

**IN THE LAHORE HIGH COURT LAHORE/  
ELECTION TRIBUNAL**

**ELECTION PETITION NO.06 OF 2018.**

**Malik Muhammad Nawaz.          Versus          Khayal Ahmad, etc.**

**J U D G M E N T**

Date of hearing	<b>20.12.2018.</b>
Petitioner by:	Mr. Mohammad Ahmad Qayyum, Advocate, assisted by Mr. Shamail Arif, Advocate.
Petitioner(s) in other petitions by:	M/s Ahmad Waheed Khan and Muhammad Afzal Khan, Advocates.
Respondent No.1 by:	Mr. Khalid Ishaq, Advocate assisted by M/s Wajahat Ali, Ahmad Saeed, Babar Afzaal and Abid Husain Sial, Advocates.
Respondent No.3 by:	Chaudhary Imtiaz Ahmad Kamboh, Advocate.
Respondent No.5 by:	Mr. Suneel Tariq, Advocate.
Respondents No.2, 7, 8, 10 & 12 by:	M/s Muhammad Ajmal Adil and Muhammad Wasif Shahzad, Advocates.
Respondents No.4, 6, 9 and 11.	Ex-parte
Respondent No.14 by:	Mr. Imran Arif Ranjha, Advocate.
Respondent(s) in other petitions by:	M/s Barrister Muhammad Omer Riaz, Khalid Ishaq, Tahir Munir Malik, Mubin-ud-Din Qazi, Muhammad Ahsan Bhoon, Fakhar uz Zaman Tarar, Hamid Iftikhar Pannun and Kazim Ali Malik, Advocates.

**Shahid Jamil Khan, J:-** This judgment shall deal with and decide the legal objections on maintainability of election petitions filed under Section 139 of the Elections Act, 2017 (“Act of 2017”), before this Election Tribunal.

This judgment shall, however, dispose of only captioned election petition and rest of the petitions shall be decided on their own facts independently in light of this decision.

2. The captioned election petition is filed by Malik Muhammad Nawaz, being runner up by securing 58,401 votes, challenging the notification of respondent No.1 (Khayal Ahmad) as Returned Candidate, who secured 69,441 votes from PP-110 (Faisalabad XIV). In response to the notices, respondent No.1 (“**the Returned Candidate**”) and respondents No.2, 3, 5, 7, 8, 10 and 12 entered appearance. Respondents No.4, 6, 9 and 11 were proceeded against ex-parte for non-appearance.

An application (C.M.No.04 of 2018) was filed on behalf of the Returned Candidate, seeking rejection of the petition under Section 145(1) of the Act of 2017 for non-compliance of the mandatory conditions, *i.e.* defective verification, ineffective service of notice under Section 144(2)(c), and falsification of affidavit required under this Section.

Another application (C.M.No.05 of 2018) was filed under Rule 140 of the Election Rules, 2017 (“**Rules of 2017**”) by the petitioner seeking time to rectify the deficiencies.

3. Mr. Khalid Ishaq, Advocate, (counsel for the Returned Candidate) opened arguments for the respondent/objector’s side and submitted that wording of the verification and attestation by the Oath Commissioner are defective because it does not show presence of the petitioner before the Oath Commissioner nor is name of the person who identified him is written. He referred to the judgment in *Lt.-Col. (Rtd.) Ghazanfar Abbas Shah v. Mehr Khalid Mehmood Sargana and others (2015 SCMR 1585)*, to point out essential requirements of a valid verification and administration of oath to contend that an election petition, carrying defective verification, merits rejection, even if not prayed for. A comparison between the provisions of repealed Representation of People Act, 1976 (“**ROPA**”) and existing Act, 2017

was made to submit that this judgment is applicable and binding for an election petition filed under the latter Act.

He continued that consequence of non-compliance of requirements under the Section 145(1) cannot be relaxed or converted into directory provisions by subordinate legislation through Rule 140 of the Rules of 2017. To support this submission, reliance was placed on Suo Motu Case No.13 of 2009 (PLD 2011 Supreme Court 619) and National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Limited (2016 SCMR 550).

