

ELECTION COMMISSION OF PAKISTAN

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(3)/2024-Law-III

Subject: APPLICATION FOR TRANSFER OF ELECTION PETITION U/S 151 OF ELECTION ACT, 2017.

Raja Khurram Shehzad Nawaz,

.....Petitioner(s)

VERSUS

Syed Muhammad Ali Bukhari

.....Respondent(s)

For the Petitioner	:	Waqas Mir, ASC
For the Respondent	:	Syed Ishfaq Hussain, ASC, Muhammad Ali Haider, Adv & Sawaid Ul Hassan, Adv

Date of hearing : 24-10-2024

ORDER

Sikandar Sultan Raja, Chairman- The Commission is going to decide the above mentioned application preferred by the petitioner, Raja Khurram Shehzad Nawaz, whereby, he has invoked the jurisdiction of the Commission under Section 151 of Election Act, 2017 (herein after referred as "the Act") for transfer of election petition No. 72 of 2024 titled as Muhammad Ali Bukhari Vs. Election Commission of Pakistan pending before the learned Election Tribunal (herein after referred as "the Tribunal") at Islamabad.

02. This is the second round of litigation as the Commission had earlier decided the above mentioned Transfer application vide order dated 10.06.2024 whereby the Election Petition was transferred by allowing the application to another Election Tribunal. Subsequently, respondent Syed Muhammad Ali Bukhari challenged the order of Commission dated 10.06.2024 before the Islamabad High Court through a Writ Petition No. 1984 of 2024 titled Syed Muhammad Ali Bukhari Vs. ECP etc. The Islamabad High Court passed the order dated 19.09.2024 in following terms,

"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 of the Islamabad High Court, notices were issued to the parties for appearance. The applicant filed amended application/ Supplemental submissions; on the other hand respondent also filed a written reply. Original record of the E.P No. 72 of 2024 was called from the Election Tribunal by the Commission for perusal. After hearing argument from the parties in detail the Transfer Application was reserved for order.

FACTS IN BRIEF

04. The petitioner Syed Muhammad Ali Bukhari respondent has challenged the Election to the National Assembly of Pakistan (NA-48 ICT-III) before the learned Election Tribunal Islamabad. During the pendency of the Election Petition, the applicant has (returned candidate) approached this commission by filing the instant application for transfer of the election petition under section 151 of the Elections, Act 2017 (here-in-after referred as "The Act 2017").

05. The Learned Counsel appeared on behalf of the applicant and contended that the proceedings in the Election Petition No. 72 of 2024 titled as "Syed Muhammad Ali Bukhari vs. ECP" as conducted so far by the Election Tribunal are against the law and rules. The learned counsel of the applicant submitted a supplemental/amended application. He raised a number of grounds for transfer of Election Petition before this Commission gist of which is follows: -



- i. *That, the applicant has been declared as a returned candidate under section 98 of the Act, 2017 by the Commission on 11.02.2024 and the notification has been published in the official gazette on 13.02.2024;*
- ii. *That respondent has not presented the election petition in the office of Learned Election Tribunal but before the Registrar of Islamabad High Court;*
- iii. *That the registrar Islamabad High Court being unauthorized authority has extended time for seven days to the Respondent to cure the defects in the Election Petition filed before the Election Tribunal which is against the spirit of Law and Rules;*
- iv. *That the Learned Election Tribunal has not given attention to follow the provisions of law, and in a very slip shod manner, bent upon to conclude the trial and decide the fate of the petition, which has given rise to strong inference that petitioner will not be treated in accordance with law, which is clear violation of Article 10-A of the Constitution;*
- v. *That election petition in term of section 142 of the Act, 2017 shall be presented before the Learned Election Tribunal, notified for the purpose, however, in accordance with Rule 140 of the Rules, 2017, the office of the Learned Tribunal for the purpose, as to whether before presentation of the petition, the mandatory legal requirements are fulfilled or not, for such purpose a Registrar shall be officially notified;*
- vi. *That no doubt, according to the provisions of section 140(3) of the Act, 2017 a sitting judge of a High Court be appointed as Election Tribunal, but, no official of High Court, without, prior notification may entertain or receive any election petition;*
- vii. *That the provisions of CPC, 1908 has been applied to the trial of an election petition in term of sub Section-1 of Section 148 of the Act, 2017, as well as the provisions of Qanoon-e-Shahadat, Order 1984, meaning thereby that before framing of the factual and legal issues, the Learned Tribunal could not ask for documents or oral evidence;*
- viii. *That any contesting candidate is required under the provisions of section 142 of the Act, 2017, if he so advises, may challenge the elections by filing an election petition within 45 days, which is a mandatory requirement, entailing penal consequences, mentioned under section 145(1) of the Act, 2017 and in term of Rules 140 of the Rules, 2017, neither the Learned Election Tribunal nor office of the Learned Tribunal is vested with the jurisdiction, to provide any grace period for removing any legal defect in the election petition. That learned Election Tribunal is not proceeding in accordance with law. Section 142 to 145 of Election Act 2017.*
- ix. *That the Learned Election Tribunal has treated the subject election petition as a civil suit in utter disregard of law of elections whereby, a hopelessly time-barred and incompetent petition is admitted for regular hearing;*
- x. *That framing of issues in an election petition is the mandatory requirement, after the submission of pleadings of the contesting parties;*



