

# ELECTION COMMISSION OF PAKISTAN

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MR. SIKANDAR SULTAN RAJA,	CHAIRMAN
MR. NISAR AHMED DURRANI,	MEMBER
MR. SHAH MUHAMMAD JATOI,	MEMBER
MR. JUSTICE (R) IKRAM ULLAH KHAN,	MEMBER

## CASE No.F.8 (1)/2024-Law-III

Subject: APPLICATION UNDER 151 OF THE ELECTIONS ACT, 2017 READ WITH ARTICLE 219 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 ALONG WITH ALL OTHER ENABLING PROVISIONS OF LAW, FOR TRANSFER OF ELECTION PETITION NO 74/2024.TITLED AS AAMER MASOOD VS ANJUM AQEEL KHAN AND OTHERS FROM THE WORTHY ELECTION TRIBUNAL ICT ISLAMABAD TO ANY OTHER ELECTION TRIBUNAL.

Anjum Aqeel Khan

.....Petitioner(s)

### VERSUS

Amer Masood

.....Respondent(s)

For the Petitioner : Waqas Ahmed Mir, ASC, Hammad Hussain, AHC  
 For the Respondent : Qari Wajid, clerk of Mr. Faisal Fareed, ASC  
 Date of hearing : 24-10-2024

### ORDER

**Sikandar Sultan Raja, Chairman-** The petitioner namely Mr. Anjum Aqeel Khan preferred an application before the Election Commission of Pakistan in term of Section 151 of the Election Act, 2017 (herein after referred as 'the Act, 2017) for transfer of Election Petition No. 74/2024 titled as Aamer Masood and others Vs. Anjum Aqeel Khan which is still pending before the Election Tribunal, Islamabad.

02. This is the second round of litigation, as the Commission had earlier decided the above mentioned Transfer application vide its earlier order dated 10.06.2024 in which the Election Petition was transferred by allowing the application of the petitioner to another Election Tribunal. Subsequently respondent Mr. Aamer Masood challenged the order of the Commission dated 10.06.2024 before the Islamabad High Court, Islamabad through a writ petition No. 1981/2024 titled as Aamer Masood Vs. ECP which was allowed by the Islamabad High Court vide order dated 19.09.2024 and remanded the matter to the Commission with the following observations which are reproduce as under:



*"Having said that, the important aspect of the matter is that ECP seems to have proceeded with the transfer application in haste without providing opportunity of filing affidavits and counter-affidavits/ replies to the allegation of 'bias' or misapplication of law. Proper opportunity should have been granted to the petitioners; failure on part of ECP to grant such opportunity to present the case, apparently is in violation of Article 10-A of the Constitution. It is settled that ECP is not a 'judicial forum'; it is not even purely executive, as noted, it is a constitutional body, which has some quasi-judicial powers to perform while deciding certain issues. The power of transfer is supervisory and administrative in nature and has to be exercised after providing opportunity to everyone concerned. There is nothing on record to show that the same was done and in one of the writ petitions (W.P. No.1981-2024), while allowing the transfer application, even merits were touched and finding on the same was rendered, which is surely not the mandate of ECP. In such view of the matter, it is only appropriate that ECP revisits the matter because it does have the authority and mandate to decide transfer application under section 151 and also can transfer petitions suomoto but has to give reasons for the same. However, where the application has been filed for transfer, naturally all parties are to be heard, which in the instant case, was not done as such, in a proper manner, hence the impugned orders are not sustainable and merit setting aside.*

*31. For what has been stated above, W.P. No. 1977-2024, W.P.No.1981-2024 & W.P. No.1984-2024, are allowed and transfer orders dated 10.06.2024 passed by ECP are set aside; consequently, transfer applications filed by private respondents, shall be deemed to be pending and decided in accordance with law and observations made hereinabove. W.P No.1796-2024, W.P. No.1797-2024 & W.P. No.1798-2024, challenging vires of section 151 ibid, are dismissed for the reasons stated above.*

03. On receipt of the order dated 19.09.2024 of the Islamabad High Court, notices were issued to the parties for appearance. The applicant filed an amended application/ supplemental submissions through a miscellaneous application, on the other hand respondent also filed a written reply on the application of petitioner on dated 24.10.2024. Original record of E.P No. 74/2024 was called from the Election Tribunal by the Commission for perusal on 24.10.2024. After hearing argument from the parties in detail the Transfer Application was reserved for order.