Further submitted that judgment in Muhammad Nawaz Chandio v. Muhammad Ismail Rahu and others (2016 SCMR 875) has not taken away the binding effect of Ghazanfar Abbas Case. Concluded that the conditions of due verification stipulated in Paragraph No.8 of Ghazanfar Abbas Case are not met in this case, therefore, this petition merits dismissal.

Barrister Muhammad Omer Riaz, also argued for the objectors and laid emphasis on importance of mandatory nature of provisions under the Act of 2017. He took the Court through various Articles of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”) to submit that prime purpose of this enactment was to “*consolidate and unify laws*” relating to elections as has been mandated by the Article 222. Before this Act, the election laws were spreading over eight statutes, which have been consolidated with necessary amendments. Argued that the time tested law under ROPA was never intended to be changed. To support this assertion, he presented a chart of comparison between various provisions from ROPA and the Act of 2017. Referring to the judgment by my learned brother Justice Shahid Waheed (as another Election Tribunal) he submitted that defects in material facts, as required under Section 144(1)(a) are not curable, however, defect in material particulars, as required under Section 144(1)(b) may be rectified by allowing amendment under Section 149 of the Act of 2017 read with Rule 140 of the Rules of 2017.

Rest of the counsel including Mr. Tahir Munir Malik, Advocate, appearing for the objector had adopted arguments, *ibid*. The latter, however, took a position that a false affidavit for service of notices, if so produced, requires the election petition to be dismissed on this score alone.

4. Mr. Mohammad Ahmad Qayyum, Advocate (counsel for the petitioner), replied the arguments submitted that the scheme under the Act of 2017 does not envisage stringent application of technical provisions, therefore, judgments relied upon by the objector's counsel are not relevant. He read various Rules under Chapter IX and in particular Rule 140 of the Rules of 2017 to submit that additional 07 days' time has been provided for curing the deficiencies, which was not permissible under the repealed law. Rule 141 was also read to submit that notice under Section 145(2) could only be issued after providing time to cure the deficiencies. Argued, further, that after issuance of the notice to respondents, petition could be dismissed only after framing of issues. In support of the arguments, he read various provisions of the Act. Further submitted that tenor of the existing law is to proceed against the Returned Candidate, if any material comes to its knowledge from any source, which leads to form an opinion that Returned Candidate was a defaulter of land, taxes, government dues and utility expenses or has submitted a false and incorrect declaration regarding payment of loans etc. He argued that the information noted in the Section 165 is basis of this election petition against the Returned Candidate, therefore, cannot be overlooked due to the technicalities. He read Section 149 of the Act of 2017, which permits amendment of the petition before framing of issues to submit that the phrase "*necessary for ensuring a fair and effective trial*" depicts the intention of the legislature to proceed by ignoring technicalities. He placed reliance on a subsequent judgment in Nawaz Chandio's Case to submit that defect of verification was cured in the subsequent judgment, when petitioner had owned the signatures in witness box.

On Court's query, it was not denied that Section 145(1) of the Act of 2017 is *pari materia* to Order VII Rule 11 of Code of Civil Procedure, 1908 ("CPC") and that petition can be rejected at any stage. However, submitted that provisions of the Section 145(1) are special, which provide summary rejection before filing of reply. Concluded that the deficiency, if any, in verification may be deemed cured as full affidavit verifying the contents of the petition is available on the file. In support, reliance was placed on a judgment in Ch. Zawwar Hussain Warraich vs. Muhammad Aamir Iqbal and others (2015 SCMR 1186).

Mr. Ahmad Waheed Khan, Advocate, also argued against the objectors. He read preamble of the Constitution and pressed that Sovereignty belongs to Allah, has been bestowed upon the people of Pakistan and is to be exercised through chosen representatives. Referring to Article 218(3) of the Constitution read with Section 8(a) of the Act of 2017, submitted that to conduct election honestly, justly and fairly and guard against corrupt practices is the paramount duty of Election Commission. Contended that true representation through fairly conducted election is right of the people of a constituency. He concluded that Election Tribunal has ample power to avoid technicalities for probing into the allegations of corrupt and illegal practice to ensure the right of true representation.