- xi. *That record of election, sealed by District Election Commission (DEC) could not be summoned by an Election Tribunal, without fulfillment of legal requirement envisaged there under, Rule 90 of the Rules, 2017;*
- xii. *That the Learned Election Tribunal is not vested with the jurisdiction, either to examine or to compose copies of election document, provided by contesting candidate;*
- xiii. *That the mode and manner as adopted for the conduct of trial has seriously created perception of biasness/loss of confidence and trust of the Tribunal in the mind of applicant;*
- xiv. *That official witnesses could not be ordered to produce the original record pertaining to elections except during the course of trial of election petition. There are no provisions available in Elections Act, 2017 that before commencement of trial, either original documents pertaining to elections or witnesses be summoned;*
- xv. *That the learned presiding officer of tribunal has ignored the procedure prescribed by the Election Act 2017, therefore he has loss of confidence. When the clear statutory scheme is ignored or brushed aside, it provides legitimate reason for a citizen to loss confidence and trust fair dispensation of justice. Through passing following orders by the learned election tribunal he has lost of trust and confidence.*
- a) **02.05.2024:** *The Election Tribunal admitted the election petition without first determining the question of limitation and, inter alia, directed the respondents to submit written statements along with the 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 previous 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 of arguments. The Election Commission of Pakistan objected that a complete copy of the Election Petition had 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.*
- xvi. *That the petitioner has fundamental rights to be dealt with in accordance with the law under Article 04, of Constitution of Pakistan and opportunity of fair trial under article 10-A of the Constitution of Pakistan be provided but this principle was being ignored by the presiding officer of the Election Tribunal. In this way he has apprehension that opportunity of fair trial will not be granted to the applicant.*
- xvii. *That this Honorable Commission has vested power under Section 151 of Election Act to transfer an Election Petition from one Tribunal to another.*



- xviii. *That the applicant regrets the language and words use in his application about the presiding officer's personnel predisposition. The head no attention to Impugn the character of the judicial officer's but to lay before this commission the genuine loss of faith and confidence in the administration of justice and fair proceedings/fair trial. He further stated that he is not pressing actual biasness against the Judge of election tribunal as primary ground;*
- xix. *That the petitioner for aforesaid reasons has lost confidence in the Learned Election Tribunal;*
- xx. *Therefore, the election petition bearing No.72 may be transferred to any other Election Tribunal;*

06. He further contends that he has no bias against the Presiding Officer of Election tribunal. However, he has lost confidence/trust on the Presiding Officer. He submitted that fair trial is substantive right and it must be extended to the parties with fair opportunity. He stated that there is no bar on transfer of Election Petition from Election Tribunal to another Election Tribunal. Lastly, he prayed that the instant application may kindly be allowed and E.P No. 72 of 2024 titled as Mr. Syed Muhammad Ali Bukhari Vs. Raja Khuram Shehzad and other may graciously be transferred from the current 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 adverting to the preliminary issues.