**FACTS IN BRIEF**

04. The petitioner namely Mr. Aamer Masood herein after called as respondent here challenged the Election of the National Assembly of Pakistan (NA-46-ICT-I) before the Election Tribunal, Islamabad. Applicant was declared as returned candidate by the ECP on 11.02.2024 and Notification was issued in this respect. The Tribunal after taking cognizance of the case, issued notices to all the respondents. Initially Election Commission of Pakistan (ECP) was not party in the petition and subsequently on 30.05.2024 ECP was impleaded as party. The Commission and the Returning Officer was asked to provide original record of Form-45 & Form-46 without framing of issues.

05. The applicant being dissatisfied from the conduct of proceedings of Election Tribunal invoked the jurisdiction of Commission under section 151 of the Election Act, 2017 by filing the above mentioned application.

06. The Learned Counsel for the applicant contended that the Presiding Officer of the Election Tribunal is not conducting the trial of the Election Petition in accordance with the applicable provision of law and rules. The Learned Counsel for the applicant raised numerous grounds for transfer of Election Petition before the Commission gist of which is follows: -

- Sd/-*
- i. *That the petition was not presented before the Election Tribunal rather it was dealt by the Registrar Islamabad High Court, Islamabad;*
  - ii. *That although the election petition was not signed by the election petitioner which is incurable legal defect even then the Registrar returned the election petition in order to remove the legal defects occasioned therein having no such jurisdiction;*
  - iii. *That the entire proceedings of the Election Tribunal were carried out in the absence of the applicant and requisitioning of original record by the Election Tribunal at the first date of hearing before commencement of stage of evidence, is against the procedure laid down under the Elections Act, 2017;*
  - iv. *That the respondent did not file the subject election petition within prescribed period of 45 days before the Election Tribunal;*
  - v. *That Section 142 of the Act, 2017 provides the mechanism for presentation of election petition and the same is not processed by the Tribunal in accordance with law;*
  - vi. *That the Election Petition has been admitted for regular hearing without adopting the procedure laid down under Section 143 of the Act, 2017;*



- vii. *That a hopelessly time barred, non-maintainable and incompetent petition has been put to trial, without compliance thereto Rule 140 of the Rules, 2017 and provisions of Sections 145 of the Act, 2017;*
- viii. *That no party shall be impleaded in the panel of respondents thereafter lapse of the statutory period of 45 days provided there under Section 142 of the Elections Act, 2017;*
- ix. *That the conduct of trial, in the mode and manner as adopted by the Tribunal, has created a sense of partiality, biasness in mind of applicant towards the Tribunal and as such has lost his confidence in the Tribunal therefore, justice demands that applicant be afforded opportunity to be treated in accordance with law to safeguard his fundamental rights. Therefore, the election petition pending adjudication before the Tribunal, Islamabad may be transferred to any other election tribunal.*
- x. *That the procedure of trial, admission of an election petition, adducing of evidence in an election trial, is special procedure, which shall be strictly followed, but the Tribunal keeping in view the un-necessary summarily procedure adopted therein, seems to be disposing of the petition by passing the fundamental rights, enshrined in Article 4 and 10-A of the Constitution (herein after referred as "the Constitution") vested in applicant;*
- xi. *That the Election Tribunal could not direct the Election Commission for production of record as the Returning Officer is the custodian of the record;*
- xii. *That section 151 of the Election Act, 2017 is intra vires the constitution hence statutory power of Election Commission to transfer cases has been upheld. The Commission has been mandate to decide the transfer applications. There is not specified list of grounds for which a transfer can be sought are granted. The only requirement is that this Commission will record its reason. Even Section 151 of the Election Act, 2017 places not restriction on the power of the Commission to transfer an Election petition from one election tribunal to another. The role of the Commission is to supervisory and administrative in nature.*
- xiii. *Once an election Petition is filed, the law provides clear steps which cannot be ignored. If the statutory provision is ignored procedure as well as substantive term are altered, loss of confidence/ trust creates in the mind of applicant. Following orders of the learned Election tribunals which creates loss of confidence are given below: -*
- a. **02.05.2024:** *The Election Tribunal admitted the election petition without first demining the question of limitation and inter alia, directed the respondents to submit written statement alongwith he original Form-45 and 46.*
- b. **20.05.2024:** *The Election Tribunal issued a warning to the Returning Officer, stating that arrest warrants would be issued if he failed to appear at the next hearing.*



c. **29.05.2024:** *The Election Tribunal imposed a cost of PKR 15,000/- on the Returning Officer for his non-appearance at the pervious hearing. The Returned Candidate was again directed to submit the original Form 45 and 46.*

d. **30.05.2024:** *The Election Tribunal overruled the office objection and observed that it would be addressed at the time or arguments. The Election Commission of Pakistan objected that a complete copy of the Election Petition has not been served. The Election Tribunal, instead of dismissing the Election Petition summarily under section 145, rectified the issue; and*