Mr. Afzal Khan, Advocate did not deny that the verification is defective, however, submitted that it stood cured being accompanied by an affidavit. He read different parts of this judgment in Ghazanfar Abbas Case to submit that the judgment is binding for future but stringent application of the technicalities was to be applied in ideal situation, which is not existing even now as no measures have been taken, after the judgment, from any side to ensure a valid verification.

Mr. Mubin-ud-Din Qazi, Advocate, has not denied that the law laid down in Ghazanfar Abbas Case is applicable, however, argued that technical omissions would be ignorable, if it is discernable from examination of verification or stamp of Oath Commissioner that

deponent was physically present by invoking powers under the Section 165.

5. Heard. Record perused.

6. The objections on maintainability of an election petition under the Act of 2017 are based on the judgment in Ghazanfar Abbas Case, supra, contending that the enunciated principles, despite being on the provisions of ROPA, are applicable for an election petition under the Act of 2017. The arguments, in defense, are that this judgment does not attract. The spirit of law enunciated, through this judgment, is to be examined, to answer the proposition.

Appeal before the Apex Court was against an election petition under Section 63 of ROPA, which was dismissed for absence of due verification per the provisions of Section 55(3), despite been accompanied by an affidavit. The defects were held incurable, after discussing the requirement of a valid verification and administration of oath. Operative parts of the judgment are reproduced:-

*“5. ... Be that as it may, in addition to the law cited by both the sides (from some other dicta), it is conclusively settled by this Court that verification of an election petition is mandatory and a petition which lacks proper verification shall be summarily dismissed by the tribunal, even if the respondent has not asked for or prayed for its dismissal.”*

*“7..... It is also relevant to note here that in an ordinary lis (suit etc.) requiring verification and support by an affidavit, if the verification or affidavit is flawed, such lapse may be considered an irregularity and be treated as a curable defect, but we are not laying down any hard and fast rule, because the matter before us is not pertaining to ordinary litigation, however ***in the case of an election petition the law is very stringent and imperative.*** Therefore if the election petition has not been verified in accordance with law, this cannot be treated as a curable defect and the Election Tribunal particularly after the lapse of the period of limitation prescribed for filing of election petition, cannot permit the election petitioner to cure the same.*

[emphasis supplied]

Notwithstanding the verdict, *ibid*, the Court acknowledged a plea that an election petition may not be knocked down for any laps on

the part of an Oath Commissioner. Benefit of some doubts, in earlier judgments by superior court, was given for directing to ignore such defects in all cases pending till the date of this judgment. But the declared law was held applicable stringently, for future, by casting an obligation on the election petitioners to insist and ensure that requisite endorsement made by the Oath Commissioner and in case of failure the election petition shall be liable to dismissal summarily. Relevant extract is reproduced:-

8. ... .. We have applied our mind to this aspect of the matter and hold that in order to meet the real object and the spirit of the election laws which require verification on oath, in an ideal situation, the Oath Commissioner at the time of verification of the petition etc. and also the affidavit, must record and endorse verification/ attestation that the oath has been actually, physically and duly administered to the election petitioner/ deponent. But as the law has not been very clear till now, we should resort to the principle of presumption stipulated by Article 129(e) *ibid* in this case for avoiding the knock out of the petition for an omission and lapse on part of the Oath Commissioner. ***But for the future we hold that where the election petition or the affidavit is sought to be attested by the Oath Commissioner, the election petitioner shall insist and shall ensure that the requisite endorsement about the administration of oath is made, otherwise the election petition/affidavit shall not be considered to have been attested on oath and thus the election petition shall be liable to be, inter alia, dismissed on the above score. We consciously and deliberately neither apply this rule to the instant case nor any other matter pending at any forum (election tribunal or in appeals).***

[emphasis supplied]

7. Relevant provisions of the Act of 2017 and the ROPA are examined, in the light of Constitutional mandate for conduct of elections and disputes arising therefrom.

