Election Tribunal to regularize the proceedings itself, instead of following the technicalities of C.P.C. except application of some provisions specifically made applicable for limited purposes. Under section 55(3) of the Act, 1976, it has been made obligatory upon the person, who has challenged the Elections, to verify the same in the manner prescribed for verification of plaint by C.P.C. thus by reference, the provisions of Order VI, Rule 15, C.P.C. have been made applicable. As per its provision, every pleading is required to be verified on oath or solemn affirmation at the foot by the party or by one of the parties to pleadings or by some other person to the satisfaction of the Court acquainted with the facts of the case. It may not be out of context to note that the verification of the pleadings on oath was introduced by the Law Reforms Ordinance (XII of 1972) read with section 6 of the Oath Act, 1873, by adding the words "on oath or solemn affirmation" after the word verified in Rule 15(i) of Order VI, C.P.C. It is also pertinent to note that after the said importance of the same amendment in presence of verified pleadings on oath, the Court has been empowered to proceed case ex parte against the opponents and pass a decree, under Order IX, Rule 6(1), C.P.C. without calling for an affidavit in ex parte proof. We believe that there is no point to address ourselves on this question namely if verification on oath has not been made before the person authorized to administer the oath, the same would not be considered to be valid verification because for the purpose of taking oath one has to bind down himself to speak the truth otherwise he or she would be liable for the curse of Almighty Allah if the truth is not spoken. Under section 6 of the Oath Act, 1873, the procedure has been prescribed for taking the oath duly attested by an authorized person. Admittedly in instant case, verification has not made on oath before an authorized person, therefore, the appellant, on realizing the major defect in the Election Petition, submitted an application seeking amendment in the petition, to the extent of verifying it on oath, accordingly."

In the case of *Iqbal Zafar Jhagra Vs. Khalil-ur-Rehman* (2000 SCMR 250)

it has been held as under:-

"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 VI, Rule 15, CPC which when read with section 29, CPC 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 the requirement of section 36 of the Act, 1976 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 with the provisions of section 36 of the Act, 1976 and are of the view that these reasons do not suffer from any legal infirmity."

Further in the case of Ch. Muhammad Ashraf Vs. Rana Tariq Javed and others (2007 SCMR 34), this Court has held as under:-

"..... The Election Tribunal, was thus, justified in holding that no affidavit was annexed to the election petition which admittedly was not verified in accordance with law. As such refusal of the Election Tribunal to place reliance on the pronouncement of this Court in the case of Bashir Ahmed Bhanbhan and another v. Shaukat Ali Rajpur and others PLD 2004 SC 570 and relying on the pronouncement made by this Court in the cases of Engineer Zafar Iqbal Jhagra and others v. Khalil-ur-Rehman and others 2000 SMCR 250 and Sardar Zada Zafar Abbas and others v. Syed Hasan Murtaza and others PLD 2005 SC 600 (supra) that an election petition not having been filed in compliance with the provisions of section 55(3) of the Act, not accompanied by an affidavit would be liable to be dismissed under section 63 of the Act as the requirement of both the sections were held by this Court as mandatory."

In the case of Sumaira Malik (supra), following observations have been made:-

"...So far as grant of amendment in the petition or verification clause is concerned, it depends upon the nature of the amendment sought in the pleadings, on a case to case basis. In the case in hand, the appellant knowing well the mandatory provisions of section 55(3) of the Act, 1976, did not apply for amendment within the prescribed period of limitation for filing Election Petition. Undoubtedly, if during period of limitation for filing of petition such an amendment is sought, the Court may consider the request according to the settled principle relating to amendment in the pleadings but once limitation period has already expired, then it is the duty of the Court to examine whether a right,

which has been created on account of bar of limitation in favour of the opposite side can be snatched by allowing amendment in pleadings, enabling the plaintiff (petitioner) to put up a better/perfect case against the defendant (respondent). In this behalf the consistent practice of the Courts is that amendment in such matters, where limitation creates a hurdle, is not to be allowed on condoning the delay, particularly where no request has been made to enlarge the period of limitation. For the above proposition we are fortified by the judgments in the cases of *Bhagwanji vs Alembic Chemical Works* (AIR 1948 PC 100) and *Saeed Sehgal vs Khurshid Hassan* (PLD 1964 SC 598)."

Further in a well reasoned judgment of *Hina Manzoor Vs. Malik Ibrar Ahmed and others* (PLD 2015 SC 396) this Court has met with the said proposition as under:-

"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 lacuna, sought to be allowed cannot be considered to be an amendment necessary for the adjudication of the controversy/allegation 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....."

Further in the case of *Zia ur Rehman Vs. Syed Ahmed Hussain and others* (2014 SCMR 1015) this Court has in categorical terms held as under:-

" 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."

By taking benefit of the above guidelines, it has been examined that the appellant while filing his election petition had not complied with the mandatory requirements enunciated in Section 55(3) of the Act which are mandatory in nature and the same cannot be controverted in the presence of application submitted by the appellant under Section 62(3) of the Act

seeking to rectify the said lacuna as the same had also been filed after the period of limitation propounded in the Act could not have been allowed by way of amendment to cure the defect of verification after the expiry of period of limitation and according to the dictums mentioned above, it has been consistent view of this Court that such defect in the election petition could never have been allowed in the presence of the provisions enunciated in Section 55(3) of the Act, therefore, in the light of the above provisions, the election petition of the appellant merited dismissal under Section 63 of the Act. The appellant was bound according to the mandatory provisions mentioned above to verify his election petition and the same could not be cured after expiry of the limitation period. Admittedly his election petition had been filed not fulfilling the requirements of the said provisions as regard to the verification of the petition which merited outright rejection of the same by the Election Tribunal and when the same stands admitted by the appellant by seeking amendment to do so which according to him has been inadvertently left out on account of human error.

7. In view of the above discussion, the instant appeal merits dismissal, the same is therefore, dismissed.

Chief Justice.

Judge.

Judge.

ISLAMABAD.

07.12.2015.

(Farrukh)

Not Approved for Reporting.