e. **17.07.2024:** *The Election Tribunal imposed a cost of PKR 20,000/- on the Returned Candidate*

xiv. *He Further submitted that by way of clarification and with the greatest respect for ECP and its tribunals that the primary motivation behind moving an application for transfer was never to attack the integrity of a presiding officer. If any such impression has been created the applicant is distancing himself from the same. The applicant regrets the language and regrettable words used in his application about the presiding officer's personal predisposition. The central arguments here are not to impugn the character of a judicial officer but to lay before this Commission the genuine loss of faith and confidence in the administration of justice and fair proceedings/ fair trial. Applicant is not pressing actual bias as he primary ground for the transfer of the relevant election petition.*

xv. *Even ECP has a soumoto power to transfer an Election Petition to one Tribunal to another if prima facie there is a violation of Election Act.*

xvi. *That applicant has granted fundamental right Under Article 4, 10-A to dealt with accordance with law and fair opportunity be granted.*

07. He further submitted that the applicant had clearly raised objection regarding the maintainability of the Election Petition which is time barred. That there is no bar for Transfer of Election Petition to another Tribunal. Lastly he prayed that the instant application may kindly be allowed and E.P No. 77 of 2024 titled as Mr. Aamer Masood Vs. Anjum Aqeel Khan may graciously be transferred from the Election Tribunal, Islamabad to any other Election Tribunal for its disposal. The learned Counsel pointed out that the Election Petition is not proceedable, yet the learned Presiding Officer continues the hearing without advertng to the preliminary issues.

08. In this respect the learned counsel placed reliance on the following case laws:-

**TRANSFER OF CASES/ LOSS OF CONFIDENCE AND TRUST.**



- i. PLD 1973 SC 327
- ii. PLD 2001 SC 568
- iii. PLD 1995 Lahore 89
- iv. 2012 MLD 501
- v. 2005 YLR 2496
- vi. PLD 1996 Lahore 199.
- vii. PLD 1996 Lahore 238
- viii. 2014 (11) ADJ 414
- ix. AIR 1990 SC 113
- x. AIR 2008 SC 1333

**VERIFICATION OF ELECTION PETITION**

- i. 2015 SCMR 1585

**POWER OF A QUASI-JUDICIAL BODY**

- i. 2023 SCMR 603
- ii. 2022 SCMR 25
- iii. 2010 SCMR 1933
- iv. (2007) 3MLJ982) Indian Judgment.
- v. 1987 MLD 1372

**PRESENTATION OF PLAINT**

- i. 2000 SCMR 847

**AMENDMENT OF PETITION**

- i. PLD 1995 Lahore 95

**JUSTICE HURRIED IS JUSTICE BURRIED**

- i. 1993 SCMR 550
- ii. 2015 PCr.LJ 869 Sindh
- iii. 2015 YLR 1279

**SECTION 151, ELECTION ACT, 2017**

- i. Syed Muhammad Ali Bokhari Vs. FOP, Writ Petition No 1796/2024
- ii. PLD 2015 Sindh 408

**LIMITATION**

- i. PLD 2014 Supreme Court 585
- ii. PLD 2024 Supreme Court 736
- iii. PLD 2019 Balochistan 68
- iv. 1997 SCMR 1224

09. On the other hand learned counsel for the respondent submitted written reply and raised preliminary as well as factual objections in it. It is mentioned here that sufficient opportunities for submission of written reply or oral arguments were given to the respondent i.e. 04.10.2024, 09.10.2024, 17.10.2024, 18.10.2024 and 24.10.2024 but



he did not advance his arguments nor submitted written reply till the time matter has been reserved by the Commission. However, in the interest of justice three days time was granted to the Respondent counsel for submission of reply and written arguments. Written reply was submitted by the counsel for the Respondent on 24.10.2024, however, he did not file written arguments within given stipulated time. The counsel for the Respondent raised certain objections in his reply. The gist of the objections raised by him is given below:-