The Act of 2017 was enacted, as its preamble shows, “to amend, consolidate and unify laws relating to the conduct of elections”. The Parliament’s authority and extent for providing laws relating to conduct of elections, is directly controlled by the Constitution through the Article 222. On conduct of an election, the dispute relating to the election can be called in question, only through an election petition, as commanded by Article 225 of the Constitution,

in such a manner as may be determined by the Act of the Parliament. The Article 225 of the Constitution itself shows that a procedure to call in question an election conducted under the law, as mandated under Article 222, is not an ordinary litigation. It is to be initiated through an election petition, in a manner as may be determined by Act of the Parliament. The manner of presenting the election petition is given in Chapter IX of the Act of 2017. Chapter X is providing for appointment, powers and procedure by the Election Tribunal, besides stipulating the requirements of election petition and its contents. Section 139 of the Act of 2017 stipulates that only a candidate can call in question an election through an election petition on the allegation of corrupt, illegal practice or other illegalities (as defined in Chapter X) and respondents to the petition, under Section 143, shall be all other candidates. Any other person can also be arrayed as respondent, if so directed by the Election Tribunal, under Section 143(2) of the Act of 2017, which was not permissible under Section 54 of the ROPA. Section 143(3) enjoins a duty upon the petitioner to serve a copy of the election petition with all annexures on each respondent before or at the time of filing of the election petition. This duty has been elaborated further in Section 144(2)(c) of the Act of 2017, which requires that election petition shall be attached with an affidavit of service of the election petition with copies of all annexures, list of witnesses, affidavits and documentary evidence. Filing of list of witnesses and their statements on affidavits is necessary under Section 144(2)(a) of the Act. Under Section 144(1), a precise statement of “*material facts*” and “*full particulars*” of any corrupt or illegal practice of other legal act with date, place of its commission is necessary. Section 144(2) gives details of the documents to be attached with the petition which includes, under its Clause (b), documentary evidence in support of the allegations of corrupt or illegal practice. Even the relief which can be claimed in election petition has been provided under subsection (3).

The provisions, *ibid*, are *pari materia* to the provisions under Sections 52, 53 and 54 of the ROPA with negligible amendments. Section 144(4) requires that an election petition shall be signed and

verified by the petitioner in the manner laid down in CPC. Both the provisions, being relevant for resolution of the issue, are reproduced hereunder:-

**Section 144(4) of the Act of 2017:-**

(4). 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 Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

**Section 55(3) of the Act of 1976:-**

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

[emphasis supplied]

Only change in both the provisions is that requirement for verification of every schedule or annexures has been relaxed, which appears logical but does not diminish the importance of verification of the petition as required under the repealed law. The comparison of Section 144 of the Act of 2017 with Section 55 of the ROPA would show that subsection (2) of Section 144 has imposed additional obligations of attaching statements of witnesses on affidavits and documentary evidence to support the allegations of alleged corrupt and illegal practice with date and place. This insertion has rendered the requirement, for contents of petition and its annexures, more stringent than the repealed law. Comparison of Section 145 of the Act of 2017 with Section 56 of the ROPA would show that election petition under the ROPA was to be presented before the Election Commissioner. On receipt of the petition, the Commission was given powers under Section 56(1) to dismiss the petition forthwith if any provision of Sections 52, 53 or 54 was not complied with. The Election Tribunal was also given powers to dismiss the petition under Section 63(a) of the ROPA if provisions of Section 54 or Section 55 were not complied with. The relied upon case law has dealt with dismissal of petition under Section 63(a) by the Tribunal for non-compliance of requirements under Section 55(3). Under existing law, the

consequence of non-compliance is summary rejection of election petition, under Section 145(1) of the Act of 2017.