07. In this respect the learned Counsel placed reliance on the following case laws:-

LIMITATION

S.No	Description of documents
1.	PLD 2014 Supreme Court 585
2.	PLD 2020 Supreme Court 736
3.	PLD 2019Balochistan68
4.	1997 SCMR 1224

VERIFICATION OF ELECTION PETITION

S.No	Description of documents
1.	PLD 2015 Supreme Court 396
2.	2015 SCMR 1585
3.	2019 MLD 294
4.	2016 SCMR 1312
5.	2014 SCMR 1015
6.	1987 MLD 1372
7.	PLD 2023 Lahore 458
8.	PLD 2007 SC 362
9.	PLD 1995 Lahore 98

RULES AND REGULATIONS



S.No	Description of documents
1.	PLD 2011SC619
2.	2016 SCMR 550

PRESENTATION OF PLAINT

S.No	Description of documents
1.	2000 SCMR 847

Amendment of Petition

S.No	Description of documents
1.	PLD 1995 Lahore 95

08. While on other hand learned counsel for the respondent submitted written reply and argued the case at length. The main contention of the respondent is as under;

- i. *That the jurisdiction to the tribunal has already been assigned by the Commission to the Election Tribunal Islamabad through notification dated 17-02-2024 therefore no other Election tribunal exists and the Commission cannot appoint fresh tribunals at this stage nor can transfer the election petition to any other election Tribunal in the provinces;*
- ii. *That the effect of any law will not be effective retrospectively. The Tribunals have already been appointed and the Commission has no power to appoint or withdraw the Election Tribunal after period of 45 days.*
- iii. *That the grounds raised by the applicant are not valid grounds for transfer of an election petition. However, final judgment can be challenged in an appellate forum.*
- iv. *That the election petition has been filed before the Election Tribunal well within time and no objection whatsoever in respect of limitation has been raised by the applicant before the Election Tribunal.*
- v. *That no application for rejection of the petition has been moved by the applicant before the Election tribunal;*
- vi. *That applicant with malafide intention and to cause delay in the disposal of the election petition, has filed this petition just to malign the integrity of the Learned Tribunal;*
- vii. *That no prejudice has been caused to the applicant on obtaining attested copies of Form-45 from the Commission as original record is still under the safe custody of Election Commission. All the attested copies of From-45 have been attached with the election petition.*
- viii. *That the transfer application may be dismissed on the ground that it is not maintainable. The Election Tribunal has not passed any order through which the applicant is aggrieved and even baseless allegations of biasness have been raised without any support of evidence.*



- ix. *That all legal objections raised herein, by the applicant on one hand still require to be resolved during the course of trial while on other hand, any procedural defect in the trial, could not be equated with substance of biasness;*
- x. *That period of 180 days has been mentioned under section 148(5) of the Elections Act, 2017 and de-novo trial cannot be conducted in the subject election petition.*
- xi. *That the orders passed by the Election Tribunal have not been challenged by the applicant before any forum including Supreme Court of Pakistan and it is the case of documentary evidence which can be decided after recording of evidence.*
- xii. *That there are no solid reasons, put forward by the applicant for transferring of the election petition;*
- xiii. *That all legal objections raised herein, by the applicant on one hand still require to be resolved during the course of trial while on other hand, any procedural defect in the trial, could not be equated with substance of biasness;*
- xiv. *That a judge of the Election Tribunal acts as Persona Designate. Though he is appointed as a judge of Election Tribunal but he is still a judge of Honorable Islamabad High Court.*
- xv. *That reasons placed by the applicant for transfer of petition are general in nature, non-specific which have no nexus with the conduct of the Learned Election Tribunal;*
- xvi. *The respondent asserts that order dated 24-09-2024 issued by the ECP is unlawful and exceeds the power.*
- xvii. *That the ECP has ignored the direction of the High Court and unlawfully allow the amendments to the petitioner's application. This mandate obligates the ECP to act strictly in accordance with the law.*
- xviii. *That although Section 151 of Election Act grants the ECP's powers to transfer the Election Petition however such power must be exercised judiciously and not arbitrarily and miss interpretation of its own authority and responsibility.*
- xix. *That misapplication of law is no ground for transfer Election Petition. The ECP has violated the Respondents' right to a fair trial as enshrined in Article 10-A of the Constitution of Pakistan. Article 10-A guarantees the right to a fair trial and due process, mandating that all legal proceedings, including electoral matter, be conducted with impartiality and adherence to legal standards. The ECP's actions in this instance jeopardize the integrity of the electoral process and prejudices the Respondent's rights. The electoral process must be conducted with the utmost transparency and fairness to preserve public confidence and trust in the ECP and its determinations.*
- xx. *That even loss of confidence/trust is no ground for transfer of Election Petition from one tribunal to another.*