- i. *That there is no reason for transfer of election petition from one election tribunal to another. The point raised by the Applicant are fictitious incorrect legally not maintainable.*
- ii. *Loss of Confidence/ trust is no ground for transfer of Election Petition.*
- iii. *That the Election Commission has no jurisdiction to transfer the election petition to any other Tribunal in the province.*
- iv. *That all the points raised by the applicant herein are the arguments to be taken at the appellate stage. The Commission is neither an appellate forum nor a revisional authority in this respect;*
- v. *That respondent has presented his petition before a legally appointed Tribunal, thereafter, fulfilling all the pre-requisite legal requirements within the period prescribed by law;*
- vi. *That all questions raised herein, by the learned counsel for applicant are curable as the trial in the election petition is still under process and applicant is at liberty to agitate all such objections before the Tribunal by filing an application of the kind;*
- vii. *That all the objections raised by the applicant before the Commission were not raised before the Election Tribunal;*
- viii. *That in the case reported in 2018 CLC 1040 the powers of the Commission have been discussed which are limited to some extent;*
- ix. *That the Commission cannot order upon the legal and technical defects of the election petition as the scope of Section 151 of the Act, 2017 is limited;*
- x. *That applicant has not come to this Commission with clean hands but has approached the Commission to malign a judge and delay the trial of petition, therefore, prayed for dismissal of the application with imposition of heavy cost;*
- xi. *That no other Tribunal exists in Islamabad and the Commission vide notification dated 17.02.2024 has conferred the jurisdiction of the Tribunal to the existing Election Tribunal at Islamabad;*



- xii. *That the applicant is himself delaying the proceedings before the Election Tribunal and failed to file written statement as well as other documents as directed by the Election Tribunal;*
- xiii. *That it is settled principle of law, that mere apprehensions or perceptions of biasness are not enough to hold that a judge is biased, however such a perception required tangible evidence;*
- xiv. *That procedural unintentional flaws during the course of a trial, could not be termed and equated with substance of biasness or the partiality towards a legally constituted forum;*
- xv. *That it is further submitted that the permission to file amended application has been allowed without issuing notices to the answering respondents. Hence it cannot be termed as fair and impartial hearing. The answering respondent's right of fair trial has been miserably by this Commission and due process has also been denied to the respondent.*

10. The counsel for the Respondent also moved an application for re-hearing of the case on 26.10.2024 with diary No. 2178 with following prayer:-

*"That in the light of aforementioned submission's it is respectfully requested to fix a date for open hearing in the larger interest of justice in accordance with Article 10-A and Section 4 of the Elections Act, 2017."*

11. Before we embark upon the merits of the application, we have gone through the application of the Respondent but did not **find** any new ground to decide the application for transfer of Election Petition. All the grounds have been taken by the Respondent in his written reply which has been thoroughly examined. It is also mentioned in para-09 that sufficient opportunities have been given to the Respondent to argue that matter and even time for three days were granted to submit written reply after the matter has been reserved by the Commission. Therefore, the application for re-hearing is dismissed being devoid of merits, reasons and filed just to further delay the proceedings.

12. We have given due consideration to the arguments advanced by the learned counsel for the Petitioner and written reply submitted by the counsel for the respondent and have also gone through the available record.

13. Article 4 and 10-A of Constitution of Pakistan are reproduced as under-

**"4. Right of individuals to be dealt with in accordance with law, etc. (1) \_ To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.**





**10-A. Right to fair trial:** For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”

14. Sections 4, 145 to 151 of the Elections Act, 2017 and Rule 140 of the Election Rules, 2017 are reproduced as under-

**4. Power to issue directions.—(1)** The Commission shall have the power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order for doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.

**(2)** Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.

**(3)** Anything required to be done for carrying out the purposes of this Act, for which no provision or no sufficient provision exists, shall be done by such authority and in such manner as the Commission may direct.

**145. Procedure before the Election Tribunal. — (1)** If any provision of section 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition.

**(2)** If an election petition is not rejected under sub-section (1), the Election Tribunal shall issue notice to each of the respondents through—

**(a)** registered post acknowledgement due;

**(b)** courier service or urgent mail service; 1 Substituted vide Elections (Second Amendment) Act, 2023, dated 5th August, 2023. 83

**(c)** any electronic mode of communication, which may include radio, television, email and short message service (sms);

**(d)** affixing a copy of the notice at some conspicuous part of the house, if any, in which the respondent is known to have last resided or at a place where the respondent is known to have last carried on business or personally worked for gain;

**(e)** publication in two widely circulated daily newspapers at the cost of the petitioner; and

**(f)** any other manner or mode as the Tribunal may deem fit.

**151. Power to transfer petition.—**The Commission may at any stage, on its own motion or on an application of a party and for reasons to be recorded, transfer an election petition from one Election Tribunal to another Election Tribunal and the Election Tribunal to which the election petition is transferred—

**(a)** shall proceed with the trial of the election petition from the stage from which it is transferred; and

**(b)** may, if it deems fit, recall and examine any witness who has already been examined

**Rule 140. 1 Processing the Petition.—**Every petition shall be processed by the office of the Tribunal and in case the petition is not in accordance with the provisions of sections 142, 143 or 144, it



sd/c

*shall be laid before the Tribunal for orders under sub-section (1) of section 145.*