8. Rules relating to election disputes are provided under Chapter X of Election Rules, 2017. Rule 140 of this Chapter envisages if petition, while processing, is found not in accordance with the laid down procedure, the petitioner shall be informed accordingly, directing him to fulfill the deficiencies within 7 days, failing which the petition shall be dismissed. The Rule 140 is reproduced for better appreciation:-

**Rule 140. Processing the Petition.** Every petition shall be processed by the Tribunal and in case the petition is not in accordance with the laid down procedure the petitioner shall be informed accordingly indicating the deficiency in the petition if any directing him to fulfill the same within 7 days of the receipt of communication from the Tribunal failing which the petition shall be dismissed by the Tribunal.

This rule does provide for an opportunity to cure deficiencies in the petition within 7 days from the communication by Tribunal, yet it cannot be construed to have relaxed the stringent conditions stipulated in the statute. This rule needs to be read with Section 149 of the Act of 2017, which permits amendment of election petition before commencement of recording evidence to ensure a fair and effective trial and for determining the real questions at issue but it stops from raising new ground. Such restriction is not mentioned in Rule 17 of the Order VI of CPC. However, underlying principles in both the provisions are same that the amendment shall be allowed to determine the real question in controversy or at issue provided the other party is not prejudiced. But an amendment having effect of converting the character of suit, its subject matter or raising a new cause of action, which became time barred by that time, cannot be allowed.

9. Under the Act of 2017, the cause of action as specified in the Statute must spell out from the contents of the petition, failure of which cannot allowed to be cured under the Rule 140 or through amendment of Section 149. Under Section 144(1)(a), a petition must contain precise statement of Material Facts relied upon by the

petitioner, which should disclose a cause of action as specified in the Act of 2017 i.e., ‘*corrupt or illegal practice*’. or ‘*other illegal act*’. Material Particulars under Section 144(1)(b), are also required to be disclosed. The Election Tribunal shall allow to make up the deficiency if it is satisfied that the permission would not change character of the petition and would not raise an additional cause of action. Emphasis, under Order VI Rule 2 of CPC, is on “*concise statement of material facts*” and the evidence, to prove the material facts, is not to be mentioned. Purpose of pleading is to let other party know what case it has to meet otherwise it can urge to have been taken by surprise. Neither issues can be framed nor can judgment be given on a plea not raised in pleadings. The material facts on which a party relies are known *facta probanda* and the evidence by means of which they are proved is called as *facta probantia*. Where pleadings omit material fact, evidence would not allowed to be led on the plea not raised unless it is incorporated through amendment of pleadings under Order VI Rule 17 of CPC. The basic rule is *secundum allegata et probata* i.e. a party can only succeed according to what was alleged and proved.

10. The difference between the Section 144(1)(a) and Order VI Rule (2) is that latter requires ‘*Concise Statement of the material facts*, whereas the words used in the former provision are ‘*precise statement of material facts*’, which is more stringent than the provision under general law. Similarly under Order VI Rule (4) material particulars are essential if any misrepresentation, fraud, breach of trust, willful default or undue influence is pleaded. In other cases, material particulars can be given if felt necessary. As has been observed by his lordship Mr. Justice Shahid Waheed in *Usama Ahmad Mela vs. Mohsin Nawaz Ranjha, etc.* (2018 LHC 2705) the deficiency in material particulars is curable, under general law, but omission on material facts is incurable.

The legal position under the Act of 2017 is different. Under Section 144(1)(b) the pleading shall contain full particulars of the alleged corrupt or illegal practice or other illegal act, with names of parties, date and place of commission, which are mandatory

requirements, as word shall is used with consequence of failure under Section 145(1). All other requirements like attachment of complete list of witnesses and their statement on affidavits and relied upon documentary evidence, being akin to material facts and material particulars are mandatory.

Holistic examination of different provisions of the Act of 2017, would show that law related to election petition, being special, is different from any action under general law, where parties to the litigation can make up the deficiencies in the pleading or procedure liberally. Under the Act of 2017, the causes of actions i.e., corrupt practice, illegal practice and other illegal acts are defined in Chapter X. The prayer and its form has been specified in Section 144(3) with the extent and guidelines, (as contained in Sections 154, 156, 157 and 158), for declaring any election as void, or as a whole void with direction for re-election and for declaring another contesting candidate as elect. The extent of jurisdiction and procedures are so elaborated that Election Tribunal is left with discretion for very limited purposes. The discretion to allow making up of deficiencies and curing of omissions (available under the Rule 140 and Section 149) is not as wide as is under general law.