- xxi. *The Counsel for the respondents rebutted the judgments referred by the applicant and stated that all the judgments are irrelevant and against the orders of appellant tribunals. He requested for dismissal of the application by imposing heavy cost.*
- xxii. *There is no specific condition mentioned in the rules that Registrar will be appoint separately. Election Rules, 2017 is a special law that will given preference over the General Law.*
- xxiii. *Till today, Applicant has not challenge the proceedings of Election Tribunal before any competent forum which means that he admits the proceedings of the Tribunal even otherwise Election Tribunal has given much favor beyond their scope.*
- xxiv. *That the neither the Election Tribunal nor Applicant raised any objection about the deficiency of any document under Section 142, 143 & 144 of the Elections Act, 2017 which means that all proceedings are conducting in accordance with the law. Even against the finding of Election Tribunal, Election Petition cannot be transferred.*
- xxv. *That there was allegation against the Returning Officer (R.O) and his staff that he has manipulated the record with the convenience of the party therefore, RO was directed to place original record before the Tribunal.*
- xxvi. *There were specific instructions in the judgment of Islamabad High Court that only affidavit will be submitted before the Commission and no amended application and written statement will be placed before the Commission. The Commission cannot go beyond the judgment of Islamabad High Court.*
- xxvii. *That while deciding the Transfer application, Commission must record its reason although there is no single reason exist to transfer the Election Petition, therefore, Transfer application should be dismiss.*
- xxviii. *The Respondent took another objection while arguing the case that applicant may move fresh application and same application cannot be amended. The RO has issued the Form-46. It is not amend the Form-46 while issuing. At this stage no fresh ground can be taken for transfer of Election Petition.*

REBUTTAL

09. In rebuttal the applicant has raised additional grounds:-
- i. *The applicant stated that he has already lost confidence in the original Transfer application.*
 - ii. *The law has provided remedy to the applicant if there exists a strong ground for transfer of Election Petition, therefore, the applicant has filed transfer application on the ground mentioned above. The Tribunal should have decided the Election Petition on the first date of hearing on the ground of maintainability of Election Petition but has ignored this aspect.*



iii. *The Commission has not limited powers to transfer the Election Petition. The legislation has bestowed inherent on power to the Commission to transfer the Election Petition if it is satisfied that grounds are reasonable.*

10. 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.

11. 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.”*

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

13. 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 to 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.Sep.2024 and remanded the case to the Commission to decide afresh after providing opportunity of hearing.

14. 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 Hon'ble 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 and called as Election Amendment Act 2024 on 08.07.2024.

15. 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 limit 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 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 precedents whereby the Election Petitions have been transferred by the Commission to another province for provision of complete justice to the parties. Furthermore, after the enactment of Election Amendment Act 2024 the Commission has the exclusive power to constitute Election Tribunals comprising of retired judges of the High Courts for trial and disposal of Election Petitions.

16. 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 bound the Tribunal to summarily reject the Election Petitions presented before it if the basic requirements 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. The Respondent himself objected that the Tribunal has given undue favor to the Applicant for submission of written statement more than given time of seven days which is against the principle of law and favor has been granted by the Tribunal to the Applicant. According to the Respondent the favor cannot be granted by the Tribunal as it is not a curable defect and law provides specific time to do the needful.

17. 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.

18. 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 Tribunal 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 by the Presiding Officer of the Election Tribunal 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.

19. 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 follow 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 afore-mentioned 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.

20. 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.

21. 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.

22. 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.”

23. 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."

24. 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.

25. 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."

26. 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.”

27. 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. 72/2024 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.

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


SIKANDAR SULTAN RAJA
 Chairman


NISAR AHMED DURRANI
 Member


SHAH MUHAMMAD JATOI
 Member


JUSTICE (R) IKRAMULLAH KHAN
 Member