15. Election Commission of Pakistan is a Constitutional body constituted under Article 218(2) of the Constitution of 1973. The Commission is charged with the duty to organize and conduct the elections and to make such arrangements that elections are conducted honestly, justly, fairly and in accordance with law. Similarly, Article 219 of the Constitution read with Section 140 of the Elections Act, 2017 empowers the Commission to appoint the Election Tribunals for trial and disposal of election petitions arising out of elections between the parties. After the conduct of General Elections 2024, the Commission started the process of appointment of Election Tribunals as provided under Section 140 of the Elections Act, 2017 in consultation with the Chief Justice of the concerned High Courts. Mr. Justice Tariq Mehmood Jahangiri was appointed as Election Tribunal for trial and disposal of Election Petitions of the Constituencies of Islamabad Capital Territory (ICT). Transfer application in the subject matter was received on 03.06.2024 by the Commission for transfer of the Election Petition from the appointed Election Tribunal ICT to another Election Tribunal on various grounds. The said transfer application was decided by the Commission vide order dated 10.06.2024 which was challenged by the present Respondent before the Islamabad High Court. The Islamabad High Court decided the matter on 19<sup>th</sup> September, 2024 and remanded the case to the Commission to decide afresh after providing opportunity of hearing.

16. The Commission has given ample opportunities to the Respondent to engage his counsel, submission of reply and arguments but on each and every date of hearing matter has been lingered-on on one or the other, however, in the interest of justice time was granted for submission of written reply and written arguments.

17. Section 140 of the Elections Act, 2017 empowers the Commission to appoint as many as Election Tribunals as may be necessary for the swift disposal of Election Petitions. Before the promulgation of Ordinance No. 5/2024 sitting judge of the High Court was to be appointed as a judge of Election Tribunal in consultation with the Chief Justice of the concerned High Court, however, amendment in Section 140 of the Elections Act, 2017 was made through Election Amendment Ordinance 2024 whereby, the word "is" or "has been" was inserted in clause (a) and clause (b). It was also clarified through substitution in clause (3) of Section 140 of the Act *ibid* that the Commission shall consult with the Chief Justice of the High Court concerned in case of appointment of sitting judges as Election Tribunal. Later-on, this Ordinance was laid before the Parliament and it became an Act of Parliament and called as Election Amendment Act 2024, published in the official gazette on 08.07.2024.



18. Similarly, Section 151 of the Act gives powers to the Commission to transfer an Election Petition at any stage of the proceedings before the Election Tribunal on its own motion or by an application of a party to any other Election Tribunal. This Section did not confine the limit of the power of the Commission only to the extent of administrative grounds nor has given specific grounds for transfer of an Election Petition. The only requirement to transfer an Election Petition by the Commission is recording of detailed reasons. The Commission can also exercise this power by its own motion to provide right of fair trial and justice to a party. The objections raised by the Respondent in his reply regarding jurisdiction of the Commission to transfer an Election Petition to any other Election Tribunal including to the other province is not maintainable. There is no bar in the Elections Act, 2017 and specifically in Section 151 of the Elections Act, 2017 to transfer an Election Petition to any other Tribunal including any other province. We have precedence whereby the Election Petitions have been transferred by the Commission to any other province for provision of complete justice to the parties. Furthermore, after the enactment of Election Amendment Act 2024 the Commission has the exclusive powers to constitute Election Tribunals comprising of retired judges of the High Courts for trial and disposal of Election Petitions.

19. Article 10-A of the Constitution provides that any person is entitled for equal opportunities, fair trial and due process in the process of litigation. The Elections Act, 2017 is enacted by the Parliament and there are certain requirements to do certain acts in specific manner. It is a settled principle of law that all the legal defects apparent on the face of the record shall be decided initially before further proceedings. The Election Petition has to be presented before the Election Tribunal in a specific manner provided under Section 140 to 144 of the Elections Act, 2017. It is also categorically provided that if an Election Petition is suffering from any legal defect/ deficiency and mandatory requirement of law, such petition shall be summarily rejected in term of Section 145 of the Elections Act, 2017. Similarly, Rule 140 of the Election Rules, 2017 also bounds the Tribunal to summarily reject the Election Petitions presented before it if the basic requirement of Section 142 to 144 of the Elections Act, 2017 are not fulfilled. No relaxation can be given by the Tribunal or by the Registrar High Court to cure the defects in the Election Petition presented by the parties. It is also observed that the Tribunal in the instant matter has not followed the due process of law and by ignoring the basic requirements provided under Section 142 to 144 of the Elections Act, 2017 and without framing of issues, issued notices to the parties and summoned the original record from the R.O and the Election Commission of Pakistan. The Tribunal cannot cure the defect in the Election Petition.