Absence of list of witnesses alongwith affidavits is not a curable deficiency under the Rule 140, because the defect is in the contents of petition. The documents in support of material facts cannot allowed to be produced in evidence subsequently because no list of reliance on documents is required to be filed. The Section 149 and the Rule 140 might be invoked for a deficiency of non-filing or defective affidavit of service and supply of complete documents as required under Section 144(2)(c), after determining whether the omission was beyond control, inadvertent or un-contumacious. Similarly any defect in prayer, being not incompliance with Section 144(3) can allowed to be cured, through amendment of pleading if necessary corollary of the disclosed material facts and material particulars so permit. Nevertheless, Rule 140 would not be invoked to extend limitation of

45 days under Section 142(1). A willful non deposit of security, under the Section cannot be condoned, yet any non-deposit under uncontrollable circumstances can be condoned by allowing seven days' time to fulfill the deficiency and the failure to comply, would lead to dismissal of election petition for defiance of Election Tribunal's order. The argument that Rule 140 has extended time for rejection of election petition under Section 145(1) is misconceived, because different terms are used in both provisions. Rejection of election petition cannot be equated with its dismissal. The argument that, after issuance of notices to respondents by Election Tribunal, provision of Section 145(1) cannot be invoked, has no force, because language of the subsection (1) does not suggest it and the wordings of subsection (2) of Section 145 and the Rule 141 show that these provisions are directory. An election petition carrying incurable defects or deficiencies cannot be proceeded with merely because it was not noticed by the Tribunal before issuance of notices to the respondents.

11. Examination of various provisions of the Act of 2017 endorse the argument that it is promulgated to consolidate the law relating to conduct of Elections and matters connected therewith, without any shift from the law prevalent since 1967. Some of the provisions are rationalized with necessary amendments, but most of the provisions are couched in similar language, besides increasing strictness for compliance and the consequence. The strictness of laws relating to conduct of Elections is evident from the Constitution. Article 218(3) enjoins duty upon Election Commission to ensure that election is organized and conducted honestly, justly, fairly and in accordance with law and to guard against corrupt practices, which is reiterated in Section 8(a) of the Act of 2017. Article 222 confers specific power upon the Parliament to enact laws to meet the object mentioned therein. Its clauses (c) and (d) set the object of enacting laws for conduct of elections and election petitions to resolve doubts and disputes and matters relating to corrupt practices and other offences.

The argument by Mr. Ahmad Waheed Khan, Advocate that to achieve this object laws are to be construed liberally is found not convincing, despite force in his argument that per preamble of the Constitution sovereignty belongs to Almighty Allah alone, which is to be exercised by People of Pakistan through chosen representatives. No doubt relevant Articles of the Constitution and provisions of the Act of 2017 are meant to ensure that true representatives of the People of Pakistan are chosen for discharge of the sacred trust, which is the right of the people of a constituency, to be ensured by the Election Commission. Election conducted by the Election Commission, under the Constitution and the law, is an official act, having protection of the presumption under Article 129(e) of Qanun-e-Shahadat Order, 1984, that it is conducted honestly, justly and fairly. Filing of an election petition to challenge declaration of a Returned Candidate by the Election Commission, on any ground of corrupt or illegal practice, is to prove against this presumption, displacement of which requires high standards of evidence. While conducting an election of a constituency, people of the constituency and Government's machinery undergo an extensive exercise. The election petitioner, in fact, seeks to discard the whole process, which cannot and should not lightly be entertained, unless the alleged corrupt or illegal practice is oozing out of the contents of election petition supported by mandatory attachments. Strictness for entertaining an election petition appears logical for the reason that from filing of the petition till decision thereon, people of the constituency and the returned candidate would remain in a state of uncertainty, therefore, discharge of the sacred trust, to the extent of the people of that constituency, shall be compromised. This position is supported from the command, couched in negative, under Article 225, which is reproduced hereunder:-