20. The Respondent also objected that the Commission cannot allow the Petitioner to amend his application without issuing of notices to the parties. In this regard it is mentioned here that notices were issued to both the parties after announcement of order by the Islamabad High Court, however, due to non-serious attitude of the Respondent by using delaying tactics has lingered on the Election Petition. Additionally, Section 3 of the Elections Act, 2017 provides that the Commission shall regulate its own procedure for decision of pending matter before it. No specific procedure has been provided under Section 151 of the Elections Act, 2017 to deal with the Applications for transfer of an Election Petition. It is also clarified by the Counsel for the Applicant that he has submitted the additional/ supplementary submissions and not the amended application it is not the type of amendment that can change the nature of the Petition only additional submissions are given which according to counsel for the applicant may be ignored. Furthermore, the Respondent has been given full opportunity to file reply/ amended reply in response to the additional submissions submitted by the counsel for the Applicant.

21. The Islamabad High Court while deciding the writ petition filed by the Respondent Election Petition has also acknowledged the powers of the Commission to transfer an Election Petition from one Tribunal to another and has further held that Section 151 of the Elections Act, 2017 is not in violation of the Constitution. The only ground for setting aside the order of the Commission dated 10.06.2024 was that "the Commission has proceeded with the transfer application in haste without providing opportunity of filing affidavits and counter affidavits/ replies to the allegation of biased or mis-application of law." Proper opportunity should have been granted to the Petitioners. The court has also observed that "power of transfer is supervisory and administrative in nature and has to be exercised after providing an opportunity to every concerned person". No other ground has been mentioned by the High Court for setting aside the order of the Commission. In the present case which is the second round of litigation, the Commission has provided ample opportunity to the parties to defend their stance by filing additional grounds, written replies, amended replies and extensive arguments. It is also highlighted that the previous order of the Commission was not based on the ground of biasness of the Hon'ble Presiding Officer of the Election Tribunal. Admittedly, there are certain points whereby the law has not been followed which has caused loss of confidence and fear of loss to the Applicant in the present case. The Commission is bound to ensure provision of fair trial as provided under Article 10-A of the Constitution to the parties in the petition, while exercising power under Section 151 of the Elections Act, 2017.



22. The apex courts in various judgments have held that the procedure and mandatory provision of law for filing of Election Petitions are necessary to be followed in letter and spirit, in case these provisions are not followed, the petition requires to be dismissed summarily. Some of the important judgments are reproduced below:-

#### 2015 SCMR 1585

10. Admittedly both the election petitions filed by the respondents in the aforementioned appeals were not verified on oath in the manner prescribed under the afore-quoted provision. If the law requires a particular thing to be done in a particular manner it has to be done accordingly, otherwise it would not be in compliance with the legislative intent. Non-compliance of this provision carries a penal consequence in terms of section 63 of the Representation of the People Act whereas no penal provision is prescribed for non-compliance with Order VI, Rule 15 of the Civil Procedure Code.

#### PLD 2019 Balochistan 68

11. The provisions of Section 145 of the Act has made it clear that if any provision of Sections 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition. Admittedly, the petition in hand is hit by the above referred provisions of law. Neither the petitioner could explain the reasons for filing a time barred petition nor he was in a position to explain the reasons for non-verification of petition along with its annexures on oath and have also could not satisfy this Tribunal for not dispatching the copies of petition and its annexures to the contesting respondents. The legal defects are apparent on the face of record, thus further trial in the matter would be nothing, but a futile exercise and wastage of precious time of this Tribunal. According to consistent view of the Hon'ble Supreme Court and has also held in the above referred case of Zia ur Rehman, that if the law requires a particular thing to be done in a particular manner it has to be done accordingly, otherwise it would not be in compliance with the legislative intent.

#### 2016 SCMR 1312

---S. 52---Election petition---Objection with regard to maintainability of an election petition for non-compliance of a mandatory provision--- Election Tribunal should decide such an objection first because if such objection sustained then the Tribunal was left with no option but to dismiss the election petition.

#### PLD 2005 SC 600

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.*

*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), 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.*

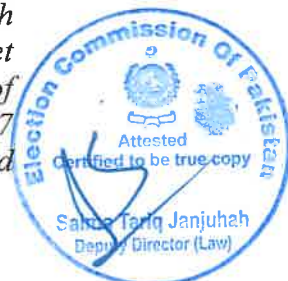
*11. For what has been discussed above, this appeal is allowed, impugned judgment dated 18.07.2014 passed by the Election Tribunal is set aside and the election petition filed by the Respondent No.1 is hereby dismissed under section 63 of the ROPA, 1976 as not being in conformity with the mandatory provisions of section 55 of the ROPA, 1976.*