**“225. Election dispute.—**No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament).”

Bare reading of this Article shows that an election having presumption of being conducted justly, fairly and in accordance with law, cannot be called in question in an ordinary way. Besides conferring jurisdiction to an Election Tribunal, emphasis is on the manner to be determined by the Parliament. Start of a constitutional command with negative word candidly shows its imperative nature, for calling an election, conducted by Election Commission, into question. NS Bindra calls an act, prohibited by legislature using negative language, as *ultra vires* and without jurisdiction. Relevant extract is reproduced hereunder:-

“There is a difference between a case in which a court or an officer of a court omits to do something, which by a statute it is enacted shall be done, and cases in which court or an officer of a court does something which by a statute it is enacted shall not be done. In the one case, the omission to do an act which by the statute it is enacted shall be done may not amount to more than an irregularity in procedure, while in the other case, in which the prohibition is enacted, the doing of the prohibited thing by the court or the official is *ultra vires* and illegal and if so, it must follow that it was done without jurisdiction.

Negative words would give a statute an imperative effect. Negative words are clearly prohibitory and ordinarily used as a legislative device to make a statute imperative.”

**Reference** (NS Bindra's *Interpretation of Statutes*, 10<sup>th</sup> edition).

Harshness and strictness of the manner of presenting the election petition is stemming out of the Article 225 and is reflecting in the provision of the Act of 2017. As no provision for an application for condonation of delay is provided in the Act of 2017, even if the contents of petition are showing apparently that a corrupt or illegal practice was committed. In such a situation, *suo moto* power under Section 165 cannot be exercised by the Tribunal, because such interpretation would directly be in conflict with the Article 225, which ordains that an election shall be called in question by an election petition and in the manner determined by the Act of Parliament. Harmonious construction should be that an Election Tribunal may take *suo moto* action after entertaining election petition or during its

proceedings, if comes across an information, as provided in the Section 165, from any source not necessarily from the pleadings.

12. The verification of election petition is stipulated under Section 144(4) of the Act of 2017, in the manner laid down in CPC. Order VI Rule 15 of CPC provides the manner, requiring a pleading to be verified at the foot by the party. The person verifying shall specify, by referring to the numbered paragraphs, what he verifies of his own knowledge and upon information provided to him. The verification shall be signed stating time and place at which it was signed. The verification has to be **“on oath or solemn affirmation”** Manner of administering oath is given in Section 139 of CPC, which authorises any officer or other person, appointed in this behalf by a High Court. Section 7 of the Oath Act, 1873, provides that **“all oath and affirmation”** shall be made according to the forms as High Court may from time to time prescribe. The form and manner for administering oath is prescribed under Rules No.11, 12, 14, 15 and 16 of Chapter No.12, Volume IV of the Lahore High Court Rules and Orders.

The verification on oath or solemn affirmation, needs to be attested (by Oath Commissioner) in the manner and as per forms prescribed by High Court, which is held mandatory and any omission in the form or manner has been held incurable by the Apex Court, conclusively through judgment in Ghazanfar Abbas Case, after discussing all available judgments starting from Engr. Zafar Iqbal Jhagra and others v. Khalilur Rehman and 4 others (2000 SCMR 250). The judgment in Ghazanfar Abbas Case was followed immediately by the judgment in Hina Manzoor Case. The plea that administration of oath was not required for verification of pleadings was repelled by reproducing relevant extracts from almost all judgments, by the Apex Court, till that date. The defect in verification was held incurable by holding that any application to cure the defect after limitation of 45 days was not entertainable. In Ghazanfar Abbas Case, requirement of a valid verification and administration of oath

were explained putting a responsibility on the deponent to get these requirements fulfilled from the Oath Commissioner.