#### 2014 SCMR 1015

*7. When the law prescribes a certain format of an Election Petition and its verification on oath and entails a penal consequence of its non-compliance, it is a mandatory provision. If an objection is raised with regard to maintainability of such a petition for non-compliance of a mandatory provision, the Court/Tribunal should decide that preliminary objection. Because if that objection is sustained then the Court is left with no option but to dismiss the petition. In view of this legislative intent, we are minded to decide the appeals primarily on issue No.1.*

#### 2019 MLD 294

*---Validity---Object of requiring verification of election petition was to fix the responsibility for the averments and allegations in the petition on the person signing verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts---Verification of contents of the election petition was required to be made on oath to be administered by the Oath Commissioner, who was bound to record and to endorse verification/attestation, that oath had been actually, physically and duly administered to petitioner---Perusal of the rubber stamp of the Oath Commissioner, in the present case, made it clear that the petitioner was not present at the time of verification before the Oath Commissioner because he was not identified with reference to his computerized national identity card and was not clear from the stamp as to at what place, the oath was practically and physically administered---Words "declared on oath before me" used in the stamp of Oath Commissioner were not sufficient being ambiguous as they did not indicate as to what was declared on oath or whether the contents of the verification were made on oath before the Oath Commissioner and said statement being patently ambiguous did not meet with the criterion for due attestation of verification---Non-verification of the election petition in accordance with S.144(4) of Elections Act, 2017 was fatal and such defect after the expiry of limitation could not be allowed*



to be rectified.---Election petition was rejected under S.145 of the Elections Act, 2017, accordingly.

**PLD 2023 Lahore 458.**

---Rejection of petition---Scope---Chapter IX of the Elections Act, 2017, lays down a procedure for the settlement of election disputes---In terms of S. 139, no election shall be called in question except by an election petition filed by a candidate for that election---For the trial of election petitions under the Elections Act, 2017, the Election Commission of Pakistan appoints as many Election Tribunals as may be necessary for swift disposal of election petitions---Election petition is to be presented in a manner provided under S. 142, and S. 144 lays down necessary pre-conditions for the election petition---Subsection (4) of S. 144 ordains that an election petition and its annexures shall be signed by the petitioner and the petition shall be verified in the manner laid down in the Civil Procedure Code for the verification of pleadings---Section 145 prescribes a procedure before the Election Tribunal---Subsection (1) of S. 145 contemplates if any provision of S. 142, 143 or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition---Once the Election Tribunal reaches the conclusion that petition is not proceedable it cannot wait till the culmination of the proceedings through regular trial---Mandate of law is to nip the evil in the bud---Civil Procedure Code also bestows power upon the Civil Court to reject the plaint summarily in terms of O. VII, R. 11, if it suffers with the flaws mentioned in the said provision---Election Tribunal, thus, can proceed on the same parimateria and reject the election petition at any stage---Tribunal is even vested with the power to adopt any other procedure for the expeditious disposal depending upon the circumstances of the case---Provisions of the Elections Act, 2017, are unequivocal and clear to this extent that a petitioner while presenting the election petition is obliged to adhere the mandate of Ss. 142, 143 & 144 of the Elections Act, 2017---Non-compliance of any of the said provisions renders automatic rejection of the election petition.

**PLD 2007 SC 362**

----Ss. 63, 52(2), 54 & 55(3)---Civil Procedure Code (V of 1908), S.139, O.VI, Rr.15(1)(a) & 17---Oaths Act (X of 1873), S.6--Non-verification of election petition and its annexures on oath or solemn affirmation before person authorized to administer oath--Effect---Application seeking amendment to remove such defect in verification---Validity and scope---Ignorance of law would be no excuse---Such petition would be deemed not duly verified' on oath---While approaching Election Tribunal, petitioner would be bound to fulfil requirement of law including verification of petition in terms of S.55(3) of Representation of the People Act, 1976---Provision of S.55(3) of the Act for having prescribed a penalty of dismissal of petition for its non-compliance had become mandatory---Such defect in verification, whether pointed out by respondent or not, Tribunal would be bound to ensure compliance of such mandatory provisions---Where such amendment was sought during period of limitation prescribed for filing of election petition, then Election Tribunal could consider same according to settled principle relating to amendment in pleadings---Where such limitation period for its expiry had created a hurdle, then such amendment would not be allowed on condoning delay, particularly in absence of request to enlarge such period---Such amendment could not be regarded as an amendment essential to determine on merits real issues between parties--Principles.