The argument that full affidavit, accompanied by the election petition, cures the lacuna, if any, in the verification is of no avail after the date of the judgment in Ghazanfar Abbas Case. Even otherwise, filing of full affidavit is in deviation from the manner of the verification, as given under Order VI Rule 15 of CPC, which specifically requires to put the verification “*at the foot*” of pleadings. If the Section 144(4) is read with Article 225, no departure from the manner of verification can be allowed.

13. The subsequent judgments, in Feroze Ahmad Jamali v. Masroor Ahmad Khan Jatoi and others (2016 SCMR 750) and in Nawaz Chandio Case, have not obliterated the binding effect of the judgment in Ghazanfar Abbas Case.

In Feroze Ahmad Jamali’s judgment, it is held, “*the validity of the verification shall depend on facts of each case*” And after examining the verification it was found to had complied with the provisions of Order VI Rule 15 of CPC.

In Nawaz Chandio’s Judgment also, the verification was examined and found valid, besides an observation that the petitioner had owned the election petition in witness box. Nevertheless, it was observed that judgment in Ghazanfar Abbas Case, being mandatory for future, was not relevant.

To answer Mr. Afzal Khan Advocate’s arguments that ideal situation did not exist to follow the law enunciated by judgment in Ghazanfar Abbas Case, suffice it to observe that after imposing responsibility on the deponent, through the judgment, this argument has no force.

14. The question whether judgment in Ghazanfar Abbas Case would apply and is binding for an election petition filed under the Act of 2017, has been settled affirmatively by the Apex Court through decision in Civil Appeal No.1344 of 2018. An appeal against summary

rejection of election petition for defective verification and non-supply of list of witnesses, has been dismissed by applying the law laid down in Ghazanfar Abbas Case. The order is reproduced hereunder:-

“In the light of the law laid down in the judgment reported as Ghazanfar Abbas Shah Vs. Khalid Mehmood Sargana (2015 SCMR 1585) (particularly paragraph No.7 thereof), a perusal of the verification of the affidavits filed along with the election petition clearly suggest that the same are not in accordance what the ratio of the aforesaid judgment. Besides, the list of witnesses has also not been provided as required by law. Resultantly, the impugned judgment is in line with the law and the petition was rightly dismissed by the learned High Court. This appeal having no merit is accordingly dismissed.”

15. Contents of the captioned election petition are examined in light of the objections raised through C. M. No. 04 of 2018 by the contesting candidate. The objection of not serving election petition with all annexures, as required under Section 143(3) read with Section 144(2)(c), cannot be decided summarily because affidavit of service alongwith receipts by courier service, as required under the relevant provisions, are attached, which cannot be declared false in absence of evidence.

However, perusal of the verification and its attestation by Oath Commissioner, at foot of the petition, from the face of it, is found defective. The verification is reproduced hereunder:-

Certified that the above was Declared on Oaa.  
by Mr./Mrs \_\_\_\_\_  
S/o, D/o, W/o \_\_\_\_\_  
to \_\_\_\_\_  
Identified by Mr. \_\_\_\_\_  
MUNIR-UL-HASSAN KHAN  
ADVOCATE HIGH COURT  
OATH COMMISSIONER  
Lahore High Court, Lahore.  
Notification No-21 Gen.A. B.S. (I) 1997-20

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Verified on oath on \_\_\_\_\_ at Lahore that paras 1 to 9 are true and correct as per my own knowledge and information. paras 10 to 14 are true and correct upon information.

Petitioner  
Jae

It does not disclose that petitioner was present before the Oath Commissioner and was duly identified.

16. For what has been discussed hereinabove, C.M.No.04 of 2018 filed by the respondent (Returned Candidate) is **allowed** and the captioned Election Petition is **rejected** in terms of Section 145 (1) of the Act of 2017. As a consequence, C.M.No.05 of 2018 filed by the petitioner is **dismissed**.

**(Shahid Jamil Khan)**  
Judge/Election Tribunal

**Announced in open Court on 07.02.2019.**

**(Shahid Jamil Khan)**  
Judge/Election Tribunal

**Approved for reporting**

**Judge**

\*A.W./SAJJAD