23. The Sindh High Court in a case reported in PLD 2015 Sindh 408 have held that the powers to transfer an Election Petition from one Tribunal to the another Election Tribunal is vested with the Election Commission of Pakistan and this power is administrative and supervisory in nature. The Election Commission of Pakistan is the appointing authority of the Election Tribunal and the power to appoint the Tribunal is granted by the Constitution of Islamic republic of Pakistan in terms of Article 219. The Commission has the exclusive jurisdiction to decide the application for transfer of an Election Petition.

24. The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum shall not result in denial of justice and fundamental right. The Parliament has therefore, invested this Commission with the discretion to transfer the case from one Tribunal to another Tribunal in terms of the Section 151 of the Elections Act, 2017; if that is considered expedient to meet the ends of justice.

25. The High Court of Allahabad while deciding the transfer application No. 519/2014 in case titled Amit Agrawal Vs. Atul Gupta has held that

*“The paramount consideration must be to see that justice according to the law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner’s plea for the transfer of the case must be tested on this touchstone. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made.”*

26. In another case the Supreme Court of India in Civil appeal No. 338/2008 (Arising out of SLP (C) No. 21147/2006) in case titled Kulwinder Kaur Vs. Kandi Friends Education Trust and Ors. Has held that right to fair trial is the paramount consideration and it is the duty of the court to provide justice to the parties in the trial.

*“14. Although the direct discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience other point involved in the suit; issues raised by the parties; reasonable apprehension in the mind of litigant that he might not*





*get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; 'interest of justice' demanding for transfer of suit, appeal on other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceedings. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a 'fair trial' in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."*

27. The Commission without going into the merits of the case nor dilating upon the integrity and repute of the Hon'ble Presiding Judge of the Election Tribunal, holds that transfer of an Election Petition from one tribunal to another tribunal can be granted where it is in the interest of justice. The applicant intends to seek a fair trial in the Election Petition pending adjudication before the Election Tribunal which can only be possible if he has confidence in the Tribunal. The proprietary demands that for the smooth and swift trial of the Election Petition and to ensure the fair trial in all respects within reasonable time fair opportunity may be provided to the parties to defend their case.

28. Aiming at enforcement of Article 10-A of the Constitution, the august Supreme Court of Pakistan in case titled Federation of Pakistan through Secretary Finance Islamabad & another Vs. E-Movers (Pvt.) Limited and another reported in 2022 SCMR 1021 has held that:-

*"The due process requirement must be met in the determination of rights and obligations. The Constitution does not define due process. Therefore, it would not be appropriate to limit its scope by defining it. But this does not mean that the due process requirement is a meaningless concept. Rather due process incorporates universally accepted standards of justice and is not dependent upon any law or laws. It is an all-encompassing expression which may not be curtailed with reference to particular laws. Due process is to be understood holistically by keeping in mind the entire Constitution, which excludes arbitrary power, authoritarianism and autocratic rule.*

*Petitioner will suffer an irreparable loss and injury, but said act of Respondent/Pakistan Railways will be in utter disregard to constitutional intent to protect fundamental rights of citizen."*

29. Similarly, The High Court of Lahore in case titled Nadeem Sultan and another Vs. Hamza Shaneem and 2 others reported in PLD 2023 Lahore 334 also discussed the importance of right to fair trial in following terms:-

*"---Art. 10-A---Right to fair trial---Scope---Concept of due process rests in the idea that the legal proceedings be carried out in accordance*



*with the established rules, express statutory provisions and settled principles for deciding the rights of litigants. [p. 343] M*

*12. With the insertion of Article 10-A in the Constitution of Islamic Republic of Pakistan, 1973 through Eighteenth Amendment, the fair trial and due process is the entitlement of every person. The concept of due process rests in the idea that the legal proceedings be carried out in accordance with the established rules, express statutory provisions and settled principles for deciding the rights of litigants."*

30. In view of the above mentioned reasons and in exercise of powers conferred upon the Commission in terms of Article 218(3), Article 10-A of the Constitution read with Section 3, 4 & 151 of the Elections Act, 2017, the transfer application is accepted and the election petition No. 74/2024 is hereby transferred to the Election Tribunal for Rawalpindi Division comprising of Mr. Justice (R) Abdul Shakoor Paracha and he is conferred the jurisdiction of Islamabad Capital Territory for trial and disposal of Election Petitions. The previous notification of Election Tribunal comprising of Justice Tariq Mehmood Jahangiri for Islamabad Capital Territory is hereby withdrawn.

31. Office is directed to take follow up action accordingly.

*Self*

**SIKANDAR SULTAN RAJA**  
Chairman

*Self*      *Self*

**NISAR AHMED DURRANI**      **SHAH MUHAMMAD JATOI**  
Member      Member

*Self*

**JUSTICE (R) IKRAMULLAH KHAN**  
Member

